INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(UKRAINE *v.* RUSSIAN FEDERATION)

VOLUME XXVI OF THE ANNEXES TO THE MEMORIAL

SUBMITTED BY UKRAINE

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Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, Judgment (6 December 1999),

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Trial Chamber I

OR: FR.

ICTR-96-3-T
06-DEC-1999
(1723-1549)

Before: **Judge Laïty Kama, Presiding**
Judge Lennart Aspegren
Judge Navanethem Pillay

Registrar: **Mr. Agwu Okali**

Judgement of: **6 December 1999**

THE PROSECUTOR
VERSUS
GEORGES ANDERSON NDERUBUMWE RUTAGANDA

Case No. ICTR-96-3-T

JUDGEMENT AND SENTENCE

The Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. James Stewart
Mr. Udo Herbert Gehring
Ms. Holo Makwaia

Defence Counsel:

Ms. Tiphaine Dickson

1.5 The Accused

24. On 8 April 1999, the Accused testified that he was born on 28 November 1958 in Ngoma, in Gishyita *Commune*, Kibuye *Préfecture* in Rwanda. He grew up in Gitarama and Kibuye *Préfecture*, before studying and working in Butare and Kigali *Préfectures*.

25. The Accused testified that his father, Esdras Mpamo, held many civil, public and political offices and government appointments, such as the Prefect of Kibuye, Cyangugu, and Butare *Préfectures*, the Rwandese Ambassador to Uganda and Germany and the Bourgmestre of Masango *Commune*, in the Gitarama *Préfecture*. The Accused testified that although he traveled a lot he considered his origin to be Masango *Commune* in the Gitarama *Préfecture* because his father was the Bourgmestre in this *Commune*, and he returned there throughout his youth. The Accused also testified that his father was a devout Seventh Day Adventist, and that his father's religious and political beliefs significantly influenced his upbringing and subsequent political decisions.

26. The Accused testified that he is married and he is a father of three children. He stated that he received a degree in agricultural engineering in 1985, from National University of Rwanda and thereafter he was appointed agricultural engineer. He stated that as an agricultural engineer, he conducted agricultural research and he managed a farm which served as a model farm to the farmers of Huye *Commune*. According to the Accused, he was allowed to purchase this farm by virtue of a Presidential decree.

27. The Accused testified that he applied to the Agricultural Ministry to be transferred from Butare in 1991, because of threats he had received from certain people in the Huye *Commune*, following his purchase of the farm that he managed. He stated that he was subsequently transferred to a post with the Rwandese Ministry of Agriculture in Kigali, although his family remained in Butare.

28. The Accused testified that, in June 1991, he commenced work as a business man in Kigali, dealing with import, under the name of Rutuganda SARL. He stated that Rutaganda SARL was a highly profitable enterprise, and maintained exclusive imports and distribution agreements with a number of European food and beverage producers, as well as exclusive supply agreements with smaller bars, distributors, and organizations in Rwanda.

29. The Accused testified that he joined the MRND on or about September or October 1991. He stated that various political parties offered him membership, but he joined the MRND because he believed that this political party was in a position to provide the best economic and military protection, both of which were significant concerns for him as a business proprietor in Rwanda.

30. The Accused testified that, after he joined the MRND party in 1991, he became the second vice president of its youth wing, the Interahamwe za MRND. He stated that he was involved in the creation of the Interahamwe za MRND and met regularly with its other leaders.

2. THE APPLICABLE LAW

2.1 Individual Criminal Responsibility

31. The Accused is charged under Article 6(1) of the Statute with individual criminal responsibility for the crimes alleged in the Indictment. Article 6(1) provides that:

> "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute shall be individually responsible for the crime".

32. In the *Akayesu Judgement* findings were made on the principle of individual criminal responsibility under Article 6(1) of the Statute. The Chamber notes that these findings are, in the main, the same as those made in the *Tadic Judgement* and in the judgements in *The Prosecutor v. Clément Kayishema and Obed Ruzindana* (the "*Kayishema and Ruzindana Judgement*")[11] and *The Prosecutor versus Zejnil Delalic, Zdravko Mucic, Hazim Delic, Esad Landzo*: '*The Celebici Case*', (the "*Celebici Judgement*")[12]. The Chamber is of the view that the position as derived from the afore-mentioned case law, with respect to the principle of individual criminal responsibility, and as articulated, notably, in the *Akayesu Judgement* is sufficiently established and is applicable in the instant case.

33. The Chamber notes, that under Article 6 (1), an accused person may incur individual criminal responsibility as a result of five forms of participation in the commission of one of the three crimes referred to in the Statute. Article 6 (1) covers various stages in the commission of

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[11] Judgement of the International Criminal Tribunal for Rwanda, Trial Chamber II, *Prosecutor v. Clément Kayishema and Obed Ruzindana*, (Case No. ICTR 95-1-T) 21 May 1999.

[12] Judgement of the International Criminal Tribunal for the Former Yugoslavia, (Case No. IT-96-21-T) *The Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, Esad Landzo, "The Celebici Case"*, 16 November 1998.

a crime, ranging from its initial planning to its execution.

34. The Chamber observes that the principle of individual criminal responsibility under Article 6 (1) implies that the planning or preparation of a crime actually leads to its commission. However, the Chamber notes that Article 2 (3) of the Statute, on the crime of genocide, provides for prosecution for attempted genocide, among other acts. However, attempt is by definition an inchoate crime, inherent in the criminal conduct *per se* irrespective of its result. Consequently, the Chamber holds that an accused may incur individual criminal responsibility for inchoate offences under Article 2 (3) of the Statute and that, conversely, a person engaging in any form of participation in other crimes falling within the jurisdiction of the Tribunal, such as those covered in Articles 3 and 4 of the Statute, could incur criminal responsibility only if the offence were consummated.

35. The Chamber finds that in addition to incurring responsibility as a principal offender, the Accused may also be held criminally liable for criminal acts committed by others if, for example, he planned such acts, instigated another to commit them, ordered that they be committed or aided and abetted another in the commission of such acts.

36. The Chamber defines the five forms of criminal participation under Article 6(1) as follows:

37. Firstly, in the view of the Chamber, "planning" of a crime implies that one or more persons contemplate designing the commission of a crime at both its preparatory and execution phases.

38. In the opinion of the Chamber, the second form of participation, that is, incitement to commit an offence, under Article 6(1), involves instigating another, directly and publicly, to commit an offence. Instigation is punishable only where it leads to the actual commission of an

offence desired by the instigator, except with genocide, where an accused may be held individually criminally liable for incitement to commit genocide under Article 2(3)(c) of the Statute, even where such incitement fails to produce a result.[13]

39. In the opinion of the Chamber, ordering, which is a third form of participation, implies a superior-subordinate relationship between the person giving the order and the one executing it, with the person in a position of authority using such position to persuade another to commit an offence.

40. Fourthly, an accused incurs criminal responsibility for the commission of a crime, under Article 6(1), where he actually "commits" one of the crimes within the jurisdiction *rationae materiae* of the Tribunal.

41. The Chamber holds that an accused may participate in the commission of a crime either through direct commission of an unlawful act or by omission, where he has a duty to act.

42. A fifth and last form of participation where individual criminal responsibility arises under Article 6(1), is "[...] otherwise aid[ing] and abett[ing] in the planning or execution of a crime referred to in Articles 2 to 4".

43. The Chamber finds that aiding and abetting alone is sufficient to render the accused criminally liable. In both instances, it is not necessary that the person aiding and abetting another to commit an offence be present during the commission of the crime. The relevant act of assistance may be geographically and temporally unconnected to the actual commission of the offence. The Chamber holds that aiding and abetting include all acts of assistance in either physical form or in the form of moral support; nevertheless, it emphasizes that any act of

[13] *Akayesu Judgement*, para. 562

participation must substantially contribute to the commission of the crime. The aider and abettor assists or facilitates another in the accomplishment of a substantive offence.

2.2 Genocide (Article 2 of the Statute)

44. In accordance with the provisions of Article 2(3)(a) of the Statute, which stipulate that the Tribunal shall have the power to prosecute persons responsible for genocide, the Prosecutor has charged the Accused with genocide, Count 1 of the Indictment.

45. The definition of genocide, as given in Article 2 of the Tribunal's Statute, is taken verbatim from Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention")[14]. It reads as follows:

> "Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group."

[14] The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on 9 December 1948.

46. The Genocide Convention is undeniably considered part of customary international law, as reflected in the advisory opinion issued in 1951 by the International Court of Justice on reservations to the Genocide Convention, and as noted by the United Nations Secretary-General in his Report on the establishment of the International Criminal Tribunal for the Former Yugoslavia[15].

47. The Chamber notes that Rwanda acceded, by legislative decree, to the Convention on Genocide on 12 February 1975[16]. Therefore the crime of genocide was punishable in Rwanda in 1994.

48. The Chamber adheres to the definition of the crime of genocide as it was defined in the *Akayesu Judgement*.

49. The Chamber accepts that the crime of genocide involves, firstly, that one of the acts listed under Article 2(2) of the Statute be committed; secondly, that such an act be committed against a national, ethnical, racial or religious group, specifically targeted as such; and, thirdly, that the "act be committed with the intent to destroy, in whole or in part, the targeted group".

The Acts Enumerated under Article 2(2)(a) to (e) of the Statute

50. Article 2(2)(a) of the Statute, like the corresponding provisions of the Genocide Convention, refers to "meurtre" in the French version and to "killing" in the English version. In the opinion of the Chamber, the term "killing" includes both intentional and unintentional

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[15] Secretary-General's Report pursuant to para. 2 of Resolution 808 (1993) of the Security Council, 3 May 1993, S/25704.

[16] Legislative Decree of 12 February 1975, Official Gazette of the Republic of Rwanda, 1975, p.230. Rwanda acceded to the Genocide Convention but stated that it shall not be bound by Article 9 of this Convention.

homicides, whereas the word "meurtre" covers homicide committed with the intent to cause death. Given the presumption of innocence, and pursuant to the general principles of criminal law, the Chamber holds that the version more favourable to the Accused should be adopted, and finds that Article 2(2)(a) of the Statute must be interpreted in accordance with the definition of murder in the Criminal Code of Rwanda, which provides, under Article 311, that "Homicide committed with intent to cause death shall be treated as murder".

51. For the purposes of interpreting Article 2(2)(b) of the Statute, the Chamber understands the words "serious bodily or mental harm" to include acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence, and persecution. The Chamber is of the opinion that "serious harm" need not entail permanent or irremediable harm.

52. In the opinion of the Chamber, the words "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part", as indicated in Article 2(2)(c) of the Statute, are to be construed "as methods of destruction by which the perpetrator does not necessarily intend to immediately kill the members of the group", but which are, ultimately, aimed at their physical destruction. The Chamber holds that the means of deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part, include subjecting a group of people to a subsistence diet, systematic expulsion from their homes and deprivation of essential medical supplies below a minimum vital standard.

53. For the purposes of interpreting Article 2(2)(d) of the Statute, the Chamber holds that the words "measures intended to prevent births within the group" should be construed as including sexual mutilation, enforced sterilization, forced birth control, forced separation of males and females, and prohibition of marriages. The Chamber notes that measures intended to prevent births within the group may be not only physical, but also mental.

54. The Chamber is of the opinion that the provisions of Article 2(2)(e) of the Statute, on the forcible transfer of children from one group to another, are aimed at sanctioning not only any direct act of forcible physical transfer, but also any acts of threats or trauma which would lead to the forcible transfer of children from one group to another group.

Potential Groups of Victims of the Crime of Genocide

55. The Chamber is of the view that it is necessary to consider the issue of the potential groups of victims of genocide in light of the provisions of the Statute and the Genocide Convention, which stipulate that genocide aims at "destroy[ing], in whole or in part, a national, ethnical, racial or religious group, as such."

56. The Chamber notes that the concepts of national, ethnical, racial and religious groups have been researched extensively and that, at present, there are no generally and internationally accepted precise definitions thereof. Each of these concepts must be assessed in the light of a particular political, social and cultural context. Moreover, the Chamber notes that for the purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction. In some instances, the victim may perceive himself/herself as belonging to the said group.

57. Nevertheless, the Chamber is of the view that a subjective definition alone is not enough to determine victim groups, as provided for in the Genocide Convention. It appears, from a reading of the *travaux préparatoires* of the Genocide Convention[17], that certain groups, such as political and economic groups, have been excluded from the protected groups, because they are considered to be "mobile groups" which one joins through individual, political commitment.

[17]Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September - 10 December 1948, Official Records of the General Assembly.

That would seem to suggest *a contrario* that the Convention was presumably intended to cover relatively stable and permanent groups.

58. Therefore, the Chamber holds that in assessing whether a particular group may be considered as protected from the crime of genocide, it will proceed on a case-by-case basis, taking into account both the relevant evidence proffered and the political and cultural context as indicated *supra*.

The Special Intent of the Crime of Genocide.

59. Genocide is distinct from other crimes because it requires *dolus specialis*, a special intent. Special intent of a crime is the specific intention which, as an element of the crime, requires that the perpetrator clearly intended the result charged. The *dolus specialis* of the crime of genocide lies in "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". A person may be convicted of genocide only where it is established that he committed one of the acts referred to under Article 2(2) of the Statute with the specific intent to destroy, in whole or in part, a particular group.

60. In concrete terms, for any of the acts charged to constitute genocide, the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group. Thus, the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group. The victim of the act is, therefore, a member of a given group selected as such, which, ultimately, means the victim of the crime of genocide is the group itself and not the individual alone. The perpetration of the act charged, therefore, extends beyond its actual commission, for example, the murder of a particular person, to encompass the realization of the ulterior purpose to destroy, in whole or in part, the group of which the person is only a member.

61. The *dolus specialis* is a key element of an intentional offence, which offence is characterized by a psychological nexus between the physical result and the mental state of the perpetrator. With regard to the issue of determining the offender's specific intent, the Chamber applies the following reasoning, as held in the *Akayesu Judgement*:

> " [...] intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber is of the view that the genocidal intent inherent in a particular act charged can be inferred from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act."[18]

62. Similarly, in the *Kayishema and Ruzindana Judgement*, Trial Chamber II held that :

> "[...] The Chamber finds that the intent can be inferred either from words or deeds and may be determined by a pattern of purposeful action. In particular, the Chamber considers evidence such as [...] the methodical way of planning, the systematic manner of killing. [...]"[19]

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[18] *Akayesu Judgement*, para. 523

[19] *Kayishema and Ruzindana Judgement*, para. 93.

63. Therefore, the Chamber is of the view that, in practice, intent can be, on a case-by-case basis, inferred from the material evidence submitted to the Chamber, including the evidence which demonstrates a consistent pattern of conduct by the Accused .

2.3 Crimes against Humanity (Article 3 of the Statute)

64. The Chamber notes that the *Akayesu Judgement* traced the historical development and evolution of crimes against humanity, as far back as the Charter of the International Military Tribunal of Nuremberg. The *Akayesu Judgement* also considered the gradual evolution of crimes against humanity in the cases of *Eichmann*, *Barbie*, *Touvier* and *Papon*[20]. The Chamber concurs with the historical development of crimes against humanity, as set forth in the *Akayesu Judgement*.

65. The Chamber notes that Article 7 of the Statute of the International Criminal Court defines a crime against humanity as any of the enumerated acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. These enumerated acts are murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any other crime within the jurisdiction of the court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or mental or physical health.[21]

[20] *Akayesu Judgement* para. 563 to 576

[21] Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Court on 17 July 1998.

Crimes against Humanity pursuant to Article 3 of the Statute of the Tribunal

66. Article 3 of the Statute confers on the Tribunal the jurisdiction to prosecute persons for various inhumane acts which constitute crimes against humanity. The Chamber concurs with the reasoning in the *Akayesu Judgement* that offences falling within the ambit of crimes against humanity may be broadly broken down into four essential elements, namely:

(a) the *actus reus* must be inhumane in nature and character, causing great suffering, or serious injury to body or to mental or physical health

(b) the *actus reus* must be committed as part of a widespread or systematic attack

(c) the *actus reus* must be committed against members of the civilian population

(d) the *actus reus* must be committed on one or more discriminatory grounds, namely, national, political, ethnic, racial or religious grounds.[22]

The *Actus Reus* Must be Committed as Part of a Widespread or Systematic Attack

67. The Chamber is of the opinion that the *actus reus* cannot be a random inhumane act, but rather an act committed as part of an attack. With regard to the nature of this attack, the Chamber notes that Article 3 of the English version of the Statute reads "[...] as part of a widespread or systematic attack. [...]" whilst the French version of the Statute reads "[...] dans le cadre d'une attaque généralisée et systématique [...]". The French version requires that the attack be both of a widespread *and* systematic nature, whilst the English version requires that the attack be of a widespread *or* systematic nature and need not be both.

[22] *Akayesu Judgement*, para. 578.

68. The Chamber notes that customary international law requires that the attack be either of a widespread *or* systematic nature and need not be both. The English version of the Statute conforms more closely with customary international law and the Chamber therefore accepts the elements as set forth in Article 3 of the English version of the Statute and follows the interpretation in other ICTR judgements namely: that the "attack" under Article 3 of the Statute, must be either of a widespread or systematic nature and need not be both.[23]

69. The Chamber notes that "widespread", as an element of crimes against humanity, was defined in the *Akayesu Judgement*, as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims, whilst "systematic" was defined as thoroughly organised action, following a regular pattern on the basis of a common policy and involving substantial public or private resources[24]. The Chamber concurs with these definitions and finds that it is not essential for this policy to be adopted formally as a policy of a State. There must, however, be some kind of preconceived plan or policy.[25]

70. The Chamber notes that "attack", as an element of crimes against humanity, was defined in the *Akayesu Judgement*, as an unlawful act of the kind enumerated in Article 3(a) to (i) of the Statute, such as murder, extermination, enslavement etc. An attack may also be non-violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article I of the Apartheid Convention of 1973, or exerting pressure on the population to act in

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[23] *Akayesu Judgement*, p. 235, fn 144; *Kayishema and Ruzindana Judgement*, p. 51, fn 63.

[24] *Akayesu Judgement* para. 580.

[25] Report on the International Law Commission to the General Assembly, 51 U.N. GAOR Supp. (No 10) at 94 U.N.Doc. A/51/10 (1996)

a particular manner may also come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner[26]. The Chamber concurs with this definition.

71. The Chamber considers that the perpetrator must have:

> "[...]actual or constructive knowledge of the broader context of the attack, meaning that the accused must know that his act(s) is part of a widespread or systematic attack on a civilian population and pursuant to some kind of policy or plan."[27]

The *Actus Reus* Must be Directed against the Civilian Population

72. The Chamber notes that the *actus reus* must be directed against the civilian population, if it is to constitute a crime against humanity. In the *Akayesu Judgement*, the civilian population was defined as people who were not taking any active part in the hostilities[28]. The fact that there are certain individuals among the civilian population who are not civilians does not deprive the population of its civilian character[29]. The Chamber concurs with this definition.

The *Actus Reus* Must be Committed on Discriminatory Grounds

73. The Statute stipulates that inhumane acts committed against the civilian population must be committed on "national, political, ethnic, racial or religious grounds." Discrimination on the

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[26] *Akayesu Judgement* para. 581.

[27] *Kayishema and Ruzindana Judgement* para. 134

[28] *Akayesu Judgement*, para. 582. Note that this definition assimilates the definition of "civilian" to the categories of person protected by Common Article 3 of the Geneva Conventions.

[29] *Ibid* para. 582, Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict; Article 50.

basis of a person's political ideology satisfies the requirement of 'political' grounds as envisaged in Article 3 of the Statute.

74. Inhumane acts committed against persons not falling within any one of the discriminatory categories may constitute crimes against humanity if the perpetrator's intention in committing these acts, is to further his attack on the group discriminated against on one of the grounds specified in Article 3 of the Statute. The perpetrator must have the requisite intent for the commission of crimes against humanity.[30]

75. The Chamber notes that the Appeals Chamber in the *Tadic* Appeal ruled that the Trial Chamber erred in finding that all crimes against humanity require a discriminatory intent. The Appeals Chamber stated that a discriminatory intent is an indispensable element of the offence only with regard to those crimes for which this is expressly required, that is the offence of persecution, pursuant to Article 5(h) of the Statute of the International Criminal Tribunal for the former Yugoslavia (the "ICTY").[31]

76. The Chamber considers the provisions of Article 5 of the ICTY Statute, as compared to the provisions of Article 3 of the ICTR, Statute and notes that, although the provisions of both the aforementioned Articles pertain to crimes against humanity, except for persecution, there is a material and substantial difference in the elements of the offence that constitute crimes against humanity. This stems from the fact that Article 3 of the ICTR Statute expressly provides the enumerated discriminatory grounds of "national, political, ethnic, racial or religious", in respect of the offences of Murder; Extermination; Deportation; Imprisonment; Torture; Rape; and; Other Inhumane Acts, whilst the ICTY Statute does not stipulate any discriminatory grounds in respect of these offences..

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[30] *Akayesu Judgement*, para. 584.

[31] *The Prosecutor v. Dusko Tadic*; Appeals Judgment of 15 July 1999; para. 305; p. 55.

The Enumerated Acts

77. Article 3 of the Statute sets out various acts that constitute crimes against humanity, namely: murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecution on political, racial and religious grounds; and; other inhumane acts. Although the category of acts that constitute crimes against humanity are set out in Article 3, this category is not exhaustive. Any act which is inhumane in nature and character may constitute a crime against humanity, provided the other elements are satisfied. This is evident in (i) which caters for all other inhumane acts not stipulated in (a) to (h) of Article 3.

78. The Chamber notes that in respect of crimes against humanity, the Accused is indicted for murder and extermination. The Chamber, in interpreting Article 3 of the Statute, will focus its discussion on these offences only.

Murder

79. Pursuant to Article 3(a) of the Statute, murder constitutes a crime against humanity. The Chamber notes that Article 3(a) of the English version of the Statute refers to "Murder", whilst the French version of the Statute refers to "Assassinat". Customary International Law dictates that it is the offence of "Murder" that constitutes a crime against humanity and not "Assassinat".

80. The *Akayesu Judgement* defined Murder as the unlawful, intentional killing of a human being. The requisite elements of murder are:

(a) The victim is dead;

(b) The death resulted from an unlawful act or omission of the accused or a subordinate;

(c) At the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless as to whether or not death ensures;

(d) The victim was discriminated against on any one of the enumerated discriminatory grounds;

(e) The victim was a member of the civilian population; and

(f) The act or omission was part of a widespread or systematic attack on the civilian population.[32]

81. The Chamber concurs with this definition of murder and is of the opinion that the act or omission that constitutes murder must be discriminatory in nature and directed against a member of the civilian population.

Extermination

82. Pursuant to Article 3(c) of the Statute, extermination constitutes a crime against humanity. By its very nature, extermination is a crime which is directed against a group of individuals. Extermination differs from murder in that it requires an element of mass destruction which is not a pre-requisite for murder.

[32] *Akayesu Judgement*, para. 589 and 590.

83. The *Akayesu Judgement*, defined the essential elements of extermination as follows:

(a) the accused or his subordinate participated in the killing of certain named or described persons;

(b) the act or omission was unlawful and intentional;

(c) the unlawful act or omission must be part of a widespread or systematic attack;

(d) the attack must be against the civilian population; and

(e) the attack must be on discriminatory grounds, namely: national, political, ethnic, racial, or religious grounds.

84. The Chamber concurs with this definition of extermination and is of the opinion that the act or omission that constitutes extermination must be discriminatory in nature and directed against members of the civilian population. Further, this act or omission includes, but is not limited to the direct act of killing. It can be any act or omission, or cumulative acts or omissions, that cause the death of the targeted group of individuals.

Annex 991

Prosecutor v. Jelisić, Case No. IT-95-10-A, Judgment (14 December 1999)

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of The Former Yugoslavia since 1991

Case No. IT-95-10-T

Date: 14 December 1999

Original: English
French

IN THE TRIAL CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Fouad Riad
Judge Almiro Rodrigues

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 14 December 1999

THE PROSECUTOR

v.

GORAN JELISI]

JUDGEMENT

The Office of the Prosecutor:
Mr. Geoffrey Nice
Mr. Vladimir Tochilovsky

Defence Counsel:
Mr. Veselin Londrovi}
Mr. Michael Greaves

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I. INTRODUCTION

1. The trial of Goran Jelisi} before Trial Chamber I (hereinafter "the Trial Chamber") of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter "the Tribunal") opened on 30 November 1998 and ended on 25 November 1999.

2. Further to several amendments to the indictment, Goran Jelisi} had to answer to thirty-two (32) distinct counts[1] of genocide, violations of the laws or customs of war and crimes against humanity.

A. The Indictment

3. The indictment[2] charges Goran Jelisi} with genocide:

> In May 1992, Goran Jelisi}, intending to destroy a substantial or significant part of the Bosnian Muslim people as a national, ethnical or religious group, systematically killed Muslim detainees at the Laser Bus Co., the Br~ko police station and Luka camp. He introduced himself as the "Serb Adolf", said that he had come to Br~ko to kill Muslims and often informed the Muslim detainees and others of the numbers of Muslims he had killed. In addition to killing countless detainees, whose identities are unknown, Goran Jelisi} personally killed the victims in paragraphs 16-25, 30 and 33. By these actions, Goran Jelisi} committed or aided and abetted:
>
> Count 1: Genocide, a crime recognised by Article 4(2)(A) of the Tribunal's Statute.

The accused was also specifically prosecuted for murdering thirteen (13) persons[3], for inflicting bodily harm on four (4) persons[4] and for stealing money from the detainees in Luka camp – a count characterised as "plunder" in the indictment[5]. For these acts, the accused was prosecuted for violations of the laws or customs of war and for crimes against humanity.

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[1] Second Amended Indictment against Goran Jelisi} and Ranko ^esi}, 19 October 1998, paras. 14 ff. Ranko ^esi} has not been arrested to date.
[2] In this instance, the Second Amended Indictment. See the Procedural Background below.
[3] Counts 4 to 23, 32, 33, 38 and 39 (for counts 14 and 15, see footnote 7 below). All the victims 1isted under these counts were also specified under genocide.
[4] Counts 30, 31, 36, 37, 40 and 41.
[5] Count 44.

B. Procedural Background

4. The initial indictment issued against the accused on 30 June 1995 was confirmed by Judge Lal Chand Vohrah on 21 July 1995. Goran Jelisi} was accused of genocide (Article 4(2) of the Statute), grave breaches of the Geneva Conventions of 1949 (Article 2(a) of the Statute), violations of the laws or customs of war (Article 3 of the Statute) and crimes against humanity (Article 5 (a) of the Statute).

5. Goran Jelisi} was arrested on 22 January 1998 in accordance with a warrant of arrest issued by the Tribunal and immediately transferred to its Detention Unit in The Hague. That same day, the President of the Tribunal, Judge Gabrielle Kirk McDonald, assigned the case to Trial Chamber I, composed of Judge Claude Jorda, presiding, Judge Fouad Riad and Judge Almiro Rodrigues.

6. Pursuant to Rule 62 of the Rules of Procedure and Evidence of the Tribunal (hereinafter "the Rules"), the initial appearance of the accused took place on 26 January 1998 before Trial Chamber I. The accused pleaded not guilty to all the counts on which he was charged.

7. On 11 March 1998, the Trial Chamber issued a confidential Order that the accused undergo a psychiatric examination. The expert report dated 6 April 1998 declared the accused fit to understand the nature of the charges brought against him and to follow the proceedings fully informed. He was therefore declared fit to stand trial.

8. In the amended indictment of 13 May 1998, Goran Jelisi} was charged with genocide under Article 4(2) of the Statute, multiple violations of the laws or customs of war under Article 3 of the Statute and crimes against humanity under Article 5(a) of the Statute. The indictment was again amended by the Prosecutor on 19 October 1998 in accordance with Goran Jelisi}'s intention to plead guilty to 31 of the counts.

9. On 19 August 1998, at the request of Defence counsel to the accused, Mr. Londrovi}, himself assigned, the Registry of the Tribunal appointed Mr. Nikola P. Kostich as co-counsel[6].

10. Following discussions between the parties and pre-trial preparations organised by Judge Fouad Riad under the authority of the Trial Chamber, an "Agreed Factual Basis for Guilty Pleas to be Entered by Goran Jelisi}" was signed by the parties on 9 September 1998. A second amended indictment relying upon this Agreed Factual Basis was confirmed by Judge Lal Chand Vohrah on 19 October 1998.

11. On 29 October 1998, Goran Jelisi} confirmed that he was pleading not guilty to genocide but guilty to war crimes and crimes against humanity as described in the Agreed Factual Basis of 9 September 1998[7]. The Trial Chamber declared that the guilty plea had been informed and that it was not equivocal. It also noted that the Prosecution and Counsel for the accused did not disagree on any of the facts relating to the guilty plea.

12. In a note dated 24 November 1998, the Defence indicated its intention to invoke the special defence of alibi pursuant to Sub-rule 67(A)(ii)(a)(b) of the Rules for the acts which the accused allegedly committed after 19 May 1992. The note stated that Goran Jelisi} purportedly fled Br~ko on 19 May 1992 and consequently could not have committed the acts ascribed to him in the indictment after this date. The Defence also intended to invoke two special grounds of defence, the seriously diminished psychological responsibility of the accused at the time the acts mentioned in the indictment were committed and the fact that the accused allegedly acted on the orders of his superiors and under hierarchical duress.

13. The trial of the accused was begun on 30 November 1998 and was suspended on 2 December 1998 but could not then be swiftly re-opened due to the inability of Judge Fouad Riad to participate in the hearings on medical grounds, the refusal of Goran Jelisi} to have

[6] This assignment was conducted in accordance with the Rules which provide that the accused may request the assignment of a co-counsel in the sixty (60) days preceding the date that the trial opens.

[7] The wording of counts 14 and 15 is slightly ambiguous. Whilst the heading of paragraph 21 of the indictment specifies the murder of two persons, Sead]erimagi} and Jasminko ^umurovi}, the text only refers to the incident in which "Goran Jelisi} shot and killed Jasminko ^umurovi}". But the Agreed Factual Basis drafted by the Prosecution and the Defence related solely to J. ^umurovi} and in the statements attached to this agreement ("Factual basis for the charges to which Goran Jelisi} intends to plead guilty" (hereinafter "the factual basis"), Annex II, (confidential) statement of 29 June 1998, pp. 20-21), Goran Jelisi} did not admit having killed Sead ^erimagi}. In these circumstances, the Trial Chamber deems that the indictment and the guilty plea do concern only the murder of Jasminko ^umurovi}.

him replaced and the unavailability of Judge Claude Jorda and Judge Almiro Rodrigues who were occupied in another trial which had commenced before that of Goran Jelisi}. On 18 December 1998, the Trial Chamber issued an order granting protective measures to certain witnesses whose names and other identifying elements were not to be revealed during open sessions.

14. In view of the delay in the trial, the Trial Chamber considered pronouncing its decision on the guilty plea, including the corresponding sentence, if necessary, but to keep the genocide trial back for a later date. At the status conference held to take up this issue on 18 March 1999, the Defence declared itself in favour of a single sentence, citing the close connection between the counts to which Goran Jelisi} had pleaded guilty and the count of genocide to which he had pleaded not guilty. The hearings finally resumed once more on 30 August 1999. On 22 September 1999, the Prosecutor announced that she had finished presenting her evidence.

15. Having heard the arguments of the Prosecution, the Judges of the Trial Chamber reviewed the evidence presented by the Prosecution. In deliberations, they concluded that, without even needing to hear the arguments of the Defence, the accused could not be found guilty of the crime of genocide.

16. In these conditions, on 12 October 1999, the Trial Chamber informed the parties pursuant to Rule 98*ter* of the Rules that it would render its Decision on 19 October 1999. On 15 October 1999 the Prosecutor filed a Motion for the Trial Chamber to postpone its Decision until the Prosecution had had the opportunity to present its arguments stating *inter alia* that the effect of Rule 98*ter* could not be to deprive the Prosecution of its right to submit a closing argument on the law and the facts. At the hearing of 19 October 1999, the Trial Chamber, adjudging that an indissociable link existed between the Motion submitted by the Prosecutor and the Decision on the merits, decided that there was reason to join the interlocutory Motion to the merits. The Trial Chamber then found Goran Jelisi} guilty of war crimes and crimes against humanity but declared his acquittal on the count of genocide pursuant to Rule 98 *bis* of the Rules[8].

[8] Rule 98 *bis* obliges the Trial Chamber to pronounce the acquittal of the accused when the evidence presented by the Prosecution is insufficient to sustain a conviction.

17. Lastly, the Trial Chamber heard the witnesses and the arguments of the parties relating to the sentencing. The hearings were declared closed on 25 November 1999 pursuant to Rule 81 of the Rules.

II. HISTORICAL BACKGROUND[9]

18. This trial concerns the events which occurred in May 1992 in the municipality of Br~ko, a sizeable town in the Posavina corridor in the extreme north-eastern corner of Bosnia-Herzegovina on the border with Croatia.

19. On 30 April 1992, two explosions destroyed the two bridges in Br~ko spanning the Sava River[10]. The Trial Chamber heard testimony that the Serbian political officials in Br~ko had previously demanded that the town be split into three sectors, including one which was to be exclusively Serbian[11]. These explosions may be considered as marking the commencement of hostilities by the Serbian forces[12]. On 1 May 1992, radio broadcasts ordered Muslims and Croats to surrender their arms[13]. As from 1 May 1992, the Serbian forces, comprised of soldiers and paramilitary and police forces, deployed within the town[14].

20. Several statements reproduced in the factual basis bring to light the involvement of Serbian military, paramilitary and police forces not from the municipality of Br~ko[15]. One witness declared that he had seen Arkan's men criss-cross the town carrying pumps used to set fire to the houses[16]. The presence of "Arkan's Tigers" was confirmed by several witnesses appearing before the Trial Chamber[17].

21. The events described in the factual basis very clearly show that the Serbian offensive targeted the non-Serbian population of Br~ko. The statements also relate the organised

[9] The facts detailed herein are based on the witness statements and descriptions contained in the factual basis to which the Defence expressed its agreement [French Provisional Transcript (hereinafter "FPT") p. 183].
[10] Factual basis: Witness F, p. 3; Witness O, p. 2; Witness W, p. 2.
[11] Witness F, factual basis, p. 2.
[12] Witness W, factual basis, p. 2.
[13] Witness O, factual basis, p. 2.
[14] Witness P, factual basis, p. 2.
[15] The elements presented in the factual basis show that some witnesses stated that these soldiers were from Serbia. The witnesses heard during the trial often stated that the members of the Serbian forces involved in the conflict were from Bijeljina.
[16] Witness BB, factual basis, p. 2.
[17] Factual basis: Witness C, p. 2; Witness P, p. 3; Witness V, p. 2; Witness M, p. 2; Witness J, p. 2; Witness I, p. 3.

evacuation of the inhabitants of Br~ko, neighbourhood by neighbourhood, to collection centres[18] where the Serbs were separated from the Muslims and Croats. According to witnesses[19], the Serbian men were immediately enrolled in the Serbian forces whilst the women, children and men over sixty were evacuated by bus to neighbouring regions[20]. The Muslim and Croatian men between sixteen and about sixty remained in detention at the collection centres. Many of them, nearly all Muslims, were then transferred by bus or lorry to Luka camp, a former port facility. A series of warehouses lay on the left side of a narrow road which cut through the camp. The detainees were incarcerated in the first two warehouses. Administrative buildings to the right of the road stood opposite them. The interrogations were conducted in the first of these buildings.

22. The detainees at Luka camp and also some of those who were rearrested after having been released were then interned at the Batkovi} detention camp in July 1992[21]. Most of these prisoners were then exchanged beginning in October 1992[22].

23. The indictment states that "[o]n about 1 May 1992 Goran Jelisi} […] came to Br~ko from Bijeljina". In his guilty plea entered on 29 October 1998[23], Goran Jelisi} admitted his guilt for committing thirteen murders, inflicting bodily harm on four persons and having stolen money from detainees at Luka camp.

III. THE CRIMES ADMITTED TO BY THE ACCUSED IN THE GUILTY PLEA

24. Goran Jelisi} pleaded guilty to violations of the laws or customs of war (sixteen counts)[24] and crimes against humanity (fifteen counts)[25].

[18] The main collection centres given were: the Br~ko Mosque, the JNA barracks, the Laser Bus Co. and the Br~ko police station (SUP).
[19] Factual basis, Witness W, p. 2; Witness Q, p. 3.
[20] Factual basis, Witness E, p. 3; Witness N, p. 4.
[21] Factual basis, Witness V, pp. 7-8; Witness B, p. 6; Witness P, p. 6.
[22] Factual basis, Witness C, p. 9; Witness J, p. 13; Witness K, p. 13; Witness N, p. 10.
[23] As regards the legal validity of the guilty plea, see Section III below.
[24] Twelve of them charge him with murder (counts 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 32, 38), three with cruel treatment (counts 30, 36, 40) and one with plunder (count 44).
[25] Twelve of them charge him under crimes against humanity with murder (counts 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 33, 39) and three with inhumane acts (counts 31, 37, 41).

25. A guilty plea is not in itself a sufficient basis for the conviction of an accused. Although the Trial Chamber notes that the parties managed to agree on the crime charged, it is still necessary for the Judges to find something in the elements of the case upon which to base their conviction both in law and in fact that the accused is indeed guilty of the crime.

26. Pursuant to Rule 62 *bis* of the Rules, the Judges must verify that:

(i) the guilty plea has been made voluntarily;

(ii) the guilty plea is informed;

(iii) the guilty plea is not equivocal; and

(iv) there is sufficient factual basis for the crime and the accused's participation in it, either on the basis of independent indicia or of lack of any material disagreement between the parties about the facts of the case.

27. In this respect, the Trial Chamber recalls that on 11 March 1998 it ordered an expert evaluation whose results[26] indicated that Goran Jelisi} was fit to understand the nature of the charges brought against him and to follow the proceedings fully informed. Moreover, the accused pleaded guilty only after long discussions between the parties either directly or during hearings. The ensuing Memorandum of Understanding quite clearly presents the result of these discussions as regards the nature and scope of the crimes committed by the accused.

28. The Trial Chamber must also verify whether the elements presented in the guilty plea are sufficient to establish the crimes acknowledged.

29. First, it is appropriate to note that the existence of an armed conflict is a condition for both Article 3 and Article 5 of the Statute to apply[27]. The Trial Chamber here takes up the definition of armed conflict used by the Appeals Chamber in the *Tadi}* Case which states that:

[26] Psychiatric evaluation reports of Dr. Nikola Kmeti} dated 1 April 1998 and of Dr. Elsman dated 15 April 1998; psychological evaluation report of Dr. Herfst dated 16 April 1998; and the forensic report presented by the psychiatric experts N. Duits and C.M. van der Veen dated 25 November 1998.

[27] The Tribunal has noted on several occasions that the armed conflict mentioned in Article 5 of the Statute was a condition for the jurisdiction of the Tribunal and not a legal ingredient of a crime against humanity, Judgements of the Appeals Chamber in the case *The Prosecutor v. Du{ko Tadi} alias Dule* (hereinafter "the *Tadi}* case"), IT-94-1-AR72, 2 October 1995 (hereinafter "the *Tadi}* Appeal Decision"), paragraphs (hereinafter "paras.") 140 and 249; and IT-94-1-A, 15 July 1999 (hereinafter "the *Tadi}* Appeal Judgement"), para. 251.

> an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State[28]

30. The Defence concurred that the municipality of Br~ko was the theatre for an armed conflict at the moment the crimes were committed[29] and there can be no doubt that the crimes were linked to this conflict. The Trial Chamber also observes that the facts accepted in support of the guilty plea[30] as recounted in the historical background do not leave any doubt about the existence of an armed conflict in the region at that time.

31. The legal ingredients of war crimes and crimes against humanity invoked as part of the armed conflict are as follows.

A. Violations of the laws or customs of war

32. The counts based on Article 3 of the Statute charge the accused with murder, cruel treatment and plunder.

33. Article 3 of the Statute is a general, residual clause which applies to all violations of humanitarian law not covered under Articles 2, 4 and 5 of the Statute provided that the rules concerned are customary[31].

34. The charges for murder and cruel treatment are based on Article 3 common to the Geneva Conventions whose customary character has been noted on several occasions by this Tribunal and the Criminal Tribunal for Rwanda[32] [33]. As a rule of customary international law,

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[28] *Tadi}* Appeal Decision, para. 70.
[29] See *inter alia* the "Addendum to the agreed factual basis for guilty pleas to be entered by Goran Jelisi}", confidential, 28 October 1998 (hereinafter "the Addendum"), p. 2.
[30] Factual basis, pp. 18-19.
[31] *Tadi}* Appeal Decision, para. 91.
[32] International Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and other such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994, (hereinafter "the ICTR" or "the Tribunal for Rwanda").
[33] See *inter alia* the Judgement in the case *The Prosecutor v. Zejnil Delali}, Zdravko Muci} alias "Pavo", Hazim Deli}, Esad Land`o alias "Zenga"*, IT-96-21-T, 16 November 1998 (hereinafter "the ^*elebi}i* Judgement"), para. 301 or the Judgement in the case *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, 2 September 1998, (hereinafter "the *Akayesu* Judgement"), para. 608.

Article 3 common to the Geneva Conventions is covered by Article 3 of the Statute as indicated in the *Tadi} Appeal Decision*[34]. Common Article 3 protects "[p]ersons taking no active part in the hostilities" including persons "placed *hors de combat* by sickness, wounds, detention, or any other cause". Victims of murder, bodily harm and theft, all placed *hors de combat* by their detention, are clearly protected persons within the meaning of common Article 3.

1. Murder

35. Murder is defined as homicide committed with the intention to cause death. The legal ingredients of the offence as generally recognised in national law may be characterised as follows:

- the victim is dead,
- as a result of an act of the accused,
- committed with the intention to cause death.[35]

36. The elements submitted in the Annex to the factual basis clearly confirmed that the accused was guilty of the murder of the thirteen persons listed in support of the counts.

37. Five of the thirteen murders to which the accused pleaded guilty were perpetrated at the Br~ko police station on about 7 May 1992[36] in an always identical manner which was described by the accused himself[37]. Having undergone an interrogation at the Br~ko police station, the victims were placed in the hands of the accused who took them out to an alley near the police station. The accused executed them, generally with two bullets to the back of the neck fired from a "Skorpion" pistol fitted with a silencer. A lorry then came to gather up the bodies. According to the accused, these murders were committed over a period of two days. Goran Jelisi} admitted killing in this manner:

- an unidentified male (count 4),

[34] *Tadi}* Appeals Decision, para. 87; the *^elebi}i* Judgement also considered that Article 3 of the Statute covered violations of Article 3 common to the Geneva Conventions (para. 298).
[35] See the *Akayesu* Judgement, para. 589.
[36] Counts 4 and 5 (murder of an unidentified male), 6 and 7 (murder of Hasan Ja{arevi}), 8 and 9 (murder of a young man from [interaj), 10 and 11 (murder of Ahmet Hod`i} or Had`i} alias Papa), 12 and 13 (murder of Suad).
[37] Statement of the accused dated 29 June 1998, Annex II, pp. 5-6, pp. 15-16, p. 29.

- Hasan Ja{arevi} (count 6),

- a young man from [interaj (count 8),

- Ahmet Hod`i} or Had`i}, *alias* Papa (count 10), the head of the Muslim SDA political party,

- a person by the first name of Suad (count 12).

38. Eight of the thirteen murders to which the accused pleaded guilty were perpetrated at Luka camp. Here again, the murders were always committed in an identical way. First, the victims underwent an interrogation inside the administrative buildings in which for the most part the accused participated and during which they were severely beaten, in particular with truncheons and clubs. Armed with a "Skorpion" pistol fitted with a silencer, the accused made them go to the corner of the offices where he then executed them with one or two bullets fired point-blank into the back of the neck or into the back. Some victims were killed even before they reached the corner of the administrative buildings such that other detainees actually witnessed the murders. Other detainees were killed with one or two bullets to the back of the head whilst kneeling over a grate near the office where the interrogations were held. He then made some detainees carry the body of the victim behind the administrative offices where the bodies were piled up. The accused admitted to having killed in this manner:

- Jasminko]umurovi}, *alias* Ja{}e (count 14),

- Huso and Smajil Zahirovi} (count 16),

- Naza Bukvi} (count 18),

- Muharem Ahmetovi}, father of Naza Bukvi}, killed the day after his daughter died (count 20),

- Stipo Glavo~evi}, *alias* Stipo, (count 22),

- Novalija (count 32),

- Adnan Kucalovi} (count 38).

39. Naza Bukvi}[38] was very severely beaten before being executed[39]. It appears that her executioners wanted to find out where her brother and father, members of the police forces before the war, were hiding. She was handcuffed to a signpost and then beaten with long truncheons by several policemen for a whole day[40]. The victim's clothes were torn and covered with blood. That evening, she was brought back to the hangar covered in bruises and moaning with pain. The accused returned for her the next morning and executed her in the same fashion as he had his other victims[41].

40. One Croatian person, named Stipo Glavo~evi}, also suffered serious bodily harm before being killed. He arrived at Luka camp on about 9 May 1992 on a truck. His right ear was cut off and then Goran Jelisi}, accompanied by a guard carrying a sabre, stood the victim before the detainees under guard in the hangar. Stipo Glavo~evi} begged someone to put him out of his misery. Goran Jelisi} offered his weapon to the detainees for one of them to volunteer to do so. No one moved. The guard accompanying the accused hit Stipo Glavo~evi} with the edge of the sabre. Stipo Glavo~evi} was led outside the hangar and then the accused went out and killed him in the manner previously described.

2. Cruel Treatment

41. This Trial Chamber shares the opinion of the Trial Chamber in the *^elebi}i* case which defined cruel treatment as "an intentional act or omission [...] which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity"[42].

42. The bodily harm suffered by the brothers Zej}ir and Re{ad Osmi} is the focus of count 30. The two brothers were first taken to the Br~ko police station where Goran Jelisi} came looking for them. The accused called them "balijas"[43], handcuffed them and punched them. He then made them get into the boot of a red "Zastava 101" car. The victims were thus transported to Luka camp. Goran Jelisi} forced them to go into the administrative office in which were his girlfriend Monika, who was sitting at a desk in front of a typewriter, and her brother, Kole. The two brothers were made to stand with their backs to the wall and Goran Jelisi} began to hit them with a club, mostly to the head, the neck and the chest. According to

[38] Counts 18 and 19.
[39] Witness P, factual basis, p. 6.
[40] Witness N, factual basis, pp. 5-6.
[41] Witness O, factual basis, p. 6. This witness reports having seen the body of Naza Bukvi} the day after she died amongst other bodies (p. 10).
[42] *^elebi}i* Judgement, para. 552.
[43] A term which seems to have no direct equivalent in English but which is considered highly offensive.

one of the brothers, they were allegedly beaten like this for approximately thirty minutes. Zej}ir Osmi} was then taken to the hangar. Goran Jelisi} continued to beat Re{ad Osmi} who was no longer able to open his eyes as his eyelids were too swollen. He ended up collapsing from the blows. Goran Jelisi} kicked him in the chest while he was trying to get back up. The accused then left. The victim was not beaten while Goran Jelisi} was away. Goran Jelisi} returned after approximately ten minutes. His shirt was stained with blood. He explained "I just killed a man from fifty centimetres away. I cut off his ear. He didn't want to talk, like you". The accused then slashed the victim's two forearms with a knife before again beating him with a club. Goran Jelisi} next made the victim take out his papers and his money. None of his identity papers gave any indication that he was Muslim. The accused then became angry and asked why the two brothers had been brought to Luka. He ordered their immediate release[44].

43. Count 37 relates to the bodily harm suffered by Muhamed Bukvi}. The factual basis offered in support of the guilty plea shows that this man was very severely beaten by Goran Jelisi} during an interrogation which he underwent in the administrative offices in Luka camp. The victim, already covered in bruises from the beating he received the previous day from another guard at the camp named Kosta, was beaten all over his body by Goran Jelisi} with a truncheon[45]. The accused, using his fingers to squeeze the victims cheeks up towards his eyes, hit him with his truncheon at eye level.

44. The bodily harm inflicted on Amir Didi} is covered in count 40. He was beaten several times during the interrogations to which he was subjected in the Luka camp offices. Amir Didi} indicated that he had been beaten by several guards even though the accused was by far the most active. Goran Jelisi} hit him on one occasion with a fire hose thereby making him lose consciousness. Amir Didi} was allegedly beaten to the point of being unrecognisable. He stated that another official at the camp named Kole and the girlfriend of the accused, Monika, were always present during these beatings[46].

45. The Trial Chamber is of the opinion that the assault described in the indictment, admitted by the accused and moreover confirmed by the elements presented during the trial, constitute inhumane acts.

[44] Factual basis, Witness T p. 2-4; Witness U, p. 2-4.
[45] Factual basis, p. 15.
[46] Factual basis, p. 16.

3. Plunder

46. Count 44 charges the accused with stealing money from persons detained at Luka camp, in particular from Hasib Begi}, Zej}ir Osmi}, Enes Zuki} and Armin Drapi}, between approximately 7 May and 28 May 1992.

47. Pursuant to Article 3(e), the Tribunal has jurisdiction over violations of the laws or customs of war which:

> shall include, but not be limited to:
>
> [...]
>
> (e) plunder of public or private property.

48. Plunder is defined as the fraudulent appropriation of public or private funds belonging to the enemy or the opposing party perpetrated during an armed conflict and related thereto. The Trial Chamber hearing the *^elebi}i* case recalled that the "prohibition against the unjustified appropriation of public and private enemy property is general in scope, and extends both to acts of looting committed by individual soldiers for their private gain, and to the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory"[47]. It thus found that the individual acts of plunder perpetrated by people motivated by greed might entail individual criminal responsibility on the part of its perpetrators.

49. The factual basis attached to the guilty plea[48] indicates that the accused stole money, watches, jewellery and other valuables from the detainees upon their arrival at Luka camp by threatening those who did not hand over all their possessions with death. The accused was sometimes accompanied by guards or Monika[49] but he mostly acted alone. The Trial Chamber holds that these elements are sufficient to confirm the guilt of the accused on the charge of plunder.

B. Crimes against humanity

50. Within the terms of Article 5 of the Statute, murder and other inhumane acts specified in paragraphs (a) and (i) respectively must be characterised as crimes against humanity when

[47] *^elebi}i* Judgement, para. 590.
[48] Factual basis, pp. 17-18.
[49] Factual basis, Witness AA, p. 18.

"committed in armed conflict, whether international or internal in character, and directed against any civilian population".

1. Underlying offences: murder and other inhumane acts

(a) murder[50]

51. The Trial Chamber notes firstly that the English text of the Statute uses the term "murder". The Trial Chamber observes that in line with the *Akayesu* case[51] of the Tribunal for Rwanda it is appropriate to adopt this as the accepted term in international custom[52]. The Trial Chamber will therefore adopt the definition of murder set out above[53]. The murders listed in support of the counts of crimes against humanity are the same as those enounced in support of the violations of the laws or customs of war and which, as previously seen, have been established.

(b) other inhumane acts

52. The sub-characterisation "other inhumane acts" specified under Article 5(i) of the Statute is an generic charge which encompasses a series of crimes. It is appropriate to recall the position of the Trial Chamber in the *^elebi}i* case which stated that the notion of cruel treatment set out in Article 3 of the Statute " carries an equivalent meaning [...] as inhuman treatment does in relation to grave breaches of the Geneva Conventions"[54]. Likewise, the Trial Chamber considers that the notions of cruel treatment within the meaning of Article 3 and of inhumane treatment set out in Article 5 of the Statute have the same legal meaning. The facts submitted in support of these counts are moreover the same as those invoked for cruel treatment under Article 3 which, as the Trial Chamber has already noted, have been established.

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[50] The Trial Chamber notes however that the French version of the indictment specifies crimes under Article 5(a) as "*meurtre*" of the Statute (emphasis added) whilst the Statute uses the term "*assassinat*".
[51] *Akayesu* Judgement, para. 588.
[52] "Meurtre" is also used in the Statute of the International Criminal Court (Article 7(1)(a)) and in Article 18 of the Draft Code of Crimes against the Peace and Security of Mankind, Official Document (hereinafter "Off. Doc.") of the United Nations Assembly General (hereinafter "UN"), 51st session, A/51/10 (1996) Suppl. No. 10 (hereinafter "Draft Articles of the ILC").
[53] See section III A) 1, above.
[54] *^elebi}i* Judgement, para. 552.

2. An attack against a civilian population as a general condition of the charge

(a) A widespread or systematic attack

53. Article 5 defines crimes against humanity as crimes "directed against any population". Customary international law has interpreted this characteristic, particular to crimes against humanity, as assuming the existence of a widespread or systematic attack against a civilian population[55]. The conditions of scale and "systematicity" are not cumulative as is evidenced by the case-law of this Tribunal[56] and the Tribunal for Rwanda[57], the Statute of the International Criminal Court[58] and the works of the International Law Commission (hereinafter "the ILC")[59]. Nevertheless, the criteria which allow one or other of the aspects to be established partially overlap. The existence of an acknowledged policy targeting a particular community[60], the establishment of parallel institutions meant to implement this policy, the involvement of high-level political or military authorities, the employment of considerable financial, military or other resources and the scale or the repeated, unchanging and continuous nature of the violence committed against a particular civilian population are among the factors which may demonstrate the widespread or systematic nature of an attack.

(b) against a civilian population

54. It follows from the letter and the spirit of Article 5 that the term "civilian population" must be interpreted broadly. The text states that the acts are directed against "any" civilian population. In addition, reference to a civilian population would seek to place the emphasis more on the collective aspect of the crime than on the status of the victims[61]. The Commission of Experts formed pursuant to Security Council resolution 780 (hereinafter "the

[55] See, in particular, the report of the Secretary-General pursuant to Security Council resolution 808 (S/25704, 3 May 1993, para. 48). Article 3 of the Statute of the International Criminal Tribunal for Rwanda and Article 7 of the Statute of the International Criminal Court also state this element explicitly. The widespread or systematic attack was also specified as a legal ingredient of a crime against humanity by the Appeals Chamber of the Tribunal in the *Tadi}* Appeal Judgement, para. 648. The Legal Committee of the United Nations War Crimes Commission also adopted this position (History of the U.N. War Crimes Commission, p. 179).

[56] In particular, in the cases *The Prosecutor v. Miroslav Radi} and Veselin [ljivan}anin* (Case No. IT-95-13-R61 of 3 April 1996, para. 30) and *The Prosecutor v. Du{ko Tadi} alias "Dule"* (Case No. IT-94-1-T of 7 May 1997, hereinafter "the *Tadi}* Judgement", paras. 646-647).

[57] In particular, in the *Akayesu* Judgement (para. 579) and in *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, 21 May 1999, para. 123 (hereinafter "the *Kayishema* case").

[58] Article 7, paragraph 1.

[59] Draft Articles of the ILC, pp. 94-95.

[60] Expressed, in particular, in the writings and speeches of political leaders and media propaganda.

[61] In the *Tadi}* Judgement, the Trial Chamber noted that "[i]t is the desire to exclude isolated or random acts from the notion of crimes against humanity that led to the inclusion of the requirement that the acts must be directed against a civilian 'population'" (para. 648).

Commission of Experts")[62] considered furthermore that the civilian population within the meaning of Article 5 of the Statute must include all those persons bearing or having borne arms who had not, strictly speaking, been involved in military activities. The Trial Chamber therefore adjudges that the notion of civilian population as used in Article 5 of the Statute includes, in addition to civilians in the strict sense, all persons placed *hors de combat* when the crime is perpetrated. Moreover, in accordance with the case-law of this Tribunal and the Tribunal for Rwanda[63], the Trial Chamber deems that "[t]he presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character"[64].

55. The elements presented in support of the guilty plea as summarised in the historical background[65] do not leave any doubt as to the widespread and systematic nature of the attack against the Muslim and Croatian civilian population in the municipality of Br~ko.

3. An attack in which an accused participates in full knowledge of the significance of his acts

56. The accused must also be aware that the underlying crime which he is committing forms part of the widespread and systematic attack.

57. The accused has not denied that his acts formed part of the attack by the Serbian forces against the non-Serbian population of Br~ko[66]. The Trial Chamber moreover notes that, despite remaining uncertainties regarding his exact rank and position, the accused was part of the Serbian forces that took part in the operation conducted against the non-Serbian civilian population in Br~ko. It was indeed in anticipation and in the service of the attack that the accused, who comes from Bijeljina, was given police duties in the municipality of Br~ko. As one of the active participants in this attack, Goran Jelisi} must have known of the widespread and systematic nature of the attack against the non-Serbian population of Br~ko.

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[62] *Final Report of the Commission of Experts established pursuant to Security Council resolution 780 (1992)*, UN Off. Doc., S/1994/674, para. 78.
[63] *Tadi}* Judgement, para. 639. The Tribunal for Rwanda took the same position in the *Akayesu* case (Judgement, para. 582) and *Kayishema* case (Judgement, para. 128).
[64] This case-law is based upon Article 50(3) of the first Protocol additional to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims in International Armed Conflicts.
[65] See section II above.
[66] See the "Addendum", p. 3.

C. Conclusion

58. In conclusion, the Trial Chamber declares Goran Jelisi} guilty on thirty-one counts of violations of the laws or customs of war and crimes against humanity.

IV. GENOCIDE

59. Within the terms of Article 4(2) of the Statute, genocide is defined as:

> any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) killing members of the group;
>
> (b) causing serious bodily or mental harm to members of the group;
>
> (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) imposing measures intended to prevent births within the group;
>
> (e) forcibly transferring children of the group to another group.

60. Article 4 of the Statute takes up word for word the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide[67] (hereinafter "the Convention"), adopted on 9 December 1948[68] and in force as of 12 January 1951[69]. The concepts of genocide and crimes against humanity came about[70] as a reaction to the horrors committed by the Nazis during the Second World War - genocide being more particularly associated with the holocaust. Subsequently, the Convention has become one of the most widely accepted

[67] Articles II and III.
[68] The draft Convention was approved by a General Assembly plenary session with 55 votes for, none against and no abstentions. The Convention was immediately signed by 20 States.
[69] That is, pursuant to Article XIII of the Convention, 90 days after the filing of the twentieth ratification instrument. Yugoslavia was amongst the first States to ratify the Convention on 29 August 1950.
[70] The concept of crimes against humanity first appeared in the Charters and Statutes of the International Military Tribunals established by the London Agreement of 1945 and by the Declaration of the Allied Supreme Commander in the Far-East of 1946. Genocide, a term created by Raphaël Lemkin in 1944 (Axis Rules in Occupied Europe, Washington D.C., Carnegie Endowment, 1944), was first officially consecrated in the indictment brought against the major German war criminals of 8 April 1945.

international instruments relating to human rights[71]. There can be absolutely no doubt that its provisions fall under customary international law as, moreover, noted by the International Court of Justice as early as 1951. The Court went even further and placed the crime on the level of *jus cogens*[72] because of its extreme gravity. It thus defined genocide as:

> "a crime under international law" involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations … The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the cooperation required "in order to liberate mankind from such an odious scourge" (Preamble to the Convention).[73]

61. In accordance with the principle *nullum crimen sine lege*[74], the Trial Chamber means to examine the legal ingredients of the crime of genocide taking into account only those which beyond all doubt form part of customary international law. Several sources have been considered in this respect. First, the Trial Chamber takes note of the Convention on whose incontestable customary value it has already remarked. It interprets the Convention's terms in accordance with the general rules of interpretation of treaties set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties[75]. In addition to the normal meaning of its provisions, the Trial Chamber also considered the object and purpose of the Convention[76] and could also refer to the preparatory work and circumstances associated with the Convention's

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[71] The Convention was ratified by 129 States on 1 October 1999.

[72] Article 53 of the Vienna Convention on the Law of Treaties defines a peremptory norm of general international law as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

[73] ICJ, *Case of the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Rec. 1951, p. 23. The Court reaffirmed its position in the case involving the *Barcelona Traction, Light and Power Co.*(ICJ, Reports 1970, p. 32) by indicating that given the importance of the rights at issue, certain areas exist such as the prevention and punishment of the crime of genocide for which States have obligations towards the entire international community (*erga omnes* obligations) and not only to another State: the *erga omnes* obligations in contemporary international law derive, for instance, from the prohibition of acts of aggression and genocide.

[74] A principle recalled by the Secretary-General in his report pursuant to paragraph 2 of Security Council resolution 808 (1993) of 3 May 1993 (UN Off. Doc. S/25704, para. 34): "application of the principle *nullum crimen sine lege* requires that the international tribunal should apply rules of international humanitarian law which are beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise".

[75] Vienna Convention on the Law of Treaties of 23 May 1969, in force as of 27 January 1980.

[76] Article 31 of the Vienna Convention: "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

coming into being[77]. The Trial Chamber also took account of subsequent practice grounded upon the Convention. Special significance was attached to the Judgements rendered by the Tribunal for Rwanda[78], in particular to the *Akayesu* and *Kayishema* cases which constitute to date the only existing international case-law on the issue[79]. The practice of States, notably through their national courts[80], and the work of international authorities in this field [81] have also been taken into account. The ILC report commenting upon the "Articles of the Draft Code of Crimes Against the Peace and Security of Mankind"[82] which sets out to transcribe the customary law on the issue appeared especially useful.

62. Genocide is characterised by two legal ingredients according to the terms of Article 4 of the Statute:

- the material element of the offence, constituted by one or several acts enumerated in paragraph 2 of Article 4;

- the *mens rea* of the offence, consisting of the special intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

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[77] Article 32 of the Vienna Convention on the Law of Treaties: "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
(a) leaves the meaning ambiguous or obscure; or
(b) leads to a result which is manifestly absurd or unreasonable".

[78] The Tribunal for Rwanda has jurisdiction to judge those persons presumed responsible for the crime of genocide pursuant to Article 2 of its Statute which also reproduces Articles II and III of the Convention on genocide.

[79] *The Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* was brought before the International Court of Justice in 1993 by Bosnia-Herzegovina against the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to Article IX of the Convention. In this case, the Court rendered two orders (Request for the indication of provisional measures dated 8 April 1993, Reports 1993 p. 1; Further requests for the indication of provisional measures dated 13 September 1993, Reports 1993, p. 325) and a decision on its jurisdiction (Decision dated 11 July 1996, preliminary objections, Reports 1996, p. 595). However, it has not yet ruled on the merits of the case.

[80] Of the judgements rendered in this field by national courts, the following may *inter alia* be noted: the Judgement rendered on 29 May 1962 by the Supreme Court of Israel against Adolf Eichmann for complicity in a "crime against the Jewish people", a crime defined the same as genocide but whose victims are exclusively Jewish; the Judgement rendered by the courts in Equatorial Guinea against the tyrant Macias and the Judgement rendered in absentia against Pol Pot and his deputy Prime Minister by a revolutionary people's tribunal set up by the Vietnamese authorities following their invasion of Cambodia. Proceedings were also initiated in Ethiopia against 70 representatives of the Mengistu Haile Mariam regime which held power from 1974 to 1991. Two Judgements relating to Serbian nationals accused of genocide or complicity in genocide were also recently rendered by the German courts (Appeals Court of Bavaria, *Novislav Djaji}* case, 23 May 1997, 3 St 20/96; Düsseldorf Supreme Court, *Nikola Jorgi}* case, 26 September 1997, 2 StE 8/96).

[81] Particular attention should be paid to the two reports submitted by the United Nations Subcommittee for anti-discriminatory measures and the protection of minorities by Nicodème Ruhashyankiko in 1978 ("Study of the question of the prevention and punishment of the crime of genocide" E/CN.4/Sub.2/416, 4 July 1978) and by Benjamin Whitaker in 1985 ("Revised and updated report on the question of the prevention and punishment of the crime of genocide", E/CN.4/Sub.2/1985/6, 2 July 1985).

[82] Draft Articles of the ILC, in particular pp. 85-93.

A. The material element of the offence: the murder of members of a group[83]

63. The murder[84] of members of a group constitutes the crime evoked by the Prosecutor in support of the genocide charge (Article 4(2)(a) of the Statute).

64. In her pre-trial brief, the Prosecutor alleges that throughout the time Luka operated, the Serbian authorities, including the accused, killed hundreds of Muslim and Croatian detainees[85]. The number of the victims would thus be much higher than the figure given for only those crimes to which the accused pleaded guilty[86].

65. Although the Trial Chamber is not in a position to establish the precise number of victims ascribable to Goran Jelisi} for the period in the indictment, it notes that, in this instance, the material element of the crime of genocide has been satisfied. Consequently, the Trial Chamber must evaluate whether the intent of the accused was such that his acts must be characterised as genocide.

B. The *mens rea* of the offence: the intent to destroy, in whole or in part, a national, ethnical, racial or religious group

66. It is in fact the *mens rea* which gives genocide its speciality and distinguishes it from an ordinary crime and other crimes against international humanitarian law. The underlying crime or crimes must be characterised as genocide when committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. Stated otherwise, "[t]he prohibited act must be committed against an individual because of his membership in a particular group and as an incremental step in the overall objective of destroying the group"[87]. Two elements which may therefore be drawn from the special intent are:

- that the victims belonged to an identified group;

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[83] In the instance, the group was defined by the Prosecution in the charge as being Muslim. For the legal discussion on the notion of group see B) 1) b).
[84] In the *Akayesu* case, the Trial Chamber remarked that the term "meurtre" used in the French text was more exact and favourable term for the accused than "killing" used in the English text of the Statute. It selected one of the two definitions of murder in accordance with the general principles of criminal law by which the interpretation which most benefits the accused must be chosen (Judgement, para. 501).
[85] Prosecutor's pre-trial brief of 19 November 1998, para. 1.7.
[86] Moreover, Goran Jelisi} expressly admitted that he was guilty of three other murders not included in the indictment, FPT p. 81.
[87] ILC Draft Articles, p. 88.

- that the alleged perpetrator must have committed his crimes as part of a wider plan to destroy the group as such.

1. Acts committed against victims because of their membership in a national, ethnical, racial or religious group

(a) The discriminatory nature of the acts

67. The special intent which characterises genocide supposes that the alleged perpetrator of the crime selects his victims because they are part of a group which he is seeking to destroy. Where the goal of the perpetrator or perpetrators of the crime is to destroy all or part of a group, it is the "membership of the individual in a particular group rather than the identity of the individual that is the decisive criterion in determining the immediate victims of the crime of genocide"[88].

68. From this point of view, genocide is closely related to the crime of persecution, one of the forms of crimes against humanity set forth in Article 5 of the Statute. The analyses of the Appeals Chamber[89] and the Trial Chamber[90] in the *Tadi}* case point out that the perpetrator of a crime of persecution, which covers bodily harm including murder[91], also chooses his victims because they belong to a specific human group. As previously recognised by an Israeli District Court in the *Eichmann*[92] case and the Criminal Tribunal for Rwanda in the *Kayishema*[93] case, a crime characterised as genocide constitutes, of itself, crimes against humanity within the meaning of persecution.

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[88] ILC Draft Articles, p. 88; the same comment was made by Pieter N. Drost, based on the preparatory works of the Convention, in *The Crime of State, Genocide,* A.W. Sythoff, Leyden, 1959, p. 124: "It is an externally perceptible quality or characteristic which the victim has in common with the other members of the group, which makes him distinct from the rest of society in the criminal mind of his attacker and which *for that very reason* causes the attacker to commit the crime against such marked and indicated individual"(emphasis added).
[89] *Tadi}* Appeals Judgement, para. 305.
[90] *Tadi}* Judgement, para. 697: "what is necessary is some form of discrimination that is intended to be and results in an infringement of an individual's fundamental rights. Additionally, this discrimination must be on specific grounds, namely race, religion or politics".
[91] See in particular the *Tadi}* Judgement, para, 717.
[92] The Israeli District Court noted that "All [the accused] did with the object of exterminating the Jewish people also amounts *ipso facto* to persecution of Jews on national, racial, religious and political grounds" (Attorney General of Israel v. Eichmann, Judgement of the District Court, in E. Lauterpacht, *International Law Reports*, vol. 36, part VI, para. 201, p. 239 (1968)).
[93] Judgement, para. 578.

(b) Groups protected by Article 4 of the Statute

69. Article 4 of the Statute protects victims belonging to a national, ethnical, racial or religious group and excludes members of political groups. The preparatory work of the Convention demonstrates that a wish was expressed to limit the field of application of the Convention to protecting "stable" groups objectively defined and to which individuals belong regardless of their own desires[94].

70. Although the objective determination of a religious group still remains possible, to attempt to define a national, ethnical or racial group today using objective and scientifically irreproachable criteria would be a perilous exercise whose result would not necessarily correspond to the perception of the persons concerned by such categorisation. Therefore, it is more appropriate to evaluate the status of a national, ethnical or racial group from the point of view of those persons who wish to single that group out from the rest of the community. The Trial Chamber consequently elects to evaluate membership in a national, ethnical or racial group using a subjective criterion. It is the stigmatisation of a group as a distinct national, ethnical or racial unit by the community which allows it to be determined whether a targeted population constitutes a national, ethnical or racial group in the eyes of the alleged perpetrators[95]. This position corresponds to that adopted by the Trial Chamber in its Review of the Indictment Pursuant to Article 61 filed in the Nikoli} case[96].

71. A group may be stigmatised in this manner by way of positive or negative criteria. A "positive approach" would consist of the perpetrators of the crime distinguishing a group by the characteristics which they deem to be particular to a national, ethnical, racial or religious group. A "negative approach" would consist of identifying individuals as not being part of the group to which the perpetrators of the crime consider that they themselves belong and which to them displays specific national, ethnical, racial or religious characteristics. Thereby, all individuals thus rejected would, by exclusion, make up a distinct group. The Trial

[94] Not retained at the draft stage when submitted to the United Nations General Assembly (E/447) because of their lack of permanence, political groups were included under protected groups in the *ad hoc* committee's draft document by a narrow majority (4 votes to 3; UN Off. Doc. E/794 of 24 May 1948 pp. 13-14). The reference to political groups was however again rejected in the final draft of the Assembly General's Sixth Committee (see in particular the commentaries of the Brazilian and Venezuelan representatives expressing their concern about the fact that only "permanent" groups were specified, A/C.6/SR 69, p. 5).

[95] Here, the Trial Chamber follows in part the position taken by the International Criminal Tribunal for Rwanda which stated that "an ethnic group is one whose members share a common language and culture; or a group which distinguishes itself, as such (self-identification); or, a group identified as such by others, including the perpetrators of the crimes (identification by others)" in the *Kayishema* case (Judgement, para. 98).

[96] Review in the case *The Prosecutor v. Nikoli}* (hereinafter "the *Nikoli}* Review"), 20 October 1995, para. 27, as part of the appraisal of the crime against humanity "persecution": "the civilian population subjected to such

Chamber concurs here with the opinion already expressed by the Commission of Experts[97] and deems that it is consonant with the object and the purpose of the Convention to consider that its provisions also protect groups defined by exclusion where they have been stigmatised by the perpetrators of the act in this way.

72. In this case, it is the positive approach towards a group which has been advanced by the Prosecution. The genocide charge states that the murders committed by the accused targeted the Bosnian Muslim population.

(c) Proof of discriminatory intent

73. In seeking proof of discriminatory intent, the Trial Chamber takes account of not only the general context in which the acts of the accused fit but also, in particular, his statements and deeds. The Trial Chamber deems, moreover, that an individual knowingly acting against the backdrop of the widespread and systematic violence being committed against only one specific group could not reasonably deny that he chose his victims discriminatorily.

74. The testimony heard during the trial[98] shows that the offensive against the civilian population of Br~ko, of which the acts of Goran Jelisi} formed part, was directed mainly against the Muslim population. A great majority of the persons detained in the collection centres and at Luka camp were Muslim[99]. During interrogations, the Muslims were questioned about their possible involvement in resistance movements or political groups[100]. Most of the victims who were killed during the conflict in Br~ko were Muslims[101].

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discrimination was identified by *the perpetrators of the discriminatory measures*, principally by its religious characteristics" (emphasis added).

[97] *Final Report of the Commission of Experts*, *op. cit.*, para. 96, p. 25: "If there are several or more than one victim groups, and each group as such is protected, it may be within the spirit and purpose of the Convention to consider all the victim groups as a larger entity. The case being, for example, that there is evidence that group A wants to destroy in whole or in part groups B, C and D, or rather everyone who does not belong to the national, ethnic, racial or religious group A. In a sense, group A has defined a pluralistic non-A group using national, ethnic, racial and religious criteria for the definition. It seems relevant to analyse the fate of the non-A group along similar lines as if the non-A group had been homogenous".

[98] In this regard, the Trial Chamber notes that several witnesses (Q, B, N, E) whose statements are included in the factual basis also testified before the Trial Chamber during the genocide trial.

[99] Witness B, FPT p. 159; Witness I, FPT p. 686; Witness N, FPT pp. 1115-1116.

[100] Witness D, FPT pp. 525-526.

[101] See exhibit 12. The witness Mustafa Rami}, former mayor of Br~ko, alleged that about 2000 of the 3000 Muslims who supposedly remained in Br~ko after the destruction of the bridges were killed or disappeared (FPT pp.1318-1327).
According to the prior statement of witness John Ralston, in 1991 the town of Br~ko had a population of 41 046 of which 55.5% were Muslims, 19.9% Serbs, 6.9% Croats and 17.5% others. Muslims also accounted for the majority of the population throughout most of the Br~ko municipality.

75. The words and deeds of the accused demonstrate that he was not only perfectly aware of the discriminatory nature of the operation but also that he fully supported it. It appears from the evidence submitted to the Trial Chamber that a large majority of the persons whom Goran Jelisi} admitted having beaten and executed were Muslim. Additionally, many of the elements showed how Goran Jelisi} made scornful and discriminatory remarks about the Muslim population. Often, Goran Jelisi} insulted the Muslims by calling them "balijas" or "Turks"[102]. Of one detainee whom he had just hit, Goran Jelisi} allegedly said that he must be have been mad to dirty his hands with a "balija" before then executing him[103].

76. It also appears from the testimony that Goran Jelisi} allegedly humiliated the Muslims by forcing them to sing Serbian songs. At the police station, he supposedly made them line up facing the Serbian flag and sing[104].

77. The Trial Chamber concludes that in this case the discriminatory intent has been proved.

2. The intent to destroy, in whole or in part, the group as such

78. In examining the intentionality of an attack against a group, the Trial Chamber will first consider the different concepts of the notion of destruction of a group as such before then reviewing the degree of intent required for a crime to be constituted. In other words, the Trial Chamber will have to verify that there was both an intentional attack against a group and an intention upon the part of the accused to participate in or carry out this attack. Indeed, the intention necessary for the commission of a crime of genocide may not be presumed even in the case where the existence of a group is at least in part threatened. The Trial Chamber must verify whether the accused had the "special" intention which, beyond the discrimination of the crimes he commits, characterises his intent to destroy the discriminated group as such, at least in part.

(a) Definition

79. Apart from its discriminatory character, the underlying crime is also characterised by the fact that it is part of a wider plan to *destroy*, in whole or in part, the group *as such*. As indicated by the ILC, "the intention must be to destroy the group "as such", meaning as a

[102] Witness A, FPT p. 45; Witness F, FPT p. 248.
[103] Witness F, FPT p. 248.
[104] Witness Q, FPT pp. 1203-1227.

separate and distinct entity, and not merely some individuals because of their membership in a particular group".[105] By killing an individual member of the targeted group, the perpetrator does not thereby only manifest his hatred of the group to which his victim belongs but also knowingly commits this act as part of a wider-ranging intention to destroy the national, ethnical, racial or religious group of which the victim is a member. The Tribunal for Rwanda notes that "[t]he perpetration of the act charged therefore extends beyond its actual commission, for example, the murder of a particular individual, for the realisation of an ulterior motive, which is to destroy, in whole or in part, the group of which the individual is just one element"[106]. Genocide therefore differs from the crime of persecution in which the perpetrator chooses his victims because they belong to a specific community but does not necessarily seek to destroy the community as such[107].

80. Notwithstanding this, it is recognised that the destruction sought need not be directed at the whole group which, moreover, is clear from the letter of Article 4 of the Statute. The ILC also states that "[i]t is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe"[108]. The question which then arises is what proportion of the group is marked for destruction and beyond what threshold could the crime be qualified as genocide? In particular, the Trial Chamber will have to verify whether genocide may be committed within a restricted geographical zone.

81. The Prosecution accepts that the phrase "in whole or in part" must be understood to mean the destruction of a significant portion of the group from either a quantitative or qualitative standpoint. The intention demonstrated by the accused to destroy a part of the group would therefore have to affect either a major part of the group or a representative fraction thereof, such as its leaders[109].

82. Given the goal of the Convention to deal with mass crimes, it is widely acknowledged that the intention to destroy must target at least a *substantial* part of the group[110]. The

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[105] ILC Draft Articles, p. 88.
[106] *Akayesu* Judgement, para. 522.
[107] Stefan Glaser, *Droit international pénal conventionnel*, Bruylant, Brussels, 1970, p. 107. Professor Pella also uses this criterion to distinguish the two crimes in his "Memorandum concerning a draft code of offences against the peace and security of mankind" submitted to the ILC during its second session (UN Off. Doc., A/CN.4/39, 4 November 1950, para. 141, pp. 188-189).
[108] ILC Draft Articles, p. 89.
[109] Prosecutor's pre-trial brief, para. 4.3, pp. 12-13.
[110] The ILC Draft Articles just as Nehemia Robinson's commentary indicate that the perpetrators of genocide must be seeking to destroy a "substantial part" of the group (ILC Draft Articles, p. 89; Nehemia Robinson, *The Genocide Convention*, New York, 1949 (1st edition), 1960, p. 63); the U. S. Senate's "understanding" of Article II of the Convention also states that the U.S. interprets "partial destruction" as the destruction of a "*substantial*

Tribunal for Rwanda appears to go even further by demanding that the accused have the intention of destroying a "considerable" number of individual members of a group[111]. In a letter addressed to the United States Senate during the debate on Article II of the Convention on genocide, Raphaël Lemkin explained in the same way that the intent to destroy "in part" must be interpreted as an desire for destruction which "must be of a substantial nature […] so as to affect the entirety"[112]. A targeted part of a group would be classed as substantial either because the intent sought to harm a large majority of the group in question or the most representative members of the targeted community. The Commission of Experts specified that "[i]f essentially the total leadership of a group is targeted, it could also amount to genocide. Such leadership includes political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others – the totality per se may be a strong indication of genocide regardless of the actual numbers killed. A corroborating argument will be the fate of the rest of the group. The character of the attack on the leadership must be *viewed in the context of the fate or what happened to the rest of the group*. If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example deported on a large scale or forced to flee, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose"[113]. Genocidal intent may therefore be manifest in two forms. It may consist of desiring the extermination of a very large number of the members of the group, in which case it would constitute an intention to destroy a group en masse. However, it may also consist of the desired destruction of a more limited number of persons selected for the impact that their disappearance would have upon the survival of the group as such. This would then constitute an intention to destroy the group "selectively". The Prosecutor did not actually choose between these two options[114].

83. The Prosecution contends, however, that the geographical zone in which an attempt to eliminate the group is made may be limited to the size of a region or even a municipality[115].

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part" of the group (*Genocide Convention, Report of the Committee on Foreign Relations*, U.S. Senate, 18 July 1981, p. 22).

[111] *Kayishema* Judgement, para. 97.

[112] Raphaël Lemkin in *Executive Session of the Senate Foreign Relations Committee, Historical Series*, 1976, p. 370. In the same vein, the implementing legislation proposed by the Nixon and Carter administrations stated that "'substantial part' means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity", S EXEC. REP. No. 23, 94th Cong., 2nd Sess. (1976), pp. 34-35.

[113] Report of the Commission of Experts, para. 94 (emphasis added).

[114] For the discussion of this point, see below.

[115] Prosecutor's pre-trial brief, para. 4.4, pp. 13-14.

The Trial Chamber notes that it is accepted that genocide may be perpetrated in a limited geographic zone[116]. Furthermore, the United Nations General Assembly did not hesitate in characterising the massacres at Sabra and Shatila[117] as genocide, even if it is appropriate to look upon this evaluation with caution due to its undoubtedly being more of a political assessment than a legal one. Moreover, the Trial Chamber adopted a similar position in its Review of the Indictment Pursuant to Article 61 filed in the Nikoli} case. In this case, the Trial Chamber deemed that it was possible to base the charge of genocide on events which occurred only in the region of Vlasenica[118]. In view of the object and goal of the Convention and the subsequent interpretation thereof, the Trial Chamber thus finds that international custom admits the characterisation of genocide even when the exterminatory intent only extends to a limited geographic zone.

(b) The degree of intention required

84. The accused is charged with committing genocide or aiding and abetting therein. These charges are grounded on Article 7(1) of the Statute according to which any person who has either committed a crime or instigated, ordered or otherwise aided and abetted in the commission of the crime without having himself directly committed it must be held responsible for the crime.

85. The Prosecutor proposes a broad understanding of the intention required under Article 7(1) of the Statute and submits that an accused need not *seek* the destruction in whole or in part of a group. Instead, she claims that it suffices that he *knows* that his acts will inevitably, or even only probably, result in the destruction of the group in question[119]. Furthermore, she states that premeditation is not required[120].

86. The Trial Chamber notes that, contrary to the Prosecutor's contention, the Tribunal for Rwanda in the *Akayesu* case considered that any person accused of genocide for having committed, executed or even only aided and abetted must have had "the specific intent to commit genocide", defined as "the intent to destroy, in whole or in part, a national, ethnical,

[116] Nehemia Robinson states that "the intent to destroy a multitude of persons of the same group must be classified as Genocide even if these persons constitute only a part of a group either within a country or within a region *or within a single community*", (emphasis added) p. 63.
[117] UN Off. Doc. AG/Res. 37/ 123 D (16 December 1982), para. 2.
[118] *Nikoli}* Review, para. 34.
[119] Prosecutor's pre-trial brief, 19 November 1998, para. 3.1, pp. 7-8.
[120] Prosecutor's pre-trial brief, 19 November 1998, para. 3.2, p. 8.

racial or religious group as such"[121]. The *Akayesu* Trial Chamber found that an accused could not be found guilty of genocide if he himself did not share the goal of destroying in part or in whole a group even if he knew that he was contributing to or through his acts might be contributing to the partial or total destruction of a group. It declared that such an individual must be convicted of complicity in genocide[122].

87. Before even ruling on the level of intention required, the Trial Chamber must first verify whether an act of genocide has been committed as the accused cannot be found guilty of having aided and abetted in a crime of genocide unless that crime has been established.

(i) The intention to commit "all-inclusive" genocide

88. As has already been seen, the collection of the population in centres located at different points around the town, their subsequent transfer to detention camps and the interrogations always conducted in an identical manner over a short period of time demonstrate that the operation launched by the Serbian forces against the Muslim population of Br~ko was organised. Consequently, whether this organisation meant to destroy in whole or in part the Muslim group must be established.

89. The Trial Chamber notes in this regard that one witness related how a Serbian friend had told him that he had planned for only 20% of the Muslims to remain[123]. Another witness declared that he was told during an interrogation at the mosque that 5% of the Muslims and Croats would be allowed to live but that this 5% would have to perform back-breaking work[124]. Some witnesses even declared that on several occasions during their time at Luka they had carried up to twenty bodies[125].

90. During the exhumations which took place in summer 1997, approximately 66 bodies were discovered scattered about in four mass graves. The positions of the bodies indicate that

[121] *Akayesu* Judgement, para. 485.
[122] *Akayesu* Judgement, paras. 544-547.
[123] Witness J, FPT p. 830.
[124] Witness I, FPT pp. 687-758.
[125] Witness L, FPT p. 965; Witness D, FPT p.445. Allegedly, these bodies were then loaded into a refrigerated lorry (Witness A, FPT p. 5; Witness J, FPT p. 773), while others were thrown into the Sava River (Witness B, FPT pp. 136-139).

they were piled haphazardly into the graves[126]. Most were the bodies of males of fighting age and most of them had been shot dead[127].

91. The Prosecutor also tendered lists[128] of names of persons who were reputedly killed at the time of the acts ascribed to the accused[129]. In particular, the Prosecutor submitted a list of thirty-nine persons who for the most part were either members of the local administrative or political authorities, well-known figures in town, members of the Muslim Youth Association, members of the SDA or simply SDA sympathisers[130].

92. One witness[131] described how the police detectives who interrogated the detainees at Luka camp appeared to decide which detainees were to be executed upon the basis of a document. Another detainee[132] claimed at the hearing to have seen a list of numbered names headed "people to execute" in one of the administrative building offices in Luka camp. According to this witness, about fifty names appeared on the list and they were mostly Muslim.

93. However, the reason for being on these lists and how they were compiled is not clear. Nor has it been established that the accused relied on such a list in carrying out the executions. One witness stated *inter alia* that Goran Jelisi} seemed to select the names of persons at random from a list[133]. Other witnesses suggested that the accused himself picked out his victims from those in the hangar. In no manner has it been established that the lists seen by Witness K or by Witness R at Luka camp correspond to that submitted by the Prosecutor[134]. It is not therefore possible to conclude beyond all reasonable doubt that the choice of victims arose from a precise logic to destroy the most representative figures of the Muslim community in Br~ko to the point of threatening the survival of that community[135].

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[126] Testimony of Mr. Wright, FPT p. 1356, exhibit 60.
[127] Testimony of Mr. Albert Charles Hunt, FPT pp. 1363 and 1369.
[128] These lists name just over a hundred people who died. The first list (exhibit 12) was compiled using documents supplied by Republika Srpska which established a list of persons whose bodies were reportedly found in a mass grave. The second list (exhibit 13) was compiled by witness Mustafa Rami}. It appears from these exhibits that about sixty persons were killed in Br~ko during May 1992 (of a total Muslim population of about 22 000 people – see note 101).
[129] Exhibits 12 and 13.
[130] Exhibit 13.
[131] Witness L, FPT pp. 945-948.
[132] Witness K, FPT pp. 840-903 and 980 to 1026.
[133] Witness R, FPT pp. 1384-1476. The existence of lists was also remarked upon by Witness J, FPT p. 830.
[134] Exhibit 13.
[135] As indicated above, the figures provided by a prosecution witness put the Muslim population at over 22 000 in the town of Br~ko alone.

94. In addition, it has been established that many detainees at Luka camp had a laissez-passer[136]. According to Witness F, eighty to a hundred persons out of a total of six to seven hundred detainees were reputedly released in this way on the day they arrived, 8 May 1992. Other laissez-passer were reportedly issued subsequently. Allegedly, the detainees were also exchanged as of 19 May 1992[137].

95. It has also not been established beyond all reasonable doubt whether the accused killed at Luka camp under orders. Goran Jelisi} allegedly presented himself to the detainees as the Luka camp commander[138]. The detainees believed that he was the chief or at least a person in authority because he gave orders to the soldiers at the camp[139] who appeared to be afraid of him[140]. The Trial Chamber does not doubt that the accused exercised a *de facto* authority over the staff and detainees at the camp.

96. However, no element establishing the chain of command within which he operated has been presented. In particular, no clear information has been provided concerning the authority to which he answered. Some testimony did however make reference to a man who supposedly presented himself as being Jelisi}'s superior[141]. This commander[142], who wore the uniform of the Yugoslav National Army (JNA), supposedly came to Luka camp on about 16 or 18 May 1992 with other military personnel and reported that an order had been given for the detainees not to be killed but kept alive for use in exchanges[143]. Several witnesses attested to Goran Jelisi}'s being present in Luka camp up until 18 or 19 May 1992 and reported that there was a change of regime following his departure. Cruel treatment allegedly became less frequent and there were supposedly no more murders[144].

97. The Trial Chamber thus considers it possible that Goran Jelisi} acted beyond the scope of the powers entrusted to him. Some of the testimony heard would appear to confirm this conclusion since it describes the accused as a man acting as he pleased and as he saw

[136] Witness L, FPT p. 944; Witness H, FPT p. 669; Witness I, FPT p. 730; Witness G, FPT p. 423; Witness J, FPT p. 808.
[137] Witness M, FPT p. 1076; Witness O, FPT p. 1155; Witness B, FPT pp. 158-159.
[138] Witness D, FPT pp. 440-441. According to Witness O, Goran Jelisi} wore the uniform of the civilian police or a camouflage uniform, FPT p. 1153.
[139] Witness L, FPT pp. 907-970.
[140] Witness B, FPT p. 139.
[141] Witness A, FPT p. 95; Witness B, FPT p. 139.
[142] Djurkovi} or Jerkovi}, Witness A, FPT p. 55; Witness B declared that "Kole" was the chief at Luka on 12 or 13 May 1992 and that he had been replaced by Vojkan and then Kosta, FPT p. 181.
[143] Witness M, FPT p. 1076; Witness O, FPT p. 1155; Witness B, FPT pp. 158-159.
[144] Witness K, FPT p. 885; Witness A, FPT p. 55.

fit[145]. One witness even recounted that Goran Jelisi} had an altercation with a guard and told him that he should not subject the detainees to such treatment[146].

98. In consequence, the Trial Chamber considers that, in this case, the Prosecutor has not provided sufficient evidence allowing it to be established beyond all reasonable doubt that there existed a plan to destroy the Muslim group in Br~ko or elsewhere within which the murders committed by the accused would allegedly fit.

(ii) Jelisi}'s intention to commit genocide

99. It is therefore only as a perpetrator that Goran Jelisi} could be declared guilty of genocide.

100. Such a case is theoretically possible. The murders committed by the accused are sufficient to establish the material element of the crime of genocide and it is *a priori* possible to conceive that the accused harboured the plan to exterminate an entire group without this intent having been supported by any organisation in which other individuals participated[147]. In this respect, the preparatory work of the Convention of 1948 brings out that premeditation was not selected as a legal ingredient of the crime of genocide, after having been mentioned by the *ad hoc* committee at the draft stage, on the grounds that it seemed superfluous given the special intention already required by the text[148] and that such precision would only make the burden of proof even greater[149]. It ensues from this omission that the drafters of the Convention did not deem the existence of an organisation or a system serving a genocidal objective as a legal ingredient of the crime. In so doing, they did not discount the possibility of a lone individual seeking to destroy a group as such.

[145] Witness I, FPT p. 761; Witness R, FPT p. 1413.
[146] Witness I.
[147] Pieter N. Drost, *The Crime of State, Genocide,* A.W. Sythoff, Leyden, 1959, p. 85: "both as a question of theory and as a matter of principle nothing in the present Convention prohibits its provisions to be interpreted and applied to individual cases of murder by reason of the national, racial, ethnical or religious qualities of the single victim if the murderous attack was done with the intent to commit similar acts in the future and in connection with the first crime".
[148] The French word "délibéré" was dropped further to a proposal of Belgium (UN Off. Doc. A/C.6/217, UN Doc. A/C.6/SR.72 p. 8).
[149] On this point, see *inter alia* the commentary of J. Graven, *op. cit.*, p. 495.

101. The Trial Chamber observes, however, that it will be very difficult in practice to provide proof of the genocidal intent of an individual if the crimes committed are not widespread and if the crime charged is not backed by an organisation or a system[150].

102. Admittedly, the testimony makes it seem that during this period Goran Jelisi} presented himself as the "Serbian Adolf"[151] and claimed to have gone to Br~ko to kill Muslims. He also presented himself as "Adolf" at his initial hearing before the Trial Chamber on 26 January 1998[152]. He allegedly said to the detainees at Luka camp that he held their lives in his hands and that only between 5 to 10 % of them would leave there[153]. According to another witness, Goran Jelisi} told the Muslim detainees in Luka camp that 70% of them were to be killed, 30% beaten and that barely 4% of the 30% might not be badly beaten[154]. Goran Jelisi} remarked to one witness that he hated the Muslims and wanted to kill them all, whilst the surviving Muslims could be slaves for cleaning the toilets but never have a professional job. He reportedly added that he wanted "to cleanse" the Muslims and would enjoy doing so, that the "balijas" had proliferated too much and that he had to rid the world of them[155]. Goran Jelisi} also purportedly said that he hated Muslim women, that he found them highly dirty and that he wanted to sterilise them all in order to prevent an increase in the number of Muslims but that before exterminating them he would begin with the men in order prevent any proliferation[156].

103. The statements of the witnesses bring to light the fact that, during the initial part of May, Goran Jelisi} regularly executed detainees at Luka camp. According to one witness, Goran Jelisi} declared that he had to execute twenty to thirty persons before being able to drink his coffee each morning. The testimony heard by the Trial Chamber revealed that Goran Jelisi} frequently informed the detainees of the number of Muslims that he had killed. Thus, on 8 May 1992 he reputedly said to one witness that it was his sixty-eighth victim[157], on 11 May that he had killed one hundred and fifty persons[158] and finally on 15 May to another witness[159] following an execution that it was his "eighty-third case".

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[150] The International Criminal Tribunal for Rwanda noted similarly in the *Kayishema* case that "although a specific plan to destroy does not constitute an element of genocide, it would appear that it is not easy to carry out a genocide without such a plan, or organisation" (para. 94).
[151] Witness J, FPT pp. 774 and 808; Witness A, FPT p. 125.
[152] FPT p. 1
[153] Witness F, FPT pp. 234-567.
[154] Witness G, FPT pp. 372-434.
[155] Witness K, FPT pp. 864-865.
[156] Witness K, FPT pp. 867-868.
[157] Witness F, FPT p. 249.
[158] Witness A, FPT p. 45.
[159] Witness R, FPT pp. 1401-1405.

104 Some witnesses pointed out that Goran Jelisi} seemed to take pleasure from his position, one which gave him a feeling of power, of holding the power of life or death over the detainees and that he took a certain pride in the number of victims that he had allegedly executed[160]. According to another testimony, Goran Jelisi} spoke in a bloodthirsty manner, he treated them like animals or beasts and spittle formed on his lips because of his shouts and the hatred he was expressing. He wanted to terrorise them[161].

105. The words and attitude of Goran Jelisi} as related by the witnesses essentially reveal a disturbed personality[162]. Goran Jelisi} led an ordinary life before the conflict. This personality, which presents borderline, anti-social and narcissistic characteristics and which is marked simultaneously by immaturity, a hunger to fill a "void" and a concern to please superiors, contributed to his finally committing crimes[163]. Goran Jelisi} suddenly found himself in an apparent position of authority for which nothing had prepared him. It matters little whether this authority was real. What does matter is that this authority made it even easier for an opportunistic and inconsistent behaviour to express itself.

106. Goran Jelisi} performed the executions randomly. In addition, Witness R, an eminent and well-known figure in the Muslim community was allegedly forced to play Russian roulette with Goran Jelisi} before receiving a laissez-passer directly from him[164]. Moreover, on his own initiative and against all logic, Goran Jelisi} issued laissez-passer to several detainees at the camp, as shown *inter alia* by the case of Witness E[165] whom Goran Jelisi} released after having beaten.

107. In conclusion, the acts of Goran Jelisi} are not the physical expression of an affirmed resolve to destroy in whole or in part a group as such.

108. All things considered, the Prosecutor has not established beyond all reasonable doubt that genocide was committed in Br~ko during the period covered by the indictment. Furthermore, the behaviour of the accused appears to indicate that, although he obviously singled out Muslims, he killed arbitrarily rather than with the clear intention to destroy a group. The Trial Chamber therefore concludes that it has not been proved beyond all reasonable doubt that the accused was motivated by the *dolus specialis* of the crime of

[160] Witness B, FPT pp. 131-133.
[161] Witness K, FPT pp. 840-903 and 980-1026.
[162] See note 25. See also the report of Doctor van den Bussche, 8 November 1999.
[163] The Trial Chamber notes that the presence of a woman at Goran Jelisi}'s side also seems to have encouraged him to commit certain murders in order to impress the young woman.
[164] Witness R, FPT pp. 1383-1476.

genocide. The benefit of the doubt must always go to the accused and, consequently, Goran Jelisi} must be found not guilty on this count.

V. SENTENCING

109. The Trial Chamber ultimately found Goran Jelisi} guilty of sixteen violations of the laws or customs of war, twelve for murder (counts 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 23, 32 and 38), three for cruel treatment (counts 30, 36 and 40) and one for plunder (count 44) and fifteen for crimes against humanity, that is, twelve counts of murder (counts 5, 7, 9, 11 13, 15, 17, 19, 21, 23, 33 and 39) and three counts of inhumane acts (counts 31, 37 and 41). The Trial Chamber will pronounce sentence on the basis of that guilt.

A. Principles and Purpose of the Sentence

110. In order to pronounce the appropriate penalty the Tribunal is guided by the Statute and the Rules. The Statute states:

> Article 23
> Judgement
>
> 1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.
>
> 2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.
>
> Article 24
> Penalties
>
> 1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.
>
> 2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
>
> [...]

[165] Witness E, exhibit 24.

The Trial Chamber also notes the provisions of Rules 100 and 101 of the Rules[166].

111. Article 41(1) of the 1990 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) states which elements must be considered for the determination of sentence:

> For a given offence, the court shall set the limits prescribed by law for the offence and shall consider all the circumstances which might influence the severity of the penalty (mitigating and attenuating circumstances) and, in particular: the level of criminal responsibility, the motives for the offence, the intensity of the threat or assault on the protected object, the circumstances under which the offence was committed, the previous history of the perpetrator of the offence, his personal circumstances and conduct subsequent to the perpetration of the offence and any other circumstances relating to the character of the perpetrator.

112. The Trial Chamber also notes Chapter XVI of the SFRY Criminal Code entitled Criminal Offences against Humanity and International Law. Article 142 thereof provides that:

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Rule 100
Sentencing Procedure on a Guilty Plea

(A) If the Trial Chamber convicts the accused on a guilty plea, the Prosecutor and the defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence.

(B) The sentence shall be pronounced in a judgement in public and in the presence of the convicted person, subject to Sub-rule 102(B).

Rule 101
Penalties

(A) A convicted person may be sentenced to imprisonment for a term up to and including the remainder of the convicted person's life.

(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Article 24, paragraph 2, of the Statute. As well as such factors as:

(i) any aggravating circumstances

(ii) any mitigating circumstances including the substantial cooperation with the Prosecutor by the convicted person before or after conviction;

(iii) the general practice regarding prison sentences in the courts of the former Yugoslavia;

(iv) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 10, paragraph 3, of the Statute.

(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.

(D) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal.

> Any person who out of a disregard for the rule of law among peoples in times of war, armed conflict or occupation orders an attack against a civilian population [..] or commits[…] acts of homicide or torture or who has subjected the civilian population to inhumane treatment […] shall be punished with a term of imprisonment of at least five years or by death.

113. It is clear that Article 142 authorises severe penalties for the crimes for which Goran Jelisi} has been found guilty, that is, "a term of imprisonment of at least five years" or death. The Trial Chamber notes that in November 1998 Bosnia and Herzegovina abolished the death penalty and replaced it with a 20 to 40 year prison term[167]. The Trial Chamber notes that, pursuant to Article 24 of the Statute, the International Tribunal may pass a sentence of life imprisonment but never a death sentence.

114. The Trial Chamber considers, however, that the only obligation imposed by the Statute through its reference to the general range of penalties applied by the courts of the former Yugoslavia is to keep that range in mind. It is valid only as an indication[168].

115. In conclusion, the Trial Chamber will take into account the Tribunal's practice in respect of the nature of the confirmed indictments and the scope of the crimes they cover, the characteristics peculiar to the accused, the declarations of previous guilt and sentences handed down.

116. As the Trial Chamber hearing the *Tadi}* case recently recalled, the mission of the Tribunal, pursuant to Security Council resolutions 808 and 827, is to put a end to the serious violations of international humanitarian law and to contribute to restoring and keeping the peace in the former Yugoslavia. This is especially relevant for determining the penalty[169]. To achieve these objectives, in concert with the case-law of the two *ad hoc* Tribunals, the

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[167] *The Prosecutor v. Du{ko Tadi}*, Case No. IT-94-1-T*bis*-R117, Sentencing Judgement, 11 November 1999 (hereinafter "the *Tadi}* Sentencing Judgement of 11 November 1999"), para. 12.
[168] This interpretation is in line with the case-law of the two *ad hoc* Tribunals: the *Tadi}* Sentencing Judgement of 11 November 1999, para 12; the *^elebi}i* Judgement, para 1194; *The Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-T, Judgement, 25 June 1999, para. 242; *The Prosecutor v. Dra`en Erdemovi}*, Case No. IT-96-22-T, Sentencing Judgement, 29 November 1996, (hereinafter "the *Erdemovi}* Sentencing Judgement of 29 November 1996"), para. 39; and *mutatis mutandis*, for the ICTR: *The Prosecutor v. Omar Serushago*, Case No. ICTR-98-39-S, Sentence, 5 February 1999, (hereinafter "the Serushago Sentence"), para. 18; *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Sentencing Judgement, 2 October 1998, (hereinafter "the *Akayesu* Sentence"), para. 14; and *The Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence, 4 September 1998 (hereinafter "the *Kambanda* Sentence"), para. 23.
[169] The *Tadi}* Sentencing Judgement of 11 November 1999, para. 7.

Trial Chamber must pronounce an exemplary penalty both from the viewpoint of punishment and deterrence[170].

117. Moreover, as noted in another case before the International Tribunal:

> the International Tribunal sees public reprobation and stigmatisation by the international community, which would thereby express its indignation over heinous crimes and denounce the perpetrators as one of the essential functions of a prison sentence for a crime against humanity[171].

118. Lastly, the Trial Chamber agrees with the Trial Chamber which heard the *Furund`ija* case, that is, that this reasoning applies not only to crimes against humanity but also to war crimes and other serious violations of international humanitarian law[172].

B. Conclusions of the Parties

119. Both parties presented their final arguments in respect of the penalty at a public hearing held on 25 November 1999. On 24 November 1999, the Prosecution called two witnesses, one "character witness" and a psychiatric expert and claimed that no decisive mitigating circumstances exist. It did, however, mention many aggravating circumstances including Goran Jelisi}'s demonstrated dishonesty, his discriminatory behaviour, his enthusiasm in committing the crimes and his submissiveness vis à vis people in authority. In respect of sentencing practice, the Prosecution referred *inter alia* to the recent sentence handed down in the *Tadi}* case and asked the Trial Chamber to pronounce a life sentence on the accused[173].

120. From 8 to 11 November 1999 and on 22 and 24 November 1999, the Trial Chamber heard 20 Defence witnesses including a psychiatric expert. Five of the witnesses were heard by video-link from Br~ko and Sarajevo. The Defence claimed that the orders from superiors which Goran Jelisi} allegedly obeyed, his guilty plea, his co-operation with the Office of the Prosecutor, his remorse, his youth and his good relations with Muslims constitute mitigating circumstances. Furthermore, the Defence held that when deliberating on the penalty to be

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[170] *Tadi}* Sentencing Judgement of 11 November 1999, para. 9; ^e*lebi}i* Judgement, paras. 1231 and 1234; *The Prosecutor v. Anto Furund`ija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998 (hereinafter "the *Furund`ija* Judgement"), para. 288; *The Prosecutor v. Clement Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Judgement, 21 May 1999, para. 2; *Serushago* Sentence, para. 20; *Akayesu* Sentence, para. 19; *Kambanda* Sentence, para. 28.
[171] *Erdemovi}* Sentencing Judgement of 29 November 1996, para. 65.
[172] *Furund`ija* Judgement, para. 289.
[173] FPT p. 2310.

pronounced, the Trial Chamber must take into account the consistency of penalties meted out by both *ad hoc* Tribunals and the local courts of Bosnia and Herzegovina. In this respect, it mentioned four recent judgements in Bosnia and Herzegovina[174]. In conclusion, though not recommending a specific penalty, the Defence argued that the Trial Chamber should not sentence the accused to life in prison[175].

C. Determination of the penalty

121. The Trial Chamber is of the opinion that the most important factors to be considered in the case in point are the gravity of the crimes to which the accused pleaded guilty and his personal circumstances.

1. The accused

122. The Trial Chamber has relatively little information on Goran Jelisi}. Most of its information was provided by the expert reports it ordered or which were prepared at the request of the Defence. The Trial Chamber notes that on important points, such as whether he may have been subjected to physical violence when he was arrested by the Croats, the accused presented conflicting accounts.

123. Goran Jelisi} was born on 7 June 1968 in Bijeljina in Bosnia and Herzegovina. After leaving school early in his first year of secondary education, he became a farm mechanic. He has been married since February 1995 and is the father of a young son[176]. Since his arrest on 22 January 1998, Goran Jelisi} has been held in the United Nations Detention Unit at Scheveningen in The Hague[177].

2. Mitigating circumstances

124. Among the mitigating circumstances set out by the Defence, the Trial Chamber will consider the age of the accused. He is now 31 years old and, at the time of the crimes, was 23. The Trial Chamber also takes into account the fact that the accused had never convicted of a violent crime and that he is the father of a young child. Nonetheless, as indicated by the Trial

[174] FPT pp. 2349-2350.
[175] FPT p. 2354.
[176] Forensic Report, Duits & Van der Veen, 25 November 1998, pp. 5-9.
[177] Initial appearance of 26 January 1998, FPT p. 1.

Chamber hearing the *Furund`ija* case, many accused are in that same situation and, in so serious a case, the Judges cannot accord too great a weight to considerations of this sort[178].

125. As previously stated, the expert diagnosis indicated that Goran Jelisi} suffered from personality disorders, had borderline, narcissistic and anti-social characteristics. Still, though this does speak in favour of psychiatric follow-up, the Trial Chamber concurs with the Prosecution and does not agree that such a condition diminishes Goran Jelisi}'s criminal responsibility.

126. Moreover, the Trial Chamber considers that, even if it had been proved that Goran Jelisi} acted on the orders of a superior, the relentless character and cruelty of his acts would preclude his benefiting from this fact as a mitigating circumstance.

127. The Trial Chamber is not convinced that the remorse which Goran Jelisi} allegedly expressed to the expert psychiatrist was sincere[179]. Moreover, although the Trial Chamber considered the accused's guilty plea out of principle, it must point out that the accused demonstrated no remorse before it for the crimes he committed. The Trial Chamber further states that photographs attached to the Agreed Factual Basis or produced at trial which the accused was fully aware had been taken show Goran Jelisi} committing crimes. It therefore accords only relative weight to his plea[180]. The Trial Chamber also notes that the accused allegedly had considered surrendering voluntarily[181] but did not. Furthermore, his co-operation with the Office of the Prosecutor in this case does not seem to constitute a mitigating circumstance within the meaning of Sub-rule 101(B)(ii) of the Rules. Finally, although the accused's behaviour has improved since he has been in detention, it is not such as to mitigate the penalty in any substantial way.

128. Lastly, the Trial Chamber considered the testimony heard at trial in respect of sentencing. The cordial relations that Goran Jelisi} may have had with Muslims does not make up for the extreme gravity of the acts which he discriminatorily committed. In addition, the Trial Chamber does not rule out the possibility that, once he realised what crimes he had

[178] *Furund`ija* Judgement, para. 284.
[179] Report of Doctor van den Bussche, 8 November 1999, p. 22.
[180] The Trial Chamber observes that the accused pleaded guilty to crimes against humanity contrary the advice of his counsel, FPT p. 187.
[181] Witness DQ, FPT p. 2108.

committed, Goran Jelisi} actively sought out potential witnesses[182], including witnesses from the Muslim community itself.

3. Aggravating circumstances

129. The Trial Chamber concludes that the statements attached to the factual basis and the testimony heard at the genocide trial show that Goran Jelisi}'s crimes were committed under particularly aggravating circumstances.

130. The Trial Chamber points out the repugnant, bestial and sadistic nature of Goran Jelisi}'s behaviour. His cold-blooded commission of murders and mistreatment of people attest to a profound contempt for mankind and the right to life.

131. It was especially during the period spent at Luka camp that Goran Jelisi} enthusiastically committed his crimes and took advantage of the opportunity afforded to him by the feeling of power to impose his own will on the defenceless victims and to decide who would live and who would die.

132. Furthermore, the Trial Chamber holds that the impact of the accused's behaviour goes well beyond the great physical and psychological suffering inflicted on the immediate victims of his crimes and on their relatives. All the witnesses to the crimes who were at Goran Jelisi}'s mercy suffered as well.

133. One of the missions of the International Criminal Tribunal is to contribute to the restoration of peace in the former Yugoslavia. To do so, it must identify, prosecute and punish the principal political and military officials responsible for the atrocities committed since 1991 in the territories concerned. However, where need be, it must also recall that although the crimes perpetrated during armed conflicts may be more specifically ascribed to one or other of these officials, they could not achieve their ends without the enthusiastic help or contribution, direct or indirect, of individuals like Goran Jelisi}.

[182] The Trial Chamber notes, for example, the testimony of witness DR who met the accused for the first time in 1995.

134. Ultimately, in Goran Jelisi}'s case, the aggravating circumstances far outweigh the mitigating ones and this is why a particularly harsh sentence has been imposed on him.

4. Calculation of the length of custody pending trial

135. Sub-rule 101(D) of the Rules states that "credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending surrender to the Tribunal or pending trial or appeal". When calculating the time to be served, the fact that the accused has been detained by the Tribunal since 22 January 1998, that is, to date, for one year, ten months and twenty-two days, must be taken into account.

5. The sentence itself

136. The Trial Chamber considers that the provisions of Rule 101 of the Rules do not preclude the handing down of a single sentence for several crimes. In this respect, the Trial Chamber points out that although, to date, the ICTY's Trial Chambers have rendered judgements imposing multiple penalties, Trial Chamber I of the ICTR imposed single penalties in the *Kambanda*[183] and *Serushago*[184] cases.

137. In the case in point, the crimes ascribed to the accused were given two distinct characterisations but form part of a single set of crimes committed over a brief time span which does not allow for distinctions between their respective criminal intention and motives. In view of their overall consistency, the Trial Chamber is of the opinion that it is appropriate to impose a single penalty for all the crimes of which the accused was found guilty.

[183] *Kambanda* Sentence.
[184] *Serushago* Sentence.

VI. DISPOSITION

138. For the foregoing reasons, the Trial Chamber unanimously:

ACQUITS Goran Jelisi} of count 1, genocide:

FINDS Goran Jelisi} GUILTY:

- of stealing money from persons detained at Luka camp, in particular Hasib Begi}, Zej}ir Osmi}, Enes Zuki} and Armin Drapi}, between about 7 and 28 May 1992, count 44, a violation of the laws or customs of war (plunder);
- of causing bodily harm between 10 and 12 May 1992 at Luka camp to the Osmi} brothers, Zej}ir and Re{ad, count 30, a violation of the laws or customs of war (cruel treatment), and count 31, a crime against humanity (inhumane acts);
- of causing bodily harm to Muhamed Bukvi} at Luka camp around 13 May 1992, count 36, a violation of the laws or customs of war (cruel treatment), and count 37, a crime against humanity (inhumane acts);
- of causing bodily harm to Amir Didi} at Luka camp between 20 and 28 May 1992, count 40, a violation of the laws or customs of war (cruel treatment), and count 41, a crime against humanity (inhumane acts);
- of the murder of an unidentified male around 6 or 7 May 1992 near the Br~ko police station, count 4, a violation of the laws or customs of war, and count 5, a crime against humanity;
- of the murder of Hasan Ja{arevi} near the Br~ko police station around 7 May 1992, count 6, a violation of the laws or customs of war, and count 7, a crime against humanity;
- of the murder of an unidentified young man from [interaj near the Br~ko police station around 7 May 1992, count 8, a violation of the laws or customs of war and count 9, a crime against humanity;
- of the murder of Ahmet Hod`i} (or Had`i}) alias Papa near the Br~ko police station around 7 May 1992, count 10, a violation of the laws or customs or war, and count 11, a crime against humanity;
- of the murder of Suad on 7 May 1992 near the Br~ko police station, count 12, a violation of the laws or customs of war, and count 13, a crime against humanity;

- of the murder of Jasminko ^umurovi} alias Ja{~e around 8 May 1992 at the Luka camp, count 14, a violation of the laws or customs of war, and count 15, a crime against humanity;
- of the murders of Huso and Smajil Zahirovi} around 8 May at the Luka camp, count 16, a violation of the laws or customs of war, and count 17, a crime against humanity;
- of the murder of Naza Bukvi} around 9 May 1992 at the Luka camp, count 18, a violation of the laws or customs of war, and count 19, a crime against humanity;
- of the murder of Muharem Ahmetovi} around 9 May 1992 at the Luka camp, count 20, a violation of the laws or customs of war, and count 21, a crime against humanity;
- of the murder of Stipo Glavo~evi}, alias Stjepo, around 9 May 1992 at the Luka camp, count 22, a violation of the laws of customs of war, and count 23, a crime against humanity;
- of the murder of Novalija, an elderly Muslim man, around 12 May 1992 at the Luka camp, count 32, a violation of the laws or customs of war, and count 33, a crime against humanity;
- of the murder of Adnan Kucalovi} around 18 May 1992 at the Luka camp, count 38, a violation of the laws or customs of war, and count 39, a crime against humanity;

crimes covered by Articles 3, 5(a) and 7(1) of the Statute of the Tribunal and Article 3(1)(a) of the Geneva Conventions.

139. For these reasons, the Trial Chamber SENTENCES Goran Jelisi} to forty (40) years in prison;

140. RECOMMENDS that he receive psychological and psychiatric follow-up treatment and REQUESTS that the Registry take all the appropriate measures in this respect together with the State in which he will serve his sentence[185].

[185] The Trial Chamber points out that all the Agreements entered into with States willing to receive convicted persons provide that when the Registrar presents her request, she will attach any appropriate recommendation relating to continued treatment in the State where the convicted person serves his sentence. *See* Article 2(2)(c) of the Agreements entered into with the different States: Agreement between the Government of Norway and the United Nations on the enforcement of sentences of the International Criminal Tribunal for the former Yugoslavia (24 April 1998), Agreement between the International Criminal Tribunal for the former Yugoslavia and the Government of Finland on the enforcement of sentences of the International Tribunal (7 May 1997), Agreement between the Government of the Italian Republic and the United Nations on the enforcement of sentences of the International Criminal Tribunal for the former Yugoslavia (6 February 1997), Agreement between the United Nations and the federal Government of Austria on the enforcement of sentences of the International Criminal Tribunal for the former Yugoslavia (23 July 1999), Agreement between the United

Done in French and English, the French version being authoritative.

Done this fourteenth day of December 1999

At The Hague

The Netherlands

Claude Jorda
Presiding Judge, Trial Chamber

Fouad Riad

Almiro Rodrigues

(Seal of the Tribunal)

Nations and the government of Sweden on the enforcement of sentences of the International Criminal Tribunal for the former Yugoslavia (23 February 1999).

Annex 992

Prosecutor v. Bagilishema, Case No. ICTR-95-1A-T, Trial Judgment (7 June 2001)

1783

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

Original: English

TRIAL CHAMBER I

Before: Judge Erik Møse, Presiding
Judge Asoka de Z. Gunawardana
Judge Mehmet Güney

Registry: Mr Adama Dieng

Decision of: 7 June 2001

THE PROSECUTOR
VERSUS
IGNACE BAGILISHEMA

Case No. ICTR-95-1A-T

JUDGEMENT

The Office of the Prosecutor:

Ms Anywar Adong
Mr Charles Adeogun-Phillips
Mr Wallace Kapaya
Ms Boi-Tia Stevens

Counsel for the accused:

Mr François Roux
Mr Maroufa Diabira
Ms Héleyn Uñac
Mr Wayne Jordash

1.2 Responsibility under Article 6(3) of the Statute

37. Article 6(3) incorporates the customary law doctrine of command responsibility. This doctrine is predicated upon the power of the superior to control or influence the acts of subordinates. Failure by the superior to prevent, suppress, or punish crimes committed by subordinates is a dereliction of duty that may invoke individual criminal responsibility.[32]

38. The Chamber will now consider, in turn, the three essential elements of command responsibility, namely:

> (i) the existence of a superior-subordinate relationship of effective control between the accused and the perpetrator of the crime; and,
>
> (ii) the knowledge, or constructive knowledge, of the accused that the crime was about to be, was being, or had been committed; and,
>
> (iii) the failure of the accused to take the necessary and reasonable measures to prevent or stop the crime, or to punish the perpetrator.[33]

1.2.1 Superior-Subordinate Relationship

39. A position of command is a necessary condition for the imposition of command responsibility, but the existence of such a position cannot be determined by reference to

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[32] As demonstrated in *Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo*, Judgement of 16 November 1998, [henceforth *Celebici* (TC)] paras. 333-343. This foundation of the doctrine is apparent also in the *Yamashita* case, where the military commission characterised the accused's failure to prevent the commission of atrocities by forces under his command as a breach of his "duty" as commander (*In re Yamashita*, 327 U.S. 1 (1946), pp. 13-14). The U.S. Supreme Court, in a decision denying Yamashita's writ of habeas corpus, stated that a precedent for imposing such a duty existed in the Hague Convention IV of 1907 (*In re Yamashita*, pp. 15-16). In expounding a rationale for command responsibility, the court observed that given that the purpose of the law of war was to protect civilian populations and prisoners of war from brutality, this would largely be defeated if the commander of an invading army could with impunity "neglect" to take reasonable measures for their protection (p. 15).

[33] See *Celebici* (TC) para. 346; *Blaskic* para. 294. See also *Aleksovski* (TC) para. 69; confirmed by the Appeals Chamber in *Prosecutor v. Zlatko Aleksovski*, 24 March 2000 [henceforth *Aleksovski* (AC)] para. 72. The three constituent elements clearly draw from Article 86 para. 2, of Additional Protocol I, and

formal status alone. The factor that determines liability is the actual possession, or non-possession, of a position of command over subordinates. Therefore, although a person's *de jure* position as a commander in certain circumstances may be sufficient to invoke responsibility under Article 6(3), ultimately it is the actual relationship of command (whether *de jure* or *de facto*) that is required for command responsibility.[34] The decisive criterion in determining who is a superior is his or her ability, as demonstrated by duties and competence, to effectively control his or her subordinates.[35]

Command Responsibility of Civilian Superiors

40. Although the doctrine of command responsibility was applied originally in a military context, Article 6(3) contains no express limitation restricting the scope of this type of responsibility to military commanders or to situations arising under military command. However, the broadening of the case-law of command responsibility to include civilians, has proceeded with caution. In *Akayesu*, the Chamber stated that "the application of the principle of individual criminal responsibility, enshrined in Article 6(3), to civilians remains contentious."[36]

41. The first guilty verdict by an International Tribunal under the doctrine of command responsibility was entered in the ICTY's *Celebici* case. Mucic, a civilian warden of a prison-camp, was held responsible for the ill-treatment of prisoners by camp guards. Although the accused held his post without a formal appointment, he manifested, according to the Trial Chamber, all the powers and functions of a formal appointment as

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Article 6 of the *Draft Code of Crimes* of the International Law Commission (UN Doc. A/51/10, 1996). They are repeated in Article 28 of the Rome Statute of the International Criminal Court.

[34] See *Celebici* (TC) para. 370; *Blaskic* para. 301.

[35] See *Aleksovski* (TC) para. 76.

[36] *Akayesu* (TC) para. 491. The Chamber cited Judge Röling's dissent in the Hirota case of the International Military Tribunal for the Far East, which expressed concern about holding government officials responsible for the behaviour of the army. In the event, the Chamber did not consider the three counts alleging Akayesu's command responsibility, holding that a superior/subordinate relationship between the accused and the local militia, though confirmed by the evidence presented in the case, had not been expressly alleged in the indictment

commander.[37] Since the *Celebici* judgement, the ICTY has found another civilian prison-camp warden guilty on the grounds of superior responsibility,[38] and the ICTR has found two civilians, a *préfet* and a tea factory director, responsible as commanders for atrocities committed in Rwanda.[39]

42. While there can be no doubt, therefore, that the doctrine of command responsibility extends beyond the responsibility of military commanders to encompass civilian superiors in positions of authority,[40] the Chamber agrees with the approach articulated by the International Law Commission,[41] and, more recently, in *Celebici*, namely that the doctrine of command responsibility "extends to civilian superiors only to the extent that they exercise a degree of control over their subordinates which is similar to that of military commanders."[42]

43. According to the Trial Chamber in *Celebici*, for a civilian superior's degree of control to be "similar to" that of a military commander, the control over subordinates must be "effective",[43] and the superior must, have the "material ability"[44] to prevent and punish any offences. Furthermore, the exercise of *de facto* authority must be accompanied by "the trappings of the exercise of *de jure* authority".[45] The present Chamber concurs. The Chamber is of the view that these trappings of authority include, for example, awareness of a chain of command, the practice of issuing and obeying orders, and the expectation that insubordination may lead to disciplinary action. It is by these trappings that the law distinguishes civilian superiors from mere rabble-rousers or other persons of influence.

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[37] *Celebici* (TC) para. 750.
[38] See *Aleksovski* (TC) para. 118.
[39] See *Kayishema and Ruzindana* (TC) and *Musema*.
[40] See *Celebici* (TC) para. 357-363.
[41] Commentary on the 1996 Code of Crimes against the Peace and Security of Mankind: "Report of the International Law Commission on the Work of its Forty-Eighth Session, 6 May–26 June 1996" [henceforth I.L.C. Draft Code of Crimes], U.N. Doc. A/51/10 (1996), commentary para. 4 to Article 6.
[42] *Celebici* (TC) para. 378.
[43] Ibid.
[44] Ibid.

1.2.2 Knowing or Having Reason to Know

44. As to the *mens rea*, the standard that the doctrine of command responsibility establishes for superiors who fail to prevent or punish crimes committed by their subordinates is not one of strict liability. The U.S. Military Tribunal in the "High Command case" held:

> "Criminality does not attach to every individual in this chain of command from that fact alone. There must be a personal dereliction. That can occur only where the act is directly traceable to him or where his failure to properly supervise his subordinates constitutes criminal negligence on his part."[46]

45. It follows that the essential element is not whether a superior had authority over a certain geographical area, but whether he or she had effective control over the individuals who committed the crimes, and whether he or she knew or had reason to know that the subordinates were committing or had committed a crime under the Statutes. Although an individual's command position may be a significant indicator that he or she knew about the crimes, such knowledge may not be presumed on the basis of his or her position alone.

46. It is the Chamber's view that a superior possesses or will be imputed the *mens rea* required to incur criminal liability where:

> he or she had actual knowledge, established through direct or circumstantial evidence, that his or her subordinates were about to commit, were committing, or had committed, a crime under the Statutes;[47] or,
>
> he or she had information which put him or her on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such

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[45] Ibid. para. 646.

[46] *U.S.A. v. Wilhelm von Leeb et al.*, in Trials of War Criminals, Vol. XI, pp. 543-544, [henceforth the *High Command* case].

[47] See *Celebici* (TC) paras. 384-386.

offences were about to be committed, were being committed, or had been committed, by subordinates;[48] or,

the absence of knowledge is the result of negligence in the discharge of the superior's duties; that is, where the superior failed to exercise the means available to him or her to learn of the offences, and under the circumstances he or she *should* have known.[49]

1.2.3 Failing to Prevent or Punish

47. Article 6(3) states that a superior is expected to take "necessary and reasonable measures" to prevent or punish crimes under the Statutes. The Chamber understands "necessary" to be those measures required to discharge the obligation to prevent or punish in the circumstances prevailing at the time; and, "reasonable" to be those measures which the commander was in a position to take in the circumstances.[50]

48. A superior may be held responsible for failing to take only such measures that were within his or her powers.[51] Indeed, it is the commander's degree of effective control – his or her material ability to control subordinates – which will guide the Chamber in determining whether he or she took reasonable measures to prevent, stop, or punish the subordinates' crimes. Such a material ability must not be considered abstractly, but must be evaluated on a case-by-case basis, considering all the circumstances.

49. In this connection, the Chamber notes that the obligation to prevent or punish does not provide the Accused with alternative options. For example, where the Accused knew or had reason to know that his or her subordinates were about to commit crimes and failed to prevent them, the Accused cannot make up for the failure to act by punishing the subordinates afterwards.[52]

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[48] Ibid. para. 390-393.
[49] See *Blaskic* paras. 314-332; cf. *Aleksovski* (TC) para. 80.
[50] See *Blaskic* para. 333.
[51] See *Celebici* (TC) para. 395.
[52] See *Blaskic* para. 336.

50. The Chamber is of the view that, in the case of failure to punish, a superior's responsibility may arise from his or her failure to create or sustain among the persons under his or her control, an environment of discipline and respect for the law. For example, in *Celebici*, the Trial Chamber cited evidence that Mucic, the accused prison warden, never punished guards, was frequently absent from the camp at night, and failed to enforce any instructions he did happen to give out.[53] In *Blaskic*, the accused had led his subordinates to understand that certain types of illegal conduct were acceptable and would not result in punishment.[54] Both Mucic and Blaskic tolerated indiscipline among their subordinates, causing them to believe that acts in disregard of the dictates of humanitarian law would go unpunished. It follows that command responsibility for failure to punish may be triggered by a broadly based pattern of conduct by a superior, which in effect encourages the commission of atrocities by his or her subordinates.[55]

2. The Crime of Genocide (Article 2 of the Statute)

2.1 Genocide

51. Article 2 of the Statute reads:

> "1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article
>
> 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> Killing members of the group;
>
> Causing serious bodily or mental harm to members of the group;

[53] See *Celebici* (TC) paras. 772f.

[54] See *Blaskic* paras. 487 and 494-495.

[55] This position is evident not only from the case-law, but also from the aim of Article 6(3), which is not that the crimes of subordinates should be punished but that superiors should ensure that the crimes do not occur. See also *In re Yamashita* pp. 14-16; *Akayesu* para. 691; *Celebici* (TC) paras. 772f; *Blaskic* paras. 487f.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

Imposing measures intended to prevent births within the group;

Forcibly transferring children of the group to another group.

3.The following acts shall be punishable:

Genocide;

Conspiracy to commit genocide;

Direct and public incitement to commit genocide;

Attempt to commit genocide;

Complicity in genocide."

52. Under Count 1 of the Indictment, the Prosecution alleges that the Accused is responsible under Articles 6(1) and 6(3) for the killing or causing of serious bodily or mental harm to members of the Tutsi population and charges the Accused with the crime of genocide pursuant to Article 2(3)(a) of the Statute.

53. The definition of genocide, as provided in Article 2 of the Statute, cites, *verbatim*, Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention").[56]

54. The Genocide Convention is undeniably considered part of customary international law, as reflected in the advisory opinion of the International Court of Justice (1951) on reservations to the Convention.[57] The Chamber also notes that Rwanda acceded, by legislative decree, to the Genocide Convention on 12 February 1975, and that the crime of genocide was therefore punishable in Rwanda in 1994.

55. The definition of the crime of genocide has been interpreted in the jurisprudence of this Tribunal, namely in the *Akayesu, Kayishema and Ruzindana, Rutaganda* and *Musema* Judgements. The Chamber adheres to the definitions of genocide as elaborated

[56] The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly, 9 December 1948.

[57] See also the UN Secretary-General's Report on the establishment of the International Criminal Tribunal for the Former Yugoslavia, 3 May 1993, U.N Doc. S/25704.

in these judgements. It therefore considers that a crime of genocide is proven if it is established beyond reasonable doubt, firstly, that one of the acts listed under Article 2(2) of the Statute was committed and, secondly, that this act was committed against a specifically targeted national, ethnical, racial or religious group, with the specific intent to destroy, in whole or in part, that group. Genocide therefore invites analysis under two headings: the prohibited underlying acts and the specific genocidal intent or *dolus specialis*.

2.1.1 Underlying Acts

56. The acts underlying the crime of genocide may in each case be analysed into physical and mental elements. The offences relevant to the present case are considered below.

(i) Killing – Article 2(2)(a) of the Statute

57. Article 2(2)(a) of the Statute, like the corresponding provisions of the Genocide Convention, uses "*meurtre*" in the French version and "killing" in the English version. The concept of killing includes both intentional and unintentional homicide, whereas *meurtre* refers exclusively to homicide committed with the intent to cause death. In such a situation, pursuant to the general principles of criminal law, the version more favourable to the Accused must be adopted. The Chamber also notes the Criminal Code of Rwanda, which provides, under Article 311, that "Homicide committed with intent to cause death shall be treated as murder".

58. The Chamber therefore finds that Article 2(2)(a) of the Statute must be interpreted as a homicide committed with intent to cause death. Furthermore, to constitute a crime of genocide, the enumerated acts under Article 2(2)(a) must be committed with intent to destroy a specific group in whole or in part. Therefore, by their very nature the enumerated acts are conscious, intentional, volitional acts that an individual cannot commit by accident or as a result of mere negligence.

(ii) Causing Serious Bodily or Mental Harm – Article 2(2)(b) of the Statute

59. For the purposes of interpreting Article 2(2)(b) of the Statute, the Chamber construes "serious bodily or mental harm" to include acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence, and persecution. In the Chamber's view, "serious harm" entails more than minor impairment on mental or physical faculties, but it need not amount to permanent or irremediable harm.

2.1.2 Dolus Specialis

60. The *dolus specialis* of the crime of genocide is found in the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

61. For one of the underlying acts to be constitutive of the crime of genocide, it must have been committed against a person because this person was a member of a specific group, and specifically because of his or her membership of this group. Consequently, the perpetration of the act is in realisation of the purpose of the perpetrator, which is to destroy the group in whole or in part. It follows that the victim of the crime of genocide is singled out by the offender not by reason of his or her individual identity, but on account of his or her being a member of a national, ethnical, racial, or religious group. This means that the victim of the crime of genocide is not only the individual but also the group to which he or she belongs.[58]

62. On the issue of determining the offender's specific intent, the Chamber applies the following reasoning, as held in *Akayesu*:

> "[...] intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale

[58] *Akayesu* (TC) paras. 521-522.

of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act."[59]

63. Thus evidence of the context of the alleged culpable acts may help the Chamber to determine the intention of the Accused, especially where the intention of a person is not clear from what that person says or does. The Chamber notes, however, that the use of context to determine the intent of an accused must be counterbalanced with the actual conduct of the Accused. The Chamber is of the opinion that the Accused's intent should be determined, above all, from his words and deeds, and should be evident from patterns of purposeful action.

64. As for the meaning of the terms "in whole or in part", the Chamber agrees with the statement of the International Law Commission, that "the intention must be to destroy the group as such, meaning as a separate and distinct entity, and not merely some individuals because of their membership in a particular group".[60] Although the destruction sought need not be directed at every member of the targeted group, the Chamber considers that the intention to destroy must target at least a substantial part of the group.[61]

65. The Chamber notes that the concepts of national, ethnical, racial, and religious groups enjoy no generally or internationally accepted definition.[62] Each of these concepts must be assessed in the light of a particular political, social, historical, and cultural context. Although membership of the targeted group must be an objective feature of the society in question, there is also a subjective dimension.[63] A group may not have

[59] *Akayesu* (TC) para. 523.

[60] ILC, Draft Code of Crimes, p. 88, and *Akayesu* (TC) paras. 496-499.

[61] For example, the Chamber in *Kayishema and Ruzindana* (TC) held that the accused must have the intention to destroy a "considerable" number of members of a group.

[62] Although indicative definitions of these four terms have been provided, for example, in *Akayesu* paras. 512-515.

[63] In this regard, the Chamber agrees with the comment of the Commission of Experts on Rwanda that "to recognise that there exists discrimination on racial or ethnic grounds, it is not necessary to presume or posit

precisely defined boundaries and there may be occasions when it is difficult to give a definitive answer as to whether or not a victim was a member of a protected group. Moreover, the perpetrators of genocide may characterize the targeted group in ways that do not fully correspond to conceptions of the group shared generally, or by other segments of society. In such a case, the Chamber is of the opinion that, on the evidence, if a victim was perceived by a perpetrator as belonging to a protected group, the victim could be considered by the Chamber as a member of the protected group, for the purposes of genocide.

2.2 Complicity to Commit Genocide

66. By Count 2 of the Indictment, the Prosecutor alleges that the Accused is responsible, under Articles 6(1) and 6(3), as an accomplice to the killing and causing of serious bodily or mental harm to members of the Tutsi population, and charges the Accused with the crime of complicity in genocide, pursuant to Article 2(3)(e) of the Statute.

67. The Indictment indicates that for the charge of complicity in genocide, the Prosecution relies on the same acts that it relies on for the charge of genocide. In the Chamber's view, genocide and complicity in genocide are two different forms of participation in the same offence. The Chamber thus concurs with the opinion expressed in *Akayesu* that "an act with which an Accused is being charged cannot, therefore, be characterized both as an act of genocide and an act of complicity in genocide as pertains to this accused. Consequently, since the two are mutually exclusive, the same individual cannot be convicted of both crimes for the same act".[64] Therefore, the Chamber finds that an accused cannot be convicted of both genocide and complicity in genocide on the basis of the same acts.

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the existence of race or ethnicity itself as a scientifically objective fact": Morris and Scharf, *The International Criminal Tribunal for Rwanda*, vol. 1, p. 176.

[64] *Akayesu* (TC) para. 532.

68. The Chamber agrees with the definition of the elements of the offence of complicity in genocide found in the jurisprudence of this Tribunal, as, for example, in *Musema*.[65]

69. With regard to the *actus reus* of complicity in genocide, the Chamber notes that, under Common Law, the forms of accomplice participation are usually defined as "aiding and abetting, counselling and procuring". On the other hand, in most Civil Law systems, three forms of accomplice participation are recognised: complicity by instigation, by aiding and abetting, and by procuring means. The Rwandan Penal Code, in its Article 91, defines, *inter alia*, these three forms of complicity:

> "(a) Complicity by procuring means, such as weapons, instruments or any other means, used to commit genocide, with the accomplice knowing that such means would be used for such a purpose;
>
> (b) Complicity by knowingly aiding or abetting a perpetrator of a genocide in the planning or enabling acts thereof;
>
> (c) Complicity by instigation, for which a person is liable who, though not directly participating in the crime of genocide, gave instructions to commit genocide, through gifts, promises, threats, abuse of authority or power, machinations or culpable artifice, or who directly incited the commission of genocide."[66]

70. Taking note of the fact that the Civil Law and the Common Law definitions of complicity are very similar, the Chamber defines the forms of complicity, for the purposes of interpreting Article 2(3)(e) of the Statute, as complicity by aiding and abetting, by procuring means, or by instigation, as defined in the Rwandan Penal Code.[67]

71. The *mens rea* of complicity in genocide lies in the accomplice's knowledge of the commission of the crime of genocide by the principal perpetrator.[68] Therefore, the accomplice in genocide need not possess the *dolus specialis* of genocide; rather he or she, knowingly, aids and abets, instigates or procures for another in the knowledge that the

[65] *Musema* paras. 168-175
[66] *Akayesu* (TC) para. 179.
[67] Ibid. paras. 525-548.

other person intends to destroy, in whole or in part, a national, ethnical, racial or religious group as such.

3. Crimes against Humanity (Article 3 of the Statute)

72. Article 3 of the ICTR Statute reads:

> "The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:
>
> (a) Murder;
>
> (b) Extermination;
>
> (c) Enslavement;
>
> (d) Deportation;
>
> (e) Imprisonment;
>
> (f) Torture;
>
> (g) Rape;
>
> (h) Persecutions on political, racial and religious grounds;
>
> (i) Other inhumane acts."

73. The Accused in the present case is charged with three counts of crimes against humanity: murder, extermination, and other inhumane acts, under Article 3(a), (b), and (i) of the Statute, respectively. The three counts charge the Accused with responsibility under Article 6(1) and 6(3) of the Statute.

[68] See *inter alia* the conclusions in *Akayesu* (TC) para. 540f.

74. The text of Article 3 of the Statute draws primarily on the benchmark definition of a crime against humanity found in Article 6(c) of the Statute of the Nuremberg Tribunal.[69] In customary international law, crimes against humanity may be directed against *any* civilian population and are prohibited regardless of whether they are committed in an international or internal armed conflict.[70] The UN Security Council, in deciding that crimes against humanity in the Statute of this Tribunal must have been committed as part of a discriminatory attack, applied a narrower definition than that in customary international law.

75. A crime against humanity is a prohibited underlying offence committed as part of a broader criminal attack. The crime therefore invites definition under three headings: the broader attack, the underlying offences, and the mental element.

3.1 The Broader Attack

76. The underlying offences must be committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds.

3.1.1 Widespread or Systematic

77. A widespread attack is an attack on a large scale directed against a multiplicity of victims, whereas a systematic attack is one carried out pursuant to a preconceived policy or plan.[71] To qualify, the attack must be at least widespread or systematic, but need not be both. Nonetheless, the Chamber notes that the criteria by which one or the other aspects of the attack is established partially overlap. As stated in *Blaskic*:

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[69] Annex to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, London, 8 August 1945, p. 85.

[70] *Akayesu* (TC) para. 565; *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 141.

> "The fact still remains however that, in practice, these two criteria will often be difficult to separate since a widespread attack targeting a large number of victims generally relies on some form of planning or organisation. The quantitative criterion is not objectively definable as witnessed by the fact that neither international texts nor international and national case-law set any threshold starting with which a crime against humanity is constituted."[72]

78. It is, therefore, the Chamber's view that either of the requirements of widespread or systematic will be enough to exclude acts not committed as part of a broader policy or plan. Also, the requirement that the attack must be committed against a "civilian population" presupposes a kind of plan; and the discriminatory element of the attack is, by its very nature, only possible as a consequence of a policy. Thus the policy element can be seen to be an inherent feature of the attack, whether the attack be characterised as widespread or systematic.[73] Further, it is clear from Article 3 of the Statute and recent case law[74] that such a policy may be instigated or directed by any organisation or group, whether or not representing the government of a State.

3.1.2 Against any Civilian Population

79. The Chamber concurs with the finding in *Tadic* that the targeted population must be predominantly civilian in nature, but that the presence of certain non-civilians in it does not change its civilian character.[75] It also follows, as argued in *Blaskic*, "that the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian."[76]

80. The requirement that the prohibited acts must be directed against a civilian

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[71] For example, the ILC Draft Code of Crimes defines systematic as "meaning pursuant to a preconceived plan or policy. The implementation of this plan or policy could result in the repeated or continuous commission of inhumane acts." Commentary on Article 18, para. 3.

[72] *Blaskic* para. 207.

[73] Although the Chamber concurs with the statement in *Kupreskic et al*, "that although the concept of crimes against humanity necessarily implies a policy element, there is some doubt as to whether it is strictly a *requirement*, as such, for crimes against humanity", para. 551.

[74] See, for example, *Tadic* (TC) para. 654.

[75] *Tadic* (TC) para. 638.

"population" does not mean that the entire population of a given State or territory must be victimised by these acts in order for the acts to constitute a crime against humanity. Instead the "population" element is intended to imply crimes of a collective nature and thus excludes single or isolated acts which, although possibly constituting crimes under national penal legislation, do not rise to the level of crimes against humanity.[77]

3.1.3 On Discriminatory Grounds

81. The Statute contains a requirement that, the broader attack must be conducted on national, political, ethnic, racial, or religious grounds.[78] The Chamber is of the view that the qualifier "on national, political, ethnic, racial or religious grounds", which is peculiar to the ICTR Statute should, as a matter of construction, be read as a characterisation of the nature of the "attack" rather than of the *mens rea* of the perpetrator.[79] The perpetrator may well have committed an underlying offence on discriminatory grounds identical to those of the broader attack; but neither this, nor for that matter any discriminatory intent whatsoever, are prerequisites of the crime, so long as it was committed as part of the broader attack.[80]

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[76] *Blaskic* para. 214.

[77] See *Tadic* (TC) para. 644.

[78] This requirement is additional to the Nuremberg Charter, the ICTY Statute, and the ICC Statute.

[79] Had the drafters of the Statute sought to characterise the individual actor's intent as discriminatory, they would have inserted the relevant phrase immediately after the word "committed", or they would have used punctuation to set aside the intervening description of the attack. In addition, they would have taken care to modify Article 3(h) to redress the resulting repetition of qualifiers. As noted by the Appeals Chamber in *Tadic* (correcting the Trial Chamber's adoption in that case of a supposedly implicit requirement of discriminatory intent for all crimes against humanity under Article 5 of the ICTY Statute), "a logical construction of Article 5 also leads to the conclusion that, generally speaking, this requirement is not laid down for all crimes against humanity. Indeed, if it were otherwise, why should Article 5(h) specify that "persecutions" fall under the Tribunal's jurisdiction if carried out 'on political, racial and religious grounds'? This specification would be illogical and superfluous. It is an elementary rule of interpretation that one should not construe a provision or part of a provision as if it were superfluous and hence pointless: the presumption is warranted that law-makers enact or agree upon rules that are well thought out and meaningful in all their elements." *Tadic* (AC) para. 284. See also ibid. para. 305; *Kupreskic et al.* para. 558; *Blaskic* paras. 244 and 260.

[80] *The Prosecutor v. Jean Paul Akayesu*, Judgement on appeal of 1 June 2001 (Case No. 96-4-A) para. 469 (AC), and *Kayishema and Ruzindana* (TC) para. 133-134.

3.2 Underlying Acts

82. As discussed above, a crime against humanity is constituted by an offence committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial, or religious grounds. However, an underlying offence need not contain elements of the broader attack. For example, an offence may be committed without discrimination, or be neither widespread nor systematic, yet still constitutes a crime against humanity if the other prerequisites of the principal crime are met. A single act by a perpetrator may thus constitute a crime against humanity. [81]

83. Each enumerated crime contains its own specific mental and physical elements. The three underlying offences charged in the Indictment are described below.

Murder

84. In *Kayishema and Ruzindana*, the Trial Chamber found that:

> "murder and *assassinat* [the word used in the French version of the Statute] should be considered together in order to ascertain the standard of *mens rea* intended by the drafters and demanded by the ICTR Statute. When murder is considered along with *assassinat* the Chamber finds that the standard of *mens rea* required is intentional and premeditated killing. The accused is guilty of murder if the accused, engaging in conduct which is unlawful:
>
> 1. causes the death of another;
> 2. by a premeditated act or omission; and
> 3. intending to kill any person or,
> 4. intending to cause grievous bodily harm to any person."[82]

85. This Chamber concurs with the above description.

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[81] *The Prosecutor v. Mile Msksic, Miroslav Radic, and Veselin Sljivancanin,* Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 3 April 1996 (Case IT-95-13-R61) para. 30 and *Kupreskic et al.* para. 550.

[82] *Kayishema and Ruzindana* (TC) para. 139-140.

Extermination

86. There is very little jurisprudence relating to the essential elements of extermination. In *Akayesu* the Trial Chamber stated that extermination is a crime by definition directed against a group of individuals, differing from murder in respect of this element of mass destruction. Jean-Paul Akayesu was found guilty of extermination for ordering the killing of sixteen people.[83]

87. The Chamber agrees that extermination is unlawful killing on a large scale. "Large scale" does not suggest a numerical minimum. It must be determined on a case-by-case basis using a common-sense approach.

88. A perpetrator may nonetheless be guilty of extermination if he kills, or creates the conditions of life that kill, a single person, providing that the perpetrator is aware that his or her acts or omissions form part of a mass killing event, namely mass killings that are proximate in time and place and thereby are best understood as a single or sustained attack.

89. The Chamber thus adopts the three elements of the underlying crime of extermination articulated in *Kayishema and Ruzindana*.[84] These are that the Accused, through his acts or omissions:

> (i) participated in the mass killing of others, or in the creation of conditions of life leading to the mass killing of others;
>
> (ii) intended the killings, or was reckless, or grossly negligent as to whether the killings would result; and,
>
> (iii) was aware that his acts or omissions formed part of a mass killing event.

90. The "creation of conditions of life leading to the mass killing" of others include, for example imprisoning a large number of people and withholding the necessities of life,

[83] *Akayesu* (TC) para. 735-744.
[84] *Kayishema and Ruzindana* (TC) para. 144.

so that mass death results; or introducing a deadly virus into a population and preventing medical care, with the same result.

Other Inhumane Acts

91. Since the Nuremberg Charter, the category "other inhumane acts" has been retained as a category of unspecified acts of comparable gravity to the other enumerated acts. Article 7(k) of the Rome Statute of the International Criminal Court characterises "other inhumane acts" with reference to a preceding list of offences as "acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health." Commenting on Article 18 of its Draft Code of Crimes, the International Law Commission stated that:

> "... this category of acts is intended to include only additional acts that are similar in gravity to those listed in the preceding subparagraphs. Second, the act must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity"(para. 17).

92. The Chamber therefore is of the view that, "other inhumane acts" includes acts that are of similar gravity and seriousness to the enumerated acts of murder, extermination, enslavement, deportation, imprisonment, torture, rape, or persecution on political, racial, and religious grounds. These will be acts or omissions that deliberately cause serious mental or physical suffering or injury or constitute a serious attack on human dignity. As for which acts rise to the level of inhumane acts, this should be determined on a case-by-case basis.

3.3 Mental Element

93. A mental factor specific to crimes against humanity is required to create the nexus between an underlying offence and the broader criminal context, thus transforming an ordinary crime into an attack on humanity itself.

94. The Chamber concurs with the description of the *mens rea* of a crime against humanity as stated in *Kayishema and Ruzindana* (which was cited with approval in the

ICTY cases of *Kupreskic et al.*[85] and *Blaskic*[86]), namely, that the Accused mentally must *include* his act within the greater dimension of criminal conduct. This means that the accused must know that his offence forms part of the broader attack. By making his criminal act part of the attack, the perpetrator necessarily participates in the broader attack.

95. It is worth noting that the *motives* (as distinct from the *intent*) of the Accused are of no relevance to the legal constitution of a crime against humanity.[87] This point was clarified by the Appeals Chamber in *Tadic,* which held that an act committed for purely personal motives was not excluded from being a crime against humanity as long as the underlying offence was committed by the perpetrator as part of the broader attack.[88]

4. Violations of the Geneva Conventions and Additional Protocol II

96. Article 4 of the Statute reads:

> "The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:
>
> a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
>
> b) Collective punishments;
>
> c) Taking of hostages;
>
> d) Acts of terrorism;
>
> e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
>
> f) Pillage;

[85] *Kupreskic et al.* para. 557.
[86] *Blaskic* para. 249.
[87] *Kupreskic et al.* para. 558.
[88] *Tadic* (AC) paras. 271-272.

g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples;

h) Threats to commit any of the foregoing acts."

97. Under Counts 6 and 7 of the Indictment, the Prosecution alleges that the Accused is responsible under Articles 6(1) and 6(3) for the serious violations of Common Article 3 and Additional Protocol II pursuant to Articles 4(a) and (e) of the Statute.

4.1 Applicability

98. Jurisprudence of this Tribunal has established that Common Article 3 and Additional Protocol II were applicable as a matter of custom and convention in Rwanda in 1994.[89] Consequently, at the time the events in the Indictment are said to have taken place, persons who violated these instruments would incur individual criminal responsibility and could be prosecuted therefore.

4.2 Material Requirements

99. Common Article 3 and Additional Protocol II afford protection to, *inter alia*, civilians, non-combatants and persons placed *hors de combat*, in the context of internal armed conflicts. Such conflicts must meet a minimum threshold requirement to fall within the ambit of these instruments. The lesser threshold is that of Common Article 3 which simply applies to armed conflicts "not of an international character". This rules out acts of banditry and internal disturbances but covers hostilities that involve armed forces organized to a greater or lesser extent. To be covered by Common Article 3, the hostilities must take place within the territory of a single State, which, in the present matter would be that of Rwanda.

100. Additional Protocol II offers a higher threshold of applicability inasmuch it applies to conflicts which take place in the territory of a High Contracting Party between

its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. Again, situations ruled out as not being armed conflicts are "internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature."[90] Considering the higher threshold of applicability of Additional Protocol II, it is clear that a conflict that meets its material requirements of applicability will *ipso facto* meet those of Common Article 3.

101. Whether a conflict meets the material requirements of the above instruments is a matter of objective evaluation of the organization and intensity of the conflict and of the forces opposing one and another.[91] Once the material requirements of Common Article 3 or Additional Protocol II have been met, these instruments will immediately be applicable not only within the limited theatre of combat but also in the whole territory of the State engaged in the conflict. Consequently, the parties engaged in the hostilities are bound to respect the provisions of these instruments throughout the relevant territory.

102. For a violation to be covered by Article 4 of the Statute it must be deemed *serious*. On this, the Chamber follows the definition advanced in *Akayesu*, in which the Chamber stated that a serious violation is "a breach of a rule protecting important values which must involve grave consequences for the victim".[92] Regarding the elements of murder, as covered by Article 4(a) of the Statute, the Chamber refers to its definition of murder in 3.2 above.

103. Common Article 3 and Additional Protocol II afford protection primarily to victims or potential victims of armed conflicts. In the case of Common Article 3, these

[89] See *Akayesu* (TC) paras. 608-610, *Kayishema and Ruzindana* (TC) para. 156 and *Musema* paras. 970-971.
[90] See Article 1 of Additional Protocol II and *Akayesu* (TC) paras. 625-626.
[91] *Akayesu* (TC) para. 624.
[92] *Akayesu* (TC) para. 616.

individuals are persons taking no active part in the hostilities[93] and, under Additional Protocol II, the protection is extended to all persons who do not take or who have ceased to take part in the hostilities.[94] In the present matter, it is clear that the victims of the events alleged are unarmed men, women, and children, all civilians.

104. To take a direct or active part in the hostilities covers acts which by their very nature or purpose are likely to cause harm to personnel and equipment of the armed forces. In assessing whether or not an individual can be classed as being a civilian, the overall humanitarian purpose of the Geneva Conventions and their Protocols should be taken into account. To give effect to this purpose, a civilian should be considered to be any one who is not a member of the "armed forces", as described above, or any one placed *hors de combat*.[95]

105. For a crime to constitute a serious violation of Common Article 3 and Additional Protocol II, there must be a nexus between the offence and the armed conflict. The "nexus" requirement is met when the offence is closely related to the hostilities or committed in conjunction with the armed conflict. The Appeals Chamber in *Tadic* held that it is "sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict".[96] As such, it is not necessary that actual armed hostilities have broken out in Mabanza *commune* and Kibuye Prefecture for Article 4 of the Statute to be applicable. Moreover, it is not a requirement that fighting was taking place in the exact time-period when the acts the offences alleged occurred were perpetrated. The Chamber will determine whether the alleged acts were committed against the victims because of the conflict at issue.

106. The burden rests on the Prosecutor to establish that such a nexus exists.

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[93] Common Article 3 (1).
[94] Article 4.
[95] See 1977 Additional Protocol I Articles 43 and 44 as regards requirements for recognition of combatant status and *Rutaganda* paras. 100 and 101.
[96] *The Prosecutor v. Tadic*, "Decision on the defence motion for interlocutory appeal on jurisdiction" of 2 October 1995 para. 70.

5. Cumulative Charging

107. The Accused is cumulatively charged with seven counts on the basis of his acts as alleged in paragraphs 4.10 to 4.31 of the Indictment (although the Complicity to commit genocide is based only on paragraphs 4.14 to 4.25).

108. With regard to cumulative charging, the ICTY Appeals Chamber in *Celebici* held:

> "Cumulative charging is to be allowed in light of the fact that, prior to the presentation of all of the evidence, it is not possible to determine to a certainty which of the charges brought against an accused will be proven. The Trial Chamber is better poised, after the parties' presentation of the evidence, to evaluate which of the charges may be retained, based upon the sufficiency of the evidence. In addition, cumulative charging constitutes the usual practice of both this Tribunal and the ICTR." [97]

109. The Chamber concurs with the holding of the ICTY Appeals Chamber endorsing the principle of cumulative charging. Therefore, in the present case, the Chamber will consider all the charges in the Indictment, preferred against the Accused.

[97] *Celibici* (AC) para. 400.

Annex 993

Prosecutor v. Krstić, Case No. IT-98-33-T, Judgment (2 August 2001)

UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-98-33-T

Date: 02 August 2001

Original: English

IN THE TRIAL CHAMBER

Before: Judge Almiro Rodrigues, Presiding
Judge Fouad Riad
Judge Patricia Wald

Registrar: Mr. Hans Holthuis

PROSECUTOR

v.

RADISLAV KRSTIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Mark Harmon
Mr. Peter McCloskey
Mr. Andrew Cayley
Ms. Magda Karagiannakis

Counsel for the Accused:

Mr. Nenad Petrušic
Mr. Tomislav Višnji}

individual acts may not be inhumane, their overall consequences must offend humanity in such a way that they may be termed 'inhumane'.[1190]

536. The Trial Chamber has previously determined that a widespread and systematic attack was launched against the Bosnian Muslim population of Srebrenica from 11 July onwards, by reason of their belonging to the Bosnian Muslim group.

537. The humanitarian crisis in Poto~ari, the burning of homes in Srebrenica and Poto~ari, the terrorisation of Bosnian Muslim civilians, the murder of thousands of Bosnian Muslim civilians, in Poto~ari or in carefully orchestrated mass scale executions, and the forcible transfer of the women, children and elderly out of the territory controlled by the Bosnian Serbs, constitute persecutory acts.

538. The Trial Chamber is thus satisfied that a crime of persecution, as defined in the indictment, was committed from 11 July 1995 onward in the enclave of Srebrenica.

G. Genocide

539. General Krsti} is principally charged with genocide and, in the alternative, with complicity in genocide[1191] in relation to the mass executions of the Bosnian Muslim men in Srebrenica between 11 July and 1 November 1995.[1192]

540. Article 4(2) of the Statute defines genocide as:

> any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) killing members of the group;
>
> (b) causing serious bodily or mental harm to members of the group;
>
> (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) imposing measures intended to prevent births within the group;
>
> (e) forcibly transferring children of the group to another group.

541. The Trial Chamber must interpret Article 4 of the Statute taking into account the state of customary international law at the time the events in Srebrenica took place. Several sources have been considered in this respect. The Trial Chamber first referred to the codification work

[1190] *Kupre{ki}* Judgement, para. 622.
[1191] Counts 1 and 2.

undertaken by international bodies. The Convention on the Prevention and Punishment of the Crime of Genocide[1193] (hereinafter "the Convention"), adopted on 9 December 1948,[1194] whose provisions Article 4 adopts *verbatim*, constitutes the main reference source in this respect. Although the Convention was adopted during the same period that the term "genocide" itself was coined, the Convention has been viewed as codifying a norm of international law long recognised and which case-law would soon elevate to the level of a peremptory norm of general international law (*jus cogens*).[1195] The Trial Chamber has interpreted the Convention pursuant to the general rules of interpretation of treaties laid down in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. As a result, the Chamber took into account the object and purpose of the Convention in addition to the ordinary meaning of the terms in its provisions. As a supplementary means of interpretation, the Trial Chamber also consulted the preparatory work and the circumstances which gave rise to the Convention. Furthermore, the Trial Chamber considered the international case-law on the crime of genocide, in particular, that developed by the ICTR. The Report of the International Law Commission (ILC) on the Draft Code of Crimes against Peace and Security of Mankind[1196] received particular attention. Although the report was completed in 1996, it is the product of several years of reflection by the Commission whose purpose was to codify international law, notably on genocide : it therefore constitutes a particularly relevant source for interpretation of Article 4. The work of other international committees, especially the reports of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights,[1197] was also reviewed. Furthermore, the Chamber gave consideration to the work done in producing the Rome Statute on the establishment of an international criminal court, specifically, the finalised draft text of the elements of crimes completed by the Preparatory Commission for the International Criminal Court in July 2000.[1198] Although that document post-dates the acts involved here, it has proved helpful in assessing the state of customary international law which the Chamber itself derived from other sources. In this regard, it should be noted that all the States attending the conference, whether signatories of the Rome Statute or not, were eligible to be represented on the Preparatory Commission. From this perspective, the

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[1192] Indictment, para. 21.
[1193] Articles II and III.
[1194] Entered into force on 12 January 1951.
[1195] *Reservations to the Convention on the Prevention and Punishment of Genocide,* Advisory Opinion, ICJ Reports (1951), p. 23.
[1196] ILC Draft Code, in particular, pp. 106-114.
[1197] Nicodème Ruhashyankiko, *Study on the Question of the Prevention and Punishment of the Crime of Genocide*, United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN. 4/Sub. 2/ 416, 4 July 1978; Benjamin Whitaker, *Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide*, United Nations, Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub. 2/1985/6, 2 July 1985.

document is a useful key to the *opinio juris* of the States. Finally, the Trial Chamber also looked for guidance in the legislation and practice of States, especially their judicial interpretations and decisions.

542. Article 4 of the Statute characterises genocide by two constitutive elements:

- the *actus reus* of the offence, which consists of one or several of the acts enumerated under Article 4(2);

- the *mens rea* of the offence, which is described as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

1. Actus reus

543. The Trial Chamber has discussed above the murders and serious bodily and mental harm alleged by the Prosecution and has concluded they have been proved. It has been established beyond all reasonable doubt that Bosnian Muslim men residing in the enclave were murdered, in mass executions or individually. It has also been established that serious bodily or mental harm was done to the few individuals who survived the mass executions.

2. Mens rea

544. The critical determination still to be made is whether the offences were committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

545. The Prosecution contends that the Bosnian Serb forces planned and intended to kill all the Bosnian Muslim men of military age at Srebrenica and that these large scale murders constitute genocide.[1199] The Defence does not challenge that the Bosnian Serb forces killed a significant number of Bosnian Muslim men of military age but disagrees a genocidal intent within the meaning of Article 4 has been proved.

546. The Trial Chamber is ultimately satisfied that murders and infliction of serious bodily or mental harm were committed with the intent to kill all the Bosnian Muslim men of military age at Srebrenica. The evidence shows that the mass executions mainly took place between 13 and 16 July, while executions of smaller scale continued until 19 July. All of the executions systematically targeted Bosnian Muslim men of military age, regardless of whether they were civilians or soldiers.

[1198] PCNICC/2000/INF/3/Add. 2, 6 July 2000.
[1199] Prosecution Opening Statement, T. 461.

The military aged men who fled to Poto~ari were systematically separated from the other refugees. They were gathered in the "White House" and were forced to leave their identification papers and personal belongings outside the house. While opportunistic killings occurred in Poto~ari on 12 and 13 July,[1200] most of the men detained in the White house were bussed to Bratunac, from the afternoon of 12 July throughout 13 July,[1201] and were subsequently led to execution sites. Additionally, the VRS launched an artillery attack against the column of Bosnian Muslim men marching toward Tuzla soon after it became aware of its existence.[1202] A relentless search for the men forming the column started on 12 July and continued throughout 13 July. The few survivors qualified the search as a "man hunt" that left hardly any chance of escape.[1203] Attack resumed on 14 and 15 July against the third of the column that had managed to cross the asphalt road between Konjevic Polje and Nova Kasaba on 11-12 July.[1204] As the pressures on the VRS mounted during the fatal week of 11-16 July, negotiations were undertaken between the Bosnian Muslim and Bosnian Serb sides and a portion of the Bosnian Muslim column was eventually let through to government-held territory.[1205] The most logical reason for this was that most of the VRS troops had been relocated to @epa by this time and, due to lack of manpower to stop the column, the Zvornik brigade was forced to let them go.[1206] Overall, however, as many as 8,000 to 10,000 men from the Muslim column of 10,000 to 15,000 men were eventually reported as missing.[1207]

547. The VRS may have initially considered only targeting the military men for execution.[1208] Some men from the column were in fact killed in combat and it is not certain that the VRS intended at first to kill all the captured Muslim men, including the civilians in the column.[1209] Evidence shows, however, that a decision was taken, at some point, to capture and kill all the Bosnian Muslim men indiscriminately. No effort thereafter was made to distinguish the soldiers from the civilians. Identification papers and personal belongings were taken away from both Bosnian Muslim men at Poto~ari and from men captured from the column; their papers and belongings were piled up and eventually burnt.[1210] The strength of the desire to capture all the Bosnian Muslim men was so great that Bosnian Serb forces systematically stopped the buses transporting the women,

[1200] *Supra,* paras. 43-47, 58.
[1201] *Supra*, para. 59, 66.
[1202] An intercept submitted into evidence indicates that the Bosnian Serbs were aware of the column as of 12 July at 0300 hours. *Supra*, para. 162.
[1203] *Supra*, para. 62.
[1204] *Supra,* para. 65.
[1205] *Supra*, para. 65.
[1206] *Supra*, para. 85.
[1207] *Supra,* para. 83.
[1208] A list of criminals of war was drawn upon @ivanovi}'s order dated 13 July; an intercepted conversation between Cerovi} and Beara on 16 July (P335) also indicates that the prisoners should be screened.
[1209] *Supra*, paras. 77, 80.
[1210] *Supra*, para. 171.

children and the elderly at Ti{}a and checked that no men were hiding on board.[1211] Those men found in the buses were removed and subsequently executed.[1212] Admittedly, as the Defence has argued, some wounded men were authorised to leave the Srebrenica enclave under the escort of UNPROFOR. A report of 13 July, however, indicates that the VRS agreed to their evacuation only because of the presence of UNPROFOR and in order to show to the media that non-combatants were properly treated.[1213] Except for the wounded, all the men, whether separated in Poto~ari or captured from the column, were executed, either in small groups or in carefully orchestrated mass executions. They were led to sites located in remote places for execution. The men, sometimes blindfolded, barefoot or with their wrists bound behind their backs, were lined up and shot in rounds. Others were jammed into buildings and killed by rounds of automatic rifles or machine gunfire, or with hand grenades hurled into the buildings.[1214] Bulldozers usually arrived immediately after the execution was completed, to bury the corpses.[1215] Soldiers would sometimes start digging the graves while the executions were still in progress.[1216] Bosnian Serb soldiers would come back to the execution sites a few hours later and check that no one had been left alive.[1217] The evidence shows that the VRS sought to kill all the Bosnian Muslim military aged men in Srebrenica, regardless of their civilian or military status.

548. The Prosecution contends that evidence demonstrates an intent to destroy part of a group as such,[1218] which is consonant with the definition of genocide. Conversely, the Defence maintains that the intent to kill all the Bosnian Muslim men of military age living in Srebrenica cannot be interpreted as an intent to destroy in whole or in part a group as such within the meaning of Article 4 of the Statute.

549. As a preliminary, the Chamber emphasises the need to distinguish between the individual intent of the accused and the intent involved in the conception and commission of the crime. The gravity and the scale of the crime of genocide ordinarily presume that several protagonists were involved in its perpetration. Although the motive of each participant may differ, the objective of the criminal enterprise remains the same. In such cases of joint participation, the intent to destroy, in whole or in part, a group as such must be discernible in the criminal act itself, apart from the intent of particular perpetrators. It is then necessary to establish whether the accused being prosecuted for genocide shared the intention that a genocide be carried out.

[1211] *Supra*, para. 216. The screening of the men probably took place on 12 July and in the earlier hours of 13 July.
[1212] para. 106.
[1213] P459, *supra* para. 86.
[1214] Execution in Kravica on 13 July, Pilica cultural Dom on 16 July.
[1215] *Supra*, para. 68.
[1216] Orahovac, 14 July.

550. Genocide refers to any criminal enterprise seeking to destroy, in whole or in part, a particular kind of human group, as such, by certain means. Those are two elements of the special intent requirement of genocide:

- the act or acts must target a national, ethnical, racial or religious group;

- the act or acts must seek to destroy all or part of that group.[1219]

(a) A group, as such

551. The parties agreed that genocide must target not only one or several individuals but a group as such.[1220]

552. United Nations General Assembly resolution 96 (I) defined genocide as "a denial of the right of existence of entire human groups".[1221] On the same issue, the Secretariat explained:

> The victim of the crime of genocide is a human group. It is not a greater or smaller number of individuals who are affected for a particular reason but a group as such.[1222]

In 1951, following the adoption of the Genocide Convention, the International Court of Justice observed that the Convention looked "to safeguard the very existence of certain human groups and ?…g to confirm and endorse the most elementary principles of morality".[1223] The ILC also insisted on this point in 1996:

> The group itself is the ultimate target or intended victim of this type of massive criminal conduct. [...] the intention must be to destroy the group 'as such', meaning as a separate and distinct entity.[1224]

The *Akayesu* Judgement[1225] and the *Kayishema and Ruzindana* Judgement[1226] upheld this interpretation.

[1217] See esp. Witnesses J and K's testimony who are survivors of the execution carried out at the Kravica warehouse. *supra* para. 207.
[1218] Indictment, para. 21.
[1219] *Jelisi}* Judgement, para. 66.
[1220] Prosecutor's Submissions of agreed matters of law presented during the pre-trial conference of 7 March 2000, 8 March 2000, paras. 92 and 93.
[1221] UN Doc. A/ 96(I) (1946), 11 December 1946.
[1222] "Relations Between the Convention on Genocide on the One Hand and the Formulation of the Nurnberg Principles and the Preparation of a Draft Code of Offences Against Peace and Security on the Other", U.N. Doc. E/AC.25/3/Rev.1, 12 April 1948, p. 6. Nehemia Robinson set forth this essential characteristic of genocide very explicitly in his commentary on the Convention: "The main characteristic of Genocide is its object: the act must be directed toward the destruction of a *group*. Groups consist of individuals, and therefore, destructive action must, in the last analysis, be taken against individuals. However, these individuals are important not *per se* but only as members of the group to which they belong" (*op.cit.* p. 63).
[1223] *Reservations to the Convention on the Prevention and Punishment of Genocide,* Advisory Opinion, ICJ Reports (1951), p. 23.
[1224] ILC Draft Code, p. 88.

553. The Convention thus seeks to protect the right to life of human groups, as such. This characteristic makes genocide an exceptionally grave crime and distinguishes it from other serious crimes, in particular persecution, where the perpetrator selects his victims because of their membership in a specific community but does not necessarily seek to destroy the community as such.[1227]

554. However, the Genocide Convention does not protect all types of human groups. Its application is confined to national, ethnical, racial or religious groups.

555. National, ethnical, racial or religious group are not clearly defined in the Convention or elsewhere. In contrast, the preparatory work on the Convention and the work conducted by international bodies in relation to the protection of minorities show that the concepts of protected groups and national minorities partially overlap and are on occasion synonymous. European instruments on human rights use the term "national minorities",[1228] while universal instruments more commonly make reference to "ethnic, religious or linguistic minorities";[1229] the two expressions appear to embrace the same goals.[1230] In a study conducted for the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1979, F. Capotorti commented that "the Sub-Commission ?on Prevention of Discrimination and Protection of Minoritiesg decided, in 1950, to replace the word 'racial' by the word 'ethnic' in all references to minority groups described by their ethnic origin".[1231] The International Convention on the Elimination of All Forms of Racial Discrimination[1232] defines racial discrimination as "any distinction, exclusion, restriction or

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[1225] *Akayesu* Judgement, para. 522: "The perpetration of the act charged therefore extends beyond its actual commission, for example, the murder of a particular individual, for the realisation of an ulterior motive, which is to destroy, in whole or in part, the group of which the individual is just one element".
[1226] *Kayishema, Ruzindana* Judgement, para. 99 : "'Destroying' has to be directed at the group *as such*, that is, *qua group*".
[1227] See in particular the *Kupre{ki}* Judgement, para. 636 and the *Jelisi}* Judgement, para. 79.
[1228] See in particular Article 14 of the European Convention on Human Rights: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ?…g association with a national minority ?…g". See also the Framework Convention for the Protection of National Minorities, ETS 157, or principle VII of the Final Act of the Conference on Security and Co-operation in Europe (1975), point 105, para. 2.
[1229] See in particular Article 27 of the International Covenant on Civil and Political Rights: "In those States in which *ethnic, religious or linguistic minorities* exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".
[1230] See in particular the definition suggested by the European Commission for Democracy through Law, *The Protection of Minorities*, Strasbourg: Council of Europe Press, 1994, p. 12: a national minority is "a group which is smaller in number than the rest of a population of a State, whose members, who are nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language".
[1231] F. Capotorti, *Study on the Rights of the Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1 (1979), paras. 197, referring to the debates held on a draft resolution on the definition of minorities (E/CN. 4/Sub. 2/103).
[1232] UNTS, vol. 660, no. 9646.

preference based on race, colour, descent, or national or ethnic origin".[1233] The preparatory work on the Genocide Convention also reflects that the term "ethnical" was added at a later stage in order to better define the type of groups protected by the Convention and ensure that the term "national" would not be understood as encompassing purely political groups.[1234]

556. The preparatory work of the Convention shows that setting out such a list was designed more to describe a single phenomenon, roughly corresponding to what was recognised, before the second word war, as "national minorities", rather than to refer to several distinct prototypes of human groups. To attempt to differentiate each of the named groups on the basis of scientifically objective criteria would thus be inconsistent with the object and purpose of the Convention.

557. A group's cultural, religious, ethnical or national characteristics must be identified within the socio-historic context which it inhabits. As in the *Nikoli}*[1235] and *Jelisi}*[1236] cases, the Chamber identifies the relevant group by using as a criterion the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics.

558. Whereas the indictment in this case defined the targeted group as the Bosnian Muslims, the Prosecution appeared to use an alternative definition in its pre-trial brief by pleading the intention to eliminate the "Bosnian Muslim population of Srebrenica" through mass killing and deportation.[1237] In its final trial brief, the Prosecution chose to define the group as the Bosnian Muslims of Srebrenica,[1238] while it referred to the Bosnian Muslims of Eastern Bosnia in its final arguments.[1239] The Defence argued in its final brief that the Bosnian Muslims of Srebrenica did not form a specific national, ethnical, racial or religious group. In particular, it contended that "one cannot create an artificial 'group' by limiting its scope to a geographical area".[1240] According to the Defence, the Bosnian Muslims constitute the only group that fits the definition of a group protected by the Convention.[1241]

559. Originally viewed as a religious group, the Bosnian Muslims were recognised as a "nation" by the Yugoslav Constitution of 1963. The evidence tendered at trial also shows very clearly that the highest Bosnian Serb political authorities and the Bosnian Serb forces operating in Srebrenica in

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[1233] Article 1.
[1234] UN Doc. A/C.6/SR.73 (Petren, Sweden); UN Doc. A/C.6/SR.74 (Petren, Sweden).
[1235] *The Prosecutor v. Nikoli}, Review of the indictment pursuant to Rule 61,* Decision of Trial Chamber I, 20 October 1995, case no. IT-94-2-R61 (hereinafter "the *Nikoli}* Decision"), para. 27.
[1236] *Jelisi}* Judgement, para. 70.
[1237] Prosecutor's pre-trial brief pursuant to Rule 65*ter* (E) (i), 25 February 2000, para. 12.
[1238] Prosecution Final Trial Brief, para. 412.
[1239] Closing argument, T. 9983.
[1240] Final Submissions of the Accused, para. 104.

July 1995 viewed the Bosnian Muslims as a specific national group. Conversely, no national, ethnical, racial or religious characteristic makes it possible to differentiate the Bosnian Muslims residing in Srebrenica, at the time of the 1995 offensive, from the other Bosnian Muslims. The only distinctive criterion would be their geographical location, not a criterion contemplated by the Convention. In addition, it is doubtful that the Bosnian Muslims residing in the enclave at the time of the offensive considered themselves a distinct national, ethnical, racial or religious group among the Bosnian Muslims. Indeed, most of the Bosnian Muslims residing in Srebrenica at the time of the attack were not originally from Srebrenica but from all around the central Podrinje region. Evidence shows that they rather viewed themselves as members of the Bosnian Muslim group.

560. The Chamber concludes that the protected group, within the meaning of Article 4 of the Statute, must be defined, in the present case, as the Bosnian Muslims. The Bosnian Muslims of Srebrenica or the Bosnian Muslims of Eastern Bosnia constitute a part of the protected group under Article 4. The question of whether an intent to destroy a part of the protected group falls under the definition of genocide is a separate issue that will be discussed below.

561. The Prosecution and the Defence, in this case, concur in their belief that the victims of genocide must be targeted *by reason of* their membership in a group.[1242] This is the only interpretation coinciding with the intent which characterises the crime of genocide. The intent to destroy a group as such, in whole or in part, presupposes that the victims were chosen by reason of their membership in the group whose destruction was sought. Mere knowledge of the victims' membership in a distinct group on the part of the perpetrators is not sufficient to establish an intention to destroy the group as such. As the ILC noted:

> ?…g the intention must be to destroy a group and not merely one or more individuals who are coincidentally members of a particular group. The ?…g act must be committed against an individual because of his membership in a particular group and as an incremental step in the overall objective of destroying the group.[1243]

562. As a result, there are obvious similarities between a genocidal policy and the policy commonly known as "ethnic cleansing". In this case, acts of discrimination are not confined to the events in Srebrenica alone, but characterise the whole of the 1992-95 conflict between the Bosnian Serbs, Muslims and Croats. The Report of the Secretary-General comments that "a central objective of the conflict was the use of military means to terrorise civilian populations, often with

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[1241] Final Submissions of the Accused, paras. 102-107.
[1242] Prosecutor's pre-trial brief pursuant to Rule 65*ter* (E) (i), 25 February 2000, para. 92, p. 33.
[1243] ILC Draft Code, p. 109. See also Pieter Drost, *The Crime of State, Genocide*, p. 124, for a commentary on the Convention: "It is an externally perceptible quality or characteristic which the victim has in common with the other members of the group, which makes him distinct from the rest of society in the criminal mind of his attacker and which for that very reason causes the attacker to commit the crime against such marked and indicated individual".

the goal of forcing their flight in a process that came to be known as 'ethnic cleansing'".[1244] The Bosnian Serbs' war objective was clearly spelt out, notably in a decision issued on 12 May 1992 by Mom~ilo Kraji{nik, then President of the National Assembly of the Bosnian Serb People. The decision indicates that one of the strategic objectives of the Serbian people of Bosnia-Herzegovina was to reunite all Serbian people in a single State, in particular by erasing the border along the Drina which separated Serbia from Eastern Bosnia, whose population was mostly Serbian.[1245]

563. The accused himself defined the objective of the campaign in Bosnia during an interview in November 1995, when he explained that the Podrinje region should remain "Serbian for ever, while the Eastern part of Republika Srpska and the Drina river w?ouldg be an important meeting point for the entire Serbian people from both sides of the Drina".[1246]

564. In this goal, the cleansing of Bosnian Muslims from Srebrenica had special advantages. Lying in the central Podrinje region, whose strategic importance for the creation of a Bosnian Serb Republic has frequently been cited in testimony,[1247] Srebrenica and the surrounding area was a predominantly Muslim pocket within a mainly Serbian region adjoining Serbia.[1248] Given the war objectives, it is hardly surprising that the Serbs and Bosnian Muslims fought each other bitterly in this region from the outbreak of the conflict.[1249]

565. Many attacks were launched by both parties against villages controlled by the other side in the region. The Bosnian Muslim forces committed apparent violations of humanitarian law directed against the Bosnian Serb inhabitants of the region, especially from May 1992 to January 1993.[1250] In response, operations were conducted by the Bosnian Serb forces, notably, a large-scale attack launched in January 1993. The attack forced the Bosnian Muslim population from the surrounding villages to flee to the areas of Srebrenica and @epa. As a result, the population of Srebrenica climbed from 37,000 in 1991 to 50,000 or 60,000 in 1993 while, at the same time, the territory shrank from 900 to 150 square km.[1251] A significant majority of the Muslim population, residing in the territory of the Drina Corps' zone of responsibility, had already been displaced by April 1993. By that date, the Bosnian Serb forces had ethnically cleansed the towns and villages of Zvornik,

[1244] para. 19.
[1245] P746/a.
[1246] P743, p. 2.
[1247] Radinovi}, T. 7812. *supra*, para. 12.
[1248] See para. 11, referring to the Report of the Secretary-General, para. 33.
[1249] The Report of the Secretary-General, para. 33, lists the crimes committed by the Bosnian Serb forces against the Bosnian Muslim population from the very outset of the conflict.
[1250] Report of the Secretary-General, paras. 34 to 37.
[1251] *Supra*, para. 13-14.

[ekovi}i, Kalesija, Bratunac, Vlasenica, Kladanj, Olovo, Han Pijesak, Rogatica and Sokolac.[1252] The over-populated municipality of Srebrenica was then subjected to constant shelling before the Security Council decided, on 16 April 1993, to declare the enclave a safe area.[1253] Despite a period of relative stability, the living conditions remained dreadful. The Security Council Mission, set up pursuant to resolution 819, described Srebrenica on 30 April 1993 as an "open jail" [1254] and stated that 50% of the dwellings had been demolished. The Mission further lamented the Bosnian Serb forces' harassment of the humanitarian convoys heading for Srebrenica and the obstacles confronted in transporting the sick and wounded out of the enclave.[1255] Until 1995, the water and electricity networks were unusable, having been either destroyed or cut. There was an extreme shortage of food and medicines.[1256]

566. Even before the offensive of July 1995 and as early as January 1995, the Bosnian Serb forces tried to prevent the humanitarian convoys from getting through to the enclave.[1257] The Trial Chamber has previously described the catastrophic humanitarian situation which was born out of the policy of systematically hampering humanitarian convoys.[1258] In particular, several persons died from starvation on 7 and 8 July 1995 and a report from the command of the 28th Division, dated 8 July 1995, warned that the civilian population would very soon be forced to flee the enclave if it wished to survive.[1259]

567. However, the Trial Chamber has found that, on its face, the operation Krivaja 95 did not include a plan to overrun the enclave and expel the Bosnian Muslim population.[1260] The Trial Chamber heard credible testimony on the chronic refusal of Bosnian Muslim forces to respect the demilitarisation agreement of 1993.[1261] Defence witnesses accused the Bosnian Muslim forces of using the safe area as a fortified base from which to launch offensives against the Bosnian Serb forces. In particular, on 26 June 1995, several weeks prior to the offensive of the VRS on Srebrenica, the Bosnian Muslim forces launched an assault from the enclave on the Serbian village

[1252] Statement of General Had`ihasanovi} made on 24 January 2001, para. 4, corroborated by General Krsti}'s statement in a press article published in November 1995 (P744/c, p. 1).
[1253] Resolution 819 (1993), 16 April 1993.
[1254] P 126: Report of the Security Council Mission set up pursuant to resolution 819 (1993), UN Doc. S/25700 (30 April 1993), para. 18.
[1255] *Ibid*, para. 10 and 11.
[1256] *Supra*, para. 15.
[1257] *Supra*, para. 26.
[1258] *Supra*, para. 28.
[1259] P 901, p. 2.
[1260] *Supra*, para. 120.
[1261] *Supra*, p ara. 24. First agreement signed on 18 April 1993, followed by the agreement of 8 May 1993.

of Vi{nica 5km away.[1262] Such acts could well have motivated an attack designed to cut communications between the enclaves of @epa and Srebrenica.

568. The operation, however, was not confined to mere retaliation. Its objective, although perhaps restricted initially to blocking communications between the two enclaves and reducing the Srebrenica enclave to its urban core, was quickly extended. Realising that no resistance was being offered by the Bosnian Muslim forces or the international community, President Karad`i} broadened the operation's objective by issuing, on 9 July, the order to seize the town.[1263] By 11 July, the town of Srebrenica was captured, driving 20,000 to 25,000 Muslim refugees to flee towards Poto~ari. Operation Krivaja 1995 then became an instrument of the policy designed to drive out the Bosnian Muslim population. The humanitarian crisis caused by the flow of refugees arriving at Poto~ari, the intensity and the scale of the violence, the illegal confinement of the men in one area, while the women and children were forcibly transferred out of the Bosnian Serb held territory, and the subsequent death of thousands of Bosnian Muslim civilian and military men, most of whom clearly did not die in combat, demonstrate that a purposeful decision was taken by the Bosnian Serb forces to target the Bosnian Muslim population in Srebrenica, by reason of their membership in the Bosnian Muslim group. It remains to determine whether this discriminatory attack sought to destroy the group, in whole or in part, within the meaning of Article 4 of the Statute.

(b) Intent to destroy the group in whole or in part

(i) Intent to destroy

569. The Prosecution urges a broad interpretation of Article 4's requirement of an intent to destroy all or part of the group. It contends that the acts have been committed with the requisite intent if "?the accusedg consciously desired ?hisg acts to result in the destruction, in whole or in part, of the group, as such; or he knew his acts were destroying, in whole or in part, the group, as such; or he knew that the likely consequence of his acts would be to destroy, in whole or in part, the group, as such".[1264] The Prosecution is of the opinion that, in this case, General Krsti} and others "consciously desired their acts to lead to the destruction of part of the Bosnian Muslim people as a ?…g group".[1265]

[1262] Report of the Secretary-General, para. 225.
[1263] *Supra*, para. 33.
[1264] Prosecutor's pre-trial brief pursuant to Rule 65*ter*(E)(i), 25 February 2000, para. 90.
[1265] *Ibid*, para. 91, p. 33.

570. Conversely, the Defence claims that the perpetrator of genocide must "have the specific intent to destroy the [...] group" and concludes that "the *dolus specialis* constitutes a higher form of premeditation".[1266]

571. The preparatory work of the Genocide Convention clearly shows that the drafters envisaged genocide as an enterprise whose goal, or objective, was to destroy a human group, in whole or in part. United Nations General Assembly resolution 96 (I) defined genocide as "the *denial* of the right of existence of entire human groups".[1267] The draft Convention prepared by the Secretary-General presented genocide as a criminal act which aims to destroy a group, in whole or in part,[1268] and specified that this definition excluded certain acts, which may result in the total or partial destruction of a group, but are committed in the absence of an intent to destroy the group.[1269] The International Law Commission upheld this interpretation and indicated that "a general intent to commit one of the enumerated acts combined with a general awareness of the probable consequences of such an act with respect to the immediate victim or victims is not sufficient for the crime of genocide. The definition of this crime requires a *particular state of mind* or a *specific intent* with respect to the overall consequence of the prohibited act".[1270] The International Court of Justice insisted, in its Opinion on the *Legality of the Threat or Use of Nuclear Weapons,*[1271] that specific intent to destroy was required and indicated that "the prohibition of genocide would be pertinent in this case if the recourse to nuclear weapons did indeed entail the element of intent, towards a group as such, required by the provision quoted above".[1272] The ICTR adopted the same interpretation. In *The Prosecutor v. Jean Kambanda,* the Trial Chamber stated: "the crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime be committed with the intent 'to destroy in whole or in part, a national, ethnic, racial or

[1266] Final Submissions of the Accused, 21 June 2001, para. 94.
[1267] UN Doc. A/96 (I), 11 December 1946 (Emphasis added).
[1268] UN Doc. E/447 (1947), p. 20 "the word genocide means a criminal act directed against any one of the aforesaid groups of human beings, with the purpose of destroying it in whole or in part, or of preventing its preservation or development".
[1269] UN Doc. E/447 (1947), p. 23. See also "Relations Between the Convention on Genocide on the One Hand and the Formulation of the Nurnberg Principles and the Preparation of a Draft Code of Offences Against Peace and Security on the Other", UN Doc. E/AC.25/3/Rev.1, 12 April 1948, p. 6: "The destruction of the human group is the actual aim in view. In the case of foreign or civil war, one side may inflict extremely heavy losses on the other but its purpose is to impose its will on the other side and not to destroy it."
[1270] ILC Draft Code, p. 88 (emphasis added).
[1271] ICJ Repors (1996), p. 240.
[1272] Para. 26. The Chamber notes however that several dissenting opinions criticised the Opinion on the issue by holding that an act whose foreseeable result was the destruction of a group as such and which did indeed cause the destruction of the group did constitute genocide. In particular, Judge Weeramantry observes that the use of nuclear weapons inevitably brings about the destruction of entire populations and constitutes, as such, genocide. He thus challenges the interpretation that "there must be an intention to target a particular national, ethnical, racial or religious group qua such group, and not incidentally to some other act" (Reports p. 502). In the same vein, Judge Koroma comments on "the abhorrent shocking consequences that a whole population could be wiped out by the use of nuclear weapons during an armed conflict". He claims that such a situation constitutes genocide "if the consequences of the act could have been foreseen" (Reports, p. 577).

religious group as such'".[1273] In *Kayishema, Ruzindana*, the Trial Chamber also emphasised that "genocide requires the aforementioned specific intent to exterminate a protected group (in whole or in part)".[1274] Moreover, the Chamber notes that the domestic law of some States distinguishes genocide by the existence of a plan to destroy a group.[1275] Some legal commentators further contend that genocide embraces those acts whose foreseeable or probable consequence is the total or partial destruction of the group without any necessity of showing that destruction was the goal of the act.[1276] Whether this interpretation can be viewed as reflecting the status of customary international law at the time of the acts involved here is not clear. For the purpose of this case, the Chamber will therefore adhere to the characterisation of genocide which encompass only acts committed with the *goal* of destroying all or part of a group.

572. Article 4 of the Statute does not require that the genocidal acts be premeditated over a long period.[1277] It is conceivable that, although the intention at the outset of an operation was not the destruction of a group, it may become the goal at some later point during the implementation of the operation. For instance, an armed force could decide to destroy a protected group during a military operation whose primary objective was totally unrelated to the fate of the group. The Appeals Chamber, in a recent decision, indicated that the existence of a plan was not a legal ingredient of the crime of genocide but could be of evidential assistance to prove the intent of the authors of the criminal act(s).[1278] Evidence presented in this case has shown that the killings were planned: the number and nature of the forces involved, the standardised coded language used by the units in communicating information about the killings, the scale of the executions, the invariability of the killing methods applied, indicate that a decision was made to kill all the Bosnian Muslim military aged men.[1279]

573. The Trial Chamber is unable to determine the precise date on which the decision to kill all the military aged men was taken. Hence, it cannot find that the killings committed in Poto~ari on 12 and 13 July 1995 formed part of the plan to kill all the military aged men. Nevertheless, the Trial Chamber is confident that the mass executions and other killings committed from 13 July onwards were part of this plan.

[1273] ICTR 97-23-S, 4 September 1998 (hereinafter The "*Kambanda* Judgement"), para. 16.
[1274] 21 May 1999, para. 89.
[1275] Article 211-1 of the French Criminal Code states that the crime must be committed "in the execution of a concerted plan to destroy wholly or partially a group".
[1276] See in particular Eric David, *Droit des conflits armés*, p. 615; Alexander K.A. Greenawalt, "Rethinking genocidal intent: the case for a knowledge-based interpretation", *Columbia Law Review*, December 1999, pp. 2259-2294; Gil Gil *Derecho penal internacional, especial consideracion del delito de genicidio*, 1999.
[1277] The element of premeditation was dismissed at the proposal of Belgium (UN Doc. A/C.6/217) on the ground that such a provision was superfluous in light of the special intent already incorporated into the definition of the crime (UN Doc. A/C.6/SR.72, p. 8).
[1278] *Jelisi}* Appeal Judgement, para. 48.
[1279] *Supra*, para. 85-87.

574. The manner in which the destruction of a group may be implemented so as to qualify as a genocide under Article 4 must also be discussed. The physical destruction of a group is the most obvious method, but one may also conceive of destroying a group through purposeful eradication of its culture and identity resulting in the eventual extinction of the group as an entity distinct from the remainder of the community.

575. The notion of genocide, as fashioned by Raphael Lemkin in 1944, originally covered all forms of destruction of a group as a distinct social entity.[1280] As such, genocide closely resembled the crime of persecution. In this regard, the ILC stated, in its 1996 report, that genocide as currently defined corresponds to the second category of crime against humanity established under Article 6(c) of the Nuremberg Tribunal's Statute, namely the crime of persecution.[1281] There is consensus that the crime of persecution provided for by the Statute of the Nuremberg Tribunal was not limited to the physical destruction of the group but covered all acts designed to destroy the social and/or cultural bases of a group. Such a broad interpretation of persecution was upheld *inter alia* in the indictment against *Ulrich Greifelt et al.,* before the United States Military Tribunal in Nuremberg. The accused were charged with implementing a systematic programme of genocide which sought to destroy foreign nations and ethnic groups. The indictment interpreted destruction to mean not only the extermination of the members of those groups but also the eradication of their national characteristics.[1282] It should be noted that this interpretation was supported by the working group established to report on the human rights violations in South Africa in 1985. While recognising that the Convention literally covered only the physical or material destruction of the group, the report explained that it was adopting a broader interpretation that viewed as genocidal any act which prevented an individual "from participating fully in national life", the latter being understood "in its more general sense".[1283]

576. Although the Convention does not specifically speak to the point, the preparatory work points out that the "cultural" destruction of a group was expressly rejected after having been seriously contemplated.[1284] The notion of cultural genocide was considered too vague and too

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[1280] *Axis Rule in Occupied Europe*, p. 79, pp. 87-89.
[1281] ILC Draft Code, *op. cit.*, commentary of article 17, p. 106.
[1282] *USA v. Ulrich Greifelt et al*, Trials of War Criminals, vol. XIV (1948), p. 2: "The acts, conduct, plans and enterprises charged in Paragraph 1 of this Count were carried out as part of a systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups, in part by murderous extermination, and in part by elimination and suppression of national characteristics". See also the judgements rendered by the Polish Supreme Court against Amon Leopold Goeth (Trials of War Criminals, vol. VII, no. 37, p. 8) and Rudolf Franz Ferdinand Hoess (Trials of War Criminals, vol. VII, no. 38, p. 24).
[1283] *Violations of Human Rights in Southern Africa: Report of the* Ad Hoc *Working Group of Experts*, UN Doc. E/CN.4/1985/14, 28 January 1985, paras. 56 and 57.
[1284] The notion of a cultural genocide was rejected by the General Assembly Sixth Committee by 25 votes to 6, with 4 abstentions and 13 delegations absent.

removed from the physical or biological destruction that motivated the Convention. The ILC noted in 1996:

> As clearly shown by the preparatory work for the Convention, the destruction in question is the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group. The national or religious element and the racial or ethnic element are not taken into consideration in the definition of the word "destruction", which must be taken only in its material sense, its physical or biological sense.[1285]

577. Several recent declarations and decisions, however, have interpreted the intent to destroy clause in Article 4 so as to encompass evidence relating to acts that involved cultural and other non physical forms of group destruction.

578. In 1992, the United Nations General Assembly labelled ethnic cleansing as a form of genocide.[1286]

579. The Federal Constitutional Court of Germany said in December 2000 that:

> the statutory definition of genocide defends a supra-individual object of legal protection, i.e. the *social* existence of the group [...] the intent to destroy the group [...] extends beyond physical and biological extermination [...] The text of the law does not therefore compel the interpretation that the culprit's intent must be to exterminate physically at least a substantial number of the members of the group.[1287]

580. The Trial Chamber is aware that it must interpret the Convention with due regard for the principle of *nullum crimen sine lege*. It therefore recognises that, despite recent developments, customary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of the group. Hence, an enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide. The Trial Chamber however points out that where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group. In this case, the Trial Chamber will thus take into account as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group.

[1285] ILC Draft Code, pp. 90-91.
[1286] UN Doc. AG/Res./47/121 of 18 December 1992.
[1287] Federal Constitutional Court, 2 BvR 1290/99, 12 December 2000, para. (III)(4)(a)(aa). Emphasis added.

(ii) "In part"

581. Since in this case primarily the Bosnian Muslim men of military age were killed, a second issue is whether this group of victims represented a sufficient part of the Bosnian Muslim group so that the intent to destroy them qualifies as an "intent to destroy the group in whole or in part" under Article 4 of the Statute.

582. Invoking the work of the ILC and the *Jelisi}* Judgement, the Prosecution interprets the expression "in whole or in part" to mean a "substantial" part in quantitative or qualitative terms.[1288] However, the Prosecution states that "it is not necessary to consider the global population of the group. The intent to destroy a multitude of persons because of their membership in a particular group constitutes genocide even if these persons constitute only part of a group either within a country or within a region or within a single community".[1289] The Prosecution relies on, *inter alia*, the *Akayesu* Judgement which found the accused guilty of genocide for acts he committed within a single commune and the *Nikoli}* Decision taken pursuant to Rule 61, which upheld the characterisation of genocide for acts committed within a single region of Bosnia-Herzegovina, in that case, the region of Vlasenica.[1290] The Prosecution further cites the *Jelisi}* Judgement which declared that "international custom admit?tedg the characterisation of genocide even when the exterminatory intent only extend?edg to a limited geographic zone".[1291]

583. The Defence contends that the term "in part" refers to the scale of the crimes actually committed, as opposed to the intent, which would have to extend to destroying the group as such, *i.e.* in its entirety.[1292] The Defence relies for this interpretation on the intention of the drafters of the Convention, which it contends was confirmed by the subsequent commentary of Raphael Lemkin in 1950 before the American Congress during the debates on the Convention's ratification[1293] and by the implementing legislation proposed by the United States during the Nixon and Carter administrations.[1294] That is, any destruction, even if only partial, must have been carried out with the intent to destroy the entire group, as such.

[1288] Prosecutor's pre-trial brief pursuant to Rule 65*ter* (E)(i), 25 February 2000, para. 100.
[1289] Prosecutor's pre-trial brief pursuant to Rule 65*ter* (E)(i), 25 February 2000, para. 101.
[1290] Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, Decision of Trial Chamber I, 20 October 1995, IT-94-2-R61, para. 34.
[1291] *Jelisi}* Judgement, para. 83.
[1292] Final Submissions of the Accused, paras. 96-101.
[1293] Letter of Raphael Lemkin published in "Executive Sessions of the U.S. Senate Foreign Relations Committee", Historical Series 781-805 (1976), p. 370, quoted in the Defence Final Trial Brief, para. 97. Raphael Lemkin explained that partial destruction must target a substantial part in such a way that it affects the group as a whole.
[1294] Senate Executive Report No. 23, 94th Cong., 2nd Session (1976), pp. 34-35.

584. The Trial Chamber does not agree. Admittedly, by adding the term "in part", some of the Convention's drafters may have intended that actual destruction of a mere part of a human group could be characterised as genocide, only as long as it was carried out with the intent to destroy the group as such.[1295] The debates on this point during the preparatory work are unclear, however, and a plain reading of the Convention contradicts this interpretation. Under the Convention, the term "in whole or in part" refers to the intent, as opposed to the actual destruction, and it would run contrary to the rules of interpretation to alter the ordinary meaning of the terms used in the Convention by recourse to the preparatory work which lacks clarity on the issue. The Trial Chamber concludes that any act committed with the intent to destroy a part of a group, as such, constitutes an act of genocide within the meaning of the Convention.

585. The Genocide Convention itself provides no indication of what constitutes intent to destroy "in part". The preparatory work offers few indications either. The draft Convention submitted by the Secretary-General observes that "the systematic destruction even of a fraction of a group of human beings constitutes an exceptionally heinous crime".[1296] Early commentaries on the Genocide Convention opined that the matter of what was substantial fell within the ambit of the Judges' discretionary evaluation. Nehemia Robinson was of the view that the intent to destroy could pertain to only a region or even a local community if the number of persons targeted was substantial.[1297] Pieter Drost remarked that any systematic destruction of a fraction of a protected group constituted genocide.[1298]

586. A somewhat stricter interpretation has prevailed in more recent times. According to the ILC, the perpetrators of the crime must seek to destroy a quantitatively substantial part of the protected group:

[1295] In this regard, see especially the commentary of the representative of the United Kingdom, Fitzmaurice, UN Doc. A/C.6/SR. 73. The preparatory work is unclear on the issue. It does indeed seem that there was confusion between the *actus reus* and the *mens rea* in this respect.

[1296] Draft Convention for the Prevention and Punishment of Genocide presented by the Secretary-General, 26 June 1947, UN Doc. E/447, p. 24.

[1297] Nehemia Robinson, *The Genocide Convention*, p. 63: "the intent to destroy a multitude of persons of the same group must be classified as genocide even if these persons constitute only part of a group either within a country or within a region *or within a single community*, provided the number is substantial". The writer also noted before the Foreign Relations Commission of the American Senate: "the intent to destroy a multitude of persons of the same group must be classified as genocide even if these persons constitute only part of a group either within a country or within a single community, provided the number is substantial because the aim of the convention is to deal with action against large numbers, not individual events if they happen to possess the same characteristics. It will be up to the court to decide in every case whether such intent existed" (*The Genocide Convention - Its Origins and Interpretation, reprinted in Hearings on the Genocide Convention Before a Subcomm. of the Senate Comm. on Foreign Relations, 81st Cong., 2nd Sess., 487, 498 (1950)*).

[1298] Pieter Drost, *The Crime of State, Book II, Genocide*, Sythoff, Leyden, p. 85: "Acts perpetrated with the intended purpose to destroy various people as members of the same group are to be classified as genocidal crimes although the victims amount to only a small part of the entire group present within the national, regional or local community".

> It is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe. None the less the crime of genocide by its very nature requires the intention to destroy at least a substantial part of a particular group.[1299]

The *Kayishema and Ruzindana* Judgement stated that the intent to destroy a part of a group must affect a "considerable" number of individuals.[1300] The Judgement handed down on Ignace Bagilishema, on 7 June 2001, also recognised that the destruction sought must target at least a substantial part of the group.[1301]

587. Benjamin Whitaker's 1985 study on the prevention and punishment of the crime of genocide holds that the partial destruction of a group merits the characterisation of genocide when it concerns a large portion of the entire group or a significant section of that group.

> 'In part' would seem to imply a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group, such as its leadership.[1302]

The "Final Report of the Commission of Experts established pursuant to Security Council resolution 780 (1992)" (hereinafter " Report of the Commission of Experts") confirmed this interpretation, and considered that an intent to destroy a specific part of a group, such as its political, administrative, intellectual or business leaders, "may be a strong indication of genocide regardless of the actual numbers killed". The report states that extermination specifically directed against law enforcement and military personnel may affect "a significant section of a group in that it renders the group at large defenceless against other abuses of a similar or other nature". However, the Report goes on to say that "the attack on the leadership must be viewed *in the context of the fate of what happened to the rest of the group*. If a group suffers extermination of its leadership and in the wake of that loss, a large number of its members are killed or subjected to other heinous acts, for example deportation, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose".[1303]

588. Judge Elihu Lauterpacht, the *ad hoc* Judge nominated by Bosnia-Herzegovina in the case before the International Court of Justice regarding the application of the Convention on the

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[1299] *Ibid*., p. 89.
[1300] *Kayishema and Ruzindana* case, para. 97: "'in part' requires the intention to destroy a considerable number of individuals who are part of the group".
[1301] *The Prosecutor v. Ignace Bagilishema*, case no. ICTR-95-1A-T, 7 June 2001 (hereinafter "*Bagilishema* Judgement") para. 64: "Although the destruction sought need not be directed at every member of the targeted group, the Chamber considers that the intention to destroy must target at least a substantial part of the group".
[1302] Para. 29.
[1303] *Report of the Commission of Experts*, UN Doc. S/1994/674, para. 94 (emphasis added).

Prevention and Punishment of the Crime of Genocide, spoke similarly in his separate opinion.[1304] Judge Lauterpacht observed that the Bosnian Serb forces had murdered and caused serious mental and bodily injury to the Bosnian Muslims and had subjected the group to living conditions meant to bring about its total or partial physical destruction. He went on to take into account "the forced migration of civilians, more commonly known as 'ethnic cleansing'" in order to establish the intent to destroy all or part of the group. In his view, this demonstrated the Serbs' intent "to eliminate Muslim control of, and presence in, substantial parts of Bosnia-Herzegovina". Judge Lauterpacht concluded that the acts which led to the group's physical destruction had to be characterised as "acts of genocide" since they were "directed against an ethnical or religious group as such, and they [were] intended to destroy that group, if not in whole certainly in part, to the extent necessary to ensure that that group [would] no longer occup[y] the parts of Bosnia-Herzegovina coveted by the Serbs".[1305]

589. Several other sources confirm that the intent to eradicate a group within a limited geographical area such as the region of a country or even a municipality may be characterised as genocide. The United Nations General Assembly characterised as an act of genocide the murder of approximately 800 Palestinians[1306] detained at Sabra and Shatila, most of whom were women, children and elderly.[1307] The *Jelisi}* Judgement held that genocide could target a limited geographic zone.[1308] Two Judgements recently rendered by German courts took the view that genocide could be perpetrated within a limited geographical area. The Federal Constitutional Court of Germany, in the *Nikola Jorgi}* case, upheld the Judgement of the Düsseldorf Supreme Court,[1309] interpreting the intent to destroy the group "in part" as including the intention to destroy a group within a limited geographical area.[1310] In a Judgement against Novislav Djaji} on 23 May 1997, the Bavarian

[1304] *Application of the Convention of the Prevention and Punishment of the Crime of Genocide*, Bosnia-Herzegovina v. Yugoslavia (Serbia and Montenegro), Order on further Requests for the Indication of Provisional Measures, ICJ Reports (1993), pp. 325- 795.
[1305] Separate Opinion of Judge Lauterpacht, ICJ Reports (1993), p. 431.
[1306] There are varying estimates as to the number of victims. The Israeli commission of inquiry put the number of victims at 800. However, according to the ICRC, no less than 2,400 people were massacred. The massacre was perpetrated over two days, on 16 and 17 September 1982.
[1307] UN Doc. AG/Res.37/123D (16 December 1982), para. 2. It should however be noted that the resolution was not adopted unanimously, notably, the paragraph characterising the massacre as an act of genocide was approved by 98 votes to 19, with 23 abstentions. See UN Doc. A/37/PV.108, para. 151.
[1308] *Jelisi}* Judgement, para. 83.
[1309] Düsseldorf Supreme Court, *Nikola Jorgi}* case, 30 April 1999, 3StR 215/98.
[1310] Federal Constitutional Court, 2BvR 1290/99, 12 December 2000, par. 23: "The courts also do not go beyond the possible meaning of the text by accepting that the intent to destroy may relate to a geographically limited part of the group. There is support for that interpretation in the fact that STGB para. 220a [the national law integrating the Convention] penalises the intent to destroy partially as well as entirely".

Appeals Chamber similarly found that acts of genocide were committed in June 1992 though confined within the administrative district of Fo~a.[1311]

590. The Trial Chamber is thus left with a margin of discretion in assessing what is destruction "in part" of the group. But it must exercise its discretionary power in a spirit consonant with the object and purpose of the Convention which is to criminalise specified conduct directed against the existence of protected *groups*, as such. The Trial Chamber is therefore of the opinion that the intent to destroy a group, even if only in part, means seeking to destroy a distinct part of the group as opposed to an accumulation of isolated individuals within it. Although the perpetrators of genocide need not seek to destroy the entire group protected by the Convention, they must view the part of the group they wish to destroy as a distinct entity which must be eliminated as such. A campaign resulting in the killings, in different places spread over a broad geographical area, of a finite number of members of a protected group might not thus qualify as genocide, despite the high total number of casualties, because it would not show an intent by the perpetrators to target the very existence of the group as such. Conversely, the killing of all members of the part of a group located within a small geographical area, although resulting in a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographical area. Indeed, the physical destruction may target only a part of the geographically limited part of the larger group because the perpetrators of the genocide regard the intended destruction as sufficient to annihilate the group as a distinct entity in the geographic area at issue. In this regard, it is important to bear in mind the total context in which the physical destruction is carried out.

591. The parties have presented opposing views as to whether the killings of Bosnian Muslim men in Srebrenica were carried out with intent to destroy a substantial part of the Bosnian Muslim group. It should be recalled that the Prosecution at different times has proposed different definitions of the group in the context of the charge of genocide. In the Indictment, as in the submission of the Defence, the Prosecution referred to the group of the Bosnian Muslims, while in the final brief and arguments it defined the group as the Bosnian Muslims of Srebrenica or the Bosnian Muslims of Eastern Bosnia. The Trial Chamber has previously indicated that the protected group, under Article 4 of the Statue, should be defined as the Bosnian Muslims.

592. The Prosecution first argues that "causing at least 7,475 deaths of mainly Bosnian Muslim men in Srebrenica, the destruction of this part of the group, which numbered in total approximately

[1311] Bavarian Appeals Court, *Novislav Djaji}* case, 23 May 1997, 3 St 20/96, section VI, p. 24 of the English translation.

38,000 to 42,000 prior to the fall",[1312] constitutes a substantial part of the group not only because it targeted a numerically high number of victims, but also because the victims represented a significant part of the group. It was common knowledge that the Bosnian Muslims of Eastern Bosnia constituted a patriarchal society in which men had more education, training and provided material support to their family. The Prosecution claims that the VRS troops were fully cognisant that by killing all the military aged men, they would profoundly disrupt the bedrock social and cultural foundations of the group. The Prosecution adds that the mass executions of the military aged men must be viewed in the context of what occurred to the remainder of the Srebrenica group. The offensive against the safe area aimed to ethnically cleanse the Bosnian Muslims[1313] and progressively culminated in the murder of the Bosnian Muslim men as well as the evacuation of the women, children and elderly.[1314] In the Prosecution's view, the end result was purposeful, as shown by the longstanding plan of Republika Sprska to eliminate the Bosnian Muslims from the area. Specifically, Radovan Karadzi}, in Directive 7 of 7 March 1995,[1315] ordered the Drina Corps to "?...g create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and @epa".[1316] General Krsti} and his superiors also manifested genocidal intent by using inflammatory rhetoric and racist statements that presented the VRS as defending the Serbian people from a threat of genocide posed by "Ustasha-Muslim hords".[1317] According to the Prosecution, "by killing the leaders and defenders of the group and deporting the remainder of it, the VRS and General Krsti} had assured that the Bosnian Muslim community of Srebrenica and its surrounds would not return to Srebrenica nor would it reconstitute itself in that region or indeed, anywhere else".[1318] The Prosecution points us to the terrible impact the events of 11-16 July had upon the Bosnian Muslim community of Srebrenica : "what remains of the Srebrenica community survives in many cases only in the biological sense, nothing more. It's a community in despair; it's a community clinging to memories; it's a community that is lacking leadership; it's a community that's a shadow of what it once was".[1319] The Prosecution concludes that "the defendant's crimes have not only resulted in the death of thousands men and boys, but have destroyed the Srebrenica Muslim community".[1320]

593. The Defence argues in rejoinder that, "although the desire to condemn the acts of the Bosnian Serb Army at Srebrenica in the most pejorative terms is understandably strong", these acts

[1312] Prosecutor's final Trial Brief, para. 412.
[1313] Prosecutor's final Trial Brief, para. 420.
[1314] Prosecutor's final Trial Brief, para. 423.
[1315] P425.
[1316] cited in the Prosecutor's final Trial Brief, para. 425.
[1317] P750, cited in the Prosecutor's final Trial Brief, para. 416.
[1318] Prosecutor's final Trial Brief, para. 438.
[1319] T. 10004-10005.
[1320] Closing arguments, T. 10009.

do not fall under the legal definition of genocide because it was not proven that they were committed with the intent to destroy the group as an entity.[1321] First, the killing of up to 7,500 members of a group, the Bosnian Muslims, that numbers about 1,4 million people, does not evidence an intent to destroy a "substantial" part of the group. To the Defence, the 7,500 dead are not even substantial when compared to the 40,000 Bosnian Muslims of Srebrenica.[1322] The Defence also points to the fact that the VRS forces did not kill the women, children and elderly gathered at Poto~ari but transported them safely to Kladanj, as opposed to all other genocides in modern history, which have indiscriminately targeted men, women and children.[1323] The Defence counters the Prosecution's submission that the murder of all the military aged men would constitute a selective genocide, as the VRS knew that their death would inevitably result in the destruction of the Muslim community of Srebrenica as such.[1324] According to the Defence, had the VRS actually intended to destroy the Bosnian Muslim community of Srebrenica, it would have killed all the women and children, who were powerless and already under its control, rather than undertaking the time and manpower consuming task of searching out and eliminating the men of the column.[1325] The Defence rejects the notion that the transfer of the women, children and elderly can be viewed cynically as a public relations cover-up for the planned execution of the men. First, it says the decision to transfer the women, children and elderly was taken on 11 July, *i.e.* before the VRS decided to kill all the military aged men. Further, the Defence points out, by the time the evacuation started, the world community was already aware of, and outraged by, the humanitarian crisis caused by the VRS in Srebrenica, and the VRS was not concerned with covering up its true intentions.[1326] The Defence also argues that the VRS would have killed the Bosnian Muslims in @epa, a neighbouring enclave, as well, if its intent was to kill the Bosnian Muslims as a group.[1327] Furthermore, the Defence claims that none of the military expert witnesses "could attribute the killings to any overall plan to destroy the Bosnian Muslims as a group".[1328] To the Defence, a true genocide is almost invariably preceded by propaganda that calls for killings of the targeted group and nothing similar occurred in the present case. Inflammatory public statements made by one group against another – short of calling for killings - are common practice in any war and cannot be taken as evidence of genocidal intent.[1329] The Defence argues that, despite the unprecedented access to confidential material obtained by the Prosecution, none of the documents submitted, not even the intercepted conversations of VRS Army officers involved in the Srebrenica campaign,

[1321] Final Submissions of the Accused, para. 131.
[1322] Closing arguments, T. 10113.
[1323] Final Submissions of the Accused, para. 133.
[1324] Closing arguments, T. 10118.
[1325] Closing arguments, T. 10118.
[1326] Closing arguments, T. 10118-10119.
[1327] Final Submissions of the Accused, paras. 141-145.
[1328] Final Submissions of the Accused, para. 156.

show an intent to destroy the Bosnian Muslims as a group.[1330] The Defence contends that the facts instead prove that the VRS forces intended to kill solely all potential fighters in order to eliminate any future military threat. The wounded men were spared.[1331] More significantly, 3,000 members of the column were let through after a general truce was concluded between the warring parties.[1332] The Defence concludes that the killings were committed by a small group of individuals within a short period of time as a retaliation for failure to meet General Mladi}'s demand of surrender to the VRS of the BiH Army units in the Srebrenica area. The Defence recognises that "the consequences of the killings of 7,500 people on those who survived are undoubtedly terrible". However, it argues that these consequences would remain the same, regardless of the intent underlying the killings and thus "do not contribute to deciding and determining what the true intent of the killing was".[1333] The Defence concludes that "there is no proof and evidence upon which this Trial Chamber could conclude beyond all reasonable doubt that the killings were carried out with the intent to destroy, in whole or in part, the Bosnian Muslims as an ethnic group".[1334]

594. The Trial Chamber concludes from the evidence that the VRS forces sought to eliminate all of the Bosnian Muslims in Srebrenica as a community. Within a period of no more than seven days, as many as 7,000- 8,000 men of military age were systematically massacred while the remainder of the Bosnian Muslim population present at Srebrenica, some 25,000 people, were forcibly transferred to Kladanj. The Trial Chamber previously described how the VRS attempted to kill all the Bosnian Muslim men of military age, regardless of their civilian or military status; wounded men were spared only because of the presence of UNPROFOR and the portion of the column that managed to get through to government-held territory owed its survival to the fact that the VRS lacked the military resources to capture them.

595. Granted, only the men of military age were systematically massacred, but it is significant that these massacres occurred at a time when the forcible transfer of the rest of the Bosnian Muslim population was well under way. The Bosnian Serb forces could not have failed to know, by the time they decided to kill all the men, that this selective destruction of the group would have a lasting impact upon the entire group. Their death precluded any effective attempt by the Bosnian Muslims to recapture the territory. Furthermore, the Bosnian Serb forces had to be aware of the catastrophic impact that the disappearance of two or three generations of men would have on the

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[1329] Final Submissions of the Accused, para. 161, Closing arguments, T. 10129.
[1330] Final Submissions of the Accused, para. 157, 166.
[1331] Closing arguments, T. 10120.
[1332] Final Submissions of the Accused, paras. 146-147.
[1333] Closing arguments, T. 10139.
[1334] Closing arguments, T. 10140.

survival of a traditionally patriarchal society, an impact the Chamber has previously described in detail.[1335] The Bosnian Serb forces knew, by the time they decided to kill all of the military aged men, that the combination of those killings with the forcible transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica. Intent by the Bosnian Serb forces to target the Bosnian Muslims of Srebrenica as a group is further evidenced by their destroying homes of Bosnian Muslims in Srebrenica and Poto~ari[1336] and the principal mosque in Srebrenica soon after the attack.[1337]

596. Finally, there is a strong indication of the intent to destroy the group as such in the concealment of the bodies in mass graves, which were later dug up, the bodies mutilated and reburied in other mass graves located in even more remote areas, thereby preventing any decent burial in accord with religious and ethnic customs and causing terrible distress to the mourning survivors, many of whom have been unable to come to a closure until the death of their men is finally verified.

597. The strategic location of the enclave, situated between two Serb territories, may explain why the Bosnian Serb forces did not limit themselves to expelling the Bosnian Muslim population. By killing all the military aged men, the Bosnian Serb forces effectively destroyed the community of the Bosnian Muslims in Srebrenica as such and eliminated all likelihood that it could ever re-establish itself on that territory.[1338]

598. The Chamber concludes that the intent to kill all the Bosnian Muslim men of military age in Srebrenica constitutes an intent to destroy in part the Bosnian Muslim group within the meaning of Article 4 and therefore must be qualified as a genocide.

599. The Trial Chamber has thus concluded that the Prosecution has proven beyond all reasonable doubt that genocide, crimes against humanity and violations of the laws or customs of war were perpetrated against the Bosnian Muslims, at Srebrenica, in July 1995. The Chamber now proceeds to consider the criminal responsibility of General Krsti} for these crimes in accordance with the provisions of Article 7 of the Statute.

[1335] *Supra*, paras. 90-94.
[1336] *Supra*, paras. 41, 123, 153.
[1337] It was eventually turned into a parking lot. P4/4 to P4/6; Ruez, T. 542-543.
[1338] See Witness Halilovi}, *Supra* para. 94.

Annex 994

Prosecutor v. Kunarac et al., Case No it-96-23/1-A, Appeals Judgment (12 June 2002)

UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.:	IT-96-23& IT-96-23/1-A
		Date:	12 June 2002
		Original:	French

IN THE APPEALS CHAMBER

Before: Judge Claude Jorda, Presiding
Judge Mohamed Shahabuddeen
Judge Wolfgang Schomburg
Judge Mehmet Güney
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Judgement of: 12 June 2002

PROSECUTOR
V
DRAGOLJUB KUNARAC
RADOMIR KOVAC
AND
ZORAN VUKOVIC

JUDGEMENT

Counsel for the Prosecutor:

Mr. Anthony Carmona
Ms. Norul Rashid
Ms. Susan Lamb
Ms. Helen Brady

Counsel for the Accused:

Mr. Slavi{a Prodanovic and Mr. Dejan Savatic for the accused Dragoljub Kunarac
Mr. Momir Kolesar and Mr. Vladimir Rajic for the accused Radomir Kovac
Mr. Goran Jovanovic and Ms. Jelena Lopicic for the accused Zoran Vukovic

Trial Chamber reasonably concluded that the Appellant Vukovic intended to discriminate against his victim because she was Muslim.[191] She further submits that, in this case, all the acts of torture could be considered to be discriminatory, based on religion, ethnicity or sex.[192] Moreover, all the acts of sexual torture perpetrated on the victims resulted in their intimidation or humiliation.[193]

2. Discussion

(a) The Definition of Torture by the Trial Chamber

142. With reference to the Torture Convention [194] and the case-law of the Tribunal and the ICTR, the Trial Chamber adopted a definition based on the following constitutive elements: [195]

> (i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.
>
> (ii) The act or omission must be intentional.
>
> (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.

143. The Trial Chamber undertook a comprehensive study of the crime of torture, including the definition which other Chambers had previously given,[196] and found the Appellant Kunarac[197] and the Appellant Vukovi}[198] guilty of the crime of torture. The Trial Chamber did not, however, have recourse to a decision of the Appeals Chamber rendered seven months earlier[199] which addressed the definition of torture.[200]

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[191] *Ibid.*

[192] Prosecution Consolidated Respondent's Brief, para 6.145. According to the Prosecutor, the evidence, in particular the discriminatory statements, establish that FWS-75 was tortured with the purpose of humiliating her because she was a Muslim woman: see Prosecution Consolidated Respondent's Brief, para 6.146.

[193] Prosecution Consolidated Respondent's Brief, para 6.145.

[194] Article 1 of the Torture Convention: "For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

[195] Trial Judgement, para 497.

[196] *Ibid.,* paras 465-497. The Chamber concurs with, in particular, the quite complete review carried out in the *^elebi}i* and *Furund`ija* cases where torture was not prosecuted as a crime against humanity.

[197] Counts 1 (crime against humanity), 3 and 11 (violation of the laws or customs of war), Trial Judgement, para 883.

[198] Counts 33 (crime against humanity) and 35 (violation of the laws or customs of war), Trial Judgement, para 888.

[199] *Furund`ija* Appeal Judgement.

[200] In the *Aleksovski* Appeal Judgement at para 113 it was stated "that a proper construction of the Statute requires that the *ratio decidendi* of its decisions is binding on Trial Chambers."

144. The Appeals Chamber largely concurs with the Trial Chamber's definition but wishes to hold the following.

145. First, the Appeals Chamber wishes to provide further clarification as to the nature of the definition of torture in customary international law as it appears in the Torture Convention, in particular with regard to the participation of a public official or any other person acting in a non-private capacity. Although this point was not raised by the parties, the Appeals Chamber finds that it is important to address this issue in order that no controversy remains about this appeal or its consistency with the jurisprudence of the Tribunal.

146. The definition of the crime of torture, as set out in the Torture Convention, may be considered to reflect customary international law.[201] The Torture Convention was addressed to States and sought to regulate their conduct, and it is only for that purpose and to that extent that the Torture Convention deals with the acts of individuals acting in an official capacity. Consequently, the requirement set out by the Torture Convention that the crime of torture be committed by an individual acting in an official capacity may be considered as a limitation of the engagement of States; they need prosecute acts of torture only when those acts are committed by "a public official...or any other person acting in a non-private capacity." So the Appeals Chamber in the *Furund`ija* case was correct when it said that the definition of torture in the Torture Convention, inclusive of the public official requirement, reflected customary international law.[202]

147. Furthermore, in the *Furund`ija* Trial Judgement, the Trial Chamber noted that the definition provided in the Torture Convention related to "the purposes of ?the? Convention".[203] The accused in that case had not acted in a private capacity, but as a member of armed forces during an armed conflict, and he did not question that the definition of torture in the Torture Convention reflected customary international law. In this context, and with the objectives of the Torture Convention in mind, the Appeals Chamber in the *Furund`ija* case was in a legitimate position to assert that "at least one of the persons involved in the torture process must be a public official or must at any rate act in a non-private capacity, *e.g.*, as a de facto organ of a State or any other authority-wielding

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[201] See *Furund`ija* Appeal Judgement, para 111; *^elebi}i* Trial Judgement, para 459; *Furund`ija* Trial Judgement, para 161 and Trial Judgement, para 472. The ICTR comes to the same conclusion: see *Akayesu* Trial Judgement, para 593. It is interesting to note that a similar decision was rendered very recently by the German Supreme Court (BGH St volume 46, p 292, p 303).

[202] *Furund`ija* Appeal Judgement, para 111: "The Appeals Chamber supports the conclusion of the Trial Chamber that "there is now general acceptance of the main elements contained in the definition set out in Article 1 of the Torture Convention ?*Furund`ija* Trial Judgement, para 161g and takes the view that the definition given in Article 1 ?of the said Conventiong reflects customary international law."

[203] *Furund`ija* Trial Judgement, para 160, quoting Article 1 of the Torture Convention.

Annex 995

Prosecutor v. Semanza, Case No. ICTR-97-20-T, Trial Judgment (15 May 2003)

ICTR-97-20-T
15-5-2003
(7494 - 7261)

7494
#m

International Criminal Tribunal for Rwanda

Tribunal Pénal International pour le Rwanda

UNITED NATIONS

NATIONS UNIES

TRIAL CHAMBER III

Original: English

Before Judges: Yakov Ostrovsky, Presiding
Lloyd G. Williams, QC
Pavel Dolenc

Registrar: Adama Dieng

Judgement of: 15 May 2003

THE PROSECUTOR

v.

LAURENT SEMANZA

Case No. ICTR-97-20-T

JUDGEMENT AND SENTENCE

Counsel for the Prosecution:

Chile Eboe-Osuji

Counsel for the Defence:

Charles Acheleke Taku
Sadikou Ayo Alao

1. Mens Rea

311. In order to find an accused guilty of the crime of genocide it must be proved that he possessed the requisite *mens rea* of the genocidal acts listed in Article 2 of the Statue. Accordingly, it must be demonstrated that the alleged perpetrator committed any of the enumerated acts with the intent to destroy, in whole or in part, a group, as such, that is defined by one of the protected categories, nationality, race, ethnicity or religion.[533]

312. The determination of *mens rea* in the case of genocide requires the following: firstly, it must be established that a person, who killed or caused serious bodily or mental harm to another person, did so on the basis of the victim's membership in a protected group; secondly, it must be established that the perpetrator's intent was to destroy that group as such in whole or in part.

313. A perpetrator's *mens rea* may be inferred from his actions. While noting the inherent difficulty of finding an accused's genocidal intent in the absence of a confession or other admissions, the *Akayesu* Judgement presents various factors that a Chamber may examine to infer the accused's mental state:

> [I]t is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.[534]

314. The Chamber adopts the methods enumerated in *Akayesu* for assessing the specific genocidal intent of an accused.

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[533] Statute, art. 2(2). *See Ntakirutimana*, Judgement, TC, para. 784; *Bagilishema*, Judgement, TC, paras. 60-61; *Musema*, Judgement, TC, para. 164; *Rutaganda*, Judgement, TC, para. 49; *Kayishema and Ruzindana*, Judgement, TC, para. 91; *Akayesu*, Judgement, TC, para. 517.

[534] *Akayesu*, Judgement, TC, para. 523. *See also Bagilishema*, Judgement, TC, paras. 62-63; *Musema,* Judgement, TC, paras. 166-167; *Rutaganda,* Judgement, TC, paras. 61-63; *Kayishema and Ruzindana,* Judgement, TC, para. 93; *Jelisic*, Judgement, TC, para. 73.

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a. "To Destroy"

315. Article 2 of the Statute indicates that the perpetrator must be shown to have committed the enumerated prohibited acts with the intent to "*destroy*" a group. The drafters of the Genocide Convention, from which the Tribunal's Statute borrows the definition of genocide verbatim, unequivocally chose to restrict the meaning of "destroy" to encompass only acts that amount to physical or biological genocide.[535]

b. "In Whole or in Part"

316. Although there is no numeric threshold of victims necessary to establish genocide, the Prosecutor must prove beyond a reasonable doubt that the perpetrator acted with the intent to destroy the group as such, in whole or in part.[536] The intention to destroy must be, at least, to destroy a substantial part of the group.[537]

c. Protected Groups

317. The Statute of the Tribunal does not provide any insight into whether the group that is the target of an accused's genocidal intent is to be determined by objective or subjective criteria or by some hybrid formulation. The various Trial Chambers of this Tribunal have found that the determination of whether a group comes within the sphere of protection created by Article 2 of the Statute ought to be assessed on a case-by-case basis by reference to the *objective* particulars of a given social or historical context, and by the *subjective* perceptions of the perpetrators.[538] The Chamber finds that the determination of a protected group is to be made on a case-by-case basis, consulting both objective and subjective criteria.

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[535] *Report of the International Law Commission on the Work of its Forty-Eighth Session 6 May – 26 July 1996*, UN GAOR International Law Commission, 51st Sess., Supp. No. 10, p. 90, UN Doc. A/51/10 (1996) ("As clearly shown by the preparatory work for the Convention, the destruction in question is the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group.").

[536] *Bagilishema*, Judgement, TC, para. 58; *Musema,* Judgement, TC, para. 165; *Rutaganda*, Judgement, TC, para. 60; *Kayishema and Ruzindana,* Judgement, TC, paras. 95, 96, 98; *Akayesu*, Judgement, TC, para. 521.

[537] *Bagilishema*, Judgement, TC, para. 64.

[538] *See, e.g.*, *Bagilishema*, Judgement, TC, para. 65; *Musema,* Judgement, TC, paras. 161-163; *Rutaganda*, Judgement, TC, paras. 56-58; *Kayishema and Ruzindana*, Judgement, TC, para. 98; *Akayesu*, Judgement, TC, para. 702. *See also Jelisic*, Judgement, TC, paras. 69-72 (using a subjective approach to determine definition of a group while holding that the intent of the drafters of the Genocide convention was that groups were to be defined objectively).

Annex 996

Prosecutor v. Kajelijeli, Case No. ICTR-98-44A, Trial Judgment (1 December 2003)

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER II

Original: English

Before Judges: William H. Sekule, Presiding
Winston C. Matanzima Maqutu
Arlette Ramaroson
Registrar: Adama Dieng

Judgment of: 1 December 2003

THE PROSECUTOR
v.
Juvénal KAJELIJELI

Case No. ICTR-98-44A-T

JUDGMENT AND SENTENCE

Counsel for the Prosecution:
Ifeoma Ojemeni

Counsel for the Defence:
Lennox S. Hinds
Nkeyi M. Bompaka

the intent of the perpetrator to destroy the target group in whole or in part, there is no numeric threshold of victims necessary to establish genocide.[1047]

810. The *Kayishema and Ruzindana* Trial Chamber quoted the Report of the Sub-Commission on Genocide where the Special Rapporteur stated that, "[t]he relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Articles II and III of the Genocide Convention, is strong evidence to prove the necessary intent to destroy a group in whole or in part."[1048]

- **Protected groups**

811. It is required to show under Article 2 that the Accused, in committing genocide intended to destroy 'a national, ethnical, racial or religious' group. Trial Chambers of this Tribunal have noted that the said concept enjoys no generally or internationally accepted definition, rather each concept must be assessed in the light of a particular political, social, historical and cultural context.[1049] Accordingly, "[f]or purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept [where] the victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction."[1050] A determination of the categorized groups should be made on a case-by-case basis, by reference to both objective and subjective criteria.[1051]

- **The acteus reus**

812. The *acteus reus* for the crime of genocide is provided for under Article 2(2) of the Statute. As the issues arising in the present case are so limited, the Chamber shall only review the meaning of the requirements: (a) "killing members of the group"; and (b) "causing serious bodily or mental harm to members of the group".

- **Killing Members of the Group**

813. It is clear from judgments of this Tribunal that in order to be held liable for genocide by killing members of the group, the Prosecutor must show that the perpetrator, killed one or more members of the group, while the perpetrator possessed an intent to destroy the group, as such, in whole or in part. Given that the element of *mens rea* in the killing has been addressed in the special intent for genocide, there is no requirement to prove a further element of premeditation in the killing.[1052] An analysis or the case law of this Tribunal also requires the evidence to show that such victim or victims either (a)

[1047] *Semanza,* Judgment (TC), para. 316.
[1048] *Kayishema and Ruzindana*, Judgment (TC), para. 93.
[1049] *Bagilishema,* Judgment (TC), para. 65; *Musema,* Judgment (TC), para. 161.
[1050] *Rutaganda,* Judgment (TC), para. 56; *Musema,* Judgment (TC), para. 161; *Semanza,* Judgment (TC), para. 317.
[1051] *Semanza,* Judgment (TC), para. 317.
[1052] *Semanza*,Judgment (TC), para. 319; *Bagilishema,* Judgment (TC), para. 55, 57 and 58; *Musema,* Judgment (TC), para. 155; *Rutaganda,* Judgment (TC), para. 49 and 50; *Kayishema and Ruzindana,* Judgment (TC), para. 103 ; *Kayishema and Ruzindana,* Judgment (AC), para. 151; *Akayesu,* Judgment (TC), para. 501.

Annex 997

Prosecutor v. Kamuhanda, Case No. ICTR-95-54A-T, Trial Judgment (22 January 2004)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

United Nations
Nations Unies

OR: ENG

TRIAL CHAMBER II

Before:
Judge William H. Sekule, Presiding
Judge Winston C. Matanzima Maqutu
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 22 January 2004

The PROSECUTOR
v.
Jean de Dieu KAMUHANDA

Case No. ICTR-95-54A-T

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his words and deeds and his actual purposeful conduct, especially when his intention is not clear from what he says or does.
To Destroy

627. An Accused may be liable under Article 2 if he "intends to destroy a […] group." According to the Report of the International Law Commission, destruction within the meaning of Article 2 is "[t]he material destruction of a group either by physical and biological means and not the destruction of the national, linguistic, religious, cultural or other identity of a particular group."
In Whole or in Part

628. Under Article 2, an accused may be liable if he "intends to destroy in whole or in part a […] group." As has been explained in judgments of this Tribunal, in order to establish an intent to destroy "in whole or in part", it is not necessary to show that the perpetrator intended to achieve the complete annihilation of a group from every corner of the globe. It is sufficient to prove that the perpetrator have intended to destroy more than an imperceptible number of the targeted group. In effect, the Chamber endorses the opinion expressed in the Semanza Judgment: the Prosecution must establish, beyond reasonable doubt, the intent of the perpetrator to destroy the target group in whole or in part, there is no numeric threshold of victims necessary to establish genocide.
629. In the Report of the Sub-Commission on Genocide, the Special Rapporteur stated: "The relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Articles II and III of the Genocide Convention, is strong evidence to prove the necessary intent to destroy a group in whole or in part."
o Protected Groups

630. It is required to show under Article 2 that the Accused, in committing genocide intended to destroy "a national, ethnical, racial or religious" group. Trial Chambers of this Tribunal have noted that the concept of a group enjoys no generally or internationally accepted definition, rather each group must be assessed in the light of a particular political, social, historical and cultural context. Accordingly, "[f]or purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept [where] the victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction." A determination of the categorized groups should be made on a case-by-case basis, by reference to both objective and subjective criteria.
o The Acteus Reus
631. The acteus reus for the crime of genocide is provided for under Article 2(2) of the Statute. As the issues arising in the present case are limited, the Chamber shall review only the meaning of the requirements for the crime: (a) "killing members of the group"; and (b) "causing serious bodily or mental harm to members of the group".

Killing Members of the Group

632. It is clear from the established jurisprudence of this Tribunal that the Prosecution bears the burden of proof to show that the perpetrator participated in the killing of one or

Annex 998

Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Trial Judgment (17 June 2004)

UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before Judges: Andresia Vaz, presiding
Jai Ram Reddy
Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 17 June 2004

THE PROSECUTOR

v.

SYLVESTRE GACUMBTSI

Case No. ICTR-2001-64-T

JUDGMENT

Office of the Prosecutor:
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Andra Mobberley
Khaled Ramadan

Counsel for the Defence:
Kouengoua
Anne Ngatio Mbattang

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CHAPTER I: INTRODUCTION

A. THE TRIBUNAL AND ITS JURISDICTION

1. This Judgment is rendered in the case of *The Prosecutor v. Sylvestre Gacumbitsi* by Trial Chamber III (the "Trial Chamber" or the "Chamber") of the International Criminal Tribunal for Rwanda (the "Tribunal"), composed of Judge Andrésia Vaz, presiding, Judge Jai Ram Reddy and Judge Sergei Alekseevich Egorov.

2. The Tribunal was established in 1994 by the United Nations Security Council, pursuant to Chapter VII of the United Nations Charter.[1]

3. The Tribunal is governed by the Statute appended to Security Council resolution 955 (the "Statute")[2] and by its Rules of Procedure and Evidence (the "Rules").

4. The Statute provides that the Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States. Pursuant to Article 1 of the Statute, the Tribunal's temporal jurisdiction is limited to acts committed between 1 January and 31 December 1994. The Tribunal also has *ratione materiae* jurisdiction over genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

B. THE ACCUSED

5. Sylvestre Gacumbitsi (the "Accused") was born in 1943 in Kigina *secteur*, Rusumo *commune*, Kibungo *préfecture*.[3]

6. He worked successively as a teacher in Kibungo *préfecture*, chairman of the *Banque Populaire de* Rusumo and, between 1983 and 1994, as *bourgmestre* of Rusumo *commune*, a position he held until April 1994.[4]

C. PROCEDURAL BACKGROUND

7. On 19 June 2001, Judge Lloyd G. Williams, Q.C., acting under Rule 40 *bis* of the Rules and at the request of the Prosecutor, requested the Tanzanian authorities to arrest and place in custody Sylvestre Gacumbitsi, then a suspect, until his transfer to the Tribunal.[5]

8. On 20 June 2001, Judge Lloyd G. Williams, Q.C. confirmed an Indictment prepared by the Prosecutor against Sylvestre Gacumbitsi (the "Indictment") and, at the

[1] United Nations Security Council, resolution 955.
[2] United Nations Security Council, resolution 955. The Statute was amended by the United Nations Security Council resolutions 1165, 1329, 1411, 1431, 1503 and 1512.
[3] Defence Closing Brief, para. 38.
[4] Defence Closing Brief, paras. 41 to 47 and 60.
[5] *Gacumbitsi*, Order, 20 June 2001 (TC).

same time, granted the Prosecution leave to amend the Indictment.[6] An amended version of the Indictment was filed in English and French on that date, with the confirming Judge issuing a warrant of arrest against the Accused.[7]

9. Also on 20 June 2001, Tanzanian authorities arrested the Accused in Kigoma, Tanzania, and transferred him to the Tribunal, where the Registrar had him placed in custody at the Detention Facility.

10. On 26 June 2001, the Accused pleaded not guilty to each of the counts in the Indictment.[8]

11. On 25 July 2002, the Chamber dismissed a preliminary motion by the Defence based on defects in the form of the Indictment.[9] The Chamber recalled that the confirming Judge, pursuant to Article 18 of the Statute and Rule 47 of the Rules, was satisfied that a *prima facie* case had been established.

12. On 16 May 2003, the Prosecution filed its Pre-Trial Brief.

13. On 28 July 2003, the trial opened with the Prosecution making its opening statement[10] and case-in-chief.

14. On 1 August 2003, pursuant to Rule 92 *bis* of the Rules, the Chamber admitted into evidence the testimony of Expert Witness Alison Des Forges in the *Akayesu* casem[11] including the 49 exhibits relating thereto which had been disclosed earlier to the Defence[12] in lieu of her examination-in-chief. The Chamber ruled that it was admitting the evidence given by the said witness in *Akayesu*, together with any other parts of the transcript that could clarify their meaning.[13]

15. On 6 August 2003, the Chamber denied a Defence oral motion requesting the Chamber not to hear Witness TAP's evidence of a rape allegedly committed by the Accused himself − a new allegation that had been disclosed to the Defence the previous day. The Chamber ruled that, while it was aware of the rights of the Defence to fair notice of charges, it nevertheless decided, in the interests of justice, to hear Witness TAP's full testimony, while at same time reserving its decision as to the admissibility of the allegation itself.[14]

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[6] *Gacumbitsi*, Decision, 20 June 2001 (TC).
[7] *Gacumbitsi*, Order, 20 June 2001 (TC).
[8] Initial appearance pursuant to Rule 62 of the Rules, with Judge Lloyd G. Williams, Q.C. presiding (T., 26 June 2001).
[9] *Gacumbitsi*, Decision, 25 July 2002 (TC).
[10] T., 28 July 2003, pp. 17 to 22.
[11] *The Prosecutor v. Jean-Paul Akayesu,* Case No. ICTR-1996-4-T.
[12] Such material was disclosed to the Defence when the "*Prosecutor's Motion for Admission of Testimony of an Expert Witness Pursuant to Rules 54, 73, 92* bis", was filed on the 25 June 2003 (*cf.* para. 1, footnote 1 and Annex A).
[13] *Gacumbitsi*, Decision on Expert Witness, 1 August 2003 (TC). Evidence provided by Expert Witness Alison Des Forges in *Akayesu* was filed in the instant case as Prosecution Exhibit 15, in the form of a CD ROM. A list of the material contained therein is appended to this Judgment.
[14] T., 6 August 2003, p. 23-24.

16. On 2 October 2003, the Chamber dismissed a Defence motion for acquittal of the Accused on certain counts in the Indictment, pursuant to Rule 98 *bis* of the Rules. However, the Chamber ruled, of its own motion, that in its final deliberations, it would not take into account the allegation of rape made against the Accused by Witness TAP in her testimony. The Chamber noted that, apart from the Prosecution's failure to provide notice of this charge, the Indictment did not contain any allegation of rape committed by the Accused himself, and the Prosecution had not sought an amendment of the Indictment in this respect.[15]

17. The Prosecution rested on 28 August 2003, following 16 days of hearings.

18. Citing difficulties in the preparation of its case, the Defence requested on 28 August 2003 that the Defence case, which was scheduled to start on 6 October 2003, be postponed to December 2003. The Chamber found that the reasons cited by the Defence were not such as to warrant postponement of the trial and ordered the Defence to file its Pre-Trial Brief no later than 3 October 2003.[16]

19. On 6 October 2003, the Defence proceeded with its case, following its opening statement.[17] The Defence rested its case on 25 November 2003.

20. The Chamber heard a total of 15 Prosecution witnesses and 22 Defence witnesses and also admitted into evidence 15 Prosecution exhibits and 9 Defence exhibits.

21. The Chamber notes that it applied Rule 15 *bis*(A) of the Rules.

22. The Prosecution filed its Closing Brief on 23 December 2003, while the Defence filed its own Closing Brief on 9 February 2004.[18] The Prosecution and the Defence made their closing arguments on 1 March 2004, on which date the trial was declared closed and deliberations commenced.[19]

D. EVIDENTIARY MATTERS

23. The Chamber examined the charges on the basis of the testimonies given and exhibits tendered by the parties to sustain or rebut the allegations in the Indictment.

24. Under Rule 89 of the Rules, the Chamber is not bound by national rules of evidence and may, in cases not otherwise provided for in the Rules, apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

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[15] *Gacumbitsi*, Decision, 2 October 2003 (TC).
[16] T., 28 August 2003, pp. 20 and 21.
[17] T., 6 October 2003, pp. 2 to 8.
[18] On 25 February 2004, the Defence filed an amended version of its Closing Brief. Unless otherwise stated, reference will hereinafter be made to this version, which includes numbered paragraphs.
[19] T., 1 March 2004.

E. WITNESS PROTECTION

25. Certain witnesses called by the Parties gave part or all of their evidence in camera to ensure their safety. In this Judgement, the Chamber wished to provide as much detail as possible to make it easy to follow its reasoning.[20] However, the Chamber was at the same time careful not to disclose any information that might reveal the identity of the protected witnesses to the public.

[20] *Semanza* Judgement (TC), para. 37.

CHAPTER II: FACTUAL FINDINGS

A. PARAGRAPHS 1, 2, 3 AND 26 OF THE INDICTMENT (GENERAL ALLEGATIONS)

26. Paragraph 1 of the Indictment alleges that:

> 1. Between 1 January and 31 December 1994, citizens native to Rwanda were severally identified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.

27. Prosecution Expert Witness, Alison Des Forges, testified in *Akayesu* that there were three distinct ethnic groups in Rwanda, namely the Hutu, the Tutsi and the Twa.[21] The Defence does not dispute the fact that in 1994 Rwandan citizens were divided into three ethnic groups, but merely points out that such division dates back to the colonial or pre-colonial period.[22]

28. Consequently, the Chamber concludes that during the period referred to in the Indictment, Rwandan citizens were categorised into three ethnic groups, namely Tutsi, Hutu and Twa.

29. Paragraph 2 of the Indictment alleges that:

> 2. Between 1 January and 17 July 1994 there was a state of non-international armed conflict in Rwanda.

30. Since the Indictment does not charge any violation of Article 3 common to the Geneva Conventions and Additional Protocol II, the Chamber does not find it necessary to make a finding on the allegation contained in paragraph 2 of the Indictment.

31. Paragraph 3 of the Indictment alleges that:

> 3. Following the death of Rwandan President Juvenal Habyariamana on 6 April 1994 and resumption of civil hostilities in the non-international armed conflict on the following day, a newly installed Interim Government of 8 April 1994 launched a nationwide campaign to mobilize government armed forces, civilian militias, the local public administration and common citizens to fight the Rwandese Patriotic Front (RPF), a predominantly Tutsi politico-military opposition group. Government armed forces and *Interahamwe* militias specifically targeted Rwanda's civilian Tutsi population as domestic accomplices of an invading army, *ibyitso*, or as a domestic enemy in their own right. Under the guise of national defense, ordinary citizens of Rwanda, primarily Hutu peasantry, were enlisted in a nationwide campaign of looting, pillaging, murder, rape, torture, and extermination of the Tutsi.

32. This paragraph is of a general nature and does not contain any specific or contextual allegations relating to the Accused's actions and conduct over and above the

[21] *Gacumbitsi* trial; Exhibit P15, Transcript of the hearing of Alison Des Forges' testimony of 12 February 1997 in the *Akayesu* case, p. 11 and pp. 12 to 13.
[22] Defence Closing Brief, para. 124.

allegations made in other more specific paragraphs of the Indictment. Consequently, the Chamber will not make any finding on this matter.

33. Paragraph 26 of the Indictment alleges that:

> 26. Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

34. Allegations relating to events that took place outside Rusumo *commune* have not been made before the Chamber. The allegation contained in paragraph 26 of the Indictment will therefore be understood as relating only to Rusumo *commune* and will be examined as part of the Chamber's consideration of the charge of crimes against humanity. The Chamber's finding in this respect will be presented in Chapter III hereunder.

B. PARAGRAPHS 4 TO 7 AND 9 TO 14 OF THE INDICTMENT (MEETINGS IN RUSUMO AND KIBUNGO, THE ACCUSED'S MOVEMENTS WITHIN RUSUMO COMMUNE *AND THE DISTRIBUTION OF WEAPONS)*

1. Allegations

35. Paragraphs 4, 5, 6, 7, 9, 11, 12 and 13 of the Indictment allege that:

> 4. Sylvestre Gacumbitsi organized the campaign against Tutsi civilians in Rusumo *commune*, Kibungo *préfecture*. The campaign consisted in public incitement of Hutu civilians to separate themselves from their Tutsi neighbours and to kill them, and resulted in thousands of deaths. Sylvestre Gacumbitsi killed persons by his own hand, ordered killings by subordinates, and led attacks under circumstances where he knew, or should have known, that civilians were, or would be, killed by persons acting under his authority.
>
> 5. Notably, on or about 9 April 1994, Sylvestre Gacumbitsi convened a meeting of all the *conseillers de secteur*, *responsables de cellule* and party chiefs of MRND and CDR in Rusumo *commune*. The meeting was held at the *bureau communal*. During that meeting *Bourgmestre* Sylvestre Gacumbitsi announced that weapons would be distributed for purposes of the extermination of the Tutsi population.
>
> 6. On or about 10 April 1994 Sylvestre Gacumbitsi participated in a meeting at the FAR military camp in Kibungo. Present at the meeting was Col. Pierre Célestin Rwagafirita and all of the *bourgmestres* of Kibungo *préfecture*. Col. Rwagafirita and a number of other soldiers distributed cases of grenades, machetes and bladed weapons to each *bourgmestre*. Sylvestre Gacumbitsi received over 100 boxes of weapons, some of which he subsequently distributed to various locations in the *préfecture*.
>
> 7. On or about 12 April 1994, after conferring with Major Ndekezi, Sylvestre Gacumbitsi ordered soldiers and boatmen along the lakes in Gisenyi *secteur* to stop refugees in flight from escaping across the border into Tanzania.

> 9. Sylvestre Gacumbitsi ordered *responsables de cellule* and *nyumbakumi* to deliver weapons to certain members of the populace. He also ordered the *responsables de cellule* and *nyumbakumi* to disseminate to members of the populace and to carry out the official policy of massacring civilian Tutsi. These communal officials in turn re-distributed the weapons that they received from Sylvestre Gacumbitsi and participated in the campaign of extermination by ordering their constituents to kill civilian Tutsi throughout the *commune*.
>
> 11. During the week of 11 April 1994, Sylvestre Gacumbitsi circulated in Rusumo aboard a vehicle belonging to the *commune*. He was often accompanied by communal police and *Interahamwe*, and the vehicle was often loaded with a quantity of machetes. For example, on or about 15 April 1994 Sylvestre Gacumbitsi, accompanied by Munyabugingo, transported weapons, including machetes, in a vehicle heading towards Nyarubuye.
>
> 12. On or about 14 April 1994 Sylvestre Gacumbitsi arrived in Nyabitare *secteur* and summoned all the Hutu *nyumbakumi* and distributed machetes to them. He instructed the communal police and the *nyumbakumi* that all Tutsi in the region should be killed by nightfall, and that whoever killed a Tutsi could then appropriate his belongings. The communal police and *nyumbakumi* did as Sylvestre Gacumbitsi instructed, and many civilian Tutsi were killed, among them: Léonard Kagumya; Gahondogo and her children, Runuya and her children, including Maniriho, Kagumya (2 weeks old), Gashumba, Mutempundu, Mukabera, Nyamvura, Mukadusabe, Bimenyimana.
>
> 13. In addition to exhorting crowds to massacre the Tutsi civilians, Sylvestre Gacumbitsi travelled to the various *cellules* to monitor the course of the massacres.

36. The Chamber finds that the general allegations contained in paragraph 4 of the Indictment are a summary of the Prosecution case against Sylvestre Gacumbitsi as to his criminal responsibility for the crimes committed in Rusumo *commune* – an issue which is dealt with in Chapter III of the present Judgment. It does not deem it necessary to make factual findings on such allegations, except on the allegation of a campaign of public incitement urging Hutu civilians to separate themselves from their Tutsi neighbours and kill them.

37. As the Prosecution conceded,[23] no evidence was adduced in support of the specific allegations contained in paragraphs 10 and 14 of the Indictment. Consequently, the Chamber will not make any finding thereon.

38. The Chamber considers as unfounded the Defence's allegation that paragraph 7 of the Indictment is vague as to the place where the Accused met with Major Ndekezi and to the latter's identification.[24] The identification of Major Ndekezi is sufficient and the Indictment contains further details that make it possible to identify the location – "the lakes in Gisenyi *secteur*" – where the events took place.

[23] T., 1 March 2004.
[24] T., 1 March 2004.

39. The Defence alleges that no Prosecution witness mentioned the names of the victims referred to in paragraph 12 of the Indictment.[25] The Chamber considers that the count of genocide covers a large number of victims, such that the Prosecution could not be expected to provide an exhaustive list of victims. Therefore, the fact that witnesses mentioned victims not referred to in the Indictment does not prejudice the Accused.

40. The Chamber notes, however, that the evidence of Witness TAC, who testified on the massacre of 15 April 1994 at the Nyabitare Catholic Centre, fails to prove the allegations contained in paragraph 12 of the Indictment, as alleged by the Prosecutor.[26] Indeed, the evidence refers to an attack that allegedly occurred on 15 April 1994 in the course of which two Tutsi, Mutunzi and Rukomeza, were killed at a specific location in Nyabitare, the local Catholic Centre, whereas paragraph 12 of the Indictment alleges that attackers had killed, in an unspecified location in Nyabitare, around 14 April 1994, a number of Tutsi some of whose names were provided. The names of Mutunzi and Rukomeza were not mentioned. The Chamber notes that Witness TAC did not mention the names of the victims referred to in the Indictment and made no mention of testifying to a large-scale massacre. Rather, the witness only testified to the murder of Mutunzi and Rukomeza. In conclusion, the Chamber finds that the allegations contained in paragraph 12 of the Indictment have not been proved. The Chamber will assess Witness TAC's evidence when considering the allegations contained in paragraph 34 of the Indictment.

2. Evidence

Thursday, 7 April 1994

41. **Prosecution Witness TAW**, a Tutsi,[27] who had known the Accused for several years prior to 1994 and who, from a vantage point, was able to observe the actions of the Accused between 7 and 13 April 1994, testified about meetings between the Accused and *gendarmerie* officials during that period.[28]

42. Witness TAW testified that, early in the morning of Thursday 7 April 1994, the Accused went to the temporary *gendarmerie* camp in Rwanteru to meet the camp commander, Major Ndekezi. Thereafter, the Accused and the Major went to the military camp at Rusumo Falls, at the border between Rwanda and Tanzania, where they held a meeting with Major Nsabimana. Later in the day, the Accused also met with *Gendarmerie* Colonel Rwagafirita.[29] Witness TAW did not take part in the meetings, but witnessed a conversation between Major Ndekezi and the Accused during which the former said: "Habyarimana is dead. Why don't we kill the Tutsi in Rwanda? If we kill them, the war might be over", and the Accused answered that not all Tutsi were bad.[30]

43. Witness TAW further testified that, on that same day, the Accused asked the *commune*'s secretary to type out a message inviting the *conseillers* of the *secteur*s to a

[25] Defence Closing Brief, paras. 107 to 108.
[26] Prosecution Closing Brief, paras. 142 to 153.
[27] T., 20 August 2003, pp. 2 to 5.
[28] T., 20 August 2003, pp. 48 to 52. Witness TAW identified the Accused in court, T., 20 August 2003, p. 31.
[29] In the transcripts the name "Rwagafirita" is also spelled "Rwagafilita".
[30] T., 20 August 2003, pp. 7 to 9, 45 to 50.

meeting scheduled for the following Saturday, 9 April. Witness TAW testified that the message was actually delivered to the addressees by communal policemen.[31]

44. **Defence Witness ZEZ**, who worked in Rwanteru, not far from the military camp, testified that he did not see the Accused on 7 April 1994, but explained that he was not aware if the Accused went to Rwanteru military camp on that day.[32]

45. The Accused testified that on the night of 6 April 1994, after hearing the news of the President's death on Radio Rwanda, he no longer went out of his house. The following day, 7 April 1994, he met with the *sous-préfet* and, together, they decided that the people needed to be consoled and to be advised to pull themselves together. Apart from the *sous-préfet*, no Rwandan official visited him in Rusumo on that day. The Accused further testified that at that time, Rusumo *commune* was not connected to the telephone network, and that it was isolated.[33]

Friday 8 April 1994

46. **Witness TAW** testified that on 8 April 1994, the Accused went to a meeting, not far from Kibungo. He was accompanied, apart from his driver, by three police officers and Justin Manayabagabo, a former school inspector and MRND chairman for Rusomo *commune*, as well as the *sous-préfet* of Kirehe, Joseph Habimana. The meeting was held near the *préfecture* building, a short distance from Kibungo town where there was a bar, in the house of Rwagasori, a businessman. In attendance were: the *préfet* of Kibungo, Colonel Rwagafirita, all the *bourgmestres* of Kibungo *préfecture*, officials and leaders of political parties and some *Interahamwe*, who were led by a certain Cyasa. Witness TAW, who himself did not take part in the meeting and could not testify about what was said there, stated that many persons were present in the room where it was held, and that it was Colonel Rwagafirita "(…) who spent more time chairing the meeting". It was at the meeting that, for the first time, Witness TAW saw *Interahamwe* in uniform. The witness explained that, in the past, the people of Rusumo trained with the *Interahamwe*, but that he himself had never seen them in uniform.[34]

47. The **Accused** testified that on 8 April 1994 he went to Kibungo to attend a meeting convened and presided over by the *préfet*, Godefroid Ruzindana, to discuss security issues. The meeting was held in the prefectoral office meeting room.[35]

48. The Accused testified that each *bourgmestre* presented a report on the security situation in his *commune*. While all the other *bourgmestres* reported that they were encountering security problems in their *communes*, the Accused reported that there was none in his *commune*. Security instructions were issued to the *bourgmestres* so that they could be relayed to the *conseillers* and the citizens. According to the instructions, the *bourgmestres* had to ensure security and organize meetings to that effect. A curfew was agreed on. The people had to organize night patrols. There was to be no racial

[31] T., 20 August 2003, pp. 8 to 10.
[32] T., 6 October 2003, pp. 50 to 52.
[33] T., 21 November 2003, pp. 16 to 20.
[34] T., 20 August 2003, pp. 9 to 13, and 50 to 56.
[35] T., 21 November 2003, pp. 17 to 19.

discrimination. Those disturbing public peace were to be punished. Decisions taken at the meeting were broadcast on the radio.[36]

49. The Accused further testified that after the meeting he returned to Rusumo *commune* and lost no time in convening a meeting of the communal *conseillers* for 9 April 1994 to ask them to ensure that there was security.[37]

Saturday, 9 April 1994

50. **Prosecution Witness TBH**, a Hutu, who was a local official in 1994 and acknowledged that he took part in the massacre of the Tutsi in Rusomo *commune* between April and May 1994, stated that after he had been tried and sentenced to fifteen years' imprisonment in Rwanda for his role in the genocide in Rusumo *commune*, he was granted an early and unconditional release by presidential decree in early 2003.[38]

51. Witness TBH testified that a meeting of *conseillers* took place on 9 April 1994, around noon, in the IGA room, located in Rusumo *commune*.[39] In attendance were *Conseillers* Birasa of Musaza *secteur*, Claude Ahishakiye of Gatore *secteur*, André Bizuru of Kigina *secteur*, Anastase Mutabaruka of Kirehe *secteur*, Rwabarinda of Nyabitare *secteur*, Nyiringabo of Kankobwa *secteur*, Claudien Kabandana of Nyamugari *secteur*,[40] Ananie Karamage of Nyarubuye *secteur* and Seth Sebijojo of Gisenyi *secteur*. Only the *Conseiller* of Kigarama *secteur* was absent.[41] Also in attendance were Edmond Bugingo, MRND Chairman for Rusumo *commune* and Justin Manayabagabo, Secretary of MRND. The Accused, who chaired the meeting, recalled the situation in Rwanda since the assassination of President Habyarimana, the fact that the country was at war, the presence of the Rwandan Patriotic Front (RPF) at Kinihira and the fact that young Tutsi were leaving their families in the *commune* to join RPF. The Accused asked the *conseillers* of the *secteurs* of Rusumo *commune* to organize meetings, which were to be held without the knowledge of the Tutsi, between 9 and 12 April 1994 in their respective *secteurs*. He also asked them to tell the Hutu, during the meetings, that all the Tutsi should be killed, adding that otherwise, the accomplices of the *Inkotanyi* would denounce the Hutu, and such Hutu would die before the others. He said that once the Tutsi were killed, the *Inkotanyi* would not have any more accomplices. The witness explained that before the meeting, he had never heard the Accused make any statement intended for the massacre of Tutsi. According to the instructions of the Accused, all meetings were to be held before 12 April and the massacres were to commence on 13 or 14 April 1994. In response to a question put to him by the Bench, Witness TBH testified that the issue of weapons distribution was not mentioned during the meeting of 9 April 1994.[42]

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[36] T., 21 November 2003, pp. 17 to 23. See: Defence Exhibit D07: Broadcast Report of the meeting of 8 April 1994.
[37] T., 21 November 2003, pp. 23 to 25.
[38] T., 25 August 2003, pp. 13 to 19, and 22 to 23. TBH identified the Accused in court: T., 25 August 2003, pp. 32 to 33.
[39] The IGA room is a training centre which, according to Witness ZEZ, is located at the same place as the communal office. See T., 6 October 2003, pp. 52 to 53.
[40] In the transcripts, Nyamugari is also spelled Nyamugali.
[41] T., 25 August 2003, pp. 23 to 28.
[42] T., 25 August 2003, pp. 21 to 36; T., 26 August 2003, pp. 13 to 16 and 22.

52. Witness TBH testified that the Accused, as *bourgmestre*, was the superior of the *conseillers de secteurs* and that the latter had to obey his orders. The witness however pointed out that some participants in the 9 April 1994 meeting did not approve of the Accused's statements, while others decided not to hold the meetings requested by the Accused and refused to transmit his instructions to the officials of the *cellules* in their *secteurs*.[43]

53. Witness TBH testified that the situation was calm on 9 April 1994, even though since 8 April 1994, everyone in Kigina *secteur* had been talking about the war. He pointed out that attacks had already been carried out in the surrounding *communes*. In conclusion, he testified that security had not been provided.[44]

54. In response to a question from the Bench, Witness TBH admitted to never having spoken about the holding of the 9 April 1994 meeting, which was convened and chaired by the Accused, before becoming a witness at the Tribunal.[45]

55. **Prosecution Witness TAW** testified that, on the morning of Saturday 9 April 1994, the Accused went to the Rusumo communal office in Nyakarambi, to take part in a meeting with the *conseillers*. The meeting ended late in the afternoon. Apart from the *conseillers de secteur* and the *cellule* officials, certain political party representatives had been invited. Subsequently, Witness TAW had a conversation with one of the participants in the meeting who told him that the general situation was serious, that the situation of the Tutsi was very delicate, as their hour was up, that "weapons were going to be distributed in the near future", with a view to massacring them and that the Hutu, MDR and CDR were in a coalition to fight against all the Tutsi.[46] The witness testified that the purpose of the meeting was to inform the *conseillers de secteurs* of the message given during the meeting of 8 April at Kibungo.[47]

56. The **Accused** testified that a meeting bringing together all the *conseillers*, save one, who was retained in his *secteur* because of security problems, took place at Rusumo on 9 April 1994. The Accused, who chaired the meeting, reminded them that it was unacceptable to commit acts of injustice against an RPF accomplice. At the end of the meeting, he went to the *secteur* of the absent *conseiller*.[48]

Sunday 10 April 1994

57. **Witness TAW** testified that on the morning of Sunday, 10 April 1994, the Accused went to Kibungo military camp in a convoy of three communal vehicles accompanied by Rusomo *commune* police officers. Also present there were the *bourgmestres* of Sake and Mugesera *communes*, with the vehicles of those *communes*. After speaking with Colonel Rwagafirita, the Accused asked the drivers to drive the *communes*' vehicles to a place in the camp so as to load them, under the colonel's orders, with boxes stored in a building. The soldiers and police officers loaded the boxes and the

[43] T., 25 August 2003, pp. 24 to 26.
[44] T., 25 August 2003, p. 66 to 67.
[45] T., 26 August 2003, pp. 13 to 16.
[46] T., 20 August 2003, pp. 13 to 16 and 55 to 56.
[47] T., 20 August 2003, pp. 52 to 53.
[48] T., 21 November 2003, pp. 23 to 25.

bourgmestres received same. Forty boxes were loaded into each of the two Stout vehicles belonging to Rusomo *commune*, and 25 boxes into the third vehicle, making a total of 105 boxes. Some similar boxes were loaded into the vehicles belonging to Sake and Mugesera *commune*s. Witness TAW, who conceded that he did not see the content of the boxes, deduced, on the basis of information received the previous day from a participant at the meeting held in the *commune* office, that the boxes contained weapons.[49]

58. Witness TAW testified that, upon return to the Rusomo *commune* office, in the afternoon of the same day, the Accused sent one of the three *commune* vehicles to Nyarubuye and another to Nyamugari with, on board, some communal policemen, with a mission to deliver the boxes to Kibungo camp. The Accused himself went to the house of Léonidas Gacondo, the *cellule* official for Kavuzo, Kigina *secteur* where, with the help of his driver he unloaded 15 boxes and had them stored in a room. Gacondo confided to Witness TAW the same evening that the boxes contained weapons. The Accused then went to the Gasenyi commercial centre, in Kigarama *secteur*, near the River Akagera. There he met a certain André, a boatman and trader who was also the local leader of the *Coalition pour la defense de la République* (CDR) party. The Accused then instructed the policemen accompanying him to keep the remaining boxes in a room in André's house. He also asked André to prevent "(…) people who wanted to cross (the river) from crossing" there. According to the witness, the Accused was referring to the Tutsi who were fleeing from the massacres, and wanted to seek refuge on the other side of the river, in Tanzania.[50]

59. The **Accused** testified that he went to Kibungo camp on 10 April 1994. He stated that he went together with the Deputy Prosecutor to the house of *Conseiller* Birasa, a Tutsi, whose house had been set ablaze the previous night. He returned home the same evening, around 6 p.m.[51]

Monday, 11 April 1994

60. **Witness TAW** testified that on the morning of 11 April 1994, the Accused successively met with Cyasa, who was accompanied by four or five *Interahamwe* and Major Ndekezi, at the Rwanteru military camp, and, later, accompanied by Cyasa and Ndekezi, Major Nsabimana at the Rusumo military camp. He could not testify about their discussions.[52]

61. The **Accused** testified that on the night of 10 to 11 April 1994, a Hutu and a Tutsi were attacked and their houses set ablaze. He visited the scene the following day and carried out an inquiry that led to the arrest, upon denunciation, of several persons. He held a security meeting in which he requested that such acts should stop. He subsequently incarcerated the criminals in the *commune* cells and sent their case files to the Deputy Prosecutor. On the night of 11 to 12 April 1994, an incident occurred in Gatore *secteur* during which some people were killed. When the Accused heard about it, he wasted no time. He convened a security meeting in the *secteur* and was informed of the identity of

[49] T., 20 August 2003, pp. 15 to 19, 49 to 50, and 56 to 57.
[50] T., 20 August 2003, pp. 18 to 23 and 58 to 63; T., 21 August 2003, pp. 2, 3 and 20 to 21.
[51] T., 21 November 2003, pp. 24 to 26.
[52] T., 20 August 2003, pp. 22 to 24.

the attackers, a groupe led by a certain "*Maréchal*". With the help of the criminal investigations Officer (*Inspecteur de police juridiciaire* (IPJ)), he carried out an investigation and a search that led to the recovery of some belongings looted during the attack and to the arrest of the criminals who were then incarcerated in the *commune* cells. In the *commune*, the situation was becoming serious, the criminals were not happy with the Accused's decisions. Some inhabitants revolted and went to the *commune* cells and, in the afternoon of 12 April, released the detainees, since the Accused, who was held back in Gatore, was absent.[53]

Tuesday, 12 April 1994

62. **Witness TAW** testified that on Tuesday, 12 April 1994, the Accused embarked on a tour of the *secteur*s in the *commune* to check if the *conseillers* had held or scheduled security meetings. The Accused first visited the *conseiller* of Kigina *secteur*, then Major Ndekezi, at the Rwanteru military camp and, later, Nyarubuye, Kankobwa, Nyabitare, Nyamugari, Gasenyi, Kigarama, Gatore and Kirehe *secteurs*. The last lap of his tour that ended late in the evening was Nyakarambi. The purpose of the visits was to meet with the *conseillers* – not the local population – to ask them questions relating to the holding of meetings. In Gasenyi, the Accused met André and asked him for the local situation report. He reiterated to him the instruction not to allow any person to pass through that place in order to escape. The communal police went to ensure that no one crossed the river.[54]

63. **Defence Witness YEW** testified that before 10 a.m. on 12 April 1994, he saw the *bourgmestre* talking with the *commune*'s criminal investigations Officer (*Inspecteur de police judiciaire* (IPJ)), near the Gatore *secteur* office. In the evening, around 5 or 6 p.m., he saw some people from Nyamugali, including a certain Augustin Nkunzumwami, alias "*Maréchal*"; these people claimed they had been imprisoned by the *bourgmestre*, then released and were issuing threats against the *bourgmestre*.[55]

64. **Defence Witness YCW** testified that around 8 a.m. on 12 April 1994, he saw the *bourgmestre*, the *conseiller* and the IPJ in the *secteur* office inquiring into the murder of Kurunziza and his family which took place in Nyamiryango *cellule*. Investigations into the killing led to the arrest of those responsible for it: Augustin Nkunzumwami alias *Maréchal*, Sunahire Bugingo, Habukubaho, Batege Nteziryayo and Uwizeye, a former soldier. Grégoire Havugimana, Ntambara and Munyarubuga, allegedly responsible for other killings, were also arrested and they confessed that they belonged to a group led by Augustin Nkunzumwami. The *bourgmestre* led the attackers away to be incarcerated with those from Nyamugali. The *bourgmestre* then held a meeting in the *secteur* office, during which he told the inhabitants that every assailant should be arrested and handed over to the authorities. The same day, in the afternoon, at Nyakarambi, some people publicly complained about the *bourgmestre* and the *sous-préfet* regarding the arrests and threatened to attack them. The witness saw about fifty demonstrators among whom were those imprisoned by the *bourgmestre*. The witness stated that he heard about a tract being

[53] T., 21 November 2003, pp. 24 to 27.
[54] T., 20 August 2003, pp. 24 to 26.
[55] T., 15 October 2003, pp. 69 to 70; T., 16 October 2003, pp. 3 to 4.

circulated by Cyasa calling the *bourgmestre* and the *sous-préfet* accomplices of the *Inkotanyi*.[56]

65. **Defence Witness XW10** testified that he never heard the Accused instruct that no one should cross the River Akagera to seek refuge in Tanzania, and pointed out that he himself, like many other people, was able to cross the river into Tanzania on 13 April 1994. He acknowledged, in response to questions put to him by the Judges, that he did not see the Accused during the period of 7 April to 13 April 1994.[57]

66. **Defence Witness XW11** testified that on 7 April 1994, he started working as a boatman at a crossing point between Karebezo hills and Bwiza, on the River Akagera. The witness added that around 27 or 28 May 1994, he took the Accused across the River Akagera as he (the Accused) was fleeing from Rwanda to Tanzania. He added that he never heard that anyone was prohibited from crossing the River Akagera during that period.[58]

Wednesday, 13 April 1994

67. **Prosecution Witness TAS**, a Hutu woman married to a Tutsi, who knows the Accused very well and identified him in court, testified to having seen him near Nyakarambi market around 10 or 11 a.m. on Wednesday, 13 April 1994, accompanied by Rusumo communal policemen. Through a megaphone, the Accused invited the population to assemble behind the stores, beside the market. The policemen, who were armed, were in the vehicles, while one of them, Kazoba, also armed, had come down and was beside the Accused. Eighty to one hundred people, almost all of whom were Hutu, and some *Interahamwe*, were assembled there. Addressing the crowd, the Accused asked them to be vigilant and make sure no one escaped, adding that they should follow the example of Rukira *commune*, pointing to burning houses there, which were visible from Nyakarambi market. The witness and a Tutsi friend, who was beside her, felt targeted by those statements and decided to leave the place. Witness TAS pointed out that she had interpreted the *bourgmestre*'s statements to mean that killings should begin, as was the case in the other *commune*s. Later, in the evening, while she was hiding in a bush, below a road where Kazoba was passing, though she could not see him, she heard him, as she recognized his voice, telling someone that as from 12 noon the following day, Thursday 14 April, there would not be a single Tutsi alive, for the Accused had asked that they should all be killed, starting with the women called Marie and Béatrice, his tenants. Witness TAS added that earlier in the day, the Accused had driven away people who had wanted to take refuge in the Rusumo *commune* office.[59]

68. Witness TAS further testified that after President Habyarimana's death, there were secret meetings to which she was not invited because she had been married to a Tutsi, and that the killing of the Tutsi had occurred on 12 April 1994 in Kirehe and Kigina *secteur*s.[60]

[56] T., 16 October 2003, pp. 18 to 21.
[57] T., 13 October 2003, pp. 26 to 27, 28 to 29, and 29 to 30.
[58] T., 13 October 2003, pp. 35 to 37 and 40 to 41.
[59] T., 5 August 2003, pp. 10 to 12, 13 to 17, 28 to 37 and 53 to 55.
[60] T., 5 August 2003, pp. 15 to 16.

69. **Witness TAW** testified that on 13 April 1994, after visiting, around 9 a.m., the house he owned in Nyakarambi, and having asked the tenants to leave, the Accused got a megaphone from the *commune* office and asked the police to assemble the people who were at Nyakarambi market square. The Accused told those assembled that it was forbidden to leave a *secteur* for another, that roadblocks should be mounted to intercept those trying to flee, that any person coming from another *commune* should be denied access to Rusomo *commune*, and that night patrols should be carried out at roadblocks. The witness testified that the Accused, pointing to burning houses in Rukira *commune*, told the people: "This is what is happening in Rukira. Go and ensure your own security. This is how things are. Each person must ensure their own security". According to Witness TAW, that speech was a ruse, for in reality, the Accused was trying to reassure and divert the population, so that no one would try to flee: "He was seeking to distract the local population". Witness TAW testified that there was a plan of which the Accused was aware: the *Interahamwe* were supposed to leave Kibungo and come and kill the Tutsi at the marketplace.[61]

70. Witness TAW explained that the attack on Nyakarambi market square did not take place that morning and that around 2 p.m., "those who were there" were discouraged. Messengers from Kibungo had announced that the attack would not take place because the attackers, notably the *Interahamwe* led by Cyasa, on their way to Rusumo to launch an attack on Nyakarambi, had learnt that in Rukira *commune* the *bourgmestre* and his policemen had objected to the massacre of the Tutsi, and had decided to go there.[62]

71. **Defence Witness YCW**, a Hutu, testified that on 13 April 1994, while he himself was speaking with other traders in front of his store in Nyakarambi, the Accused told him the extent to which he was overwhelmed by the events and that it was in his own interest to flee. There and then, some hooligans openly threatened to attack the *bourgmestre*, calling him an *Inkotanyi* accomplice.[63]

72. **The Accused** testified that on 13 April 1994, after a house near the River Akagera had been attacked by some bandits, he went there to assess the situation and referred the matter to the Public Prosecutor's Office. The Accused returned to the communal office around 1 p.m. In Nyakarambi he found a tense situation, because of the presence of the same bandits, who had been sent from Kibungo by Cyasa.[64] The bandits attacked him verbally, comparing his house to CND, the building in Kigali that housed an RPF battalion. The Accused then advised his Tutsi driver to flee to Tanzania. The Accused went to the *sous-préfet*'s house, for he thought that his life was in danger. He wanted to flee.[65]

[61] T., 20 August 2003, pp. 27 to 30; T., 21 August 2003, pp. 9 to 10.
[62] T., 20 August 2003, pp. 28 to 30.
[63] T., 16 October 2003, pp. 20 to 23.
[64] Also spelled Kasa in the French transcript, see: T., 21 November 2003, p. 35.
[65] T., 21 November 2003, pp. 34 to 37.

Thursday, 14 April 1994

73. **Prosecution Witness TBJ**, a Hutu,[66] who was arrested in 1997 on charges of genocide committed in 1994 and provisionally released in 2003 pending his appearance before the *gacaca* Court, testified that between 10 a.m. and 12 noon on Thursday, 14 April 1994, he saw the Accused arrive at the Rwanteru commercial centre. The Accused was accompanied by policemen, including Sergeant Rukara, Assistant Sergeant Kazoba and Berakumenyo. Speaking to the witness and friends with whom he was having a drink, the Accused was surprised that they were drinking beer, whereas they should be participating in "the struggle against the enemy",[67] that is, hunting down the Tutsi and looting their belongings. At the commercial centre where the Accused made that statement, there were at least one hundred people. Juvénal Ntamwemizi, nicknamed "Sergeant" who presented himself as the Accused's envoy or [proxy],[68] formed two groups of assailants. One of them stayed in the village and attacked Ludovico Buhanda's house and property.[69] The other group, composed of about 50 to 60 people, including the witness, armed with clubs and machetes, followed the *bourgmestre* to Kigarama, 10 kilometres and one-hour's walk from the commercial centre. In the group were two soldiers with guns and a few assailants armed with grenades. In Kigarama, the assailants, whom some other people had joined on the way and who now numbered between 150 and 200, were led by a young man called Bamenya to the house of Callixte, rumoured to be Tutsi. They looted his house and captured his cows. The witness testified that the purpose of the attack was clearly to "carry out the instructions" given by the Accused.[70]

74. **Prosecution Witness TBH** testified that between 12 noon and 1 p.m. on 14 April 1994, he saw the Accused arrive at the Rwanteru bus stop in a *commune* vehicle accompagnied by the police. The witness testified that from his vehicle, the Accused shouted at the many people who were gathered there in these terms: "You are there doing nothing while the others have finished. Go, take your machetes let no Tutsi live tomorrow morning". The witness explained that "at those words, the population took machetes".[71] Shortly after the speech, Witness TBH saw traders closing their stores, the population, armed with machetes, set out with the Accused for Kigarama. Witness TBH also heard that the Accused had given instructions to Juvénal Ntamwemezi, a retired army sergeant.[72]

75. Witness TBH testified that since he himself heard what the Accused had ordered, and since he could not afford to disobey him, he invited other members of the public to go and kill the Tutsi in Bugarura *cellule* and decided himself to take part in the massacres, in order to avoid being blamed for disobedience and in order to "save face".[73]

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[66] T., 18 August 2003, pp. 68 to 69.
[67] T., 18 August 2003, pp. 68 to 69.
[68] T., 19 August 2003, pp. 3 to 4.
[69] At the hearing, Buhanda was sometimes referred to in the French transcript as Ludovico or Ludoviko and sometimes Louis.
[70] T., 18 August 2003, pp. 71 to 72; T., 19 August 2003, pp. 1 to 5 and 27 to 28.
[71] T., 25 August 2003, pp. 27 to 28.
[72] T., 25 August 2003, pp. 28 to 30.
[73] T., 25 August 2003, pp. 29 to 31.

76. Witness TBH explained that during the massacres that lasted from 14 to 16 April 1994, some Tutsi were killed in all the *cellules* in Rusumo. He put the death toll at between 300 and 400. He added that, in Rugando *cellule*, 57 Tutsi were locked up in their houses by the Hutu and shot dead by soldiers who had been led to those houses by the Hutu. Witness TBH further testified that the massacres were initiated by the *bourgmestre* who had the policemen's support. The witness added that the *bourgmestre* did not punish any attacker.[74]

77. **Prosecution Witness TBK** is a Hutu[75] who was arrested in 1997 but provisionally released in 2003 for pleading guilty to the murder of one person, and who is awaiting trial by the *gacaca* Court. He testified that around 3 p.m. on Thursday, 14 April 1994, he saw the Accused in Musaza, at the Kanyinya commercial centre, Rusumo. The Accused arrived in a white double-cabin vehicle accompanied by four persons, including two uniformed policemen, Berakumenyo who was carrying a gun, a soldier and a driver. The Accused told a group of about ten people, including the witness: "Others have already completed their work. Where do you stand?".[76] When some people asked what he meant by 'work', Berakumenyo pointed to a woman selling sorghum beer, promising to demonstrate to them that the woman was Tutsi. When he was told that she was not Tutsi, she was spared. The Accused then said that anyone who looked like a Tutsi should be killed immediately, and he left aboard his vehicle for Nganda market. Once the Accused left, two young demobilized soldiers from the region, Nkaka and Sendama, present at the commercial centre, carried out his instructions. As early as 15 April, these two young people, who had weapons, mobilized the local population to kill, loot and destroy. The witness stated that the targets of the assailants' attacks were the Tutsi, in line with the instructions given by the Accused. The witness himself took part in the Muyoka attacks, where about 100 persons allegedly died. Witness TBK added that on 15 April he went out, armed with a bow which he used for hunting, but that it was only on 16 April that he killed a Tutsi whom he knew.[77]

78. **Prosecution Witness TBI** is a Hutu[78] who, in 1994, was residing in Rusumo *commune*. He was arrested in 1997 for killing three people, a charge he has denied. After he had confessed to other crimes, he was provisionally released in 2003 and is awaiting to make his appearance before the *Gacaca* Court.[79]

79. Witness TBI testified that he saw the Accused around 4 p.m. on 14 April 1994 at the Gasenyi commercial centre. The Accused, who was travelling in a white double-cabin "Hilux" belonging to Rusomo *commune*, was accompanied by communal policemen, armed with guns, and by a criminal investigations Officer (IPJ) from Rusomo. The Accused addressed a crowd of about forty people at the centre, urging them to kill the Tutsi and throw their bodies into the river. He also ordered the boatmen to remove their boats from the River Akagera, so as to prevent the Tutsi from using them to run away. After the speech, Witness TBI heard the Accused instructing André Nyandwi to make sure that the local population carried out the orders he had just given. Witness TBI stated

[74] T., 25 August 2003, pp. 30 to 32.
[75] T., 19 August 2003, pp. 34 to 36.
[76] T., 19 August 2003, pp. 40 to 41.
[77] T., 19 August 2003, pp. 38 to 42, 44 to 46, 48 to 51 and 59 to 60.
[78] T., 18 August 2003, p. 6.
[79] T., 18 August 2003, pp. 6 to 11.

that he, and Rwandans as a general rule, have a high respect for authority, and also that he obeyed the *bourgmestre*'s instructions. A small number of Tutsi who were at the Gasenyi centre during the speech immediately understood that they were threatened and tried to run away. Certain Hutu hid some Tutsi, while the local population went after them in order to kill them, attacked and destroyed their houses and looted their belongings. According to Witness TBI, the Hutu had no choice but to start looting, setting houses ablaze and killing cattle belonging to the Tutsi, as soon as the *bourgmestre*'s speech ended. Witness TBI was also one of the looters. He, however, helped two Tutsi friends to escape before killing others. After the Accused's speech, the policemen and the criminal investigations Officer (IPJ) asked the people to carry out the instructions.[80]

80. Witness TBI further testified that the Accused had given specific instructions concerning the *conseiller* of his *secteur*, a Tutsi: the instruction to kill all the Tutsi did not apply to him or to his family. The witness explained that the *conseiller* is still alive and that his property was not looted.[81]

81. The Accused testified that on 14 April 1994 he was home and did not go out. He had told his family not to tell anyone that he was home. He did not want to flee and was waiting for the authorities to do something for him.[82]

82. **Defence Witness RDR**, a Hutu,[83] testified that he did not see the Accused or any other official on that 14th day of April 1994, and maintained that neither the *conseiller* of his *secteur* nor *Bourgmestre* Gacumbitsi held any meeting in April 1994 in his village.[84]

3. Discussion and Findings

83. The Chamber finds that the testimonies of Witnesses TAW and TBH largely corroborate each other. The Chamber has, however, noted a few minor discrepancies between their testimonies: the date on which invitations for the meeting of 9 April 1994 were sent out, the number of people who attended the meeting, and whether a plan for weapons distribution had been discussed at such meeting. The Chamber finds that these discrepancies can be explained by the time that has elapsed since the events, and by the locations from which each of the witnesses observed the same events.

84. The Chamber finds Witness TAW to be credible. He gave a reliable account of the activities of the Accused between 7 and 13 April 1994, when the witness fled to Tanzania. The discrepancy between his testimony before the Chamber and his previous statement as to the content of the message he allegedly left with the Accused at the time of his escape to Tanzania is not such as to seriously cast doubt on the truthfulness of his prior account of events. Witness TAW refrained from exaggerating his account of events in order to hurt the Accused. For example, he acknowledged that his certainty as to there being weapons in the boxes that were loaded onto communal vehicles on 10 April 1994,

[80] T., 18 August 2003, pp. 15, 17 to 22, 32 to 34 and 37 to 38; see also Exhibit P12.
[81] T., 18 August 2003, p. 45 to 46.
[82] T., 21 November 2003, pp. 38 to 40.
[83] T., 21 October 2003, pp. 42 to 43 and 48 to 49.
[84] T., 21 October 2003, pp. 47 to 49.

in Kibungo camp, did not result from personal observation, but was rather based on inference and subsequent information.

85. Lastly, the Chamber finds that no evidence tendered showed that the witness in question was biased against the Accused, as the Defence alleges.[85] Neither the witness's demeanour nor his testimony suggested that he fabricated his account in order to implicate the Accused.

86. The Chamber recalls that Witness TBH is an alleged accomplice of the Accused. It also recalls that the Accused removed Witness TBH from an official position, as the witness acknowledged. Thus, the Chamber assessed his evidence with caution. Having carefully examined Witness TBH's evidence, the Chamber finds, however, that his account of the meeting of 9 April 1994 and of the subsequent events implicating the Accused is credible and reliable, and that his testimony does not appear to have been born of any resentment towards the Accused. The Chamber cannot entertain, in the absence of evidence, the Defence's allegation that Rwandan authorities manipulated Witness TBH.

87. The Chamber is of the opinion that Witness TBH's loss of his Rwandan civic rights would not, per se, warrant, as the Defence alleges,[86] the dismissal of his evidence by this Tribunal, whose Statute and Rules of Procedure and Evidence do not subject the admissibility of evidence to requirements of Rwandan national law.

88. The Chamber finds Witnesses TAS, TBJ, TBI and TBK to be credible. Their evidence reflects a consistent account of events and does not contain facts that would cast doubt on their credibility. Their evidence shows, together with the evidence of Witnesses TBH and TAW, that after the meeting of 9 April 1994, the Accused travelled every day within and without Rusumo *commune* either to meet with *gendarmerie* officials or the *Interahamwe*, or to ensure that the orders given at the 9 April meeting were properly executed, or to urge the people of Rusumo to join in the fight against the "enemy", and in the extermination of the Tutsi.

89. The Chamber has carefully assessed the evidence of the Accused and of other Defence witnesses. In light of the reliable and cogent evidence adduced by the Prosecution about the activities of the Accused between 7 and 14 April 1994, the Chamber finds that the Defence evidence is not such as to cast any doubt over its subsequent findings.

90. Based on Witness TAW's evidence, the Chamber finds that on the morning of 7 April 1994, the Accused went to the Rwanteru provisional *gendarmerie* camp, where he met Major Ndekezi. During a conversation held in Witness TAW's presence, Major Ndekezi explained to the Accused that the Tutsi had to be killed in order to stop the war. That same day, the Accused had a conversation with Major Nsabimana at the Rusumo Falls camp and, when he returned to the communal office, *Gendarmerie* Colonel Rwagafirita visited him.

[85] Defence Closing Brief, paras. 562 to 593.
[86] Defence Closing Brief, paras. 448 to 466.

91. On 8 April 1994, the Accused went to Kibungo where he took part in a meeting in the presence, among others, of the *préfet* of Kibungo, *Gendarmerie* Colonel Rwagafirita, local political party representatives, and local *Interahamwe* leaders, including a certain Cyasa, and other *bourgmestre*s of the same *préfecture*.

92. It is not disputed that the Accused, as *bourgmestre* of Rusumo *commune*, convened a meeting of the *conseillers* of the *secteur*s of the *commune* on 9 April 1994.

93. The Chamber finds that on 9 April 1994, the Accused chaired a meeting that was held in the IGA room of Rusumo *commune* in which all the *conseillers* of the *secteur* of the *commune*, with the sole exception of a Tutsi *conseiller*, took part, as well as local MRND leaders, Edmond Bugingo and Justin Manayabagabo, respectively chairman and local secretary of the party. The Accused asked the *conseillers* to organize, in their respective *secteur*s between 9 and 12 April 1994, meetings which they were to hold in secret from the Tutsi. During the meetings, they had to tell the Hutu to kill all the Tutsi, so that the *Inkotanyi* would no longer have any accomplices.[87]

94. Since the evidence of Witness TAW, who did not attend the meeting, was not corroborated and contradicted the evidence of a direct witness, Witness TBH, the Chamber can only find that the issue of weapons distribution was discussed during the meeting of 9 April 1994.

95. The Chamber finds, on Witness TAW's evidence, that on 10 April 1994 the Accused, who was accompanied by the communal police, went in a convoy of three vehicles to the Kibungo *gendarmerie* camp where he met Colonel Rwagafirita. The Accused was delivered 105 boxes, which he had loaded onto Rusumo communal vehicles. The circumstances of delivery, as well as the information collected by Witness TAW from one of the consignees of the boxes, lead the Chamber to find that they contained weapons, without being able to determine which type. Upon his return to the communal office in Rusumo, the Accused delivered the boxes or had them delivered to different locations in the *commune*.

96. On the evidence of Witness TAW, the Chamber finds that on 11 April 1994, the Accused visited several places in Rusumo *commune* with Majors Ndekesi and Nsabimana and *Interahamwe* leader Cyasa. He continued visiting various *secteur*s in Rusumo *commune* on 12 April 1994 to verify whether the *conseillers* had held security meetings with the local population. The same day, he met André, the local CDR leader, in Gasenyi, and reiterated his request, which was made for the first time on 10 April, to not allow people to flee to Tanzania.

97. On the evidence of Witnesses TAS and TAW, the Chamber finds that on the morning of 13 April 1994, at Nyakarambi market, the Accused, accompanied by communal police officers, exhorted a crowd, through a megaphone, to ensure its own security, gave it security instructions and also ordered it to let no one escape. Such orders, addressed to a Hutu majority, were designed to prevent the Tutsi from escaping from the attacks and to prepare the Hutu population for the elimination of the Tutsi.

[87] In 1994, the word *Inkotanyi* was used to designate, in particular, RPF military forces, which had been waging war since 1990 against the regime of President Habyarimana.

98. On the basis of Witness TBJ's evidence, the Chamber finds that on 14 April 1994, the Accused, accompanied by communal police officers, went to Rwanteru commercial centre, where he addressed about one hundred people and incited them to arm themselves with machetes and to participate in the fight against the enemy, specifying that they had to hunt down all the Tutsi. After his speech, he went towards Kigarama, followed by a part of the population. When they arrived at Kigarama, the assailants attacked the house and property of a Tutsi called Callixte and plundered property belonging to other Tutsi. Led by a certain Juvénal Ntamwemizi, a person who was identified as the representative of the Accused, another group, comprising those who were also present when the Accused gave his speech at Rwanteru, attacked the property of a Tutsi called Buhanda. The Chamber considers that such attacks were the direct consequences of the inciting words uttered by the Accused at the Rwanteru commercial centre, and that the attack at Kigarama was carried out under his personal supervision, whereas the attack on Buhanda's house was carried out under the supervision of his representative.

99. On the basis of Witness TBK's evidence, the Chamber finds that in the afternoon of 14 April 1994, the Accused, accompanied by armed communal police officers, went to the Kanyinya commercial centre, where he addressed a group of about ten people and asked them: "Others have already completed their work. Where do you stand?". After he had left, a group of assailants, led by two demobilized soldiers, Nkaka and Sendema, began attacking Tutsi targets. On the basis of Witness TBI's evidence, the Chamber finds that on 14 April 1994, after addressing the crowd at the Kanyinya commercial centre, the Accused, still accompanied by communal police officers, went to the Gasenyi trading centre where he addressed about forty persons, most of whom were Hutu. He urged them to kill all the Tutsi and throw their bodies into the River Akagera. He also asked the boatmen to remove their boats from the river so that the Tutsi should not use them to cross the river.

100. The Prosecutor has established that on various occasions between 7 and 12 April 1994, Sylvestre Gacumbitsi conversed with Major Ndekezi of the Rwanteru camp. It is also established that the Accused instructed André, a CDR official, not to allow anyone to escape to Tanzania using the River Akagera. On the evidence adduced, the Chamber finds by inference that the purpose of the instructions given by the Accused was to prevent people, who wanted to leave the *commune* during the attacks that were under way, from using the river. The instructions were indeed directed against the Tutsi, who had been targeted since the meeting of 9 April 1994. The fact that, during the period in question, some people, including Tutsi refugees, were able to cross the river to seek refuge in Tanzania, cannot invalidate the finding made above which related to the objectives contemplated by the Accused and not to their consequences.

101. The Chamber finds that, during the meeting of 9 April 1994, the Accused instructed the *conseillers* of the *secteur*s and Hutu political leaders to tell the Hutu population to separate themselves from the Tutsi and kill them. On several occasions, in private and in public, he gave instructions for the massacre of the Tutsi. He publicly incited the Hutu population to kill the Tutsi.

102. The Chamber finds that on 10 April 1994, Sylvestre Gacumbitsi met Colonel Pierre Célestin Rwagafirita at the Kibungo military camp, where the former received

boxes of unidentified weapons. Also present at the camp to receive similar deliveries were other *bourgmestre*s of Kibungo *préfecture*. Sylvestre Gacumbitsi then delivered or had these boxes delivered to several locations in the *commune*. However, there is no direct evidence of weapons distribution to the local population to kill the Tutsi, as alleged in paragraph 9 of the Indictment. Nonetheless, the Chamber considers that, based on all the evidence adduced and on the circumstances, it can draw the inference that weapons were distributed to those who were implicated in attacks within the *commune*. The Chamber notes that during the attacks in Nyarubuye, the assailants had various types of weapons, including machetes, clubs, grenades and guns.

103. The Chamber finds that the reception and redistribution of boxes of weapons in the *commune* shared the same objective as the meetings and rallies in which the Accused participated, or which he organized, namely, the practical organization of and the preparation for the massacre of Tutsi who were in Rusumo in April 1994.

104. The Prosecutor has established that during the week of 11 to 17 April 1994, the Accused drove about in Rusumo aboard vehicles belonging to the *commune*, and that the communal police often accompanied him. The purpose of these movements was to visit administrative officials, especially the *conseiller*s of the *secteur*s, and military and local party officials, as well as to participate in some meetings. During these visits and meetings, the Accused discussed the security situation, distributed boxes of weapons and, either personally or through the *conseiller*s of the *secteur*s, incited the Hutu to separate themselves from the Tutsi and kill them.

105. The Prosecutor has not shown beyond a reasonable doubt that during these movements that occurred before 15 April 1994, the Accused was allegedly often accompanied by the *Interahamwe*, or that his vehicle often carried a quantity of machetes, as alleged in paragraph 11 of the Indictment. However, the Chamber finds that on 14 April 1994, the Accused met Cyasa, an *Interahamwe* leader, in Kibungo *préfecture* and took part with him in meetings with military officials.

106. The Prosecutor has not proven beyond a reasonable doubt that during the period of 7 to 14 April 1994, that is before the massacre at Nyarubuye Parish on 15 April, Sylvestre Gacumbitsi allegedly visited various *cellules* to supervise the progress of the massacres. However, it is established that the movements of the Accused were aimed at inciting the population to commence the massacres in the places visited, and at mobilizing the Hutu against the Tutsi.

107. The Chamber finds that Sylvestre Gacumbitsi played a major role in organizing a campaign of incitement against Tutsi civilians in Rusumo *commune*. In the course of such campaign, he personally and publicly incited Hutu civilians to isolate themselves from their Tutsi neighbours and kill them and, generally, to kill the Tutsi who were within the territory of Rusumo *commune*.

C. PARAGRAPHS 15 TO 19 AND 27 OF THE INDICTMENT (ATTACKS ON NYARUBUYE PARISH)

1. Allegations

108. Paragraphs 15 to 19 and 27 of the Indictment allege that:

> 15. Between the 15th and 17th April 1994, Sylvestre Gacumbitsi led an attack on the *paroisse* of Nyarubuye, where numerous Tutsi and Hutu refugees had gathered. Sylvestre Gacumbitsi approached the church in a caravan of several vehicles of communal police and *Interahamwe*. Many of the attackers wore berets and *kitenge* uniforms bearing MRND *Interahamwe* insignia. A quantity of machetes was unloaded from the vehicles and placed before the church. Sylvestre Gacumbitsi addressed the crowd with a megaphone and ordered Hutu refugees to separate from Tutsi. Once the groups were separated the attacks began.
>
> 16. The communal police and *Interahamwe* surrounded the church compound. Sylvestre Gacumbitsi ordered the Hutu to attack the Tutsi, incorporating former Hutu refugees in attacks against the Tutsi led by communal police and *Interahamwe* under his direction.
>
> 17. Communal police and *Interahamwe* attacked the Tutsi refugees with grenades and firearms and traditional weapons. Other attackers used the machetes previously supplied by Sylvestre Gacumbitsi.
>
> 18. On the following day, Sylvestre Gacumbitsi, accompanied by Rubanguka, the President of the Rusumo Court, and a group of attackers returned to the devastated church compound at Nyarubuye armed with spears, machetes, and bows and arrows. Led by Rubanguka, the attackers finished off the survivors lying among the corpses. Afterwards the attackers looted the church compound, removing cupboards, tables, radios, beds and clothing.
>
> 19. Almost all of the Tutsi refugees, comprising several thousands, at Nyarubuye *paroisse* were killed.
>
> (…)
>
> 27. Approximately between 15 and 18 April 1994, Sylvestre Gacumbitsi commanded, facilitated or participated in attacks upon civilian Tutsi refugees that had gathered at Nyarubuye *paroisse*. Sylvestre Gacumbitsi transported, or facilitated the transportation of, communal police or *Interahamwe* or weapons to Nyarubuye *paroisse* and led attacks against civilian Tutsi by his own example or by ordering and directing the attackers to kill the refugees.

2. Evidence

15 April 1994

109. **Prosecution Witness TAQ** is a young Tutsi woman who lived in Rusumo in 1994, and who personally knew the Accused. She was pregnant in April 1994.[88] She fled the killings carried out against the Tutsi in Nyarutunga and took refuge at Nyarubuye Parish compound, with members of her family and her neighbours, at about 4 p.m. on April 14 1994. There, she found thousands of civilians, some of whom were natives of the *communes* bordering on Rusumo, such as Rukira, Birenga

[88] T., 29 July 2003, pp. 42 to 45 and 52 to 53.

and Kigarama. She learned that these people had fled attacks carried out against the Tutsi. The number of refugees rose again between 14 and 15 April 1994.[89]

110. Witness TAQ testified that at about 8 a.m. on 15 April 1994, she saw some youths arrive at the parish compound, wearing banana leaves on their waists and branches of eucalyptus on their heads, and armed with clubs, sticks and bows. Among them, she recognised one Bagaruka and a soldier known as Lyamugwiza in the company of *Conseiller* Isaïe Karamage. She testified that she believed they were *Interahamwe*, because of their attire, and because she had seen some of them during the attacks against the Tutsi at Nyarutunga the previous day. The people around her told her that those people were *Interahamwe*. She explained that they were "members of the local population" in that they were ordinary citizens, and that she knew some of them. Although those people were instilling fear into the refugees, *Conseiller* Karamage told them, before he left, not to leave the parish compound. The *Interahamwe* remained behind, trying to get bribes from the refugees, who refused to give them money.[90]

111. Witness TAQ further testified that at around 3 p.m. on 15 April, while she was in front of the priests' office in the parish compound near the church, she saw the white double-cabin vehicle belonging to Rusumo *commune* pull up in front of the parish compound. In the vehicle, she saw the Accused, who was in civilian clothes and wearing glasses, as well as other people, including the driver of the vehicle and a young man called Augustin. In the back of the vehicle, she saw machetes and uniformed communal police, including Berakumenyo and Kazoba, carrying guns. The *commune* vehicle was followed by two vehicles decorated with branches and carrying young people, dressed in the same peculiar way as the *Interahamwe*, wearing banana leaves and carrying sticks, grenades and clubs. They sang: "Let's exterminate them". Other vehicles followed, although the witness could not see them since the three vehicles that were in front were obstructing her view. Witness TAQ explained that she and the other refugees were heartened by the arrival of the Accused. They thought that he would restore security, as the *Interahamwe* were threatening to kill them. She saw him alight from his vehicle and head towards the refugees, who were also coming towards him.[91]

112. Witness TAQ explained that three refugees – Murefu, an old teacher, Simon Buhonogo and Rujigena, who were all Tutsi – enquired from the Accused as to what the Tutsi had done and why they were being killed. She too approached him at that particular moment. She heard him reply to the three Tutsi furiously that he had no answer to give them, because "the Tutsi' hour had come". She then saw him take a machete from an *Interahamwe* and use it to strike Murefu on the neck. Murefu dropped dead immediately. It was then that a young man, whom the witness did not know, allegedly "cut up" Simon Buhonogo with the machete, while a policeman shot Rujigena. Buhonogo and Rujigena were behind Murefu.[92]

[89] T., 29 July 2003, pp. 47 to 48, T., 30 July 2003, pp. 7 to 10 and 27 to 29.
[90] T., 29 July 2003, pp. 46 to 49; T., 30 July 2003, pp. 12 to 13.
[91] T., 29 July 2003, pp. 48 to 52.
[92] T., 29 July 2003, pp. 51 to 54; T., 30 July 2003, pp. 21 to 22.

113. Witness TAQ testified that she heard the Accused tell the *Interahamwe* surrounding him to act quickly so that the refugees should not flee. While the refugees were being massacred with machetes, guns and grenades, she and some others fled towards the presbytery. Some people fell and "others ran over them".[93] Once she was in the presbytery, near a doghouse in which she hid later, she heard the Accused asking "the Hutu who were within the area to come out".[94] She explained that she could not see the Accused at that particular moment, but could hear him speaking on the megaphone. A young woman allegedly came out, followed by a child who had to go back after being told that he was not Hutu. Immediately after the young girl came out, grenades were thrown into the crowd.[95]

114. Witness TAQ further testified that in the presbytery compound, she saw *Interahamwe* looting, carrying away vehicles and motorcycles. When the grenades exploded, she saw people being attacked with machetes; everyone was screaming. She fainted soon after, in the dog house where she was hiding and others fell on her. She regained consciousness only at around 11 p.m. or midnight, when it was raining. She was under the bodies of many seriously wounded people. Her elder sister's mother-in-law,[96] who was also wounded, helped her to move away from the bodies. She saw many wounded and dying people, people who were screaming, many intermingled bodies of men and women. Not far away, a wounded child and three girls had survived. After some time, at around 3 p.m., the group of survivors, including the witness, went to a classroom near the priest's house, where they spent the night.[97] Witness TAQ left the parish compound the following day, 16 April 1994, at about 8 a.m.[98]

115. Witness TAQ testified that more than 100 members of her extended family died during that attack. They included her elder sister and her seven children, her younger sister with her two children and husband, her aunt and her uncles, one of whom had a family of about 70 people, including children and grandchildren. Witness TAQ explained that the people who were attacked on 15 April were Tutsi. She testified that she believed the Hutu who were among the refugees left the parish before the attack, after being asked to do so. She further testified that they are still alive, she sees them, and they talk about it from time to time. They told her that they

[93] T., 29 July 2003, pp. 53 to 54.
[94] T., 29 July 2003, pp. 52 to 55; T., 30 July 2003, pp. 25 to 26.
[95] T., 29 July 2003, pp. 54 to 55.
[96] According to the transcript of 29 July 2003, pp. 56 to 57, the witness mentioned her mother during examination-in-chief. In cross-examination, she explained that she was rather referring to the 'mother-in-law of her older sister' (T., 30 July 2003 pp. 26 to 27). The Chamber recieved from the Language Section a corrigendum to the transcript that the Prosecutor had sent to the Section, dated 16, 18 and 19 December 2003, in response to an *ex parte* request that the Prosecutor had sent directly to the Section. The corrigendum showed in essence that the witness had used a more general term than 'mother', which the Language Section replaced with 'old woman'. The Prosecutor received this memo before filing his closing brief, whereas the Chamber and the Defence received a copy thereof only on 2 June 2004. While stressing the belatedness of this communication, the Chamber considers that as the witness herself gave additional information in cross-examination on the issue of her 'mother', the memo in question is irrelevant to assessing her credibility.
[97] T., 29 July 2003, pp. 55 to 57.
[98] T., 29 July 2003, pp. 53 to 55; T., 30 July 2003, p. 30.

left the parish when they heard the Accused asking them to come out of the complex.[99]

116. Under cross-examination, Witness TAQ further testified that before the beginning of the massacres, when the Hutu were asked to come out of the crowd of refugees, two young men in *Interahamwe* attire went to the house of Louis, an old Hutu priest of Nyarubuye Parish, and evacuated him.[100] She testified that from her vantage point in front of the priests' house, the main entrance was visible "because it's quite close to the church".[101] She further testified that she could not remember the colour of the clothes that the Accused was wearing on 15 April 1994. Nor could she testify as to whether the glasses worn by the Accused on that day were prescription glasses or sunglasses. She however testified that those were the glasses the Accused usually wore.[102] She also testified that she did not know Cyasa, the *Interahamwe* from Kibungo. The Defence then reminded her that in her prior statement, she had described how Cyasa arrived at Nyarubuye Parish on 15 April 1994, in the company of the *Interahamwe*. In response, Witness TAQ maintained that she did not know Cyasa and explained that some refugees who were with her had mentioned Cyasa's name when they saw him arrive in a vehicle full of *Interahamwe*.[103]

117. **Prosecution Witness TAO** is a Tutsi man who lived in Rusumo in 1994, and whose wife and children died during the events of 1994.[104]

118. Witness TAO testified that he escaped the massacres committed by the *gendarmes, Interahamwe* and Hutu civilians against the Tutsi on 14 April 1994, at the Nyarutunga market place. That same day, around 4 p.m., he took refuge at Nyarubuye Parish, where he hoped to find his family. When he got there, he saw a crowd of between 20,000 to 30,000 people, Tutsi and Hutu. Some of them were natives of other *communes*, namely Mugesera, Muhazi, Rwamagana, Birenga, Rugera and Kibungo. When he arrived, he started looking for his family, whom he found only on 15 April between 1 and 2 p.m.[105]

119. Witness TAO testified that on 15 April 1994, while he was on the right flank of the parish compound in front of the church, he saw the Accused arrive in a white double cabin pick-up with a reddish or yellowish stripe on the sides belonging to Rusumo *commune*.[106] The Accused was in the company of people dressed in police uniform and carrying guns. The Accused was dressed in khaki-coloured clothes resembling those worn by *gendarmes* at the time. From where he was, Witness TAO could not see the policemen who were accompanying the Accused, until they had alighted from the vehicle. He saw many new machetes in the back of the Accused's vehicle, and bags in the front cabin. Witness TAO learned later that the bags contained grenades. He heard other vehicles arrive at the place, but could not see

[99] T., 29 July 2003, pp. 53 to 59.
[100] T., 30 July 2003, pp. 10 to 11.
[101] T., 30 July 2003, pp. 18 to 19.
[102] T., 30 July 2003, p. 18 to 20.
[103] T., 30 July 2003, pp. 22 to 23.
[104] T., 30 July 2003, pp. 46 to 53; T., 31 July 2003, pp. 4 to 5.
[105] T., 30 July 2003, pp. 53 to 54 and 61 to 62; T., 31 July 2003, pp. 11 to 12.
[106] T., 30 July 2003, pp. 52 to 53.

them.[107] He was watching the scene from a higher position, about 30 metres from where the Accused was.[108]

120. Witness TAO testified that when he saw the Accused arrive, he thought that the Accused had come to find out about the situation of the refugees at the church. Refugees allegedly went to meet him, but when he saw them, he ordered them to remain where they were. Some refugees, including three or four elderly persons, including a certain Murefu, allegedly went towards him. The witness heard the Accused tell one of the refugees aloud: "Do not move any closer, because the hour of the Tutsi has come". He also told him that he did not want to hear about their problems any more.[109] The Accused allegedly grabbed a machete from one of the *Interahamwe* and hit Murefu with it, while another person was "cut up" with the machete. Witness TAO, however, explained that he saw the Accused hit only one person, namely Murefu.[110] The Accused then told the policemen: "Open fire".[111] The policemen started shooting, while others, namely, *Interahamwe* whom Witness TAO had seen the day before at the Nyarutunga market place, used machetes. Grenades were also thrown.[112]

121. Witness TAO further testified that it was then that the Accused asked aloud the Hutu who were at the parish to separate themselves from the Tutsi, adding that the hour of the Tutsi had come. At the time of the attack, the *Interahamwe* were singing "Let's exterminate them".[113] Witness TAO then fled to a forest near the church, together with his children. When he looked back, he saw one of the attackers, Claver Muhirwa,[114] throw a grenade at the refugees. He testified that the attack subsided only around 7 p.m. that evening, while he was leaving the parish. He explained that there were fewer gunshots, although the screaming continued.[115]

122. Witness TAO testified that all the victims of the attack at Nyarubuye Church were Tutsi. His younger brother, his sister and one of her children aged 6 were killed during that attack, as well as 200 members of his extended family. They were all Tutsi.[116]

123. During cross-examination, the Defence pointed out that in his prior statement, Witness TAO had estimated the number of refugees who died at Nyarubuye Parish at 12,000 and not 20,000 to 30,000 people as he had testified to during cross-examination.[117] Witness TAO further testified that he did not see the Accused arrive at Nyarubuye Parish on 15 April 1994, but he heard his vehicle arrive there. Soon after, he saw the Accused and the six policemen who were with him.[118] When he saw

[107] T., 30 July 2003, pp. 51 to 65.
[108] T., 31 July 2003, pp. 14 to 16 and 22.
[109] T., 30 July 2003, pp. 53 to 54.
[110] T., 30 July 2003, pp. 53 to 54.
[111] On 2 June 2004, the Chamber received a corrigendum to this aspect of the testimony.
[112] T., 30 July 2003, pp. 53 to 54.
[113] *Ibid*.
[114] Also spelled Muhigirwa in the French transcript.
[115] T., 30 July 2003, pp. 54 to 55.
[116] T., 30 July 2003, pp. 55 to 56.
[117] T., 31 July 2003, pp. 12 to 14.
[118] T., 31 July 2003, pp. 12 to 14.

the vehicle, he concluded that the Accused and the policemen had arrived in it.[119] He further testified that from where he was, he could see what was inside the vehicle, in the back, but not inside the front cabin. He also testified that he saw Clavier Muhigirwa take a grenade from the Accused's vehicle, unpin and throw it. The witness then testified that the bags referred to in examination-in-chief were not in the cabin, but beside it. The Defence pointed out that the witness's prior statement was contradictory as to the Accused's reaction to the approaching refugees: when the crowd, feeling reassured, went towards the *bourgmestre,* he apparently reassured them that they were safe. Witness TAO did not deny making such statements, but he stuck to the testimony that he had given during his examination-in-chief. He explained that the Accused was wearing a khaki-coloured pair of trousers and shirt, but did not know whether it was a military uniform. He explained that when the attacks started, he hid with his wife and two children in a latrine belonging to CERAI school, about 200 metres from the Nyarubuye Parish compound and 40 metres away from the road.[120]

124. **Prosecution Witness TAX**, a young Tutsi woman who was 11 years old in April 1994 and lived in Rusumo, survived the attack at Nyarubuye Parish.[121] She saw the Accused in 1994, before the events of April and May, at a meeting held in the witness's *secteur*. She testified that the Accused had marks on his face resembling scars. She identified him at the hearing.[122]

125. Witness TAX testified that she saw the Accused at around 3 p.m. on Friday 15 April 1994 at Nyarubuye Parish, where she and members of her family, together with many other refugees, had taken refuge two days earlier. She was with the refugees outside in the convent compound, adjoining the presbytery, when she heard gunshots and screaming. Young men wearing leaves on their heads and armed with machetes, clubs and knives entered the convent compound, shouting, and started looting the refugees' property. The Accused arrived in the company of two men; the three of them were in civilian clothes. The Accused told the young men to stop looting, adding: "You know why we have come here. And when you strike at a snake you must begin with its head, and no one shall be spared".[123] The attackers then ordered the refugees, including the witness, to lie down, and the attack started. On cross-examination, Witness TAX further testified that it was the Accused who had asked the Hutu to come out of the crowd. A young man who had stood up in response to the call was allegedly hit and killed by a grenade that was thrown next to him. Witness TAX lost sight of her parents in the commotion that ensued, as the attackers attacked the refugees with machetes and grenades. She talked about despair and chaos. An attacker pierced her twice in the ribs. She fainted.[124]

[119] T., 31 July 2002, pp. 11 to 14.
[120] T., 31 July 2003, pp. 14 to 19 and 22 to 24.
[121] T., 31 July 2003, pp. 19 to 31 and 48 to 50.
[122] T., 31 July 2003, pp. 30 to 31, 43, and 52 to 53.
[123] T., 31 July 2003, pp. 31 to 34.
[124] T., 31 July 2003, pp. 33 to 37 and 58 to 59.

126. Witness TAX testified that the victims of the attack of 15 April in Nyarubuye were Tutsi, and that they were many in number. A number of her family members died in the attack, including her father, mother, two sisters and two brothers.[125]

127. **Defence Witness NG2** is a young man who lived in Rukira *commune* in 1994.[126] He testified that on 15 April 1994, people who had come from Rukira forced everyone they met on the way to arm themselves and to join their convoy, either on foot or by car, to Nyarubuye. The witness testified that at about 2.30 p.m., in Mulindi, Rukira *commune*, he was forced to get into one of the vehicles belonging to the attackers. He further testified that he was one of the first people to arrive at Nyarubuye Parish, near the dispensary where he and others alighted shortly thereafter. They were ordered to surround the parish so that nobody could get out. He himself was near the entrance to the parish. Someone known as "lieutenant" asked the "innocent" to come out of the parish. Four or five people, including an old man and a young woman, came out of the parish compound. The refugees started throwing arrows and spears at the attackers, who were very many. The attackers retaliated by shooting at the refugees and throwing grenades at them. Some of the attackers requested to get members of their families out, but the *gendarmes* continued to shoot. Many people died. After the shootings, the *gendarmes* ordered the attackers to go and get the property, and load it into their vehicles. The attackers took away a Suzuki vehicle belonging to the parish. During the attack, Witness NG2 saw neither the Accused nor Rusumo *commune* police officers, but only *gendarmes* from the Mulindi camp.[127]

128. Witness NG2 admitted that he looted, but he denied having killed anyone. He testified that he did not take part in any other attack up to his exile in May 1994. He also testified that he did not receive any weapons. He further testified that *gendarmes* had asked those who had been requisitioned to take their own weapons – machetes and clubs. Witness NG2 testified that he was not armed during the attack. When cross-examined on this point and confronted with his prior statement, of which the Prosecution read to him the following passage: "We were carrying household weapons, i.e., machetes, hoes, spears, arrows, while the *gendarmes* had firearms", he testified that the Defence investigator was wrong, and that he had only referred to other attackers. Furthermore, Witness NG2 denied having participated voluntarily in the looting. He testified that he loaded the loot into the *gendarmes*' vehicles, without taking away anything for himself.[128]

129. **Defence Witness ZHZ**, a Hutu man who lived in Nyarubuye in 1994, testified that from 9 to 14 April 1994, many refugees took refuge at Nyarubuye Parish, after fleeing acts of violence against the Tutsi in the neighbouring *communes*, particularly Rukira. Regarding those refugees, the authorities of Rukira had allegedly threatened the inhabitants of Nyarubuye for giving refuge to the accomplices of the President's murderers. On 14 April, both Hutu and Tutsi inhabitants of Nyarubuye defended themselves against the Rukira attackers, in Birembo. The group of "resistance

[125] T. 31 July 2003, pp. 35 to 37.
[126] T., 21 October 2003, pp. 16 to 17.
[127] T., 21 October 2003, pp. 18 to 26.
[128] T., 21 October 2003, pp. 22 to 26, 29 to 33 and 35 to 36.

fighters", including the witness himself, killed six attackers and arrested two others, namely Gisagara and Hakizamungu, who were important officials. While they were preparing to question them, eight *gendarmes* accompanied by some attackers arrived at the Mulindi camp. Instead of questioning them, they had Gisagara and Hakizamungu released, and attacked the people of Nyarubuye, including the witness, who managed to escape and take refuge in Nyabitare. Having escaped from another attack carried out on 15 April 1994 by people who wore banana leaves on their heads and were also natives of the region known as "*cuvette*" and of Nyabitare,[129] he returned to his area.

130. Defence Witness ZHZ further testified that in Nyarubuye, in the afternoon of 15 April, attackers, who had come in several vehicles from Birembo, Rukira *commune*, requisitioned him and many other inhabitants. Some of the attackers wore banana leaves. Others, namely, *gendarmes*, wore camouflage fatigues and red berets. Gisagara, whom Mulindi *gendarmes* had released the day before, was among them. When they got to the parish, the attackers from Birembo assembled the inhabitants of Nyarubuye. The refugees in the parish were shouting and insulting the attackers. A soldier by the name of "Lieutenant" asked one Kibwa, who had come from Kibungo, to call the innocent people who were in the parish. Kibwa complied and five girls and a young priest came out. The attackers asked the old priest, Louis Ntamezeze, to come out. The inhabitants of Nyarubuye remained behind, while the attackers from Birembo and *gendarmes* surrounded the parish. The attackers were armed with 'stream' rockets, while other attackers had grenades. The lieutenant gave a signal and the attackers from Birembo, and the soldiers, opened fire and threw grenades at the refugees. The witness and the other inhabitants of Nyarubuye who had remained at the back fled as soon as the attack began. The witness then went into hiding until RPF arrived on 28 April 1994. Witness ZHZ further testified that he neither saw the Accused nor witnessed the distribution of weapons at Nyarubuye Parish on 15 April 1994.[130]

131. **Defence Witness ZIZ**, a Hutu who lived in Rukira, Kibungo *préfecture*, in 1994[131], testified that he fled the attacks that had been going on in Rukira since 10 April, and went to Nyarubuye, where a friend lodged him from 14 April 1994. He testified that the attack on Nyarubuye Parish was launched in the afternoon of 15 April 1994 by people, led by *gendarmes* from the Mulindi camp located near Rusumo, who had come from *communes* neighbouring Rusumo (Rukira and Birenga). The men and youths from Nyarubuye were allegedly forced to participate in the attack, failing which they would have been considered as accomplices. The witness and his friend were beaten up and forced to accompany the attackers who told them that there was "work to do" at Nyarubuye Parish. Attackers and vehicles were already there. One of the *gendarmes* present, who was head of the Mulindi camp, located near the parish, led the operations, and gave the signal to attack. Before that, another leader from among the attackers ordered the "innocent" to come out of the compound. The refugees threw some arrows, spears and stones and the *gendarmes* retaliated by throwing grenades and by firing 'Stream' rockets and guns. The bodies of many

[129] T., 15 October 2003, pp. 7 to 9 and 19 to 20.
[130] T., 15 October 2003, pp. 19 to 25.
[131] T., 8 October 2003, pp. 5 to 7.

people of all ages and of both sexes, including children, lay in the parish compound. The witness and some other people fled and hid in the bush. He further testified that the Accused was not present and that the inhabitants of Nyarubuye who were gathered there thought he was dead. Defence Witness ZIZ also testified that he neither saw any official from Rusumo *commune* nor any communal police officers from Rusumo among the attackers of Nyarubuye Parish.[132]

132. In response to questions from the Bench, Witness ZIZ testified that the Tutsi were not the only ones targeted by the acts of violence that occurred in Rukira and Nyarubuye in April 1994, and that Hutu were also killed. He testified that the victims of the massacres were targeted for ideological reasons, and not because they belonged to a particular ethnic group. He admitted that he did not know the persons who did not share the attackers' ideology. He further testified that those who did not participate in the massacres were referred to as accomplices of those who were targeted. He could not testify as to whether those refugees who considered themselves to be innocent and came out of the parish at the request of the head of the *gendarmes,* prior to the attack, were Tutsi or Hutu. He stressed that he did not know those people and that it is not possible to tell one's ethnic origin from one's physiognomy.[133]

133. The **Accused** testified that on 15 April 1994, he was hiding in his house, about 30 km from Nyarubuye Parish, and that he feared for his life. Early in the morning of 16 April 1994, communal Sergeant Neza went to see him to report that people who had come in vehicles, including soldiers and civilians, had attacked the refugees at Nyarubuye Parish. Sergeant Neza told him that those people had come from Rukira *commune*, that they were led by *gendarmes* from Mulindi, a camp in Rukira *commune*, and that the attackers had forced inhabitants to participate in the attacks. Neza also told him that the attackers had come from Birembo, located between Rukira and Rusumo *communes.*[134]

134. "The **Accused** testified that he was "greatly saddened" by the news. He further testified that for about two minutes he could not speak, as he was hiding and there was nothing he could do. He testified that he had then asked Sergeant Neza to go and report the events to the *sous-préfet* of Kirehe and also call for him. The *sous-préfet* had a vehicle. The Accused further testified that the *sous-préfet* had come to fetch him and that they had both gone to the *sous-préfet*'s house to see what they could do about the situation. He then discussed his situation, which he considered to be "very critical", with the *sous-préfet*, stressing that he was being portrayed as an accomplice of the *Inkotanyi*, which is why he, just like the *sous-préfet*, was being sought after. The Accused further testified that he "immediately" asked the *sous-préfet* to send to the scene the sergeant, who acted as criminal investigation officer, "to see what he could do."[135]

135. The Accused testified that since the *sous-préfet*'s car had run out of petrol, a businessman known as Asarias accepted to provide them with a vehicle, which was

[132] T., 8 Octber 2003, pp. 8 to 33 and 36 to 39.
[133] T., 8 October 2003, pp. 32 to 33 and 36 to 37.
[134] T., 24 November 2003, pp. 1 to 4 and 29 to 31.
[135] T., 24 November 2003, pp. 1 to 4.

given to the sergeant who had been charged with the responsibility of finding out what was happening in Nyarubuye and reporting on the situation. After the sergeant had left with other policemen, the Accused returned home. In the evening, the sergeant confirmed that people had been killed at the parish. The Accused asked him if there were many victims. The Accused testified thus: "Because I knew that there were very few people". The sergeant replied that there was "not really" a great number of victims: between 800 and 1,000 people. The Accused further testified that in spite of the massacres at Nyarubuye Parish, security was better guaranteed in Rusumo *commune* than in the other *communes*, explaining that refugees were coming from those other *communes*, including Byumba and Kibungo, fleeing the *Inkotanyi* attacks.[136]

16 April 1994

136. **Prosecution Witness TAQ** testified that at around 8 a.m. on 16 April 1994, a group of *Interahamwe* led by Bagaruka and a group of soldiers led by Liamuguiza successively went to the classroom in Nyarubuye Parish building where she had taken refuge after the attack of 15 April. There were thirty refugees, including the witness, in the classroom. Bagaruka and Liamuguiza, each in turn, asked them who had authorised them to remain in there. They then left after asking them to remain on the spot. As he was leaving, Liamuguiza said that he was going to loot. The group of refugees decided to leave the classroom, and dispersed. The witness and other refugees went to the valley below. Witness TAQ saw Judge Rubanguka wandering amidst the many scattered bodies littering the parish. He was throwing pepper on the bodies to spot the survivors. The survivors were then beaten to death with clubs studded with nails. Witness TAQ left immediately after witnessing the scene.[137] During cross-examination, Witness TAQ testified that she witnessed this scene at around 8 a.m., just after leaving the classroom, while she was in front of the nuns' convent. She further testified that Rubanguka burned pepper in an incense burner, which he swung over the bodies.[138]

137. **Prosecution Witness TAO** testified that he saw the Accused on 16 April 1994 at Nyarubuye Parish, from the latrines of the CERAI primary school where he had been hiding with his wife and two children since 15 April 1994. His hiding place was 200 metres from the parish and 40 metres from the road. The Accused allegedly arrived in the company of Evariste Rubanguka, a judge at the canton court, and another person whom, as the witness learned later, was known as Gatete. He saw them enter a bar near Nyarubuye Parish, where the witness believed they spent about 30 minutes. After leaving the bar, the Accused, Evariste Rubanguka and Gatete then allegedly headed for the parish, together with many other people, all Hutu. As they approached the parish building, Witness TAO saw Rubanguka stick a spear into the body of someone who was "already dead". He saw Rubanguka carrying another object resembling a bottle, but which he could not identify from where he was, because of the distance.[139] Witness TAO testified that, contrary to the previous

[136] T., 24 November 2003, pp. 2 to 5.
[137] T., 29 July 2003, pp. 59 to 61.
[138] T., 30 July 2003, pp. 30 to 31.
[139] T., 30 July 2003, pp. 55 to 57; T., 31 July 2003, pp. 14 to 16, 18 to 19, and 22 to 24.

incident, he did not see what had happened after. He further testified that Rubanguka came out of the church holding an incense burner filled with pepper that he burned. Rubanguka then wandered among the corpses in the building. Those who were still alive started sneezing because of the smoke from the incense burner and, once they were discovered, they were finished off.[140]

138. **Defence Witness UHT**, a Hutu who lived in Rusumo in 1994,[141] testified that on 16 April 1994 at around 6 a.m. he and his brother-in-law were on their way to Rwanteru when they met a group of attackers wearing banana leaves. The attackers beat the refugees up and forced the refugees to follow them up to Nyarubuye Church, where they arrived at 7 or 8 a.m. He saw many corpses at the parish, as well as children who were roaming about, and who had allegedly survived the massacres. He also saw soldiers and people in clothes made out of *kitenge* material. The attackers then finished the survivors off with knives and clubs. One of those who was wearing a *kitenge*, and who was allegedly leader of the operation, was applauded by the others. At one point, Witness UHT saw a red vehicle allegedly belonging to the *gendarmes*. Around noon, he saw a pick-up, allegedly belonging to Rusumo *commune*, arrive at the parish. Uniformed communal policemen and three people in civilian clothes, including the driver, alighted from the pick-up. The Accused was not one of those in civilian clothes, since, as testified to by the witness, they all weighed less than 60 kg. Witness UHT managed to escape at about 2 p.m.[142]

139. As stated above,[143] the **Accused** testified that early in the morning of 16 April 1994, while he was hiding at his home, communal Sergeant Neza came and informed him about the Nyarubuye massacre. The Accused further testified that the *sous-préfet* came looking for him and that they both went to the *sous-préfet*'s house where they held a meeting. The *sous-préfet* sent communal policemen to Nyarubuye to assess the situation. After returning home, the Accused remained there waiting for the sergeant's report, which he received that same evening.[144]

17 April 1994

140. **Prosecution Witness TAX** testified that she saw the Accused around 9 a.m. on the Sunday following 15 April 1994 (17 April, by inference), when Nyarubuye Parish was attacked. Witness TAX testified that at around 7 a.m., *Interahamwe*, led by one Antoine and armed with bows, machetes, clubs and knives, had found a group of 15 Tutsi refugees in a classroom. The group comprised two adult men, children, women and young girls, including the witness. The attackers threw stones and small children at the bodies to discover survivors.[145] Then they gathered the 15 survivors, including the witness, on the lawn in front of the church. Two vehicles arrived. One of them was carrying *Interahamwe*, who alighted with their weapons. The other was carrying the Accused. The witness testified that the *Interahamwe* displayed their weapons when the Accused arrived. The Accused came out of the car and asked them

[140] T., 30 July 2003, pp. 56 to 58.
[141] T., 7 October 2003, pp. 4 to 5.
[142] T., 7 October 2003, pp. 4 to 15 and 22 to 23.
[143] See *supra,* paras. 130 to 132.
[144] T., 24 November 2003, pp. 1 to 4.
[145] T., 31 July 2003, pp. 37 to 38.

to turn around. The Accused then told them: "I do not want to repeat what I said before. Everybody should take up their weapons, and to kill a snake you have to aim at the head and spare no one."[146] The witness and other survivors begged in vain for mercy. Witness TAX testified that Ferdinand and Pascal, two attackers whom she knew well, handed her over, despite her pleas, to Antoine, who hit her with a club on the right hand until her bone became visible, and on her shoulder. He then hit her again twice on the head with a machete. Witness TAX further testified that she lost consciousness again. While this was happening, the Accused stood two metres away.[147]

141. **The Accused** testified that he was hiding in his house on 17 April 1994, waiting for the *sous-préfet*, whom he had seen the previous day, to brief him about the recommendations that had been made with regard to "our safety", so that he could come out of hiding. The Accused explained: "My fear was founded because I remembered my colleagues who had been killed". The Accused further explained that when he talked of his colleagues, he was referring to "the *bourgmestres*". He testified about the *bourgmestre* of Kinigi *commune*, Ruhengeri *préfecture*, who was killed on 8 April "while he was trying to repel the assailants who had attacked his *commune*". He testified that he thought that he would suffer the same fate.[148]

[146] T., 31 July 2003, pp. 37 to 38.
[147] T., 31 July 2003, pp. 38 to 39 and 58 to 61.
[148] T., 24. November 2003, pp. 3 and 5.

After 17 April 1994

142. **Expert Witness, Alison Des Forges,** testified that in 1994 she visited, among other places in Rwanda, sites close to Nyarubuye, and that she found corpses on those sites. Based on the information she received from different sources that were not disclosed at trial, she testified that the corpses she saw in all the areas she visited were mostly those of Tutsi, or of Hutu, depending on the sites. The former were victims of attacks perpetrated by the *Forces armées rwandaises* (FAR), the militia and members of the population, while RPF was responsible for the latter.[149]

143. The expert witness identified information contained in a document which the Defence showed to her[150] and which she referred to as the Gersony Report. She testified that the Office of the United Nations High Commissioner for Refugees requested the said document from Mr. Gersony, but that it was not made public. She testified that Mr. Gersony referred to corpses floating in the river a few weeks after the arrival of RPF in an area including Rusumo, the River Akagera and Nyarubuye. Ms. Des Forges explained that, according to her own information, a general distinction should be made between corpses with hands bound behind the back, dating back to the period after the arrival of RPF, and corpses with unbound hands, dating back to the period before the arrival of RPF. She further testified that that she never saw any corpse with hands bound at Nyarubuye Parish.[151]

144. **Prosecution Witness Patrick Fergal Keane**, a journalist, who, in May 1994, produced a documentary for the British Broadcasting Corporation (BBC)[152] on Rwanda, focussing on the events in Rusumo *commune*, testified that at the end of May 1994, with the assistance of RPF which was in control of that area, he was in Rusumo and filmed the Nyarubuye Parish building, which was littered with corpses.[153] Having heard the stories of the survivors of the events at the parish, he started looking for *Bourgmestre* Sylvestre Gacumbitsi, and had a conversation with him at the Benaco refugee camp in Tanzania.[154] In the documentary, some clips of which were shown and tendered as exhibits,[155] many decomposing and intermingled corpses are visible. The corpses are numerous, piled on top of each other, in front of a building located behind Nyarubuye Church, under the arches. The corpses are those of persons of both sexes, and bodies of children, including some in school uniforms, can be seen.

[149]T., 26 August 2003, pp. 61 to 63.
[150] By Oral Decision of 20 October 2003, this document was then admitted as Defence Exhibit (D04), see T., 20 October 2003, pp. 3 to 5.
[151] T., 26 August 2003, pp. 63 to 72.
[152] T., 28 July 2003, pp. 22 to 24 and 31.
[153] T., 28 July 2003, pp. 25 *et seq.*
[154] See Prosecution Exhibit P7A. The witnesses identified the Accused in court (T., 28 July 2003, pp. 30 to 31).
[155] See Prosecution Exhibits P1, P2, P3, P4, P5, P6, P7, P8 and P9. These clips were shown in court and the witness commented on them. (T., 28 July 2003, pp. 31 *et seq.*).

3. Discussion

15 April 1994

145. The Chamber finds Prosecution Witnesses TAQ, TAO and TAX to be credible. The evidence they gave on the events they witnessed at Nyarubuye Parish was reliable. No major inconsistency or discrepancy was noted in their evidence. The discrepancies noted can be explained by the time that has elapsed since the massacres, the fact that they witnessed the massacres from different locations and at different times, and the considerable stress they were subjected to.

146. Witness TAQ was able to identify several individuals who took part in the events. The Chamber is of the opinion that the fact she did not see the machetes being off-loaded in front of Nyarubuye Church is not such as to discredit her evidence about the events that took place there, as the Defence wrongly submits. The Chamber also notes that Witness TAQ also testified to the presence of weapons, including machetes, in the Accused's vehicle.[156]

147. Under cross-examination, Witness TAQ explained that when she fainted she was hiding with many other persons in the priests' doghouse. The Defence submits that it is not plausible that many people were able to hide in a doghouse in which, the witness admits, you could not stand up.[157] The Chamber, which noted the witness's reaction, is unpersuaded by this argument. The witness's reaction was: "… in our situation as refugees, we had no choice. When you are looking for a place to seek refuge you don't seek a place where you can stand. All you do is look for a place where you can hide and that's what we did".[158]

148. The Chamber finds that the testimonies of Witnesses TAQ and TAO are by no means contradictory as to the state of mind of the refugees at the parish upon the arrival of the Accused. The evidence given on this incident by Witnesses TAQ and TAO is consistent. They testified that the refugees approached the Accused in order to dialogue with him and, perhaps, in Witness's TAQ's estimation, to seek explanations or protection from him.

149. Regarding the identification of the person from whom the Accused, as testified to by Witnesses TAQ and TAO, "borrowed" a machete, the Chamber finds that the testimonies are not contradictory but rather corroborate each other. Although, unlike Witness TAQ, Witness TAO could not identify at trial the person from whom the Accused borrowed the machete as an *Interahamwe*, the evidence he gave on this incident is not inconsistent. The turbulent circumstances of the incident may explain why the two witnesses gave the same account but with different degrees of accuracy.

150. As to the ability of the witnesses to identify people as belonging to the *Interahamwe*, the Chamber is aware that in the minds of witnesses who experienced such events, the word *Interahamwe* may sometimes refer to a member of a structured

[156] T., 29 July 2003, pp. 45 to 51; T., 30 July 2003, p. 22.
[157] T., 30 July 2003, pp. 25 to 26.
[158] T., 30 July 2003, pp. 25 to 26.

national and local group that was usually thought of as being the youth wing of MRND. The word may sometimes also refer to any person who took part in the massacres of 1994 and who was wearing, or not wearing, special attire. In assessing the evidence on this issue, the Chamber took care not to make a premature finding as to the presence in Rusumo *commune* of a structured *Interahamwe* group, solely on the evidence of the presence and actions of the *Interahamwe* during the massacres.

151. The Chamber finds, on Witness TAQ's evidence, which was corroborated by many other Prosecution witnesses and by Defence Witness ZHZ, that on 15 April 1994, several thousand civilians, including a large number of Tutsi, from different *communes* and certain *secteurs* in Rusumo, found refuge at Nyarubuye Parish, fleeing from the insecurity and attacks perpetrated by the *Interahamwe* and other attackers in their localities.

152. The Chamber further finds that on 15 April, around 8 a.m., a *conseiller* of a *secteur* came to the parish accompanied by many *Interahamwe* and asked the refugees to stay calm and not to leave the parish. The *conseiller* then left, while the *Interahamwe* remained. The Accused arrived at Nyarubuye Parish around 3 p.m. Rusumo communal police and the *Interahamwe* accompanied him. The *Interahamwe* were singing "Let's exterminate them". When he arrived, three refugees, including Murefu, an old Tutsi, went up to the Accused, who told them that the Tutsi's hour had come. The Accused then grabbed a machete and slashed Murefu's neck, killing him instantly. The Accused then instructed the communal police and the *Interahamwe* to attack the refugees and prevent them from escaping. The Accused also asked the Hutu to leave the parish. The attackers pushed back a child who was trying to leave the crowd because he was not Hutu. A grenade hit the child during the attack.

153. Defence Witnesses NG2 and ZIZ testified that Hutu were asked to leave the parish in order to avoid the attack, and that a major attack occurred there on 15 April 1994. However, Witnesses NG2 and ZIZ also testified that it was the *gendarmes* who carried out the massacres, and not the Accused, who was absent. The Chamber is quite aware of these testimonies. In the opinion of the Chamber, when viewed against the consistent and specific evidence of Witnesses TAQ, TAO and TAX, those testimonies are not such as to raise any doubt about the participation of the Accused in the massacres of 15 April 1994 at Nyarubuye Parish.

154. The Chamber also finds that the attackers attacked the refugees at the parish with grenades, guns and machetes up to about 7 p.m., killing, wounding and mutilating a number of them.

16 April 1994

155. The Chamber admits the direct, credible and convincing evidence of Prosecution Witnesses TAO and TAX on the actions of the Accused at Nyarubuye Parish on 16 April 1994.

156. Witness TAO testified that he saw the Accused on the morning of 16 April outside the Nyarubuye Church building. The Accused was moving towards the said

building with others, including Judge Rubanguka.[159] Witness TAO's testimony that he saw Rubanguka stick his spear into the body of a victim, shortly before arriving at the parish, confirms the fact that Rubanguka and those with whom the Accused was were attackers. The Chamber finds that the conditions under which Judge Rubanguka was seen are plausible, including the distance of 40 metres, which, according to Witness TAO, separated him from the judge.

157. Contrary to Defence submissions, the Chamber has no cause to doubt that Witness TAO, his wife and two children were able to hide together for two days in the latrines of CERAI, not far from the parish, under the conditions described by the witness.

158. Moreover, on the evidence of Witnesses TAO and TAQ, and that of Defence Witness UHT, who testified that that he had been requisitioned to be part of those who attacked Nyarubuye Parish in the morning of 16 April 1994, the Chamber finds that it is established that, on that morning, the group of attackers, which Witness TAQ referred to as *Interahamwe*, among whom, like Witness TAO, the witness saw Judge Évariste Rubanguka, began finishing off the survivors of the attack carried out the previous day. That some details in Witness TAO's testimony, about Judge Rubanguka spraying pepper on corpses in order to flush out survivors, were not covered in the witness's prior statements, does not affect this finding or the credibility of the witness.

159. That Witness TAQ did not testify that she saw the Accused at Nyarubuye Parish on 16 April 1994 is not such as to cast doubt on her testimony. The discrepancy may be explained by the fact that the two witnesses witnessed the event at different times from different locations. Moreover, Witness TAQ testified that she saw Judge Rubanguka in the parish building, while Witness TAO testified that he saw the Accused, not far from the parish, with Rubanguka and others, when the group was heading for the parish. Thus, Witness TAO's testimony seems to precede Witness TAQ's.

160. The Chamber finds Defence Witness UHT not very credible. Under cross-examination, Witness UHT testified that during the six hours he spent with the attackers at the parish on 16 April 1994, amongst corpses and survivors, he did not take part in finishing off the wounded. However, he could not testify as to what he did, apart from staying with his brother-in-law, being shocked and frightened. Moreover, Witness UHT was unclear as to whether the second vehicle that he saw at the parish belonged to Rusumo *commune*. Under cross-examination, he began by testifying that he did not know, then was adamant that such was not the case, a stance he maintained during re-examination. To a question from the Bench concerning the driver of the vehicle in question, the witness answered that he was able to identify the *commune* driver. The Chamber further finds that during cross-examination, when the Prosecution maintained that Witness UHT allegedly told the Defence investigator who took down his prior statement that after leaving the parish he had seen the vehicle in question at the Nyarubuye road junction, located 15 kilometres from there, the witness attributed it to an error on the part of the investigator.[160]

[159] T., 30 July 2003, pp. 56 to 57.
[160] T., 7 October 2003, pp. 13 to 14, 22 to 24, and 26 to 27.

161. The Chamber notes, however, that Witness TAO, who alone saw the Accused in the morning of 16 April 1994, did not testify that the Accused was armed. Moreover, neither Witness TAO, Witness TAQ nor Witness UHT mentioned any looting in the parish building after the massacre.

17 April 1994

162. As the Defence points out, Witness TAQ testified that he heard the Accused speaking over a megaphone at a location, other than Nyarubuye Parish, on 17 April 1994 at around 9 a.m. Witness TAX also testified that she saw the Accused at the same time. Both Witnesses TAX and TAQ only approximated the time when they saw the Accused.[161] Moreover, Witness TAQ testified that she heard the Accused speaking over a megaphone, and that the Accused was part of a convoy of three vehicles that she saw passing at the time, at the frontier between Kankobwa *secteur* and Nyarubuye *secteur*, in which Nyarubuye Parish is also located. As Witness TAX saw the Accused arriving at the parish in a vehicle, both witnesses could have seen the Accused within a reasonably short interval of time, at around 9 a.m. The Chamber therefore finds that Witness TAQ's evidence does not cast doubt over the reliability and credibility of Witness TAX as to this incident.

163. The Chamber finds that the conditions under which Witness TAX observed the Accused were particularly good. The incident took place in the morning and Witness TAX was at a very short distance, which she estimated to be two metres away from the Accused. On her evidence, the Chamber finds that, on 17 April 1994 at about 9 a.m., the Accused addressed a group of attackers who had gathered 15 Tutsi survivors in front of the Nyarubuye Church, and told them to take their weapons and kill the survivors, aiming at the head and sparing no one. There is no doubt that by these words, the Accused was ordering the murder of each of the 15 Tutsi survivors, given that once these words were uttered, the attackers attacked the survivors with machetes, with two of them mutilating Witness TAX, despite her pleas, leaving her for dead. On this evidence, the Chamber finds that, on 17 April 1994, the Accused led an attack against Tutsi civilians at Nyarubuye Parish by ordering the attackers to kill the refugees, as alleged in paragraph 27 of the Indictment.

The Defence Case: massacres committed by RPF

164. The Defence submits that the pictures in Fergal Keane's report do not date from the attacks on Nyarubuye Parish on 15, 16 and 17 April 1994[162]. Thus, regarding the bodies seen in parts of Fergal Keane's report and blamed on the massacre of 15 April at Nyarubuye Parish, the Defence submits that they are rather proof of the crimes committed by RPF. Such is the purport of the report of the two forensic pathologists, expert witnesses called by the Defence.[163] Similarly, Defence witnesses testified about the crimes committed by RPF. Thus, Defence Witness XW9, a member

[161] T., 31 July 2003, p. 37 (Witness TAX) and T., 29 July 2003, pp. 61 to 62 (Witness TAQ).
[162] Defence Closing Brief, paras. 385 to 394.
[163] Report of Expert Witnesses Vorhauer and Lecomte, p. 13.

of MDR-Power residing in Kigina *secteur*,[164] testified that he was arrested at his home on 28 April 1994 by three *Inkotanyi* soldiers, meaning by this expression RPF members who had attacked Rwanda. The witness testified that, amongst the RPF party members, he recognised one of his neighbours, a Tutsi, who was not wearing a military uniform. He testified further that the *Inkotanyi* had taken him away with others, after binding him. When he fell along the way, one of the soldiers allegedly fired two shots in his direction and left him for dead, while soldiers from the Rwandan Patriotic Army (RPA, the armed wing of RPF) continued with the other captives, whom they shot dead 20 metres from where the witness was, in Nyabitare. He also testified that, on 5 May 1994, his wife and five children (the youngest of whom was one and a half years old), and all his neighbours had been killed by RPA soldiers.[165] The Defence also relied on the Gersony Report[166] to establish that RPF committed crimes, especially in Rusumo *commune* and its neighbourhood.

165. On the one hand, the Defence seems to submit vaguely that RPF, the adversary in the armed conflict in Rwanda, also committed crimes. In this regard, the Chamber recalls that such a line of *tu quoque* defence against the serious crimes that this Tribunal[167] is prosecuting is inadmissible, all the more so as the Defence is not suggesting that RPF committed crimes in Nyarubuye before 15, 16 and 17 April 1994.

166. On the other hand, although the Defence submits only that, among the corpses found at Nyarubuye, a certain number, which it does not specify, result from killings perpetrated by RPF, the Chamber finds that the report of the two forensic pathologists leads only to a limited finding. Indeed, the pathologists simply testify that all the bodies on the clips that were viewed do not date back to April 1994, which does not rule out that bodies could date back to the period from 15 to 17 April 1994, when attacks were carried out against Tutsi civilians at Nyarubuye Parish, Rusumo *commune*. Therefore, the report is not such as to cast doubt over the occurrence of the attacks that several Prosecution and Defence witnesses have testified about.

4. Findings

167. Regarding paragraphs 15, 16 and 17 of the Indictment, the Chamber finds that on 15 April 1994, Sylvestre Gacumbitsi took part in the attack against Nyarubuye Parish, where many Tutsi refugees and Hutu had gathered. Sylvestre Gacumbitsi arrived at the parish in a convoy of vehicles carrying communal policemen and *Interahamwe*. The attackers wore clothing attributed to the *Interahamwe*. They were armed with machetes and other traditional or crafted weapons, and with guns and grenades that they used during the attack. However, the Chamber cannot, on the evidence adduced, find that Sylvestre Gacumbitsi had previously provided them with the said machetes.

168. Shortly after arriving at the parish at about 3 p.m., Sylvestre Gacumbitsi killed Murefu, a Tutsi refugee who had gone up to him, and gave a signal for the massacres

[164] T., 13 October 2003, pp. 6 to 7. The witness identified the Accused in court; T., 13 October 2003, p. 8.
[165] T., 13 October 2003, pp. 11 to 13.
[166] Defence Exhibit D04.
[167] *Kupreškić* Trial Judgment, ICTY, 14 January 2000, paras. 515 to 520.

to commence. Sylvestre Gacumbitsi addressed the crowd through a megaphone and ordered Hutu refugees to separate themselves from the Tutsi. Some obeyed the orders. Communal policemen and *Interahamwe* attacked the refugees in the church building.

169. The Chamber finds that the communal policemen who attacked the parish did so under the orders of the Accused. The Accused directed the attack and gave orders which were perceived by the attackers as an incitement or encouragement to act.

170. The Chamber finds that the Accused facilitated the attack by allowing Rusumo *commune* vehicles to ferry attackers and weapons to the parish. The Accused himself came to the parish, aboard one the vehicles in the convoy, accompanied by the police and attackers. The same vehicles transported weapons to the location of the attack. However, no evidence was adduced that these weapons were distributed.

171. As to paragraph 18 of the Indictment, the Chamber finds that on 16 April 1994, following the attack of 15 April 1994, Sylvestre Gacumbitsi, and a group of attackers, including a certain Judge Rubanguka, went to the Nyarubuye church building. Some attackers were armed with spears, machetes and bows and arrows. It is not established that the Accused himself was armed. Rubanguka, in the presence of the Accused, planted a spear into a person's body, but it was not established if the person was dead or still alive. The Chamber finds that the Accused directed the attack of 16 April and the attack of the previous day. During the attack, the attackers, including Judge Rubanguka, finished off survivors. The attackers then went on to loot the parish building.

172. With regard to paragraph 27 of the Indictment, the Chamber finds that between 15 and 17 April 1994, Sylvestre Gacumbitsi directed attacks against Tutsi civilian refugees who had assembled at Nyarubuye Parish, and personally took part in the attacks. On 15 April 1994, he killed a Tutsi called Murefu. On 15, 16 and 17 April he directed attacks by issuing clear instructions to the attackers to attack the Tutsi who had sought refuge in the parish. Among the attackers of 15 April 1994 were the *Interahamwe*, *gendarmes* and communal police.

173. The Chamber finds that Sylvestre Gacumbitsi facilitated the transport of the communal police, *Interahamwe* and weapons to Nyarubuye Parish by authorizing or facilitating the use of *commune* vehicles. He led attacks against Tutsi civilians by example or by instructing the attackers to kill the refugees.

174. Lastly, with respect to paragraph 19 of the Indictment, the Chamber cannot, on the evidence adduced, find whether "[a]lmost all of the Tutsi refugees, comprising several thousands at Nyarubuye *paroisse*, were killed". However, the Chamber finds that it is established that thousands of Hutu and Tutsi civilians had sought refuge there in the days preceding the attack of 15 April 1994, and that on that same day Hutu were separated from Tutsi, who were attacked. Very many Tutsi were killed that day. Survivors were finished off the following day, and two days later. The parish compound was still littered with many corpses a few weeks later. Thus, the Chamber finds that many Tutsi who found refuge at Nyarubuye Parish were killed there between 15 and 17 April 1994.

D. PARAGRAPHS 31 TO 36 OF THE INDICTMENT (MURDERS)

1. Allegations

175. Paragraphs 31, 33, 34 and 36 of the Indictment allege that:

> 31. In addition to personally ordering and leading attacks against groups of civilian Tutsi refugees, Sylvestre Gacumbitsi also targeted specific Tutsi civilians in Kibungo *préfecture* for murder.
>
> 32. On a certain date during April 1994, Sylvestre Gacumbitsi killed a Tutsi woman and her three children in his own home. Sylvestre Gacumbitsi was god-father to one of the children, and the woman sought refuge at the home of her former friend. Instead of protecting the woman and her children, Sylvestre Gacumbitsi personally arranged their murder.
>
> 33. On or about 14 April 1994, Sylvestre Gacumbitsi personally shot and killed two civilian Tutsi in the Catholic centre in Nyabitare. The two persons pleaded with Sylvestre Gacumbitsi, going so far as to offer him money so that they would be killed with bullets and not by machetes. Sylvestre Gacumbitsi took the money, shot them, and removed the rest of their money.
>
> 34. Sometime between 17 and 18 April 1994, Sylvestre Gacumbitsi also caused the death of several Tutsi children. Upon specific instruction from Sylvestre Gacumbitsi, infant survivors of the attack on Nyarubuye *paroisse* were lured to a location with an offer of food. Once they were assembled, Sylvestre Gacumbitsi ordered all exits blocked and the children were killed with grenades.
>
> 35. On a date uncertain during April-June 1994, Sylvestre Gacumbitsi personally ordered the tenants in one of his homes to vacate the premises. After announcing that his home was not CND, a reference to the cantonment of RPF soldiers in Kigali, Sylvestre Gacumbitsi ordered the killing of his former tenants.

176. The Chamber notes that the wording of paragraph 31 is general and there is no reference to any specific event identified by a date, specific place and named victims. The Chamber finds that this paragraph is introductory by nature, and cannot be interpreted in such a way as to include killings other than those specifically referred to in paragraphs 32 to 36 of the Indictment. Indeed, it does not contain any specific allegation as to the killing of Murefu, Simon Buhonogo, Rugegena, nor to the killing of Tassiana Mukamwiza. Thus, it cannot, contrary to Prosecution submissions, sustain the evidence adduced. Accordingly, the Chamber finds that paragraph 31 is not specific enough to warrant findings based on the evidence of the above-mentioned killings. The Chamber recalls that it has already assessed the evidence on the killing of Murefu, Simon Buhonogo and Rugegena as part of its finding on paragraph 15 of the Indictment on the attack at Nyarubuye.[168]

177. The Prosecution admits that it did not adduce any evidence to sustain the allegations in paragraphs 32 and 35 of the Indictment. The Chamber will therefore not make any finding on such allegations.

[168] See *supra*: Chapter II, Part C.

178. The Chamber notes that in the Prosecution's Pre-Trial Brief, the Prosecution identifies the victims referred to in paragraph 34 of the Indictment more clearly, and explains that such allegations are based on the evidence of Witness TAC.[169]

2. Evidence

13 April 1994 – Murder of Marie and Béatrice

179. **Prosecution Witness TBC,** a Rusumo businessman who knew the Accused well and identified him at the hearing, testified that he saw the Accused around 8 a.m. on 13 April 1994. The Accused was accompanied by police officers Mukankusi, Kazoba and Gidas alias Gitamisi. The Accused explained to his tenants, including the two Tutsi sisters, Marie and Béatrice, that the *Interahamwe* had sent him a message that they would be there at noon and that his tenants, therefore, had to leave the house and give him the keys, adding that his house was not the CND, referring, according to the witness, to the building in Kigali which had been allocated to RPF soldiers under the Arusha Peace Accords. The tenants interpreted the Accused's words as meaning that his house was not for Tutsi, and that the tenants had to leave. Witness TBC later fled to Tanzania. When he returned to Rwanda in June 1994, he learned that Marie and Béatrice had died that same night of 13 April 1994. Witness TBC testified that he did not hear the Accused order anyone to kill people.[170]

180. **Prosecution Witness TAS** testified that she saw the Accused around 11 a.m. at the Nyakarambi market on Wednesday 13 April 1994. The only person the witness saw and recognized among those accompanying the Accused was Kazoba, a policeman. The same evening, from her hideout, she heard Kazoba who was 30 metres away, but whom she could not see, tell someone that from 12 p.m., this Thursday 14 of April, there would no longer be any Tutsi alive because Sylvestre Gacumbitsi had ordered that all Tutsi should be killed, starting with Marie and Béatrice.[171]

181. **Prosecution Witness TAW** testified that around 9 a.m. on 13 April 1994, the Accused and some communal police went to a building belonging to the Accused "to see if his tenants had decided to move out of the house".[172] In the building were Marie and Béatrice, among others. The Accused's tenants asked for more time to vacate the place since they had no alternative accommodation, but the Accused asked the policemen to force them to leave the house and take their keys. The policemen dragged Marie and her child out of the house. The Accused took the house keys and said to his tenants: "I am going back to the office. When I come back if you are still here, you will have problems". When he returned there in the afternoon and found Marie and Béatrice, he once again ordered them to leave.[173]

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[169] Prosecutor's Pre-Trial Brief, para. 2.28.
[170] T., 5 August 2003, pp. 62 to 64 and 68 to 73.
[171] T., 5 August 2003, pp. 13 to 17, 19 to 20, 28 to 30. TAS identified the Accused at the hearing.
[172] T., 20 August 2003, p. 26 to 27.
[173] T., 20 August 2003, pp. 27 to 28 and 30 to 31.

182. **Defence Witness UPT**, who was a 16-year-old girl in 1994, testified that during the night of 13 April 1994, the killings started with the murder of Béatrice and Marie, who were Tutsi. Hooligans, including Kirenge and Kigati, led the attack. At the time of their death, the two young girls were at a place they had sought refuge in following threats against the *bourgmestre* because he had taken in some *Inkotanyi*. The witness testified that the *bourgmestre* did not expel his tenants that day.[174]

183. **Defence Witness YEW** testified that on 13 April 1994, before 1 p.m., he met one of the *bourgmestre'*s tenants, who told him that he had fled because the *bourgmestre* had said that he could no longer guarantee the tenant's safety. The following morning, the witness learned that Marie and Béatrice had been killed, and explained that only Marie was the *bourgmestre*'s tenant, while Béatrice lived in a house belonging to the manager of the local *Banque populaire*.[175]

14 April 1994 – The murder of Kanyogote

184. **Prosecution Witnesses TAK and TBH** testified about the murder of Augustin Kanyogote, a Tutsi, and of his two children, on 14 April 1994, near the Accused's house.[176]

15 April 1994 – Attack on the Nyabitare Catholic Centre

185. **Prosecution Witness TAC**,[177] a Tutsi who said that he knew the Accused "very well" and identified him at the hearing, testified that he saw the Accused on 14 or 15 April 1994, just after midday, near the Nyabitare Catholic Centre in Rusumo *commune*, where some refugees were. Witness TAC was hiding in a banana plantation, about 30 metres away from the centre. The Accused was accompanied, among others, by Edmond Bugingo, local leader of the *Interahamwe*, the MRND youth wing, Grégoire Kabandanyi, CDR leader in Nyabitare *secteur,* and *Conseiller* Rwabalinda. Witness TAC explained that the Accused's vehicle, a double cabin pick-up, was carrying weapons at the back, where the policemen were sitting, and that the Accused was sitting in the front seat of the vehicle.[178]

186. Witness TAC further testified that, soon after talking with the Accused, policemen Berakumenyo and Kazoba entered the Catholic Centre and came out quickly with two Tutsi refugees, Rukomeza and Vianney Mutunzi, whom Witness TAC knew well. Vianney Mutunzi was a well known football player at the time. Witness TAC observed Mutunzi and Rukomera imploring the Accused out loud not to let them suffer, and to kill them with bullets rather than with a machete. He saw them take something from their pockets and give to the Accused. Witness TAC assumed that it was money. The Accused then left in his vehicle and drove towards Nyarubuye. After he had left, Mutunzi and Rukomera were shot dead by the two policemen who

[174] T., 16 October 2003, pp. 22 to 23.
[175].T., 15 October 2003, pp. 71 to 72.
[176] T., 4 August 2003, pp. 47 to 52, 62 to 63, 64 to 65 and 66; T., 25 August 2003, pp. 32 to 33; T., 26 August 2003, pp. 9 to 11.
[177] T., 4 August 2003, pp. 7 and 20.
[178] T., 4 August 2003, pp. 9 to 15, 17 to 18, 24 to 29, and 31 to 33.

searched their bodies. Under cross-examination, Witness TAC explained that Mutunzi and Rukomera were shot "just as he [the Accused] left".[179]

3. Discussion and Findings

Paragraph 33 of the Indictment

187. The evidence given by Witnesses TAK and TBH relates to the murder, on 14 April 1994, at or near the home of the Accused, of a Tutsi man called Kanyogote, who was accompanied by his two children. Paragraph 33 of the Indictment contains a different allegation: that of murder by the Accused, at his home in April 1994, of a Tutsi woman and her three children. Thus, the Chamber can only find that the evidence of Witnesses TAK and TBH relates to a victim or victims other than those referred to in paragraph 33 of the Indictment.

188. Consequently, the Chamber finds that the Indictment does not contain any specific allegation about the murder of Kanyogote and his children. That the Prosecutor mentioned the murder of Kanyogote and his children in his Pre-Trial Brief[180] is not such as to cure the vagueness in the Indictment, especially as such brief does not establish a link between the new allegation and paragraph 33 of the Indictment. The Pre-Trial Brief does not seek to render the Indictment more specific, but rather alters the Indictment substantially by either changing the identity of the victims referred to in paragraph 33 or including a new allegation of murder. The Pre-Trial Brief cannot be used as an instrument to amend the Indictment substantially. Such amendment must comply with the provisions of Rule 50 of the Rules of Procedure and Evidence.

189. In this case, it is indeed the substance of the Indictment that is affected by including a new allegation of murder, or changing the identity of the victims of such murder. Consequently, the Chamber has decided to disregard the evidence adduced by the Prosecutor against the Accused on the murder of Kanyogote and his children. However, the Chamber finds that unknown perpetrators killed Kanyogote and his children, Tutsi who felt threatened because of their ethnicity, in April 1994 in Rusumo *commune.*

190. Moreover, the Chamber finds that the Prosecution adduced no evidence to sustain the allegation contained in paragraph 33 of the Indictment.

Paragraph 34 of the Indictment

191. The Chamber finds that the Pre-Trial Brief, which identified the victims more precisely, cured the vagueness in paragraph 34 of the Indictment.

192. The Chamber is unpersuaded by Witness TAC's evidence. Several factors affect its reliability. The Chamber recalls that Witness TAC witnessed the incident only for a brief moment, lying flat on his stomach and hiding in a banana field about

[179] T.4, August 2003, pp. 11 to 14, 17 to 18, and 31 to 37.
[180] Prosecution Pre-Trial Brief, para. 2.30.

30 metres away from the *locus in quo*. In such circumstances, compounded by the enormous stress the witness experienced at the time of the events, his identification of the Accused and his account of the Accused's gestures and actions at the time he observed the Accused, have been examined with caution. Moreover, the Chamber has noted several inconsistencies and contradictions in Witness TAC's evidence. For example, the Witness gave differing accounts of the number and identity of the policemen who remained on the premises after the Accused had left. Besides, Witness TAC contradicted himself on several issues in his prior statements. In particular, Witness TAC testified that the Accused was not armed and had left the Catholic Centre before two policemen killed Mutunzi and Rukomeza, whereas in his prior statement of 8 April 1997, he alleged that the Accused was armed and had personally killed the two victims. The witness had allegedly stated to investigators that the Accused had extorted money from the two victims before killing them, whereas in court he testified that he did not know what the Accused had taken from the victims.[181] The witness further testified that he was hiding alone in the banana fields, whereas he had alleged in his prior statement that he was in the company of his wife and three sisters. The witness's explanations about such major inconsistencies and contradictions, which cannot be attributed to error on the part of the investigators, were not persuasive.

193. In conclusion, the Chamber finds that the Prosecutor has not proven the allegations contained in paragraph 34 of the Indictment beyond a reasonable doubt.

Paragraph 36 of the Indictment

194. The Chamber finds that paragraph 36 of the Indictment is vague as it fails to identify the victims precisely, and does not specify their killers. Paragraph 36 only alleges that the Accused ordered the killing of his former tenants. However, the Chamber further finds that the Pre-Trial Brief and its annexes, which provided further details on the allegation, cured the vagueness.

195. The Chamber finds the evidence of Witnesses TBC and TAS to be credible. Their accounts corroborate each other and are consistent with that of Witness TAW, whom the Chamber has already found to be credible. On the evidence of Witnesses TAW, TBC and TAS, the Chamber finds that on 12 April 1994, at Nyakarambi, the Accused ordered Marie and Béatrice, two Tutsi sisters, to vacate the premises which they were renting, stating that the said premises did not belong to CND, a reference to the RPF cantonment in Kigali. The Accused returned to the premises on 13 April 1994 and, with the assistance of the communal police, expelled the tenants.

196. On the evidence of Witness TBC and Defence Witnesses UPT, YCW and YEW, the Chamber finds that Marie and Béatrice were killed in the night of 13 April 1994. However, the hearsay evidence of Witness TAS is insufficient, failing corroboration, to establish that the Accused ordered the murder of Marie and Béatrice.

197. In the light of the Chamber's findings on the involvement of the Accused in preparing, inciting and perpetrating the massacres of Tutsi at Rusumo, the Chamber

[181] T., 4 August 2003, pp. 12 and 40.

further finds that on 13 April 1994, the Accused expelled his tenants, Tutsi women, knowing that by so doing he was exposing them to the risk of being targeted by Hutu attackers on grounds of their ethnic origin.

E. PARAGRAPHS 20, 21 AND 37 TO 40 OF THE INDICTMENT (RAPES)

1. Allegations

198. Paragraphs 20, 21, 37, 38, 39 and 40 of the Indictment allege that:

> 20. Sexual violence against Tutsi women was systematically incorporated in the widespread attacks against the Tutsi. In leading, ordering and encouraging the campaign of extermination in Rusumo *commune*, Sylvestre Gacumbitsi knew, or should have known, that sexual violence against civilian Tutsi was, or would be, widespread or systematic, and that the perpetrators would include his subordinates or those that committed such acts in response to his generalized orders and instructions to exterminate the Tutsi.
>
> 21. Furthermore, Sylvestre Gacumbitsi circulated about Rusumo *commune* in a vehicle announcing by megaphone that Tutsi women should be raped and sexually degraded. For example, on or about 17 April 1994 Sylvestre Gacumbitsi exhorted the population along the Nyarubuye road to "rape Tutsi girls that had always refused to sleep with the Hutu…" and to "search in the bushes, do not save a single snake…" Attacks and rapes of Tutsi women immediately followed.
>
> 33. During April, May and June 1994, there were widespread or systematic rapes and sexual violence of Tutsi women. The sexual assaults were often a prelude to murder, and were sometimes the cause of death of a number of civilian Tutsi.
>
> 34. On one particular occasion, on or about 17 April 1994, Sylvestre Gacumbitsi lured Tutsi women to a certain location by announcing over a megaphone that Tutsi women would be spared, and that only Tutsi men would be killed. When a number of Tutsi women gathered in response to Sylvestre Gacumbitsi's exhortations, they were surrounded by several attackers, raped, and then killed. Attackers also sexually degraded a number of Tutsi women by inserting objects in their genitals.
>
> 39. On or about 17 April 1994, Sylvestre Gacumbitsi travelled along the Nyarubuye road in a caravan of vehicles, announcing with a megaphone "Search in the bushes, do not save a single snake .... Hutu that save Tutsi should be killed Tutsi girls that have always refused to sleep with Hutu should be raped and sticks placed in their genitals...". After Sylvestre Gacumbitsi drove by, a group of men attacked Tutsi women that were hiding nearby and raped several of the women. One of the women was killed and a stick was thrust in her genitals.
>
> 40. The sexual violence was so widespread, and conducted so openly, and was so integrally incorporated in widespread attacks against civilian Tutsi, that Sylvestre Gacumbitsi must have known, or should have known, that it was occurring, and that the perpetrators were his subordinates, subject to this authority and control, and acting under his orders. This is especially so since the perpetrators of sexual violence were often the same individuals that organized and led or participated in the widespread attacks against the Tutsi that Sylvestre Gacumbitsi had ordered.

199. The Chamber notes that no evidence was tendered to sustain the allegations contained in paragraph 38 of the Indictment. Thus, it shall not make any finding on such allegations.

2. Evidence

200. **Prosecution Witness TAQ** testified that around 9 a.m. on 17 April 1994, while she was hiding under the bridge between Kankobwa *secteur* and Nyarubuye *secteur*, Rubare *cellule*, she saw some people driving around in three vehicles, ordering through a megaphone: "for the tall grass to be cleared so that any snakes found therein that they be caught, and that to kill a snake you needed to hit it on the head". The witness further testified that she also heard those people saying that Tutsi girls who had refused to get married to the Hutu should be looked for, raped, and if they resisted, killed.[182]

201. Witness TAQ testified that she recognized, among the voices in the megaphones, the voice of Sylvestre Gacumbitsi, giving the same orders that Tutsi girls who resisted should be killed in an "atrocious manner", that is, by inserting sticks into their genitals.[183]

202. Witness TAQ testified that immediately after this incident, a group of more than ten attackers chasing cows discovered them where she and seven other refugee women and girls were hiding. Among the women were an old lady and six girls, the youngest of whom was 12, and the oldest 25, called Chantal. The attackers forced them back up the hill, where the attackers ordered them to choose between dying and undressing. They then stripped them by tearing their clothes, and raped them.[184]

203. Witness TAQ testified that she was heavily pregnant and vomited while one of the attackers was raping her by means of penetration. The witness explained that the attacker asked her if the child she was bearing was a boy or a girl, for he would have disembowelled her in order to kill the child if it was a boy. The witness explained that she did not answer since she did not know the baby's sex.[185] Under cross-examination, the witness confirmed her prior statement that the same attacker told her that he wanted to take revenge on the witness's sister who had refused to marry him.[186] The witness explained that the old lady assisted her during birth on the night of the rape, and that a *cellule* official also assisted her.[187] The *cellule* official hid them in his son's unfinished house, and, the following day, informed her, the old lady and the other two young girls of a communiqué from *Conseiller* Isaïe Karamage asking the refugees to go to the *Conseiller*'s house to collect travel documents that would enable them to return to the ruins of their houses without anxiety. The three refugees went there. In the evening, the *cellule* official returned and informed Witness TAQ that the refugees had obtained the documents at the *conseiller*'s house, but that the refugees had subsequently been taken to the *secteur* office where they were killed and thrown into a pit that was used to collect rain water.[188]

[182] T., 29 July 2003, pp. 61 to 62.
[183] T., 29 July 2003, pp. 61 to 63.
[184] T., 29 July 2003, p. 63; T., 30 July 2003, p. 30.
[185] T., 29 July 2003, pp. 64 to 65.
[186] T., 30 July 2003, p. 35.
[187] T., 29 July 2003, pp. 64 to 65. The witness identified the official.
[188] T., 29 July 2003, p. 64 to 66.

204. Witness TAQ testified that she saw Chantal quartered, with a stick inserted into her genitals, and saw three other girls leave with the attackers. The attackers were going to have the girls as their partners. The witness explained that Chantal died as result of that act of sexual violence.[189]

205. **Prosecution Witness TAO** testified that his wife told him that, after the massacres perpetrated near Nyarubuye Parish in April 1994, she was arrested at a roadblock and taken to *Conseiller* Isaïe Karamage's house. She spent two or three days[190] there, during which the *conseiller* raped her every evening and every night. Upon leaving the compound, the *conseiller* gave her a travel document, which was supposed to guarantee a peaceful return. The *conseiller* also promised to visit her. The witness testified that the document read as follows: "The person by the name […] is authorized to move freely without being unduly disturbed or inconvenienced. [signed] I, *Conseiller* Isaïe Karamage". The document also bore the following expression: "The women or girls who have not yet received the said certificate should hurry to come and obtain the said certificate from the *conseiller*". The travel document bore the stamp of Nyarubuye *secteur*.[191]

206. Prosecution Witness TAO testified that he saw his wife again five days later with other persons, after she had been taken to the *conseiller*'s house, in the ruins of his grandfather's house. The witness came to see them there every evening. Then one day, around 5 p.m., he saw some attackers attack the house. Hiding, he witnessed his wife being raped. After raping her, the attacker did not want to surrender her to the second attacker, who then killed her with a machete to put an end to the dispute.[192]

207. **Prosecution Witness TAP**, a young Tutsi woman,[193] testified that a group of about thirty unidentified attackers attacked her mother and drove a stick into her mother's genitals right through her head. When the witness heard her mother's screams, she concluded that she had died on the spot. The witness explained that the attack occurred the day after the President's death, in April 1994. She had heard some loud noises that told her something special was happening in Nyarubuye Parish.[194]

208. Witness TAP testified that after the attack on her mother, some attackers came towards her. Three of the attackers, one of whom was identified by the witness, hit her. The attackers were saying that in the past Tutsi women and girls hated Hutu men and refused to marry them, but that now they were going to abuse the Tutsi girls and women freely. The three assailants forced her to sit down. Several attackers, including the man she had already identified, raped her. A branch slightly longer than a meter was driven into her genitals, wounding her and causing her to bleed profusely.[195]

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[189] T., 29 July 2003, p. 63 to 65; T., 30 July 2003, pp. 36 and 40 to 41.
[190] T., 30 July 2003, pp. 57 to 59; T., 31 July 2003, pp. 20 to 22.
[191] T., 30 July 2003, pp. 57 to 59.
[192] T., 30 July 2003, pp. 59 to 60.
[193] T., 6 August 2003, pp. 5 to 6. The witness identified the Accused in court: T., 6 August 2003, pp. 7 and 27 to 28.
[194] T., 6 August 2003, pp. 5 to 11, 28, and 37.
[195] T., 6 August 2003, pp. 7 to 11 and 40 to 41; p. 52; Exhibit P10.

209. **Prosecution Witness TAS**, a Hutu woman married to a Tutsi, testified without specifying the date, but rather referring to a previous incident that occurred on 14 April 1994, that as she was looking for a hiding place, she came across a Hutu who told her that he just wanted to rape her and not kill her. Another Hutu came and told the first Hutu that the Accused had authorized them to rape only Tutsi women and girls, explaining that no decision had yet been taken concerning Hutu women who were married to Tutsi. However, the first Hutu snatched the child the witness was carrying, lowered his trousers, undressed the young woman and raped her. The other attacker also raped her. The attackers then left when they heard a whistle. The witness thought that she was raped because she was married to a Tutsi.[196]

210. **Defence Witnesses UA3, ZEZ, UHT, XW9, XW10, XW1, YCW, UPT, NG4, NG2, MQ1, XW15** and **XW13** testified, without further detail, that they never had any knowledge of the *bourgmestre* instructing the rape of Tutsi, or of any rape committed in their areas.[197]

3. Discussion

211. The Defence alleges that Prosecution Witness TAQ is not credible because of the many contradictions between her prior statements and oral testimony, and that her account of events is not plausible.[198] On this particular issue, the Defence contends that the witness could have been mistaken about the Accused's voice and that, in any case, her evidence was not corroborated[199] but was, quite on the contrary, contradicted by Prosecution Witness TAX, who situated the Accused at Nyarubuye Parish at the same time.

212. The Chamber recalls that it has already dismissed such Defence arguments as to the contradictions in Witness TAQ's account. The Chamber finds that the contradictions are minor and can be explained by the lapse of time.[200]

213. The Chamber finds that the witness knew the Accused sufficiency well, because of their relationship,[201] to be able to recognize his voice over the megaphone without seeing him. The Chamber recalls that there is no provision in the Rules requiring corroboration in such circumstances, and is persuaded that Witness TAQ's account is credible because she was an eyewitness.

214. Lastly, the Chamber recalls its findings on the contradiction, pointed out by the Defence,[202] between the evidence of Prosecution Witnesses TAQ and TAX. The Defence makes a general allegation that Witness TAQ is not credible, and that her

[196] T., 5 August 2003, pp. 17 to 24 and 50 to 51.
[197] T., 1 March 2004, pp. 52 to 53. For each witness see: T., 6 October 2003, p. 29 (UA3), and pp. 53 to 54 (ZEZ); T., 7 October 2003, pp. 11 to 12 (UHT); T., 13 October 2003, p. 14 (XW9), p. 28 (XW10), and pp. 54 to 55 (XWI); T., 16 October 2003, pp. 23 to 24, and 27 (YCW) and pp. 60 to 61 (UPT); T., 21 October 2003, pp. 10 to 11 (NG4), pp. 24 to 25 (NG2), pp. 70 to 71 (MQ1); T., 17 November 2003, pp. 22 to 23 (XW13); T., 18 November 2003, pp. 7 to 8 (XW15).
[198] T., 1 March 2004, pp. 34 to 36.
[199] Defence Closing Brief, paras. 496 *et seq*.
[200] See supra: paras. 147 *et seq*.
[201] T., 29 July 2003, pp. 42 to 43.
[202] See *supra*: paras. 162 *et seq.*

account of events is implausible, without specifically challenging that aspect of her evidence or pointing out any contradiction therein. The Chamber reaffirms that Witness TAQ is credible and her evidence reliable. The Chamber recalls its previous reasoning on Witness TAQ's credibility.[203] In the Chamber's opinion, there is no reason to believe that Witness TAQ's pregnancy during the events affected her senses. The Chamber finds her account of events reliable. The Chamber also finds Witness TAQ to be credible regarding her account of the acts of sexual violence committed against her and other Tutsi women and girls.

215. Accordingly, the Chamber finds that, on 16 April 1994, around 9 a.m., the Accused, who was driving around in Rubare *cellule*, Nyarubuye *secteur*, using a megaphone, asked that Hutu young men whom whom girls had refused to marry should be looked for so that they should have sex with the young girls, adding that "in the event [that] they [the young girls] resisted, they had to be killed in an atrocious manner".[204] Placed in context, and considering the attendant audience, such an utterance from the Accused constituted an incitement, directed at this group of attackers on which the *bourgmestre* had influence, to rape Tutsi women. That is why, immediately after the utterance, a group of attackers attacked Witness TAQ and seven other Tutsi women and girls with whom she was hiding, and raped them. One of them, Chantal, died after her genitals had been impaled with a stick, at the instigation of the Accused. Three of the young Tutsi girls were led away forcefully.

216. The events recounted by Witness TAO are of two types in terms of evidence. On the one hand, the rape allegedly committed against Witness TAO's wife at *Conseiller* Isaïe Karamage's house is hearsay, as the witness's wife told him this. On the other hand, the rape committed against his wife in the ruins of his grandfather's house is direct evidence because Witness TAO was an eyewitness to the event.

217. As to the rape committed at *Conseiller* Isaïe Karamage's house, the Chamber finds the witness to be credible, especially as other witnesses testified that there were similar incidents of rape at the same house, or at least, that women and girls gathered there, contrary to Defence argument that such evidence was not corroborated. Thus, Prosecution Witness TAQ testified that a *cellule* official informed her that Tutsi women and girls were invited to go and look for travel documents at the *conseiller*'s house, but that once the documents were issued, the Tutsi women and girls were driven to the *secteur* office, where they were killed and thrown into a mass grave.[205] Witness TBH also testified that a similar document was issued to a young Tutsi woman who was allegedly killed later by attackers.[206] It can be inferred from these facts that the women and girls who had gathered at the *conseiller*'s house were raped.

218. As to the rape and subsequent killing and of Witness TAO's wife in the ruins of his grandfather's house, the Chamber finds that the witness is credible and his account of events reliable, even without corroboration, because he was an eyewitness

[203] See *supra*: paras. 147 *et seq.*
[204] T., 29 July 2003, pp. 61 to 62.
[205] T., 29 July 2003, pp. 64 to 66.
[206] T., 25 August 2003, pp. 16 to 17, 40 to 41, 42, 51, and 65 to 66.

and the circumstances of the events were peculiar, in particular, the relationship between the witness and the victim of the rape and murder.

219. As to the evidence given by Witness TAP, the Defence alleges that the evidence is not credible because the witness's account of events is contradictory and implausible, and it was the first time during her testimony before the Chamber that she alleged that the Accused[207] raped her. First, the Chamber recalls that rejection of a new allegation made during a witness's testimony before the Chamber does not affect other allegations.[208] The Chamber finds that there is no contradiction between the witness's prior statement and her testimony as to the date of the rape, as she testified during cross-examination that the time that had elapsed since the events did not allow her to ascertain dates. The Chamber further finds that Witness TAP's account of events seems to be plausible because of the peculiar circumstances of the events, a situation of extreme crisis in which the survival of certain victims may seem extraordinary. Thus, the Chamber finds that Prosecution Witness TAP is credible as to her account of the acts of sexual violence committed against her and her mother.[209]

220. The Defence submits that Prosecution Witness TAS lacks any credibility, alleging on the one hand, that as a victim the witness cannot give a reliable account of events and, on the other hand, that her evidence was fabricated by the *Ibuka* Association, as she relied on the evidence of Defence Witness RDR.[210] The Chamber finds that being a victim of the events that occurred in Rwanda in 1994 cannot automatically discredit a witness's evidence in such a way as to exclude it. The Chamber recalls that many victims have already contributed to the search for truth in judicial proceedings, especially in proceedings before this Tribunal. Moreover, as to the specific allegation that *Ibuka* fabricated evidence, the Chamber finds that that Witness RDR's evidence[211] fails to prove that. The Chamber also finds that Witness TAS is credible and his account reliable.

221. The Defence also alleges that the utterances of the two attackers recounted by Prosecution Witness TAS cannot be sustained because the witness testified that she did not see the Accused himself instigate rape.[212]

222. The Chamber notes that Witness TAS, the rape victim, is Hutu and her husband Tutsi. The Chamber finds that through the woman, it was her husband, a Tutsi civilian, who was the target. Thus, the rape was part of the widespread attacks against Tutsi civilians, as pleaded by the Prosecutor in paragraph 40 of the Indictment.

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[207] Defence Closing Brief, paras. 970 to 974.
[208] *Gacumbitsi,* Decision of 2 October 2003, para. 25, in which the Chamber reserved it discretion to make a finding on the new allegations of rape by Witness TAP.
[209] The Chamber recalls that it had ruled, in its Decision of 2 October 2003, that it would not make any finding on the new allegations of rape by Witness TAP against the Accused, see *supra*: para. 16.
[210] Defence Closing Brief, para. 615.
[211] T., 21 October 2003, pp. 58 to 59. Defence Witness RDR affirmed that a Tutsi lady told him that Prosecution Witness TAS allegedly requested him to testify for the Prosecution against Sylvestre Gacumbitsi.
[212] T., 1 March 2004, pp. 52 to 53.

223. The Defence makes a general allegation that no Prosecution witness is credible,[213] because they are either victims of the events of 1994 or accomplices and, therefore, are either in jail or on conditional release. The Defence also alleges that their evidence is not credible.[214] Lastly, the Defence further affirms that the witnesses are not credible because they alone knew of the rapes, whereas none of the Defence witnesses called heard of rape, witnessed it or was a victim thereof.[215] The Chamber has already had occasion to rule on such allegations each time it made a finding on an individual witness. The Chamber reiterates its findings, and adds that the credibility of Prosecution witnesses, who themselves were raped or witnessed rape, cannot be impeached by the fact that Defence witnesses were not raped or did not witness rape.

4. Findings

224. Regarding paragraphs 21 and 39 of the Indictment, and in light of the evidence admitted above, the Chamber finds that it is established that the Accused publicly instigated the rape of Tutsi girls, by specifying that sticks be inserted into their genitals in case they resisted. The Chamber finds that the rapes and other acts of sexual violence recounted by Prosecution Witness TAQ, the consequence of the instigation against Tutsi girls, are established.

225. Regarding paragraph 40 of the Indictment, the Chamber finds that acts of sexual violence were part of a systematic and widespread attack against Tutsi civilians in Rusumo *commune* during the events of April 1994. Although it is possible that many rapes were committed in Rusumo *commune*, the evidence tendered covered only a few cases of rape and acts of sexual violence. Thus, the Chamber cannot make a finding on the widespread character of such crimes. Nor can the Chamber find that the Accused knew or had reason to know that such acts were being perpetrated because of their widespread character. However, as the Chamber has already found that the Accused instigated such acts of violence, he thereby clearly demonstrated his intent to see them committed.

226. The Chamber finds that the rapes recounted by Prosecution Witnesses TAQ, TAO, TAS and TAP are established.

227. In light of the closeness in time and space between the instigation by the Accused on 17 April 1994 and the rapes committed against Witness TAQ and other women and girls, the mode of commission of which amounted to instigation, the Chamber finds that the rapes were a direct consequence of instigation. However, the Chamber is unpersuaded that there is a sufficient nexus between such instigation and the other rapes, the commission of which has been proved beyond a reasonable doubt. Although it is true that Prosecution Witness TAS testified that an attacker told her that he was acting in accordance with the Accused's instructions, the Chamber has not found any evidence that this part of her account is reliable.

[213] T., 1 March 2004, pp. 34 to 35, 42 to 43, and 52 to 53.
[214] T., 1 March 2004, pp. 34 to 36.
[215] T., 1 March 2004, pp. 52 to 53.

228. With regard to paragraphs 20 and 37 of the Indictment, and in light of the evidence adduced in respect of paragraphs 39 and 40 of the same Indictment, the Chamber finds that the Prosecutor has established beyond a reasonable doubt that, from April to June 1994, in Rusumo *commune*, rapes and other acts of sexual violence were committed as part of a widespread and systematic attack against Tutsi civilians. The Chamber finds that the Accused knew or had reason to know that such rapes were being committed because he instigated the attack against Tutsi civilians.

F. PARAGRAPHS 8, 22, 23 AND 24 OF THE INDICTMENT (AUTHORITY OF THE ACCUSED)

1. Allegations

229. Paragraphs 8, 22, 23 and 24 of the Indictment allege that:

> 8. As *bourgmestre,* Sylvestre Gacumbitsi exercised authority over his subordinates, among whom can be counted: administrative personnel at the level of the *commune,* including *conseillers de secteur, responsables de cellule* and *nyumbakumi;* and the communal police. As consequences of his public office as *bourgmestre* of Rusumo *commune* and his membership in the MRND political party, Sylvestre Gacumbitsi also exercised authority over *gendarmes* and civilian militias in Rusumo *commune.*
>
> (…)
>
> 22. From those first days of April 1994 through 30 April 1994, Sylvestre Gacumbitsi ordered, directed or acted in concert with local administrative officials in Kibungo *prefecture,* including *bourgmestres* and *conseillers de secteur,* to deny protection to civilian Tutsi refugees and to facilitate attacks upon them by communal police, *Interahamwe,* civilian militias and local residents.
>
> 23. At all times material to this indictment Sylvestre Gacumbitsi failed to maintain public order, or deliberately undermined the public order, in districts over which he exercised administrative authority, in agreement with or in furtherance of the policies of the MRND or the Interim Government, knowing that those policies intended the destruction, in whole or in part, of the Tutsi.
>
> 24. By virtue of his positions of leadership of the MRND and the *Interahamwe,* particularly as derived from his status as *bourgmestre* of Rusumo, Sylvestre Gacumbitsi ordered or directed or otherwise authorized government armed forces, civilian militias and civilians to persecute rape and kill or facilitate the killing of civilian Tutsi. By virtue of that same authority Sylvestre Gacumbitsi had the ability and the duty to halt, prevent, discourage or sanction persons that committed, or were about to commit, such acts, and did not do so, or only did so selectively.

2. Evidence

230. In the case of *The Prosecutor v. Jean-Paul Akayesu*, **Expert Witness, Alison Des Forges**, gave evidence on the local administrative structure of Rwanda, including the powers of the *bourgmestre*, and on the history of Rwanda. In the instant case, the expert witness also gave evidence on the history of Rwanda, notably with regard to its

people from the 10th century to colonization, and the evolution of social groups that became ethnic groups, before addressing the specific issue of the powers and authority of the *bourgmestre* in Rwanda in 1994.[216]

231. The expert testified that the *bourgmestre* plays in his *commune* a historically important role, attributable to the one-party system and to the fact that not only is the *bourgmestre* appointed by the President of the Republic, he is also the party's local leader. The introduction of a multiparty system reduced the importance of the local *bourgmestre*'s role without abolishing it. First, the *bourgmestre* was no longer necessarily the local political leader, as each party now had its own leader. Second, the national political situation had, to some extent, affected the *bourgmestre*'s authority.[217] Thus, the relationship between the *bourgmestre* and the President of the Republic was not as cosy as before. Therefore, when the *bourgmestre* was not from MRND, he was not perceived as the President's man, although he was still the local representative of a national political leader.

232. The expert witness testified that the importance of the *bourgmestre*'s role in his *commune* resulted from his *de jure* and *de facto* authority. He was legally responsible for implementing regulations adopted by the communal council (composed of *conseillers de secteur* and the *bourgmestre* himself), and for maintaining law and public order in the *commune*. He was also in charge of communal personnel, school enrolments and distribution of land, and also had quasi-judicial authority to settle civil disputes and prosecute crimes and misdemeanors. He also performed the duties of a judicial police officer.[218] His direct authority over the communal police derived from his authority over the forces of law and order in the *commune*. Such authority extended to the *gendarmerie* in case of emergency requiring requisitioning of *gendarmerie* units by the *préfet*.[219] However, details of the *de facto* powers were not given. The expert further testified that such *de facto* powers could allow, for example, a *bourgmestre* to disobey a *préfet* who was hostile to the killings, without the *préfet* being able to prevent the *bourgmestre* from attaining his objectives.[220]

233. In the instant case, the expert witness testified under cross-examination that the *préfet*, a high-level civil servant, is still the *bourgmestre*'s superior in the administrative structure, and that the *bourgmestre*'s importance in the *commune* is not affected in any way as he can ignore the hierarchy. The witness also emphasized the *bourgmestre*'s power to distribute communal resources, including land, a crucial prerogative in the socio-economic context of Rwanda. The witness further testified that the *bourgmestre* was, permanently and locally, perceived by citizens as the authority with the greatest influence on their daily lives.

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[216] T., 26 August 2003, pp. 34 to 42.
[217] See *Akayesu* Judgment (TC), paras. 58 to 60. See also *Akayesu,* T., 13 February 1997, pp. 101 to 105.
[218] See *Akayesu* Judgment, T., 12 February 1997, pp. 87 to 92.
[219] T., see *Akayesu* Judgment (TC), paras. 61 to 71. As to quasi-judicial authority, see *Akayesu,* T., 12 February 1997, pp. 74 to 78. See also Articles 57 and 58 of the Law of 23 November 1963, as amended by Law No. 31/91 of 5 August 1991, the provisions of which were read at trial by Counsel for the Defence.
[220] See *Akayesu,* T., 23 May 1997, pp. 31 to 32.

234. The expert witness also testified that, in light of all his prerogatives, the *bourgmestre*'s authority at the local level was such that if a citizen was a victim of a decision taken by the *bourgmestre*, or of measures imposed by him, it was nearly impossible for the victim to have recourse to any remedy whatsoever. This was borne out in his relations with the locally elected *conseillers de secteur*.

235. Under cross-examination, the witness put things into perspective as to the status of the *préfet* by testifying that the immediate superior of the *bourgmestre* is the *sous-préfet*. However, the witness explained that the presence of a *sous-préfet* did not really affect the *bourgmestre – préfet* relationship. The witness further explained that, politically, the *préfet* and *sous-préfet* did not have the same influence.[221] Under cross-examination, the expert conceded that there were notable differences between *communes* as to the powers and role of the *bourgmestre*. Such differences were determined by a number of factors, including the duration of the *bourgmestre*'s term of office, local rivalries and the *bourgmestre*'s relationships with the President of the Republic. The witness explained that such differences were not prescribed by law, but rather resulted from the political reality of power.[222]

236. The expert witness testified that, in view of the *bourgmestre*'s *de jure* and *de facto* powers, any targeted person would have little chance of survival were the *bourgmestre* to participate in the massacres.[223]

237. Moreover, a number of witnesses testified about their perception of the importance of *bourgmestres*. For example, **Prosecution Witness TAO** testified that *Bourgmestre* Sylvestre Gacumbitsi[224] was the highest authority and most important person in 1994 in his *commune*, Rusumo. The witness explained that the *bourgmestre* was the local MRND leader and, accordingly, presided over MRND activities in the *commune*. The witness thus concluded that the Accused and his assistant, Edmond Bugingo, were *Interahamwe* officials.[225] Moreover, Witness TAQ testified that, as *bourgmestre*, the Accused was responsible for security in the *commune*. Thus, at Nyarubuye Parish, the witness and the other refugees were happy to see the Accused, thinking that he would stop the *Interahamwe*[226] from threatening them. The witness further testified that the Accused led the attacks against the refugees at Nyarubuye Parish on 15 April 1994 and that the *Interahamwe* and communal police took part[227] in the attacks. **Prosecution Witness TBH** testified that the *bourgmestre* gave instructions and orders to the *conseillers* on matters concerning their *secteurs*.[228] The witness also testified that the Accused convened and chaired meetings during which he instructed *conseillers* in his *commune* to kill Tutsi. The witness explained that the Accused had authority over the communal police, that he was the *conseillers*' superior, and that he failed in his duty to curb crime by not punishing those

[221] T., 27 August 2003, pp. 7 to 9.
[222] T., 27 August 2003, pp. 23 to 24.
[223] T., 27 August 2003, pp. 23 to 24.
[224] T., 30 July 2003, pp. 47 to 48.
[225] T., 31 July 2003, pp. 22 to 24.
[226] T., 29 July 2003, pp. 51 to 52.
[227] T., 29 July 2003, pp. 52 to 53.
[228] T., 25 August 2003, pp. 14 to 15 and 24 to 27.

responsible for the massacres.[229] The witness explained that that he did not think that a *conseiller* could disregard *Bourgmestre* Sylvestre Gacumbitsi's[230] instructions. Another witness, **Prosecution Witness TAC**, testified that the *bourgmestre* was the most important civil servant in Rusumo *commune*, while at the *sous-préfecture* level, the most important civil servant was the *sous-préfet*, Joseph Habimana, it being understood that the *sous-préfecture* of Kirehe comprised two *communes*, Rusumo and Rukira.[231] Another witness, **Prosecution Witness TBK**, testified that he killed someone on the Accused's instructions, because the *bourgmestre* was an authority he had to obey, for fear of being killed[232] himself. Lastly, **Prosecution Witness TBI** testified that he saw communal policemen and a judicial police officer at the Gasenyi commercial centre executing the orders of the Accused. The witness also testified that the communal policemen and judicial police officer spoke respectfully of the *bourgmestre* and referred to him as "His Excellency". The witness further testified that the police were under the Accused's authority.[233]

238. The Accused testified that, as *bourgmestre*, he was chief executive of the *commune*. He conceded that he exercised authority over communal employees, including the communal police, who themselves were under the command of the communal sergeant.[234]

3. Discussion and Findings

239. The Chamber recalls its previous findings on the Accused's participation in meetings and killings.

240. Alison Des Forges testified as an expert witness on the history of Rwanda. Her evidence relates mainly to the administrative structure of Rwanda prior to the advent of multiparty politics, and the powers of a *bourgmestre* prior to the events of April 1994. The Chamber finds that her evidence provides a basis for understanding the role of a *bourgmestre's* in the Rwandan society, as well as his relations with the communal police, *conseillers* and ordinary citizens within the *commune*. Her evidence does not show that the role of a *bourgmestre* changed considerably with the advent of multiparty politics. The *bourgmestre* principal prerogatives, as described by the expert witness, seem to have lasted until April 1994.

241. Based on the above-mentioned evidence and considering the Chamber's previous findings, the Chamber finds that the Accused was an influential figure in his *commune* of Rusumo. Ordinarily, he represented the central administration in the *commune* and, as such, was its highest-ranking local administrative official. Moreover, he was perceived as such by the local population, without mentioning that, in addition to his role as *bourgmestre*, he was the local MRND leader prior to the advent of multiparty politics.

[229] T., 25 August 2003, pp. 26 to 27.
[230] T., 26 August 2003, pp. 14 to 18.
[231] T., 4 August 2003, p. 9 and 21 to 24.
[232] T., 19 August 2003, pp. 45 to 46.
[233] T., 18 August 2003, pp. 37 to 39.
[234] T., 24 November 2003, pp. 20 to 21.

242. The *bourgmestre* had legal authority over communal workers and the communal police, including communal sergeants. He was a superior vis-à-vis the said communal personnel. Moreover, he was specifically responsible for the maintenance of law and order in the *commune*.

243. On the evidence tendered, the Chamber cannot find that the Accused had superior authority over the *conseillers*, *gendarmes*, soldiers and *Interahamwe* that were in his *commune* at the time of the events under consideration. The law did not, *per se*, place him in such a position. Although his responsibilities regarding the maintenance of law and order afforded him the power to take legal measures that would be binding on everyone in the *commune*, the Prosecution has not adduced any evidence that such power placed him, *ipso facto*, in the position of a superior within a formal administrative hierarchy vis-à-vis each category of persons mentioned above.

CHAPTER III: LEGAL FINDINGS

244. In setting out its legal findings, the Chamber will rely on its factual findings set forth in Chapter II.

245. The Indictment contains five counts. In its submissions, the Defence asserts that the Prosecution charges Sylvestre Gacumbitsi mainly with genocide and, alternatively, complicity in genocide and crimes against humanity (extermination, murder and rape). The Defence further asserts that the Prosecution's constant effort to establish all those crimes cumulatively clearly shows that the Prosecution is not sure of its case. The Defence therefore submits that the Chamber should make a finding only on the crime of genocide, and examine the other crimes[235] only in the event of a negative finding on the crime of genocide.

246. The Chamber finds that the five counts retained against Sylvestre Gacumbitsi, with the exception of the first two (genocide and complicity in genocide), are cumulative and not alternative. This results from the original English version of the Indictment, which clearly shows the Prosecutor's intention to charge the Accused cumulatively, and not alternatively, under Counts 1, 3, 4 and 5. Far from being controverted, the Prosecutor's initial intention was confirmed in his Pre-Trial Brief, opening statement and closing argument. The Defence is aware of all this. Thus, the Chamber will enquire successively whether the Prosecutor has adduced evidence of Sylvestre Gacumbitsi's responsibility under the different counts.

A. GENOCIDE AND RELATED OFFENCES

247. The Accused is charged under Count 1 with the crime of genocide, and under Count 2, alternatively to Count 1, with complicity in genocide.

248. The Chamber recalls that between 1 January 1994 and 17 July 1994, Rwanda was one of the Contracting Parties to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which it signed on 12 February 1975.[236]

1. Statute and case law

249. Article 2 of the Statute provides as follows:

> 1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article.
>
> 2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:
>
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;

[235] Defence arguments, see T., 1 March 2004, pp. 39 to 41.
[236] *Akayesu* Judgment (TC), para. 496; *Kajelijeli* Judgment (TC), para. 744; *Kamuhanda* Judgment (TC), para. 576.

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.

250. The ***mens rea*** of genocide is the specific intent (*dolus specialis*) described in Article 2(2) of the Statute as the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group".

251. The ***actus reus*** of genocide is found in each of the five acts enumerated in Article 2(2) of the Statute. In the case at bar, the Prosecutor focuses only on two of those acts, namely, "killing members of the group" and "causing serious bodily or mental harm to members of the group". The Chamber will, therefore, examine only those two items.

252. It is possible to infer the genocidal intent inherent in a particular act charged from the perpetrator's deeds and utterances considered together, as well as from the general context of the perpetration of other culpable acts systematically directed against that same group, notwithstanding that the said acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership in a particular group, while excluding members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.[237]

253. Evidence of genocidal intent can be inferred from "the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing".[238] The notion of "destruction of a group" means "the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group".[239] In proving the intent to destroy "in whole or in part", it is not necessary to establish that the perpetrator intended to achieve the complete annihilation of a group from every corner of the globe. There is no numeric threshold of victims necessary to establish genocide,[240] even though the relative proportionate scale of the actual or attempted destruction of a group, by any act listed

[237] *Akayesu* Judgment (TC), para. 523; *Ntagerura and Others* Judgment (TC), para. 663, *Kajelijeli* Judgment (TC), paras. 804 to 805.
[238] *Kayishema and Ruzindana* Judgment (TC), para. 93; *Kajelijeli* Judgment (TC), para. 86.
[239] See ILC Report (1996), para. 50; see also *Semanza* Judgment (TC), para. 315; *Kayishema and Ruzindana* Judgement (TC), para. 95.
[240] *Semanza* Judgment (TC), para. 316.

in Article 2 of the Statute, is strong evidence to prove the necessary intent to destroy a group in whole or in part.[241]

254. Membership of a group is a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction,[242] but the determination of a targeted group must be made on a case-by-case basis, consulting both objective and subjective criteria.[243] Indeed, in a given situation, the perpetrator, just like the victim, may believe that there is an objective criterion for determining membership of an ethnic group on the basis of an administrative mechanism for the identification of an individual's ethnic group.[244]

255. The case-law of the Tribunal shows that for a conviction of genocide to be entered against a person charged with killing members of a group, the Prosecution must establish that the accused planned, ordered or instigated the killing, killed or aided and abetted in the killing of one or several members of the group in question with intent to destroy, in whole or in part, the group as such.[245] Evidence must also be tendered to show either that the victim belonged to the targeted ethnical, racial, national or religious group[246] or that the perpetrator of the crime believed that the victim belonged to the said group.

256. For the accused to incur criminal liability, pursuant to Article 2(2)(b) of the Statute, he must have caused serious bodily or mental harm to members of the group.[247]

2. Genocide

257. The Chamber finds that during the period covered by the Indictment, Rwandan citizens were individually identified according to ethnic groups, to wit, Tutsi, Hutu and Twa.[248]

258. The Chamber recalls that the phrase "destroy in whole or in part a[n] ethnic group" does not imply a numeric approach. It is sufficient to prove that the Accused acted with intent to destroy a substantial part of the targeted group.[249] In this instance, the scale of the massacres and the fact that Tutsi were targeted, including in the incitement by the Accused, are sufficient proof thereof.

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[241] *Kayishema and Ruzindana* Judgment (TC), para. 93.
[242] *Rutanga* Judgment (TC), para. 56; *Musema* Judgment (TC), para. 161; *Semanza* Judgment (TC), para. 317.
[243] *Semanza* Judgment (TC), para. 317.
[244] In the instant case, Rwanda in 1994, the existence of an identity card mentioning the bearer's ethnic group satisfies such criterion. See the evidence of Expert Witness Alison Des Forges on the existence of such an identity card mentioning the bearer's ethnic group: T., 26 August 2003, pp. 43 to 44.
[245] *Akayesu* Judgment (TC), para. 473; *Kajelijeli* Judgment (TC), para. 757; *Semanza* Judgment, para. 377.
[246] *Semanza* Judgment, (TC), para. 319; *ibid*. para. 55; *ibid.* paras. 154 and 155; *Rutaganda* Judgment (TC), para. 60; *Kayishema and Ruzindana* Judgment (TC), para. 99; *Akayesu* Judgment (TC), para. 499.
[247] See *infra*: para. 291 to 293. See ILC Report (1996), para. 8.
[248] See *supra*: Chapter II, Parts B and C.
[249] See ILC Report (1996), para. 8.

259. In its factual findings, the Chamber extensively considered the actions and utterances of the Accused. Thus, at the meeting of 9 April, the Accused urged the *conseillers de secteur* to incite the Hutu to kill the Tutsi. Similarly, in the morning of 13 April at the Nyakarambi market, on 14 April at the Rwanteru and Kanyinya trading centres, the Accused made similar utterances to the population, and on 17 April, he instigated the rape of Tutsi women and girls. Moreover, the Accused personally killed Murefu, a Tutsi, thereby signalling the beginning of the attack at Nyarubuye Parish on 15 April 1994.[250] The Chamber finds that at the time of the events in Rusumo *commune*, which events have been established in the factual findings above, Sylvestre Gacumbitsi had the intent to destroy, in whole or in part, the Tutsi ethnic group.

260. Having found that the Tutsi constituted an ethnic group and that the Accused had the intent to destroy the said group in whole or in part, the Chamber will now examine whether the Accused committed any of the two acts enumerated in Article 2(2) under which he is charged, namely, killing members of the [Tutsi] group (Article 2(2)(a)), and causing serious bodily or mental harm to members of the [Tutsi] group (Article (2)(2)(b)).

Killing members of the group

261. The Chamber has already found that a substantial number of Tutsi civilians were killed in Rusumo *commune* between 7 and 18 April 1994. In particular, the Chamber found that the Accused killed Murefu, a Tutsi civilian, on 15 April 1994 in Nyarubuye Parish. The Chamber also found that the Accused participated in the attack on Nyarubuye Parish on 15 and 16 April 1994.[251] Lastly, the Chamber also found that on 17 April, Chantal, a young Tutsi girl, died as a result of the impalement of her genitals, at the instigation of the Accused. The Chamber is persuaded that the Accused played a leading role in conducting and, especially, supervising the attack.

262. The Chamber therefore finds that during the period covered by the Indictment, Sylvestre Gacumbitsi participated in the killing of Tutsi with the required genocidal intent. The Chamber will now examine the form of participation in such killings.

263. In the introduction to the allegations of genocide contained in paragraphs 1 to 25 of the Indictment, the Prosecutor charges the Accused cumulatively under Article 6(1) and (3) of the Statute, which read:

> (1) A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 and 4 of the present Statute, shall be individually responsible for the crime.
>
> (…)
>
> (3) The fact that any of the acts referred to in Articles 2 and 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate

[250] See *supra*: Chapter II, Parts B and C.
[251] See *supra*: Chapter II, Part C.

was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

264. The Indictment charges the Accused with criminal responsibility under Article 6(1) of the Statute by virtue of his affirmative acts in "ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged".[252]

265. The Indictment charges the Accused with criminal responsibility under Article 6(3) of the Statute by virtue of his "actual constructive knowledge of the acts or omissions of soldiers, *gendarmes*, communal police, *Interahamwe*, civilian militia and civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the preparation and execution of the crime charged".

266. These two forms of responsibility cannot be charged cumulatively on the basis of the same set of facts. In case of cumulative charging, the Trial Chamber will retain only the form of responsibility that best describes the Accused's culpable conduct.

267. Article 6(1) of the Statute reflects the criminal law principle that criminal liability is incurred by individuals who participate in and contribute to the crime in various ways according to the five forms of participation covered by Article 6(1) of the Statute.[253] In the original English version of the Indictment, the Prosecutor pleads such forms of participation as ordering, instigating, commanding, participating in and aiding and abetting in the preparation and execution, which do not exactly tie in with the statutory provisions. Of such forms, only the last two – commanding and participating in, and aiding and abetting in the preparation and execution – are not set forth in the Statute of the Tribunal, and it is incumbent upon the Chamber to throw more light on their significance.

268. "Commanding", as a form of participation, corresponds rather to the form of participation expressed in "ordering", as used in the Statute, taking into account the ordinary meaning of the term. Hence, the Chamber holds that this form of participation has been doubly pleaded.

269. The form "participating in and aiding and abetting in the preparation and execution" appears to encompass two propositions: first, "participating in the preparation and execution" and second, "aiding and abetting in the preparation and execution". The first proposition corresponds to two forms of participation contemplated by the Statute: first of all, planning, which is the result of "participating in the preparation", and secondly, committing, which is inferred from "participating in the execution". Moreover, with respect to the first proposition, the Chamber notes that

[252] The English version of the Indictment reads: "Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged".
[253] *Semanza* Judgment (TC), para. 377; *Kayishema and Ruzindana* Judgment (AC), para. 185; *Musema* Judgment (TC), para. 114; *Rutaganda* Judgment (TC), para. 33; *Kayishema and Ruzindana* Judgment (TC), para. 196; *Akayesu* Judgment (TC), para. 473; *Kajelijeli* Judgment (TC), para. 757.

the Accused is charged in the Prosecutor's Pre-Trial Brief, under the heading "Genocide", with acts of planning.[254] The Chamber also notes that the Indictment contains factual allegations sustaining the charges of preparing, planning and organizing preferred against the Accused.[255] With regard to the form "aiding and abetting in the preparation and execution", it should be noted that aiding and abetting are pleaded at the planning and execution phases of the crime, in conformity with the Statute under which, alternatively, this form of responsibility covers three stages of the crime, namely planning, preparation and execution.

270. Pursuant to Article 6(1), the Prosecutor charges Sylvestre Gacumbitsi with planning, instigating, ordering, committing, and aiding and abetting in genocide. The Chamber will examine each of these forms of participation *seriatim*.

271. "Planning" presupposes that one or more persons contemplate the commission of a crime at both its preparatory and execution phases.[256] On 9 April 1994, Sylvestre Gacumbitsi, as *bourgmestre* of Rusumo *commune*, convened a meeting of *conseillers de secteurs* and instructed them to organize meetings at the *secteur* level between 9 and 12 April, without the knowledge of Tutsi, and to incite Hutu to kill Tutsi. On 10 April 1994, Sylvestre Gacumbitsi, together with communal policemen, received boxes of weapons at the Kibungo *gendarmerie* camp, and had the boxes delivered to various *secteurs*. On 11 April, Sylvestre Gacumbitsi met successively with Majors Ndekezi and Nsabimana, as well as with *Interahamwe* leader, Cyasa. Together, they travelled to several areas in Rusumo *commune* on 11 April 1994. The Accused then visited several *secteurs* in Rusumo on 12 April 1994 to check whether the *conseillers* had held such meetings with the local population. The same day, he met the local CDR leader, André, in Gasenyi and reiterated his request of 10 April, namely, not to let people flee to Tanzania.[257]

272. In the morning of 13 April 1994, at the Nyakarambi market, the Accused, using a megaphone, addressed a crowd of about one hundred people who had assembled at his request. He issued various instructions and asked the crowd not to let anyone escape. The instructions were directed at the Hutu majority and aimed at preventing Tutsi from escaping from the attacks, and preparing Hutu to eliminate Tutsi.

273. On 14 April 1994, at the Rwanteru trading centre, the Accused addressed about a hundred people and urged them to arm themselves with machetes and participate in the fight against the enemy, stressing that all the Tutsi had to be driven away. After his speech, the Accused drove towards Kigarama, followed by some of the people. In Kigarama, the attackers attacked the house and property of a Tutsi called Callixte, and also looted the property of other Tutsi. Led by Juvénal Ntamwemizi, who was identified as the Accused's representative, another group, composed of people who had also listened to the Accused's speech in Rwanteru, attacked the property of a Tutsi called Buhanda.

[254] Prosecutor's Pre-Trial Brief, para. 3.35.
[255] Indictment of 20 June 2001, paras. 4 to 7, 9 and 11.
[256] ICTY, *Bla{ki}* Judgment (TC), para. 386; *Musema* Judgment (TC), para. 119; *Akayesu* Judgment (TC), para. 480.
[257] See *supra:* Chapter II, Part B. This reference is also relevant to subsequent factual findings.

274. The Chamber finds that these attacks resulted from the instigation stirred up by the Accused at the Rwanteru trading centre: the Kigarama attack took place under his direct supervision, while Buhanda's house was attacked under the supervision of his representative.

275. In the afternoon of 14 April 1994, the Accused, together with some armed communal policemen, went to the Kanyinya trading centre, where he told a group of about ten people: "Others have already completed their work. Where do you stand?". Soon after he left, a group of attackers set up and led by two demobilized soldiers, Nkaka and Sendama, started attacking Tutsi targets.

276. On 14 April 1994, after addressing the crowd at the Kanyinya commercial centre, the Accused, still accompanied by communal policemen, went to the Gisenyi commercial centre, where he addressed about 40 people, mainly Hutu. The Accused urged them to kill the Tutsi and throw their bodies into the River Akagera. He also asked boatmen to remove their canoes from the river to prevent the Tutsi from using them to cross the river.

277. Furthermore, the Accused met with various political and military officials, notably Colonel Rwagafirita from whom he received boxes of weapons that he had unloaded in various areas of the *commune*.

278. All such facts amount to acts of preparation for the massacres of the Tutsi in Rusumo *commune*. Sylvestre Gacumbitsi's involvement leads the Chamber to find that he planned the murder of Tutsi in Rusumo *commune* in April 1994.

279. "Instigating" involves prompting another person to commit an offence.[258] Instigating need not be direct and public.[259] For it to be a punishable offence, proof[260] is required of a causal connection between the instigation and the *actus reus* of the crime. In this particular case, the Accused, at various locations, publicly instigated the population to kill the Tutsi. For example, the Accused made speeches at the Rwanteru commercial centre where, following his instigation, those who listened to his speeches participated, shortly after, in looting property belonging to the Tutsi and in killing the Tutsi.[261]

280. The Chamber finds that Sylvestre Gacumbitsi incited the killing of Tutsi in Rusumo *commune* in April 1994.

281. "Ordering" refers to a situation where an individual in a position of authority uses such authority to compel another individual to commit an offence.[262] On this issue, the two ad hoc Tribunals have ruled differently. One has held that ordering implies the existence of a superior-subordinate relationship between the individual

[258] *Kajelijeli* Judgment (TC), para. 762; *Bagilishema* Judgment (TC), para. 30; *Akayesu* Judgment (TC), para. 482.
[259] *Semanza* Judgment (TC). para. 381; *Akayesu* Judgment (AC), paras. 478 to 482.
[260] *Bagilishema* Judgment (TC), *ibid*.
[261] See *supra*: Chapter II, Part B.
[262] *Akayesu* Judgment (TC), para. 483; *Kajelijeli* Judgment (TC), para. 763.

who gives the order and the one who executes it.[263] The other has held that ordering does not necessarily imply the existence of such a formal superior-subordinate relationship.[264]

282. The Trial Chamber is of the opinion that the issue must be determined in light of the circumstances of the case. The authority of an influential person can derive from his social, economic, political or administrative standing, or from his abiding moral principles. Such authority may also be *de jure* or *de facto*. When people are confronted with an emergency or danger, they can naturally turn to such influential person, expecting him to provide a solution, assistance or take measures to deal with the crisis. When he speaks, everyone listens to him with keen interest; his advice commands overriding respect over all others and the people could easily see his actions as an encouragement. Such words and actions are not necessarily culpable, but can, where appropriate, amount to forms of participation in crime, such as "incitement" and "aiding and abetting" provided for in Article 6(1) of the Statute. In certain circumstances, the authority of an influential person is enhanced by a lawful or unlawful element of coercion, such as declaring a state of emergency, the *de facto* exercise of an administrative function, or even the use of threat or unlawful force. The presence of a coercive element is such that it can determine the way the words of the influential person are perceived. Thus, mere words of exhortation or encouragement would be perceived as orders within the meaning of Article 6(1) referred to above. Such a situation does not, *ipso facto*, lead to the conclusion that a formal superior-subordinate relationship exists between the person giving the order and the person executing it. As a matter of fact, instructions given outside a purely informal context by a superior to his subordinate within a formal administrative hierarchy, be it *de jure* or *de facto*, would also be considered as an "order" within the meaning of Article 6(1) of the Statute.

283. The Chamber recalls its factual finding that Sylvestre Gacumbitsi had superior authority only over the communal police.[265] The Prosecution failed to show that he also had superior authority over the *conseillers*, *Interahamwe*, *gendarmes* or any other persons who participated in the attacks. Moreover, the Prosecution failed to demonstrate that, in the absence of a formal superior-subordinate relationship between the Accused and the population and attackers, the circumstances of the case suggest that the Accused's words of incitement were perceived as orders within the meaning of Article 6(1) of the Statute.

284. Accordingly, the Chamber finds that Sylvestre Gacumbitsi ordered communal policemen who were present at Nyarubuye Parish on 15 April 1994 to kill the Tutsi. On the evidence adduced, the participation of those policemen in the massacre was a direct consequence of the orders given by the Accused. Thus, the Accused incurs liability, pursuant to Article 6(1) of the Statute, for having ordered them to so participate in those crimes.

[263] *Semanza* Judgment (TC), para. 382; *Ntagerura and others* Judgment (TC), para. 624.
[264] ICTY, *Kordi} and Cerkez*, Judgment (TC), para. 388. See also *Kajelijeli* Judgment (TC), para. 763.
[265] See *supra*: Chapter II, Part F.

285. "Committing" refers generally to the direct and physical perpetration of the crime[266] by the offender himself. In the present case, the Accused killed Murefu, a Tutsi. The Chamber therefore finds that he committed the crime of genocide, within the meaning of Article 6(1) of the Statute.

286. "Aiding and abetting" constitute a more complex form of participation.[267] *Aiding* means assisting or helping another to commit a crime. *Abetting* means facilitating, advising or instigating the commission of a crime.[268] In this case, the Accused, on several occasions, drove the attackers in a convoy, with the vehicle in which he was always leading the convoy. The attackers were transported in communal vehicles, the use of which the Accused was in a position to prevent. That the Accused was leading the convoy is sufficient proof that he consented to the use of such vehicles. Lastly, the Accused was present throughout the attack on the Tutsi in Rusumo. The Accused was also at Nyarubuye Parish on 15 April, and in the vicinity of the parish on 16 and 17 April 1994.[269] The Chamber therefore finds that Sylvestre Gacumbitsi aided or abetted in the perpetration of the massacres, thereby encouraging the commission of the crime of genocide in Rusumo *commune* in April 1994.

287. The Chamber finds that the requisite specific intent to establish genocide is in itself evidence of the Accused's intention to participate in the commission of such acts of genocide.

288. In the light of the foregoing, the Chamber finds Sylvestre Gacumbitsi responsible for planning, instigating, ordering the communal police, committing and aiding and abetting in the killing of members of the Tutsi ethnic group, as part of the scheme to perpetrate the crime of genocide.

289. In paragraph 25 of the Indictment, the Prosecutor also charges the Accused with conspiring with others, participating in the planning, preparation or implementation of a common plan, strategy or scheme aimed at exterminating the Tutsi, through his own acts, or through people whom he helped, or through his subordinates, whose acts he knew and approved of. The Prosecution seems to allege that the Accused participated in a joint criminal enterprise. However, the Chamber cannot make a finding on such allegation since it was not pleaded clearly enough to allow the Accused to defend himself adequately. The Prosecution also seems to allege that the Accused participated in a conspiracy, a form of commission of the crime of genocide (Article 2(3)(c) of the Statute). Again, the Chamber cannot make a finding on such allegation because the Indictment contains only the counts of genocide and complicity in genocide. In the same paragraph, the Prosecution further alleges that the Accused planned, ordered, or aided and abetted the commission of genocide. However, the Chamber has already made a finding on this matter. Lastly, the Prosecution alleges, in the alternative, that the Accused is responsible for the actions of his subordinates, i.e. he is so responsible pursuant to Article 6(3) of the Statute.

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[266] *Kayishema and Ruzindana* Judgment (AC), para. 187; ICTY, *Tadi}* Judgment (AC), para. 188; ICTY, *Kunarac* and Others Judgment (TC), para. 390; *Semanza* Judgment (TC), para. 383.
[267] *Semanza* Judgment (TC), para. 384; *Akayesu* Judgment (TC), para. 484.
[268] *Ntakirutimana* Judgment (TC), para. 787; *Akayesu* Judgment (TC), para. 484; *Kajelijeli* Judgment (TC), para. 765.
[269] See *supra:* Chapter II, Part C.

290. Since the Chamber has found the Accused liable under Article 6(1) of the Statute for perpetrating genocide against the Tutsi in Rusumo *commune* in April 1994, the Chamber does not deem it necessary, given the similarity of the acts charged, to find whether he also incurs criminal responsibility under Article 6(3) of the Statute.

Causing Serious Bodily or Mental Harm to members of the Tutsi Ethnic Group

291. Serious bodily harm means any form of physical harm or act that causes serious bodily injury to the victim, such as torture and sexual violence. Serious bodily harm does not necessarily mean that the harm is irremediable.[270] Similarly, serious mental harm can be construed as some type of impairment of mental faculties, or harm that causes serious injury to the mental state of the victim.[271]

292. With regard to paragraph 21 of the Indictment, the Chamber has already found that the Accused publicly instigated the rape of Tutsi women and girls, and that the rape of Witness TAQ and seven other Tutsi women and girls by attackers who heeded the instigation was a direct consequence thereof. The Chamber finds that these rapes caused serious physical harm to members of the Tutsi ethnic group. Thus, the Chamber finds that, as to the specific crime of serious bodily harm, Sylvestre Gacumbitsi incurs responsibility for the crime of genocide by instigating the rape of Tutsi women and girls.

293. Accordingly, the Chamber finds Sylvestre Gacumbitsi GUILTY of GENOCIDE, pursuant to Article 2(3)(a) and (b), as charged under Count 1 of the Indictment.

3. Complicity in Genocide

294. Count 2, complicity in genocide, is an alternative to Count 1, genocide, and is based on the same factual allegations contained in the Indictment.

295. Since the Chamber has already found the Accused guilty under Count 1 pursuant to Article 2(3) (a) and (b) of the Statute, the Chamber will not make a finding on the COUNT OF COMPLICITY IN GENOCIDE provided for in Article 2(3)(e) of the Statute. Count 2 is therefore DISMISSED.

B. CRIMES AGAINST HUMANITY

1. Common elements

296. Article 3 of the Statute provides as follows:

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[270] *Akayesu* Judgment (TC), para. 502, *Kayishema and Ruzindana* Judgment (TC), para. 110, *Semanza* Judgment (TC), paras. 320 to 321.

[271] See ILC Report (1996), para. 14, under Article 17 of the Draft Code of Crimes. Bodily harm is defined therein as "some type of physical injury", while mental harm is defined as "some type of impairment of mental faculties".

> The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:
>
> (a) Murder;
> (b) Extermination;
> (c) Enslavement;
> (d) Deportation;
> (e) Imprisonment;
> (f) Torture;
> (g) Rape;
> (h) Persecutions on political, racial and religious grounds;
> (i) Other inhumane acts.

297. Article 3 of the Statute relating to crimes against humanity contains a common element that is applicable to all the acts enumerated therein. The commission of any of these acts by an accused would not constitute a crime against humanity unless the Chamber found that it was committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.

298. The concept of "attack", within the meaning of Article 3 of the Statute, may be defined as an unlawful act, event, or series of events of the kind listed in Article 3(a) through (i) of the Statute.[272] This is the accepted definition in the Tribunal's case law.[273]

299. The attack must be widespread or systematic.[274] The concept of "widespread" attack refers to the scale of the attack and multiplicity of victims.[275] The attack must be "massive or large scale, involving many victims".[276] The concept of "systematic" attack, within the meaning of Article 3 of the Statute, refers to a deliberate pattern of conduct, but does not necessarily include the idea of a plan.[277] The existence of a policy or plan may be evidentially relevant, in that it may be useful in establishing that the attack was directed against a civilian population and that it was widespread or systematic. However, the existence of such a policy or plan is not a separate legal element of the crime.[278]

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[272] *Semanza* Judgment (TC), para. 327.
[273] *Musema* Judgment (TC), para. 205; *Rutaganda* Judgment (TC), para. 70; *Akayesu* Judgment (TC), para. 581.
[274] Although both versions are equally authentic, the French and English versions differ on this point. The "widespread" and "systematic" components in the nature of the attacks are cumulative in the French version ("*systématique et généralisé*"), while any of those components suffices in the English version ("widespread or systematic"). In practice, ICTY and ICTR prefer the English version, which is in conformity with international customary law. See ILC Report (1996), paras. 3 to 4 under Article 18 (crimes against humanity) of the Draft Code of Crimes.
[275] *Semanza* Judgment (TC), para. 329; *Niyitegeta* Judgment (TC), para. 439, *Akayesu* Judgment (TC), para. 580.
[276] *Niyitegeta* Judgment (TC), para. 439; *Ntakirutimana* Judgment (TC), para. 804.
[277] *Semanza* Judgment (TC), para. 329.
[278] *Ibid., citing Kunarac and Others,* Judgment (TC), para. 98.

300. The attack must be directed against a civilian population. The presence of certain individuals within the civilian population who do not fall within the definition of civilians does not deprive the population of its civilian character.[279]

301. The attack against the civilian population must have been carried out on discriminatory grounds, that is, on "national, political, ethnical, racial or religious grounds". This provision is particularly relevant as it allows the Tribunal to exercise jurisdiction only over a restricted category of crimes.[280] Acts committed against persons not falling within the discriminatory categories may nevertheless constitute acts falling within the jurisdiction of the Tribunal if the perpetrator's intention in committing such acts was to support or further the attack on the group discriminated against on any of the enumerated grounds.[281]

302. Lastly, the accused must have acted with knowledge of the broader context of the attack, and with knowledge that his act formed part of the widespread and systematic attack against a civilian population.[282]

303. The Chamber has already found that there were attacks against Tutsi refugees in Nyarubuye Parish during three consecutive days, from 15 to 17 April 1994. Hutu refugees at the parish had been asked to separate themselves from the crowd, thus an indeterminate number of them were saved from the attack. Many Tutsi were killed there. After the first attack on the parish on 15 April 1994, the attackers returned there the following day, and the day after, to finish off survivors. Between 7 April and 18 April 1994, other Tutsi were killed or subjected to attacks and acts of discrimination. Tutsi refugees and Tutsi inhabitants of Rusumo *commune* were attacked and their property looted. On 13 April 1994, the Accused expelled his tenants, Tutsi women, knowing that by so doing he was exposing them to the imminent risk of being targeted by Hutu attackers. The utterances and actions of the Accused at the meeting of 9 April 1994, and during the public meetings he held on the days preceding the attack on the parish, demonstrate the systematic nature of the attack. Weapons were assembled in preparation for the attacks. The Accused conferred daily with military officials to coordinate actions to be undertaken. He travelled to various locations in Rusumo *commune* disseminating his instructions. Once the population was mobilized, it started attacking Tutsi in different locations, but the most serious attack – the attack on the parish – occurred after reinforcements had come from a group of *Interahamwe*.[283]

304. The Chamber finds that the Accused's instructions to the attackers contained a discriminatory element, which prevailed during the attacks and in the selection of victims.

305. Although Article 3 of the Statute does not require evidence of a widespread and systematic attack against a civilian population, the Chamber deems it appropriate

[279] *Akayesu* Judgment (TC), para. 582.
[280] *Akayesu* Judgment (TC), paras. 464 to 565.
[281] *Kajelijeli* Judgment (TC), paras. 877 to 878; *Semanza* Judgment (TC), para. 331.
[282] *Semanza* Judgment (TC), para. 332; *Ntagerura and Others* Judgment (TC), para. 698.
[283] See *supra*: Chapter II, Part B, C and D.

in this case to make findings in that regard, so as to better reflect the circumstances and context of the attack against the Tutsi in Rusumo in April 1994.

306. The said attacks, which were carried out by groups of attackers, were directed against numerous victims, on the ground that they belonged to the Tutsi ethnic group. The victims were attacked particularly in their areas of residence or in places where they had sought refuge. Tutsi families were decimated.[284] The Chamber therefore finds that a discriminatory, widespread and systematic attack was carried against a group of Tutsi civilians during the month of April 1994 in Rusumo *commune*.

2. Crimes against humanity – extermination

307. Count 3 of the Indictment charges the Accused with extermination as a crime against humanity, pursuant to Article 3(b) of the Statute. The Prosecutor sets forth factual allegations in support of the charge in paragraphs 4 to 16 and 26 to 30 of the Indictment, and submits that the Accused is criminally responsible pursuant to Article 6(1) and (3) of the Statute.

308. The Chamber finds that the factual allegations in support of the charge of extermination are similar to those sustaining the charge of genocide, including the massacre at Nyarubuye Parish on 15, 16 and 17 April 1994. The Chamber recalls that during its deliberations on the crime of genocide, it found that the Accused incurred criminal responsibility under Article 6(1) of the Statute for his leading role in the massacres at Nyarubuye Parish. The Accused personally killed Murefu, a Tutsi civilian, gave the signal for the massacre, and then instigated attackers to kill other refugees present at the parish.[285]

309. It is the settled jurisprudence of this Tribunal that extermination, by its very nature, is a crime that is directed against a group of individuals, but different from murder in that it requires an element of mass destruction[286] that is not required for murder. "Large scale" does not suggest a numerical minimum; it must be determined on case-by-case basis using a common sense approach.[287] Responsibility for a single or a number of killings is insufficient for a finding of extermination.[288]

310. In the light of its previous factual findings, the Chamber is of the view that the high numerical strength of the victims of the Nyarubuye Parish massacres supports a finding of widespread killing. It is established that many persons of Tutsi and Hutu origin had taken refuge in the parish on the days preceding the attack. Some witnesses testified that there were several thousand refugees there. It is also established that Hutu were asked to separate themselves from Tutsi during the massacre. The massacre lasted several hours and the attackers returned to finish off survivors during the following two days. Witness accounts show sufficiently that it was a large-scale

[284] See *supra*: Chapter II, Part B, C and E.
[285] See *supra*: Chapter II, Part C.
[286] *Akayesu* Judgment (TC), para.591; *Semanza* Judgment (TC), para. 340; *Nahimana and Others* Judgment (TC), para. 1061.
[287] Bagilishema Judgment (TC), para 87; *Kayishema and Ruzindana* Judgment (TC), para. 142; *Nahimana and Others* Judgment (TC), para. 1061.
[288] *Semanza* Judgment (TC), para. 340.

massacre that resulted in numerous deaths. The fact is corroborated by Prosecution Witness Patrick Fergal Keane who, weeks later, saw many corpses.[289]

311. Considering the leading role of the Accused in preparing and launching the attack, as well as his subsequent visits to the parish to instigate attackers to kill survivors, and the fact that he supervised their actions, the Chamber does not doubt the Accused's intention to participate in a large scale massacre in Nyarubuye.

312. The Chamber finds that the Accused had knowledge of such a widespread and systematic attack against a civilian population in Rusumo in April 1994 because, at the local level, he planned and led certain operations.[290]

313. The Chamber recalls that it has already made a finding on the widespread and systematic nature of the attacks against the Tutsi.[291]

314. In conclusion, the Chamber is satisfied beyond a reasonable doubt that the Accused incurs individual criminal responsibility under Article 6(1) of the Statute for planning extermination, inciting extermination, ordering communal policemen to exterminate and aiding and abetting in the extermination of members of the Tutsi ethnic group in Rusumo *commune* in April 1994.

315. Since the Chamber has found the Accused individually responsible under Article 6(1) of the Statute for the extermination of Tutsi in Rusumo *commune* in April 1994, it deems it unnecessary to find, given the similarity of the acts changed, whether the Accused is equally liable under Article 6(3) of the Statute.

316. Accordingly, the Chamber finds the Accused GUILTY OF EXTERMINATION AS A CRIME AGAINST HUMANITY, as charged under Count 3 of the Indictment.

3. Crimes against humanity – murder

317. Count 4 of the Indictment charges the Accused with murder as a crime against humanity, pursuant to Article 3(a) of the Statute. The Prosecutor's factual allegations in support of this charge are contained in paragraphs 31 to 36 of the Indictment.

318. In the Indictment, the Prosecutor alleges that Sylvestre Gacumbitsi stabbed to death a pregnant Tutsi woman and her mother-in-law, and disembowelled the pregnant woman to extract two foetuses. The Prosecutor also alleges that Sylvestre Gacumbitsi killed a Tutsi woman and her three children, one of whom was Sylvestre Gacumbitsi's godson; that he shot and killed two civilian Tutsi; that he ordered and or planned the killing of children who had sought refuge at Nyarubuye Parish and, lastly, that he expelled and ordered the killing of his tenants.[292]

[289] See *supra*: Chapter II, Part C.
[290] See *supra*: Chapter II, Parts B and C.
[291] See *supra*: paras. 303 to 306.
[292] See *supra*: Chapter II, Part D.

319. The Chamber recalls that no evidence has been tendered as to the allegations contained in paragraphs 32 and 35 of the Indictment. As to paragraph 33, the Prosecution rather adduced evidence on the murder on 14 April of Kanyogote, a Tutsi, and his three children. The Chamber finds that this murder is different from that charged. As to paragraph 34, the Chamber is not persuaded by the evidence adduced on the murder of Mutunzi and Rukomeza at the Catholic Centre. Lastly, as to paragraph 36, the Chamber is still not persuaded by Prosecution evidence that the Accused incurs responsibility for the murder of Marie and Béatrice, his tenants that he expelled.

320. Accordingly, the Chamber finds the Accused not guilty of MURDER AS A CRIME AGAINST HUMANITY as charged in Count 4 of the Indictment.

4. Crimes against humanity – rape

321. The Chamber is of the opinion that any penetration of the victim's vagina by the rapist with his genitals or with any object constitutes rape, although the definition of rape under Article 3(g) of the Statute[293] is not limited to such acts alone. In the case at bench, the Chamber has already found that Witness TAQ was raped at the same time as seven other Tutsi women and girls; that the rapists either penetrated each victim's vagina with their genitals or inserted sticks into them; that Witness TAO's wife was raped, with the rapist penetrating the victim's vagina with his genitals; that Witness TAS was raped in a similar manner, as well as Witness TAP and her mother. The Chamber finds that all these acts fall within the definition of rape.

322. The Chamber reiterates its previous findings on the existence of a widespread and systematic attack against civilians in Rusumo in April 1994.[294]

323. In its factual findings, the Chamber held, on the one hand, that the widespread and systematic attack targeted specifically Tutsi civilians and, on the other hand, that Prosecution Witnesses TAQ, TAP and TAS, the wife of Prosecution Witness TAO, the mother of Prosecution Witness TAP, and seven Tutsi women and girls were all raped, as testified to by Prosecution Witness TAQ. The evidence shows that all these victims are civilians.[295]

324. The Chamber finds that these victims of rape were chosen because of their Tutsi ethnic origin, or because of their relationship with a person of the Tutsi ethnic group, which is the case with Prosecution Witness TAS. The Chamber finds that the order given by the Accused to attackers to attack and select rape victims was discriminatory in character.

325. Under such circumstances, the utterances made by the Accused to the effect that in case of resistance the victims should be killed in an atrocious manner, and the fact that rape victims were attacked by those they were fleeing from, adequately establish the victims' lack of consent to the rapes.

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[293] *Akayesu* Judgment (TC), paras. 597 to 598; ICTY, *Kunarac and Others*, (AC), paras. 127 to 133.
[294] See *supra*: paras. 303 to 306.
[295] See *supra*: Chapter II, Part E. This reference is also relevant to the subsequent factual findings.

326. The Prosecutor submits that the Accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or perpetration of the rape of the above-mentioned victims.

327. The Chamber finds that the evidence adduced establishes that Sylvestre Gacumbitsi, through such utterances as were heard by Prosecution Witness TAQ, also instigated the rape of Tutsi women and girls. On her part, Prosecution Witness TAS also testified that she heard those who raped her say that the Accused had ordered them to rape Tutsi women and girls, but her uncorroborated hearsay evidence is not such as to prove the involvement of the Accused.

328. The Chamber recalls that, immediately after the utterances made by the Accused instigating the rape of Tutsi women and girls, while he was crossing the bridge between Kankobwa and Nyarubuye *secteurs* on his way to Nyarubuye, Prosecution Witness TAQ and seven other Tutsi women and girls were raped by young men who, being in the neigbourhood, heard the *bourgmestre*'s instigation. The Chamber finds that these rapes, as recounted by Prosecution Witness TAQ, resulted directly from the instigation of the Accused.

329. On the contrary, the Chamber finds no evidence establishing a link between the rape of Prosecution Witness TAS and the possible utterances of the Accused and therefore the Accused cannot incur responsibility in that respect. The same applies to the rape of the wife of Prosecution Witness TAO, and the rape of the mother of Prosecution Witness TAP. However, the Chambers finds that these rapes are established as part of the widespread and systematic attack against Tutsi civilians in Rusumo.

330. Pursuant to Article 6(1) of the Statute, the Chamber finds Sylvestre Gacumbitsi criminally liable for instigating the rape of Witness TAQ and seven other Tutsi women and girls, thereby also committing a crime against humanity.

331. As to the other forms of criminal participation, the Prosecution has not adduced evidence to show that they are applicable to the Accused.

332. Having found the Accused criminally liable under Article 6(1) of the Statute for instigating others to commit rape in Rusumo *commune* in April 1994, the Chamber does not deem it necessary to *enquire* whether he is equally responsible pursuant to Article 6(3) of the Statute, given the similarity of the acts charged and the lack evidence of a superior-subordinate relationship between the Accused and the perpetrators of the rapes.

333. Thus, with regard to Count 5, the Chamber finds Sylvestre Gacumbitsi GUILTY OF RAPE AS A CRIME AGAINST HUMANITY.

CHAPTER IV: VERDICT

334. For the reasons set out in this Judgement, having considered all of the evidence and the arguments, Trial Chamber III unanimously finds in respect of the Accused as follows:

Count 1 (Genocide):	**GUILTY**
Count 2 (Complicity in genocide):	**DISMISSED**
Count 3 (Crimes against Humanity) (Extermination):	**GUILTY**
Count 4 (Crimes against Humanity) (Murder):	**NOT GUILTY**
Count 5 (Crimes against Humanity) (Rape):	**GUILTY**

CHAPTER V: SENTENCING

A. GENERAL PRINCIPLES GOVERNING DETERMINATION OF SENTENCES

335. The preamble to the United Nations Security Council resolution 955 establishing the Tribunal emphasized the need to further the goals of deterrence, justice, reconciliation, and restoration and maintenance of peace.

336. In deciding the sentence to impose on the Accused, the Chamber will take into account all the factors likely to contribute to the achievement of the above goals. In view of the gravity of the offences committed in Rwanda in 1994, it is of the utmost importance that the international community condemn the said offences in a manner that will prevent a repetition of those crimes either in Rwanda or elsewhere. The Chamber will also take into account reconciliation among Rwandans towards which, pursuant to the same resolution, the Tribunal is mandated to contribute.

337. In accordance with Article 23[296] of the Statute and Rule 101[297] of the Rules, the Chamber will, in sentencing Sylvestre Gacumbitsi, take into account the gravity of the offences with which he is charged, his individual circumstances, any aggravating and mitigating circumstances, as well as the Tribunal's general sentencing practice, taking into account the general practice regarding prison sentences in the courts of Rwanda. If need be, the Chamber will give Sylvestre Gacumbitsi credit for any period spent in custody pending trial.

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[296] Article 23 of the Statute provides:
1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

[297] Rule 101 of the Rules provides:
(A) A person convicted by the Tribunal may be sentenced to imprisonment for a fixed term or the remainder of his life.
(B) In determining the sentence, the Trial Chamber shall take into account the factors mentioned in Articles 23(2) of the Statute, as well as such factors as:
(i) Any aggravating circumstances;
(ii) Any mitigating circumstances, including the substantial cooperation with the Prosecution by the convicted person before or after conviction;
The general practice regarding prison sentences in the courts of Rwanda;
The extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served, as referred to in Article 9(3) of the same Statute.
(C) The Trial Chamber shall indicate whether multiple sentences shall be served consecutively or concurrently.
(D) Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained in custody pending his surrender to the Tribunal or pending trial or appeal.

B. AGGRAVATING CIRCUMSTANCES

338. The Prosecution submitted, citing various decisions, that the term of life imprisonment should be reserved for the most serious crimes and the most serious offenders, as is the case at present.[298]

339. As to aggravating circumstances, the Prosecution pointed out the gravity of the crimes committed in Rusumo, namely genocide and crimes against humanity,[299] for which it holds Sylvestre Gacumbitsi responsible. The Prosecution also recalled the scale of the crimes committed nationwide, that is "the killing of an estimated 500,000 Tutsi civilians in Rwanda in a short span of 100 days", and the specific nature of the "the crime of crimes", genocide. The Prosecution also recalled that the Accused was at the centre of the events that took place in Rusumo *commune,* be it in terms of planning, incitement to commit crimes, or giving orders to that effect.[300]

340. The Prosecution then submitted that the crimes committed were premeditated. First, the crimes committed in Rusumo were not isolated but were the result of elaborate planning and, second, the Accused was the most senior government official in the *commune* at the time. He therefore knew that those crimes were being committed.[301]

341. The Prosecution further submitted that the Accused's position as *bourgmestre* is an aggravating circumstance, because he failed in his duties: first, he did not protect the civilians over whom he had responsibility and authority; second, he did not disassociate himself from the government's genocidal policies.[302] Moreover, the Prosecution submitted that the Accused incurs superior responsibility under Article 6(3) of the Statute for the crimes committed by the *Interahamwe*, and under Article 6(1) of the Statute for the preparation of attacks, distribution of weapons and incitement to sexual violence.[303] The Prosecution also submitted that the Accused participated voluntarily in those crimes.[304]

342. Lastly, the Prosecution submitted that the crimes were committed methodically.[305] It pointed out the predominant role played by the Accused in that regard,[306] and further noted that the Accused neither punished the perpetrators of the crimes nor prevented the commission of the said crimes.[307]

343. In response to the Prosecution's allegation that the Accused did not dissociate himself from the government's criminal policy, the Defence submitted that even Prosecution evidence shows that the crimes were not committed in Rusumo in the

[298] Prosecution Closing Brief, paras. 419 to 425, 436 and 437.
[299] *Ibid.*, para. 436.
[300] *Ibid.*, para. 437.
[301] *Ibid.*, para. 438.
[302] *Ibid.*, para. 440.
[303] *Ibid.*, paras. 441 to 442.
[304] *Ibid.*, para. 443 and 445.
[305] *Ibid.*, para. 446.
[306] *Ibid.*, para. 448.
[307] *Ibid.*, para. 449 to 450.

immediate aftermath of the attack on the presidential plane. The Defence further submitted that the Prosecution did not adduce evidence that the Accused contacted members of the Interim Government between the time the presidential plane was shot down and the time he left for exile. Moreover, criminals from elsewhere, and sometimes the refugees themselves, committed the crimes in Rusumo. Thus, the Defence denies the existence of any form of premeditation and, above all, criminal participation by the Accused in the events that took place in Rusumo in April 1994.[308]

Finding

344. The Chamber finds that under Article 23(2) of the Statute, the gravity of the crimes committed must be taken into account in determining sentence. Thus, the more heinous the crime, the heavier the sentence will be. Such interpretation of Article 23(2) underpins the Prosecution's submission that the maximum sentence is required for the most serious offenders. However, in assessing the gravity of the offences of which the Accused had been found guilty, the Chamber will also take into account the particular circumstances of the case, as well as the form and degree of the participation of the Accused in the crimes.[309]

345. In the instant case, the Chamber finds that the status of the Accused in April 1994, as *bourgmestre* and the most important and influential personality of Rusumo *commune,* is an aggravating circumstance, insofar as the Accused participated in the crimes committed and was one of the ringleaders, in terms of planning the crimes, inciting their commission and sometimes driving attackers to the massacre sites. By so doing, he betrayed the trust that the people of his *commune* had placed in him. His active participation in the said crimes explains why he could not take measures to prevent or to punish the perpetrators, when he had the opportunity to do so. The seriousness of the crimes committed, particularly genocide, but also the particularly atrocious rapes that some victims suffered, further constitute aggravating circumstances.

C. MITIGATING CIRCUMSTANCES

346. As an alternative to its plea for acquittal, the Defence made a general submission that in case of a conviction; the Chamber has the discretion to impose any sentence that would promote the interests of justice.[310]

347. With respect to mitigating circumstances, the Defence submitted that some Tutsi were saved only because of the intervention of Sylvestre Gacumbitsi. The Defence further submitted that Sylvestre Gacumbitsi's family situation and clean criminal record and should be considered as mitigating circumstances. The Defence explained that the Accused is married and has six children; that his wife and children still live in harmony with the people of Rusumo *commune* in Rwanda. The Defence

[308] Defence Closing Brief, paras. 1006 to 1019.
[309] *Semanza* Judgment (TC), para. 555.
[310] T., 1 March 2004, pp. 54 to 55.

submitted that a less severe sentence would alleviate the suffering of his close family members who bear no responsibility for the events.[311]

348. The Defence further submitted that Sylvestre Gacumbitsi had a clean criminal record,[312] having never been convicted before, and a good reputation, as testified to by several Defence witnesses.[313]

349. The Defence submitted that Sylvestre Gacumbitsi had always been an exemplary *bourgmestre,* who knew how to administer his *commune* without resorting to discrimination based on ethnic grounds, and that he always had good relations with the people of his *commune*. The Defence emphasized that Gacumbitsi always had Tutsi friends, including some long-time ones, and that even Prosecution witnesses admitted that such was the case before April 1994. Lastly, the Defence submitted that the peace that reigned in Rusumo, in the week following the attack on President Habyarimana's plane, is evidence of the type of *bourgmestre* the Accused was. The Defence further submitted that available evidence shows that a number of people from neighbouring *communes* took refuge in Rusumo at that time, and that when disturbances were reported to the Accused, he had the perpetrators arrested.[314]

350. It is the Prosecution's submission that Sylvestre Gacumbitsi could have benefited from mitigating circumstances, had he cooperated with the Prosecution in establishing the truth, or expressed remorse for the events that took place in 1994.[315] Moreover, the Prosecution contends, on the basis of the judgments rendered in the *Kajelijeli*[316] and *Media*[317] cases, particularly in respect of Hassan Ngeze, that the fact of having provided some Tutsi with shelter at the home of the Accused is not a mitigating circumstance.[318] Lastly, the Prosecution submitted that the scale and gravity of the crimes committed militate against considering the family situation of the Accused as a mitigating circumstance.[319]

351. In response to the specific allegation of lack of remorse, the Defence submitted that the Accused, following his line of defence,[320] could not express any such remorse in respect of events for which he is not responsible.

Conclusion

352. The Chamber is of the opinion that the work done by the Accused as *bourgmestre* certainly constitutes a mitigating circumstance, just like his conduct prior to April 1994. Evidence of the mitigating circumstances was given by Defence witnesses, including the Accused himself, and some Prosecution witnesses like

[311] T., 1 March 2004, pp. 53 to 54.
[312] Defence Closing Brief, para. 1003.
[313] Defence Closing Brief, paras. 1004 to 1006.
[314] Defence Closing Brief, para. 1007.
[315] Prosecution Closing Brief, para. 451.
[316] *Kajelijeli* Judgement (TC).
[317] *Nahimana et al.* Judgement (TC).
[318] Prosecution Closing Brief, para.425.
[319] Prosecution Closing Brief, para. 456.
[320] Defence Closing Brief, paras. 1018 and 1019.

Witness TAW, who testified that the Accused was of good character and had good relations with the Tutsi prior to the death of President Habyarimana. Furthermore, the Accused's family still lives in Rwanda, and is on good terms with their neighbours, irrespective of which ethnic group they belong to. However, these mitigating circumstances must be balanced against the aggravating circumstances in determining sentence.

353. The Chamber finds that in the instant case, the Accused joined an ongoing process, and that he was not involved over a long period of time in the preparation of the tragic events that took place in Rusumo. Moreover, in requesting the maximum sentence for Sylvestre Gacumbitsi, the Prosecution pointed to the scale of the crimes committed throughout Rwanda, and not in Rusumo *commune* alone. Lastly, the Chamber is not persuaded that the Accused had superior responsibility over the perpetrators of the crimes committed in Rusumo *commune* in April 1994, with the exception of the communal policemen of Rusumo. Accordingly, the Chamber cannot take into account the aggravating circumstances submitted by the Prosecution.

D. SCALE OF SENTENCES

354. The Chamber has also taken into consideration the sentencing practice of ICTR and ICTY, and notes that the penalty should, first and foremost, be commensurate with the gravity of the offence. Persons found guilty of genocide or extermination as a crime against humanity, or of both crimes, have received prison sentences ranging from 15 years' imprisonment to life imprisonment. Secondary or indirect forms of participation are generally punished with a less severe sentence. Georges Ruggiu, for example, received a sentence of 12 years' improsonment for incitement to commit genocide after having pleaded guilty, whereas Elizaphan Ntakirutimana received a sentence of ten years imprisonment for aiding and abetting the commission of genocide, on account of his advanced age.

355. The Chamber has taken into account the general practice regarding sentences in ad hoc Tribunals and the courts of Rwanda, as well as the mitigating and aggravating circumstances considered. The Chamber therefore deems it appropriate to impose an exemplary sentence on Sylvestre Gacumbitsi.

356. For the foregoing reasons, the Trial Chamber imposes on Sylvestre Gacumbitsi a single sentence of:

THIRTY YEARS' IMPRISONMENT

357. The sentence shall be served in a State designated in consultation with the Trial Chamber, and credit shall be given for the period spent in custody pending trial.

358. Furthermore, the sentence shall be enforced immediately. However, as soon as the notice of appeal is given, enforcement of the sentence shall be stayed until the decision on the appeal has been delivered, the convicted person meanwhile remaining in detention.

359. Done in Arusha, this 17th day of June 2004, in French and English, the French text being authoritative.

[Signed]	[Signed]	[Signed]
Andrésia Vaz Presiding Judge	Jai Ram Reddy Judge	Sergei Alekseevich Egorov Judge

[Seal of the Tribunal]

Annex I – LIST Of CITED SOURCES AND ABREVIATIONS

A. International Criminal Tribunal for Rwanda, ICTR Reports of Orders, Decisions and Judgments

Long form	Short form
ICTR, Reports of Orders, Decisions and Judgments 1998, Brussels, Bruylant, 2003, Vol. I and II.	ICTR Reports, 1998
ICTR, Reports of Orders, Decisions and Judgments 1999, Brussels, Bruylant, 2004 Vol. I and II.	ICTR Reports, 1999

B. List of Cited Judgments

Long form	Short form
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The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-1996-4-T, Judgment (TC), 2 September 1998 (ICTR Reports, 1998, pp. 44-404).	*Akayesu*, Judgment (TC).
The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-1996-4-A, Judgment (AC), 1 June 2001.	*Akayesu*, Judgment (AC).
The Prosecutor v. Ignace Bagilishema	
The Prosecutor v. Ignace Bagilishema, Case No. ICTR-1995-1A-T, Judgment (TC), 7 June 2001.	*Bagilishema*, Judgment (TC).
The Prosecutor v. Ignace Bagilishema, Case No. ICTR-1995-1A- A, Judgment (AC), 3 July 2001.	*Bagilishema*, Judgment (AC).

The Prosecutor v. Juvénal Kajelijeli

The Prosecutor v. Juvénal Kajelijeli, Case No. ICTR-1998-44A-T, Judgment and Sentence (TC), 1 December 2003.	*Kajelijeli*, Judgment (TC).

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The Prosecutor v. Jean de Dieu Kamuhanda, Case No. ICTR-1999-54A-T, Judgment and Sentence (TC), 22 January 2004.	*Kamuhanda*, Judgment (TC).

The Prosecutor v. Clément Kayishema and Obed Ruzindana

The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-1995-1-T, Judgment (TC), 21 May 1999.	*Kayishema and Ruzindana*, Judgment (TC).
The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-1995-1-A, Judgment (AC), 1 June 2001.	*Kayishema et Ruzindana*, Judgment (AC).

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The Prosecutor v. Alfred Musema, Case No. ICTR-1996-13-T, Judgment (TC), 27 January 2000.	*Musema*, Judgment (TC).
The Prosecutor v. Alfred Musema, Case No. ICTR-1996-13-A, Judgment (AC), 16 November 2001.	*Musema*, Judgment (AC).

The Prosecutor v. Ferdinand Nahimana et al.

The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Case No. ICTR-1999-52-T, Judgment and Sentence (TC), 3 December 2003.	*Nahimana et al.*, Jugement (TC).

The Prosecutor v. André Ntagerura et al.

The Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe, Case No. ICTR-1999-46-T, Judgment and Sentence (TC), 25 February 2004.	*Cyangugu*, Judgment (TC).

The Proseutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana

The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, Case No. ICTR-1996-10 & ICTR-1996-17-T, Judgment (TC), 21 February 2003.	*Ntakirutimana*, Judgment (TC).

The Prosecutor v. Eliezer Niyitegeka

The Prosecutor v. Eliezer Niyitegeka, Case No. ICTR-1996-14-	*Niyitegeka*, Judgment

T, Judgment (TC), 16 May 2003.	(TC).

The Prosecutor v. Georges Anderson Nderubumwe Rutaganda

The Prosecutor v. Georges Rutaganda, Case No. ICTR-1996-3-T, Judgment (TC), 6 December 1999.	*Rutaganda,* Judgment (TC).
The Prosecutor v. Georges Rutaganda, Case No. ICTR-1996-3-A, Judgment (AC), 26 May 2003.	*Rutaganda, Judgment* (AC).

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Prosecutor v. Tihomir Blaški}

Prosecutor v. Tihomir Blaški}, Case No. IT-95-14-T, Judgment (TC), 3 March 2000.	*Blaški}*, Judgment (TC).

Prosecutor v. Zejnil Delali} et al.

Prosecutor v. Zejnil Delali}, Zdravko Muci} also known as "Pavo", Hazim Deli}, Esad Landzo also known as "Zenga", Case No. IT-96-21-A, Judgment (TC), 16 November 1998.	*Celebici Case*, Judgment (TC).
Prosecutor v. Zejnil Delali}, Zdravko Muci} also known as "Pavo", Hazim Deli}, Esad Landzo also known as "Zenga", Case No. IT-96-21-A, Judgment (AC), 20 February 2001.	*Celebici Case*, Judgment (AC).

Prosecutor v. Anto Furundzija

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Prosecutor v. Goran Jelisi}

Prosecutor v. Goran Jelisi}, Case No. IT-95-10-T, Judgment (TC), 14 December 1999.	*Jelisi}*, Judgment (TC).

Prosecutor v. Dario Kordi} and Mario Cerkez

Prosecutor v. Dario Kordi} and Mario Cerkez, Case No. IT-95-14/2-T, Judgment (TC), 26 February 2001.	*Kordi} and Cerkez*, Judgment (TC).

Prosecutor v. Milorad Krnojelac

Prosecutor v. Milorad Krnojelac, Case No. IT-97-25-T, Judgment (TC), 15 March 2001.	*Krnojelac*, Judgment (TC).

Prosecutor v. Radislav Krsti}

Prosecutor v. Radislav Krsti}, Case No. IT-98-33-T, Judgment (TC), 2 August 2001.	*Krsti}*, Judgment (TC).
Prosecutor v. Radislav Krsti}, Case No. IT-98-33-T, Judgment (AC), 19 April 2004.	*Krsti}*, Judgment (AC).

Prosecutor v. Dragoljub Kunarac et al.

Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23-T and 96-23/1, Judgment (TC), 22 February 2001.	*Kunarac et al.*, Judgment (TC).
Prosecutor v. Dragoljub Kunarac et al., Case No. IT-96-23-T and 96-23/1, Judgment (AC), 12 June 2002.	*Kunarac et al.*, Judgment (AC).

Prosecutor v. Zoran Kupre{ki} et al.

Prosecutor v. Zoran Kupre{ki} et al., Case No. IT-95-16-T, Judgment (TC), 14 January 2000.	*Kupre{ki} et al.*, Judgment (TC).
Prosecutor v. Zoran Kupre{ki} et al., Case No. IT-95-16-T, Judgment (AC), 21 October 2001.	*Kupre{ki} et al.*, Judgment (AC).

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Prosecutor v. Miroslav Kvo~ka et al., Case No. IT-98-30/1-T, Judgment (TC), 2 November 2001.	*Kvo~ka et al.*, Judgment (TC).

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Prosecutor v. Dusko Tadi}, Case No. IT-94-1-A, Judgment (AC), 15 July 1999.	*Tadi}*, Judgment (AC).
Prosecutor v. Mitar Vasiljevi}	
Prosecutor v. Mitar Vasiljevi}, Case No. IT-98-32-T, Judgment (TC), 29 November 2002.	*Vasiljevi}*, Judgment (TC).

C. List of Cited Decisions and Orders

Long form	**Short form**
The Prosecutor v. Sylvestre Gacumbitsi	
The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-I, Order for Transfer and Provisional Detention Under Rule 40 *bis* of the Rules of Procedure and Evidence (TC), 19 June 2001.	*Gacumbitsi*, Order of 19 June 2001 (TC).
The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-I, Decision on the Prosecutor's Application for Confirmation of an Indictment and Related Orders (TC), 20 June 2001.	*Gacumbitsi*, Decision of 20 June 2001 (TC).
The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-I, Warrant of Arrest and Order for Transfer and Detention (TC), 20 June 2001.	*Gacumbitsi*, Order of 20 June 2001 (TC).
The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-I, Decision on Defence Motion to Amend Indictment and to Drop Certain Counts (TC), 25 July 2002.	*Gacumbitsi*, Decision of 25 July 2002 (TC).
The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-I, Decision on Prosecution Motion for Protective Measures for Victims and Witnesses (TC), 20 May 2003.	*Gacumbitsi*, Décision of 20 May 2003 (TC).
The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-I, Decision concerning the Prosecutor's Motion for the Transfer of Witnesses Detained in Rwanda (TC), 11 July 2003.	*Gacumbitsi*, Decision of 11 July 2003 (TC).
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The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, *Décision relative à la requête du Procureur aux fins d'admission du témoignage d'un témoin expert* (TC), 1 August 2003.	*Gacumbitsi*, Decision of 1st August 2003 on an expert witness (TC).

The Prosecutor v. Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, Decision on the Defence Motion for Protective Measures for Defence Witnesses (TC), 25 August 2003.	*Gacumbitsi*, Decision of 25 August 2003 (TC).
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United Nations Security Council Resolution 1329 du 30 November 2000, UN Document S/RES/1329 (2000).	Security Council Resolution 1329.
United Nations Security Council Resolution 1411 du 17 May 2002, UN Document S/RES/1411 (2002).	Security Council Resolution 1411.
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United Nations Security Council Resolution 1503 28 August 2003, UN Document S/RES/1503 (2003).	Security Council Resolution 1503.

United Nations Security Council Resolution 1512 of 27 Octobre 2003, UNDocument S/RES/1512 (2003).	Security Council Resolution 1512.

E. List of Cited Rwandan Laws

Law of 23 November 1963, amended by Law No. 31/91 du 5 August 1991

List of Abreviations and Conventions

Long form	Short form
United Nations	UN
United Nations Security Council	Security Council
International Criminal Tribunal for the FormerYugoslavia	ICTY
International Criminal Tribunal for Rwanda	ICTR or the Tribunal
Statute of the ICTR	Statute (The)
ICTR Rules of Procedure and Evidence	Rules (The)
Trial Chamber	TC
Appeals Chamber	AC
Trial Chamber III	Chamber (The)
International Law Commission (ILC), 1996 Activity Report (A/51/10)	ILC Report, 1996
Transcripts in French of the hearing of 3 September 2003, p. 180.	T., 3 September 2003, p. 180.
Transcripts in English of the hearing of 3 September 2003, p. 180.	T., 3 September 2003, p. 180.
The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-1996-4-T, Transcripts in French of the hearing of 23 May 1997, p. 31.	*Akayesu*, T., 23 May 1997, p. 31.
Prosecution Exhibit 1	P1
Personal Identification Sheet No. 1	PIS No. 1
Defence Exhibit D01	D01
Mouvement Révolutionnaire National pour le Développement [before July 1991]	MRND
Mouvement républicain national pour la démocratie et le développement [after July 1991]	MRND
Mouvement démocratique républicain	MDR
Armée patriotique rwandaise	APR
Rwandan Patriotic Front	RPF
Forces armées rwandaises	FAR

ANNEX II: THE INDICTMENT

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Case No. ICTR-2001-64-I

THE PROSECUTOR

AGAINST

SYLVESTRE GACUMBITSI

INDICTMENT

I. The Prosecutor of the International Criminal Tribunal for Rwanda, pursuant to the authority stipulated in Article 17 of the Statute of the International Criminal Tribunal for Rwanda (the "Statute of the Tribunal") charges:

SYLVESTRE GACUMBITSI

with GENOCIDE; or in the alternative COMPLICITY IN GENOCIDE; and EXTERMINATION, MURDER and RAPE as CRIMES AGAINST HUMANITY; offenses stipulated in Articles 2 and 3 of the Statute of the Tribunal, as set forth below:

II. THE ACCUSED:

Sylvestre GACUMBITSI was born in 1947 in Rusumo *commune,* Kibungo *préfecture,* Rwanda. During the period covered by this indictment, **Sylvestre GACUMBITSI** was *bourgmestre* of Rusumo *commune* in Kibungo *préfecture.*

III. CHARGES and CONCISE STATEMENT OF FACTS:

Count 1: GENOCIDE

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with ***GENOCIDE,*** *a crime stipulated in Article 2(3)(a) of the Statute,* in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *prefecture,* Rwanda, **Sylvestre GACUMBITSI** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group;

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged; ***and***

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts and omissions of soldiers, gendarmes, communal police, *Interahamwe,* civilian militia and civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the preparation and execution of the crime charged;

or alternatively,

Count 2: COMPLICITY IN GENOCIDE

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with ***COMPLICITY IN GENOCIDE,*** *a crime stipulated in Article 2(3)(e) of the Statute,* in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture,* Rwanda, **Sylvestre GACUMBITSI** was responsible for killing or causing serious bodily or mental harm to members of the Tutsi population with the intent to destroy, in whole or in part, a racial or ethnic group, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in ordering, instigating, commanding, participating in and aiding and abetting the preparation and execution of the crime charged, in that:

Concise Statement of Facts for Counts 1 & 2:

1. Between 1 January and 31 December 1994, citizens native to Rwanda were severally identified according to the following ethnic or racial classifications: Tutsi, Hutu and Twa.

2. Between 1 January 1994 and 17 July 1994 there was a state of non-international armed conflict in Rwanda.

3. Following the death of Rwandan President Juvéna1 Habyarimana on 6 April 1994 and resumption of civil hostilities in the non-international armed conflict on the following day, a newly installed Interim Government of 8 April 1994 launched a nationwide campaign to mobilize government armed forces, civilian militias, the local public administration and common citizens to fight the Rwandese Patriotic Front (RPF), a predominantly Tutsi politico-military opposition group. Government armed forces and *Interahamwe* militias specifically targeted Rwanda's civilian Tutsi population as domestic accomplices of an invading army, *ibyitso,* or as a domestic enemy in their own right. Under the guise of national defense, ordinary citizens of Rwanda, primarily its Hutu peasantry, were enlisted in a nationwide campaign of looting, pillaging, murder, rape, torture, and extermination of the Tutsi.

4. **Sylvestre GACUMBITSI** organized the campaign against Tutsi civilians in Rusumo *commune,* Kibungo *préfecture.* The campaign consisted in public incitement of Hutu civilians to separate themselves from their Tutsi neighbors and to kill them and resulted in thousands of deaths. **Sylvestre GACUMBITSI** killed persons by his own hand, ordered killings by subordinates, and led attacks under circumstances where he knew, or should have known, that civilians were, or would be, killed by persons acting under his authority.

5. Notably, on or about 9 April 1994 **Sylvestre GACUMBITSI** convened a meeting of all the *conseillers de secteur, responsables de cellule* and party chiefs of MRND and CDR in Rusumo *commune.* The meeting was held at the *bureau communal.* During that meeting *bourgmestre* **Sylvestre GACUMBITSI** announced that weapons would be distributed for purposes of the extermination of the Tutsi population.

6. On or about 10 April 1994 **Sylvestre GACUMBITSI** participated in a meeting at the FAR military camp in Kibungo. Present at the meeting was Col. Pierre Célestin RWAGAFIRITA and all of the *bourgmestres* of Kibungo *préfecture.* Col. RWAGAFIRITA and a number of other soldiers distributed cases of grenades, machetes and bladed weapons to each *bourgmestre.* **Sylvestre GACUMBITSI** received over 100 boxes of weapons, some of which he subsequently delivered to various locations in the *préfecture.*

7. On or about 12 April 1994, after conferring with Major NDEKEZI, Sylvestre **GACUMBITSI** ordered soldiers and boatmen along the lakes in Gisenyi *secteur* to stop refugees in flight from escaping across the border into Tanzania.

8. As *bourgmestre,* **Sylvestre GACUMBITSI** exercised authority over his subordinates, among whom can be counted: administrative personnel at the level of the *commune,* including *conseillers de secteur, responsables de cellule* and *nyumbakumi;* and the communal police. As consequences of his public office as *bourgmestre* of Rusumo *commune* and his membership in the MRND political party, Sylvestre **GACUMBITSI** also exercised authority over *gendarmes* and civilian militias in Rusumo *commune.*

9. **Sylvestre GACUMBITSI** ordered *responsables de cellule* and *nyumbakumi* to deliver weapons to certain members of the populace. He also ordered the *responsables de cellule* and *nyumbakumi* to disseminate to members of the populace and to carry out the official policy of massacring civilian Tutsi. These communal officials in turn re-distributed the weapons that they received from **Sylvestre GACUMBITSI** and participated in the campaign of extermination by ordering their constituents to kill civilian Tutsi throughout the *commune.*

10. In ordering *conseillers de secteur* and *responsables de cellule* to exterminate the Tutsi, Sylvestre **GACUMBITSI** directed that the killing should begin with parents whose children had joined the *inkotanyi,* a specific reference to the RPF. **Sylvestre GACUMBITSI** specifically ordered that attacks be directed against the *snakes,* a reference to the Tutsi.

11. During the week of 11 April 1994 **Sylvestre GACUMBITSI** circulated about Rusumo aboard a vehicle belonging to the *commune.* He was often accompanied by communal police and *Interahamwe,* and the vehicle was often loaded with a quantity of machetes. For example, on or about 15 April 1994 **Sylvestre GACUMBITSI,** accompanied by MUNYABUGINGO, transported weapons, including machetes, in a vehicle heading toward Nyarubuye.

12. On or about 14 April 1994 Sylvestre **GACUMBITSI** arrived in Nyabitare *secteur* and summoned all the Hutu *nyumbakumi* and distributed machetes to them. He instructed the communal police and the *nyumbakumi* that all Tutsi in the region should be killed by nightfall, and that whoever killed a Tutsi could then appropriate his belongings. The communal police and *nyumbakumi* did as **Sylvestre GACUMBITSI** instructed, and many civilian Tutsi were killed, among them: KAGUMYA Léonard; GAHONDOGO and her children, RUNUYA and her children, including MANIRIHO, KAGUMYA (2 weeks old), GASHUMBA, MUTEMPUNDU, MUKABERA, NYAMVURA, MUKADUSABE, BIMENYIMANA, among others.

13. In addition to exhorting crowds to massacre the Tutsi civilians, **Sylvestre GACUMBITSI** also travelled to the various cellules to monitor the course of the massacres.

14. On or about 15 April 1994, **Sylvestre GACUMBITSI** also circulated in Rusumo *commune* aboard a vehicle and announced over a loud speaker that Tutsi women and children could safely return to their homes, but that Tutsi men would be killed. His announcements were a ruse to facilitate attacks upon women and children that would come out of hiding, and an inciting call to exterminate the Tutsi men.

15. Between the 15th and 17th April 1994, **Sylvestre GACUMBITSI** led an attack on the *paroisse* of Nyarubuye, where numerous Tutsi and Hutu refugees had gathered. Sylvestre **GACUMBITSI** approached the church in a caravan of several vehicles of communal police and *Interahamwe.* Many of the attackers wore berets and *kitenge* uniforms bearing MRND *Interahamwe* insignia. A quantity of machetes was unloaded from the vehicles and placed before the church. **Sylvestre GACUMBITSI** addressed the crowd with a megaphone and ordered Hutu refugees to separate from Tutsi. Once the groups were separated the attacks began.

16. The communal police and *Interahamwe* surrounded the church compound. **Sylvestre GACUMBITSI** ordered the Hutu to attack the Tutsi, incorporating former Hutu refugees in attacks against the Tutsi led by communal police and *Interahamwe* under his direction.

17. Communal police and *Interahamwe* attacked the Tutsi refugees with grenades and firearms and traditional weapons. Other attackers used the machetes previously supplied by **Sylvestre GACUMBITSI.**

18. On the following day, **Sylvestre GACUMBITSI,** accompanied by RUBANGUKA, the President of the Rusumo Court, and a group of attackers returned to the devastated church compound at Nyarubuye armed with spears, machetes, and bows and arrows. Led by RUBANGUKA, the attackers finished off the survivors lying among the corpses. Afterwards the attackers looted the church compound, removing cupboards, tables, radios, beds and clothing.

19. Almost all of the Tutsi refugees, comprising several thousands, at Nyarubuye *paroisse* were killed.

20. Sexual violence against Tutsi women was systematically incorporated in the generalized attacks against the Tutsi. In leading, ordering and encouraging the campaign of extermination in Rusumo *commune,* **Sylvestre GACUMBITSI** knew, or should have known, that sexual violence against civilian Tutsi was, or would be, widespread or systematic, and that the perpetrators would include his subordinates or those that committed such acts in response to his generalized orders and instructions to exterminate the Tutsi.

21. Furthermore, **Sylvestre GACUMBITSI** circulated about Rusumo *commune* in a vehicle announcing by megaphone that Tutsi women should be raped and sexually degraded. For example, on or about 17 April 1994 **Sylvestre GACUMBITSI** exhorted the population along the Nyarubuye road to "*rape Tutsi girls that had always refused to sleep with Hutu ...*" and to "*search in the bushes, do not save a single snake ...*". Attacks and rapes of Tutsi women immediately followed.

22. From those first days of April 1994 through 30 April 1994, **Sylvestre GACUMBITSI** ordered, directed or acted in concert with local administrative official in Kibungo *préfecture,* including *bourgmestres* and *conseillers de secteur,* to deny protection to civilian Tutsi refugees and to facilitate attacks upon them by communal police, *Interahamwe,* civilian militias and local residents.

23. At all times material to this indictment **Sylvestre GACUMBITSI** failed to maintain public order, or deliberately undermined the public order, in districts over which he exercised administrative authority, in agreement with or in furtherance of the policies of the MRND or the

Interim Government, knowing that those policies intended the destruction, in whole or in part, of the Tutsi.

24. By virtue of his positions of leadership of the MRND and the *Interahamwe,* particularly as derived from his status as *bourgmestre* of Rusumo, **Sylvestre GACUMBITSI** ordered or directed or otherwise authorized government armed forces, civilian militias and civilians to persecute rape and kill or facilitate the killing of civilian Tutsi. By virtue of that same authority **Sylvestre GACUMBITSI** had the ability and the duty to halt, prevent, discourage or sanction persons that committed, or were about to commit, such acts, and did not do so, or only did so selectively.

25. **Sylvestre GACUMBITSI,** in his position of authority and acting in concert with others, participated in the planning, preparation or execution of a common scheme, strategy or plan to exterminate the Tutsi, by his own affirmative acts or through persons he assisted or by his subordinates with his knowledge and consent.

Count 3: EXTERMINATION as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with ***EXTERMINATION as a CRIME AGAINST HUMANITY*** *as stipulated in Article 3(b) of the Statute,* in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *prefectures,* Rwanda, **Sylvestre GACUMBITSI** did kill persons, or cause persons to be killed, during mass killing events as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; ***and***

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe,* civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

26. Between 6 April 1994 and 17 July 1994, there were throughout Rwanda widespread or systematic attacks directed against a civilian population on political, ethnic or racial grounds.

27. Approximately between 15 and 18 April 1994, **Sylvestre GACUMBITSI** commanded, facilitated or participated in attacks upon civilian Tutsi refugees that had gathered at Nyarabuye *paroisse.* **Sylvestre GACUMBITSI** transported, or facilitated the transportation of, communal police or *Interahamwe* or weapons to Nyarabuye

paroisse and led attacks against civilian Tutsi by his own example or by ordering and directing the attackers to kill the refugees.

28. As direct consequences of orders or instructions from **Sylvestre GACUMBITSI** at Nyarabuye *paroisse,* there were numerous killings of family members and entire families, including UWIRAGIYE, MUGIRANEZA and TUYIRINGIRE, three children. The identity of each victim and the proximate number of fatalities and the exact circumstances of each death cannot be detailed exhaustively due to the overwhelming devastation of the massacres.

29. **Sylvestre GACUMBITSI**'s affirmative acts in commanding, facilitating or participating in the killings of civilian Tutsi refugees at Nyarabuye *paroisse* are pleaded with greater particularity in paragraphs 4 through 16, above, which are reiterated and incorporated herein by reference.

30. Furthermore, **Sylvestre GACUMBITSI**'s generalized campaign of extermination in Rusumo *commune,* Kibungo *préfecture,* during April 1994, particularly following his distributions of weapons and organizational meetings with military and administrative officials from 7 to 15 April 1994, claimed the lives of hundreds of civilian Tutsi and moderate Hutu. **Sylvestre GACUMBITSI**'s affirmative acts in commanding, facilitating or participating in the killings of civilian Tutsi in Rusumo *commune* are pleaded with greater particularity in paragraphs 4 through 16, above, which are reiterated and incorporated herein by reference.

Count 4: MURDER as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre GACUMBITSI** with ***MURDER as a CRIME AGAINST HUMANITY, as stipulated*** *in Article 3(a) of the Statute,* in that on or between the dates of 6 April 1994 and 30 April 1994 in Kibungo *préfecture,* Rwanda, Sylvestre **GACUMBITSI did** kill persons, or cause persons to be killed, as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(l) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; ***and***

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe,* civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

31. In addition to personally ordering and leading attacks against groups of civilian Tutsi refugees, **Sylvestre GACUMBITSI** also targeted specific Tutsi civilians in Kibungo *préfecture* for murder.

32. On a date uncertain during April 1994, **Sylvestre GACUMBITSI** approached a pregnant Tutsi woman and her mother-in-law along a roadside. The woman appeared to be in discomfort and asked for assistance. Instead of helping the women, **Sylvestre GACUMBITSI** took a knife and slit her abdomen, causing the two fetuses that the woman was carrying to fall from her body. **Sylvestre GACUMBITSI,** assisted by another, repeatedly stabbed the woman, her mother-in-law and the two babies, causing their deaths.

33. On a date uncertain during April 1994, **Sylvestre GACUMBITSI** killed a Tutsi woman and her three children in his own home. **Sylvestre GACUMBITSI** was god-father to one of the children, and the woman sought refuge at the home of her former friend. Instead of protecting the woman and her children, **Sylvestre GACUMBITSI** personally arranged their murder.

34. On or about 14 April 1994, **Sylvestre GACUMBITSI** personally shot and killed two civilian Tutsi near the Catholic center in Nyabitare. The two persons pleaded with **Sylvestre GACUMBITSI,** going so far as to offer him money so that they would be killed with bullets and not by machetes. **Sylvestre GACUMBITSI** took the money, shot them, and removed the rest of their money.

35. Sometime between 17 and 18 April 1994, **Sylvestre GACUMBITSI** also caused the death of several Tutsi children. Upon specific instruction from **Sylvestre GACUMBITSI!,** infant survivors of the attack on Nyarubuye *paroisse* were lured to a location with an offer of food. Once they were assembled, **Sylvestre GACUMBITSI** ordered all exits blocked and the children were killed with grenades.

36. On a date uncertain during April - June 1994, **Sylvestre GACUMBITSI** personally ordered the tenants in one of his homes to vacate the premises. After announcing that his home was not CND, a reference to the cantonment of RPF soldiers in Kigali, **Sylvestre GACUMBITSI** ordered the killing of his former tenants.

Count 5: RAPE as a CRIME AGAINST HUMANITY:

The Prosecutor of the International Criminal Tribunal of Rwanda charges **Sylvestre Gacumbitsi** with ***RAPE as a CRIME AGAINST HUMANITY*** *as stipulated in Article 3(g) of the Statute,* in that on or between the dates of 6 April 1994 and 30 **April** 1994 in Kibungo *préfecture,* Rwanda, **Sylvestre Gacumbitsi** did cause women to be raped as part of a widespread or systematic attack against a civilian population on political, ethnic or racial grounds, as follows:

Pursuant to Article 6(1) of the Statute: by virtue of his affirmative acts in planning, instigating, ordering, committing, or otherwise aiding and abetting the planning, preparation or execution of the crime charged; ***and***

Pursuant to Article 6(3) of the Statute: by virtue of his actual or constructive knowledge of the acts or omissions of his subordinates, including soldiers, gendarmes, communal police, *Interahamwe,* civilian militia or civilians acting under his authority, and his failure to take necessary and reasonable measures to stop or prevent them, or to discipline and punish them, for their acts in the planning, preparation or execution of the crime charged, in that:

37. During April, May and June of 1994, there were widespread or systematic rapes and sexual violence of Tutsi women. The sexual assaults were often a prelude to murder, and was sometimes the cause of death of a number of civilian Tutsi.

38. On one particular occasion, on or about 17 April 1994, **Sylvestre GACUMBITSI** lured Tutsi women to a certain location by announcing over a megaphone that Tutsi women would be spared, and that only Tutsi men would be killed. When a number of Tutsi women gathered in response to **Sylvestre GACUMBITSI's** exhortations, they were surrounded by several attackers, raped, and then killed. Attackers also sexually degraded a number of Tutsi women by inserting objects in their genitals.

39. On or about 17 April 1994, **Sylvestre GACUMBITSI** travelled along the Nyarubuye road in a caravan of vehicles, announcing with a megaphone *'Search in the bushes, do not save a single snake .... Hutu that save Tutsi should be killed Tutsi girls that have always refused to sleep with Hutu should be raped and sticks placed in their genitals..."* After **Sylvestre GACUMBITSI** drove by, a group of men attacked Tutsi women that were hiding nearby and raped several of the women. One of the women was killed and a stick was thrust in her genitals.

40. The sexual violence was so widespread, and conducted so openly, and was so integrally incorporated in generalized attacks against civilian Tutsi, that. **Sylvestre GACUMBITSI** must have known, or should have known, that it was occurring, and that the perpetrators were his subordinates, subject to his authority and control, and acting under his orders. This is especially so since the perpetrators of sexual violence were often the same individuals that organized and led or participated in the generalized attacks against the Tutsi that **Sylvestre GACUMIIITSI** had ordered.

The acts and omissions of Sylvestre GACUMBITSI detailed herein are punishable in reference to Articles 22 and 23 of the Statute.

Dated this 20 day of June 2001:

[Signed]
Carla del Ponte
Prosecutor

[Seal of the Tribunal]

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Annex 999

Prosecutor v. Brđanin, Case No. IT-99-36-T, Trial Judgment (1 September 2004)

UNITED NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991

Case No. IT-99-36-T

Date: 1 September 2004

Original: English

IN THE TRIAL CHAMBER II

Before: **Judge Carmel Agius, Presiding**
Judge Ivana Janu
Judge Chikako Taya

Registrar: **Mr. Hans Holthuis**

Judgement of: **1 September 2004**

PROSECUTOR

v.

RADOSLAV BRĐANIN

JUDGEMENT

The Office of the Prosecutor:

Ms. Joanna Korner
Ms. Anna Richterova
Ms. Ann Sutherland
Mr. Julian Nicholls

Counsel for the Accused:

Mr. John Ackerman
Mr. David Cunningham

IV. GENERAL OVERVIEW

A. Background to the armed conflict in Bosnia and Herzegovina

53. Following the occupation of the Kingdom of Yugoslavia in 1941 by the German Nazi regime, the independent State of Croatia, which included BiH, was established. The State was governed by a group of extreme Croat nationalists, known as Ustaša. The Ustaša regime was particularly brutal in the Bosnian Krajina, where tens of thousands of Serbs, Jews and Roma were systematically killed in extermination camps because of their religion and ethnicity.[90] A significant number of members of the Bosnian Muslim community collaborated with the Ustaša and the Germans during the war.[91]

54. After the Second World War, the People's Republic of Bosnia and Herzegovina, later renamed Socialist Republic of Bosnia and Herzegovina ("SRBH")[92] was created as one of the six republics in the Socialist Federal Republic of Yugoslavia ("SFRY"), the successor state of the Kingdom of Yugoslavia. The SRBH was the only republic without a single majority nationality. It was populated primarily by Bosnian Serbs, Bosnian Muslims and Bosnian Croats.[93] While there were differences in their cultural heritage and religious tradition, the three groups had much in common and peacefully coexisted for most of the time.[94]

55. Marshal Tito's death in 1980 and the disintegration of the ruling League of Communists of Yugoslavia in the first months of 1990 resulted in a power vacuum and the emergence of nationalist parties throughout the country.[95] The Party for Democratic Action ("SDA"), established by Bosnian Muslims, was formed in early spring 1990 as the first of the three main nationalist parties of the SRBH.[96] The Croatian Democratic Union ("HDZ") and the Serbian Democratic Party ("SDS") were

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[90] Robert Donia, T. 832-833, 1203-1204; ex. P53, "Expert Report of Robert Donia", pp. 21-23; Jovica Radojko, T. 20069; ex. DB376, "Expert Report of Paul Shoup", pp. 10-11.
[91] Ex. P53, "Donia Report", p. 21.
[92] While the abbreviation BiH refers to a territorial unit, the acronym SRBH refers to a political unit.
[93] In 1953, the ethnic composition of BiH was as follows: Muslims constituted 31.3% of the population, Serbs constituted 44.4% of the population and Croats constituted 23.0% of the population. According to the 1991 census, during which it was possible to declare "*Yugoslav*" as an ethnicity, the ethnic composition of BiH has changed to some extent: Muslims constituted 43.7% of the population, Serbs constituted 31.4% of the population and Croats constituted 17.3% of the population of BiH: Ex. DB1, "The War in Bosnia and Herzegovina", book co-written by Paul Shoup, p. 27. The Trial Chamber recognises that the terms "ethnic identity" or "ethnicity" may not describe the distinguishing features of Bosnian Muslims, Bosnian Croats and Bosnian Serbs in their entirety, since other factors, such as religion and nationality, are of importance. Nevertheless, for the sake of brevity and following the trend of other Trial Chambers of the Tribunal, this Trial Chamber has opted for this term for the purposes of this judgement.
[94] Robert Donia, T. 824-827, 1207, 1313; ex. P53, "Expert Report of Robert Donia", pp. 23-24; BT-19, T. 20696 (closed session).
[95] Robert Donia, T. 822-823; ex. P53, "Expert Report of Robert Donia", pp. 25-26.
[96] The Constitution of SRBH was amended in 1989 and 1990 to allow for the holding of multi-party elections. In the early months of 1990, the SRBH Parliament approved the formation of political parties, but prohibited the organisation of parties on the basis of nationality or religion. However, in June 1990, this restriction was deemed unconstitutional by the SRBH Constitutional Court: Robert Donia, T. 839-840, 1215-1216; Patrick Treanor, T. 20881-20890.

and III are reproduced in Article 4(2) and (3) of the Statute. It is widely recognised that these provisions of the Genocide Convention reflect customary international law and that the norm prohibiting genocide constitutes *jus cogens*.[1690]

(b) Genocide

681. Article 4 of the Statute characterises genocide by the following constitutive elements:

1. the underlying act of the offence, which consists of one or several of the actus reus enumerated in subparagraphs (a) to (e) of Article 4(2) carried out with the mens rea required for the commission of each;

2. the specific intent of the offence, which is described as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.[1691]

(i) The protected groups

682. The Genocide Convention and, correspondingly, Article 4 of the Statute, protects national, ethnical, racial or religious groups. These groups are not clearly defined in the Genocide Convention or elsewhere.[1692] The Trial Chamber agrees with the *Krstić* Trial Chamber that:

> [t]he preparatory work of the Convention shows that setting out such a list was designed more to describe a single phenomenon, roughly corresponding to what was recognised, before the second world war, as "national minorities", rather than to refer to several distinct prototypes of human groups. To attempt to differentiate each of the named groups on the basis of scientifically objective criteria would thus be inconsistent with the object and purpose of the Convention.[1693]

683. In accordance with the jurisprudence of the Tribunal, the relevant protected group may be identified by means of the subjective criterion of the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics.[1694] In some instances, the victim may perceive himself or herself to belong to the aforesaid group.[1695]

Federal Council held on 28 September 1976 and declared by decree of the President of the Republic on 28 September 1976; published in the SFRY Official Gazette No.44 of 8 October 1976 (correction in the Official Gazette SFRY No.36 of 15 July 1977) and which came into effect on 1 July 1977.

[1690] *See Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, (1951) ICJ Reports 23. *See* also *Secretary-General's Report*, para. 45; *Stakić* Trial Judgement, para. 500; *Krstić* Trial Judgement, para. 541; *Jelisić* Trial Judgement, para. 60; *Akayesu* Trial Judgement, para. 495; *Kayishema* Trial Judgement, para. 88; *Rutaganda* Trial Judgement, para. 46; *Bagilishema* Trial Judgement, para. 54.

[1691] *See Krstić* Trial Judgement, para. 542; *Jelisić* Trial Judgement, para. 62; *Kayishema* Trial Judgement, para. 90.

[1692] *Krstić* Trial Judgement, para. 555; *Rutaganda* Trial Judgement, para. 56; *Bagilishema* Trial Judgement, para. 65; *Kajelijeli* Trial Judgement, para. 811.

[1693] *Krstić* Trial Judgement, para. 556.

[1694] *Nikolić* Rule 61 Decision, para. 27; *Krstić* Trial Judgement, para. 557; *Jelisić* Trial Judgement, para. 70.

[1695] *See Rutaganda* Trial Judgement, para. 56; *See* also *Krstić* Trial Judgement, para. 559.

684. The correct determination of the relevant protected group has to be made on a case-by-case basis, consulting both objective and subjective criteria.[1696] This is so because subjective criteria alone may not be sufficient to determine the group targeted for destruction and protected by the Genocide Convention, for the reason that the acts identified in subparagraphs (a) to (e) of Article 4(2) must be in fact directed against "members of the group".[1697]

685. In addition, the Trial Chamber agrees with the *Stakić* Trial Chamber that, "[i]n cases where more than one group is targeted, it is not appropriate to define the group in general terms, as for example, 'non-Serbs'".[1698] It follows that the Trial Chamber disagrees with the possibility of identifying the relevant group by exclusion, *i.e.*: on the basis of "negative criteria".[1699]

686. Moreover, where more than one group is targeted, the elements of the crime of genocide must be considered in relation to each group separately.[1700]

(ii) The underlying acts: their objective and subjective elements

687. The Indictment limits the charges of genocide and of complicity in genocide to the underlying criminal acts listed in subparagraphs (a) to (c) of Article 4(2) of the Statute.

688. The acts in subparagraphs (a) and (b) of Article 4(2) require proof of a result.[1701]

a. Killing members of the group

689. The *actus reus* and *mens rea* required for "killing" in subparagraph (a) have been set out earlier in this judgement.[1702] The killing must be of members of the targeted national, ethnical, racial or religious group.

[1696] *Semanza* Trial Judgement, para. 317; *Kajelijeli* Trial Judgement, para. 811.
[1697] *See* Schabas, *Genocide in International Law*, p. 110; *See* also *Rutaganda* Trial Judgement, para. 57, which reached the same conclusion on a different reasoning: "it appears from a reading of the *travaux préparatoires* of the Genocide Convention, that certain groups, such as political and economic groups, have been excluded from the protected groups".
[1698] *Stakić* Trial Judgement, para. 512.
[1699] "A 'negative approach' would consist of identifying individuals as not being part of the group to which the perpetrators of the crime consider that they themselves belong and which to them displays specific national, ethnical, racial or religious characteristics. Thereby, all individuals thus rejected would, by exclusion, make up a distinct group": *Jelisić* Trial Judgement, para. 71.
[1700] *Stakić* Trial Judgement, para. 512.
[1701] *Stakić* Trial Judgement, para. 514.
[1702] *See* A.1. *supra*, "Wilful killing". The word "killing" is understood to refer to intentional, but not necessarily to premeditated, acts. *See* also *Stakić* Trial Judgement, para. 515; *Kayishema* Appeal Judgement, para. 151.

Annex 1000

Prosecutor v. Muhimana, Case No. ICTR-95-1B-T (28 April 2005)

UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Before: Judge Khalida Rachid Khan, Presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 28 April 2005

TRIAL CHAMBER III

THE PROSECUTOR

v.

MIKAELI MUHIMANA

Case No. ICTR- 95-1B-T

JUDGEMENT AND SENTENCE

Office of the Prosecutor:
Mr. Charles Adeogun-Philips
Mr. Wallace Kapaya
Ms. Renifa Madenga
Ms. Florida Kabasinga
Ms. Maymuchka Lauriston

Counsel for the Defence:
Professor Nyabirungu mwene Songa
Me Kazadi Kabimba

CHAPTER III – LEGAL FINDINGS

485. Based on its factual findings set out above, the Chamber will present its legal findings on the charges alleged against the Accused in the order of the Counts as they appear in the Indictment.

486. The Indictment contains four counts: Count 1, Genocide; alternatively, Count 2, Complicity in Genocide; Count 3, Rape as a Crime against Humanity; Count 4, Murder as a Crime against Humanity. With the exception of Count 1 and Count 2 (Genocide and Complicity in Genocide), the counts are charged cumulatively.

A. GENOCIDE (COUNT 1)

487. Count 1 of the Indictment charges the Accused with genocide, by acting individually or in concert with others, to cause many *Tutsi* to be killed. In support of this charge, the Prosecution, in Paragraph 5 of the Indictment, alleges the following acts committed by the Accused:[450]

( ) Mobilisation and distribution of arms to assailants;

( ) Visit to Mubuga Church in preparation for an attack on *Tutsi* refugees;

( ) Looting of food which was intended for civilians who had taken refuge in Mubuga Church;

( ) Distribution of grenades and guns at Mubuga Church;

( ) Attacks against civilian *Tutsi* within Mubuga Church;

( ) Attack against *Tutsi* civilians at Mugonero Complex;

( ) Shooting twenty *Tutsi* civilians at Uwingabo;

( ) Pursuing and attacking *Tutsi* at Rushishi and Ngendombi, Gitwa, and Muyira Hills.

488. The Defence contends that "by failing to indicate in the amended Indictment any of the [material elements of genocide], the Prosecution made it impossible for the Accused to identify the offence charged within the meaning of the Genocide Convention and the Statute, and made it unnecessary for the Defence to analyse the *actus reus* of genocide".[451]

[450] Indictment, para. 5.

[451] Defence Closing Brief, para. 119; Defence Oral Closing arguments: T. 20 Janvier 2005, pp. 5 and 6 (in French).

489. After carefully reviewing the Defence argument, the Chamber finds that the Indictment provided the Accused with sufficient notice of the material elements of the crime of genocide charged against him.

490. The Indictment charges the Accused with criminal responsibility, under Article 6 (1) of the Statute, but fails to detail the form of his alleged participation in the crime of genocide. Article 6 (1), which identifies five forms of criminal responsibility, provides:

> A person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

491. The Chamber considers that the Prosecution's failure to indicate the precise form of the Accused's alleged participation is not fatal because the factual allegations of the Indictment adequately describe the Accused's role in the crimes.[452] Accordingly, the Chamber has considered all forms of participation, under Article 6 (1), relevant to its factual findings, in making its legal findings on the Accused's criminal responsibility.

1. Applicable Law

492. Rwanda is a Party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, signed on 12 February 1975.[453]

493. Genocide means:

> … any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group.[454]

494. In the instant case, the Prosecution charges the Accused with two genocidal acts enumerated in the Statute: killing members of the group; and causing serious bodily or mental harm to members of the group. Therefore, the Chamber will apply the law to its factual findings only in relation to these two forms of genocide.

495. In addition to these material elements, the specific intent for genocide requires that the perpetrator target the victims with "intent to destroy, in whole or in part, a national, ethnical, racial or religious group".

496. The perpetrator's specific genocidal intent may be inferred from deeds and utterances. It may also be inferred from the general context of the perpetration, in consideration of factors such as: the systematic manner of killing; the methodical way of planning; the general nature of the atrocities, including their scale and geographical location, weapons employed in an attack, and the extent of bodily injuries; the targeting of

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[452] *Ntagerura et al.* Judgement, (TC) para. 38; *Semanza* Judgement (TC), para. 59.

[453] *Gacumbitsi* Judgement (TC), para. 248; *Akayesu* Judgement (TC), para. 496; *Kajelijeli* Judgement (TC), para. 744; *Kamuhanda* Judgement (TC), para. 576.

[454] ICTR Statute, Article 2 (2).

property belonging to members of the group; the use of derogatory language towards members of the group; and other culpable acts systematically directed against the same group, whether committed by the perpetrator or others.[455]

497. The notion of "destruction of a group" means "the material destruction of a group either by physical or by biological means, not the destruction of the national, linguistic, religious, cultural or other identity of a particular group".[456]

498. In proving the intent to destroy "in whole or in part", it is not necessary for the Prosecution to establish that the perpetrator intended to achieve the complete annihilation of a group. There is no numeric threshold of victims necessary to establish genocide[457], even though the relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Article 2 of the Statute, is strong evidence of the intent to destroy a group, in whole or in part.[458]

499. To convict a person of genocide for killing members of a group requires that the Prosecution establish that the accused, having the intent to destroy, in whole or in part, the group as such:

- committed, planned, ordered, or instigated the killing; or
- as an accomplice, aided and abetted the killing of one or several members of the group.[459]

500. The Prosecution also has the burden of proving either that the victim belongs to the targeted ethnic, racial, national, or religious group or that the perpetrator of the crime believed that the victim belonged to the group. [460]

501. Pursuant to Article 2 (2) (b) of the Statute, an accused incurs criminal liability if he causes serious bodily or mental harm to members of the group.[461]

502. Serious bodily harm is any serious physical injury to the victim, such as torture and sexual violence. This injury need not necessarily be irremediable.[462] Similarly, serious mental harm can be construed as some type of impairment of mental faculties or harm that causes serious injury to the mental state of the victim.[463]

503. Planning occurs when one or more persons contemplate and take any steps towards commission of a crime.[464]

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[455] *Gacumbitsi* Judgement (TC), paras. 252-253; *Akayesu* Judgement (TC), para. 523; *Kayishema and Ruzindana* Judgement (TC), para. 93; *Ntagerura and Others* Judgement (TC), para. 663.

[456] See ILC Report (1996), para. 50; see also *Gacumbitsi* Judgement (TC), para. 253; *Semanza* Judgement (TC), para. 315; *Kayishema and Ruzindana* Judgement (TC), para. 95.

[457] *Gacumbitsi* Judgement (TC), para. 253; *Semanza* Judgement (TC), para. 316.

[458] *Gacumbitsi* Judgement (TC), para. 253; *Kayishema and Ruzindana* Judgement (TC), para. 93.

[459] *Gacumbitsi* Judgement (TC), para. 255; *Akayesu* Judgement (TC), para. 473; *Kajelijeli* Judgement (TC), para. 757; *Semanza* Judgement, para. 377.

[460] *Gacumbitsi* Judgement (TC), para. 255-256; *Semanza* Judgement, (TC), para. 319; *Rutaganda* Judgement (TC), para. 60; *Kayishema and Ruzindana* Judgement (TC), para. 99; *Akayesu* Judgement (TC), para. 499.

[461] *Gacumbitsi* Judgement (TC), para. 256; See ILC Report (1996), para. 8.

[462] *Gacumbitsi* Judgement (TC), para. 291; *Akayesu* Judgement (TC), para. 502; *Kayishema and Ruzindana* Judgement (TC), para. 110; *Semanza* Judgement (TC), paras. 320 -321.

[463] *Gacumbitsi* Judgement (TC), para. 291; See ILC Report (1996), para. 14, under Article 17 of the Draft Code of Crimes. Bodily harm is defined therein as "some type of physical injury", while mental harm is defined as "some type of impairment of mental faculties".

[464] *Gacumbitsi* Judgement (TC), para. 271.

504. Instigating involves prompting another person to commit an offence.[465] Instigating need not be direct or public, as required for direct and public incitement to commit genocide, punishable pursuant to Article 2 (3) (c) of the Statute. Proof is required of a causal connection between the instigation and the *actus reus* of the crime. [466]

505. Ordering refers to a situation where an individual, in a position of authority, uses such authority to compel another individual to commit an offence.[467]

506. Committing refers to the direct and physical perpetration of the crime by the offender.[468]

507. Aiding and abetting are distinct legal concepts. Aiding means assisting or helping another to commit a crime. Abetting means facilitating, advising, or instigating the commission of a crime.[469]

2. Legal Findings

508. In light of its factual findings with regard to the allegations of genocide set forth in Paragraphs 5 (a), (b), (c), and (d) of the Indictment, the Chamber has considered the criminal responsibility of the Accused under Count 1, Genocide, under Article 2 of the Statute of the Tribunal.

The Tutsi Group

509. The Chamber has found that, during the period addressed by the Indictment, Rwandan citizens were individually identified according to three ethnic groups: that is, *Tutsi*, *Hutu*, and *Twa*.[470]

510. The Defence does not contest that the *Tutsi* were considered a distinct group in Rwanda in 1994, stating that any question as to whether they constituted a national, ethnic, racial, or religious group in the sense of the 1948 Convention against Genocide is academic.[471] According to its interpretation of *Akayesu*, the 1948 Convention protects not only the explicitly mentioned groups, but all stable and permanent groups.[472]

511. The Chamber concludes - having noted that the question is not in dispute between the Parties - that in Rwanda, in 1994, the *Tutsi* were a group protected by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

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[465] *Gacumbitsi* Judgement (TC), para. 279; *Kajelijeli* Judgement (TC), para. 762; *Bagilishema* Judgement (TC), para. 30; *Akayesu* Judgement (TC), para. 482.

[466] *Gacumbitsi* Judgement (TC), para. 279; *Semanza* Judgement (TC). para. 381; *Akayesu* Judgement (AC), paras. 478 to 482.

[467] *Gacumbitsi* Judgement (TC), para. 281; *Akayesu* Judgement (TC), para. 483; *Kajelijeli* Judgement (TC), para. 763.

[468] *Gacumbitsi* Judgement (TC), para. 285; *Kayishema and Ruzindana* Judgement (AC), para. 187; ICTY, *Tadic* Judgement (AC), para. 188; ICTY, *Kunarac* and Others Judgement (TC), para. 390; *Semanza* Judgement (TC), para. 383.

[469] *Gacumbitsi* Judgement (TC), para. 286; *Ntakirutimana* Judgement (TC), para. 787; *Akayesu* Judgement (TC), para. 484; *Kajelijeli* Judgement (TC), para. 765.

[470] See *supra*: Chapter II, Section B.

[471] Defence Closing Brief, paras. 100, 104.

[472] Defence Closing Brief, para. 111 : The Defence further states “In the *Akayesu* Judgement, ICTR considered all Tutsis as an ethnic group and very reasonably and wisely observed that the Genocide Convention is applicable to all stable and permanent groups. We are greatly indebted to ICTR for this interpretation which is the most reasonable there could be”.

The Accused's Actions

512. The Chamber has found that, during the months of April and May 1994, the Accused participated in acts of killing members of the *Tutsi* ethnic group and causing serious bodily or mental harm to members of the *Tutsi* ethnic group.

513. The Chamber finds that, through personal commission, the Accused killed and caused serious bodily or mental harm to members of the *Tutsi* group :

( ) By taking part in attacks at Nyarutovu and Ngendombi Hills, where he shot and wounded a *Tutsi* man called Emmanuel;[473]

( ) By taking part in an attack at Mubuga Church, where he shot at *Tutsi* refugees and threw a grenade into the church where refugees were gathered. The grenade explosion killed a *Tutsi* man called Kaihura and seriously wounded many others. Many *Tutsi* refugees died or were injured in the attack;[474]

( ) By taking part in attacks at Mugonero Complex, where he raped *Tutsi* women and shot at *Tutsi* refugees. Many *Tutsi* refugees died or were injured in the attack;[475]

( ) By taking part in attacks at Kanyinya Hill, where he pursued and attacked *Tutsi* refugees and shot a *Tutsi* man called Nyagihigi;[476]

( ) By taking part in attacks at Muyira Hill, where he shot and killed the sister of Witness W, a *Tutsi*.[477]

The Accused's Intent

514. The Chamber notes that the phrase "destroy in whole or in part a[n] ethnic group" does not imply a numeric approach. It is sufficient to prove that the Accused acted with intent to destroy a substantial part of the targeted group.[478]

515. The Chamber finds that the attacks mentioned in Paragraph 513 above were systematically directed against the *Tutsi* group. Before the attacks on Mubuga Church commenced, *Hutu* refugees, who were intermingled with the *Tutsi*, were instructed to come out of the church. Similarly, both Prosecution and Defence witnesses testified that the refugees who had gathered on Kanyinya and Muyira Hills were predominantly *Tutsi*.

516. Factors such as the sheer scale of the massacres, during which a great number of *Tutsi* civilians died or were seriously injured, and the number of assailants who were involved in the attacks against *Tutsi* civilians, lead the Chamber to the irresistible conclusion that the massacres, in which the Accused participated, were intended to destroy the *Tutsi* group in whole or in part.

517. The Accused targeted *Tutsi* civilians during these attacks by shooting and raping *Tutsi* victims. He also raped a young *Hutu* girl, Witness BJ, whom he believed to be *Tutsi*,

[473] See *supra*: Chapter II, Section E.

[474] See *supra*: Chapter II, Section H.

[475] See *supra*: Chapter II, Section L.

[476] See *supra*: Chapter II, Section O.

[477] See *supra*: Chapter II, Section P.

[478] See ILC Report (1996), para. 8.

Annex 1001

DH v. Czech Republic Application No.57325/00 (2008) 47 E.H.R.R. 3 (ECHR (Grand Chamber)

GRAND CHAMBER

CASE OF D.H. AND OTHERS v. THE CZECH REPUBLIC

(Application no. 57325/00)

JUDGMENT

STRASBOURG

13 November 2007

This judgment is final but may be subject to editorial revision.

In the case of D.H. and Others v. the Czech Republic,

The European Court of Human Rights (Second Section), sitting as a Grand Chamber composed of:

Sir Nicolas Bratza, President,
Mr B.M. Zupančič,
Mr R. Türmen,
Mr K. Jungwiert,
Mr J. Casadevall,
Mrs M. Tsatsa-Nikolovska,
Mr K. Traja,
Mr V. Zagrebelsky,
Mrs E. Steiner,
Mr J. Borrego Borrego,
Mrs A. Gyulumyan,
Mr K. Hajiyev,
Mr D. Spielmann,
Mr S.E. Jebens,
Mr J. Šikuta,
Mrs I. Ziemele,
Mr M. Villiger, judges,
and Mr M. O'Boyle, Deputy Registrar,

Having deliberated in private on 17 January and 19 September 2007,

Delivers the following judgment, which was adopted on the last mentioned date:

PROCEDURE

1. The case originated in an application (no. 57325/00) against the Czech Republic lodged with the Court on 18 April 2000 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eighteen Czech nationals ("the applicants"), whose details are set out in the annex to this judgment ("the Annex").

2. The applicants were represented before the Court by the European Roma Rights Centre based in Budapest, Lord Lester of Herne Hill, Q.C, Mr J. Goldston, of the New York Bar, and Mr D. Strupek, a lawyer practising in the Czech Republic. The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm.

3. The applicants alleged, inter alia, that they had been discriminated against in the enjoyment of their right to education on account of their race or ethnic origin.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 1 March 2005, following a hearing on admissibility and the merits (Rule 54 § 3), the Chamber declared the application partly admissible.

(a) Interights and Human Rights Watch

161. Interights and Human Rights Watch stated that it was essential that Article 14 of the Convention should afford effective protection against indirect discrimination, a concept which the Court had not yet had many occasions to consider. They submitted that aspects of the Chamber's reasoning were out of step with recent developments in cases such as Timishev v. Russia (judgment cited above), Zarb Adami v. Malta (judgment cited above) and Hoogendijk v. the Netherlands (decision cited above). The Grand Chamber needed to consolidate a purposive interpretation of Article 14 and to bring the Court's jurisprudence on indirect discrimination in line with existing international standards.

162. Interights and Human Rights Watch noted that the Court itself had confirmed in Zarb Adami that discrimination was not always direct or explicit and that a policy or general measure could result in indirect discrimination. It had also accepted that intent was not required in cases of indirect discrimination (Hugh Jordan v. the United Kingdom, no. 24746/94, 4 May 2001, § 154). In their submission, it was sufficient in the case of indirect discrimination that the practice or policy resulted in a disproportionate adverse effect on a particular group.

163. As to proof of indirect discrimination, it was widely accepted in Europe and internationally and also by the Court (see Timishev, judgment cited above, § 57; and Hoogendijk, decision cited above) that the burden of proof had to shift once a prima facie case of discrimination had been established. In cases of indirect discrimination, where the applicant had demonstrated that significantly more people of a particular category were placed at a disadvantage by a given policy or practice, a presumption of discrimination arose. The burden then shifted to the State to reject the basis for the prima facie case, or to provide a justification for it.

164. It was therefore critical for the Court to engage with the type of evidence that might be produced in order to shift the burden of proof. Interights and Human Rights Watch submitted on this point that the Court's position with regard to statistical evidence, as set out in the Hugh Jordan judgment (cited above, § 154), was at variance with international and comparative practice. In European Communities Directives and international instruments, statistics were the key method of proving indirect discrimination. Where measures were neutral on their face, statistics sometimes proved the only effective means of identifying their varying impact on different segments of society. Obviously, courts had to assess the credibility, strength and relevance of the statistics to the case at hand, requiring that they be tied to the applicant's allegations in concrete ways.

If, however, the Court were to maintain the position that statistics alone were not sufficient to disclose a discriminatory practice, Interights and Human Rights Watch submitted that the general social context should be taken into account, as it provided valuable insight into the extent to which the effects of the measure on the applicants were disproportionate.

(b) Minority Rights Group International, the European Network against Racism and the European Roma Information Office

165. The Minority Rights Group International, the European Network against Racism and the European Roma Information Office submitted that the wrongful assignment of Roma children to special schools for the mentally disabled was the most obvious and odious form of discrimination against the Roma. Children in such special schools followed a simplified curriculum considered appropriate for their lower level of intellectual development. Thus, for example, in the Czech Republic, children in special schools were not expected to know the Czech alphabet or numbers up to 10 until the third or fourth school-year, while their counterparts in ordinary schools acquired that knowledge in the first year.

166. This practice had received considerable attention, both at the European level and within the human-rights bodies of the United Nations, which had expressed their concern in various reports as to the over-representation of Roma children in special schools, the adequacy of the tests employed and the quality of the alleged parental consent. All these bodies had found that no objective and reasonable justification could legitimise the disadvantage faced by Roma children in the field of education. The degree of consistency among the institutions and quasi-judicial bodies was persuasive in confirming the existence of widespread discrimination against Roma children.

167. The interveners added that whatever the merits of separate education for children with genuine mental disabilities, the decision to place Roma children in special schools was in the majority of cases not based on any actual mental disability but rather on language and cultural differences which were not taken into account in the testing process. In order to fulfil their obligation to secure equal treatment for Roma in the exercise of their right to education, the first requirement of States was to amend the testing process so that it was not racially prejudiced against Roma and to take positive measures in the area of language training and social-skills training.

(c) International Step by Step Association, the Roma Education Fund and the European Early Childhood Education Research Association

168. The International Step by Step Association, the Roma Education Fund and the European Early Childhood Education Research Association sought to demonstrate that the assessment used to place Roma children in special schools in the

Ostrava region disregarded the numerous effective and appropriate indicators that were well-known by the mid-1990s (see paragraph 44 above). In their submission, the assessment had not taken into account the language and culture of the children, their prior learning experiences or their unfamiliarity with the demands of the testing situation. Single rather than multiple sources of evidence had been used. Testing had been done in a single administration, not over time. Evidence had not been obtained in realistic or authentic settings where children could demonstrate their learning. Undue emphasis had been placed on individually administered, standardised tests normed on other populations.

169. Referring to various studies that had been carried out (see paragraph 44 above), the interveners noted that minority children and those from vulnerable families were over-represented in special education in central and eastern Europe. This resulted from an array of factors, including unconscious racial bias on the part of school authorities, large resource inequalities, unjustifiable reliance on IQ and other evaluation tools, educators' inappropriate responses to the pressures of "high-stakes" testing and power differentials between minority parents and school officials. School placement through psychological testing often reflected racial biases in the society concerned.

170. The Czech Republic was notable for its placement of children in segregated settings because of "social disadvantage". According to a comparison of data on fifteen countries collected by the OECD in 1999 (see paragraph 18 in fine above) the Czech Republic ranked third in placing pupils with learning difficult disabilities in special school settings. Of the eight countries that provided data on the placement of pupils as a result of social factors, the Czech Republic was the only one to have recourse to special schools; the other countries almost exclusively used ordinary schools for educating such pupils.

171. Further, the practice of referring children labelled as being of low ability to special schools at an early age (educational tracking) frequently led, whether or not intentionally, to racial segregation and had particularly negative effects on the level of education of disadvantaged children. This had long-term detrimental consequences for both them and society, including premature exclusion from the education system with the resulting loss of job opportunities for those concerned.

(d) Fédération internationale des ligues des droits de l'Homme (International Federation for Human Rights – FIDH)

172. The FIDH considered that the Chamber had unjustifiably placed significant weight in its judgment on the consent which the applicants' parents had allegedly given to the situation forming the subject of their complaint to the Court. It noted that under the Court's case-law there were situations in which the waiver of a right was not considered capable of exempting the State from its obligation to guarantee to every person within its jurisdiction the rights and freedoms laid down in the Convention. That applied, in particular, where the waiver conflicted with an important public interest, or was not explicit or unequivocal. Furthermore, in order to be capable of justifying a restriction of the right or freedom of the individual, the waiver of that guarantee by the person concerned had to take place in circumstances from which it could be concluded that he was fully aware of the consequences, in particular the legal consequences, of his choice. In the case of R. v. Borden ([1994] 3 RCS 145, p. 162) the Supreme Court of Canada had developed the following principle on that precise point: "[i]n order for a waiver of the right ... to be effective, the person purporting to consent must be possessed of the requisite informational foundation for a true relinquishment of the right. A right to choose requires not only the volition to prefer one option over another, but also sufficient available information to make the preference meaningful".

173. The question therefore arose as to whether, in the light of the nature of the principle of equality of treatment, and of the link between the prohibition of racial discrimination and the wider concept of human dignity, waiver of the right to protection against discrimination ought not to be precluded altogether. In the instant case, the consent obtained from the applicants' parents was binding not solely on the applicants but on all the children of the Roma community. It was perfectly possible – indeed, in the FIDH's submission, probable – that all parents of Roma children would prefer an integrated education for their children, but that, being uncertain as regards the choice that would be made by other parents in that situation, they preferred the "security" offered by special education, which was followed by the vast majority of Roma children. In a context characterised by a history of discrimination against the Roma, the choice available to the parents of Roma children was between (a) placing their children in schools where the authorities were reluctant to admit them and where they feared being the subject of various forms of harassment and of manifestations of hostility on the part of their fellow pupils and of teachers, or (b) placing them in special schools where Roma children were in a large majority and where, consequently, they would not have to fear the manifestation of such prejudices. In reality, the applicants' parents had chosen what they saw as being the lesser of two evils, in the absence of any real possibility of receiving an integrated education which would unreservedly welcome Roma. The disproportion between the two alternatives was such that the applicants' parents had been obliged to make the choice for which the Government now sought to hold them responsible

174. For the reasons set out above, the FIDH considered that in the circumstances of the instant case, the alleged waiver by the applicants' parents of the right for their children to receive an education in normal schools could not justify exempting the Czech Republic from its obligations under the Convention.

C. The Court's assessment

1. Recapitulation of the main principles

175. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (Willis v. the United Kingdom, no. 36042/97, § 48, ECHR 2002-IV; and Okpisz v. Germany, no. 59140/00, § 33, 25 October 2005). However, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article ("Case relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Merits), judgment of 23 July 1968, Series A no. 6, § 10; Thlimmenos v. Greece [GC], no. 34369/97, § 44, ECHR 2000-IV; and Stec and Others v. the United Kingdom [GC], no. 65731/01, § 51, ECHR 2006-...). The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group (Hugh Jordan v. the United Kingdom, no. 24746/94, § 154, 4 May 2001; and Hoogendijk v. the Netherlands (dec.), no. 58461/00, 6 January 2005), and that discrimination potentially contrary to the Convention may result from a de facto situation (Zarb Adami v. Malta, no. 17209/02, § 76, ECHR 2006-...).

176. Discrimination on account of, inter alia, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-...; and Timishev v. Russia, nos. 55762/00 and 55974/00, § 56, ECHR 2005-...). The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (Timishev, cited above, § 58).

177. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (see, among other authorities, Chassagnou and Others v. France [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92, ECHR 1999-III; and Timishev, cited above, § 57).

178. As regards the question of what constitutes prima facie evidence capable of shifting the burden of proof on to the respondent State, the Court stated in Nachova and Others (cited above, § 147) that in proceedings before it there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.

179. The Court has also recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle affirmanti incumbit probatio (he who alleges something must prove that allegation – Aktaş v. Turkey (extracts), no. 24351/94, § 272, ECHR 2003-V). In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (Salman v. Turkey [GC], no. 21986/93, § 100, ECHR 2000-VII; and Anguelova v. Bulgaria, no. 38361/97, § 111, ECHR 2002-IV). In the case of Nachova and Others, cited above, § 157), the Court did not rule out requiring a respondent Government to disprove an arguable allegation of discrimination in certain cases, even though it considered that it would be difficult to do so in that particular case in which the allegation was that an act of violence had been motivated by racial prejudice. It noted in that connection that in the legal systems of many countries proof of the discriminatory effect of a policy, decision or practice would dispense with the need to prove intent in respect of alleged discrimination in employment or in the provision of services.

180. As to whether statistics can constitute evidence, the Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as discriminatory (Hugh Jordan, cited above, § 154). However, in more recent cases on the question of discrimination, in which the applicants alleged a difference in the effect of a general measure or de facto situation (Hoogendijk, cited above; and Zarb Adami, cited above, §§ 77-78), the Court relied extensively on statistics produced by the parties to establish a difference in treatment between two groups (men and women) in similar situations.

Thus, in the Hoogendijk decision the Court stated: "[W]here an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex. If the onus of demonstrating that a

difference in impact for men and women is not in practice discriminatory does not shift to the respondent Government, it will be in practice extremely difficult for applicants to prove indirect discrimination."

181. Lastly, as noted in previous cases, the vulnerable position of Roma/Gypsies means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Chapman v. the United Kingdom [GC], no. 27238/95, § 96, ECHR 2001-I; and Connors v. the United Kingdom, no. 66746/01, § 84, 27 May 2004).

In Chapman (cited above, §§ 93-94), the Court also observed that there could be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community.

2. Application of the aforementioned principles to the instant case

182. The Court notes that as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority (see also the general observations in the Parliamentary Assembly's Recommendation no. 1203 (1993) on Gypsies in Europe, cited in paragraph 56 above and point 4 of its Recommendation no. 1557 (2002): 'The legal situation of Roma in Europe', cited in paragraph 58 above). As the Court has noted in previous cases, they therefore require special protection (see paragraph 181 above). As is attested by the activities of numerous European and international organisations and the recommendations of the Council of Europe bodies (see paragraphs 54-61 above), this protection also extends to the sphere of education. The present case therefore warrants particular attention, especially as when the applications were lodged with the Court the applicants were minor children for whom the right to education was of paramount importance.

183. The applicants' allegation in the present case is not that they were in a different situation from non-Roma children that called for different treatment or that the respondent State had failed to take affirmative action to correct factual inequalities or differences between them (Thlimmenos, cited above, § 44; and Stec and Others, cited above, § 51). In their submission, all that has to be established is that, without objective and reasonable justification, they were treated less favourably than non-Roma children in a comparable situation and that this amounted in their case to indirect discrimination.

184. The Court has already accepted in previous cases that a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group (Hugh Jordan, cited above, § 154; and Hoogendijk, cited above). In accordance with, for instance, Council Directives 97/80/EC and 2000/43/EC (see paragraphs 82 and 84 above) and the definition provided by ECRI (see paragraph 60 above), such a situation may amount to "indirect discrimination", which does not necessarily require a discriminatory intent.

(a) Whether a presumption of indirect discrimination arises in the instant case

185. It was common ground that the impugned difference in treatment did not result from the wording of the statutory provisions on placements in special schools in force at the material time. Accordingly, the issue in the instant case is whether the manner in which the legislation was applied in practice resulted in a disproportionate number of Roma children – including the applicants – being placed in special schools without justification, and whether such children were thereby placed at a significant disadvantage.

186. As mentioned above, the Court has noted in previous cases that applicants may have difficulty in proving discriminatory treatment (Nachova and Others, cited above, §§ 147 and 157). In order to guarantee those concerned the effective protection of their rights, less strict evidential rules should apply in cases of alleged indirect discrimination.

187. On this point, the Court observes that Council Directives 97/80/EC and 2000/43/EC stipulate that persons who consider themselves wronged because the principle of equal treatment has not been applied to them may establish, before a domestic authority, by any means, including on the basis of statistical evidence, facts from which it may be presumed that there has been discrimination (see paragraphs 82 and 83 above). The recent case-law of the Court of Justice of the European Communities (see paragraphs 88-89 above) shows that it permits claimants to rely on statistical evidence and the national courts to take such evidence into account where it is valid and significant.

The Grand Chamber further notes the information furnished by the third-party interveners that the courts of many countries and the supervisory bodies of the United Nations treaties habitually accept statistics as evidence of indirect discrimination in order to facilitate the victims' task of adducing prima facie evidence.

The Court also recognised the importance of official statistics in the aforementioned cases of Hoogendijk and Zarb Adami and has shown that it is prepared to accept and take into consideration various types of evidence (Nachova and Others, cited above, § 147).

188. In these circumstances, the Court considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence.

189. Where an applicant alleging indirect discrimination thus establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which must show that the difference in treatment is not discriminatory (see, mutatis mutandis, Nachova and Others, cited above, § 157). Regard being had in particular to the specificity of the facts and the nature of the allegations made in this type of case (ibid., § 147), it would be extremely difficult in practice for applicants to prove indirect discrimination without such a shift in the burden of proof.

190. In the present case, the statistical data submitted by the applicants was obtained from questionnaires that were sent out to the head teachers of special and primary schools in the town of Ostrava in 1999. It indicates that at the time 56% of all pupils placed in special schools in Ostrava were Roma. Conversely, Roma represented only 2.26% of the total number of pupils attending primary school in Ostrava. Further, whereas only 1.8% of non-Roma pupils were placed in special schools, the proportion of Roma pupils in Ostrava assigned to special schools was 50.3%. According to the Government, these figures are not sufficiently conclusive as they merely reflect the subjective opinions of the head teachers. The Government also noted that no official information on the ethnic origin of the pupils existed and that the Ostrava region had one of the largest Roma populations.

191. The Grand Chamber observes that these figures are not disputed by the Government and that they have not produced any alternative statistical evidence. In view of their comment that no official information on the ethnic origin of the pupils exists, the Court accepts that the statistics submitted by the applicants may not be entirely reliable. It nevertheless considers that these figures reveal a dominant trend that has been confirmed both by the respondent State and the independent supervisory bodies which have looked into the question.

192. In their reports submitted in accordance with Article 25 § 1 of the Framework Convention for the Protection of National Minorities, the Czech authorities accepted that in 1999 Roma pupils made up between 80% and 90% of the total number of pupils in some special schools (see paragraph 66 above) and that in 2004 "large numbers" of Roma children were still being placed in special schools (see paragraph 67 above). The Advisory Committee on the Framework Convention observed in its report of 26 October 2005 that according to unofficial estimates Roma accounted for up to 70% of pupils enrolled in special schools. According to the report published by ECRI in 2000, Roma children were "vastly overrepresented" in special schools. The Committee on the Elimination of Racial Discrimination noted in its concluding observations of 30 March 1998 that a disproportionately large number of Roma children were placed in special schools (see paragraph 99 above). Lastly, according to the figures supplied by the European Monitoring Centre on Racism and Xenophobia, more than half of Roma children in the Czech Republic attended special school.

193. In the Court's view, the latter figures, which do not relate solely to the Ostrava region and therefore provide a more general picture, show that, even if the exact percentage of Roma children in special schools at the material time remains difficult to establish, their number was disproportionately high. Moreover, Roma pupils formed a majority of the pupils in special schools. Despite being couched in neutral terms, the relevant statutory provisions therefore had considerably more impact in practice on Roma children than on non-Roma children and resulted in statistically disproportionate numbers of placements of the former in special schools.

194. Where it has been shown that legislation produces such a discriminatory effect, the Grand Chamber considers that, as with cases concerning employment or the provision of services, it is not necessary in cases in the educational sphere (see, mutatis mutandis, Nachova and Others, cited above, § 157) to prove any discriminatory intent on the part of the relevant authorities (see paragraph 184 above).

195. In these circumstances, the evidence submitted by the applicants can be regarded as sufficiently reliable and significant to give rise to a strong presumption of indirect discrimination. The burden of proof must therefore shift to the Government, which must show that the difference in the impact of the legislation was the result of objective factors unrelated to ethnic origin.

(b) Objective and reasonable justification

196. The Court reiterates that a difference in treatment is discriminatory if "it has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised (see, among many other authorities,

Larkos v. Cyprus [GC], no. 29515/95, § 29, ECHR 1999-I; and Stec and Others, cited above, § 51). Where the difference in treatment is based on race, colour or ethnic origin, the notion of objective and reasonable justification must be interpreted as strictly as possible.

197. In the instant case, the Government sought to explain the difference in treatment between Roma children and non-Roma children by the need to adapt the education system to the capacity of children with special needs. In the Government's submission, the applicants were placed in special schools on account of their specific educational needs, essentially as a result of their low intellectual capacity measured with the aid of psychological tests in educational psychology centres. After the centres had made their recommendations regarding the type of school in which the applicants should be placed, the final decision had lain with the applicants' parents and they had consented to the placements. The argument that the applicants were placed in special schools on account of their ethnic origin was therefore unsustainable.

For their part, the applicants strenuously contested the suggestion that the disproportionately high number of Roma children in special schools could be explained by the results of the intellectual capacity tests or be justified by parental consent.

198. The Court accepts that the Government's decision to retain the special-school system was motivated by the desire to find a solution for children with special educational needs. However, it shares the disquiet of the other Council of Europe institutions who have expressed concerns about the more basic curriculum followed in these schools and, in particular, the segregation the system causes.

199. The Grand Chamber observes, further, that the tests used to assess the children's learning abilities or difficulties have given rise to controversy and continue to be the subject of scientific debate and research. While accepting that it is not its role to judge the validity of such tests, various factors in the instant case nevertheless lead the Grand Chamber to conclude that the results of the tests carried out at the material time were not capable of constituting objective and reasonable justification for the purposes of Article 14 of the Convention.

200. In the first place, it was common ground that all the children who were examined sat the same tests, irrespective of their ethnic origin. The Czech authorities themselves acknowledged in 1999 that "Romany children with average or above-average intellect" were often placed in such schools on the basis of the results of psychological tests and that the tests were conceived for the majority population and did not take Roma specifics into consideration (see paragraph 66 above). As a result, they had revised the tests and methods used with a view to ensuring that they "were not misused to the detriment of Roma children" (see paragraph 72 above).

In addition, various independent bodies have expressed doubts over the adequacy of the tests. Thus, the Advisory Committee on the Framework Convention for the Protection of National Minorities observed that children who were not mentally handicapped were frequently placed in these schools "[owing] to real or perceived language and cultural differences between Roma and the majority". It also stressed the need for the tests to be "consistent, objective and comprehensive" (see paragraph 68 above). ECRI noted that the channelling of Roma children to special schools for the mentally-retarded was reportedly often "quasi-automatic" and needed to be examined to ensure that any testing used was "fair" and that the true abilities of each child were "properly evaluated" (see paragraphs 63-64 above). The Council of Europe Commissioner for Human Rights noted that Roma children were frequently placed in classes for children with special needs "without an adequate psychological or pedagogical assessment, the real criteria clearly being their ethnic origin" (see paragraph 77 above).

Lastly, in the submission of some of the third-party interveners, placements following the results of the psychological tests reflected the racial prejudices of the society concerned.

201. The Court considers that, at the very least, there is a danger that the tests were biased and that the results were not analysed in the light of the particularities and special characteristics of the Roma children who sat them. In these circumstances, the tests in question cannot serve as justification for the impugned difference in treatment.

202. As regards parental consent, the Court notes the Government's submission that this was the decisive factor without which the applicants would not have been placed in special schools. In view of the fact that a difference in treatment has been established in the instant case, it follows that any such consent would signify an acceptance of the difference in treatment, even if discriminatory, in other words a waiver of the right not to be discriminated against. However, under the Court's case-law, the waiver of a right guaranteed by the Convention – in so far as such a waiver is permissible – must be established in an unequivocal manner, and be given in full knowledge of the facts, that is to say on the basis of informed consent (Pfeifer and Plankl v. Austria, judgment of 25 February 1992, Series A no. 227, §§ 37-38) and without constraint (Deweer v. Belgium, judgment of 27 February 1980, Series A no. 35, § 51).

203. In the circumstances of the present case, the Court is not satisfied that the parents of the Roma children, who were members of a disadvantaged community and often poorly educated, were capable of weighing up all the aspects

of the situation and the consequences of giving their consent. The Government themselves admitted that consent in this instance had been given by means of a signature on a pre-completed form that contained no information on the available alternatives or the differences between the special-school curriculum and the curriculum followed in other schools. Nor do the domestic authorities appear to have taken any additional measures to ensure that the Roma parents received all the information they needed to make an informed decision or were aware of the consequences that giving their consent would have for their children's futures. It also appears indisputable that the Roma parents were faced with a dilemma: a choice between ordinary schools that were ill-equipped to cater for their children's social and cultural differences and in which their children risked isolation and ostracism and special schools where the majority of the pupils were Roma.

204. In view of the fundamental importance of the prohibition of racial discrimination (see Nachova and Others, cited above, § 145; and Timishev, cited above, § 56), the Grand Chamber considers that, even assuming the conditions referred to in paragraph 202 above were satisfied, no waiver of the right not to be subjected to racial discrimination can be accepted, as it would be counter to an important public interest (see, mutatis mutandis, Hermi v. Italy [GC], no. 18114/02, § 73, ECHR 2006-...).

(c) Conclusion

205. As is apparent from the documentation produced by ECRI and the report of the Commissioner for Human Rights of the Council of Europe, the Czech Republic is not alone in having encountered difficulties in providing schooling for Roma children: other European States have had similar difficulties. The Court is gratified to note that, unlike some countries, the Czech Republic has sought to tackle the problem and acknowledges that, in its attempts to achieve the social and educational integration of the disadvantaged group which the Roma form, it has had to contend with numerous difficulties as a result of, inter alia, the cultural specificities of that minority and a degree of hostility on the part of the parents of non-Roma children. As the Chamber noted in its admissibility decision in the instant case, the choice between a single school for everyone, highly specialised structures and unified structures with specialised sections is not an easy one. It entails a difficult balancing exercise between the competing interests. As to the setting and planning of the curriculum, this mainly involves questions of expediency on which it is not for the Court to rule (Valsamis v. Greece, judgment of 18 December 1996, Reports 1996-VI, § 28).

206. Nevertheless, whenever discretion capable of interfering with the enjoyment of a Convention right is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation (see Buckley v. the United Kingdom, judgment of 25 September 1996, Reports 1996-IV, § 76; and Connors v. the United Kingdom, judgment cited above, § 83).

207. The facts of the instant case indicate that the schooling arrangements for Roma children were not attended by safeguards (see paragraph 28 above) that would ensure that, in the exercise of its margin of appreciation in the education sphere, the State took into account their special needs as members of a disadvantaged class (see, mutatis mutandis, Buckley, cited above, § 76; and Connors, cited above, § 84). Furthermore, as a result of the arrangements the applicants were placed in schools for children with mental disabilities where a more basic curriculum was followed than in ordinary schools and where they were isolated from pupils from the wider population. As a result, they received an education which compounded their difficulties and compromised their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population. Indeed, the Government have implicitly admitted that job opportunities are more limited for pupils from special schools.

208. In these circumstances and while recognising the efforts made by the Czech authorities to ensure that Roma children receive schooling, the Court is not satisfied that the difference in treatment between Roma children and non-Roma children was objectively and reasonably justified and that there existed a reasonable relationship of proportionality between the means used and the aim pursued. In that connection, it notes with interest that the new legislation has abolished special schools and provides for children with special educational needs, including socially disadvantaged children, to be educated in ordinary schools.

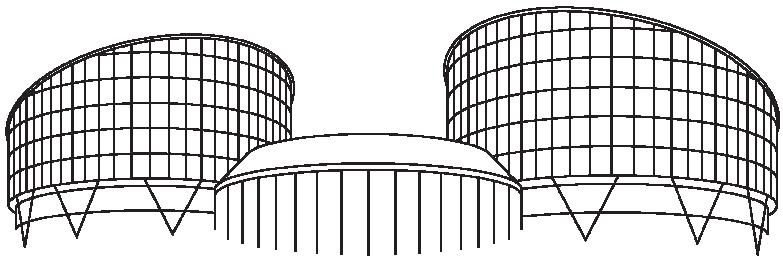
209. Lastly, since it has been established that the relevant legislation as applied in practice at the material time had a disproportionately prejudicial effect on the Roma community, the Court considers that the applicants as members of that community necessarily suffered the same discriminatory treatment. Accordingly, it does not need to examine their individual cases.

210. Consequently, there has been a violation in the instant case of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1, as regards each of the applicants.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

Annex 1002

Oršuš v. Croatia (2011) 52 EHRR 7 (ECHR) Application No. 15766/03, Merits, 16 March 2010



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Case of Oršuš and Others v. Croatia

(Application no. 15766/03)

Judgment

Strasbourg, 16 March 2010

In the case of Oršuš and Others v. Croatia,

The European Court of Human Rights (Grand Chamber), sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President,*
Nicolas Bratza,
Françoise Tulkens,
Josep Casadevall,
Karel Jungwiert,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Alvina Gyulumyan,
Renate Jaeger,
Egbert Myjer,
David Thór Björgvinsson,
Ineta Ziemele,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Işıl Karakaş,
Nebojša Vučinić, *judges,*

and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 1 April 2009 and 27 January 2010,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 15766/03) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by fifteen Croatian nationals ("the applicants"), on 8 May 2003.

2. The applicants were represented before the Court by the European Roma Rights Center based in Budapest, Mrs L. Kušan, a lawyer practising in Ivanić-Grad and Mr J. Goldston, of the New York Bar. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. The applicants alleged, in particular, that the length of proceedings before the national authorities had been excessive and that they had been denied the right to education and discriminated against in the enjoyment of that right on account of their race or ethnic origin.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 17 July 2008 the Chamber of that Section, consisting of Judges Christos Rozakis, Nina Vajić, Khanlar Hajiyev, Dean Spielmann, Sverre Erik Jebens, Giorgio Malinverni and George Nicolaou and of Søren Nielsen, Section Registrar, found unanimously that there had been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings, and that there had not been a violation of Article 2 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention. The Chamber also found that the first applicant had withdrawn his application on 22 February 2007 and it therefore discontinued the examination of the application in so far as it concerned the first applicant.

5. On 13 October 2008 the applicants requested, in accordance with Article 43 of the Convention and Rule 73, that the case be referred to the Grand Chamber. On 1 December 2008 a panel of the Grand Chamber accepted that request.

6. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

7. The applicants and the Government each filed observations on the admissibility and merits of the case. In addition, third-party comments were received from the Government of the Slovak Republic, Interights and Greek Helsinki Monitor.

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 1 April 2009 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mrs	Š. STAŽNIK,	*Agent*,
Mr	D. MARIČIĆ,	*Co-agent*,
Mrs	N. JAKIR,	
Mrs	I. IVANIŠEVIĆ,	*Advisers*;

(b) *for the applicants*

Mrs	L. KUŠAN,	
Mr	J.A. GOLDSTON,	*Counsel*,
Mr	A. DOBRUSHI,	
Mr	T. ALEXANDRIDIS,	*Advisers*.

The Court heard addresses by Mr Goldston, Mrs Kušan and Mrs Stažnik.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants were born between 1988 and 1994 and live respectively in Orehovica, Podturen and Trnovec. Their names and details are set out in the Appendix.

10. As schoolchildren the applicants at times attended separate classes, with only Roma pupils, the second to tenth applicant in primary school in the village of Podturen and the eleventh to fifteenth applicants in primary school in the village of Macinec, in Međimurje County. In Croatia primary education consists of eight grades and children are obliged to attend school from the age of seven to fifteen. The first four grades are considered as lower grades and each class is assigned a class teacher who in principle teaches all subjects. The fifth to eighth grades are upper grades in which, in addition to a class teacher assigned to each class, different teachers teach different subjects. The curriculum taught in any primary-school class, including the Roma-only classes which the applicants attended, may be reduced by up to thirty percent in comparison to the regular, full curriculum.

A. General overview of the two primary schools in question

1. Podturen Primary School

11. The proportion of Roma children in the lower grades (from first to fourth grade) varies from 33 to 36%. The total number of pupils in the Podturen Primary School in 2001 was 463, 47 of whom were Roma. There was one Roma-only class, with seventeen pupils, while the remaining thirty Roma pupils attended mixed classes.

12. In 2001 a pre-school programme called "Little School" (*Mala škola*) was introduced in the Lončarevo settlement in Podturen. It included about twenty Roma children and was designed as a preparatory programme for primary school. Three educators were involved, who had previously received special training. The programme lasted from 11 June to 15 August 2001. This programme has been provided on a permanent basis since 1 December 2003. It usually includes about twenty Roma children aged from three to seven. The programme is carried out by an educator and a Roma assistant in cooperation with the Podturen Primary School. An evaluation test was carried out at the end of the programme.

13. In December 2002 the Ministry of Education and Sport adopted a decision introducing Roma assistants in schools with Roma pupils from first to fourth grades. However, in the Podturen Primary School a Roma assistant

had already been working since September 2002. A statement made by one such assistant, Mr K.B., on 13 January 2009 reads:

> "I began to work in the Podturen Primary School in September 2002. At that time there were two classes in the fourth grade. Class four b) had Roma pupils only and it was very difficult to work with that class because the pupils were agitated and disturbed the teaching. I was contemplating leaving after only two months. At the request of teachers, I would take written invitations to the parents or I would invite them orally to come to talk with the teachers at school. Some parents would come, but often not, and I had to go and ask them again. A lot of time was needed to explain Croatian words to pupils because some of them continued to speak Romani and teachers would not understand them. I warned the pupils to attend school regularly. Some pupils would just leave classes or miss a whole day. I helped pupils with homework after school. I helped the school authorities to compile the exact list of pupils in the first grade. I do not work in the school any longer."

14. Since the school-year 2003/2004 there have been no Roma-only classes in the Podturen Primary School.

2. Macinec Primary School

15. The proportion of Roma children in the lower grades varies from 57 to 75%. Roma-only classes are formed in the lower grades and only exceptionally in the higher grades. All classes in the two final grades (seventh and eighth) are mixed. The total number of pupils in the Macinec Primary School in 2001 was 445, 194 of whom were Roma. There were six Roma-only classes, with 142 pupils in all, while the remaining fifty-two Roma pupils attended mixed classes.

16. Since 2003 the participation of Roma assistants has been implemented.

17. A "Little School" pre-school special programme was introduced in 2006.

B. Individual circumstances of each applicant

18. The applicants submitted that they had been told that they had to leave school at the age of fifteen. Furthermore, the applicants submitted statistics showing that in the school year 2006/2007 16% of Roma children aged fifteen completed their primary education, compared with 91% for the general primary school population in Međimurje County. The drop-out rate of Roma pupils without completing primary school was 84%, which was 9.3 times higher than for the general population. In school year 2005/2006, 73 Roma children were enrolled in first grade and five in eighth.

19. The following information concerning each individual applicant is taken from official school records.

Annex 1003

Case Against Hartmann, Case No. it-02-54-R77.5-A, Appeals Judgment (19 July 2011)

UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991	Case No.	IT-02-54-R77.5-A
		Date:	19 July 2011
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Patrick Robinson, Presiding**
Judge Andrésia Vaz
Judge Theodor Meron
Judge Burton Hall
Judge Howard Morrison

Registrar: **Mr. John Hocking**

Judgement: **19 July 2011**

IN THE CASE AGAINST FLORENCE HARTMANN

PUBLIC

JUDGEMENT

***Amicus Curiae* Prosecutor**
Mr. Bruce MacFarlane

Counsel for Appellant
Mr. Karim A. A. Kahn, Lead Counsel
Mr. Guénaël Mettraux, Co-Counsel

CONTENTS

133. These sub-grounds of appeal are therefore dismissed.[262]

C. Conclusion

134. The Appeals Chamber therefore dismisses ground of appeal 8 in its entirety, as well as sub-grounds 1.9, 1.10, and 6.3.

X. THE REGISTRAR'S LETTER – GROUND 9

135. In determining Hartmann's *mens rea*, the Trial Chamber relied upon the Registrar's Letter, sent 19 October 2008, which stated that her Book appeared to make reference to official Tribunal information and documents that were not public and of which she had knowledge in the context of her official duties as an employee of the Tribunal from 13 October 2000 to 12 October 2006. At trial, the Defence submitted that nothing in the Registrar's Letter suggested that she had violated the confidentiality of a court order in her Book and that the Letter contained no reference to Rule 77 of the Rules or to the Appeal Decisions.

136. The Trial Chamber considered that, even without explicit references to the Appeal Decisions or Rule 77 of the Rules, Hartmann was formally put on notice by the Registrar's Letter that the Registry was concerned about the disclosure of confidential information. The Trial Chamber also found that the fact that Hartmann published essentially the same information in her Article after having received the Registrar's Letter was strongly suggestive of her state of mind.

137. Hartmann states under **sub-ground 9.1** that the Trial Chamber, by permitting the *Amicus* Prosecutor to tender the Registrar's Letter into evidence and subsequently rely on it, violated her fundamental rights, international law, and Rules 89(D) and 95 of the Rules.[263] The *Amicus* Prosecutor contends that Hartmann: (a) received a copy of the Registrar's Letter on or about 19 October 2007; (b) consequently had notice of its contents 20 months prior to trial; and, (c) was notified of the *Amicus* Prosecutor's intention to rely upon the Letter as evidence during the

[262] In **sub-ground 6.3**, the Appellant argues that, if the Trial Chamber found that the Appellant was acting in more than a negligent manner, it erred and abused its discretion. Hartmann Final Appeal Brief, para. 69. For the reasons given in this section, the Appeals Chamber dismisses this sub-ground of appeal**. Sub-ground 1.9** (Hartmann Final Appeal Brief, para. 6) is duplicative of the arguments set forth in this section and therefore is dismissed. In **sub-ground 1.10**, (Hartmann Final Appeal Brief, para. 7) Hartmann argues that she was not validly charged in respect of the *mens rea* requirement with respect to her awareness that her Book contained confidential information. Based upon paragraph 4 of the Annex to the Order in Lieu of Indictment, which alleges that she "knew that the information was confidential at the time disclosure was made, that the decisions from which the information was drawn were ordered to be filed confidentially, and that by her disclosure she was revealing confidential information to the public", the Appeals Chamber is of the view that Hartmann was on adequate notice that she was charged with revealing confidential information. Annex to Order in Lieu of Indictment, para. 4. Sub-grounds 1.9 and 1.10 are therefore dismissed.

[263] Hartmann Final Appeal Brief, para. 91.

proceedings at least eight months in advance of the trial date.[264] In reply, Hartmann contests the Respondent's assertion that she was aware of the *Amicus* Prosecutor's intention to rely on the Registrar's Letter as evidence in the trial proceedings and reiterates that she was prejudiced.[265]

138. Hartmann submits under **sub-ground 9.2** that the Trial Chamber erred in fact by suggesting that the Registrar's Letter reflected Hartmann's awareness of the fact that the information relevant to the charges eventually filed against her was still considered confidential.[266] The *Amicus* Prosecutor responds that the Registrar's Letter is of "considerable probative value" concerning Hartmann's *mens rea*.[267]

139. The Appeals Chamber recalls that, on appeal, the parties must limit their arguments to legal errors that invalidate the Judgement of the Trial Chamber and to factual errors that result in a miscarriage of justice within the scope of Article 25 of the Statute.[268] An allegation of an error of law that has no chance of changing the outcome of a Judgement may be rejected on that ground.[269] Only an error of fact that has occasioned a miscarriage of justice will cause the Appeals Chamber to overturn a decision by the Trial Chamber.[270]

140. The Appeals Chamber observes that the Trial Chamber found Hartmann's admissions concerning the confidentiality of the Appeal Decisions in her own publications to be the strongest evidence of her *mens rea*.[271] The Appeals Chamber therefore considers that any possible error in relation to the Registrar's Letter would not have changed the outcome of the Judgement or occasioned a miscarriage of justice.

141. The Appeals Chamber therefore dismisses ground of appeal 9 is in its entirety.

XI. MISTAKE OF FACT AND LAW – GROUND 10

142. At trial, Hartmann raised mistake of fact and mistake of law as defences to the alleged acts of contempt. She argued that disclosure by the Tribunal and the Applicant, as well as public discussion in the media prior to the publication of her Book and Article, of the information she was charged with disclosing could have led her to reasonably believe that the information was no longer treated as confidential.[272] The Trial Chamber held that Hartmann could not have been reasonably

[264] *Amicus* Prosecutor Response Brief, paras 79-81.
[265] Hartmann Final Reply Brief, para. 26.
[266] Hartmann Final Appeal Brief, para. 92.
[267] *Amicus* Prosecutor Response Brief, paras 82-83.
[268] *Šešelj* Contempt Appeal Judgement, para. 9; *Jokić* Contempt Appeal Judgement, para. 11.
[269] *Šešelj* Contempt Appeal Judgement, para. 10; *Jokić* Contempt Appeal Judgement, para. 12.
[270] *Šešelj* Contempt Appeal Judgement, para. 11; *Jokić* Contempt Appeal Judgement, para. 13.
[271] Trial Judgement, paras 58, 62.
[272] Trial Judgement, para. 63.

mistaken in fact with respect to the confidential status of the Appeal Decisions.[273] In relation to the mistake of law, the Trial Chamber found that a person's misunderstanding of the law does not, in itself, excuse a violation of it.[274]

143. Hartmann argues that the Trial Chamber erred in fact and law when it excluded or disregarded the reasonable possibility that: (a) she was unaware of the criminal nature of her conduct (if regarded as such) and (b) as a result of an error of fact or law, she believed or understood that the facts in question were no longer treated as confidential at the time of publication.[275]

144. The *Amicus* Prosecutor responds that this ground of appeal should fail for two reasons. First, the *Amicus* Prosecutor submits that Hartmann is inviting the Appeals Chamber to reach a conclusion on the basis of speculation and without supporting evidence. Second, the speculative conclusions sought to be drawn by Hartmann are contrary to the Trial Chamber's express findings based on the evidence that Hartmann did not labour under a mistake of fact and that, in relation to the law, the evidence demonstrated knowledge, rather than ignorance, of the law.[276]

145. Hartmann replies that the *Amicus* Prosecutor's "suggestion" that there was no evidence to support the conclusion that Hartmann might have laboured under a mistaken belief is contradicted by the record.[277]

146. In respect of the mistake of fact defence, the Appeals Chamber observes that the Trial Chamber, in reaching its conclusion on this issue, recalled: (a) that, in her Book, Hartmann explicitly stated that the Appeal Decisions were confidential; (b) that, when asked about her knowledge of this during the suspect interview, she replied, "[i]t would appear that I had good sources"; (c) that, despite claiming to know from her "sources" that the Appeal Decisions were confidential, she nonetheless did not "regard any check as necessary" with the United Nations or the Tribunal prior to the publication of her Book in order to inquire about potential problems with disclosure; and, (d) that there was an absence in Hartmann's Book and Article of any reference to public sources in which she claimed the facts related to the Appeal Decisions were revealed. Based upon the foregoing, the Appeals Chamber considers that the Trial Judgement analysed the evidence

[273] Trial Judgement, para. 64.
[274] Trial Judgement, para. 65.
[275] Hartmann Final Appeal Brief, para. 93.
[276] *Amicus* Prosecutor Response Brief, para. 85.
[277] Hartmann Final Reply Brief, para. 27. The Appellant argues in her reply that this ground of appeal is not opposed by the *Amicus* Prosecutor. Hartmann Final Reply Brief, para. 27. The Appeal Chamber considers that the *Amicus* Prosecutor has indeed responded to this ground of appeal, contrary to the contention of the Appellant.

in relation to the mistake of fact defence raised by Hartmann and acted reasonably when it rejected this defence.

147. In respect of the mistake of law defence, the Appeals Chamber recalls its holding in the *Jović* case that:

> [K]nowledge of the legality of the Trial Chamber's order is not an element of the *mens rea* of contempt; to hold otherwise would mean that an accused could defeat a prosecution for contempt by raising the defence of a mistake of law. […] It is not a valid defence that one did not know that disclosure of the protected information in violation of an order of a Chamber was unlawful.[278]

The Trial Chamber accurately identified this principle, citing the *Jović* Contempt Trial Judgement, and applied it to the present case.[279] Moreover, the Trial Chamber went even further and identified evidence adduced at trial that clearly demonstrated that Hartmann was not ignorant of the relevant law.[280]

148. The Appeals Chamber therefore dismisses ground of appeal 10 in its entirety.

XII. RIGHT TO FREEDOM OF EXPRESSION – GROUND 2[281]

149. The Trial Chamber considered the arguments raised by the Defence at trial regarding the alleged infringement of Hartmann's right to freedom of expression as a journalist, principally under Article 10 of the European Convention on Human Rights ("ECHR").[282] The Trial Chamber acknowledged Hartmann's right to freedom of expression, but noted a qualification to that right in relation to court proceedings.[283] The Trial Chamber held that Hartmann, in openly publishing confidential information, created a real risk of interference with the Tribunal's ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law.[284]

A. Submissions

150. Under **sub-ground 2.1**, Hartmann argues that the Trial Chamber erred in law in holding that the standard applied in assessing the contempt conviction against her was consistent with jurisprudence from the European Court of Human Rights ("ECtHR").[285] Under **sub-ground 2.2,**

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[278] *Jović* Contempt Appeal Judgement, para. 27.
[279] Trial Judgement, para. 65.
[280] Trial Judgement, para. 66.
[281] The Appeals Chamber notes as a preliminary issue that, although the Appellant's appeal brief indicates that ground of appeal 2 contains 16 sub-grounds of appeal, the Appellant has omitted to present **sub-ground 2.13** in her appeal brief.
[282] Trial Judgement, paras 68-74; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1 November 1998, ETS 155 ("ECHR").
[283] Trial Judgement, para. 70.
[284] Trial Judgement, para. 74.
[285] Hartmann Final Appeal Brief, para. 15.

Hartmann submits that the Trial Chamber erred in law by failing to consider the strong presumption under international law of unrestricted publicity in criminal proceedings and by instead treating this presumption as one of many "equally important" factors.[286] Under **sub-ground 2.4**, Hartmann asserts that the Trial Chamber erred in law or fact by failing to consider the increased protection guaranteed to free expression regarding issues of public or general interest.[287] In **sub-ground 2.5**, Hartmann contends that the Trial Chamber erred in law or fact by failing to consider the right of the public to receive information disclosed by her in assessing the proportionality of the interference with her right to free expression.[288]

151. In **sub-ground 2.9**, Hartmann contends that the Trial Chamber erred in law or fact when it failed to establish, or even failed to seek to establish, that the restrictions on her—and the public's—freedom of expression in the form of a criminal conviction were "necessary".[289] Under **sub-ground 2.10**, she argues that the Trial Chamber erred in law or fact by misapplying the requirement of proportionality when it balanced various irrelevant factors in the Trial Judgement.[290] In **sub-ground 2.11**, Hartmann alleges that the Trial Chamber erred in law or fact when it failed to apply the proportionality test in deciding whether a criminal conviction was appropriate in the circumstances.[291]

152. In **sub-ground 2.12**, Hartmann contends that the Trial Chamber erred in law or fact when it failed to consider facts relevant to determining the necessity or proportionality of the restriction on her freedom of expression "as were favourable to her".[292] Finally, in **sub-ground 2.15**, she argues that the Trial Chamber erred in law by merging two issues relevant to testing the permissibility of restrictions on her freedom of expression. In her view, the Trial Chamber was required to note the aim of the good administration of justice, take into account all facts relevant to the proportionality/necessity test, and determine whether the restriction on her free speech through a criminal conviction was necessary and proportionate.[293]

153. In response, the *Amicus* Prosecutor argues that the Trial Chamber applied the correct legal standard in assessing the restriction on Hartmann's freedom of expression. He submits that Hartmann fails to acknowledge valid restrictions on what the *Amicus* Prosecutor terms the "open

[286] Hartmann Final Appeal Brief, para. 16. The Appellant relies upon jurisprudence from the United Kingdom and the European Court of Human Rights ("ECtHR") to support her position. Hartmann Final Appeal Brief, notes 21-23, 26.
[287] Hartmann Final Appeal Brief, para. 18.
[288] Hartmann Final Appeal Brief, para. 19.
[289] Hartmann Final Appeal Brief, para. 23.
[290] Hartmann Final Appeal Brief, para. 24.
[291] Hartmann Final Appeal Brief, para. 25.
[292] Hartmann Final Appeal Brief, para. 26.
[293] Hartmann Final Appeal Brief, para. 28.

court principle".[294] The *Amicus* Prosecutor also states that the decision to displace the presumption of openness is consistent with international law.[295] The *Amicus* Prosecutor contends that Hartmann selectively applies ECtHR jurisprudence and that, even if the ECtHR jurisprudence did apply, the cases relied upon by Hartmann can be distinguished from the case at hand.[296]

154. In reply, Hartmann contends that the *Amicus* Prosecutor is wrong in his enunciation of the appropriate legal standard in relation to legitimate curtailments on freedom of expression.[297] She contends that the standard of what is "necessary in a democratic society" is not whether the restriction on freedom of expression pursues a legitimate aim, but rather whether the restriction is imposed on a fundamental right.[298] Hartmann notes that she "never contested that the protection of the administration of justice could be a legitimate aim for the purpose of ordering confidentiality, including in relation to information received from a state".[299] Instead, she contended that the errors "pertain […] to the additional requirements of (i) žnecessity', (ii) žproportionality' and (iii) sufficiency of reasons adduced and whether, in the circumstances, [her] criminal conviction […] for allegedly discussing confidential matters satisfied these requirements".[300] According to Hartmann, the *Amicus* Prosecutor mistakenly argues that she objected to whether protective measures could be ordered at all, when this was never her position.[301]

155. The *amicus curiae* brief submitted by ARTICLE 19 addresses freedom of expression principles as developed in international law.[302] ARTICLE 19 notes that the right to freedom of expression is a fundamental human right guaranteed under, *inter alia*, the Universal Declaration of Human Rights[303] and the International Covenant on Civil and Political Rights ("ICCPR").[304] Reference is made also to additional jurisprudence, both international and national.[305]

156. ARTICLE 19 concludes its *amicus* brief by inviting the Appeals Chamber to consider various principles regarding freedom of expression in deciding the Appeal.[306] This includes the

[294] *Amicus* Prosecutor Response Brief, paras 27-31.
[295] *Amicus* Prosecutor Response Brief, para. 29.
[296] *Amicus* Prosecutor Response Brief, para. 27.
[297] Hartmann Final Reply Brief, para. 6.
[298] Hartmann Final Reply Brief, para. 6.
[299] Hartmann Final Reply Brief, para. 6.
[300] Hartmann Final Reply Brief, para. 6.
[301] Hartmann Final Reply Brief, para. 6.
[302] *Amicus Curiae* Brief on Behalf of ARTICLE 19, 19 February 2010 ("ARTICLE 19 *Amicus* Brief"), para. 3.
[303] U.N. General Assembly, Universal Declaration of Human Rights ("UDHR"), 10 December 1948, G.A. Res. 217 (III)A, Article 19.
[304] U.N. General Assembly, International Covenant on Civil and Political Rights ("ICCPR"), 16 December 1966, United Nations Treaty Series, vol. 999, p. 171, Article 19. *See also* ECHR, Article 10; American Convention on Human Rights, *published* 22 November 1969, *entered into force* 18 July 1978, OAS Treaty Series No. 36; 9 I.L.M. 99 (1969), Article 13; African Charter on Human and Peoples' Rights, *adopted* 27 June 1981, *entered into force* 21October 1986, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 9.
[305] ARTICLE 19 *Amicus* Brief, paras 6-32.
[306] ARTICLE 19 *Amicus* Brief, para. 34.

principle that any interference with freedom of expression must serve a legitimate aim and be necessary and proportionate to the aim pursued, with any exceptions being narrowly interpreted and convincingly established.[307] ARTICLE 19 suggests that media reporting of criminal proceedings must be protected to make sure that the public receives information on matters of public interest. It also notes that media reporting enables public scrutiny of the functioning of the criminal justice system.[308]

157. The Appeals Chamber permitted Hartmann and the *Amicus* Prosecutor to respond to ARTICLE 19's *amicus* brief.[309] Hartmann responds by adopting and supporting the submissions and conclusions of ARTICLE 19.[310] The *Amicus* Prosecutor responds that the general principles in the Trial Judgement are consistent with the jurisprudence cited by ARTICLE 19.[311] The *Amicus* Prosecutor notes that ARTICLE 19 fails to cite cases in support of the principles that prohibiting publication of confidential information violates freedom of expression, criminal contempt of court violates freedom of expression, or the exercise of the criminal contempt power to prosecute and convict parties who have violated a court order violates the freedom of expression.[312]

B. Discussion

158. The Appeals Chamber considers that Hartmann appears to submit that, had the Trial Chamber enforced a "strong" presumption in favour of unrestricted publicity, it would have ruled in her favour and permitted her to disclose confidential information pursuant to her freedom of expression rights. The Appeals Chamber considers that there is no merit in Hartmann's submission. There is no strong presumption of unrestricted publicity for matters a Chamber has ruled are not to be disclosed to the public. This was made clear in the *Jović* case, in which it was held that:

> The effect of a closed session order is to exclude the public, including members of the press, from the proceedings and to prevent them from coming into possession of the protected information being discussed therein. In such cases, the presumption of public proceedings under Article 20(4) of the Statute does not apply. [313]

159. At the heart of Hartmann's submission is the alleged inconsistency of the Trial Judgement with freedom of expression principles recognised by the ECHR. The Appeals Chamber is not bound

[307] ARTICLE 19 *Amicus* Brief, para. 33.
[308] ARTICLE 19 *Amicus* Brief, para. 33.
[309] Decision on Application for Leave to File *Amicus Curiae* Brief, 5 February 2010, para. 10(b).
[310] Hartmann Response to *Amicus* Brief, paras 2, 62.
[311] Annex to Motion to Replace with Revised Response, para. 4.
[312] Annex to Motion to Replace with Revised Response, para. 4.
[313] *Jović* Contempt Appeal Judgement, para. 21.

by the findings of regional or international courts and as such is not bound by ECtHR jurisprudence.[314]

160. The Appeals Chamber notes that Article 21 of the Statute of the Tribunal mirrors the provisions of Article 14 of the ICCPR.[315] The ICCPR and its commentaries are thus among the most persuasive sources in delineating the applicable protections for freedom of expression in the context of the Tribunal's proceedings.[316] The Human Rights Committee of the United Nations ("Human Rights Committee") has interpreted Article 14(1) of the ICCPR to require that courts' judgements be made public, with "certain strictly defined exceptions."[317] The Appeals Chamber notes that, although Article 19(2) of the ICCPR states that "[e]veryone shall have the right to freedom of expression," Article 19(3) recognises that

> The exercise of the right provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.[318]

The *travaux préparatoires* of the ICCPR indicate that the "protection of […] public order" in Article 19(3) was intended to include the prohibition of the procurement and dissemination of

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[314] *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 November 2007, para. 51. In the *Delalić et al.* Appeal Judgement, the Appeals Chamber stated that, "[a]lthough the Appeals Chamber will necessarily take into consideration other decisions of international courts, it may, after careful consideration, come to a different conclusion". *Delalić et al.* Appeal Judgement, para. 24.

[315] *See* U.N. Security Council, Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), U.N. Doc. S/25704, 3 May 1993, para. 106. This Report was issued pursuant to U.N. Security Council Resolution 808, which requested the Secretary-General "to submit for consideration by the [Security] Council […] a report" on the establishment of the Tribunal. *See* U.N. Security Council Resolution 808, U.N. Doc, S/RES/808 (1993), p. 2.

[316] The ICCPR has 167 state parties and, as such, is considered to be closer to universal application than the European Convention, which is a regional human rights instrument. *See* United Nations Treaty Collection, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en>, accessed 11 July 2011. The Appeals Chamber in the *Barayagwiza* Decision stated that the ICCPR "is part of general international law and is applied on that basis." In contrast, the Appeals Chamber indicated that, "[r]egional human rights treaties, such as the [ECHR] and the American Convention on Human Rights, and the jurisprudence developed thereunder, are persuasive authority which may be of assistance in applying and interpreting the Tribunal's applicable law. Thus, they are not binding of their own accord on the Tribunal. They are, however, authoritative as evidence of international custom." *Jean-Bosco Barayagwiza v. The Prosecutor*, Case. No. ICTR-97-19-AR72, Decision, 3 November 1999, para. 40.

[317] CCPR General Comment No. 13: Article 14 (Administration of Justice) Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 April 1984, para. 6.

[318] ICCPR, Article 19(3). Article 14(1) of the ICCPR also restricts a journalist's right to report on court proceedings. It states, *inter alia*, that "the press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". This provision was cited in the *Blaškić* and *Jović* cases. *See Jović* Contempt Trial Judgement, para. 23, note 95; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-PT, Decision on the Objection of the Republic of Croatia to the Issuance of *Subpoenae Duces Tecum*, 18 July 1997, note 248.

confidential information.[319] In respect of whether the restriction to an individual's freedom of expression is "necessary" to achieve its aim, the Human Rights Committee has considered whether the action taken was proportionate to the sought-after aim.[320]

161. Based upon the foregoing, therefore, in order to legitimately restrict Hartmann's freedom of expression under Article 19 of the ICCPR, the restriction must have been provided by law and proportionately necessary to protect against the dissemination of confidential information.[321] The two Appeal Decisions in the case of *Prosecutor v. Slobodan Milošević* contained restrictions on the freedom of expression that were "provided by law" because they were filed confidentially under protective measures granted pursuant to Rule 54 *bis* of the Rules. Furthermore, restricting Hartmann's freedom of expression in this manner was both proportionate and necessary because it protected the "public order" by guarding against the dissemination of confidential information. These restrictions were therefore within the ambit of Article 19(3) of the ICCPR.

162. In this regard, the Appeals Chamber observes that the Trial Chamber found that the effect of Hartmann's disclosure of confidential information decreased the likelihood that states would cooperate with the Tribunal in the future, thereby undermining its ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law.[322] The Trial Chamber further found that prosecuting an individual for contempt under these circumstances was proportionate to the effect her actions had on the Tribunal's ability to administer international criminal justice.[323] The Appeals Chamber is therefore of the view that the Trial Chamber was correct to conclude that Rule 54 *bis* of the Rules permits the Tribunal to impose confidentiality in an effort to secure the cooperation of sovereign states.[324] In light of the foregoing, the Appeals Chamber is satisfied that the Trial Chamber adequately took into account all relevant considerations to ensure that its Judgement was rendered in conformity with international law.[325]

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[319] *See* Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary 2nd Revised Edition N.P. Engel, 2005, pp. 464-65 (stating that the term "public order" "covers the grounds for restriction set out in Art. 10(2) of the [ECHR] and repeatedly proposed during the drafting of Art. 19 of the [ICCPR], namely, the procurement and dissemination of *confidential* information and endangering the *impartiality of the judiciary*").

[320] *Jong-Choel v. The Republic of Korea* (CCPR Communication No. 968/2001), U.N. Doc. A/60/40 vol. II (27 July 2005), p. 60, para. 8.3; *see also Marques v. Angola* (CCPR Communication No. 1128/2002), U.N. Doc. A/60/40 vol. II (29 March 2005) p. 181, para. 6.8 ("The Committee observes that the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect.").

[321] *See* CCPR General Comment No. 10: Freedom of Expression (Art. 19), 29 June 1983, para. 4; *see also Kim Jong-Cheol v. Republic of Korea*, para. 8.3; *Marques v. Angola*, para. 6.8.

[322] Trial Judgement, para. 74.

[323] Trial Judgement, para. 74.

[324] Trial Judgement, para. 72. The Trial Chamber relied upon testimony by Robin Vincent, who testified that the confidentiality breaches would lead to less cooperation by sovereign states regarding the disclosure of information, thereby affecting the Tribunal's ability to administer international criminal justice. The Trial Chamber also noted that "the testimony was not challenged by the Accused". *See* Trial Judgement, para. 72, note 171.

[325] ARTICLE 19's brief discusses other human rights instruments that guarantee freedom of expression. *See* ARTICLE 19 *Amicus* Brief, para. 3. While the Appeals Chamber acknowledges that these instruments contain freedom of

163. Hartmann also relies on an Appeals Chamber decision in *Brdanin* to support her argument that the Trial Chamber erred by failing to consider the public's right to receive information disclosed by Hartmann in evaluating the proportionality of the interference with her freedom of expression.[326] In the instant case, however, the Appeals Chamber considers that the Trial Chamber did explicitly consider the public's right to receive information. In evaluating the proportionality of the interference with Hartmann's freedom of expression, it considered certain factors that were:

> salient in weighing the public interests involved: namely, the public interest in receiving the information and the protection of confidential information to facilitate the administration of international criminal justice, which is also in the public interest, indeed, on an international scale.[327]

164. Finally, the Appeals Chamber considers ARTICLE 19's discussion of national legal standards regarding freedom of expression.[328] While ARTICLE 19 sets out different ways in which domestic jurisdictions address freedom of expression in the context of contempt of court, it cites no jurisprudence to support the position that contempt proceedings for disclosing confidential information in violation of a court order impermissibly restrict an individual's freedom of expression.

C. Conclusion

165. The Appeals Chamber therefore dismisses ground of appeal 2 in its entirety.[329]

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expression guarantees, they follow a similar approach to restrictions on freedom of expression as the European Convention and the ICCPR. The UDHR states: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." UDHR, Article 29(2). The African Charter on Human Rights and Peoples states: "Every individual shall have the right to express and disseminate his opinions within the law". African Charter on Human and Peoples' Rights, Article 9(2). The American Convention on Human Rights similarly notes: "Everyone has the right to freedom of thought and expression". American Convention on Human Rights, Article 13(1). In Article 13(2), it restricts that right by noting, "The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals." American Convention on Human Rights, Article 13(2).

[326] Hartmann Final Appeal Brief, para. 19.

[327] Trial Judgement, para. 73 (internal citations omitted).

[328] *See* ARTICLE 19 *Amicus* Brief, paras 30-32.

[329] For the reasons given in this section, **sub-ground 7.8** is dismissed. In **sub-ground 2.3**, Hartmann contends that the Trial Chamber erred in law by failing to apply the principle that restrictions to freedom of expression must be interpreted strictly and instead interpreted such restrictions to be "expensive". The Appeals Chamber assumes that this was meant to read "expansive". Hartmann Final Appeal Brief, para. 17. The Appeals Chamber considers that this amounts to a vague, obscure, and undeveloped submission and therefore summarily dismisses it. In **sub-ground 2.6**, Hartmann, referencing her final trial brief, argues that the Trial Chamber's findings are inconsistent with the Tribunal's commitment to transparency and its responsibility to victims and criminalised any public discussion of the facts contained in her publications. Hartmann Final Appeal Brief, para. 20. The Appeals Chamber considers that Hartmann has not demonstrated a legal error that invalidates the Judgement of the Trial Chamber or that would result in a miscarriage of justice within the scope of Article 25 of the Statute. In **sub-ground 2.7**, Hartmann contends that the Trial Chamber erred in law when it failed to apply internationally accepted principles regarding freedom of expression, referencing an entire section of the Trial Judgement. Hartmann Final Appeal Brief, para. 21, note 34. The Appeals Chamber considers that it is insufficient to assert that an entire section of a Judgement is an error of law or fact, without identifying further the purported error, and therefore summarily dismisses this sub-ground. Hartmann argues in **sub-**

XIII. SENTENCE – SUB-GROUNDS 2.11 (IN PART) AND 2.16

166. In **sub-ground 2.11**, Hartmann argues that the Trial Chamber erred in law or fact when it failed to apply a proportionality test to her sentence.[330] In **sub-ground 2.16**, Hartmann argues that the Trial Chamber erred in law when it failed to determine whether less intrusive sanctions, such as conditional discharge, would have been sufficient and proportionate in the circumstances.[331]

167. The Appeals Chamber recalls that Trial Chambers are vested with broad discretion in determining an appropriate sentence. In general, the Appeals Chamber will not revise a sentence unless the appellant demonstrates that a Trial Chamber has committed a discernible error in exercising its discretion or has failed to follow the applicable law.[332]

168. In this case, the Trial Chamber fined Hartmann €7,000.[333] It reached this determination after assessing the gravity of the offence and considering whether any aggravating or mitigating factors existed. Regarding the gravity of the offence, the Trial Chamber noted that, by virtue of Hartmann's actions, there existed a real risk that states may not be as forthcoming in their cooperation with the Tribunal where provision of evidentiary material was concerned.[334] Consequently, this negatively impacted the Tribunal's ability to exercise its jurisdiction to prosecute and punish serious violations of humanitarian law as prescribed by its mandate.[335] Additionally, the Trial Chamber found that the Book that gave rise to the criminal proceedings against Hartmann was still available for sale and that evidence suggested that it had been translated into Bosnian for wider distribution.[336]

169. The Trial Chamber did not find any aggravating factors. In assessing mitigating factors in the case, the Trial Chamber considered *inter alia* Hartmann's character as a respected professional and her indigence.[337] Finally, it noted that, in determining the appropriate penalty, it took into account the need to deter future wrongful disclosure of confidential information.[338]

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ground 2.8 that the Trial Chamber erred in law and fact by failing to take into account certain factual considerations relevant to the case, principally those identified in the testimony of Mr. Joinet, a witness of fact for Hartmann. Hartmann Final Appeal Brief, para. 22. The Trial Chamber stated in note 176 of its Judgement that it had considered the evidence of Louis Joinet, but that his testimony largely consisted of policy considerations and legal opinions and thus did not advance the Defence case. Trial Judgement, note 176. The Appeals Chamber is satisfied that the Trial Chamber did not ignore his testimony and therefore dismisses this sub-ground. **Sub-ground 2.14** is duplicative of sub-grounds 5.1-5.3 and is therefore dismissed.

[330] Hartmann Final Appeal Brief, para. 25.
[331] Hartmann Final Appeal Brief, para. 29.
[332] *Šešelj* Contempt Appeal Judgement, para. 37.
[333] Trial Judgement, para. 90.
[334] Trial Judgement, para. 80.
[335] Trial Judgement, para. 80.
[336] Trial Judgement, para. 82.
[337] Trial Judgement, para. 85.
[338] Trial Judgement, para. 88.

170. Hartmann has identified no error with the reasoning of the Trial Chamber. She simply asserts that the Trial Chamber erred in issuing a disproportionate sentence and that it erred in not finding that a conditional discharge was a more appropriate sentence. Therefore, she has not demonstrated that the Trial Chamber gave weight to extraneous considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or issued a decision so unreasonable or unjust that the Appeals Chamber could infer that the Trial Chamber must have failed to exercise its discretion properly.[339]

171. The Appeals Chamber therefore dismisses sub-grounds of appeal 2.11 (in part) and 2.16.

XIV. DISPOSITION

172. For the foregoing reasons, the Appeals Chamber,

PURSUANT to Article 25 of the Statute and Rules 77, 77 *bis*, 117, and 118 of the Rules;

NOTING the respective submissions of the Parties;

DISMISSES all the grounds of appeal advanced by the Appellant, Ms. Florence Hartmann;

AFFIRMS the imposition of a fine of €7,000, payable to the Registrar of the Tribunal in two instalments of €3,500 on 18 August 2011 and 19 September 2011; and

[339] *See Brdanin* Appeal Judgement, para. 500.

INSTRUCTS the Registrar of the Tribunal to take the necessary measures to enforce the Judgement.

Done in English and French, the English text being authoritative.

_____	_____
Judge Patrick Robinson, Presiding	Judge Andrésia Vaz

_____	_____	_____
Judge Theodor Meron	Judge Burton Hall	Judge Howard Morrison

Dated this nineteenth day of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

Annex 1004

Prosecutor v Tolimir Case No. IT-O5-88/2-T,Trials Chamber (12 December 2012),

UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-05-88/2-T
		Date:	12 December 2012
		Original:	English

IN TRIAL CHAMBER II

Before: **Judge Christoph Flügge, Presiding**
Judge Antoine Kesia-Mbe Mindua
Judge Prisca Matimba Nyambe

Registrar: **Mr. John Hocking**

Judgement of: **12 December 2012**

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC WITH CONFIDENTIAL ANNEX C

JUDGEMENT

The Office of the Prosecutor:
Peter McCloskey

The Accused:
Zdravko Tolimir

prominent Bosnian Muslims were murdered in circumstances that showed that they had been targeted because of the leadership positions they had occupied in the Žepa enclave before it fell.[3083]

729. The only reasonable conclusion the Chamber can reach on the basis of the evidence is that there was a single deliberate, organised, large-scale operation to murder Bosnian Muslim males. Mass killing occurred and accordingly the *actus reus* requirement for extermination has been met. In view of the character of the murder operation as a unified, integrated whole, the intention to kill on a massive scale satisfying the *mens rea* requirement is also present. The Chamber therefore finds that the crime of extermination was committed. The liability of the Accused for these crimes is discussed in Chapter VIII.

D. Genocide

1. Charges

730. The Indictment charges the Accused, pursuant to Article 4(3)(a) of the Statute, with genocide with the intent to destroy a part of the Bosnian Muslim people as a national, ethnical, or religious group; that part being the Bosnian Muslim population of Eastern BiH and in particular, the enclaves of Srebrenica, Žepa and Goražde.[3084] Specifically, the Indictment identifies acts of murder by summary execution including planned, opportunistic, and foreseeable targeted summary executions;[3085] and causing serious bodily or mental harm to female and male members of the Bosnian Muslim populations of Srebrenica and Žepa by, including but not limited to separating the able-bodied men from their families, forcibly moving the population from their homes, and murdering able-bodied men.[3086]

731. The Indictment further charges the Accused with the destruction of the women and children, alleging that through their forcible transfer from Srebrenica and Žepa, the separation of men in Potočari and the execution of the men from Srebrenica, the Accused had knowledge of conditions that were created which would contribute to the destruction of the entire Muslim population of Eastern BiH, including but not limited to the failure of the population to live and reproduce normally.[3087]

[3083] *See supra* paras. 654–680, 718–721.
[3084] Indictment, para. 10.
[3085] Indictment, para. 10(a).
[3086] Indictment, para. 10(b).
[3087] Indictment, para. 24.

732. As such, from the list of underlying acts referred to in Article 4(2), the Indictment charges the Accused with acts contained within Articles 4(2)(a),[3088] (b),[3089] (c)[3090] and (d)[3091].

2. Applicable Law

733. The definition of the crime of genocide under Articles 4(2) and (3) mirrors the definition of genocide in Articles II and III of the Genocide Convention. These provisions of the Genocide Convention are widely accepted as customary international law rising to the level of *jus cogens*;[3092] and genocide as defined in the Statute, was a punishable offence under customary international law at the time of the acts alleged in the Indictment.[3093]

734. Article 4(2) lists the following underlying acts which constitute genocide when committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

(a) killing members of the group;
(b) causing serious bodily or mental harm to members of the group;
(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) imposing measures intended to prevent births within the group;
(e) forcibly transferring children of the group to another group.

(a) The Group

735. Article 4, which corresponds to the Genocide Convention, protects a national, ethnical, racial, or religious group. This group is referred to in each of the underlying acts and, therefore, the presence of such a group is required for each constitutive element of the crime of genocide. While the criteria for identifying the group are not specified in the Genocide Convention,[3094] the jurisprudence of the Tribunal states that the determination of the group is to be made on a case-by-case basis, using both objective and subjective criteria.[3095] The group must have a particular,

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[3088] Indictment, para. 10(a).
[3089] Indictment, para. 10(b).
[3090] Indictment, para. 24; Prosecution Pre-Trial Brief, paras. 330–331.
[3091] Indictment, para. 24; Prosecution Pre-Trial Brief, para. 332.
[3092] *Jelisić* Trial Judgement para. 60; *Krstić* Trial Judgement, para. 541; *Stakić* Trial Judgement, para. 500; *Brđanin* Trial Judgement, para. 680; *Blagojević and Jokić* Trial Judgement, para. 639. *See also Kayishema and Ruzindana* Trial Judgement, para. 88.
[3093] *See, e.g., Popović* Trial Judgement para. 807; *Krstić* Trial Judgement para. 541; ICJ Bosnia Judgement paras. 142, 161.
[3094] *Krstić* Trial Judgement, para. 555.
[3095] *Brđanin* Trial Judgement, paras. 683–684 (finding that relevant group may be identified using the "subjective criterion of the stigmatisation of the group, notably by the perpetrators of the crime, on the basis of its perceived national, ethnical, racial or religious characteristics," but that in determining the relevant protected group, it is also necessary to consult objective criteria because subjective criteria alone may not be sufficient to determine the

distinct identity and be defined by its common characteristics rather than a lack thereof.[3096] It is not sufficient to define a relevant protected group using negative criteria.[3097]

(b) Underlying Acts

(i) Killing Members of the Group

736. The elements of killing are equivalent to the elements of murder and have been described in the section on Murder, Chapter VII Section B and will, therefore, not be repeated here.[3098]

(ii) Causing Serious Bodily or Mental Harm to Members of the Group

737. Article 4(2)(b) refers to an intentional act or omission that causes "serious bodily or mental harm" to members of the targeted group.[3099] Like Article 4(2)(a), it is necessary pursuant to Article 4(2)(b) to prove a result.[3100] While the term "serious bodily or mental harm" is not defined in the Statute, the phrase is understood to mean, *inter alia,* acts of torture, inhumane or degrading treatment, sexual violence including rape, beatings, threats of death, and generally harm that seriously damages health, causes disfigurement, or causes serious injury to members of the group.[3101]

738. The determination of the seriousness of the bodily or mental harm inflicted on members of a group must be made on a case-by-case basis, with appropriate consideration given to the particular circumstances of each case.[3102] The harm must be of such a serious nature as to contribute or tend to contribute to the destruction of all or part of the group;[3103] although it need not be permanent or irreversible,[3104] it must go "beyond temporary unhappiness, embarrassment or humiliation" and

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group, for the reason that the acts identified in subparagraphs (a) to (e) of Article 4(2) must be directed against "members of the group"). *See also Jelisić* Trial Judgement, para. 70; *Semanza* Trial Judgement, para. 317; *Muvunyi* Trial Judgement, para. 484.

3096 *Stakić* Appeal Judgement, para. 21; *Popović* Trial Judgement, para. 809.

3097 *Brađanin* Trial Judgement, para. 685; *Stakić* Appeal Judgement, paras. 19–20, 22–24.

3098 *See supra* paras. 713–716. *See also Krajišnik* Trial Judgement, para. 859(i) (citing *Kayishema and Ruzindana* Appeal Judgement, para. 151); *Blagojević and Jokić* Trial Judgement, para. 642.

3099 *Krstić* Trial Judgement, para. 513.

3100 *Brđanin* Trial Judgement, para. 688; *Stakić* Trial Judgement, para. 514. *See also Popović* Trial Judgement, para. 811.

3101 *Brđanin* Trial Judgement, para. 690. *See also Blagojević and Jokić* Trial Judgement, para. 645; *Gatete* Trial Judgement, para. 584.

3102 *Blagojević and Jokić* Trial Judgement, para. 646; *Krstić* Trial Judgement, para. 513.

3103 *Krajišnik* Trial Judgement, para. 862; *Seromba* Appeal Judgement, para. 46. *See also Gatete* Trial Judgement, para. 584.

3104 *Brđanin* Trial Judgement, para. 690; *Stakić* Trial Judgement, para. 516; *Akayesu* Trial Judgement, paras. 502–504; *Kayishema and Ruzindana* Trial Judgement, para. 108; *Bagosora* Trial Judgement, para. 2117.

inflict "grave and long-term disadvantage to a person's ability to lead a normal and constructive life".[3105]

739. While forcible transfer does not constitute a genocidal act by itself,[3106] it can, in certain circumstances, be an underlying act causing serious bodily or mental harm—in particular if the forcible transfer operation was conducted under such circumstances as to lead to the death of all or part of the displaced population.[3107]

(iii) Deliberately Inflicting on the Group Conditions of Life Calculated to Bring About its Physical Destruction in Whole or in Part

740. The underlying acts covered by Article 4(2)(c) are methods of destruction that do not immediately kill the members of the group, but ultimately seek their physical destruction.[3108] Examples of such acts punishable under Article 4(2)(c) include, *inter alia,* subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion.[3109]

741. Unlike Articles 4(2)(a) and (b), Article 4(2)(c) does not require proof of a result such as the ultimate physical destruction of the group in whole or in part.[3110] However, Article 4(2)(c) applies only to acts calculated to cause a group's physical or biological destruction deliberately and, as such, these acts must be clearly distinguished from those acts designed to bring about the mere dissolution of the group.[3111] Such acts, which have been referred to as "cultural genocide", were excluded from the Genocide Convention.[3112] For example, the forcible transfer of a group or part of

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[3105] *Krstić* Trial Judgement, para. 513. *See also Blagojević and Jokić* Trial Judgement,para. 645; *Gatete* Trial Judgement, para. 584.

[3106] *Krstić* Appeal Judgement, para. 33. *See also Blagojević and Jokić* Appeal Judgement, para. 123; ICJ Bosnia Judgement, para. 190.

[3107] Draft Genocide Convention, U.N. Doc. E/447 p. 20; *Krstić* Trial Judgement, para. 508; *Blagojević and Jokić* Trial Judgement, paras. 646, 650, 654.

[3108] *Akayesu* Trial Judgement, para. 505. *See also Brđanin* Trial Judgement, para. 691; *Stakić* Trial Judgement, paras. 517–518; *Musema* Trial Judgement, para. 157; *Rutaganda* Trial Judgement, para. 52; *Popović* Trial Judgement, para. 814.

[3109] *Brđanin* Trial Judgement, paras. 691; *Stakić* Trial Judgement, para. 517; *Musema* Trial Judgement, para. 157; *Kayishema and Ruzidana* Trial Judgement, paras. 115–116; *Akayesu* Trial Judgement, para. 506.

[3110] *Brđanin* Trial Judgement, para. 691; *Stakić* Trial Judgement, para. 517. *See also Brđanin* Trial Judgement, para. 905.

[3111] *Brđanin* Trial Judgement, paras. 692, 694; *Krstić* Trial Judgement, para. 580; *Stakić* Trial Judgement, para. 519. *See also* ICJ Bosnia Judgement, para. 344.

[3112] Yearbook of the International Law Commission 1996, Volume II, part 2, Report of the Commission to the General Assembly on the work of its forty-eight session, pp. 45–46. *See also Brđanin* Trial Judgement, para. 694; *Stakić* Trial Judgement, para. 518.

a group does not, by itself, constitute a genocidal act, although it can be an additional means by which to ensure the physical destruction of a group.[3113]

742. Where direct evidence is absent regarding the "conditions of life" imposed on the targeted group and calculated to bring about its physical destruction, a chamber can be guided by "the objective probability of these conditions leading to the physical destruction of the group in part" and factors like the nature of the conditions imposed, the length of time that members of the group were subjected to them, and characteristics of the targeted group such as its vulnerability.[3114]

(iv) Imposing Measures Intended to Prevent Births Within the Group

743. Measures intended to prevent births within the group may be physical or mental.[3115] The following measures have been found to qualify as acts punishable under Article 4(2)(d): sexual mutilation, enforced sterilization, forced birth control, forced separation of males and females, and prohibition of marriages.[3116]

(c) Genocidal Intent

744. The *mens rea* of the crime of genocide is characterised by the requirement of a *dolus specialis*; a specific intent "to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".[3117] Thus, the crime of genocide requires not only proof of the perpetrator's intent to commit the underlying act, but also proof of the specific intent to destroy the protected group, in whole or in part.[3118]

745. Indications of such intent are rarely overt,[3119] however, and thus it is permissible to infer the existence of genocidal intent based on "all of the evidence, taken together",[3120] as long as this inference is "the only reasonable [one] available on the evidence".[3121] Factors relevant to this analysis may include the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities, the systematic targeting of victims on

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3113 *Krstić* Appeal Judgement, paras. 31, 33; *Stakić* Trial Judgement, paras. 519. However, the fact that the forcible transfer does not constitute in and of itself a genocidal act does not preclude a Chamber from relying upon on it as evidence of a genocidal intent of a perpetrator. *See Krstić* Appeal Judgement, para. 33; ICJ Bosnia Judgement, para. 190.

3114 *Brđanin* Trial Judgement, para. 906. *See also Kayishema and Ruzindana* Trial Judgement, para. 548; *Krajišnik* Trial Judgement, para. 863.

3115 *Rutaganda* Trial Judgement, para. 53; *Akayesu* Trial Judgement, para. 508.

3116 *Rutaganda* Trial Judgement, para. 53; *Akayesu* Trial Judgement, para. 507.

3117 Genocide Convention, Art. 2. *See also Akayesu* Trial Judgement, para. 498; ICJ Bosnia Judgement, para. 187.

3118 *Krstić* Appeal Judgement, para. 20.

3119 *See, e.g., Kayishema and Ruzindana* Appeal Judgement, para. 159; *Gacumbitsi* Appeal Judgement, para. 40.

3120 *Stakić* Appeal Judgement, para. 55. *See also Hategekimana* Appeal Judgement, para. 133; *Munyakazi* Appeal Judgement, para. 142 (holding that an accused's intent to participate in a crime may be inferred from circumstantial evidence).

account of their membership in a particular group, or the repetition of destructive and discriminatory acts.[3122] The existence of a plan or policy,[3123] a perpetrator's display of his intent through public speeches[3124] or meetings with others may also support an inference that the perpetrator had formed the requisite specific intent.[3125]

(i) Intent to Destroy the Targeted Group "As Such"

746. A perpetrator's specific intent to destroy can be distinguished from the intent required for persecutions as a crime against humanity on the basis that a perpetrator who possesses genocidal intent has formed more than an intent to harm a group by virtue of his discriminatory acts; he actually intends to *destroy* the group itself.[3126] The Genocide Convention as well as customary international law require that the perpetrator intends to destroy the group physically or biologically.[3127] Although an attack on cultural or religious property or symbols of the group would not constitute a genocidal act, such an attack may nevertheless be considered evidence of an intent to physically destroy the group.[3128]

747. The term "as such" reemphasises the crime's prohibition of the destruction of the protected group itself, as opposed to the destruction of a collection of the group's individual members.[3129] Although the victim of the underlying act is selected by reason of his or her membership in a group, "the victim of the crime of genocide is the group itself and not only the individual".[3130]

748. While evidence of intent to forcibly remove is not necessarily indicative of an intent to destroy a group, it may nevertheless constitute evidence of the latter when considered in connection with "other culpable acts systematically directed against the same group".[3131] Moreover, the fact

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3121 *Brđanin* Trial Judgement, para. 970. *See also Hategekimana* Appeal Judgement, para. 133.
3122 *Jelisić* Appeal Judgement, para. 47.
3123 *Jelisić* Appeal Judgement, para. 48. While the existence of a plan or policy is not a "legal ingredient" of the crime, the existence of such may indicate the formation of specific intent. *Ibid.*
3124 *See, e.g., Gacumbitsi* Appeal Judgement, para. 43; *Kajelijeli* Trial Judgement, para. 531.
3125 *See, e.g., Kamuhanda* Appeal Judgement, paras. 81–82; *Karera* Trial Judgement, para. 542.
3126 ICJ Bosnia Judgement, para. 187. *See also Kupreškić et al.* Trial Judgement, para. 636.
3127 Yearbook of the International Law Commission 1996, Volume II, part 2, Report of the Commission to the General Assembly on the work of its forty-eight session, pp. 45-46. *See also Krstić* Appeal Judgement, para. 25; *Semanza* Trial Judgement, para. 315.
3128 *Krstić* Appeal Judgement, Partially Dissenting Opinion of Judge Shahabuddeen, paras. 53–54 (holding that the deliberate destruction of the principal mosque belonging to members of the targeted group would be considered as evidence of intent to destroy the group).
3129 *See, e.g., Stakić* Appeal Judgement, para. 20.
3130 *Akayesu* Trial Judgement, para. 521. *See also Niyitegeka* Appeal Judgement, para. 53.
3131 *Krstić* Appeal Judgement, para. 33. Similarly, the Appeals Chamber has determined that, analysed solely in connection with forcible transfer, "'opportunistic killings' by their very nature constitute a very limited basis for inferring genocidal intent". *Blagojević and Jokić* Appeal Judgement, para. 123.

that a perpetrator did not choose the most efficient method to destroy the targeted group is not necessarily dispositive of a lack of genocidal intent.[3132]

(ii) Intent to Destroy the Group "in Whole or in Part"

749. The term "in whole or in part", relates to the requirement that the perpetrator intended to destroy at least a substantial part of a protected group.[3133] While there is no numeric threshold of victims required,[3134] the targeted portion must comprise a "significant enough [portion] to have an impact on the group as a whole".[3135] Although the numerosity of the targeted portion in absolute terms is relevant to its substantiality, this is not dispositive; other relevant factors include the numerosity of the targeted portion in relation to the group as a whole, the prominence of the targeted portion, and whether the targeted portion of the group is "emblematic of the overall group, or is essential to its survival",[3136] as well as the area of the perpetrators' activity, control, and reach.[3137] The *Jelisić* Trial Chamber held that as well as consisting of the desire to exterminate a very large number of members of the group, genocidal intent may also consist of the desired destruction of a more limited number of persons selected for the impact that their disappearance would have on the survival of the group as such.[3138] The applicability of these factors and the relative weight afforded to each must be analysed on a case-by-case basis.[3139]

3132 *Krstić* Appeal Judgement, para. 32.
3133 *Krstić* Appeal Judgement, para. 12.
3134 *Semanza* Trial Judgement, para. 316; *Kajelijeli* Trial Judgement, para. 809.
3135 *Krstić* Appeal Judgement, para. 8.
3136 *Krstić* Appeal Judgement, para. 12.
3137 *Krstić* Appeal Judgement, para. 13.
3138 *Jelisić* Trial Judgement, para. 82. The *Jelisić* Trial Chamber cited the Final Report of the Commission of Experts formed pursuant to Security Council Resolution 780 which found "[i]f essentially the total leadership of a group is targeted, it could also amount to genocide. Such leadership includes political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others – the totality per se may be a strong indication of genocide regardless of the actual numbers killed. A corroborating argument will be the fate of the rest of the group. The character of the attack on the leadership must be *viewed in the context of the fate or what happened to the rest of the group*. If a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example deported on a large scale or forced to flee, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose." *See Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992)*, UN Off. Doc., S/1994/674 ("Commission of Experts Report"), para. 94. The Commission of Experts Report stated, further, that "[s]imilarly, the extermination of a group's law enforcement and military personnel may be a significant section of a group in that it renders the group at large defenceless against other abuses of a similar or other nature, particularly if the leadership is being eliminated as well. Thus the intent to destroy the fabric of a society through the extermination of its leadership, when accompanied by other acts of elimination of a segment of society, can also be deemed genocide", Commission of Experts Report, para. 94.
3139 *Krstić* Appeal Judgement, para. 14.

3. Findings

(a) The Group

750. The Prosecution has defined the targeted group that is the subject of the charges in the Indictment as the "Muslim population of Eastern Bosnia", as constituting "part" of the Bosnian Muslim people.[3140] The identification of the Bosnian Muslims as a protected group within the meaning of Article 4 of the Statute is an issue that has been settled by the Appeals Chamber and consequently, the Chamber does not deem it necessary to revisit the issue here.[3141]

(b) Underlying Acts

(i) Killing Members of the Group

751. Elsewhere in this Judgement, the Majority, Judge Nyambe dissenting, has found that at least 5,749 Bosnian Muslims from Srebrenica were killed by Bosnian Serb Forces, other than in combat, in the aftermath of the fall of Srebrenica.[3142] The Majority, Judge Nyambe dissenting, has found that these killings include the 4,970 Bosnian Muslim men established to have been killed by Bosnian Serb Forces in the specific circumstances alleged in paragraph 21.1-22.4 of the Indictment.[3143] In addition, the Chamber has found that three Muslim leaders of Žepa were killed by Bosnian Serb Forces, as alleged in paragraph 23.1 of the Indictment.[3144]

752. On the basis of these findings, the Chamber is satisfied beyond reasonable doubt that members of the protected group were killed.

(ii) Causing Serious Bodily or Mental Harm to Members of the Group

753. The circumstances under which thousands of Bosnian Muslims faced their deaths is described in detail in Chapter V wherein the Chamber made findings in relation to 23 separate killing incidents in the areas of Potočari, Bratunac, Zvornik, and locations in Bišina, near Trnovo and near Tišća.

3140 Indictment, paras. 10, 24; Prosecution Final Brief, para. 197.

3141 *Krstić* Appeal Judgement, para. 6 (noting the Trial Chamber's conclusion in this regard and the fact that it was not challenged on appeal), and para. 15; *Krstić* Trial Judgement, paras. 559–560; *Blagojević and Jokić* Trial Judgement, para. 667. This finding was not appealed in this case, either. *See also Popović et al.* Trial Judgement, para. 840. Whether the Bosnian Muslims of eastern BiH qualify as a substantial part of the protected group, as required by the law, will be discussed in more detail below. *See infra* paras. 774–775.

3142 *See supra* para. 596.

3143 *See supra* para. 570.

3144 *See supra* paras. 680, 721.

Annex 1005

Prosecutor v Tolimir Case No. IT-O5-88/2-A,Appeals Chamber (8 April 2015),

UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-05-88/2-A
		Date:	8 April 2015
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Theodor Meron, Presiding**
Judge William H. Sekule
Judge Patrick Robinson
Judge Mehmet Güney
Judge Jean-Claude Antonetti

Registrar: **Mr. John Hocking**

Judgement: **8 April 2015**

PROSECUTOR

v.

ZDRAVKO TOLIMIR

PUBLIC

JUDGEMENT

The Office of the Prosecutor:

Mr. Peter Kremer QC
Mr. Kyle Wood
Mr. Todd Schneider
Ms. Lada Šoljan
Mr. Nema Milaninia

Mr. Zdravko Tolimir, *pro se*

B. Genocide

175. The Trial Chamber found that the acts of killing, causing serious bodily or mental harm, and deliberately inflicting on a protected group conditions of life calculated to bring about its physical destruction were perpetrated against the Bosnian Muslim populations of Srebrenica and Žepa with the specific intent to destroy part of the Bosnian Muslim population.[501]

176. Tolimir makes a number of challenges to the Trial Chamber's findings establishing the elements of the crime of genocide. First, he submits that the Trial Chamber erred in law in finding that the Muslims of Eastern BiH qualified as part of a protected group under Article 4 of the Statute (Ground of Appeal 8). Second, he argues that the Trial Chamber erred in law and fact in its analysis of the *actus reus* of genocide by: (i) misinterpreting serious mental harm as an underlying genocidal act and applying that erroneous interpretation to the facts of the case (Grounds of Appeal 7 in part and 10 in part); and (ii) misinterpreting the term "physical destruction" under Article 4(2)(c) of the Statute (Ground of Appeal 10 in part). Third, Tolimir submits that the Trial Chamber erred in law in its analysis of the *mens rea* required for genocide (Grounds of Appeal 7 in part, 11 and 12).

177. In this section of the Judgement, the Appeals Chamber will address Tolimir's challenges to the Trial Chamber's findings on each element of the crime of genocide in turn.

1. Definition of the protected group (Ground of Appeal 8)

178. The Trial Chamber found that the "Bosnian Muslims" constituted a protected group within the meaning of Article 4 of the Statute,[502] noting that the identification of the Bosnian Muslims as a protected group "has been settled by the Appeals Chamber" and there was no need for the Trial Chamber "to revisit" it.[503] It further found that "the Bosnian Muslim population of Eastern Bosnia and in particular, the enclaves of Srebrenica, Žepa and Goražde" constituted a substantial part of the protected group.[504]

(a) Submissions

179. Tolimir submits that the Trial Chamber erred in law by failing to provide a reasoned opinion as to why the Bosnian Muslims qualified as a protected group under Article 4 of the Statute and why the Bosnian Muslims of Eastern BiH were a substantial part of that group.[505] Tolimir asserts

[501] Trial Judgement, paras 750-782.
[502] Trial Judgement, para. 750. *See also* Trial Judgement, paras 774-775.
[503] Trial Judgement, para. 750, *citing Krstić* Appeal Judgement, paras 6, 15, *Blagojević and Jokić* Trial Judgement, para. 667, *Popović et al.* Trial Judgement, para. 840.
[504] Trial Judgement, paras 774-775.
[505] *See* Notice of Appeal, para. 39; Appeal Brief, paras 83-85, 87-88. *See also* Reply Brief, para. 40.

that, instead of entering its own findings on these critical issues, the Trial Chamber improperly relied on findings made in other cases without taking judicial notice of those findings.[506] He argues that findings made in other cases have no binding force except between the parties to those cases.[507] According to Tolimir, the identification of the protected group under Article 4 of the Statute is a factual – not legal – issue that must be established in each case on the basis of evidence before the trial chamber adjudicating the case.[508] Tolimir submits that the Trial Chamber's error invalidates the Trial Judgement, since one of the core elements of the crime of genocide and conspiracy to genocide in this case – the identification of the protected group – has not been established on the evidence in the trial record.[509]

180. The Prosecution responds that Tolimir's challenge to these findings warrants summary dismissal as Tolimir, at no point, contested at trial or on appeal that the Bosnian Muslims qualify as a protected group under Article 4 of the Statute or that the Bosnian Muslims of Eastern BiH constitute a substantial part of that group.[510] The Prosecution further submits that the Trial Chamber's identification of the Bosnian Muslims as an ethnic group was well-grounded in findings in other parts of the Trial Judgement about the "multi-ethnic" character of BiH and the ethnic nature of the conflict in the country – findings based on the evidence as well as some adjudicated facts.[511] Similarly, the Prosecution argues that the Trial Chamber's conclusion that the Muslims of Eastern BiH constituted a substantial part of the protected group is sufficiently supported by numerous findings about the strategic importance of the enclaves of Eastern BiH in terms of the Bosnian Serb leadership achieving its goal of removing the Muslim population in the area.[512] Finally, the Prosecution submits that the qualification of Bosnian Muslims as a protected group is a fact of common knowledge, which is not required to be judicially noticed by trial chambers pursuant to Rule 94(A) of the Rules, and that such facts can be judicially noticed at the judgement stage.[513]

181. Tolimir replies that the Prosecution's arguments are contradicted by the express wording of the relevant portion of the Trial Judgement.[514] He further argues that the parts of the Trial Judgement quoted by the Prosecution do not sufficiently explain why Serb and Muslim populations in Eastern BiH were distinct ethnic groups, as required by the Trial Chamber.[515]

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[506] Appeal Brief, paras 83, 85. *See also* Reply Brief, para. 39.
[507] Appeal Brief, paras 83-86. *See also* Reply Brief, para. 39.
[508] Appeal Brief, paras 83, 85-87.
[509] Appeal Brief, para. 88.
[510] Response Brief, para. 46.
[511] Response Brief, paras 47, 49.
[512] Response Brief, paras 48-49.
[513] Response Brief, para. 50.
[514] Reply Brief, paras 38-39.
[515] Reply Brief, para. 40.

(b) Analysis

182. Article 4 of the Statute, which mirrors the Genocide Convention, defines genocide as a number of specified acts committed with the intent to destroy, in whole or in part, "a national, ethnical, racial or religious group, as such".[516] The identification of one of these protected groups as the victim of the proscribed acts is thus one of the required components of establishing the crime of genocide.[517]

183. At the outset, the Appeals Chamber notes that Tolimir never contested, either before or during trial the definition of the protected group with regard to the Article 4 charges in the Indictment.[518] It was this definition that the Trial Chamber ultimately adopted – not the definition of the protected group accepted by trial chambers in other cases involving charges of genocide.[519] The Appeals Chamber recalls that "absent special circumstances, a party cannot remain silent on a matter at trial only to raise it for the first time on appeal".[520] The Appeals Chamber thus has the discretion to dismiss Tolimir's challenges to the definition of the protected group.

184. Nevertheless, the Appeals Chamber considers that the fact that Tolimir was self-represented at trial, coupled with the seriousness of the convictions challenged under this Ground of Appeal, is a special circumstance justifying the consideration of an issue raised for the first time on appeal.[521] In addition, the Appeals Chamber finds that it is in the interests of justice to consider whether the Trial Chamber committed any error in defining the protected group for purposes of its analysis of the crime of genocide under Article 4 of the Statute. The Appeals Chamber will therefore examine Tolimir's arguments on the merits.

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[516] *See* Genocide Convention, Art. II. The acts listed under Article II of the Genocide Convention and in Article 4 of the Statute are: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group.

[517] *See* Genocide Convention, Art. II; *Bosnia Genocide* Judgment, para. 191. *See also* Trial Judgement, para. 735.

[518] *See* Defence Pre-Trial Brief, *passim*; Defence Final Trial Brief, *passim*. On appeal, Tolimir does not deny his failure to challenge that definition at trial. *See* Reply Brief, paras 39-40.

[519] *See* Trial Judgement, paras 730, 750, 775.

[520] *Haradinaj et al.* Appeal Judgement, para. 112. *See also Naletilić and Martinović* Appeal Judgement, para. 21; *Kordić and Čerkez* Appeal Judgement, para. 868; *Čelebići* Appeal Judgement, para. 640; *Furundžija* Appeal Judgement, para. 174; *Aleksovski* Appeal Judgement, para. 51; *Tadić* Appeal Judgement, para. 55. *Cf. Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR65.1, Decision on Interlocutory Appeal against Trial Chamber's Decisions Granting Provisional Release, 19 October 2005, para. 32 ("the appeal's process is not meant to offer the parties a remedy to their previous failings at trial.").

[521] *See Krajišnik* Appeal Judgement, para. 651 ("the Appeals Chamber notes that Krajišnik is self-represented […] Furthermore, the question of whether or not JCE exists goes to very heart of the case against him. Hence, the Appeals Chamber finds that in the circumstances of this case, it is in the interests of justice to consider this ground of appeal as validly filed"); *Krajišnik* Decision of 28 February 2008, para. 6 ("the Appeals Chamber has recognized the existence of heightened concerns regarding the basic fairness of proceedings when a defendant has chosen to self-represent"); *Slobodan Milošević* Decision of 20 January 2004, para. 19 ("[w]here an accused elects self-representation, the concerns about the fairness of the proceedings are, of course, heightened, and a Trial Chamber must be particularly attentive to its duty of ensuring that the trial be fair.").

185. The Appeals Chamber is satisfied that the Trial Chamber made its own findings on the protected group requirement for the crime of genocide and only relied on the definition of the protected group in past genocide cases in further support of, and not as a substitute for, those findings.[522] Tolimir misunderstands the reliance placed by the Trial Chamber on prior trial and appeal judgements. Nothing in the Statute, the Rules, or the prior jurisprudence of the Tribunal prevented the Trial Chamber from referring to the reasoning in other cases involving similar facts and applying it by analogy in the case before it, in order to reinforce its identification of the protected group and what may constitute a substantial part of the protected group in this case. Furthermore, the Trial Chamber did not take judicial notice of the definitions of the protected group in those cases.[523] Instead, in making its findings on this element of the crime, the Trial Chamber explicitly referred to the definition of the protected group contained in the Indictment and reiterated in the Prosecution's Final Trial Brief,[524] which Tolimir had not contested at trial.[525] It then made a series of findings about the underlying genocidal acts committed in this case and concluded that all of these acts had been perpetrated against members of the protected group, *i.e.*, the Muslims of Eastern BiH,[526] and referred to other cases involving similar facts as authorities in support of the proposition that the Bosnian Muslims could constitute "a national, ethnical, racial or religious group", as that term is used in Article 4 of the Statute. That proposition, in the Trial Chamber's view, was "settled by the Appeals Chamber".[527] The Appeals Chamber does not find that the Trial Chamber committed an error "by adopting the analytical legal framework used by the Appeals Chamber".[528] The Appeals Chamber is thus satisfied that the Trial Chamber provided a reasoned opinion in this regard and properly established this element of the crime of genocide.

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[522] *See* Trial Judgement, para. 750.

[523] Rule 94(A) of the Rules allows a trial chamber to take judicial notice of "facts of common knowledge". The Trial Chamber did not pronounce itself on whether it considered the identification of Bosnian Muslims as a protected group under Article 4 of the Statute as a fact of common knowledge, stating only that this issue is "settled by the Appeals Chamber". *See* Trial Judgement, para. 750. The Appeals Chamber does not interpret that statement as taking judicial notice under Rule 94(A) of the Rules and, thus, does not find it necessary to determine whether the protected group definition could be properly the subject of judicial notice under that rule, as the Prosecution argues. *See* Response Brief, para. 50. Rule 94(B) of the Rules allows a trial chamber to take judicial notice of "adjudicated facts […] from other proceedings of the Tribunal relating to matters at issue in the current proceedings", but only "[a]t the request of a party or *proprio motu* […] after hearing the parties" on this issue. The Trial Chamber never notified the parties of its intention to take judicial notice of the protected group definition in other cases and, thus, did not resort to Rule 94(B) of the Rules.

[524] *See* Trial Judgement, para. 750 (adopting the Prosecution's definition of "the targeted group that is the subject of the charges in the Indictment as the 'Muslim population of Eastern Bosnia', as constituting 'part' of the Bosnian Muslim people" (*citing* Indictment, paras 10, 24, and Prosecution Final Brief, para. 197)). *See also* Trial Judgement, para. 730.

[525] *See supra*, para. 183.

[526] *See* Trial Judgement, paras 751-752 (killing), 753-759 (causing serious bodily or mental harm to members of the group), 760-766 (deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part).

[527] Trial Judgement, para. 750.

[528] *Popović et al.* Appeal Judgement, para. 421 (rejecting similar challenges brought by the defendants in that case against trial conclusions regarding the definition of the protected group).

Annex 1006

Intentionally omitted

Annex 1007

Michael Rostovtzeff, Iranians and Greeks in South Russia (1922)

Pursuant to Rules of the Court Article 50(2), Ukraine has provided only an extract of the original document constituting this Annex. In further compliance with this Rule, Ukraine has provided two certified copies of the full document with its submission.

IRANIANS & GREEKS

IN

SOUTH RUSSIA

BY

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OXFORD
AT THE CLARENDON PRESS
1922

TO

COUNT A. BOBRINSKOY, PROFESSOR N. KONDAKOV,

DR. ELLIS H. MINNS

AND

TO THE MEMORY OF

V. V. LATYSHEV † 1921, J. I. SMIRNOV † 1918,

V. V. ŠKORPIL † 1919, N. I. VESELOVSKY † 1918.

CONTENTS

II

THE PREHISTORIC CIVILIZATIONS

THROUGHOUT the classic East—in Mesopotamia, in Elam, in Turkestan, and in Egypt—the dawn of civilized life is marked by two phenomena, one characteristic of the neolithic age, the other of the earliest metal periods. I refer to the splendid development of pottery in the neolithic period, especially painted pottery with naturalistic and geometric decoration; and to the wonderful impetus which civilization received, in all these places, at the metal epoch. The painted pottery of Central Asia, of Susa, of Turkestan, of Mesopotamia, of Asia Minor, of Egypt, still belongs to the prehistoric period; but in several of these regions the age of metals inaugurates a historic period which is accompanied not only by artistic development but also by written documents. The proto-historic epoch is marked by rich civilizations which make copious use of metals, especially copper and, later, bronze—never iron—and which we are accustomed to call copper and bronze civilizations, on the analogy of the prehistoric epochs in Central Europe, although the names are singularly inappropriate to the abundant and varied life of the East in the third millennium B.C.

Southern Europe passed through the same stages. No need to speak of the brilliant Cretan or Aegean civilization, in which a period of neolithic painted pottery, and a chalcolithic period, were succeeded by a rich historic life, with which we are ill acquainted it is true, but only because we are unable to decipher Aegean texts. We must examine, however, the corresponding phenomena in the civilized life of Central and Eastern Europe, seeing that the region of the Russian steppes was one of prime importance, as the home not only of a neolithic painted pottery but of a metal civilization of particular splendour.

The two areas do not coincide. The painted pottery is characteristic of the neolithic and chalcolithic epoch on the banks of the great western rivers, the Dniester, the Bug, and the Dnieper, whereas the metal culture principally flourished on the banks of the Kuban at the other extremity of the steppes.

The neolithic painted pottery of the Ukrainian or Tripólye type, so called from a hamlet near Kiev where Chvojka found the first examples, belongs to a group of Central and South European pottery which we call spiral and maeander pottery. Wherever it is found, it is partly painted and partly incised. Its presence has been observed in several districts, from the shores of the Adriatic to the shores of the Black Sea. Its expansion coincides approximately with the basins of the Danube and its tributaries, of the Dniester, the Bug, and the Dnieper. I cannot deal with all the difficult and delicate questions which have been raised by the various types of this ware : which came first, incised or painted decoration ; what was the principal centre, the shores of the Adriatic, or the shores of the Black Sea ; and what is the relation between this pottery and the different racial groups which subsequently formed the population of Western Europe.

What concerns us chiefly is the generally accepted fact that the Tripolye type of painted pottery—the pottery of South Russia, Galicia, and Rumania—is the richest and most highly developed branch of the family, and the most original as well. The shapes show great wealth and variety compared with those on the Danube and its tributaries. The ornamentation is by no means restricted to spiral and maeander. As in the contemporary pottery of Susa, the geometric decoration is combined with geometrizing animal and vegetable decoration which uses as ornaments figures of men, animals, and plants. Even the arrangement of the ornament in parallel zones, and the so-called metopic style of decoration, is not unknown in the painted pottery of South Russia. In South Russia, as everywhere else, the spiral and maeander pottery is accompanied by numerous clay figures of very various primitive types, representing human beings—especially women—animals, pieces of furniture, and sacred implements.

The systematic excavations of Chvojka and of Volkov on the Dnieper, of Ernst von Stern in Bessarabia, of Hubert Schmidt in Rumania, and of Hadaczek in Galicia, have shown that the men who produced the painted pottery were by no means wholly primitive : they were no longer hunters or nomads : they dwelt in villages, sometimes fortified ; owned houses of a common neolithic form, half cave, half hut ; lived on agriculture ; and had a great number of domestic animals at their disposal. We have no decisive evidence as to their mode of burial. The best-preserved pots and figurines were found neither in houses nor in tombs, but in curious structures suggesting, on the one hand, a Roman columbarium, on the other, a temple for religious ceremonies connected with funerals. These structures are sometimes of considerable size ; they were roofed, and

significantly enough by means of geometric patterns as in the second Maikop vase.

Before proceeding I must point out the close resemblance, in general ornamentation and in the treatment of animals, between the Nubian handle and, on the one hand, the Maikop objects, on the other the Egyptian ivories. The embossed work of the Maikop gold plaques and of the Nubian handle finds a parallel outside Egypt in the Sumerian objects from Astarabad recently published by myself.

We may also notice the great similarity between the panthers on the second Maikop vase and on the Nubian handle : in both we find a tendency to render the fur of the animal by means of geometric ornaments. The same peculiarity may be observed in the well-known gold plaques, forming the mounting of a stone knife, in the Cairo Museum.

The bulls of the Maikop find do not differ from each other or from the Staromyshastovskaya figurine. The type is constant : a huge head with an exceedingly long, almost square muzzle, enormous lyre-shaped horns, a massive body with drooping hind-quarters, short heavy legs, big round eyes with a dot in the middle. This type of bull is entirely foreign to Egypt. The only parallels are furnished by Elamitic and by one or two Sumerian monuments ; especially Elamitic seals, and seal-impressions on proto-Elamitic tablets. Very curious, the wild ass or Przhevalski's horse, the oldest representation of a horse on monuments. The animal on the Maikop vase is certainly not an ass : a glance at the rows of asses on Egyptian palettes makes that clear. The only counterpart to our animal is the probably contemporary figure on an ivory plaque from Susa. The likeness is conspicuous : the same muscular body and expressive head, the same treatment of the mane and tail by means of straight lines.

The wild boar and the bear are peculiar to our find. There are no representations of these animals on early monuments of the Near East or of Egypt. The types of bird are almost identical with those on various bone and ivory objects from Egypt. The Maikop birds are of course rougher and less individual than the Egyptian, but the stylistic treatment of the plumage is the same in every detail.

The analysis of the artistic monuments of Maikop has shown throughout a very close affinity with the earliest monuments of the Near East and of Egypt, which belong to a period when the arts of Egypt and Asia were still closely related, and did not present any of the very marked differences observable during the historic period. The monuments of Maikop, though very similar to those of Elam, Sumer, and Egypt, are as original as any of these groups. I have no ground for affirming that the monuments of Elam were imported from

Supreme Goddess of the banks of the Dnieper, the mother of the mythical Scythian chiefs. She appears, therefore, to have been a Mother Goddess, goddess of the productive forces of Nature, like the Mother of the Gods and the Potnia Theron of Asia Minor.

As far as I know, almost all students of the Amazonian legend, led astray by the semi-historic character of the story, have been induced to explain it by an historical misconception. The beardless Hittites—that is the latest explanation—were taken for women and so gave rise to the legend. Others consider that the Cimmerians were, so to speak, the proto-Amazons. Nothing is less likely. Why not adopt a much simpler explanation? The Amazons are localized wherever there was an ancient cult of the Mother Goddess; wherever that cult was connected, as it regularly was, with a social and political organization of matriarchal type; wherever women were not only mothers and nurses, but warriors and chieftains as well. The matriarchal stratum and the cult of the Mother Goddess are very ancient in Asia Minor. They are the mark of the pre-Semitic and pre-Indo-European population—the autochthonous population, if we care to use the word. Semites and Indo-Europeans brought with them patriarchal society and the cult of the supreme God. This cult imposed itself on that of the Mother Goddess, but did not destroy it, least of all in Asia Minor. With the cult of the goddess, the Amazons, her warrior priestesses, likewise survived.

Not only the cult of the Mother Goddess, but also the matriarchal structure, persisted for a very long time in certain places, especially on the shores of the Black Sea—in the immediate neighbourhood of the Greeks—among the Sindians, the Maeotians, the Sauromatians, and, in the Crimea, among the Taurians, who sacrificed travellers to their Parthenos, their virgin goddess. It is quite natural that the Greeks, who created the legend of the Amazons on their first contact with the matriarchal tribes of Asia Minor, should have made the Amazons of Asia Minor emigrate to South Russia and the Caucasus, where matriarchy, the cult of the Mother Goddess, and the specific ritual of that cult remained in full vigour.

This somewhat lengthy digression was necessary in order to show that the Sauromatians, the Sindians, the Maeotians, and the Taurians were really the oldest inhabitants of the Kuban, and that it was probably they who created the civilization of the copper age, and who were able to infuse it into their conquerors, the Cimmerians, and later the Scythians. To show, also, that civilized life never ceased on the banks of the Kuban, and that the Maeotian tribes were the element in the population which developed that civilization, under the influence of their neighbours, often their masters, the Cimmerians, the Scythians, the Greeks.

III

THE CIMMERIANS AND THE SCYTHIANS IN SOUTH RUSSIA (VIII–VTH CENTURIES B.C.)

THE oldest historical allusions, Greek and Assyrian, to South Russia belong or refer to the eighth and seventh centuries B.C., and tell us of two peoples who played a prominent part at that period, and not in the history of South Russia alone: the Cimmerians and the Scythians. The Assyrian documents—oracles, letters, and chronicles—belong to the reigns of Sargon II, Sennacherib, Esarhaddon, and Ashurbanipal, that is, to the second half of the eighth and to the seventh century, and reveal to us a somewhat troubled period in the annals of the two great states in the basin of Euphrates—the Chaldian kingdom of Van (Armenia), and Assyria.

Indo-European tribes were advancing from the east and north to the frontiers of these kingdoms. The tribes which are constantly being named are the Gimirrai (Cimmerians) and the Ashguzai (Scythians), the former attacking the Chaldian kingdom from the north, the latter pressing forward, step by step, into the eastern portions of the Vannic and Assyrian kingdoms.

I cannot dwell long upon the history of these movements. We know that the Cimmerians forced their way to the Vannic frontier as early as the end of the eighth century; invaded part of the kingdom, which was enfeebled by contests with Sargon II, in the last years of the century, after 714; and probably succeeded in mingling with the Vannic population. At the beginning of the seventh century, when Rusas II was king of Van (680–645 B.C.), and Esarhaddon and Assurbanipal of Assyria, the Cimmerians, in alliance with Rusas II and with several Indo-European tribes, such as the Medes (Madai), the Mannaeans, the Sakerdians, began a fierce struggle with Assyria. There is good reason to suppose that this struggle was partly caused by the heavy pressure of the Scythians, advancing eastwards in force on the Vannic kingdom and its eastern neighbours. The common interest of the Scythians and of the Assyrians accounts for the alliance concluded between Esarhaddon and the Scythian king, Bartatua, which was undoubtedly aimed at the allied Chaldians and Cimmerians. The

defeats which the enemies of Assyria sustained in this conflict, and the subsequent advance of the Scythians, forced the Cimmerians, about 660, to invade Asia Minor, where they encountered resistance from the kingdom of Lydia, assisted by Assyria. Repulsed, the Cimmerians renewed their onslaught in 652, and succeeded in destroying the Lydian kingdom and pillaging the whole of Eastern Asia Minor. A fresh Assyrian attack, and the victorious advance of the Scythians about 637, broke the power of the Cimmerians, and reduced their kingdom to a fraction of Cappadocia, which remained permanently Cimmerian: Cappadocia was always called Gimir by the Armenians. It was now the turn of the Scythians: they carried terror and destruction all over Asia Minor, especially the southern and eastern parts, which they ruled for twenty-eight years. Some parts of the country were occupied by the Scythians permanently: Sakasene and Skythene in Armenia were always peopled by Scythian tribes. It was the Medes, and after them the Persians, who put an end to the anarchy which these two terrible invasions had caused in Asia Minor.

Parallel with this Assyrian tradition, which is confirmed by the archaeological data mentioned in the first chapter, we have another tradition, this time Greek, referring to the same events, not, however, from the point of view of Asiatic history, but from that of the Greeks who dwelt on the northern shore of the Black Sea. We hear in the Odyssey of a people called Cimmerians who lived in a mythical country of fog and darkness on the shore of the Euxine. Greek mythology always connected the Black Sea, the Euxine, with the world of departed spirits. The White Island of Achilles, the land of the Hyperboreans, the Crimea, were at once real countries and regions peopled with the souls of heroes. It is the same in the Odyssey, although the writer of the passage may well have heard of real Cimmerians inhabiting the northern shore of the Black Sea. A little later, Greek historic tradition incorporated in its historical and geographical treatises distant memories of the events which took place in the Asia of the seventh century B.C. I mean the traditions which tell the story of the world empires of Ninus and Sesostris. Many attempts have been made to reconcile these historic legends with the established facts of Mesopotamian and Egyptian history. For my own part, I believe that the legends do reflect historical tendencies in these countries, but that it is very difficult to assign them to a definite period. Had I to choose among more or less probable hypotheses, my choice would fall on the period in which the last Assyrian and Egyptian dynasties, having repulsed the Scythian attacks, were anxious to justify, by means of such legends, their aspirations to that

universal dominion which was crumbling under Iranian assaults: at that epoch, I should conjecture, the legends were transmitted from east to west and became part of Greek historical tradition.

More important, and nearer to the truth, is the Greek tradition which tells the story of the conquest of South Russia by the Scythians and of their struggles with the Cimmerians. It may be supposed to have grown up from the sixth century onwards in the Greek colonies on the shores of the Black Sea, and to have been based on ancient local tradition.

Some echoes of this tradition have been preserved by Herodotus and by Strabo, who tell us of a great Cimmerian kingdom by the Black Sea, occupying the northern shore of the Black Sea, with its nucleus on both shores of the straits of Kerch. Aeschylus, Herodotus, and Strabo give the names of several localities, situated in what was later the kingdom of the Bosphorus, which were closely connected with the Cimmerians: the straits of Kerch were invariably known, in Greek tradition, as the Cimmerian Bosphorus; a part of the straits, near Panticapaeum, was called the ferry of the Cimmerians; a number of fortified places on the straits were called the Cimmerian forts; the whole country is described by Herodotus as the Cimmerian land, especially the northern part of the Taman peninsula, which is separated from the rest of the peninsula by an earth wall which was believed to be Cimmerian; finally, there were two towns, on the banks of the straits, which bore the name of Kimmerikon or Kimmerie.

Erwin Rohde wished to explain these reminiscences as due to the archaizing tendency of the kings of the Bosphorus, anxious to connect their kingdom with Homeric legend. It cannot be denied that the tyrants and the peoples of the Bosphorus had a kind of romantic tenderness for the traditions which linked the kingdom with the Amazons, the Arimaspians, and the Cimmerians. One has only to think of the hundreds of vases in the so-called Kerch style, belonging to the decadent period of red-figured vase-painting, with representations of Amazons fighting with Greeks, of Arimaspians fighting with griffins. But this by no means implies that all these traditions were invented by the tyrants of the Bosphorus. The rulers and their subjects merely laid hold of a tradition which already existed and had often been repeated, and perpetuated it in their art and in their literature. Like the legends of Amazons and Arimaspians, the geographical names which recall the Cimmerians unquestionably go back to the sixth or the seventh century, and at that period we have no right to suppose that the earliest Greek colonists were archaistically minded, or that they regarded the Cimmerians with particular warmth. There

is no doubt that when the colonists arrived they found strong and actual traces of the Cimmerians in their new home.

Herodotus, who probably used an earlier literary source, very likely Hecataeus of Miletus, was able to tell the story of the last moments of the Cimmerian kingdom. The Scythians expelled them, vanquished them, and pursued them along the shores of the Black Sea and into Asia Minor. Herodotus' account, though mingled with much legendary matter, is possible and probable. We have already spoken of the Scythian advance in the Assyrian East. It may well have been part of a general advance of Scythian tribes mixed with Mongolians, moving simultaneously along both shores of the Caspian Sea : one body passing north of the Caspian and pouring into South Russia, the other coming from the South Caspian littoral and making for the Vannic kingdom and the Assyrian empire.

Was it this advance that drove the Cimmerians to the Caucasus and the kingdom of Van ? Not necessarily. The constant intercourse between the Crimea and Northern Caucasus, and between the Crimea and Transcaucasia—the kingdom of Van—an intercourse which is attested by the archaeological data cited in our second chapter, would lead us to suppose that the southward and westward movement of the Cimmerian tribes began long before the Scythian advance. By their distant expeditions and conquests, the Cimmerians probably enfeebled their centre on the shore of the Black Sea, so that the Scythians were able to split the Cimmerian kingdom in two, and to weaken and destroy, one after the other, the detached wings, after cutting off the advanced bodies of Cimmerians, southward and westward, from their head-quarters, the Cimmerian Bosphorus. My reason for preferring this hypothesis to the Herodotean version is the fact, vouched for by the Assyrian sources, that a Cimmerian movement on the Vannic kingdom took place a long time before the advance of the Scythians : the Cimmerians appear in Asia about the second half of the eighth century, whereas the Scythians do not figure in Assyrian monuments until the time of Esarhaddon. This view is corroborated by Strabo, who mentions a Cimmerian invasion of Asia Minor by way of Thrace and the Dardanelles, which presupposes a branch of the Cimmerian people established near the mouths of the Dnieper and expelled from that region by the Scythians : this branch was also known to the authority used by Herodotus : its existence bears witness to the wide expansion of the Cimmerian empire. However this may be, it is certain that the Scythians occupied the entire region which had previously belonged to the Cimmerians in the Russian steppes. But I doubt if they succeeded in dislodging the Cimmerians

from the Taman peninsula, any more than in conquering the Crimean highlands, which were peopled by the Taurians. There is a very obscure tradition, often repeated by Greek writers, of a fierce struggle between the Scythians and the Maeotians, especially the Sindians, on both shores of the Cimmerian Bosphorus and on the shores of the Sea of Azov. The legend of the origin of the Sauromatians, mentioned in my second chapter, and another, reported by Herodotus, of a prolonged conflict between the Scythians and opponents who according to Herodotus were the sons of Scythian women by slaves, according to other very ancient authorities, Sindians, suggest that the Scythians were unable to penetrate into the Taman peninsula, which is protected by marshes on one side and by the Cimmerian Bosphorus on the other. They even tried to cross the straits in winter, but probably without success. The Cimmerians and Sindians managed to organize resistance and to preserve their independence.

To judge from the testimony quoted above, the Cimmerians remained sufficiently long on the shores of the Black Sea to leave numerous vestiges behind them when they were expelled. Unhappily we have no evidence, either as to the time of their first appearance in South Russia, or as to the length of their stay. Were they descendants of the autochthonous inhabitants who made the graves with contracted skeletons; or conquerors from the north, the west, or the east? The question is as difficult as that of their nationality. Certain indications would lead us to recognize in the Cimmerians one or more peoples of Indo-European, probably Thracian, origin. Strabo, in a passage which has often been quoted, identifies them with the Trerians, who were certainly Thracians. Others, on the strength of royal names like Teuspa, which seem to be Iranian, have argued in favour of their Iranian extraction. I prefer the former hypothesis, and for the following reasons. In the Assyrian references, and in such passages of Greek writers as go back to good sources, the Cimmerians are never confused with the Scythians. On the other hand, certain facts can only be explained by a Thracian origin: first, the presence of numerous Thracian names, side by side with Iranian ones, among the inhabitants of Tanais in the Roman period; secondly, the existence, hitherto unexplained, of a dynasty of kings with Thracian names ruling in the Cimmerian Bosphorus and in the Taman peninsula from the fifth century B. C. I can only account for these facts if there was a strong Thracian element in the population of the Greek towns in the state of the Bosphorus, and especially among the governing classes. I would say the same of the reigning families among the Sindians in the Taman peninsula.

times on cylinders representing a hero fighting with a lion. The whole series bears a conspicuous resemblance to the objects found in the tumuli of the Kuban. The treatment of the animals is the same as in the heads and figures on the pole-tops of South Russia. Curiously enough, on an axe from Khinaman near Kirman in south-western Persia, close to the frontier of Baluchistan, we find the apotropaic eye which forms the principal decoration of the archaic standard, already mentioned, from the Kuban (pl. XI, E). The most remarkable specimen of this Iranian series, and the one which offers the most striking analogy with kindred objects from South Russia, is the axe from Bactria, of bronze inlaid with silver, recently published by Sir Hercules Read: a symplegma of three animals, a lion fighting with a boar and trampling on a wild goat (pl. XI, A). Apart from the technique of inlay, derived from the process current in Sumerian Babylon, I must draw attention to the combination of three animals in one group, a motive which was taken up by South Russian as well as by Ionian art, and to the reverted heads of the lion and the goat, the prototype of that antithetic arrangement of the animal body which I mentioned above. I reserve a more detailed discussion of the Scythian animal style for my eighth chapter: but I was obliged, before proceeding farther, to point out that this style, albeit very distinctive and very original, only established itself in South Russia after a long period of contact with Assyro-Persian art, during which it was subjected to very powerful influence from that quarter, leading to the amalgamation of motives from both styles which we notice at Kelermes, in the battle-axe and in the lion pectoral with amber inlay.

The Oriental aspect of Scythian civilization in the sixth and fifth centuries could be demonstrated by means of other parallels, and may be taken as proven. We are justified in affirming that Scythian art, at the outset, was a branch of that mixed Iranian art of which hitherto we knew only the Persian branch. The Scythian branch presents itself on the one hand as a development of motives inherited by Iranian art from the powerful civilization of Mesopotamia and Elam, and on the other as an attempt to combine that art with another, ruder and more primitive, the origin of which is as yet unknown. From the fifth century onwards Scythian art, like Persian, was influenced, more and more strongly, by the Greek art of Ionia. This influence was brought about exclusively by continuous intercourse between the Greek and the Scythian world. The intermediaries were the Greek colonies, especially the towns of the Bosphoran kingdom. The subject will be treated at length in the succeeding chapter.

One remark in conclusion. In a general work like the present

I cannot dwell in detail on the hotly disputed problem of Scythian nationality. It will have been gathered from the preceding pages, that I believe the Scythians to have been Iranians, although lately several high authorities, such as Geza Nagy, Minns and Treidler, have revived the Mongolian or Turanian theory, which seemed to have been completely disposed of by the judicious observations of Schiefner, Zeuss, Gutschmid, Müllenhoff and Tomaschek. It is difficult to insist on either hypothesis: decisive proofs are lacking on both sides. It has been thought that a conclusive argument in favour of the Iranian theory was furnished by the Iranian names of native or semi-native citizens of Panticapaeum, Tanais and Olbia. But it is forgotten that these names belong to the Roman period, and bear witness to Sarmatian, not Scythian infiltration into the Greek cities. Stress has also been laid on the Mongolian physiognomy of the Scythians as represented on Bosphoran monuments of the fourth and third centuries B.C. But it must be borne in mind that the monuments give two ethnographical types: one Mongolian, as in the gorytus from Solokha, the other Indo-European, as in most of the other monuments. In spite of this I entirely agree with those who believe the Scythians to have been of Iranian extraction, although I readily admit a strong infusion of Mongolian and Turanian blood. My reasons are mainly based on historical, archaeological, and religious considerations, since the study of the language does not provide decisive criteria. Our information about the Ashguzai, who are the same as the Scythians, and about the Sacians; their close affinity with the Sarmatians, whose Iranian nationality is not disputed; and the evidence of Herodotus, confirmed by archaeology, as to the religion of the Pontic Scythians, a matter which we shall discuss later; leave no doubt that the Scythian tribes of South Russia were Iranians, nearly akin to the Medes and Persians, but belonging to another branch of the stock. It is well known that the linguistic evidence, founded on the few Scythian words transmitted to us by the Greeks, is in no way opposed to this hypothesis. But sufficient emphasis has not been laid on the archaeological evidence, which seems to me almost decisive. We have seen that very ancient monuments, which we have every reason for assigning to the Scythians, can only be explained by Iranian parallels; and that it is impossible to define the general character of Scythian art, except by connecting it with Persian art of the same period.

IV

THE GREEKS ON THE SHORES OF THE BLACK SEA, DOWN TO THE ROMAN PERIOD

I HAVE already spoken of the very ancient relations between the mining districts on the shores of the Black Sea and the peoples of Asia Minor and doubtless of Greece as well. These relations probably date from the same time as the first appearance of iron in what was later the Hellenic world. I have quoted the very old Greek legends as to the origin of iron. Iron and iron weapons were thought to have been the invention of the Chalybians and the Scythians. I am convinced that it was the export of metals from the south-eastern corner of the Black Sea which gave rise to the prehellenic, probably Carian, legend of the Argonautic expedition. The Milesian version of the story gave poetic expression to the half-military, half-commercial enterprises of the Carians and other peoples of Asia Minor, sea-raids organized by pirates and intrepid corsairs, always in quest of unknown lands.

It is somewhere about the year 1000 B.C. that we must date two groups of events: the development of the mining industry on the southern shores of the Black Sea, and the first expeditions of Achaeans and Carians in search of iron and of gold. This date is corroborated by a fact which has not hitherto been explained: the complete absence, beyond the straits of the Bosphorus, of that Aegean or Mycenaean influence which is so strong, for example, at Troy. The Cretans of the Minoan epoch, and the Myceneans of the time of Agamemnon, did not frequent the shores of the Black Sea: they had nothing to take them there: all their efforts were directed westwards. With the object of procuring an abundant supply of good iron weapons, the heirs of Mycenaean sea-power ventured into the distant Black Sea regions, and opened up the route, later so popular, which led from the Mediterranean, through the straits and along the southern coast of the Black Sea, to the banks of the Thermodon and of the Phasis.

The adventurers from Asia Minor soon recognized, that the Black Sea was not only rich in metals, but inexhaustibly rich in fish, and, more important still, that the dwellers on its shores were not ferocious

barbarians but fairly civilized people, who had a taste for the products of Asia Minor and were ready to trade. Accordingly they began to found fishing stations on the shores of the Black Sea, advancing slowly, step by step, until they finally reached the heart of the fishing district: the straits of the Bosphorus, and the shores of the Sea of Azov, on the one hand; and, on the other, the mouths of the great Russian rivers. The routes, once open, were never abandoned. The Ionians were the first to follow the example of the Carians, as we can see from the written record. We do not know the Carian version of the Argonautic myth: but we do know the Ionian or Milesian version, which existed as a separate poem and was also incorporated into the story of the hero-mariner Ulysses. I agree with Wilamowitz and Friedländer in believing that the tenth, eleventh and twelfth books of our Odyssey are a reflection of the voyages of Milesian traders and privateers in the Pontus, and that it was the Ionians who compounded that curious medley of Greek myths from various sources, of Ionian sailors' reports, and of those ancient religious and mythical ideas which saw, in the Pontic region and its inhabitants, the world beyond the grave and the souls of departed heroes. I cannot give more than a brief indication of the views which I hold on the numerous difficult and complicated problems suggested by the myth of the Argonauts and the later portion of the Odyssey: I hope to return to them in a special article. But I must insist on the high probability of the theory, pretty generally accepted in the most recent works on the subject, that the adventures of Jason, and part of the adventures of Ulysses, are to be localized in the Black Sea. I do not feel certain that we can go as far as Baer, and lately Maass, who identify the harbour of the Laestrygons with Balaklava, and the island of Circe with the Taman peninsula: but I am persuaded that the land of the rising sun, the Aia of the Odyssey, which seems, at the same time, to be part of the world beyond the grave, is to be placed on the Caucasian bank of the Black Sea. However this may be, it is evident that the only route known to the oldest Ionian navigators was the southern, the same which was used by their predecessors. It is not surprising, that the earliest Ionian stations on this route were at the two places where native centres had long existed: Sinope and Trebizond. Trebizond has always been the best port for the transmission of iron and copper from the Transcaucasian mines, and the terminus of the two great trade routes from south and east. Sinope, as Sir Walter Leaf has recently shown, was the point at which goods brought from Trebizond, on the light vessels which are the only craft plying on that part of the coast, were transferred to big sea-going ships, the Ionian merchantmen. It may be that the Ionians did not stop at

of elders, no boule : a popular assembly, without power ; finally, constitutional fictions to disguise the reality.

Still more interesting, the social structure of the Bosphoran state hardly differed from that of the states which we have compared with it. The state was based on an agricultural native population, attached to the soil : a class of great landowners, friends and kinsmen of the king, who was himself a landed proprietor, owning the soil of the whole kingdom ; and a very powerful class of Greek merchants, some citizens of the cities in the kingdom, others foreigners, who owned ships and who organized the traffic with the neighbouring semi-independent tribes as well as with the Scythian kingdom. The king himself was undoubtedly one of these merchants. He exported the grain which he received as tribute from his vassals and as contribution from his serfs. We must also reckon with a numerous lower middle class residing in the towns, artisans and small tradesmen ; and with a numerous population of slaves, who loaded and unloaded the vessels, laboured in the factories, and so forth.

The same structure is observable wherever a Greek population was obliged to submit to a native, Hellenized, or Greek dynasty whose rule was based on a native population not barbarous but accustomed to monarchic government. Peculiar to the structure of the Bosphoran state is the historical evolution, more easily apprehended here than elsewhere : an Ionian Greek city transforming itself into a Greco-Maeotian state with the Greeks in a privileged position, and gradually changing into a Hellenistic monarchy in which the two elements are confounded, the natives becoming Hellenized and the Greeks gradually adopting the spirit and the habits of the natives. The dualism can be noticed in every department of life. In religion, purely Greek cults are replaced by various forms of native cult, particularly that of the Great Goddess whom we have already mentioned. Nearly every Greek town in the Taman peninsula had a temple of this pre-Hellenic divinity. Two of these sanctuaries have been excavated, one near Phanagoria, where the Great Goddess was identified with the Greek Aphrodite, the other on a promontory in one of the lakes of the Kuban delta, that of Tsukúr, where she was worshipped, as in Asia Minor and in Macedonia, under the name of Artemis Agrotera. We have every reason to suppose that there were temples of the same deity near Hermonassa and in the vicinity of Gorgippia, the modern Anápa. The same cult gradually became predominant at Panticapaeum, and it is well known that the patron goddess of Chersonesus was the Parthenos, who is represented, in the guise of Artemis, on the coins of that city. A significant testimony to the popularity of the Great

It is very difficult to say where these objects were manufactured. Some of them may have been produced by local workmen or by Greek immigrants in the native settlements, others by itinerant craftsmen wandering with their tools from place to place, working here and there to order, and using the raw material provided by their customers. In any case, the quantity of objects bears witness to the importance of the industry and to the wide circulation of its products.

VI

THE SARMATIANS

THE Sarmatians are first mentioned by Greek writers as a people which advanced to the middle Don in the second half of the fourth century. Since little was known about the new-comers at the time, and since their name closely resembled that of the Sauromatians, who had long dwelt on the lower Don and on the shores of the Sea of Azov, Greek historians and geographers were misled by the similarity of appellation into identifying the two peoples, a confusion which has given rise to countless misunderstandings.

Herodotus and the pseudo-Hippocrates give descriptions of the Sauromatians. Of the Sarmatians, the historians of the Roman period, who knew them on the banks of the Danube and in the Caucasus,—Tacitus, Valerius Flaccus, Arrian, Pausanias, Ammianus Marcellinus—have left us a picture which though fragmentary is highly finished in parts. Now the two descriptions are completely different, and precisely in the most important and characteristic points. The Sauromatians impressed the Greeks by a notable peculiarity of their social system : matriarchy, or rather survivals of it : the participation of women in war and in government, the preponderance of woman in the political, military and religious life of the community. Among the Sarmatians, as far as we know, there was nothing of the kind. They were a warrior tribe like the Scythians, nomads with a military organization ; hunters and shepherds. They fought many a battle with the Roman legions : but it is nowhere said that women appeared in the ranks of their army, or that women played any part in their political life.

We may take it, then, that the Sauromatians had nothing to do with the Sarmatians, that the Sauromatians were probably conquered by the Sarmatians and then disappeared from history, only surviving in historic tradition : writers like Ammianus Marcellinus attempting to combine literary references to the Sauromatians, with later accounts of the warlike Sarmatians, formidable opponents of Imperial Rome.

When first we meet them, the Sarmatians appear as a series of separate groups moving westward in uninterrupted succession. With the details of the movement we are but ill acquainted, for the references in the historians of the Roman republic and empire are few and

sometimes exasperatingly brief: these references enable us, however, to reconstruct, in its general outline, the Sarmatian invasion of the South Russian steppes.

The Sarmatians, like the Scythians, belonged to the Iranian group of Asiatic peoples. They may have been closely akin to the Scythians; may have belonged, like them, to those Iranian peoples who were generally called Sacian, to distinguish them from the other branch of the Iranians, represented by the Medes and Persians, who were bitter enemies of the Sacians. That the Sarmatians were of Iranian extraction has been definitely established by the study of the Ossetian language: the Ossetians are known to be descended from the Alans, the strongest and most numerous, as we shall see, of the Sarmatian tribes. Ossetian, although it contains an admixture of heterogeneous elements, is unquestionably an Iranian tongue, nearly related to Persian.

We do not know the origin of the general term Sarmatian, applied by Greeks and Romans to the succession of tribes which gradually dislodged the Scythians from the steppes of South Russia. The earliest writer to speak of Sarmatians was the pseudo-Scylax: he, and Eudoxos of Cnidos, had heard of Συρμάται on the Don in the fourth century, about 338 B. C. Was this the name of a tribe, the first to arrive? Is it not conceivable, that the resemblance of the word Συρμάται to the familiar Σαυρομάται, and the amalgamation of the new-comers, proved, as we shall find, by archaeological evidence, with the Sauromatians long established on the Don, led to the transformation of the name Συρμάται into Σαρμάται, and to the permanent confusion of two distinct peoples in our historical tradition? However that may be, from the time of Polybius, who mentions the Sarmatians, in 179 B. C., as enemies of the Crimean Scythians, the name of Sarmatian was in general use among the Greeks and Romans, to designate those Iranian peoples, who, in the third and especially in the second century B. C., were advancing from east to west towards the Danube and western Europe. The employment of this generic designation for all the variously named tribes which supplanted the Scythians in the steppes of South Russia, is evidence that these tribes were closely interrelated.

Whence came this Neo-Iranian wave, which re-enacted the story of the Cimmerians and the Scythians? We have little information about the history of Central Asia in that tangled and difficult period, the Hellenistic. Chinese records speak of an important movement during the Ts'in and Han dynasties: Mongolian tribes were pushed westward by the vigorous defence of the Chinese frontier, and by the

construction of the Limes which we know as the Great Wall of China. This movement probably displaced a number of Iranian tribes in Central Asia and in Turkestan, who turned northward and westward, as the Scythians had turned before them, and made for western Siberia and the Ural and Volga steppes to the north of the Caspian : the southern road being barred by the kingdom of Parthia. I have no doubt that the events which took place in Central Asia during the third and second centuries were much less elementary and more complicated than the Chinese sources make them out ; although the Chinese account is by no means so simple as the version given above. For further details we must wait until the results of recent exploration are better known and better digested : Russian, German, French, British and Japanese exploration in Chinese Turkestan, Seistan and Baluchistan. The new data, linguistic, archaeological, and historical, will perhaps afford a clearer view of Central Asiatic history in the last centuries before and the earliest after Christ. This much we can already affirm, that the flow of Sarmatian tribes towards the South Russian steppes was due to the political and economic condition of Central Asia between the fourth and the second centuries B.C.: a symptom of which was a movement of Mongolian tribes towards the west, and a corresponding movement of Iranians.

The second century B.C. seems to have been the critical period of Sarmatian expansion in South Russia, although archaeological evidence and a few historical passages indicate that long before this period Sarmatian tribes had been slowly moving towards the west. But the earliest certain notice of Sarmatians in the South Russian steppes dates from the second century B. C. I have already quoted the evidence of Polybius, proving the presence of Sarmatians between Don and Dnieper in 179. From the part played by the Sarmatian king in the political events of this period, it is clear that by 179 Sarmatian power was firmly established between Dnieper and Don, counterbalancing the Scythian power, which, as we have seen from the archaeological evidence treated in the last chapter, centred in the Crimea. To judge from the chronology of Scythian tumuli, it was in the second half of the third century that the Sarmatians crossed the Don and invaded the steppes between Don and Dnieper. This date is confirmed by Strabo. The authority used by Strabo for his seventh book, Artemidorus of Ephesus, who wrote at the end of the second century, bears witness that about this time the advance guard of the Sarmatians, the Iazygians, reached the steppes between Dnieper and Danube, while the next in order, the Roxalans or White Alans, were between Don and Dnieper and figured on the political

stage in the war which Mithridates the Great was waging in the Crimea. Behind the Roxalans, another of Strabo's informants, the authority used for the eleventh book, Theophanes of Mytilene, a contemporary of Pompey and his biographer, alludes to Aorsians as occupying the left bank of the Don and the shores of the Sea of Azov, and to Siracians as holding the valley of the Kuban. Farther east we must suppose that the Alans were supreme : it is not long before they appear as the dominant tribe in the eastern steppes of South Russia.

The earliest reference to the Alans belongs to the year A. D. 35. Josephus, who mentions them, leads us to suppose that they had held the Kuban valley for some time, and were trying to force their way, through the passes of the Caucasus, to Iberia and Armenia, with the ultimate intention of fighting the Parthians. It seems, however, that their attempt was frustrated, that they turned aside and followed the other Sarmatian tribes towards the Don and the Dnieper. In A. D. 49, during the troubles which arose in the Cimmerian Bosphorus, the immediate neighbours of the Bosphoran kingdom were Aorsians and Siracians, not Alans. But these tribes seem to have been gradually invaded by the Alans and to have combined with them to form a unit which was thenceforth known by the name of the dominant tribe, the Alans. The continual advance of the Sarmatians soon carried them beyond the Dnieper in the direction of the Danube. In A. D. 50, we find the Iazygians between Theiss and Danube, and the Roxalans beyond the Dnieper.

The Sarmatians now became an imminent danger to Roman power, which was threatened from two different quarters. The provinces and vassal kingdoms south of the Caucasus daily anticipated a flood of conquerors from the steppes beside the Kuban, while the Danubian provinces were already feeling the pressure of the Sarmatian vanguard. Little is known about the conditions on the Dnieper at this period, and between Dnieper and Danube. The region seems to have been the meeting-place of several currents : a Thracian current of Getians or Dacians, who took Olbia in the middle of the first century B. C. ; a Celto-Germanic current of Galatians and Scirians in the third century, and later of Bastarnians, who appear to have occupied at least a portion of the Dnieper basin ; and, lastly, the Sarmatian current. What matters most to us, is that from this period, the first century B. C., the Iranians maintained regular and sometimes cordial relations with the Germanic and Thracian tribes, and that they dwelt side by side with them in the succeeding centuries.

From the first century B. C., therefore, Rome had to face a new

enemy on her frontiers: the Sarmatians. Time would fail me, nor is this the place, to tell the whole story of the long and sanguinary struggle between Roman and Sarmatian which was waged in the Danubian provinces and especially in Lower Moesia. A brief sketch must suffice. The Sarmatian advance beyond the Danube compelled the Romans to take the offensive. In 62–63, Nero's general, Plautius Silvanus, dealt a heavy blow at the forces of the Thracian, Germanic and Sarmatian tribes, and hurled them back across the Danube. The same Plautius Silvanus tried to reinforce the Greek oases in the Scythian world by relieving them of the danger which threatened them from the Scythians in the Crimea.

It is generally believed that the Sarmatians destroyed or completely absorbed the Scythians. This is one of the many historical figments invented by modern historians. The Scythians continued to exist as long as the Romans were supreme on the Black Sea : explicit evidence is furnished by the Bosphoran inscriptions of Roman imperial date. The Scythians only disappear with the arrival of the Goths in the third century B. C., or rather with the destruction of the Gothic state by Mongolian nomad tribes. It is true that the Scythians were conquered by the Sarmatians and had to retire before them. But the Sarmatians never managed to dislodge them from their last refuges, the Crimea in the east, and the Dobrudzha in the west. We shall see in the next chapter that for centuries the Scythians maintained a strong monarchical state in the Crimea, with its centre in the neighbourhood of Simferopol, and were powerful enough to persist in their claim to supremacy over Olbia and the Greek towns of the Crimea.

The expedition of Plautius Silvanus opened the eyes of the Roman government to the Sarmatian peril. Hence Nero's project for attacking the Alans in the very seat of their power, the steppes of Northern Caucasus. It seems to have been Nero's intention, to concentrate his forces in the kingdom of the Bosphorus, which was to be made a Roman province for the purpose, and thence to open an offensive against the Sarmatian armies ; the Sarmatian empire would be cut in two, and the Caucasus and the Danube preserved from incessant attacks from north and east. As a subsidiary measure, Pontus was to be transformed into a Roman province. Owing to the dethronement of Nero, the plan was never carried out. The period of civil war which followed the death of Nero laid the Danubian provinces open to Sarmatian assaults. This period over, it cost the Romans many efforts and much blood to arrest the triumphal march of the Sarmatians and their Thracian and Germanic allies. The famous wars on the Danube, begun by Vespasian, and continued by

Domitian, Trajan and Marcus Aurelius, though they led to the temporary annexation of Dacia, were primarily defensive wars with the object of interposing an effective barrier between the Danubian provinces and the combined attacks of Germans and Sarmatians.

In the Crimea and in the Caucasus, the Romans pursued the same defensive policy. We shall see that after Nero the kingdom of the Bosphorus was re-established as a vassal kingdom, and entrusted with the duty of defending the Crimea and Olbia against the Scythians, and of keeping watch in the Taman peninsula and on the Don to preserve the Greek colonies in that region from complete occupation by the Sarmatians. The kingdom of the Bosphorus proving unequal to the task, the Roman government, from the time of Hadrian onwards, was forced to protect the rear by drawing a line of fortresses, manned by Roman troops, round the territory of Chersonesus Taurica; in fact, it had to resume that military occupation of part of the Crimea, which had been taken in hand by Claudius and by Nero. Roman policy in the Caucasus was the same. The kingdom of Iberia, which covered the Caucasian passes, was guarded, at its most vulnerable points, by fortresses and Roman troops: Armenia also, from the second century A. D. The military bases, on which these two groups of advanced posts depended, were the province of Lower Moesia for the Crimea, and for the Caucasus the province of Cappadocia and the legions re-installed there by the Flavian emperors.

The Alans, by themselves, were never able to cross the barriers set up by the Romans. In 73–74, they tried to invade the Parthian kingdom from the east: in Hadrian's time, in 135, they attempted to cross the Caucasus and to invade Armenia from the north. Both enterprises failed. The invasion of 135 was repulsed by the governor of Cappadocia, the historian Arrian, whose treatise on his tactics and order of battle against the Alans throws valuable light on Alan military organization. The invasion of 73–74 collapsed before the might of Parthia. On the Danube also, the Sarmatian advance was arrested, once and for all, by the vigorous defensive measures and counter-attacks of the second-century emperors.

In the third century A. D., the situation changed. We have already observed, that from their first appearance on the Dnieper, the Alans maintained constant relations with the Germanic tribes, and often joined hands with Germans and Thracians to fight the Roman legions. What shape these relations assumed we do not know: nor what was the character of the association, formed in South Russia during the third century, between the Alans and the Goths, who were Germanic tribes from the Dnieper. Was it a conquest of Alans by Goths, or

Annex 1008

Petr N. Nadinskii, Boris Grekov, and the entry on the Crimean oblast in the Bolshaia sovetskaia entsyklopediia (The Great Soviet Encyclopedia), Vol. XXIII (Moscow, 1953)

Pursuant to Rules of the Court Article 50(2), Ukraine has provided only an extract of the original document constituting this Annex. In further compliance with this Rule, Ukraine has provided two certified copies of the full document with its submission.

Note 2

THE LARGE SOVIET ENCYCLOPEDIA

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KORZINKA – KUKUNOR

SECOND EDITION

THE “LARGE SOVIET ENCYCLOPEDIA
STATE SCIENTIFIC PUBLISHING HOUSE
1953

which have been retained only in a few spots along hillsides and near roads. It consists mainly of feather-grasses (Lessing feather-grass, narrow-leaf feather-grass, etc.), wheatgrass, Russian almond, drooping sage, colewort, tumble weed, etc. In the spring, Adonis, star-of-Bethlehem, saffron, or crocus, hyacinths, peonies, etc. bloom brightly. The mountainous portion begins with the southern forested steppe, where steppe-like areas alternate with thickets primarily of hornbeam, short oak, as well as oak stands mixed with ash; the undergrowth contains hornbeam, field maple, scumpia, dogwood, hawthorn, and privet with a cover of various grasses. These oak stands (oaks) in the southern foothills of the main ridge form rather thick oak forests in places. Further south along the northern slopes (up to 1430 meters), are beech and hornbeam forests and, in places pine forests (Crimean and red-trunk pine – Pinus pallisiana and P. hamata). The grassy cover in these forests is sparse (bluebell, toothwart, lily of the valley, etc.). Tall-growth thick beech forests have been preserved in the Crimean State Reserve. In the upper areas of the mountain slopes within the beech forest, one encounters individual yews; and, on the summits, juniper shrubs. The surface of the Yayla is mostly treeless and covered with high-mountain meadows, alternating with bare limestone areas. Volga fescue and brome grass grow in grass-covered areas; wild herbs included Illyrian buttercup, steppe spirea, thyme, etc. The characteristic Crimean species grow in rocky areas: Crimean edelweiss, fibrous jasmine, mountain cornflower, Crimean ironwort, and other xerophytes.

Bands of plant growth can be identified on the southern slope of the main ridge (from top to bottom): 1) a band of rocky mountain meadows and juniper shrubs (above 1200 meters); 2) a band of Crimean beech and red-trunked pine (from 800-900 to 1200-1300 meters); 3) a band of Crimean pine and oak (from 400-500 to 800-900 meters); 4) a band of xerophytic light-yellow oak forests and shrub thickets (from the sea coast to 400-500 meters). The 3rd and 4th bands are most typical, with massive expanses of junipers and terebinth trees in the 4th band and Crimean pines in the 3rd. Pine forests are particularly numerous in the vicinity of Simeiz, Alupka, Yalta, and Gurzuf. The Sudak pine (a relic endemic species) is found in two locations on the south coast – at Cape Aya and near Novy Svet.

The southern coast has richer plant life characteristic of the Mediterranean. Evergreen plants grow in this area: butcher's broom, arbutus, tree juniper, Crimean cedar, ivy vines. Cultivated plant growth on the southern coast – in an area of wild flora destroyed by humans – occupies the entire expanse from Cape Aya to Solnechnogorsk, and beyond along the riverbanks leading to the sea between Solnechnogorsk and Feodosiya. There are extensive vineyards and tobacco plantations, as well as fruit orchards (apples, pears, almonds, apricots, peaches, figs, cherries, walnuts, olives, pomegranates, persimmons, etc.); and oleanders, laurels, laurel cherries, magnolias, cypresses, cedars, sequoias, evergreen oaks, some species of palm trees, eucalyptus, roses, wisteria, etc. grow in numerous parks. The Province of Crimea is rich in medicinal, essential oil-producing, tannin-producing, and other plants.

The fauna of the Province of Crimea is very diverse corresponding to the difference between the lowland steppes and the mountainous regions. European hare, badgers, fox, and hedgehogs are widespread everywhere. Small gophers, large jerboas, gray and common voles, and prairie grouse are found in the steppes. Large mammals in the mountainous areas of the Province of Crimea include red deer (an endemic subspecies) and roe deer; small mammals include rock marten, weasel, bats (horseshoe-nosed, long-winged, etc.). Birds found in the steppes include cranes, great bustards, and a small number of great bustards; gray partridge, quail, loons, larks, etc. Birds found in the mountainous regions included vultures, eagles, owls, blue stone thrushes, etc; in the foothills and river valleys are many songbirds (nightingales, falcons, with finches being widely distributed). Rollers, bee-eaters, and hoopoes are also present. In Sivash, waterfowl are found, including gulls, terns, and ducks. Reptiles include the Crimean naked-toed gecko (on the south shore). Other reptiles are the legless yellow-bellied lizard, the leopard snake, and rock lizard. In the steppes, the small racerunner and steppe viper are

present. Swamp turtles are found in mountain watersheds. There are many invertebrates typical of southern Mediterranean areas, including cicadas, praying mantises, Crimean ground beetle, Crimean scorpion, centipedes, etc. There are many species of insects. Small two-winged insects include mosquitoes; pests include Hessian and Swedish flies, corn weevils; vineyard pests include the white tree beetle and wingless grasshopper. A peculiarity of Crimean fauna is its insular character, which manifests in the absence of a number of usual forms, as well as in the abundance of endemic species and subspecies.

Excavations in recent years have shown that, during the Ice Age, Crimea was inhabited by rich continental-types of fauna, including mammoths, bison, lions, cave hyenas, bears, lynxes, beavers, etc.

Wild sheep (mouflon), pheasants, squirrels, etc. have also been introduced into Crimea and have become acclimated to the area.

Population. The population of the Province of Crimea consists primarily of Russians and Ukrainians. During the Soviet years, the urban population grew sharply. The professional make-up of the populace changed, with the number of workers and officials employed in industry rising. In the post-war years, migrants from Kursk, Penzens, Rostov and other provinces of the RSFSR and Ukraine began settling in the Province of Crimea. The population is densest on the southern coast of Crimea, where there are many resort towns and port cities. The Province of Crimea has 14 cities: Simferopol, Sevastopol, Kerch, Evpatoriya, Feodosiya, Yalta, Alupka, Alushta, Balaklava, Bakhchisaray, Belogorsk, Dzhankoy, Saki, and Stary Krym.

Historical Overview. Over 100 sites dating back to the paleolithic era (ref.) have been discovered on the Crimea peninsula, with the most interesting being the Kiik-Koba cave (ref.). Many sites from the Neolithic, bronze, and early iron ages have been discovered. Given its abundance of historical and archaeological monuments, Crimea is rightly called the historical preserve of the Soviet Union. According to the written record, the Cimmerians and Taurians (ref.), whose name for Crimea was “Tavrika” (Taurida), as well as the Scythians (ref.) were the most ancient inhabitants of Crimea. The Kyzyl-Koba culture, which was discovered in Crimea, was in contact with the Taurians. Judging from the writings of Herodotus, in the 5th century BCE, the Scythians’ tribal structure was decaying and the process of class formation was underway.

In the 7th through 6th centuries BCE, Greek colonists began to appear in the Northern Black Sea coastal region (ref. *Greek Colonies* in the Northern Black Sea Region). In the 5th century BCE, a slave-owning *Bosphorus Kingdom* (ref.) arose in eastern Crimea. At the end of the 5th century BCE, there arose in western Crimea a small initially Greek

Annex 1009

Alan Fisher, The Crimean Tatars 176, Hoover Institution Press (1978)

Pursuant to Rules of the Court Article 50(2), Ukraine has provided only an extract of the original document constituting this Annex. In further compliance with this Rule, Ukraine has provided two certified copies of the full document with its submission.

For Note 10

The CRIMEAN TATARS

Alan Fisher

HOOVER INSTITUTION PRESS
Stanford University, Stanford, California

Note 10

return to the Crimea and national rehabilitation. For the next ten years, the Crimean Tatars in Uzbekistan pursued a program of action that resulted in the application of so much pressure upon the Soviet government by 1967 that it was forced to react in a partially satisfactory way. That the Tatars were able to bring this pressure to bear is all the more remarkable since they had virtually no help from spokesmen abroad, though within the Soviet Union a growing number of non-Tatar Soviet intellectuals had begun to become interested in their cause.

The first action that the Tatar leaders took was the sending of a petition to the Supreme Soviet in June 1957. The petition, with over 6000 signatures, asked for rehabilitation and the right to return to the Crimea, "in the light of Leninist nationality policies." It was made in response to a report of a speech given by Secretary A. F. Gorkin of the Supreme Soviet Presidium, published in *Izvestiia* on February 12, 1957, that called for a return to Leninist nationality policies.[42] During the next four years, four other petitions followed, with the number of signatures rising to 18,000. Finally a massive effort produced a petition with over 25,000 signatures that was delivered to the Twenty-second Party Congress in October 1961.[43]

Probably as a response to this last petition, two Tatar leaders were tried and sentenced in Tashkent for producing and distributing "anti-Soviet propaganda," and "stirring up racial discord." One of them, Şevket Abduramanov, a production supervisor of the Board of Works in Tashkent, received seven years in a strict labor camp. The other, Enver Seferov (aged thirty-seven), a manager of a social labor organization in Leninabad, received a five-year sentence.[44]

In 1962, a second trial resulted in the sentencing of two more Tatars to a four- and a three-year sentence. One of the Tatar leaders, Mustafa Cemilev, described the reasons for their arrest:

> In 1962, late February, when I was working in the rare books section of the Tashkent public library, on the subject of the history of the Crimea and the Crimean Tatars, I met two other of my nationality interested in the same subject. After a few weeks I decided to give a short lecture to a small group of thirty or forty Tatars. . . . It was the beginning of a small movement. We established a center not far from Tashkent. A few months later, we called it the Union of Crimean Tatar Youths, and its goal was the return to our homeland. . . .
>
> In April, I learned of several arrests by the KGB, of Murat Omerov, a worker in a tractor factory; of Refat Hocenov, a physics student in Tashkent University; of Seit Amza Umerov, a student of law; and Ahmed Asanov, the owner of the house where we had been meeting. On August 10, 1962, began the trial of Murat Omerov and Seit Amza Umerov for being in the "anti-Soviet organization," "Union of Crimean Youth."[45]

Annex 1010

Roman Solchanyk, Language Politics in the Ukraine Isabelle T. Kreindler, ed. (1985)

Pursuant to Rules of the Court Article 50(2), Ukraine has provided only an extract of the original document constituting this Annex. In further compliance with this Rule, Ukraine has provided two certified copies of the full document with its submission.

For Note 14

Sociolinguistic Perspectives on Soviet National Languages

Their Past, Present and Future

Edited by
Isabelle T. Kreindler

Mouton de Gruyter
Berlin · New York · Amsterdam

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purposely hindering the development of the Ukrainian language. Ukrainians, he concluded,

> should decisively struggle aginst manifestations of disrespect towards the Ukrainian language, which can sometimes be seen in everyday life, as well as in offices, institutions of higher education, and other establishments. The struggle for the culture of the native language is simultaneously a struggle for raising its authority as the vehicle of discourse for the multi-million Ukrainian people; language is truly a "powerful organ," a mighty voice of the people.[86]

The return to "Leninist norms," however, did not imply that the new party leadership was prepared to dismantle the attributes of privilege and superiority bestowed upon the Russian language in Stalin's time. Nor did it mean that the dissemination of Russian in the non-Russian republics was to be halted. On the contrary, the proposed school reform embodied in the November 1958 theses of the Central Committee of the CPSU and the USSR Council of Ministers – which rescinded the obligatory study of the native language in Russian schools in the non-Russian republics – suggested that the role and status of the Russian language was to be enhanced. The opposition that this proposal elicited in the republics led the authorities to sidestep the language issue in the all-Union law that was adopted in December, although eventually all of the republics passed legislation in the spirit of the theses.[87] In Ukraine, there was extensive criticism of the projected reform by representatives of the republican party apparatus as well as the intelligentsia. Both deputies from Ukraine who took part in the discussion of the draft law at the USSR Supreme Soviet session – Mykhailo Hrechuka, first deputy chairman of the Council of Ministers, and Stepan Chervonenko, Central Committee secretary responsible for ideology – argued against making study of the native language optional in Russian schools. This was also the position taken by Petro Tron'ko, a secretary of the Kiev oblast party committee, in the authoritative party journal *Komunist Ukrainy*. Two highly respected men of letters, Maksym Ryl's'kyi and Mykola Bazhan, spoke in favor of retaining the *status quo* in a joint article published in *Pravda* while the Supreme Soviet was in session.[88] The language issue was also discussed by party members of the Kiev writers' organization, who rejected the notion that parents be the sole arbitrators of such an important question as language study, and urged that control over all schools in the republic be vested in the Ministry of Education in Kiev.[89]

In March 1959, on the eve of the Ukrainian Supreme Soviet session that was to act on the proposed school reform, Ukrainian writers met for

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their Fourth Congress. The keynote speech, delivered by Bazhan in his capacity as head of the Writer's Union, included a lengthy discourse on the richness and beauty of the Ukrainian language and the writer's obligation to further its development. Similarly, Ryl's'kyi's entire presentation was devoted to such themes as language purity and the maintenance of linguistic standards, with appropriate references to Lomonosov, Pushkin, Maiakovskii, Engels, and Lenin. Such sentiments also found their way into the resolution adopted by the congress.[90]

The Ukrainian Supreme Soviet incorporated the controversial language thesis into its law "on Strengthening Ties between School and Life and on the Further Development of the System of Public Education in the Ukrainian SSR," which was adopted on April 17 without any serious discussion. In his report on the draft law, Minister of Education Ivan Bilodid explained that the Council of Ministers was being charged with developing measures guaranteeing,

> in the schools with the national language [as the language] of instruction, all the necessary conditions for studying and improving the quality of instruction of the Russian language, which is a powerful means of inter-nationality discourse, consolidation of the friendship of the peoples of the USSR, and familiarization of pupils with the treasures of Russian and world culture.

Similar measures were to be undertaken with regard to Ukrainian and other languages in schools with Russian as the language of instruction for those pupils "expressing a desire to study these language."[91] It is apparent from Bilodid's report that the accent was clearly placed on the Russian language. This was confirmed several months later by Chervonenko, who wrote in *Komunist Ukrainy* that there was a growing number of pupils attracted to the study of Russian. "In this connection," he said, "the network of schools with Russian as the language of instruction is being increased."[92] Indeed, the available data indicates that after the 1958-1959 reform the proportion of Russian-language schools in Ukraine expanded, albeit modestly, and continued to increase steadily in the 1960s (see Table 1).

More important than the respective number of Ukrainian and Russian schools is the proportion of pupils attending each type of school. Such data is not readily available in Soviet publications, and since the early 1970s it appears to have been withheld altogether. That which has been published, however, reveals a significant increase in the percentage of pupils enrolled in schools with Russian as the language of instruction. Thus, in the 1953-1954 school year 74.9 percent of pupils attended Ukrainian schools, while 23.8

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87. See Yaroslav Bilinsky, "The Soviet Education Laws of 1958-9 and Soviet Nationality Policy," *Soviet Studies*, Vol. 14, No. 2 (October 1962), 138-157, and Vernon V. Aspaturian, "The Non-Russian Nationalities," in *Prospects for Soviet Society*, ed. Allen Kassof (New York-Washington-London: Frederick A. Praeger, 1958), pp. 168-173.
88. Bilinsky, *The Second Soviet Republic*, pp. 30-31. See also M. Syvits'kyi, "Problema movy v shkolakh Ukrainy," *Nashe slovo* (Warsaw), January 25, 1959.
89. "Vykhovuvaty liudei komunistychnoho zavtra," *Literaturna hazeta*, December 19, 1958.
90. See *Literaturna hazeta* for March 11, 13, and 17, 1959.
91. *Zasedaniia Verkhovnogo Soveta Ukrainskoi SSR (Piatogo sozyva) (Pervaia sessiia) (15-17 aprelia 1959 godal): Stenograficheskii otchet* (Kiev: Gosudarstvennoe Izdatel'stvo Politicheskoi Literatury USSR, 1959), p. 28.
92. S. Chervonenko, "Tisnyi zv''iazok z zhyttiam – neodminna umova uspikhu ideolohichnoi roboty," *Kommuist Ukrainy*, 1959, No. 7, 38.
93. Kolasky, pp. 50-51.
94. It is interesting to note that in the spring of 1967 Minister of Education Petro Udovychenko assured a visiting delegation of the Communist Party of Canada that "whereas Ukrainians constituted 77 percent of the population, 82 percent of all the pupils attending school are enrolled in schools in which all tuition is in the Ukrainian language." See "Report of Delegation to Ukraine," *Viewpoint* (Toronto), Vol. 5, No. 1 (January 1968), 3. The figure of 82 percent surely refers to *schools*, not *pupils*.
95. "Sovershenstvovat' prepodavanie russkogo iazyka vo vsekh natsional'nykh shkolakh strany," *Narodnoe obrazovanie*, 1974, No. 3, 9.
96. *XXII s''ezd Kommunisticheskoi partii Sovetskogo Soiuza. 17-31 oktaibria 1961 goda. Stenograficheskii otchet*, Vol. 1 (Moscow: Gosudarstvennoe Izdatel'stvo Politicheskoi Literatury, 1962), p. 217.
97. *Programma Kommunisticheskoi partii Sovetskogo Soiuza. Priniata XXII s''ezdom KPSS* (Moscow: Izdatel'stvo Politicheskoi Literatury, 1974), pp. 115-116.
98. See Borys Lewickyj (Lewytzkyj), *Polityka narodowosciowa Z.S.A.R. w dobie Chruszczowa* (Paris: Instytut Literacki, 1966), pp. 138 ff., and Jacob Ornstein, "Soviet Language Policy: Continuity and change," in *Ethnic Minorities in the Soviet Union*, ed. Erich Goldhagen (New York: Frederick A. Praeger, 1968), pp. 132-133.
99. Bilinsky, *The Second Soviet Republic*, pp. 32-34; Kenneth C. Farmer *Ukrainian Nationalism in the Post-Stalin Era: Myth, Symbols and Ideology in Soviet Nationalities Policy* (The Hague: Martinus Nijhoff Publishers, 1980), pp. 133ff.
100. See M.T. Shch[yrba], "Natsional'ni ta internatsional'na kul'tura: Pravyl'ni i putani pohliady," *Nasha kul'tura* (Warsaw), 1962, No. 3, 4-5.
101. I.K. Beloded, *Russkii iazyk – iazyk mezhnatsional'nogo Obshcheniia narodov SSSR* (Kiev: Izdatel'stvo Akademii Nauk Ukrainskoi SSR, 1962), pp. 17-18.
102. For a vivid description of Bilodid's reputation among Ukrainian intellectuals, see John Kolasky, *Two Years in Soviet Ukraine* (Toronto: Peter Martin Associates Limited, 1970), pp. 66-70.
103. "XXII s"ezd KPPSS i zadachi izucheniia zakonomernostei razvitiia sovremennykh

Annex 1011

Theodor Meron, The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination, American Journal of International Law, Vol. 79 (1985)

THE MEANING AND REACH OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

*By Theodor Meron**

I. INTRODUCTION

The International Convention on the Elimination of All Forms of Racial Discrimination[1] (the Convention) is the most important of the general instruments (as distinguished from specialized instruments such as those pertaining to labor or education) that develop the fundamental norm of the United Nations Charter—by now accepted into the corpus of customary international law—requiring respect for and observance of human rights and fundamental freedoms for all, without distinction as to race.[2] It has been eloquently described as "the international community's only tool for combating racial discrimination which is at one and the same time universal in reach, comprehensive in scope, legally binding in character, and equipped with built-in measures of implementation."[3]

The chain of events that ultimately led to the preparation and adoption of the Convention originated with swastika painting and additional "manifestations of anti-semitism and other forms of racial and national hatred and religious and racial prejudices of a similar nature" in 1959–1960.[4] But an explicit reference to anti-Semitism was not included in the Convention as adopted.[5] Nor does it mention other specific forms of racism, except for apartheid, which is addressed in Article 3, as well as in the

* Of the Board of Editors. I note in gratitude the outstanding help of my research assistant, Donna J. Sullivan, NYU '85. Research for this article was supported by the NYU Law Center Foundation.

[1] 660 UNTS 195, *reprinted in* 5 ILM 352 (1966).

[2] On the status of this norm as customary law, see RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED) §702 (Tent. Draft No. 3, 1982).

Regarding human rights instruments on discrimination, see generally Marie, *International Instruments relating to Human Rights: Classification and Chart Showing Ratifications as of 1 January 1984*, 4 HUMAN RTS. L.J. 503, 522–24 (1984).

[3] 33 UN GAOR Supp. (No. 18) at 108, 109, UN Doc. A/33/18 (1978) (statement by the Committee on the Elimination of Racial Discrimination at the World Conference to Combat Racism and Racial Discrimination).

[4] Schwelb, *The International Convention on the Elimination of All Forms of Racial Discrimination*, 15 INT'L & COMP. L.Q. 996, 997 (1966); N. LERNER, THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 1 (1980). On the preparatory work of the Convention, see generally Schwelb, *supra*, at 997–1000; N. LERNER, *supra*, at 1–6; 2 REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS, UN Doc. ST/LEG/SER.B/21, at 70–72 (prov. ed. 1982).

[5] For the background, see N. LERNER, *supra* note 4, at 2, 68–73; Schwelb, *supra* note 4, at 1011–15.

Preamble. Nevertheless, anti-Semitism may be regarded as encompassed by the general prohibitions of racial discrimination stated in the Convention.[6] Although expressions of discrimination on ethnic grounds and on religious grounds are sometimes closely related,[7] the Convention does not prohibit religious discrimination. The intention, of course, was to make it the subject of separate instruments.[8]

The Convention drew its primary impetus from the desire of the United Nations to put an immediate end to discrimination against black and other nonwhite persons. Because of the strong political support of the African, Asian and other developing states, top priority was given to the Convention by the organs involved in its preparation, i.e., the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights, the Economic and Social Council (ECOSOC) and the Third (Social, Humanitarian and Cultural Questions) Committee of the General Assembly. Although the Sub-Commission began working on it only in January 1964, the Convention was adopted with record speed on December 21, 1965 and entered into force on January 4, 1969.[9] It has been ratified by more states[10] than any other human rights treaty except the Geneva Conventions of August 12, 1949 for the Protection of Victims of War.[11]

The Convention was signed on behalf of the United States on September 28, 1966. On February 23, 1978, it was transmitted by President Carter to the Senate for advice and consent to ratification, with far-reaching reservations, declarations and understandings.[12] These reservations, declarations and understandings have been the subject of considerable discussion[13] and will not be addressed, in detail, in this study. The Senate

[6] Schwelb, *supra* note 4, at 1014–15; N. LERNER, *supra* note 4, at 72.

[7] *See* text accompanying notes 104–106 *infra*.

[8] The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was adopted by the UN General Assembly on Nov. 25, 1981, by Res. 36/55, 36 UN GAOR Supp. (No. 51) at 171, UN Doc. A/36/51 (1981). A convention on the subject is still far from completion.

[9] MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS AT 31 DECEMBER 1981, at 96, UN Doc. ST/LEG/SER.E/1 (1982).

[10] A total of 124 states. 39 UN GAOR Supp. (No. 18) at 1, UN Doc. A/39/18 (1984).

[11] A total of 160 states. INT'L REV. RED CROSS, No. 242, Sept.–Oct. 1984, at 274.

Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention No. I), Aug. 12, 1949, 6 UST 3114, TIAS No. 3362, 75 UNTS 31; Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention No. II), Aug. 12, 1949, 6 UST 3217, TIAS No. 3363, 75 UNTS 85; Geneva Convention relative to the Treatment of Prisoners of War (Geneva Convention No. III), Aug. 12, 1949, 6 UST 3316, TIAS No. 3364, 75 UNTS 135; Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention No. IV), Aug. 12, 1949, 6 UST 3516, TIAS No. 3365, 75 UNTS 287.

[12] 1978 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 440–46 [hereinafter cited as U.S. DIGEST]; Contemporary Practice, 72 AJIL 620, 621–22 (1978).

[13] *See, e.g., International Human Rights Treaties: Hearings Before the Senate Comm. on Foreign Relations,* 96th Cong., 1st Sess. (1980).

Committee on Foreign Relations has not yet reported the Convention out and is not now actively considering it. Nonetheless, the principle of law stated in Article 18 of the Vienna Convention on the Law of Treaties[14] obligates the United States not to defeat the object and purpose of the Convention prior to its entry into force for the United States.

The annual reports of the control organ established under Article 8 of the Convention—the Committee on the Elimination of Racial Discrimination (the Committee)—other documents of the Committee, the individual comments made by members of the Committee and its practice and jurisprudence provide ample material for critical studies of the Convention and for assessing how well its object and purpose are being served.

The Committee's functions may be divided into three different categories. First, and most important for this study, the examination of reports from state parties and the submission of annual reports to the General Assembly under Article 9. Such reports may include "suggestions and general recommendations based on the examination of the reports and information received from States Parties." Second, the consideration of complaints submitted by one state party against another and alleging violation of the Convention, under Articles 11–13. This function of the Committee will not be discussed in this study. Third, the consideration of individual communications under Article 14, which will be mentioned in part VII below.

Under Article 22 of the Convention, any disputes between state parties over the interpretation or application of the Convention that are not settled by negotiation or by Convention procedures or referred to another mode of settlement may be submitted to the International Court of Justice for decision at the request of any party to the dispute. So far, no such dispute has been referred to the Court. While the Committee has not been given general competence to interpret the Convention, as a treaty organ, the Committee may be competent to interpret the Convention insofar as is required for the performance of the Committee's functions.[15] Such an interpretation per se is not binding on state parties, but it affects their reporting obligations and their internal and external behavior. It shapes the practice of states in applying the Convention and may establish and reflect their agreement regarding its interpretation.[16] Whether a particular interpretation or decision by the Committee serves such a function can, of course, be determined only *in concreto*.

Committee authority to interpret the Convention.

The object of this study is to analyze and interpret some key provisions of the Convention—considerations of space compel selectivity—with at-

[14] *Opened for signature* May 23, 1969, UN Doc. A/CONF.39/27 (1969), *reprinted in* 63 AJIL 875 (1969), 8 ILM 679 (1969). *See generally* I. SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 39 (1973); RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES (REVISED) §314 (Tent. Draft No. 1, 1980).

[15] For a discussion of this question, see 28 UN GAOR Supp. (No. 18), paras. 46–48, UN Doc. A/9018 (1973).

[16] *See* Vienna Convention on the Law of Treaties, *supra* note 14, Art. 31.

tention to problems of their reach that have not been discussed in depth in the literature.[17] Beyond the Convention itself, the study may throw some light on the quality of human rights lawmaking in the United Nations.

II. Defining Discrimination: Purpose and Effect

Article 1(1) defines racial discrimination as

> any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Unlike Article 2(1) of the International Covenant on Civil and Political Rights (Political Covenant), which only addresses distinctions in the enjoyment of the rights recognized by the Covenant, Article 1(1) extends to all human rights and fundamental freedoms, whatever their source.

This definition of racial discrimination is different from the statement of the right to equality before the law, which appears in Article 5 of the Convention, but the notion of equality before the law must be taken into account in interpreting the definition. It has been suggested that equality and nondiscrimination can be seen as affirmative and negative statements of the same principle.[18] But what does "equality" mean? In the U.S. fair employment laws, there is tension between equality in the sense of equal treatment (obligation of means) and equality in the sense of equal achievement (obligation of result).[19] The goal of equal achievement, of course,

[17] There is an extensive literature on the Convention. *See generally* Vincent-Daviss, *Human Rights Law: A Research Guide to the Literature—Part I: International Law and the United Nations,* 14 N.Y.U. J. Int'l L. & Pol. 209, 278–80 (1981); W. McKean, Equality and Discrimination under International Law (1983); N. Lerner, *supra* note 4; Schwelb, *supra* note 4; Greenberg, *Race, Sex, and Religious Discrimination in International Law,* in 2 Human Rights in International Law: Legal and Policy Issues 307 (T. Meron ed. 1984); Buergenthal, *Implementing the UN Racial Convention,* 12 Tex. Int'l L.J. 187 (1977); Partsch, *Elimination of Racial Discrimination in the Enjoyment of Civil and Political Rights,* 14 Tex. Int'l L.J. 191 (1979); J. Inglés, Study on the Implementation of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, UN Doc. A/CONF.119/10 (1983). Regarding the conformity of U.S. law with the Convention, see particularly N. Nathanson & E. Schwelb, The United States and the United Nations Treaty on Racial Discrimination: A Report for the Panel on International Human Rights Law and its Implementation (The American Society of International Law 1975). *See generally* H. Santa Cruz, Racial Discrimination, UN Doc. E/CN.4/Sub.2/370/Rev.1 (1977).

[18] Ramcharan, *Equality and Nondiscrimination,* in The International Bill of Rights: The Covenant on Civil and Political Rights 246, 252 (L. Henkin ed. 1981).

The notions of nondiscrimination and equality before the law were addressed by the Human Rights Committee in a case of discrimination on grounds of sex submitted under the Optional Protocol to the International Covenant on Civil and Political Rights. Communication No. R. 9/35, Shirin Aumeeruddy-Cziffra v. Mauritius, 36 GAOR Supp. (No. 40) at 134, UN Doc. A/36/40 (1981).

[19] Fiss, *A Theory of Fair Employment Laws,* 38 U. Chi. L. Rev. 235, 237–38 (1971).

has a redistributive quality.[20] In a major policy statement, the Committee itself has explained that "[b]oth of these obligations [the obligation regulating the behavior of the state and public authorities, institutions and officials, whether national or local, *and* the prohibition of discriminatory conduct by any person or group against another] aim at guaranteeing the right of everyone to equality before the law in the enjoyment of fundamental human rights, without distinction as to race, colour, descent or national or ethnic origin, and at ensuring that that equality is actually enjoyed in practice."[21] The Committee thus appears to regard equality of result as the principal object of the Convention. That goal is reflected in several provisions of the Convention (e.g., Arts. 1(4) and 2(1)(c)) but is not explicitly stated in its definition of racial discrimination. The definition poses special problems because of the proviso limiting the prohibited distinctions to those leading to the denial or the impairment of human rights on an equal footing.[22]

Purposeful discrimination and discrimination that is the effect, or consequence, of actions undertaken for a nondiscriminatory reason are evinced by facts of a different nature. When distinctions are made on the explicit basis of race, a violation of the Convention can often be established without great difficulty, since the discriminatory purpose may be apparent on the face of the instrument, policy or program in question. Establishing the existence of discriminatory effect,[23] however, may require information of appreciable specificity and breadth, especially where effect is observable only over time.[24] An authoritative commentator has described purpose as the subjective test, and effect as the objective test of discrimination, implying perhaps that the latter is more easily applied.[25] Yet, depending upon the quantity and the quality of the data required, discriminatory effect may be very difficult to establish, e.g., when it is attributed to the impact of economic policies and practices on ethnic groups that are already economically disadvantaged, or when the discriminatory aspects of social and cultural practices may be explained by other factors (such as religion). Information sufficiently detailed to support findings of violations in such cases will not always be available.

When egregiously racist practices are involved, these questions concerning proof are primarily of academic interest. However, the distinction

[20] *Id.* at 244.

[21] 33 UN GAOR Supp. (No. 18) at 108, 110, UN Doc. A/33/18 (1978).

[22] Schwelb, *supra* note 4, at 1001.

[23] Section 1607.3 of the Uniform Guidelines on Employee Selection Procedures of the U.S. Equal Employment Opportunities Commission (EEOC) states that the use of any selection procedure that has an adverse impact on the hiring, promotion or other employment opportunities of members of any race, sex or ethnic group will be considered to be discriminatory, unless certain conditions have been met. 29 C.F.R. §153 (rev. July 1, 1983).

[24] Section 1607.4 of the EEOC Uniform Guidelines, *supra* note 23, provides that where the user has not maintained data on adverse impact of a selection process, the federal enforcement agencies may draw an inference of adverse impact from that failure. *Id.* at 154–55.

[25] N. LERNER, *supra* note 4, at 30–31.

between purpose and effect presents a basic question: is the Convention addressed to unintentional, as well as to intentional, acts of discrimination? It has been suggested that the drafters of the Convention wished to prohibit only racially motivated discrimination.[26] The word "effect" may thus bring actions for which discriminatory purpose could not be established within the scope of the Convention by allowing the inference of purpose from effect;[27] consequences may be probative of an actor's intent.[28] This is of particular importance where subtle discriminatory purpose is not apparent on the face of statutes, policies or programs.

That the goal of de facto equality is central to the interpretation of the Convention is supported by references in the Preamble to enjoyment of certain rights "without distinction of any kind"[29] and to "discrimination between human beings on the grounds of race,"[30] as well as by the reference in Article 5 to the right to equality before the law. Moreover, the phrase "on an equal footing" in Article 1(1), considered in conjunction with the exception created in Article 1(4) allowing distinctions for the purpose of affirmative action, "to ensure . . . groups or individuals equal enjoyment or exercise of human rights," and the obligation imposed by Article 2(2) to take certain affirmative action indicate that the Convention promotes racial equality, not merely color-neutral values, "not only *de jure* . . . but also *de facto* equality . . . designed to allow the various ethnic, racial and national groups the same social development."[31] Of particular

[26] *Id.* at 28.

[27] Greenberg observes:

> The use of the standards of "purpose" and "effect" anticipated the full-blown controversy in the U.S. law of racial discrimination which became important after the U.S. Supreme Court decision in *Washington v. Davis* [426 U.S. 229 (1978)], that mere discriminatory effect without the *purpose* of discriminating does not violate the Constitution. Some *statutes,* however, have been held to forbid discriminatory *effect* [e.g., Board of Education of the City of New York v. Harris, 444 U.S. 130 (1979)]. One may speculate whether the Racial Discrimination Convention, had it been in force in the United States at the time *Washington v. Davis* was decided, would have brought about a different result.

Greenberg, *supra* note 17, at 322.

See also Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977).

For a major U.S. example of legislation based on the purpose or effect of racial discrimination, see Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a) (1982). In Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971), the Supreme Court stated: "Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation" (emphasis by Court).

[28] *See* Bonfield, *The Substance of American Fair Employment Practices Legislation I: Employers,* 61 NW. U.L. REV. 907, 956–57 (1967). Regarding the relevance of effect to the determination of purpose, see Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977). The Supreme Court stated that determining whether invidious discriminatory purpose was a motivating factor demanded a sensitive inquiry. "Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face." *Id.* at 266.

[29] Preamble, para. 2. Regarding reference to a preamble to interpret a treaty, see Vienna Convention on the Law of Treaties, *supra* note 14, Art. 31(1)–(2).

[30] Preamble, para. 7.

[31] 37 UN GAOR Supp. (No. 18), para. 468, UN Doc. A/37/18 (1982).

importance in this context is Article 2(1)(c), which requires states to take policy measures and to amend, rescind or nullify any laws or regulations that have the effect of creating or *perpetuating* racial discrimination.

Past acts of discrimination[32] have created systemic patterns of discrimination in many societies. The present effects of past discrimination may be continued or even exacerbated by facially neutral policies or practices that, though not purposely discriminatory, perpetuate the consequences of prior, often intentional, discrimination. For example, when unnecessarily rigorous educational qualifications are prescribed for jobs, members of racial groups who were denied access to education in the past may be denied employment. Because the objective of the Convention is the attainment of equality, facially neutral policies or practices that have a disparate impact on some racial groups should be prohibited, despite the absence of discriminatory motive.[33] The prohibition against practices that have a discriminatory effect or impact imposes an obligation upon states that may be more difficult to respect than the obligation to prohibit purposeful discrimination. States may fulfill the latter obligation but still violate the Convention by failing to comply with the requirements of the former. While in U.S. law effect is often taken into account in establishing purposeful discrimination, and the redistributive equal achievement goal "is not to be pursued without restraint,"[34] the Convention appears to prohibit discriminatory effect independently of the notion of intent. We shall return to the notion of intent in section IV below.

Primarily with regard to measures to ensure the development and protection of certain racial groups does the Convention, in Article 2(2), permit the obligation to be carried out "when the circumstances so warrant," leaving a certain measure of discretion to the state. These measures will be further considered in section V below. Discretion is also recognized in Article 1(4), which excludes from the definition of racial discrimination such affirmative action measures "as may be necessary." Other provisions of the Convention, such as Article 2(1)(c), obligate the state to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists," without leaving it a wide margin of discretion.

Thus, the Convention states far-reaching and burdensome obligations. Could it be argued, for example, that general fiscal or social policies that

[32] Greenberg, *supra* note 17, at 313, notes the view permitting affirmative action to compensate disadvantaged groups for past discrimination.

[33] In discussing Title VII of the Civil Rights Act of 1964, *supra* note 27, the Supreme Court stated that the Act was

> to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

Griggs v. Duke Power Co., 401 U.S. at 429–30.

[34] Fiss, *supra* note 19, at 297.

have the effect, though not the intent, of perpetuating the disadvantaged position of certain racial groups must be changed without delay, whatever the cost and without regard to competing priorities? The Convention does not indicate that states can invoke a range of considerations to justify failure to take immediate steps towards implementing the equal achievement goal and can balance that goal with other desired community goals.

By defining discrimination as various prohibited distinctions that cause nullification or impairment of the recognition, enjoyment or exercise, *on an equal footing*, of human rights, Article 1 creates certain problems. Would this wording support the contention that the "separate but equal" doctrine is consistent with the Convention? One could respond, of course, that separate facilities are never entirely equal and that they do not permit enjoyment of human rights on an equal footing. On another level, intangible considerations, such as the feeling of inferiority or the stigma that attaches to separate facilities for minority groups, are sufficient to render separate facilities and services unequal, or even inherently unequal.[35] The notion of equality advocated by the Convention, the concept of affirmative action, the preambular references to distinction and discrimination on grounds of race, the reference to the right to equality before the law in Article 5 and the prohibition in Article 1(4) of the maintenance of separate rights for different racial groups after the objectives for which they were conferred have been achieved, all militate in favor of denial of the "separate but equal" doctrine. But the text fails to make this prohibition fully explicit.

The goal of affirmative action could have been assured through different wording. Article 2 of the Universal Declaration of Human Rights,[36] which states that everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, largely avoids this difficulty.[37] In practice, the problem has not been troublesome because members of the Committee appear to have treated distinctions on grounds

[35] *See* Brown v. Board of Education, 347 U.S. 483 (1954).

[36] GA Res. 217A, UN Doc. A/810, at 71 (1948) [hereinafter cited as Universal Declaration]. *See also* Art. 2 of the International Covenant on Economic, Social and Cultural Rights (Economic Covenant), GA Res. 2200, 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966); Art. 2 of the International Covenant on Civil and Political Rights (Political Covenant), *id.* at 52. Article 2 of the Economic Covenant employs the term "discrimination," while Article 2 of the Political Covenant employs the term "distinction." The use of the word "discrimination" in the Economic Covenant was apparently intended to allow for preferential treatment of underprivileged groups. Ramcharan, *supra* note 18, at 258–59.

[37] Ramcharan observes that during the drafting of the Covenants, references to equality, equality before the law, equal protection of the law, nondiscrimination and nondistinction were used interchangeably. Ramcharan, *supra* note 18, at 251.

On equality before the law as a basic human right, see Partsch, *supra* note 17, at 196; Lillich, *Civil Rights*, in 1 Meron (ed.), *supra* note 17, at 115, 132–33. For a comparison of the concept of equality in the U.S. Constitution and international human rights instruments, see Henkin, *International Human Rights and Rights in the United States*, in *id.* at 25, 41–43. Regarding the definition of racial discrimination in other human rights instruments, see N. LERNER, *supra* note 4, at 31–32.

of race as suspect[38] (except when justified in the context of affirmative action), without engaging in a serious inquiry into whether a particular distinction has the purpose or the effect of denying or impairing the enjoyment of human rights on an equal footing. Perhaps the Committee has been suggesting that distinctions on grounds of race constitute racial discrimination per se. Thus, the "common law" of the Convention is based on the notion of equality, rather than on its definition of racial discrimination. This "common law" has been developed by the Committee without any in-depth discussion of problems of interpretation or of the discrepancy between the definitional article of the Convention (Art. 1) and some of the operative provisions. This discrepancy was caused, at least in part, by the fact that the definitional article was drafted first,[39] and was not adjusted to the operative provisions after they were prepared.

Distinctions made on the basis of race may be dangerous and subject to abuse for purposes of discrimination. "Classifying persons according to their race is more likely to reflect racial prejudice than legitimate public concerns; the race, not the person, dictates the category."[40] It would have been preferable, therefore, if the Convention had prohibited distinctions made on the basis of race, except in the context of affirmative action, without requiring a showing of their adverse effect on the enjoyment of human rights. The U.S. Supreme Court subjects the classification of persons according to their race to the most exacting scrutiny.[41] While the Court has not ruled that all racial classification is inherently impermissible, it has moved in that direction (outside the context of affirmative action).[42]

III. Public and Private Reach?

Whether the provisions of the Convention apply not only to public, but also to private, or partly private, action presents particular difficulties of interpretation. Article 1(1) defines racial discrimination as certain distinctions "in the political, economic, social, cultural or any other field of *public life*" (emphasis added). This suggests that only public action is targeted by the Convention, including the activities of organizations that, though legally autonomous, perform functions of a public nature.[43] But without explicitly addressing the possible conflict with Article 1(1), Article 2(1)(d) obligates state parties to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization." The latter provision has

[38] *See, e.g.*, 38 UN GAOR Supp. (No. 18), paras. 168, 193, 280, UN Doc. A/38/18 (1983).

[39] Schwelb, *supra* note 4, at 1005.

[40] Palmore v. Sidoti, 104 S.Ct. 1879, 1882 (1984).

[41] *Id.*

[42] The Court decided, on the basis of the Equal Protection Clause of the Fourteenth Amendment, that "[t]he effects of racial prejudice, however real, cannot justify a racial classification removing an infant child from the custody of its natural mother found to be an appropriate person to have such custody." *Id.* (footnote omitted).

[43] N. Lerner, *supra* note 4, at 37 (in the context of Art. 2).

been described as "the most important and most far-reaching of all substantive provisions of the Convention."[44] Interpreted in the context of Article 1(1), Article 2(1)(d) appears to mean that racially discriminatory action that occurs in public life is prohibited even if it is taken by any person, group or organization.[45] But how does one determine what "public life" is? To which areas does the prohibition of discrimination apply? When does the duty to accord equal treatment prevail?

The Committee itself stated that the national policies of state parties "must have as their aim the elimination of racial discrimination in all its forms—whether practised by public authorities, institutions or officials or by private individuals, groups or organizations"[46] and that they "must entail the prohibition and the termination, by all appropriate means, of acts of racial discrimination perpetrated by any person or group against another."[47] In this context, the Committee emphasized the obligation of all state parties, in accordance with Article 6 of the Convention, to assure to everyone within their jurisdiction effective protection from and remedies for any acts of racial discrimination, including remedies for discriminatory acts by any person or group. But the Committee did not establish any parameters for the activities encompassed by the prohibition on discriminatory treatment. If the Convention goes beyond governmental action to embrace discriminatory action by nongovernmental, private parties, what is the substantive area of public life that is covered or, conversely, of private life that is beyond the Convention's reach?[48] The problem of determining the reach of provisions prohibiting discrimination when nongovernmental actors are involved arises also with regard to other human rights instruments, including Article 26 of the Political Covenant,[49]

[44] Schwelb, *supra* note 4, at 1017.

[45] It may be noted that the Carter administration proposed an understanding to Article 2(1) and to a number of other provisions stating that its obligations to enact legislation extended only to "governmental or government-assisted activities and to private activities required to be available on a nondiscriminatory basis as defined by the Constitution and laws of the United States." 1978 U.S. DIGEST, *supra* note 12, at 443; 72 AJIL at 622.

[46] 33 UN GAOR Supp. (No. 18) at 109, UN Doc. A/33/18 (1978).

[47] *Id.* at 110.

[48] One member of the Committee, noting that the Race Relations Act of Great Britain "did not apply to personal and intimate relationships, said that it introduced a dangerous degree of flexibility which almost amounted to authorizing discrimination." 38 UN GAOR Supp. (No. 18), para. 164, UN Doc. A/38/18 (1983). The British representative replied that such exceptions were necessary "in the interest of striking a balance between individual freedoms and government restrictions." *Id.*, para. 172.

[49] Australia's acceptance of Article 26 "on the basis that the object of the provision is to confirm the right of each person to equal treatment in the application of the law" (MULTILATERAL TREATIES, *supra* note 9, at 119) brought about an interesting exchange between the representative of Australia and some members of the Human Rights Committee established under Article 28 of the Political Covenant. Some members of the Committee argued that Australia's interpretation of Article 26 was not correct, that the article provided not only for equality of all before the law, but also for equal protection of all by the law against any discrimination. One member of the Committee disagreed and maintained that the article was concerned not with all types of discrimination, but only with the civil and

but it is particularly difficult with regard to the Convention because of the contradictions inherent in its language.

Since Article 1(1) and Article 2(1)(d) offer no guidance on this difficult question, one must turn to other provisions of the Convention. Among the rights found in the catalog of rights in Article 5, one is of particular relevance: the guarantee under Article 5(f) of equality before the law in "[t]he right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks." While this specification is certainly important and helpful, it is an exaggeration to claim, as Schwelb did, that "Article 5 as a whole tells quite concretely what is meant by 'public life' and probably answers most of the difficult questions of interpretation which might arise."[50] For example, to what extent is housing (Art. 5(e)(iii)) provided by private developers[51] covered by the Convention? The sanguine comment by Schwelb made in the context of possible U.S. ratification of the Convention is particularly striking when compared with his earlier acknowledgment that Article 5 "lists several rights which certainly do not come within the sphere of public life, *e.g.*, the right to marriage and choice of spouse."[52] The wide sweep of the Convention is emphasized by the fact that members of the Committee have inquired whether discrimination can be found "in the rental of a private apartment"[53] or admission to "private clubs."[54]

It is correct, however, to suggest that "public life" is not synonymous with governmental action but is the opposite of "private life,"[55] which would thus not be reached by the Convention. But to apply this concept to concrete situations is difficult. The legislative history reveals concern that freedom of thought and expression may be jeopardized and the private life of individuals invaded.[56]

Perhaps a rationale for at least some distinction between public and private life can be developed by reference to the right of association.[57]

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political rights that states must guarantee. The representative of Australia maintained that the latter interpretation was "more in keeping with the original intention of the framers." 28 UN GAOR Supp. (No. 40), paras. 155, 175, UN Doc. A/38/40 (1973).

[50] Schwelb, *The International Obligations of Parties to the Convention,* in N. NATHANSON & E. SCHWELB, *supra* note 17, at 1, 7.

[51] Nathanson, *The Convention Obligations Compared with the Constitutional and Statutory Law of the United States,* in *id.* at 19, 34 (suggesting that an owner renting an apartment within his own private dwelling may be more reasonably entitled to exercise personal preference in choice of tenants than the owner of a large apartment house or a substantial real estate developer).

[52] Schwelb, *supra* note 4, at 1005.

[53] 39 UN GAOR Supp. (No. 18), para. 238, UN Doc. A/39/18 (1984).

[54] *Id.*, para. 256.

[55] Schwelb, *supra* note 50, at 6. *See also* Ramcharan, *supra* note 18, at 262 (on prohibited discrimination by individuals, other than in personal and social relationships, under Article 26 of the Political Covenant).

[56] N. LERNER, *supra* note 4, at 38.

[57] On this right, see generally Humphrey, *Political and Related Rights,* in 1 Meron (ed.), *supra* note 17, at 171, 190–91; Partsch, *Freedom of Conscience and Expression, and Political*

That right is recognized in Article 5(d)(ix). It is widely acknowledged, however, that the catalog of human rights in Article 5 does not create those rights but merely obligates a state party to prevent racial discrimination in the exercise of those that it has recognized.[58] Article 5 could have been drafted in a manner that clearly defined this limitation. But a more explicit formulation would have emphasized the liberty of states to deny some of the rights listed, which would possibly have weakened the authority of the Universal Declaration of Human Rights, on which the catalog is based, and undermined the status of some rights as customary law. Although freedom of association is recognized in the Convention only in the limited context indicated above, that right is widely stated in other human rights instruments, including Article 22 of the Political Covenant, which establishes (Art. 22(2)) strict limits on any restrictions that may be imposed on its exercise. In accordance with the rule stated in Article 31(3)(c) of the Vienna Convention on the Law of Treaties, the right of association—as a recognized principle of international human rights law—may therefore be taken into account in the interpretation of the Convention so as to protect strictly personal relations from its reach.

The approach taken by the U.S. Supreme Court in the recent case of *Roberts v. United States Jaycees*[59] is instructive in developing a rationale for the distinction between public and private life. This case involved gender-based discrimination, the constitutional freedom of association asserted by members of a private organization, and their First and Fourteenth Amendment rights. It suggests that in distinguishing "public" and "private" domains to determine the reach of the Convention, account should be taken of the relative smallness of a relationship or an association, the degree of selectivity exercised and the degree of seclusion from others.[60] Large business enterprises and their activities, e.g., hiring practices, are not entitled to the same protection from intrusion as more intimate associations. One must therefore carefully assess the objective characteristics of a particular relationship on a spectrum from the most intimate of personal attachments to the most attenuated, or from the least measure of public involvement to the most. While freedom to associate presupposes a freedom not to associate, the right to associate for expressive purposes is not absolute. With regard to large and unselective groups, there is a compelling public interest in eliminating discrimination and assuring access for all to publicly available goods and services, which includes not only tangible ones, but also privileges and advantages.

Freedoms, in Henkin (ed.), *supra* note 18, at 209, 235–37; Frowein, *Reform durch Meinungsfreiheit,* 105 ARCHIV DES ÖFFENTLICHEN RECHTS 169 (1980). Of particular importance is the case of Young, James and Webster, Eur. Ct. of Human Rights, 44 Judgments and Decisions (ser. A, 1981), *reprinted in* 4 Eur. Hum. Rts. Rep. 38 (pt. 13, 1982), *summarized in* 1981 Y.B. EUR. CONV. ON HUMAN RIGHTS 440 (Eur. Ct. Human Rts.).

[58] 28 UN GAOR Supp. (No. 18), para. 42, UN Doc. A/9018 (1973). *See also id.,* paras. 53–56; 31 UN GAOR Supp. (No. 18), para. 56, UN Doc. A/31/18 (1976); 33 UN GAOR Supp. (No. 18), para. 21, UN Doc. A/33/18 (1978); Buergenthal, *supra* note 17, at 208–11.

[59] 104 S.Ct. 3244 (1984).

[60] *Id.* at 3250–51.

This or a similar approach should also be followed by state parties and the Committee. While certain private and interpersonal, associational relations would be insulated from the reach of the Convention, the activities of large private entities and of basically unselective organizations would be regarded as publicly available goods and services. Racial discrimination in the provision of these goods and services must be prohibited. In the absence of Convention guidelines for distinguishing the public from the private realm, this question will have to be answered through the case law of the Committee. One hopes that it will be done on the basis of criteria analogous to those applied by the Supreme Court in the *Roberts* case.

The dichotomy between the public and private realms also arises in the context of Article 2(1)(b), which forbids state parties to "sponsor, defend or support racial discrimination by any persons or organizations." Arguably, "support" encompasses not only the extension of benefits as a positive action, but also the failure to impose obligations that are required of other persons or organizations. Granting tax-exempt benefits to a private organization that discriminates on the basis of race, for example, might be construed as a violation of Article 2(1)(b). One commentator has concluded that any conflicts between the U.S. Constitution and this provision would not be serious[61] because of the reach of the state action doctrine; this position perhaps overly minimizes the points of conflict between the two. For example, if a routine grant of a liquor license to a private club involved in racial discrimination is not state action in violation of the Fourteenth Amendment,[62] is it clear that this is also true under the Convention? Where the reach of the obligations arising under the Convention corresponds to the reach of the Fourteenth Amendment, as determined by the decisions of the Supreme Court involving the state action doctrine, significant conflicts between the Convention and the Constitution need not arise. But where governmental inaction, acquiescence or tolerance[63] (e.g., as through regulation, licensing or enforcement) is deemed not to constitute state action and therefore lies beyond the reach of government's authority to fight "private" discrimination, conflicts would occur, were it not for the proposed U.S. reservations, declarations and understandings.[64] Moreover, the parameters of the state action doctrine, under which the acts of private organizations or individuals are subject to constitutional limitations if a sufficiently close relationship between those actions and governmental functions exists, are controversial and uncertain.[65] Since the degree to which governmental tolerance of private action will be considered state action is unclear, the possibility of conflict with the Convention remains.[66]

[61] Nathanson, *supra* note 51, at 20–22.

[62] *Id.* at 21 (discussion of Moose Lodge v. Irvis, 407 U.S. 163 (1972)). On state action, see also 3 T. FRANCK, HUMAN RIGHTS IN THIRD WORLD PERSPECTIVE 463–66 (1982).

[63] *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1148 (1978).

[64] 1978 U.S. DIGEST, *supra* note 12, at 443–44; 72 AJIL at 621–22.

[65] *See generally* L. TRIBE, *supra* note 63, at 1147–74.

[66] Nathanson, *supra* note 51, at 21. *But see id.* at 22.

IV. Suppression of Racist Theorizing and Racist Organizations

Article 4 imposes the following obligations on state parties: to penalize the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin, and the provision of any assistance to racist activities, including the financing of such activities (para. (a)); to declare illegal and prohibit organizations and all other propaganda activities that promote and incite racial discrimination, and participation in such organizations or activities (para. (b)); and to prohibit public authorities or institutions from promoting or inciting racial discrimination (para. (c)).

In paragraph (a) "assistance" is not defined. It might be extended to include providing financial support by purchasing the publications of racist groups,[67] or renting or leasing facilities such as public auditoriums to racist organizations.

Both racist groups as organizations and individuals who participate in such groups in violation of the prohibitions stated in Article 4 are subject to criminal sanctions. The opening paragraph of Article 4 identifies the eradication of all incitement to or acts of racial discrimination as the objective underlying the obligations enumerated. Paragraph (a) addresses the offense, rather than any particular offenders. Paragraph (b) covers not only organized, but also all other propaganda activities. It therefore appears that individuals who act alone in violation of the stated prohibitions are also subject to criminal sanctions.

The offenses set forth in Article 4 go beyond the definition of racial discrimination given in Article 1(1). The latter encompasses only such prohibited distinctions as lead to the denial of human rights on an equal footing. The former prohibits certain organizations and activities, including the dissemination of opinion and thought (ideas based on racial hatred or superiority), regardless of whether or not they lead to a denial of human rights. The obligations of Article 4 are also more extensive than those arising under Article 20(2) of the Political Covenant, which penalizes only such racial hatred as constitutes incitement to discrimination, hostility or violence. Given the tragic results of racist propaganda, e.g., in the Third Reich, the pain and suffering inflicted upon target groups, the tangible damage suffered, the vital community interest in the eradication of racial discrimination and its sources, and the conflict with the UN Charter goal of racial equality, the objectives of Article 4 are commendable. Racist propaganda must never be taken with equanimity. Its destructive potential even in developed societies is a matter of history. However, it is not the objectives and goals of Article 4 that create difficulties, but the relationship of the norms stated in it to other important values. While the article as a whole poses many problems, paragraph (a) gives rise to difficulties primarily in relation to freedom of expression and paragraph (b) challenges both freedom of expression and freedom of association.

[67] N. Lerner, *supra* note 4, at 49–50.

Article 4 explicitly mandates legislative action to implement its provisions. The Committee has insisted that reporting states have a duty to legislate irrespective of whether the prohibited activities actually occur in them, except where legislation that fully satisfies the provisions of Article 4 is already in place.[68] When reporting states maintain that preexisting law sufficiently implements Article 4, the Committee engages in substantive analysis to determine the adequacy of those provisions.[69] In a study approved by the Committee, Inglés has argued that Article 4 "is not self-executing. Despite the incorporation or transformation of the Convention as part of domestic law, article 4 may only be implemented if legislation is enacted to do what the article ordains."[70]

That states must take legislative action in compliance with Article 4 irrespective of the actual existence of the prohibited activities or organizations is consistent with the prophylactic purposes of the Convention as indicated by the definition of racial discrimination, the wide scope of the obligations of the parties and the various educational measures mentioned in Article 7. The Committee has emphasized, correctly, that "[f]ar from being concerned solely with combating acts of racial discrimination after they have been perpetrated, the national policies of the State parties must also provide for preventive programmes, which seek to remove the sources from which those acts might spring—be they subjective prejudices or objective socio-economic conditions."[71] A preventive penal policy is expressed through Article 4, which requires all state parties to make specified offenses punishable by law within their national legal systems, regardless of whether racial discrimination is actually practiced in their territories.[72] While mandating criminal sanctions, Article 4 attempts to effect fundamental societal changes that should prevent the future occurrence of racial discrimination and violence. By creating prior restraints on freedom of expression and association, Article 4 seeks to eradicate racist thought and racist organizations, which generate racist acts. Thus, Inglés observes that "[a]rticle 4 aims at prevention rather than cure; the penalty of the law is supposed to deter racism or racial discrimination as well as activities aimed at their promotion or incitement."[73]

Organizations that promote racial discrimination, and not merely their specific activities which have that purpose or effect, are prohibited. During the drafting debates, an amendment inserting the words "or the activities of such organizations" after the word "organizations" in paragraph (b) was not adopted,[74] perhaps because the very existence of such organizations was felt to be destructive of the aims of the Convention. Would the

[68] General Recommendation I, Dec. 3(V), 27 UN GAOR Supp. (No. 18) at 37, UN Doc. A/8718 (1972); 34 UN GAOR Supp. (No. 18), para. 226, UN Doc. A/34/18 (1979); 31 UN GAOR Supp. (No. 18), para. 245, UN Doc. A/31/18 (1976); Buergenthal, *supra* note 17, at 193–94; Partsch, *supra* note 57, at 229.

[69] *See, e.g.*, 33 UN GAOR Supp. (No. 18), para. 320, UN Doc. A/33/18 (1978).

[70] Inglés, *supra* note 17, para. 216.

[71] 33 UN GAOR Supp. (No. 18) at 109, UN Doc. A/33/18 (1978).

[72] *Id.* at 110.

[73] Inglés, *supra* note 17, para. 221.

[74] N. LERNER, *supra* note 4, at 45.

language of that paragraph, as adopted, permit the prohibition of such groups as soon as it is clear that they intend to engage in promoting or inciting racial discrimination?[75] Members of the Committee have emphasized the need to outlaw certain organizations that in fact engage in incitement to racial discrimination, even though they do not proclaim such incitement to be their objective.[76] They have inquired whether action has been taken with the intention of dissolving associations pursuing goals that are illegal under Article 4.[77] If the aims of an organization are clear even before its formation, does the language of the provision permit its prohibition beforehand, rather than only its dissolution afterward? How are such aims determined? What is the level of activity necessary to constitute a violation? Inglés appears to answer the first of these questions in the affirmative by referring to legislation of states providing for the denial of permits to or registration of organizations with an illegal purpose, or their dissolution in the event that they have already been registered or granted permits.[78]

Article 4 is potentially even broader than may at first be apparent from the text, because the initial paragraph employs the words "*inter alia.*" But even those measures which are enumerated pose problems. The drafting and application of laws giving effect to Article 4 will be difficult, since the provision requires criminalization not only of acts and incitement to acts of racial discrimination and violence, but of the promulgation of racist theories and thought. With a few exceptions, traditional concepts of criminal liability require the commission of an act, or the failure to act when the law imposes a duty to do so, or incitement to action. But Article 4 also requires states to impose criminal liability for the dissemination of ideas (freedom of expression) alone.

When compared with U.S. law, this criminalization of speech and association (organizations) on the basis of racist content violates the content-neutral protection afforded by the First Amendment doctrine of freedom of expression.[79] But the different approach in the United States should not be explained on constitutional grounds alone. It also reflects, at least in recent history, the feeling of confidence and security in a developed and relatively stable society that, while failing to eradicate racism, has found orderly means of dealing with its racial problems, as

[75] *Id.* at 50.

[76] 32 UN GAOR Supp. (No. 18), para. 286, UN Doc. A/32/18 (1977).

[77] 39 UN GAOR Supp. (No. 18), para. 270, UN Doc. A/39/18 (1984). The Committee emphasized that it was not enough for the penal code to be applicable to individual members of an organization. The legislation should contain provisions prohibiting such organizations as required by Article 4(b). *Id.*, para. 509.

[78] Inglés, *supra* note 17, paras. 238–240.

[79] Greenberg points out that in the United States even groups that preach hatred, such as the Ku Klux Klan or the Nazis, benefit from the right of free expression, and their activities based on racial, ethnic or religious hatred are nearly uniformly permitted to continue. Greenberg, *supra* note 17, at 323–24. *See* Collin v. Smith, 578 F.2d 1197, *cert. denied*, 436 U.S. 953 (1978). *But see* "Smith Act," 18 U.S.C. §2385 (1982). For the interpretation of the Act by the Supreme Court, see Scales v. United States, 367 U.S. 203 (1961); Yates v. United States, 354 U.S. 298 (1957); Dennis v. United States, 341 U.S. 494 (1951).

well as the traditional preference for individual freedoms over the regulatory power of the state. In some other countries, however, activities and organizations that in the United States would often be regarded as creating only a marginal possibility of violence and threat to public order might be regarded as a clear and present danger.[80] If certain provisions of the Convention are overbroad when viewed against the U.S. legal and social systems, it does not necessarily follow that they are overbroad for some of the other countries. It is difficult, indeed, to find a common legislative policy for the member states of the United Nations in view of their diverse stages of development, and their different cultures, traditions, conditions of social peace and security. The purpose of these comments, of course, is not to make a value judgment about which legal and social systems are superior, but simply to state some of the relevant factors.

Dissemination of racist thought and participation in organizations that engage in promotion of racial discrimination are prohibited under Article 4 regardless of whether they lead to otherwise illegal conduct. Is there, then, a conflict between Article 4 and the principles of freedom of expression and association as they are recognized in international law? The opening paragraph of Article 4 reflects an effort to avoid such a conflict. The measures to be taken by state parties are to be adopted "with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention." The freedoms of expression and association are indeed embodied in Article 5(d)(viii)–(ix), the Universal Declaration of Human Rights and the Political Covenant, but in these and other international human rights instruments these principles are not absolute; they are subject to various limitations, the scope of which is not clearly determined.[81] Under Article 29(2) of the Universal Declaration, restrictions on the freedom of expression and association might be justified on the ground that the promulgation of racist ideas by individuals or groups would lead to the infringement of the rights of members of the targeted racial groups and adversely affect the public order and general welfare of society. This article has been invoked in support of limiting the dissemination of racist

[80] P. Hemalatha v. Govt. of A. P., 63 A.I.R. 375 (A.P. 1976), paras. 19–24, *reprinted in* T. FRANCK, *supra* note 62, at 241; The [Nigeria] Director of Public Prosecutions v. Chike Obi, F.S.C. 56/1961, *reprinted in id.* at 229.

Even in the United States, however, racist invective has been considered punishable as criminal libel, although it was not shown that it involved a clear and present danger to the target group. Beauharnais v. Illinois, 343 U.S. 250 (1952). The present status of *Beauharnais* is a matter of some doubt. In Brandenburg v. Ohio, 395 U.S. 444 (1969), the Supreme Court emphasized the principle that the constitutional guarantees of free speech and free press do not permit a state to proscribe advocacy of the use of force or of law violation except where such advocacy is directed at inciting or producing imminent lawless action and is likely to incite or produce it. The indictment of a Ku Klux Klan leader was overruled as contrary to the First and Fourteenth Amendments.

Regarding the "Front National" in France and claims for defamation submitted by its leader, Jean-Marie Le Pen, see Le Monde, Nov. 2, 1984, at 8, col. 3 (final ed.).

[81] Universal Declaration, *supra* note 36, Arts. 19, 20, 29, 30; Political Covenant, *supra* note 36, Arts. 4, 19–22.

ideas and the existence of racist organizations.[82] Of course, the promulgation of racist ideas may affect the rights of others. But, depending on the situation in a particular society, the argument that the promulgation of such ideas inherently endangers public order is usually persuasive only when doing so constitutes incitement to acts of discrimination or violence, which is already prohibited in any case.

The "due regard" clause permits the invocation of another provision of the Universal Declaration, Article 30, which states that "[n]othing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein." This has been viewed as an injunction "against interpreting the Declaration as implying for any State the right to destroy any of the rights and freedoms proclaimed therein."[83] However, elsewhere, in discussing Article 4 of the Convention, the same commentator expressed the view that Article 30 of the Universal Declaration "does not preclude or prohibit reasonable limitations as are expressly set forth in Article 29(2) which do not have the purpose or effect of destroying those rights and freedoms."[84] Because it will be argued that the measures taken in implementation of Article 4 do not have the purpose or effect of destroying the rights or freedoms stated in the Declaration, Article 30 does not provide an effective protection against abuse. Despite its vagueness, Article 30 could have perhaps been relied upon by the Committee more seriously to balance the prohibition of racial discrimination with the freedoms of association and expression stated in the Universal Declaration. It can, of course, be invoked by states in the course of their interpretation and application of the Convention.

The Committee has paid lip service to the notion that the freedoms of expression and association "are not irreconcilable" with the obligations created by Article 4,[85] and to the "due regard" clause of that article, while expressing clear preference for the application of the norms stated in Article 4:

> The Committee is fully aware that the Convention—in laying down the obligations of States parties with regard to the prohibition of the dissemination of racist ideas, incitement to racial discrimination or violence, and racist organizations—allows for the fulfilment of those obligations to be accomplished "with due regard" to the fundamental human rights to freedom of opinion, expression and association. However, it could not have been the intention of the drafters of the Convention to enable States parties to construe the phrase safeguarding the human rights in question as cancelling

[82] For statements referring explicitly or implicitly to the limitation clauses of the Universal Declaration in construing Article 4, see, e.g., 33 UN GAOR Supp. (No. 18), para. 279, UN Doc. A/33/18 (1978); 34 UN GAOR Supp. (No. 18), para. 227, UN Doc. A/34/18 (1979).

[83] J. Inglés, Study of Discrimination in respect of the Right of Everyone to Leave Any Country, Including His Own, and to Return to His Country 37, UN Doc. E/CN.4/Sub.2/220/Rev.1 (1963). *See generally* E. Daes, The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights 129–31, UN Doc. E/CN.4/Sub.2/432/Rev.2 (1983).

[84] Inglés, *supra* note 17, para. 228.

[85] 33 UN GAOR Supp. (No. 18) at 113, UN Doc. A/33/18 (1978).

> the obligations relating to the prohibition of the racist activities concerned. Otherwise, there would have been no purpose whatsoever for the inclusion in the Convention of the articles laying down those obligations.[86]

That a conflict arises has been acknowledged by some members of the Committee, for whom Article 4 supersedes freedom of expression and association.[87] Indeed, since Article 4 is premised on the belief that racist practices can be combated successfully only if the promulgation of racist ideas is curtailed, and, perhaps, on the view that such ideas are inherently dangerous, such a conclusion follows logically. As a matter of fact, in construing Article 20 of the Political Covenant, the Human Rights Committee has taken a position rather similar to that taken by the Committee on the Elimination of Racial Discrimination. It stated that the "required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities."[88] It thus emphasized the duty of states to fulfill their obligations under Article 20.

The wide sweep of Article 4 has caused occasional resentment even within the Committee.[89] Western states have expressed some opposition to the restraints on freedom of expression and association created by the article[90] and the Committee itself has admitted that only a few states have taken the necessary measures to implement it.[91]

The obligations specified apply clearly to statements or acts of public officials within the territories of the state parties. They must be deemed applicable also to the statements or acts of such officials in the United Nations and other international organizations.[92] Thus, racist remarks may violate the obligations of the states concerned under the Convention and

[86] *Id.* at 112.

[87] *See, e.g., id.*, para. 51.

[88] General Comment 11, 38 UN GAOR Supp. (No. 40) at 110, UN Doc. A/38/40 (1983).

[89] Thus, one member of the Committee objected to the text of a questionnaire because the question concerning racist theorizing "appeared to assume that Member States were required to penalize all dissemination of ideas based on racial superiority and not merely propaganda activities aimed at encouraging racial discrimination." 30 UN GAOR Supp. (No. 18), para. 47, UN Doc. A/10018 (1975).

[90] Great Britain has interpreted the obligations of Article 4 to be limited by the extent to which they may be fulfilled with due regard to the principles embodied in the Universal Declaration, in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association. MULTILATERAL TREATIES, *supra* note 9, at 104. Other governments, e.g., Belgium, *id.* at 98, have emphasized the need both to adopt the necessary legislation and to respect the freedoms of expression and association. In transmitting the Convention to the Senate, the United States has made a general declaration limiting the scope of the obligations assumed under the Convention to those which would not restrict the right of free speech as guaranteed by the U.S. Constitution and laws of the United States, and by Article 5 of the Convention. 1978 U.S. DIGEST, *supra* note 12, at 443. The Government of the Federal Republic of Germany, "after careful consideration, reached the conclusion that dissemination of opinions of racial superiority should be punishable if it was intended to create racial discrimination or hatred." 32 UN GAOR Supp. (No. 18), para. 87, UN Doc. A/32/18 (1977). *See also* Inglés, *supra* note 17, para. 225.

[91] 39 UN GAOR Supp. (No. 18), para. 303, UN Doc. A/39/18 (1984).

[92] On some other aspects of the extraterritorial reach of the Convention, see Buergenthal, *supra* note 17, at 211–18. *See generally* Meron, *Applicability of Multilateral Conventions to Occupied Territories*, 72 AJIL 542 (1978).

should be scrutinized by the Committee. In an international forum, the balancing of the various factors involved, such as the freedom of speech of governments against the Charter principles of racial equality of all persons and friendly relations among nations, may lead to results different from those which obtain internally in some states, where the freedom of speech of individuals, balanced against an all-powerful state and other community interests, is often an endangered value and deserves special protection. The prohibition of certain types of racist propaganda in the Convention and the Political Covenant should be observed first and foremost within the parent organization. Unfortunately, this is not always the case.[93]

Some of the obligations under the Convention apply, of course, to private individuals. But the Committee has never determined how far into private life the obligations of the Convention extend. Do they, for instance, cover racist remarks made between members of the same family, or in a private letter not aimed at circulation or publication? According to some members of the Committee, insulting or defamatory racist remarks made to individuals should be included in the conduct to be penalized.[94] Some comments made by the members suggest that they have an extremely broad conception of the Convention's provisions. Thus, one state party was criticized for legislation requiring that certain offenses must be committed publicly in order to be punishable (e.g., "discriminatory measures which could be taken through correspondence" would not be covered by the legislation;[95] members or supporters of an association that advocated racial discrimination could be punished only when their activities "took place publicly"[96]). Another state reported to the Committee that in implementing Article 4, it had outlawed any form of racial discrimination, "including verbal,"[97] without specifying, however, whether this encom-

[93] An egregious example of racist remarks can be found in the statement made in the UN General Assembly by the representative of the Libyan Arab Jamahiriya:

> It is high time for the United Nations and the United States in particular to realize that the Jewish Zionists here in the United States attempt to destroy Americans. Look around New York. Who are the owners of pornographic film operations and houses? Is it not the Jews who are exploiting the American people and trying to debase them?

UN Doc. A/38/PV.88, at 19–20 (1983).

[94] 34 UN GAOR Supp. (No. 18), para. 157, UN Doc. A/34/18 (1979). Nevertheless, some members of the Committee noted with regard to a penal provision of Norway, which covered only public utterances and communications, that "private utterances and communications lay outside the field in which the penal law could effectively be applied without an oppressive system of surveillance." 32 UN GAOR Supp. (No. 18), para. 157, UN Doc. A/32/18 (1977).

[95] 39 UN GAOR Supp. (No. 18), para. 238, UN Doc. A/39/18 (1984) (in the case of Belgium).

[96] *Id.* The representative of Belgium responded that the Belgian Act "would not apply in the case of a landlord who refused to rent a private apartment to a foreigner, because it would be very difficult to present legal evidence of the grounds for the refusal, unless there were witnesses." The requirement that the activities of racist associations be known to the public in order to be punishable resulted from the difficulty of proving any practice that was not a matter of public knowledge. *Id.*, para. 244.

[97] *Id.*, para. 276 (in the case of Denmark).

passed the private communication of ideas. If private as well as public communication of racist ideas is prohibited, it might invite state invasion of the right to privacy. In light of the harm caused by such behavior, would private civil actions be a more appropriate remedy, by reducing the scope of possible encroachment by the state into interpersonal relations? Nevertheless, civil actions would probably not effectively limit such conduct without the deterrent effect of criminal sanctions.

Concepts of criminal liability in U.S. law usually link culpability with intent as closely as possible. But Article 4 appears not to be based on the requirement of intent. Members of the Committee have interpreted the article accordingly and appeared to endorse the notion that it is based on absolute liability.[98] Inglés thus emphasizes "that the mere act of dissemination is penalized, despite lack of intention to commit an offence and irrespective of the consequences of the dissemination, whether it be grave or insignificant."[99] He criticized state parties whose legislation addresses only such dissemination or incitement as is intentional, or has the objective of stirring up hatred, or is threatening, abusive or insulting: "Obviously, these conditions are restrictive and ignore the fact that Art. 4(a) declares punishable the mere act of dissemination or incitement, without any conditions."[100]

The point at which the culpability of a particular organization is sufficiently clear to warrant intervention by the state may be defined by states in a manner that restricts freedom of expression and privacy more than is necessary to achieve the objectives of Article 4.[101] But if the drafters had specified intent as an element of the offenses listed, the difficulties attendant upon proving intent would have hampered the effectiveness of the article.

Given the prophylactic purposes of Article 4, limitations on the exercise of free speech and on the right of association are unavoidable, while the reconciliation of the conflicting principles is artificial. If the drafters feared that the effectiveness of the provision would be hampered by introducing the requirement of intent,[102] they should at least have defined the offenses more specifically, and, perhaps, more narrowly. The Convention should

[98] 32 UN GAOR Supp. (No. 18), para. 84, UN Doc. A/32/18 (1977). In reviewing the adequacy under Article 4 of Great Britain's Race Relations Act, members of the Committee approved a change in that legislation dispensing with the necessity "to prove a subjective intention to stir up racial hatred." Moreover, they implicitly endorsed absolute liability under Article 4 in disapproving the provision of the Race Relations Act that in the publication or distribution of written matter "it shall be a defence for the accused to prove that he was not aware of the content of the written material in question and neither suspected nor had reason to suspect it of being threatening, abusive or insulting." 33 UN GAOR Supp. (No. 18), para. 339, UN Doc. A/33/18 (1978). One member of the Committee expressed the opinion "that the question of [the offender's] good faith and intent did not enter into consideration in the implementation of article 4." 35 UN GAOR Supp. (No. 18), para. 338, UN Doc. A/35/18 (1980).

[99] Inglés, *supra* note 17, para. 83.

[100] *Id.*, para. 235.

[101] *See generally* N. LERNER, *supra* note 4, at 51.

[102] Some states (e.g., the Federal Republic of Germany, *supra* note 90) insist, nevertheless, upon the requirement of intent.

have made punishable primarily individual conduct, or the conduct of individuals acting as a group, rather than the existence of organizations (unless involved in acts of violence, incitement to violence or other illegal acts) and the promulgation of ideas, which would have limited the danger of encroachment on the freedom of expression and arbitrary censorship. Finally, by reducing the scope of Article 4 to public conduct, the drafters might have avoided conflict with the right to privacy in familial and intimate associational contexts, reduced the danger of intrusive state action and lessened the conflict with the principle of freedom of opinion and expression. The overreach of Article 4 creates difficulties for democratic states that take their obligations seriously, and has prompted some of them to enter a relatively large number of reservations to that article.[103]

Neither Article 4 nor the definitional provisions of the Convention address religious discrimination or invective. This omission poses problems when vilification occurs in the gray area between race and religion. The Norwegian Supreme Court dealt with an interesting case in point a few years ago; the judgment was included in the recent periodic report submitted by Norway to the Committee.[104] The case concerned an appeal from a conviction by a district court holding that the defendant had violated the penal code by circulating leaflets that violently attacked Norwegian policy on the immigration of "Islamic foreign workers," the workers themselves and the religion of Islam. In "a weighing up process," Associate Justice Aasland compared utterances concerning Islam as a religion, conditions in the Islamic states and Norwegian immigration policy, which were protected by the freedom of expression under the Constitution, with utterances that more directly attacked Islamic immigrants in Norway. The target of the leaflets was Islamic immigrants, their character and their behavior. Under the penal code, attacks on the characteristics of a population group and its behavioral pattern were punishable. Such attacks exposed that population group to hatred and contempt. Unless they were punished, it would be impossible to accord an exposed minority group the protection intended by the law.

This judgment was praised by some members of the Committee as a good example of the implementation of Article 4 and as striking a balance between freedom of expression and the ban on incitement to racial discrimination: "Though the defendant was held entitled to express certain general views, she had broken the law when she had directed her remarks against specific ethnic groups."[105] The judgment led the Committee to consider whether religious discrimination was covered by Article 4. Some members believed that an attack on a particular religion would not breach the Convention, while an attack on an identifiable national or ethnic group would. Others said that good grounds could be found for extending the Convention to cover attacks against religion.[106] It remains to be seen whether the Committee will try to interpret the Convention as reaching

[103] *See* MULTILATERAL TREATIES, *supra* note 9, at 97–107.
[104] Judgment No. 134 B/1981, *reprinted in* UN Doc. CERD/C/107/Add.4, at 14 (1984).
[105] 39 UN GAOR Supp. (No. 18), para. 509, UN Doc. A/39/18 (1984).
[106] *Id.*, para. 507.

incitement to hatred of groups that belong to a particular religious persuasion and have certain ethnic characteristics as well.

V. Affirmative Action

Race-Conscious Policies under Affirmative Action Programs

Article 1(4) allows state parties to take

> [s]pecial measures . . . for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms . . . , provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

This provision carves out an exception to the definition of racial discrimination. One consequence of the emphasis on racial equality is that the adverse effect upon a privileged racial group of the "[s]pecial measures" that may be taken pursuant to Article 1(4) would not be considered racial discrimination[107] until and unless the measures led to "the maintenance of separate rights for different racial groups" or "continued after the objectives for which they were taken have been achieved." Thus, bona fide affirmative action programs cannot be challenged under the Convention, as they could be if the Convention mandated color-blind policies.[108]

Because a violation of the exception stated in Article 1(4) may become apparent only after the passage of time, there is a danger that states may use this provision to legitimize discriminatory practices. The Committee has been alert to this danger, however, and has scrutinized reports from states accordingly.[109]

Affirmative Action Measures: Their Necessity and Scope

While Article 1(4) excludes affirmative action from the definition of racial discrimination, Article 2(2) actually obliges state parties to take affirmative action. They shall,

> when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.

[107] *See generally* N. Lerner, *supra* note 4, at 32–33.

[108] However, the Government of Papua New Guinea justified its caution in protecting ethnic groups on the ground that "protection of one group might be considered discrimination against others." 39 UN GAOR Supp. (No. 18), para. 284, UN Doc. A/39/18 (1984).

[109] E.g., with regard to the provisions of the Constitution of India amended to extend the special reservation of seats in the Parliament and in the legislative assemblies for the scheduled castes and tribes and for the Anglo-Indian community for an additional period of 10 years. 38 UN GAOR Supp. (No. 18), para. 280, UN Doc. A/38/18 (1983). The

This article as drafted fails to provide standards for determining which groups should benefit from special measures and when the political, economic and social circumstances of those groups warrant the introduction of such measures. The words "when the circumstances so warrant" suggest that a considerable measure of discretion is left to the states in deciding when remedial steps must be taken. Although the article mentions "protection," it does not provide safeguards against the use of special measures that promote the "adequate development" of ethnic groups to achieve their assimilation into the society at large.

Article 2(2) does not concern individual rights but protects groups of persons[110] or individuals *qua* members of the group. Because of the wide acceptance of the Convention by states, the Convention and the Committee can play an important role in the protection of ethnic groups. Article 27 of the Political Covenant protects various rights of persons belonging to certain minorities, but it does not explicitly provide for affirmative action.[111] While the Convention addresses racial "groups" (without specifying their percentage of the total population) rather than "minorities," this usage may encompass protection of ethnic minorities as defined for purposes of Article 27.[112]

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representative of India stated that 40 years was not a long period to bring to the level of the rest of the community groups that for centuries have been subjected to repression. *Id.*, para. 285. For a discussion of these and other affirmative action provisions of the Indian Constitution as applied to the reservation of a certain percentage of seats in professional and technical colleges in favor of "socially and educationally backward Classes," see Singh v. Mysore, 47 A.I.R. 338 (Mysore 1960), *reprinted in* T. FRANCK, *supra* note 62, at 428. It is of interest to contrast this case with Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978). *See also* Firefighters Local Union No. 1784 v. Stotts, 104 S.Ct. 2576 (1984).

[110] 37 UN GAOR Supp. (No. 18), para. 468, UN Doc. A/37/18 (1982). Regarding group rights, see Humphrey, *Political and Related Rights,* in 1 Meron (ed.), *supra* note 17, at 171, 171–72.

[111] For a discussion of the scope of minority rights under Article 27, see Sohn, *The Rights of Minorities,* in Henkin (ed.), *supra* note 18, at 270, 282–87. On minorities in general, see F. CAPOTORTI, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES, *reprinted in* UN Doc. E/CN.4/Sub.2/384/Rev.1 (UN Sales Pub. No. E.78.XIV.1, 1979); Ermacora, *The Protection of Minorities before the United Nations,* 182 RECUEIL DES COURS 247 (1983 IV).

In Communication No. R.6/24 (*Sandra Lovelace v. Canada*), the Human Rights Committee established under Article 28 of the Political Covenant concluded that Sandra Lovelace, an ethnic Indian who because of her marriage to a non-Indian had lost her status as Indian under the provisions of the (Canadian) Indian Act, was entitled to be regarded as belonging to the Indian minority and to claim the benefits of Article 27 of the Political Covenant. Taking into account the fact that her marriage had broken up, and that she had been absent from the reservation for only a few years, the Committee concluded that to deny her the right to reside on the reservation was not reasonable and constituted an unjustified denial of her rights under Article 27. 36 UN GAOR Supp. (No. 40), Ann. XVIII, UN Doc. A/36/40 (1981). *See* Bayefsky, *The Human Rights Committee and the Case of Sandra Lovelace,* 20 CAN. Y.B. INT'L L. 244 (1982).

[112] For the meaning of "minorities" in the context of Article 27 of the Political Covenant, see Sohn, *supra* note 111, at 276–80.

The Commission on Human Rights recently asked the Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare a definition of the term "minority." UN Doc. E/CN.4/Sub.2/1984/31. Such a definition would not focus on the interpretation

The definition of racial groups gives rise to some questions. First, should the words "certain racial groups" be interpreted to mean those groups not possessing majoritarian political status or adequate representation in the political and economic process or those constituting less than a majority of the total population? Unless the former interpretation is followed, the obligation to adopt special measures on behalf of ethnic groups with a limited share in the political and economic process[113] could be avoided by asserting that they constitute the largest percentage of the total population.[114] Conversely, racial groups that possess full political and economic rights do not qualify for special action under Article 2(2).[115] The obligations arising from Article 2(2) may also prove difficult to implement in countries with populations consisting of a large number of discrete ethnic or tribal groups,[116] no single one of which constitutes a majority of the total population.

How to identify racial groups presents a second set of definitional problems. A state may recognize a racial or ethnic group as distinct on the basis of linguistic, religious, economic or social characteristics, or some combination of these features.[117] If a group is not identifiable as ethnically discrete, it is not entitled to the protection of Article 2(2).[118] For example, a tribe that has traditionally been nomadic may not otherwise be distinguishable on the basis of physical characteristics, and if cultural and other nonracial characteristics are ignored,[119] a state might attempt to deny that group the protection of Article 2(2). The degree to which a given group must be different from the remainder of the population to benefit from the provisions of Article 2(2) is not clear.[120] States may attempt to evade their duties by refusing to acknowledge that a specific group should be

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of Article 27 of the Political Covenant. By contrast, Capotorti's tentative definition (*see supra* note 111, para. 568) was drawn up solely with the application of Article 27 in mind. It spoke, in part, of a "group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members . . . possess ethnic, religious or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language." *Cited in* UN Doc. E/CN.4/Sub.2/1984/31, at 2.

[113] The Committee has requested information on the machinery for drawing minorities into the political process in compliance with Articles 1(4) and 2(2) of the Convention. 39 UN GAOR Supp. (No. 18), para. 356, UN Doc. A/39/18 (1984) (Vietnam).

[114] *See generally* J. SIGLER, MINORITY RIGHTS: A COMPARATIVE ANALYSIS 5, 8 (1983).

[115] Members of the Committee have inquired, rather suspiciously, about the extent of the separation and points of contact "between the elite minority community" of Mauritius and the rest of the population. 39 UN GAOR Supp. (No. 18), para. 254, UN Doc. A/39/18 (1984).

[116] E.g., Tanzania. *See* 38 UN GAOR Supp. (No. 18), para. 330, UN Doc. A/38/18 (1983).

[117] *See generally* J. SIGLER, *supra* note 114, at 6–10.

[118] Sigler observes that "[m]ost nations avoid problems of group rights by simply not recognizing the status of the group." *Id.* at 12–13.

[119] *See generally id.* at 10.

[120] E.g., should Spanish Basques be identified only as a linguistic minority, or do they constitute a discrete ethnic group? 37 UN GAOR Supp. (No. 18), para. 281, UN Doc. A/37/18 (1982).

defined as ethnically distinct.[121] States' obligations to resort to affirmative measures should be determined by the group's degree of access to political and economic resources, rather than by overemphasis on the anthropological analysis of the group's relationship to the rest of the population. While Article 2(2) does not provide standards for determining when circumstances warrant special measures,[122] the text suggests that the test is whether the group in question requires the protection and aid of the state to attain a full and equal enjoyment of human rights.[123] Article 2(2) uses the term "racial groups," not races, which suggests perhaps a wider spectrum of beneficiaries. But the absence of clear definitions and the anthropological difficulty of defining[124] and identifying racial groups lead to the conclusion that this problem will continue to be troublesome.

To determine whether a state has complied with the obligations imposed by Article 2(2), demographic statistics specifying the ethnic composition of the population may be essential, and possibly a socioeconomic profile of the various ethnic groups as well.[125] Data based on religious[126] or

[121] The representative of Niger argued that discrimination against nomadic groups in his country was economic, not ethnic. 38 UN GAOR Supp. (No. 18), para. 494, UN Doc. A/38/18 (1983).

[122] Should Canadian Indians who have left the reservations no longer enjoy the same rights or protections as are afforded to those who remained on the reservations? Was the definition of membership in such groups too restrictive? *Id.*, para. 394. *See also* note 111 *supra.*

[123] Australia has recognized that its aboriginal citizens constitute a group for whom special and concrete measures are required to promote their development. 39 UN GAOR Supp. (No. 18), para. 328, UN Doc. A/39/18 (1984). Members of the Committee have inquired how the aboriginal people could be helped to achieve in practice their full political and civil rights. *Id.*, para. 335.

[124] *See generally* UN Doc. E/CN.4/Sub.2/1984/31, at 4.

[125] The Committee has thus requested that Italy include in its next periodic report a comparative socioeconomic analysis of the various minorities and ethnic groups so that it could be determined for which of those groups measures should be adopted to ensure their adequate development. 39 UN GAOR Supp. (No. 18), para. 300, UN Doc. A/39/18 (1984). The Committee has requested that the Government of the Central African Republic provide information not only on the demographic composition of the population, but also on the socioeconomic situation of the various ethnic groups and about measures to improve the living conditions of the pygmies. *Id.*, para. 117. In emphasizing its interest in the participation of ethnic groups in the economic and political processes, the Committee requested that the Government of Colombia provide information

> on the National Development Programme for Indigenous Peoples, measures to help disadvantaged groups and comparative figures for the various groups relating to education, per capita income, housing and medical care. Statistics should also be furnished . . . on the employment of members of the various racial groups in the public service and their representation among elected officials. The Committee would also like to have information on the enjoyment by members of the indigenous population of their political as well as cultural rights, their real situation. . . .

Id., para. 131.

[126] In the case of Mauritius, which classifies its population on a religious rather than an ethnic basis, members of the Committee asked how a race relations act could be effective if information on the racial composition of the population was no longer kept. *Id.*, paras. 252, 256.

linguistic affiliation are often irrelevant for these purposes.[127] But states may be unable to compile accurate demographic profiles because the census may not be frequently or effectively taken, or it may be considered improper to inquire about ethnicity or the inhabitants may not be required to indicate their race.[128] Recognizing the difficulties, the Committee has agreed that demographic statistics need not be precise but should at least indicate percentages of the total population and that it should press countries that have not been able to supply such information to do so when ethnic problems arise.[129]

Towards Assimilation?

Another problem—already mentioned—stems from the absence of safeguards against the use of measures that, in promoting the adequate development of racial groups in social, economic, cultural and other fields, constitute assimilationist policies and may result in a group's loss of cultural identity. Article 2(2) does not require states to aid in the preservation of cultural identity, but the reference to the cultural field and to "protection," rather than only to "development," suggests that at least the spirit of the Convention would be violated by such measures. Some states have shown considerable awareness of their obligations in this regard.[130] To some extent, the Committee has compensated for the deficiency by focusing inquiry upon the relevant issues. In examining specific programs undertaken for the adequate development of certain racial groups, and the consequences of such measures, the Committee has recognized the tension between the need for social and economic equality and the need to preserve the integrity of discrete cultures. Thus, in discussing the report of New Zealand, the Committee stated that the "one Nation: two peoples" approach followed by that state "in order to preserve the identity of the Maori . . . was within the context of article 2 and the Committee's policy on minorities."[131] The Committee inquired both whether the Maoris lived in segregated areas and whether the Maori community living in urban areas was at risk of losing its identity.[132]

If a state carries the concept of integration of ethnic groups into the mainstream of society too far, and traditions and customs are abandoned,

[127] 37 UN GAOR Supp. (No. 18), para. 108, UN Doc. A/37/18 (1982).

[128] 32 UN GAOR Supp. (No. 18), para. 87, UN Doc. A/32/18 (1977) (the Federal Republic of Germany). The Committee requested information on the demographic composition of the Algerian population. Its members asked for clarification regarding the assertion in Algeria's report that a census of the Algerian population on ethnic or racial grounds would be contrary to Islam. 39 UN GAOR Supp. (No. 18), para. 91, UN Doc. A/39/18 (1984).

[129] 38 UN GAOR Supp. (No. 18), paras. 513–14, UN Doc. A/38/18 (1983).

[130] For the Italian Government, the problem was not the assimilation of the members of minorities, "since they were completely integrated into the Italian society and had the same economic and political rights as the rest of the population, but the preservation of their cultural identity and languages." 39 UN GAOR Supp. (No. 18), para. 307, UN Doc. A/39/18 (1984).

[131] *Id.*, para. 78.

[132] *Id.*

could that constitute "a form of racial discrimination"?[133] Would educational programs instituted by the government to promote the use of the official language by the indigenous population result in the assimilation of diverse cultures? To avoid such a result, the use of the group's own language should be preserved and not eliminated by the official language.[134] One should be aware, however, of the danger that measures purportedly taken to preserve the language and the culture of a particular group, and that separate it from the community at large, may be used as a vehicle for continuing discrimination.

In reviewing reports, the Committee has warned that when governments take measures to promote the development of ethnic groups, they must guard against the assimilation that might result. On occasion, members of the Committee have injected questions about claims of regional autonomy[135] and even self-determination[136] into its deliberations.

In states composed of various discrete racial or ethnic groups, the obligation to take special measures for their protection may conflict with the perceived need to create a cohesive national identity,[137] because such measures may ultimately isolate rather than integrate the groups.[138] The traditional rights of groups to land[139] may conflict with the government's

[133] 29 UN GAOR Supp. (No. 18), para. 121, UN Doc. A/9618 (1974) (Norwegian Lapps and Gypsies). In response to comments from members of the Committee, the representative of Norway indicated that employment opportunities offered to the Lapps allowed them to retain their traditional way of life and that the Government did not try to impose an alien way of life on Gypsies. 31 UN GAOR Supp. (No. 18), paras. 207, 212, UN Doc. A/31/18 (1976).

[134] 38 UN GAOR Supp. (No. 18), para. 210, UN Doc. A/38/18 (1983) (measures taken by the Government of Venezuela to promote the use of Spanish). The Committee requested information on whether the Government of the Central African Republic recognized and protected the rights of minorities to have their own language and develop their own culture (39 GAOR Supp. (No. 18), para. 117, UN Doc. A/39/18 (1984)) and on what was being done in Colombia to preserve the indigenous languages. *Id.*, para. 131.

[135] 31 UN GAOR Supp. (No. 18), para. 70, UN Doc. A/31/18 (1976) (Iraqi Kurds).

[136] 37 UN GAOR Supp. (No. 18), para. 197, UN Doc. A/37/18 (1982) (ethnic groups in Ethiopia).

[137] The Committee inquired how the policy of Botswana of "discouraging ethnocentrism among the different ethnic groups could be reconciled with the establishment of a separate house of chiefs in addition to the National Assembly" (39 GAOR Supp. (No. 18), para. 105, UN Doc. A/39/18 (1984)) and "how the efforts being made to preserve racial harmony affected the traditions of various ethnic groups in the country, what provision was made to preserve their culture, and what were the consequences of fostering the process of nation-building while guaranteeing the identity of ethnic groups." *Id.*, para. 106.

[138] 37 UN GAOR Supp. (No. 18), para. 162, UN Doc. A/37/18 (1982) (an apparent inconsistency between Panamanian policies of integrating indigenous groups and of maintaining geographically distinct zones for them).

[139] In the case of Colombia, the Committee requested information

> regarding the indigenous population living in the reservation lands . . . the Government's land policy, the legal status of reservations, whether the indigenous population had the right to acquire real property elsewhere in Colombia and dispose of it at will, . . . development of reservation lands, . . . how the rights of the indigenous population were protected if a reservation was used for a national development project, whether

land use and redistribution policies, since the latter may stimulate the dispersal of racial groups and a consequent loss of cultural identity.[140] The conflict between guaranteeing economic rights and preserving traditional ways of life may often be irreconcilable.[141] Such forces as industrialization, population growth, the depletion of resources and the introduction of new agricultural techniques require adaptation, which erodes cultural identity unless, perhaps, the government resorts to a policy of territorial grants.[142] If Article 2(2) had been more carefully worded, it still might not have ensured the equalization of rights among ethnic groups without loss of cultural identity, but the present text exacerbates the difficulties through its lack of precision and standards.

VI. The Exception Based on Citizenship

Article 1(2) provides an exception to the applicability of the Convention that is overly broad. It allows state parties to make "distinctions, exclusions, restrictions or preferences . . . between citizens and non-citizens." Article 1(3) states that nationality, citizenship or naturalization provisions of a particular state may not discriminate against any particular nationality, but no provision prohibiting discrimination against particular nationalities is made with regard to other matters. Under the wording of Article 1(2), a state discriminating on the basis of race or ethnic origin may try to claim that the measures it has taken are permissible because they are based upon alienage, since members of a given ethnic group may also be noncitizens. Such claims would be critically scrutinized by the Committee as to whether discrimination against a particular nationality on grounds of race[143] was involved. But given the difficulty of establishing that racial factors were implicated (e.g., in the case of a mass expulsion of aliens who happened to belong to a different ethnic or tribal group), a more careful formulation, placing upon the state the burden of demonstrating that its discriminatory action was based *exclusively* upon alienage, would have been preferable.

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the indigenous population was permitted to migrate from its reservation land, and, if so, whether it lost its rights to the land from which it had emigrated.

39 UN GAOR Supp. (No. 18), para. 131, UN Doc. A/39/18 (1984).

[140] 31 UN GAOR Supp. (No. 18), para. 226, UN Doc. A/31/18 (1976) (with regard to the percentage of Ecuadoran Indians who had benefited from Ecuadoran agrarian reform); 37 UN GAOR Supp. (No. 18), para. 102, UN Doc. A/37/18 (1982) (has Fiji reserved for specific racial groups land leased by the Government, and what was the traditional or tribal basis for such leases?).

[141] The different policies followed by some Latin American governments on these questions—an amalgam of the various races vs. integration of ethnic groups into the body politic while preserving their respective ethnic characteristics—were noted in 31 UN GAOR Supp. (No. 18), para. 234, UN Doc. A/31/18 (1976).

[142] 33 UN GAOR Supp. (No. 18), para. 300, UN Doc. A/33/18 (1978) (Brazilian policy of gathering the indigenous Amazon groups into certain areas of the country where they could live in conformity with their traditions or, if they so desired, strengthen their contacts with the outside culture).

[143] *See, e.g.*, 28 UN GAOR Supp. (No. 18), para. 63, UN Doc. A/9018 (1973).

The use of the citizenship exception as a pretext for discrimination could thus have been deterred.

The legal situation regarding the scope of protected persons is further complicated by the broad statement in Article 5 guaranteeing the rights of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, "notably" in the enjoyment of certain enumerated rights. The drafting of the Convention and of Article 5 has been criticized as inadequate even by the members of the Committee.[144] But Article 5—which was discussed in section III above—must be interpreted in a manner consistent with the Convention as a whole, including Article 1(2). Arguably, then, despite the broad language of Article 5, state parties may limit their obligations under Article 5 to citizens if this limitation is not a pretext for racial discrimination. Other human rights instruments permit the restriction of rights on the basis of citizenship, but the scope of the permissible restrictions is circumscribed.[145] Could it thus be argued that distinctions applied to noncitizens are beyond the purview of the Convention, and outside the competence of the Committee, even when the rights denied pertain to security of the person, protection by the state against violence and civil rights generally,[146] rather than to political rights[147] or freedom of movement[148] with regard to which aliens are in a different position?

Members of the Committee have tried to temper the severity of the restrictive interpretation, claiming that while political and economic rights may be limited on the basis of alienage, "fundamental" or civil rights may not be so limited.[149] As regards economic rights, it can perhaps be argued that economic constraints may justify limiting some entitlements (such as welfare or health care) to citizens, but limiting employment-related benefits would not be supportable under this rationale. Some members of the Committee have gone further by arguing, for instance, that aliens should receive "national invalidity and widows' pensions" on the same basis as citizens, whether or not there were bilateral agreements providing for such rights;[150] and by questioning the adequacy of educational facilities for children of foreign workers.[151] On the other hand, some members have not regarded distinctions made among noncitizens pursuant to bilateral or regional economic agreements as violations of the Convention

[144] *Id.*, para. 61. For studies of Article 5, see Partsch, *supra* note 17; Buergenthal, *supra* note 17, at 208–11.

[145] Art. 21, Universal Declaration, *supra* note 36 (political rights and equal access to public service reserved to citizens); Art. 2(3), Economic Covenant, *supra* note 36 (developing countries permitted to make distinctions with regard to economic rights of non-nationals).

[146] McKean observes that it is unfortunate that restrictions on aliens were not made more selective and that there is no redress under the Convention for restrictions based upon lack of citizenship. W. MCKEAN, *supra* note 17, at 158. *But see* 34 UN GAOR Supp. (No. 18), para. 136, UN Doc. A/34/18 (1979).

[147] *See* 28 UN GAOR Supp. (No. 18), paras. 61–62, UN Doc. A/9018 (1973).

[148] *See id.*, para. 59.

[149] *Id.*, paras. 61–62.

[150] 34 UN GAOR Supp. (No. 18), para. 386, UN Doc. A/34/18 (1979).

[151] *Id.*, para. 348.

if the agreements, and not race or ethnicity, are the basis for the differential treatment.[152] Despite the broad personal reach of Article 5, differential treatment of citizens of different states, as when arising from the application of the most-favored-nation clause, has been seen as legitimate.[153]

VII. Individual Petition and Competent Internal Bodies

Article 14 creates a right of petition for individuals or groups of individuals within the jurisdiction of a state party that has made a declaration recognizing the competence of the Committee to receive and consider such communications. The Committee is authorized to make suggestions and recommendations concerning these communications and is not confined to making a statement of its views.[154] In accordance with Article 14(9), upon the tenth declaration made by a state party, the procedure outlined in Article 14 entered into force on December 3, 1982.[155]

In 1983 the Committee considered draft provisional rules of procedure governing the Committee's discharge of its responsibilities under Article 14.[156] The meaning of that article has thus become an important matter. An interesting question of interpretation arises from the wording of Article 14(2) and the relationship of that provision to other provisions of Article 14. Article 14(2) provides:

> Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

This wording suggests that the existence of a body is optional. Article 14(5), however, provides that "[i]n the event of failure to obtain satisfaction

[152] 28 UN GAOR Supp. (No. 18), para. 64, UN Doc. A/9018 (1973). Regarding the relationship between the Convention and other human rights instruments, see *id.*, para. 62. Buergenthal argues that

> if a state is under an international obligation, by virtue of its ratifications of the Covenants, to ensure the enjoyment of a right that is also listed in article 5 of the Convention, and if the state's failure to do so has more adverse consequences for individuals belonging to a racial minority than for the rest of its population, a violation of the Convention might be made out.

Buergenthal, *supra* note 17, at 211.

[153] Partsch, *supra* note 17, at 228.

[154] Article 14(8) of the Convention is thus different from Article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights, GA Res. 2200, 21 UN GAOR Supp. (No. 16) at 59, UN Doc. A/6316 (1966).

[155] 38 UN GAOR Supp. (No. 18), para. 23, UN Doc. A/38/18 (1983). The Committee has already commenced considering communications under Article 14. 39 UN GAOR Supp. (No. 18), para. 573, UN Doc. A/39/18 (1984).

[156] 38 UN GAOR Supp. (No. 18) at 7–13, 138–44, UN Doc. A/38/18 (1983).

from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months." How can the procedure be put into operation if a particular state, invoking the optional character of Article 14(2), has neither established nor indicated a "body"?

Article 14(7)(a), which provides that the Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available local remedies, except where the application of the remedies is unreasonably prolonged, makes no mention of either the "body" or the 6-month period. Because of concern that without the establishment of the "body" the procedure outlined in Article 14 could not be put into operation, an attempt has been made in the Committee to interpret Article 14(2) as requiring the existence of a body.[157] There is, however, no merit in that interpretation.[158] It should obviously be left to states to decide how to handle complaints of racial discrimination in their domestic legal systems. Some countries may feel that the complexity of such complaints necessitates the involvement of various organs, depending upon the subject (e.g., housing or employment) or the various competent levels of government (e.g., federal, provincial, municipal).

The practical problems arising from the deficient drafting of Article 14 have been largely resolved by the Committee's Provisional Rules of Procedure. Rule 90(f) (now 91(f)) provides that the Committee or its working group shall ascertain "[t]hat the communication is, except in the case of duly verified exceptional circumstances, submitted within six months after all available domestic remedies have been exhausted, including, when applicable, those indicated in paragraph 2 of article 14."[159] Rule 90(e) (now 91(e)) establishes the broader principle that the Committee should ascertain whether the individual has exhausted all available domestic remedies, including, when applicable, those mentioned in Article 14(2), except when the application of the remedies is unreasonably prolonged. The Committee's Rules of Procedure, by making it possible for the petition system to function without burdening states with obligations not dictated by the text of the Convention, provide a practical resolution of the problems created by the lack of textual clarity.

[157] It was thus argued that "while it was true that the word 'may' was used in that paragraph, it was the 'establishment' or 'indication' of that body that was optional, and not its existence." 32 UN GAOR Supp. (No. 18), para. 124, UN Doc. A/32/18 (1977).

[158] This interpretation ignores the clear meaning of the text. The word "may" was used to indicate the optional nature of the procedure. N. LERNER, *supra* note 4, at 84. Obviously, the "body" cannot exist unless it is "established" as a new entity, or it preexisted and is identified or indicated by the state party. The procedures outlined in paragraphs 4 and 5 are intended to ensure that local remedies have been exhausted, but the existence of such remedies need not depend upon the existence of the "body"; other judicial or administrative forums providing such remedies may exist.

[159] Procedure for Considering Communications from Individuals under Article 14 of the Convention, 38 UN GAOR Supp. (No. 18) at 138, 141–42, UN Doc. A/38/18 (1983). For the current Rules of Procedure, see UN Doc. CERD/C/35/Rev.2 (1984).

VIII. Concluding Observations

The Convention is a primary international human rights instrument because of both the crucial nature of its subject and the exceptionally large number of states that have become parties to it. This study has explored only a limited number of questions; many others merit consideration, e.g., whether Article 9 has established a viable system of reporting or whether it has created a reporting burden that exceeds the administrative capacity of most states, especially if account is taken of reporting obligations under other human rights instruments.[160]

The work of the Committee has proved to be a useful lighthouse, illuminating some of the important issues that have emanated from implementation of the Convention. The Committee has often ventured into controversial areas in attempting to advance observance of the basic norms of the Convention. Composed of experts nominated and elected by state parties in accordance with Article 8, the Committee, not surprisingly, has reflected and given strong support to values held by the majority of the international community.

Like other human rights instruments, the Convention deserves praise for some of its provisions but only mixed reviews for others. Some provisions, such as the "effect" clause of Article 1(1) and the "affirmative action" clauses, are important and appear to move in parallel directions to U.S. civil rights law. In some areas, the Convention advances admirable objectives, e.g., in seeking the elimination of racist theorizing. In many respects, it establishes significant and desirable goals and objectives that merit the support of the international community. But a number of provisions suffer from a lack of textual clarity. Some provisions create serious conflicts with the rights of freedom of expression, association and privacy. Indeed, the Convention reaches far into the area of private life. It creates substantial difficulties for democratic countries in which these rights are valued and protected by constitutions, statutes and traditions. Unfortunately, such countries can comply with their Convention obligations only by resorting to reservations; they are rather freely allowed by Article 20(2), which requires objections by two-thirds of the state parties to determine that a reservation is "incompatible or inhibitive." It has been argued that "[i]n the absence of a definitive judicial ruling [by the International Court of Justice, under Art. 22 of the Convention] on the admissibility of the reservation in question, the State party concerned might be asked [by the Committee] to withdraw its reservation";[161] but if to "ask" implies anything more than "appeal," this appears to go beyond the Committee's powers under the Convention. Some state parties that could have availed themselves of the right to make reservations so as to

[160] Meron, *Human Rights—Effective Remedies* (Remarks), 77 ASIL Proc. (1983, forthcoming); *see also* UN Doc. A/39/484, paras. 16, 21–22 (1984).

[161] Inglés, *supra* note 17, para. 224. The UN Secretariat has advised the Committee, correctly, that even a unanimous decision by the Committee that a reservation is unacceptable would have no legal effect and that the Committee has no authority but to take into account the reservations made by state parties. *Id.*, para. 206.

remain within the framework of the Convention without actually having to implement some of its normative provisions have not gone to the trouble of doing so, sometimes perhaps because of a desire to avoid highlighting their difficulties or because of a cynical attitude towards international human rights commitments. Thus, although only a small minority of state parties have made reservations to Article 4, most states have not carried out their obligation under that article to adopt the necessary implementing legislation.

The tension between certain norms stated in the Convention and some of the rights with which it appears to conflict reflects divergent community priorities and important societal differences, especially when the reality and immediacy of danger to the public peace posed by racist organizations and theories must be assessed and the rights of expression, association and privacy are involved. The Convention requires that policies that perpetuate racial discrimination be changed, but it does not furnish adequate guidance about permissible restraints on implementation or balancing considerations that may properly be invoked by state parties. Like other human rights instruments, the Convention is occasionally drafted in such general terms as to make its application to specific cases difficult.[162]

Several crucial provisions of the Convention suffer from deficient drafting. Some of these deficiencies result from the fact that the definition of racial discrimination was not adjusted to the operative provisions after the latter were drafted. The speed with which the Convention was considered and adopted, the robustness of the political forces that pushed its formulation and adoption, and perhaps a certain impatience with the niceties of legal drafting are among the factors that underlie some of the problems discussed in this study. The imperfect text that resulted, of course, reflects the political issues and realities of the United Nations. It would be simplistic to expect that difficulties due to these factors could have been avoided through better legislative techniques. But some, if not all, of the Convention's weaknesses could have been avoided through better legislative techniques and skills, especially where there was no political reason for the language selected and the inadequate drafting.

The United States[163] and other governments have rightly criticized the UN human rights lawmaking process.[164] Here one can only speculate whether, for a highly political subject and in a politicized environment, resort to the legislative techniques followed by the International Law Commission,[165] the United Nations Commission on International Trade

[162] *See* Greenberg, *supra* note 17, at 307, 318, 330; Lillich, *supra* note 37, at 115, 121.

[163] Statement by Jerome J. Shestack in the Third Committee of the General Assembly, *summarized in* UN Doc. A/C.3/35/SR.56, at 12–14 (1980).

[164] A detailed critique of this process is outside the scope of this essay. *See generally* Meron, *Norm Making and Supervision in International Human Rights: Reflections on Institutional Order*, 76 AJIL 754 (1982); Alston, *Conjuring up New Human Rights: A Proposal for Quality Control*, 78 AJIL 607 (1984).

[165] On the mandate and legislative techniques of the ILC, see 2 REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS, UN Doc. ST/LEG/SER.B/21, at 183–223 (prov. ed. 1982).

Law[166] or the International Labour Organisation[167] would have produced a significantly better product.

In evaluating the Convention, it is ultimately necessary to distinguish between several different problems. One is deficient drafting. Another is policies with which we may disagree but which faithfully reflect the political wishes of the majority, e.g., with regard to the value of the freedom of speech, association or private life in relation to other values. Third, there is the problem of the Convention's far-reaching goals, some of which do not lend themselves to speedy and full implementation even in developed and sympathetic countries. It has already been observed that the Convention was intended to be, in its operative provisions, a "maximalist"[168] instrument. Perhaps the majority of the United Nations wanted to adopt an ambitious set of goals, a program, without worrying too much about the prospects for full implementation in the immediate future. *Demander le plus pour obtenir le moins.* Some observers would say that this breeds disrespect for the law. But others would maintain that laws not only should reflect the mores of the community, but should be a catalyst for progress, for ever higher standards; that they should lead, not follow. There is, of course, constant tension and interaction between the behavior of the community and its norms of conduct. Pollock has observed that to be respected, law must express, on the whole, the conscience of the community.[169] Law can either lag behind public opinion or be in advance of it. Rules of law may elevate the standard of current morality: "The moral ideal present to lawgivers and judges, if it does not always come up to the highest that has been conceived, will at least be, generally speaking, above the common average of practice; it will represent the standard of the best sort of citizens."[170] Similarly, Professor Schachter, discussing De Visscher's statement that custom is established not only through "counting the observed regularities, but . . . weighing them in terms of social ends considered desirable," observes that governmental lawmaking conferences do not operate only through an inductive process, but include "as a necessary element a teleological factor which distinguishes the acceptance of certain patterns of conduct as law from the mere observation and recording of regularities of behaviour . . . . a collective judgment of the states . . . which implicitly recognizes the contemporary social value of the rules in the text."[171]

Was the Charter of the United Nations adopted by a community that really practiced the values stated in it? Or was it rather a code of *better* conduct of nations? To pave the way for greater respect for human rights

[166] On the mandate and legislative techniques of UNCITRAL, see *id.* at 224–36.

[167] On the mandate and legislative techniques of the ILO, see *id.* at 237–58.

[168] Schwelb, *supra* note 4, at 1057.

[169] F. POLLOCK, JURISPRUDENCE AND LEGAL ESSAYS at xlii (A. Goodhart ed. 1978).

[170] *Id.* at 26.

[171] Schachter, *The Nature and Process of Legal Development in International Society,* in THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW 745, 777 (R. Macdonald & D. Johnston eds. 1983).

and human dignity,[172] human rights instruments must be more advanced than the mores of the community. It is reasonable for the Convention to establish standards that are more enlightened than those actually followed by most states. But how far in advance should human rights instruments be? Idealism should not be confused with utopia. Too great a distance will discourage acceptance and cause a proliferation of reservations. Whenever human rights instruments are drafted, this question deserves to be on the "conceptual agenda" of the lawmakers.

[172] *See generally* Schachter, *Human Dignity as a Normative Concept*, 77 AJIL 848 (1983).

Annex 1012

W. Wolfrum, 'The Committee on the Elimination of Racial Discrimination', 3 Max Planck Yearbook of United Nations Law 489 (1999)

The Committee on the Elimination of Racial Discrimination

Rüdiger Wolfrum

I. Origins, New Challenges

The Committee on the Elimination of Racial Discrimination (CERD) was established in 1970; it has the function to monitor States Parties' implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention).[1] The Convention provides for four functions of the Committee: to examine States Parties' reports (article 9); to consider inter-State communications (arts 11–13); to consider individual communications (article 14); and to assist other UN bodies in their review of petitions from inhabitants of Trust and Non-Self Governing Territories and of reports of those territories (article 15). The Committee has further developed a mechanism on early warning and urgent procedure.

CERD was the first special organ to implement a human rights treaty. As such it was able to pave the way for all following human rights treaty bodies, such as the Human Rights Committee under the

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1 UNTS Vol. 660 No. 9646; as to the drafting history of the Convention see E. Schwelb, "The International Convention on the Elimination of All Forms of Racial Discrimination", *ICLQ* 15 (1966), 996 et seq.; N. Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination*, 2nd edition, 1980; M. Banton, *International Action Against Racial Discrimination*, 1996, 50 et seq.; K.J.Partsch, "Elimination of Racial Discrimination in the Enjoyment of Civil and Political Rights", *Tex.Int'lL.J.* 14 (1979), 191 et seq.

International Covenant on Civil and Political Rights. As of 1999 the Convention had been ratified by 159 States.

One reason for starting the process for the drafting of what later became the International Convention on the Elimination of All Forms of Racial Discrimination were manifestations of anti-Semitism and other forms of racial and national hatred and religious and racial prejudices of a similar nature.[2] When the Convention was adopted there was neither a common perception about the definition of racial discrimination nor about the reasons for this phenomenon. This is, to a certain extent, still the case amongst States Parties to the Convention and even among the members of the Committee. However, this does not impede the functioning of the Committee.

The different approaches at the time of the drafting of the Convention are, to a certain extent, reflected in its Preamble. Reference is made to the condemnation of colonialism and the practices of segregation. It is stressed that the Declaration of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (A/RES/1514(XV)) had affirmed the necessity of bringing them to a speedy and unconditional end. Hence, the objective of the Convention is connected with the process of decolonization. This, however, is only one facet.

The Preamble further states that the doctrine of superiority based on racial differentiation is, apart from being dangerous, scientifically false, morally condemnable and socially unjust. This is directed against ideologies such as Nazism and Fascism in their historical and modern forms as well as against comparable modern ideologies based upon or using racism for the promotion of their political objectives. This aspect has lost nothing of its validity. The Preamble further states that racial discrimination is "an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples". Developments in the recent years have proven this to be correct to an extent probably not anticipated when the Convention was drafted. By referring to the potential of racial discrimination as a threat to peace and security a connection to Article 39 of the United Nations Charter has been established, although it has not yet been explicitly used as such by the Security Council. The most important reason for the elimination of racial discrimination is somewhat hidden in the Preamble, namely that

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2 Schwelb, see note 1, 997; M. Banton, "Effective Implementation of the UN Racial Convention", *New Community* 20 (1994), 475; Banton, see note 1, 54.

racial discrimination is a violation of human dignity. This puts the Convention within the context of other human rights instruments, in particular, the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights. This latter aspect deserves to be highlighted in the work of the Committee as well as in the reports submitted by States Parties. Occasionally a tendency exists to emphasize the protection of certain ethnic groups and the discussion between the Committee and the States Parties then sometimes becomes limited to the question as to whether such groups exist or are distinct compared to the dominant population as to criteria referred to in article 1 para.1 of the Convention or not.

The reason for its final approval and its comparatively quick entry into force was that the Convention was perceived by many States Parties as a mechanism directed against apartheid and comparable policies.[3] Although the system of apartheid has been dismantled, the Convention has nothing lost of its relevance for reasons already addressed at the time when the Convention was drafted and reflected in the Preamble. Evidence to that extent are the conflicts which have amounted to genocide in the recent years. Another reason why the Convention soon gained wide acceptance may have been that already the United Nations Charter formulates the rule of non-discrimination as a directly binding principle.[4]

In spite of the attempts which have been made to abolish policies and practices based upon or promoting xenophobic and racist motivations and to counter theories based upon or endorsing such practices, these theories, policies and practices are still in existence or even gaining ground again or taking new forms or both. A serious new form of racism is reflected in the so-called policy of "ethnic cleansing".

For the reason that the manifestation of racism and xenophobia is gaining ground the international community has renewed its efforts to combat racism, racial discrimination, xenophobia and related forms of intolerance. The World Conference on Human Rights has called for the

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3 See in this respect Lerner, see note 1, 40 et seq.; as to the new developments see A/RES/49/146 of 23 December 1994, Third Decade to Combat Racism and Racial Discrimination.

4 The International Court of Justice has stated that: "to establish ... and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter", ICJ Reports 1971, para. 131.

elimination of racism and racial discrimination as a primary objective for the international community.[5] The General Assembly of the United Nations has proclaimed a Third Decade to Combat Racism and Racial Discrimination, from 1993 to 2003.[6] It has adopted a programme to achieve measurable results in reducing and eliminating discrimination through specific national and international actions.[7] The Commission on Human Rights has decided to appoint a Special Rapporteur on contemporary Forms of Racism, Racial Discrimination, Xenophobia and related Intolerance.[8] Subsequently the Commission made the mandate of the Special Rapporteur more explicit by requesting him to examine incidents of contemporary forms of racism, racial discrimination, any form of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-Semitism, and related intolerance.[9] The reason for

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5 A/CONF. 157/24 (Part I), Chapter III.

6 A/RES/48/91 of 20 December 1993.

7 A/RES/49/146 of 7 February 1995, Annex. The proclamation of the First Decade on Action to Combat Racism and Racial Discrimination coincided with the 25th anniversary of the Universal Declaration of Human Rights (A/RES/2919 (XVII) of 15 November 1972). In launching the First Decade, the General Assembly defined the goals to be the promotion of human rights and fundamental freedoms for all, without distinction of any kind on grounds of race, colour, descent or national or ethnic origin, especially by eradiction of racial prejudice, racism and racial discrimination. In A/RES/38/14 of 22 November 1983 the General Assembly approved the Programme of Action for the Second Decade.

8 CHR Resolution 1993/20 of 2 March 1993.

9 CHR Resolution 1994/64 of 9 March 1994; see also report of the Special Rapporteur Doc.E/CN.4/1995/78, para.3. In his report A/49/677 to the General Assembly the Special Rapporteur defined the terms of his mandate as follows: "Racism is a product of human history, a persistent phenomenon that recurs in different forms as societies develop, economically and socially and even scientifically and technologically and in international relations. In its specific sense, racism denotes a theory, which purports to be scientific, but is in reality pseudo-scientific, of the immutable natural (or biological) inequality of human races, which leads to contempt, hatred, exclusion and persecution or even extermination" (6/7). Defining "racial discrimination" the Special Rapporteur refers to article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (8). "Xenophobia is defined as a rejection of outsiders... Xenophobia is fed by such theories and movements as "national preference", "ethnic cleansing", by exclusions and by a desire on the part of communities to turn inward and reserve society's benefits in order to share them with people of the same culture or the same level of development."(9). "Negrophobia is the

this action is the "growing magnitude of the phenomena of racism, racial discrimination, xenophobia and related intolerance in segments of many societies and the consequences for migrant workers." Finally, the Sub-Commission on Prevention of Discrimination and Protection of Minorities has suggested that a world conference should be held against racism, racial and ethnic discrimination, xenophobia and other contemporary forms of intolerance.[10]

In general more effective and sustained measures at the national and international level are necessary to fight all forms of racism and racial discrimination. CERD is just one element within this struggle. It has to adjust its working methods to the new challenges; first steps have been taken to that extent.[11]

II. Composition

CERD is composed of eighteen independent experts who serve in their personal capacity.[12] The composition of the Committee reflects the principle of equitable geographical distribution and the representation of different forms of civilization as well as of principal legal systems. When the Committee first assembled, five of its members where nationals belonging to the Asian group, four were from Africa, two from Latin America, five from Eastern Europe and two from Western Europe. Since then the understanding has developed that four of the members should come from Asia, four from Africa, three from Latin America, three from Eastern Europe and four from Western Europe. However, since this distribution is not mandatory the distribution of seats may vary if there is disagreement in the regional groups about whom to present. Such disagreement or lack of co-ordination has resulted in the last sessions in a shift in the membership of the Committee

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fear and rejection of Blacks... The African slave trade and colonization have helped to forge racial stereotypes... " (9). "anti-Semitism ... can be considered to be one of the root causes of racial and religious hatred..." (10).

10 Recommendation 1994/2.

11 See report of CERD to the General Assembly Doc.A/48/14, 126–127; Report of the Secretary-General, *Efforts made by the United Nations Bodies to prevent and combat Racism, Racial Discrimination, Xenophobia and related Intolerance*, Doc.E/CN.4/Sub.2/1994/12 of 25 July 1994.

12 Article 8 para.1 of the Convention.

to the disadvantage of the African group. At present, since the elections in 1998, only one of the experts comes from Africa, which thus is highly underrepresented, four from Asia, four from Latin America, which is over represented, three from Eastern Europe and six from Western Europe and Others, which is clearly over represented.

The experts have different professional backgrounds; some are active or retired diplomats, others are civil servants and others are professors. Over the years the share of experts with a professional academic background has increased. This plurality of experience and in particular the fact that the Committee is not only composed of lawyers has always been regarded as a positive factor of the Committee.

Experts serve in their personal capacity, a principle which is reiterated in the solemn declaration each expert has to make after his or her election or re-election. Nevertheless, the independence of experts has turned out to be a problematic issue in the past[13] and it still is. Since it is a prerogative of States Parties to nominate experts for election they exercise a certain influence upon the composition of the Committee. This reflects that the Committee is not a court, but a body combating racial discrimination by political rather than by legal means although the experts have to make the same declaration as required of the judges of the ICJ. At the 49th Session the question of the independence of experts was brought up from a particular point of view. Several experts challenged the until then prevailing practice of the Committee that experts should not participate in the discussion of their home State's reports although this possibility would give an advantage to States Parties whose nationals serve as experts. It has been argued that under the terms of the Convention the members of the Committee are chosen not only for their impartiality but also in consideration of geographical distribution and the representation of different forms of civilization and the principal legal systems. This, however, does not mean that experts may act as agents of their States when discussing their reports or even take part in formulating the respective Concluding Observations. This

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13 See the examples given by Banton, see note 1, 100–101; K.J. Partsch, "The Committee on the Elimination of Racial Discrimination", in: P. Alston (ed.), *The United Nations and Human Rights: A Critical Appraisal*, 1992, 339, (340/341) — The Committee has refused two proposals that experts unable to attend Committee sessions be allowed to send alternates and it has refused to recognize a State Party's notification that an expert had resigned. The Committee held that experts serving in their personal capacity must personally submit their resignations.

issue, which touches upon the self-understanding of the Committee and the role of experts, was further discussed in the Committee at its 50th Session. The Rapporteur of the Committee, Mr. Chigovera, submitted a draft amendment to the Rules of Procedure of the Committee according to which "as a general rule" experts would not participate in the deliberation of the reports of the State Party of which they are nationals. This draft met with the objection of several of the experts although the majority endorsed it.

Apart from that the question of independence of experts occasionally is invoked when an expert relies on sources, particularly from non-governmental organizations, which others regard as one-sided.

III. The Notion of the Term Discrimination and the Practise of the Committee

All international human rights instruments dealing with the protection of human rights either on the universal or the regional level contain a provision prohibiting racial discrimination. Compared to the Convention they either cover specific aspects only or are of a more general nature.

The first international treaty to deal with one particular aspect of racial discrimination is the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. According to its article II genocide means specific acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group. However, there are very few occasions in which the Genocide Convention has been invoked on the international or national level, so far. This will change with the intensification of the jurisprudence of the International Criminal Tribunals for the prosecution of the crimes committed in former Yugoslavia and Rwanda and the actual establishment of the International Criminal Court.[14] Since discrimination in respect of employment and occupation is common, the ILO already in its Declaration of Philadelphia affirmed in 1944 that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. This principle was trans-

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[14] A. Zimmermann, "The Creation of a Permanent International Criminal Court", *Max Planck UNYB* 2 (1998), 169 et seq.

formed into an international treaty by ILO Convention No. 111- Concerning Discrimination in Respect of Employment and Occupation of 15 June 1960. It prohibits any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The Convention against Discrimination in Education adopted on 14 December 1960 by the General Conference of UNESCO follows the approach adopted by the ILO Convention No. 111 and prohibits any discrimination based on race, colour, sex, language, economic condition or birth which has the purpose or effect of nullifying or impairing equality of treatment in education. Further specific aspects of racial discrimination are dealt with in the International Convention on the Suppression and Punishment of the Crime of Apartheid, and in the International Convention against Apartheid in Sports. Finally, the prohibition of racial discrimination is enshrined in article 3 of the Convention relating to the Status of Stateless Persons, 1954; article 3 of the Convention relating to the Status of Refugees, 1950; article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; article 2 of the Convention on the Rights of the Child, 1989; and in article 85, para. 4, of the Additional Protocol (Protocol I) to the Geneva Conventions of 12 August 1949 on the Protection of Victims of International Armed Conflicts, 1977.

The two Human Rights Covenants of 1966 follow a more general approach. They copied the catalogue of the Universal Declaration verbatim; States Parties to the Covenants undertake to guarantee that the rights enunciated in the Covenants will be exercised without discrimination of any kind as to race, colour, sex, language etc.

The Convention goes beyond the realm of most other human rights treaties since it not only obliges States Parties to refrain from racial discrimination (article 2 para.1 lit.(a),(b), article 3, article 5 lit.(a),(b),(c),(d) of the Convention) but also to take positive steps on the legislative and administrative level to ensure that the society will develop in a manner that it is free from racial discrimination or related practices. This is not always correctly perceived by States Parties when submitting their reports. It is not enough to indicate that racial discrimination is prohibited by law or even by the Constitution. They have further to indicate that individuals from various ethnic groups in fact enjoy the same rights and equally participate in the economic, social and cultural development of a State Party, that there is no incitement to racial discrimination

and that individuals or groups are protected against racial discrimination by society.

The core provision of the Convention is article 1 para.1 defining the notion of racial discrimination; paras 2 and 3 of the same article define cases when the Convention does not apply. Para. 4 deals with temporary measures and in that respect overlaps with article 2 para. 2, of the Convention. The Committee has so far not made an attempt to further specify what is meant by the notion of race as referred to in article 1 para.1, of the Convention ("... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin...").[15] In general, it was felt that there was no need to do so since the terms of reference in article 1 para.1, of the Convention are broad enough to cover all situations the Convention attempts to eliminate. In particular the Committee can resort to descent or national or ethnic origin. However, occasionally States Parties questioned whether the Convention was applicable to them at all or whether it was appropriate to refer to a particular group as falling under the scope of the Convention. For example, Mr. Lamptey asserted that Zairians were all of the same stock and there existed no racial or ethnic differences in that State Party.[16] This approach was rejected by the majority of the Committee which looked upon ethnic diversity as a means of enriching cultural life. Developments in 1998 drastically proved how wrong it was to accept the approach advanced by the government of Zaire that the population of this country was ethnically homogenous. The same approach has been taken by the representative of Burundi at the 50th, by Mexico at the 49th Session, for example, and by other States Parties particularly from Latin America and Asia. They all alleged that their population was mixed and that one could not speak of differences as of race. In particular the representative of Burundi held that the differentiation between Hutus and Tutsi was introduced by the colonial powers and did not reflect the realities of life. When India stated in its report[17] that the caste system did not fall under the jurisdiction of CERD, the majority of experts argued that since one became member of a caste by birth this was a matter of descent and therefore fell under article 1 para.1, of the Convention. Iraq has at the 50th Session objected to questions con-

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15 Banton, see note 1, 76 et seq. makes an attempt to give some sociological clarification to the notion of race.

16 See Banton, see note 1, 251.

17 CERD/C/299/Add. 3.

cerning the Arabs living in the marshes since they were Arabs and belonged to the majority of the population.

The Committee has in its majority never accepted such statements. It has referred to the broad wording of article 1 para.1 of the Convention and its General Recommendation VIII (1990) according to which individuals are generally identified as being members of a particular racial or ethnic group by way of self-identification.[18] Thus they do not depend upon objective criteria. A group may also be identified as such by the dominant population in a country although it does not regard itself as being ethnically or racially different. Apart from that reference has been made in this context by the Committee to linguistic differences or to the affiliation to a distinct religion serving as indicators for the existence of particular groups.

States Parties claiming ethnic conformity or denying the existence of particular ethnic groups often do so in order not to endanger a national policy of integration. Such integration may often take the form of enforced assimilation to a dominant group or groups which would violate the objective of the Convention.

As far as indigenous peoples are concerned many States of Latin America now rediscover the cultural heritage of their indigenous populations. CERD has frequently emphasized that it is particularly concerned with their status and prospect of development. At its 51st Session (August 1997) the Committee has adopted a General Recommendation on Indigenous Peoples adding new elements concerning their protection. Its operative part reads:

"... The Committee calls in particular upon States parties to:

a. recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

b. ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

c. provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

d. ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no deci-

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18 HRI/GEN/1/Rev.2, 1996, 92.

sions directly relating to their rights and interests are taken without their informed consent;

e. ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

The Committee especially calls upon States Parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

The Committee further calls upon States Parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention."

Although religious discrimination does not fall under the purview of the Convention, CERD has dealt with it arguing that a particular religion may be an essential element in forming a particular ethnic group. This, however, is a very sensitive issue on which the opinions of the experts differ. Whereas the often discriminatory treatment of Muslims in European countries is frequently referred to the same experts object to questions concerning the status of Christians in Muslim States. There exists however some justification for the different approaches. Muslims in Europe are by their majority immigrants or descendents of immigrants whereas Christians in Iraq, Egypt etc. have always been nationals of these States.

As already stated the Convention prohibits not only intentional but also unintentional discrimination. CERD adopted a General Recommendation to emphasize this point.[19] According to it a distinction is contrary to the Convention if it either has the purpose or the effect of impairing particular rights and freedoms. CERD stated that a differentiation of treatment would not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of

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19 General Recommendation XIV (1993), HRI/GEN/1/Rev.2, 1996, 95.

the Convention, were legitimate or fell within the scope of article 1 para.4, of the Convention.

The Committee has frequently dealt with the treatment of non-citizens although according to article 1 para.2 of the Convention it does not apply to "distinctions, exclusions, restrictions or preferences" between citizens and non-citizens. However, the Committee has held that a State Party may not discriminate against any particular nationality. Experts have questioned in this context the special treatment citizens from a European State receive in other European States and the special treatment given in some Gulf States to citizens from other Arab countries. More generally the Committee is concerned with the non-application of civil, economic, social and cultural rights to non-citizens although such application is provided for in international human rights instruments.[20] In General Recommendation XI (1993) CERD has emphasized that at least the reporting obligation applies to non-citizens.[21] It has further emphasized that article 1 para.2 of the Convention must not detract from rights and freedoms granted to non-citizens in other international instruments. In spite of this interpretation article 1 para. 2 of the Convention limits the possibilities of the Committee to react efficiently against xenophobic tendencies and policies. CERD still has to develop a working method concerning the elimination of xenophobia and related phenomena.

IV. States Parties Obligations

According to article 1 para.1 of the Convention only those discriminations are prohibited which impair the enjoyment of human rights in a field of public life. The Committee had a long discussion on this issue. It finally agreed that political, economic, social and cultural spheres of life are always to be considered to come within the scope of public life. A privatization of schools, for example, would not exempt them from the reach of the Convention.[22] Nevertheless, more work is to be done on this. For example, as far as the right to housing is concerned (article 5 lit.(e)(iii) of the Convention) does this mean that every landlord is under an obligation to accept any potential tenant regardless of race or

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20 R. Wolfrum, "International Law on Migration Reconsidered Under the Challenge of New Population Movements", *GYIL* 38 (1995), 191 et seq.

21 HRI/GEN/1/Rev.2, 1996, 94.

22 Banton, see note 1, 195.

ethnic or national origin? The majority of the Committee may argue into this direction, the implementation of such interpretation will however meet the resistance of some States Parties.

According to para.1, four types of acts may be considered discriminatory, namely distinctions, exclusions, restrictions or preferences. They shall be considered as discriminatory in the meaning of the Convention if they are based on race, or colour, or descent, or national origin, or ethnic origin.[23] Further, such acts must have the purpose of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms or have such an effect.

Under the Convention States Parties have various obligations. Such obligations differ widely as to their content. Generally speaking States Parties are under an obligation to eliminate racial discrimination as defined by the Convention. This requires the State Party to undertake four different actions, to pursue a policy of non-discrimination[24] and to undertake repressive, remedial or educational action.

Except for particular issues the Convention does not specify how this objective is to be achieved. However, States Parties are under an obligation to exhaust all their possibilities to achieve this objective, including the enactment of specific legislation. For that reason the Committee endorses the enactment of a specific racial discrimination act although such an act is not mandatory under the Convention. Whether a State Party implements the Convention through public law or private law will very much depend upon the national legal system. However, the implementation of article 4 of the Convention requires specific legislative action namely the issuing of criminal law. Often experts inquire whether the Convention has been incorporated into national law and may be invoked before national courts. Such question may be misleading. The incorporation of the Convention into domestic law does not suffice to meet the obligations under article 4 of the Convention. In consequence, the Committee has always rejected the approach of some States Parties that such incorporation would render the adoption of the required criminal law rules unnecessary. Further the question concerning the incorporation of the Convention does not adequately reflect that different means that exist of how to ensure the effective application

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23 For the drafting history see Lerner, see note 1, 28 et seq.

24 Occasionally one expert insists that such policy should find its manifestation in a public document. However, such obligation has no foundation in the Convention.

of the Convention in national law as required by international treaty law. The verbal incorporation of an international agreement into national law is but one of the means available.

According to article 2 of the Convention States Parties are under an obligation to condemn racial discrimination and to pursue a policy of eliminating racial discrimination in all its forms. Article 2 para.1 lit.(a)–(e), of the Convention contains further specification to this end. Article 3 of the Convention provides that States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction. The Committee drafted a General Recommendation in 1995 to advise States Parties that the scope of article 3 of the Convention was not restricted to measures directed against apartheid and that segregation could arise from State policy as well as other sources. Further, the General Recommendation emphasizes that article 3 of the Convention covers the action of segregation as well as the condition of being segregated.[25] Article 4 obliges States Parties to penalize certain forms of racial discrimination. In saying that certain acts shall be punishable, the Convention requires sanctions under criminal law. Actions under other articles of the Convention can be dealt with under other branches of law.[26] CERD has always focused on this obligation; it has also emphasized that article 4 of the Convention restricts the freedom of expression and association.[27] The question is whether States Parties may invoke the protection of the freedom of expression and association to avoid the implementation of the Convention[28] or whether States Parties must strike a balance between these freedoms and their duties under the Convention.[29] This is a matter of controversy in CERD.

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25 Banton, see note 1, 201/202.

26 R. Wolfrum, "Das Verbot der Rassendiskriminierung im Spannungsfeld zwischen dem Schutz individueller Freiheitsrechte und der Verpflichtung des einzelnen im Allgemeininteresse", in: E. Denninger et al. (eds), *Festschrift Peter Schneider*, 1990, 515.

27 K.J. Partsch, "Racial Speech and Human Rights: Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination", in: S. Coliver (ed.), *Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination*, 1992, 24; Banton, see note 1, 202 et seq.

28 UN Study, *Positive Measures Designed to Eradicate all Incitement to, or Acts of, Racial Discrimination*, CERD/2, 1986.

29 Partsch, see note 27, 24.

Article 5 of the Convention lists the human rights to be guaranteed without discrimination. Almost all of these rights are covered by the two Covenants, hence the jurisdictional competences of the three treaty bodies overlap. Although CERD may deal with the enjoyment of civil and political rights as well as economic, social and cultural rights, it is restricted in this respect since it may do so only under the aspect of intentional or *de facto* discrimination. However, in this regard it has to play an important role particularly as far as the implementation of economic and social rights against a private counterpart are concerned. The rights to work, to free choice of employment etc. (article 5 lit.(e)(i) of the Convention), for example, are amongst the most important economic rights. They require enforcement against private as well as public employers. Article 5 lit.(e)(iii) of the Convention provides that any resident in a country shall enjoy any right to housing without discrimination as to race or ethnic origin. The implementation of these rights raises as already mentioned problems in practice. Although States Parties often provide for guarantees against dismissal of work on racial motives there is less protection, if any at all, against the denial of housing or work by private landlords or employers.

In the practice of the Committee the border line between criticizing discriminatory practices or the human rights situation in a given State Party is not always fully respected. Some members have taken the opportunity to inquire about the implementation of human rights standards in general. In 1996 CERD adopted a General Recommendation interpreting its functions under article 5 of the Convention.[30]

Article 6 obliges States Parties to establish a judicial system which effectively protects against any act of racial discrimination. This provision serves as a basis for CERD to discuss the judicial system of States Parties. This is, however, justifiable. An effective protection against racial discrimination requires the availability of judicial recourse. In respect of non-dominant groups it further requires that they may address the judges in their language or, at least, that the State Party provides for interpretation. The Committee equally inquires as to whether judges receive a particular training in respect of such groups. Finally, in dealing with an individual complaint from the Netherlands the Committee has indicated that the obligations under the Convention may have an impact upon the criminal procedure of States Parties. In effect the Committee did not accept that prosecution might exercise its discretionary power in a manner that in practice would condone racist offences which

30 See above.

the State Party is obliged to prosecute under article 4 of the Convention.[31]

Finally, article 7 of the Convention requires States Parties to adopt measures in the field of teaching, education, culture and information which combat racial prejudices and promote understanding and tolerance. The reports of States Parties on that aspect are very often without substance. In this respect a methodology of CERD still needs to be developed. To elaborate an approach to this end may be CERD's contribution for the Third Decade. In its 14th periodic report[32] Iceland has provided for some rather unprecedented information concerning the implementation of article 7 of the Convention. The measures taken range from the wide publication of international human rights treaties, particularly in schools, over the training of immigrant children in their mother tongue to courses and programs in schools designed to increase tolerance and understanding for foreigners.

Unlike both Covenants, the Convention emphasizes the duties of States Parties rather than the rights of individuals or groups.[33] Nevertheless, article 14 of the Convention clearly indicates that individuals or groups enjoy rights under the Convention; otherwise the individual complaint procedure established by the Convention would be meaningless.

Apart from those obligations referred to so far States Parties are in accordance with article 9 of the Convention under the obligation to regularly report on the implementation of the Convention. The basic duty on reporting is expressed in article 9 para.1 of the Convention. The wording of this provision contains just the bare minimum on the content of reports; it is different from the one in other human rights treaties which were adopted later. The Convention additionally encourages States Parties also to report about "factors and difficulties affecting the degree of fulfillment of obligations". According to the International Covenant on Civil and Political Rights it is an obligation to provide for such information. However, in practice these differences in the reporting obligations have little impact.[34] The intensity of the monitoring ef-

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31 Case 4/1991, L.K. v. The Netherlands.

32 CERD/C299/Add.4, 29 April 1996.

33 Partsch, see note 13, 341.

34 V. Dimitrijevic, "The monitoring of human rights and the prevention of human rights violations through reporting procedures", in: A. Bloed, L. Leicht, M. Nowak, A. Ross (eds), *Monitoring Human Rights in Europe*, 1993, 1 et seq., (12).

fect of reports depends nearly entirely upon depth of the oral exchange of views. The quality of the dialogue between the State Party concerned again is a matter of the preparedness of the State Party to engage in such a dialogue, the preparedness of the Committee for the particular State Party and the time available for the dialogue.

V. Reporting System

The Committee concentrates to a higher degree than other treaty bodies on the assessment of periodic reports of States Parties. Since 1996 it has dealt with more than ten reports per session. Other treaty bodies such as the Human Rights Committee or the Committee on Economic, Social and Cultural Rights only consider five each. Nevertheless, the time spent on each report is not much less than in these two bodies, namely two meetings, occasionally one meeting and a half. This means that most of its time the Committee is engaged in a dialogue with States Parties or in formulating Concluding Observations. The Committee can only do so since it has very few individual complaints to deal with,[35] and refrains from engaging itself in other activities such as the preparation of the Third Decade. Equally, very little time is devoted to the drafting of General Recommendations. Finally, no time at all is spent on the preparation for future sessions. This is all left to the country Rapporteurs. In fact, to assess so many reports in a three week session relies very much upon the introduction of the country Rapporteur system. It has enabled the Committee to make an indepth study[36] which again establishes the basis for the dialogue with the State Party concerned. However, the 50th Session has shown that dealing with more than 10 periodic reports exceeds the possibilities of the Committee and, in particular, the quality of the dialogue with the State Parties. Apart from that too little time is left for dealing with reports under the urgent procedure.

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35 At the 50th Session not even half a meeting was spent on individual complaints, the time used for that purpose at the 53rd Session was only marginally longer.

36 Reports of Country Rapporteurs take between 30 minutes to one hour or more. Attempts have been made to restrict the length of the statements of Country Rapporteurs particularly by those who question the merits of such reports.

In dealing with the reports submitted by States Parties, CERD had to address several issues over the years and, by gradually deciding upon them, further developed and refined the reporting system. These issues included the question whether a State Party should be present when its own report is discussed; how to deal with overdue reports; the content of reports; the appointment of country Rapporteurs; the information which may be used by the experts when considering the reports of States Parties and the question whether CERD should formulate Concluding Observations after having finished the examination of a report. These issues are not just of a technical nature. The Committee's approach in addressing them and thereby further developing the reporting system reflects and reveals changes in CERD's perception about the objectives pursued through the reporting system.

The Convention and the Rules of Procedure give little indication about the procedure to be followed by CERD in examining reports. Over the years CERD has developed the following practice:[37] The examination of reports usually begins with an introductory statement by the representative of the reporting State. This introduction is followed by the presentation of the country Rapporteur of the Committee and the questions asked or suggestions and opinions voiced by the experts. After the experts have completed their observations and questioning, the State's representative is once again invited to take the floor. This may be followed by another round of questions and remarks from the experts and a reply from the representative of the State Party concerned. The examination of each report is concluded by the Concluding Observations which are formulated in the absence of the representative of the reporting State although in public meeting. The development of this procedure was undertaken gradually. Some of its important elements met with resistance and it was only possible to introduce them after considerable debate.

The decision to allow representatives of States Parties to be present when their reports are discussed was only taken upon recommendation of the General Assembly.[38] Only this decision has made it possible to establish a constructive dialogue between the experts and the represen-

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37 See in this respect the revised guidelines on reporting adopted by CERD on 9 April 1980, Doc.A/35/18 (1980) Annex IV as well as the consolidated guidelines for the initial part of the reports of States Parties as suggested by the Chairpersons of the Treaty Bodies Doc.A/45/636, at 18.

38 A/RES/2783 (XXVI) of 6 December 1971; Rule 64; for details see Partsch, see note 13, 354 et seq.

tatives of States Parties. Hence, it has to be regarded as one of the most important innovations concerning the working methods of the Committee. In drafting its Rules of Procedure the Human Rights Committee included a similar provision for having States' parties representatives attend its meetings.

The introduction of the system of country Rapporteurs, already referred to, which was decided upon in 1988 represents another major change in the procedure of CERD. Proposals for appointing country Rapporteurs were first advanced in 1974 and repeated at a closed meeting in 1986.[39] CERD's annual report for 1988 in paras. 21 and 24 lit.(b) described the responsibilities of a country Rapporteur as being to prepare "a thorough study and evaluation of each State report, to prepare a comprehensive list of questions to put to the representatives of the reporting State and to lead the discussion in the Committee". Later, the Chairpersons meeting recommended[40] that treaty bodies should consider the appointment of Rapporteurs.

CERD reviewed its country Rapporteur system as it stood in 1989. Its annual report, at paras. 24 and 26 lit.(d), indicated that the introduction of the system had been successful.[41]

The country Rapporteur procedure has facilitated a division of labour between members of the Committee. Apart from that, under the new procedure the Committee has often experienced commentaries of a quality that was rarely achieved under the previous procedure.

The Convention does not give clear guidance as to how CERD may react either to reports which do not meet the reporting requirements of the Convention or the Guidelines, or when a State Party has been found to have not fully met its obligations concerning the implementation of the Convention. The Committee has changed its policy in this respect over the years.

First of all the Convention does not specify which information the experts may use to assess the reports. Over a long period, CERD did not accept information provided by non-governmental organizations or by the mass media. This policy, however, has been changed following the example of other human rights treaty bodies.[42]

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39 CERD/SR. 771.

40 Doc.A/44/98, 17 para. 57 and 24 para. 91.

41 All but three experts have in the past acted as country Rapporteurs.

42 Human Rights Committee (ed.), *Manual on Human Rights Reporting*, 1991, 121.

As to the reaction to reports following its examination, the Convention does not provide the Committee with the power to reject a report. It may only "request further information" (article 9 para.1) and may make "suggestions and general recommendations" (article 9 para. 2).

In accordance with its Rules of Procedure, CERD evaluates each State's report with respect to the formal reporting guidelines, taking into account that State's previous reports. The members seek to determine: whether the information requested in earlier reports has been delivered, whether information missing in previous reports is included in the report under consideration, whether questions initially incompletely answered have now been responded to fully and whether new developments in the reporting country give rise to a need for additional information.

During its early years the Committee would conclude its examination of reports by qualifying them as satisfactory or unsatisfactory without indicating whether unsatisfactory reports lacked sufficient information or whether the reporting State had failed to comply with its substantive obligations under the Convention. In 1972, the Committee amended its Rules of Procedure[43] in order to distinguish more clearly the two phases of its evaluation.

In its recent practice CERD has asked for additional information also in cases where it felt that a State Party had not fully discharged the obligations under the Convention, thus closing again the distinction between the two stages of examining reports. In this respect, requesting further information was regarded as a kind of verdict concerning the situation in the given State Party.

Another means for CERD to express its opinion upon the situation in a given State Party are Concluding Observations. The Committee at its 39th Session (March 1991) decided that the adoption of the country Rapporteur procedure enabled it to go further[44] towards the adoption of a common statement embodying a collective opinion. Since 1992 the procedure for drafting these observations is that the country Rapporteur is asked to circulate a draft within the Committee, to take account of the comments of colleagues, and then to present at a later session a draft that could be adopted by consensus. However, the possibility of a

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43 Rule 67.

44 The previous system was criticized in the Alston Report (Doc.A/44/668, para. 134).

vote is not excluded. Initially the discussion of the Concluding Observations was undertaken in a private meeting. Since 1996 they have been discussed in public meeting. This has had the effect that experts refrained from participating in the deliberation of the Concluding Observations on those States Parties they are nationals of. This effect was intended by changing the rules on the deliberation of the Concluding Observations.

Some of the Concluding Observations adopted since then have made reference to particular General Recommendations of the Committee and at a later stage it inquired why the State Party concerned had not responded thereto. This raises the question as to the status of General Recommendations. They are not binding upon States Parties since the Committee lacks legislative power. However, they are binding the experts amongst themselves as to the interpretation and application of the Convention. As such they give an indication to States Parties how the Committee will look upon certain aspects of the Convention.

In recent years all human rights treaty bodies have encountered the problem that States parties do not meet their reporting requirements.[45] This endangers the monitoring functions of the human rights treaty bodies. CERD decided at its 39th Session (March 1991) to review the implementation of the Convention in those States Parties whose periodic reports were excessively overdue. The annual report for that year states that in the case of reports excessively overdue, the Committee "agreed that this review would be based upon the last reports submitted by the State Party concerned and their consideration by the Committee". So far, the practice of CERD has turned out to be quite successful. In some cases the States Parties concerned have taken the opportunity to submit their report. Apart from that an increasing number of States Parties have participated in the review and have thus resumed the dialogue with the Committee.

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45 See Report of the Secretary-General, *Improving the Operation of the Human Rights Treaty Bodies*, HRI/MC/1996/2, 10 et seq. and the report by P. Alston, *Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments*, Doc.E/CN.4/1997/74, 7 March 1997, para. 48 et seq. The figures given on CERD and in particular the conclusions drawn from such figures do not meet with reality. According to Alston it would take CERD 24.3 years to deal with all outstanding reports. However, if States Parties resume the dialogue after, for example, ten years, they submit five reports in one. Nevertheless the backlog of reports is significant.

At its 47th Session the General Assembly in 1992 recommended that other treaty bodies should adopt measures similar to the practice of CERD to proceed with the examination of the situation in States Parties whose reports were long overdue, on the basis of existing information. It was further recommended that each treaty body should follow, as a last resort and to the extent appropriate, the practice of scheduling for consideration the situation in States Parties that have consistently failed to report or whose reports are long overdue. This recommendation was based upon the consideration that a persistent and long-term failure to report should not result in the State Party concerned being immune from supervision, while others which have reported are subject to careful monitoring.[46]

Assessing the reporting system it has to be stated that it has undergone significant changes. In introducing such changes CERD has altered the objective of the reporting system. At the beginning when representatives of States Parties were not allowed to orally present the reports the Committee was not in a position to engage in a dialogue with the respective State Party. It could only collect some information and on this basis make General Recommendations to the General Assembly concerning the elimination of racial discrimination. Hence, in this early period the reporting system only rudimentarily provided for means to monitor the implementation of the Convention, higher emphasis being placed upon CERD as an expert body intended to provide the General Assembly with information that would enable the latter to discuss the elimination of racial discrimination. This element of the reporting system has receded into the background, as reflected by the fact that the topic "elimination of racial discrimination'" no longer plays a prominent role in the deliberations of the General Assembly. Instead, by involving representatives of the reporting States, allowing CERD to use information other than that provided by the reporting State Party and by formulating "Concluding Observations" the Committee focuses more heavily upon the monitoring of the situation in the States Parties. Nevertheless, CERD does not work and is not intended to work as a court. Quite frequently experts point out that they are primarily interested in establishing and upholding a dialogue with the States Parties. This is why considerable effort is undertaken to convince States Parties whose reports are overdue to resume cooperation with the Committee. Asking for further information has to be seen from this point of view. It is to be understood as the desire from the side of the Committee to en-

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46 A/RES/47/111 of 16 December 1992.

hance and intensify the dialogue with those States Parties which face problems in the full implementation of the Convention.

VI. Inter-State Complaints

The practice of States Parties concerning inter-State complaints is unsatisfactory.[47] When dealing with the reports of some States Parties bordering former Yugoslavia, the respective representatives have been asked by members of the Committee why no attempt had been made to initiate a procedure under article 11. Equally the representative of Iraq was recommended to consider this procedure when he claimed that northern Iraq was under the influence of foreign powers and hence he could not report about the implementation of the Convention in this area. The same approach was taken *vis-à-vis* Mexico when it complained about the discrimination of Mexicans in the United States. The answer was evasive. Obviously there is a reluctance to resort to such procedure although it has been used under the European Convention for the Protection of Human Rights and Fundamental Freedoms. Since States did not hesitate, recently, in cases of grave and persistent violations of human rights to involve the Security Council, the reluctance to use the inter-State complaint procedure cannot result from an excessive respect for the sovereignty of the States concerned. It may be rather the feeling that a quasi-judicial procedure is hardly suited to provide a solution in cases where political decisions are called for. Apart from that the procedure of article 11 of the Convention does not enshrine any enforcement mechanism; it may seem questionable to invoke a lengthy procedure the result of which may only be a recommendation for the amicable solution of the dispute (article 13 of the Convention).

VII. Individual Complaints

Within the United Nations human rights system three treaty-based procedures exist providing for the possibility for individuals to submit petitions directly to the respective supervisory committees. These are the optional article 14 of the Convention, the Optional Protocol to the

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47 Previous article 9 reports have contained various forms of disguised inter-state disputes, see T. Buergenthal, "Implementing the UN-Racial Convention", *Tex.Int'lL.J.* 12 (1977), 202 et seq.

International Covenant on Civil and Political Rights and the optional article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The two former procedures require the specific acceptance of ten States and the latter of five States to become effective. Receiving these acceptances took much longer for article 14 of the Convention than for the Protocol. As at 10 July 1998 25 of the 159 States Parties to the Convention have made the declaration envisaged in article 14 recognizing the competence of the Committee to receive and consider communications from individuals who claim that the government has not provided them with the required protection. Although optional article 14 entered into force in 1982, only nine communications have so far reached the Committee.

Article 14 of the Convention differs from the Protocol and the Convention against Torture in that it provides that groups of individuals as well as individuals may present communications to the Committee. So far, no group action has been received. All the three procedures require the alleged victim to present to the Committee *prima facie* evidence of personal involvement which excludes the procedure being used as *actio popularis*.[48]

Examining such individual complaints should constitute an important part of the work of human rights treaty bodies. This, however, will only be the case if more States Parties accept the respective procedure and the information on the availability of such procedure is disseminated widely in the States Parties. For example, Ecuador, Peru, the Russian Federation and Uruguay have made the Declaration recognizing the competence of CERD under article 14 of the Convention. However, no communication has been transmitted yet from any of these States Parties. So far, individual complaints came from the Netherlands, Denmark, Australia, Finland and Sweden. This does not reflect the human rights situation prevailing in these States. The limited acceptance of this procedure and the insufficient information about its availability may be the reasons why the procedure has not been used more frequently. Several members of the Committee routinely encourage States Parties to adhere to this procedure.

The Committee simply has a limited practice with respect to individual complaints. It applies in most cases a two-stages procedure, first

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48 However, the Human Rights Committee did agree to consider communications submitted "on behalf" of alleged victims by others, even without formal mandate or power of attorney, when it appeared that the victim was "unable to submit the communication himself".

establishing admissibility and thereafter considering the merits. This makes the procedure a slow one, cases are pending for too long which may be considered to be a denial of justice. In two cases the Committee has asked the States Party concerned to report about the admissibility as well as on the merits (Australia and Sweden). States Parties and some of the experts are reluctant to accept such a procedure since they consider (wrongly) that the decision to have a case admitted already carries some verdict.

VIII. Preventive Action, Including Early Warning and Urgent Procedure

CERD at its 43rd Session adopted a paper on preventive action, including early warning and urgent procedures as a guide for its future work concerning possible measures to prevent and more effectively respond to violations of the Convention.[49] Under the same title a permanent item was included in the agenda of the Committee's future sessions. Successive annual reports of the Committee to the Secretary-General of the United Nations summarize the working paper.[50]

Similar steps have been taken and implemented by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child. However, as far as conceptuality and the implementation of such procedure are concerned, CERD has developed the most systematic and far-reaching practice.[51]

Like the other human rights treaty bodies the Committee was particularly induced to establish such a procedure by the events in former Yugoslavia and in the Great Lakes region of Central Africa. The members of the Committee felt that the regular monitoring of the human rights situation in States Parties through the reporting system had

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49 This was encouraged by the General Assembly with the Agenda for Peace-A/RES/47/120 of 18 December 1992.

50 Doc.A/49/18, para. 19; Doc.A/50/18, para. 22; Doc.A/51/18, para. 26. For further details see Banton, see note 1, 161 et seq.

51 M. O'Flaherty, *Human Rights and the UN: Practice Before the Treaty Bodies*, 1996, 103 et seq.; Banton, see note 1, 161 et seq.

proven to be inadequate to prevent the occurrence or recurrence of such man-made disasters.[52] [53]

Preventive actions of CERD shall include early warning measures to address existing structural problems which might escalate into conflicts. Such a situation calling for early warning exists, in the view of the Committee, *inter alia* when the national implementation procedures are inadequate or there exists the pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials. To formulate such early warning CERD will have to make full use of its sources of information and of its expert capacity to assess them.

The criterion for initiating an urgent procedure, according to the decision of CERD, is the presence of a pattern of massive or persistent racial discrimination. In nearly all cases dealt with by the Committee, so far, one expert took the initiative and made a reasoned suggestion to have a particular situation dealt with under this procedure. In all cases such a suggestion was accepted after a brief discussion.

The reactions in its preventive function and in response to problems requiring immediate attention are similar although under the early

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52 T. van Boven, "Prevention, Early-Warning and Urgent Procedures: A New Approach by the Committee on the Elimination of Racial Discrimination", in: E. Denters, N.Schrijver (eds), *Reflections on International Law from the Low Countries in Honour of Paul de Waart*, 1998,165 et seq.

53 When in 1993 the Committee adopted its prevention, early-warning and urgent procedure its Chairman justified such decision in its covering letter to the annual report to the Secretary-General of the United Nations in the following terms: "The forms of racial discrimination which in the 1960s were regarded as most abhorrent were those of discrimination by whites against blacks. Racial discrimination was frequently described as caused by the dissemination of doctrines of racial superiority by the institutions of colonial rule and by policies of racist regimes. The international community could counter these abuses by political means and in this way racial discrimination could be eliminated." The letter continued to say: "In 1993 we contemplate the success of policies initiated in the 1960s. The struggle against colonial rule and racist regimes has been successful even if the consequences of apartheid will continue to give trouble for a long time. New challenges started to emerge at the end of the 1980s with the disintegration of some of the larger political structures, particularly in eastern Europe, and the weakening of some structures in other regions ... racial or ethnic conflicts are appearing in areas previously characterized by tolerance..." (Report of the Committee on the Elimination of Racial Discrimination, 1993, Doc.A/48/18, 6).

warning procedure CERD will first exhaust its advisory functions *vis-à-vis* the respective State Party. The Committee may address its concern, along with recommendations for action, to all or any of the following: the State Party concerned; the Special Rapporteur established under a Commission on Human Rights resolution; the Secretary-General; and all other human rights bodies. The information addressed to the Secretary-General may in the case of urgent procedures include a recommendation to bring the matter to the attention of the Security Council. In the case of urgent procedures CERD may designate a Special Rapporteur.

As already indicated the attempt to improve the functions of the Committee, as far as its response to serious, massive or persistent patterns of racial discrimination is concerned or the upcoming threat thereof, was very much influenced by the situation in the former Yugoslavia. In consequence Bosnia Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) belonged to the States Parties that were placed under the early-warning procedure. Others were or still are Rwanda and Burundi, Papua New Guinea, with regard to the serious violations of human rights in Bougainville, Mexico with regard to the ethnic conflict involving the indigenous population of the Chiapas, the Russian Federation concerning the massive loss of life in the Republic of Chechnya and Liberia, Afghanistan as well as Zaire/the Democratic Republic of Congo concerning the situation brought about by civil war. Other cases dealt with under this procedure were States Parties where serious incidents caused concern in the Committee as to the implementation of the Convention and where it feared the aggravation of the situation. These incidents included the massacre committed by an Israeli settler against Palestinian worshippers, the racist terrorist acts against Jews in Buenos Aires in 1994 and in London 1994, the clashes that took place in Cyprus in 1996 and the terrorist attacks in Algeria in 1994 and 1995.

The actions taken by the Committee differed widely depending on the extent to which the respective State Party was willing to cooperate with the Committee. In the case of the Federal Republic of Yugoslavia (Serbia and Montenegro) an intensive dialogue commenced at an early stage which resulted in sending a good offices mission of three experts (Mrs H. Ahmadu, Mr. I. Reshetov and Mr. R. Wolfrum) to Belgrade and the Kosovo to promote a dialogue between the Albanians in Kosovo and the Government of the State Party. The dialogue broke off due to the decision of the meeting of States Parties to exclude the Federal Republic of Yugoslavia (Serbia and Montenegro) from its delibera-

tions.[54] In spite of that unofficial contacts have been maintained between members of the Committee and the representative of the Federal Republic of Yugoslavia with a view to resuming the dialogue. Croatia invited one member of the Committee (Mr. M. Yutzis) to give technical advice as to the drafting of the report.

The response of Israel was less cooperative. The Permanent Representative of Israel informed the United Nations of the establishment by the government of a Commission of Inquiry and agreed, while questioning the competence of the Committee, to transmit a copy of the findings to the Committee. However, it refused to submit a special report that the Committee had asked for. It has finally submitted the reports (7th, 8th and 9th in one) at the 52nd Session (in March 1998). In the introduction of the report the delegation of Israel questioned whether Israel was receiving fair and equal treatment.

Representatives of Rwanda, Burundi and Algeria took the opportunity to address the Committee whereas no reaction was received from Afghanistan, Papua New Guinea, Liberia and the Democratic Republic of Congo when they were informed that the Committee intended to deal with the situation under its early warning and urgent procedure and were asked to provide for information. The Russian Federation has provided the required information in its periodic report and, in particular, in the dialogue following the submission of such report.

Considering the experience of the Committee with this new procedure, so far, the overall assessment is positive.[55] The focus of this procedure should be less on such States in the situation of a civil war[56] but rather on States Parties where tension is building up or might build up or where civil war has ended and the State Party concerned needs all assistance for restructuring its legal, judicial and administrative system.

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54 See the letter of the Chargé d'affaires of the Permanent Mission of the Federal Republic of Yugoslavia in Geneva of 15 February 1995 as reproduced in the Report of the Committee on the Elimination of Racial Discrimination, 1995 (Doc.A/50/18, para. 227). See also the reply of the Chairman of 6 March 1995 (in the same report at para. 227).

55 Different Alston, see note 44, para.79.

56 Here, in fact, the principle of the division of labour should apply as suggested by Alston, see note 44, para. 79. This, however, requires that the Security Council or a regional organization has become active. This cannot be taken for granted. In the cases of inactivity it is the function of the human rights treaty bodies engaged in such procedure to induce activities of international organizations engaged in the preservation of peace and security.

IX. Relation with the General Assembly, the Secretariat and Other Human Rights Bodies

CERD is an autonomous body established under the Convention which is linked to the UN System. It submits its reports to the General Assembly through the Secretary-General. However, interest in the work of the Committee in the General Assembly, notably its Third Committee, is limited. The secretarial services for CERD are provided by the Secretariat. The funding formally provided for by States Parties now comes from the UN budget; the respective amendment of the Convention has not yet entered into force.

Though the Committee has appointed experts as liaison officers to be informed about the activities of other human rights bodies its connection to such bodies is limited. An improved coordination amongst the treaty bodies, at least, would render the functioning of such bodies more effective. Such coordination can only be achieved with the assistance of the Secretariat, which at the moment does not fulfill this function. Receiving information about activities of other human rights bodies, particularly, the Commission on Human Rights, UNHCR or other treaty bodies depends totally upon the initiative of each single expert. Additionally, there is little interest from the other human rights bodies to cooperate more closely. For example, the Commission on Human Rights has appointed a Special Rapporteur on contemporary Forms of Racism, Racial Discrimination, Xenophobia and related Intolerance. Although his tasks overlap with the ones of the Committee and although he reports about States which are reporting to the Committee he does not make use of the material accumulated by CERD over decades. Given the limited resources for the protection of human rights such duplication of efforts seems unacceptable.

X. Conclusions

The international efforts against racism, racial discrimination, xenophobia and other related forms of intolerance have, so far, not been successful. Although the struggle against apartheid has led to a positive result, new forms of racism, racial discrimination and ethnical prejudice or prosecution have emerged. The international bodies engaged in the struggle against all these forms of intolerance and violence based there-

upon, in particular the Committee, nevertheless have to continue and even have to strengthen their efforts.

Only through these efforts will a public awareness be created as well as a conviction within the world community that the mentioned forms of intolerance and racial discrimination are intolerable violations of the human dignity and constitute an international crime.

However, the possibilities of the Committee to effectively eradicate racial discrimination are limited. The reporting system has its merits although it is lacking enforcement mechanisms. Its effect rests in enforcing States Parties to self-assess the human rights situation in the given country. Such effects could be strengthened if the reports were made public and became the object of a national discussion. This can be achieved through publishing national reports either before submitting them to CERD and inviting comments which would be communicated to the Committee, or after the dialogue together with the Concluding Observations. Another option would be the discussion of the report in Parliament. Any of these approaches would initiate a public discussion which again would fertilize the next dialogue with the Committee. CERD should strongly encourage States Parties to pursue such a policy.[57]

CERD's possibilities are limited in cases where ethnic conflicts become violent. In cases such as Rwanda or former Yugoslavia, where ethnic tensions have resulted in an armed conflict, CERD has only limited possibilities to ameliorate the situation, apart from calling for international awareness and intervention. The latter functions, however, should not be underestimated. International awareness concentrates on specific conflicts and for a limited period only, thereafter conflicts are neglected. This is, for example, true in respect of the civil war in Sudan, equally no attention was paid in the international media to the ongoing violations of human rights in Bougainville. Hence the international community made no or very little effort to ameliorate the situation and to put pressure on the States concerned. In this respect CERD could and should provide for a more balanced approach and a sharpened awareness of the international community concerning systematic and grave violations of the Convention otherwise neglected.

In respect of cases taken up under the prevention, early-warning and urgent procedure CERD has a twofold function. It should warn States Parties about the building up of ethnic tensions and inform United Na-

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57 Emphasized in the Alston report Doc.A/44/668, 36 et seq.

tions bodies accordingly. After the ending of a conflict the Committee should play an active role in assisting the reorganisation of the respective State. The necessity of this approach was clearly felt in the Committee when it discussed Bosnia Herzegovina after the conclusion of the Dayton Accord. It was the prevailing view in the Committee — clearly expressed in the Concluding Observations — that the Dayton Accord had not been prepared adequately and that in particular the rules on elections might lead to the confirmation of the facts established by ethnic cleansing. This approach was also expressed in respect of Rwanda where the Committee indicated its readiness to assist in the restructuring of the country so as to avoid the repetition of the previous ethnic conflicts. This approach was clearly inspired by the positive role the Venice Commission has played and still plays concerning the drafting of constitutional laws of eastern European States. In this regard the Committee still has to define its role more clearly which States Parties will have to accept and to utilize.

Annex 1013

Greta Uehling, The First Independent Ukrainian Census in Crimea: Myths, Miscoding, and Missed Opportunities, 1 Ethnic and Racial Studies, Vol. 27 (January 2004)

Pursuant to Rules of the Court Article 50(2), Ukraine has provided only an extract of the original document constituting this Annex. In further compliance with this Rule, Ukraine has provided two certified copies of the full document with its submission.

For Note 9

Ethnic and Racial Studies Vol. 27 No. 1 January 2004 pp. 149–170

The first independent Ukrainian census in Crimea: Myths, miscoding, and missed opportunities

Greta Uehling

Abstract

State-defined identity categories can have a profound impact on individuals' conception of themselves. Like birth certificates and migration documents, the census is a crucial instrument in producing and maintaining ethnic and racial identities. Recent research suggests that censuses measure preferences, rather than objective data, and can profitably be studied along the lines of political campaigns. This article advances the idea that the next question is whose preference is being recorded. Ethnographic research on the micropolitics of census-taking in Crimea, Ukraine suggest the dynamics between census-takers and ethnic constituencies, as well as instructions from census officials with various ethnic loyalties, have a crucial role to play.

Keywords: Census; Ukraine; state-building; Crimean Tatars; language; nationality.

Political actors and government officials have a decided role to play in the production of collective identities by carving national, racial, and ethnic categories out of a diffuse spectrum of humanity. Statistics-gathering is therefore one of the ways that the state enters the complex process of identity formation.[1] Turning to the state's role in categorizing a populace is not, however, to suggest that 'the state' is necessarily operating in a unified or coherent way. Ethnography can bring greater clarity to how various representatives of the state (and its citizens) are involved. This article considers the dynamics of the 2001 Ukrainian census in the Autonomous Republic of Crimea. I focus on census-takers' interactions with respondents, conversations among census officials, and informal dialogues among census-takers to explore the complex nexus in which the practices and politics of census-taking were worked out.

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they were collectively accused of treason and deported to the Urals and Soviet Central Asia.[12] The Crimean Tatars began returning from exile in large numbers after the disintegration of the Soviet Union. In particular, their success in achieving equitable representation in official bodies and sufficient education in their native language depends on numerical presence. Long distrustful of Soviet statecraft, the Crimean Tatars have conducted their own unofficial censuses. They have also had to fight for official recognition. After the 1979 census, the Crimean Tatars objected to the practice of counting them as 'Tatars' so vociferously that they were then included in the 1989 census under the 'Crimean Tatar' ethnonym (Tishkov, personal communication).

In spite of the Crimean Tatars' official status in the 2001 census, dynamics between the census-takers and the Crimean Tatar population refreshed memories of their historical erasure, raising new fears of their annihilation as group. From the first days of the census, the editorial offices of the major Crimean Tatar newspapers began receiving calls that Crimean Tatars were being told by census-takers that there was no such ethnic group, only 'Tatars'. The behaviour of the census-takers led Crimean Tatars to believe that a hidden hand was operating behind the scenes, intent (not unlike the authorities of the Soviet Union) on their disappearance. As the acting head of the Crimean Tatar political body, the *Mejlis* put it: 'This is a special, political genocide'.[13] The *Mejlis* has been charged with advocating on Crimean Tatars' behalf on issues of this nature.[14]

On the ground, it was hard to ascertain how prevalent was the coding of 'Crimean Tatars' as 'Tatars'. The Deputy Director of the Department of Statistics admitted that the census-takers 'had their own shortcomings'. She elaborated on the limited training they received and did not exclude that such violations were possible. It seemed more likely, however, that the Crimean Tatars were especially sensitized to the possibility of this kind of treatment by their 1944 deportation and experiences of discrimination in the past. In the Soviet period, the experience of being denied their very existence (they were issued passports that read 'Tatar') was woven into the *habitus* of the Crimean Tatars, making it doubly difficult to assess the accuracy of these perceptions. When I followed a census-taker in a Crimean Tatar area, there were numerous instances in which it was the *respondent* who replied 'Tatar' to the question about nationality and it was the *census-taker* who sought clarification before writing *Crimean* Tatar. Similarly, when these respondents said they spoke 'Tatar' she sought clarification whether they meant *Crimean* Tatar. Here, it is partly the Crimean Tatar ethnonym that is responsible: the 'Crimean' part is dropped, particularly by youth, for the sake of brevity and ease of speech. However, it is also the case that the sharpness and immediacy of Crimean Tatar identity may be fading. National elites worry that there are Crimean Tatars who are not

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sufficiently conscious of their ethnic 'roots'.[15] This concern was evident when both the editors of the Crimean Tatar newspapers and the acting head of the *Mejlis* lamented that by failing to propagandize prior to the census, they had missed an opportunity to 'work with the people' and raise ethnic self-awareness.

The instances in which the Crimean Tatars were coded as 'Tatars' became such a concern over the course of the week that it coloured religious observances. The Muslim holiday of *Yantar*, which fell on 10 December just prior to the end of Ramadan, was supposed to have been marked off from politics. However the holiday celebration dissolved into a discussion of the threat the census posed. This led to a debate about the relative merits of changing their Crimean Tatar ethnonym. Census politics had so thoroughly penetrated the milieu that they were palpable at the ritual.

The preliminary results of the census show that the fears of the Crimean Tatars were only partially borne out. The 248,000 indicated in the preliminary census results is viewed as an undercount by the Crimean Tatars, whose unofficial censuses suggest that they number closer to 265,000 or even 270,000.[16] However, the Crimean Tatars' fears were not borne out with respect to miscoding. Except in Kherson *oblast* and Sevastopol where the number of Tatars rose while the number of *Crimean* Tatars fell, the relative proportion of the two groups remained at 1989 levels. The Kherson data are explained by the fact that Kherson was home to Crimean Tatars who migrated into the peninsula proper following the mass repatriation effort. Why Tatars rose in relation to Crimean Tatars in Sevastopol, however, remains unexplained. Whether or not Crimean Tatar concerns were well grounded, the more basic point remains that an exercise designed to make the division of resources more rational and equitable led to rumours and the hypertrophy of fear. Administrators and citizens alike were highly conscious of the long-term political outcomes that could evolve from these events. Much will depend on whether the Crimean Tatars, who are seeking representation at all levels of government, will win a say in the matters that affect them.

Nationality

In the first independent Ukrainian census, it was the questions on nationality and language that generated the most controversy. This is predictable given the history of Soviet nationality politics. By the middle of the twentieth century, Soviet ethnographers, Marxist-Leninist social scientists, and Soviet officials had crafted a system of classifying national and territorial units that not only worked as neatly as a set of nesting dolls (Slezkine 1994) but was perhaps more clearly articulated than in any other country in the world (Hirsch 1997). The irony is that in 2001, many individuals were simply not asked about their nationality. Census-takers

Annex 1014

Institute for Political and Ethnonational Research of the National Academy of Sciences of Ukraine, Crimea in Ethnopolitical Measurements (2005), cited in Krym v etnopolitychnomu vymiri (Kyiv: Instytut politychnych i etnonatsional'nykh doslidzhen' NAN Ukra

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CRIMEA
IN ETHNOPOLITICAL MEASUREMENTS

Kyiv, 2005

and democratic shifts in national-cultural life, politicians recognized significant positive changes. But linguistic issues took new forms that were threatening to the national identification of the peoples and ethnic groups of Ukraine.

The process of Russification is seen in greatest relief in language. The displacement of the Ukrainian language from the public school system of Ukraine took place in the second half of the 20th century, slowly but steadily under Moscow leadership, and played a decisive role in processes of linguistic and ethnic assimilation of Ukrainians. After all, even Soviet scientists recognize that the system of teaching in the native language in schools has a significant impact on clarification of the national-linguistic orientation.

The issue of the introduction of the Ukrainian language into public school education in Crimea was raised by Crimean party leaders in the summer of 1954, right after Crimea passed to the Ukrainian SSR. The report of the Crimean Region Party Committee dated September 13, 1954 stated that, because of the transfer of the Crimean Region to the Ukrainian SSR, "the Crimean Regional Committee of the Communist Party of Ukraine deems it necessary to introduce the study of Ukrainian language and literature in the 1995/56 school year in grades 2, 3, 4, 5, 6 and 7 in all schools in the Crimean Region."[1]

The postponement of the date for introducing the Ukrainian language to the next school year is explained by the fact that there were not enough teachers in Crimean to teach it. Of 2913 elementary school teachers, only 94 spoke Ukrainian, but had no experience teaching it. At that time 320 elementary and 140 secondary schools were operating in Crimea. *It was necessary to train* 1500 teachers for grades 2-4 and 600 to teach in the upper grades of elementary and in secondary schools in Crimea. It was also planned that courses in the study of Ukrainian for elementary school teachers would be held. At these summer courses 1500 teachers were trained.[2] It was also necessary to provide textbooks to 460 schools.

The Crimean Regional Committee of the Communist Party of Ukraine asked the Ministry of Public Education of the Ukrainian SSR to send 640 teachers of the Ukrainian language and literature to Crimea before the beginning of the 1955/56 school year to each Ukrainian and literature in grades 2-10. This included 60 teachers to Simferopol; 51 to Kerch, 49 to Sevastopol, 29 to Yalta, 21 to Yevpatoria, and 17 to Feodosia[3].

Introducing the Ukrainian into all the region's schools required the training of 2150 in short-term courses…

Annex 1015

Gwendolyn Sasse, The Crimea Question: Identity, Transition, and Conflict, Harvard University Press (2007)

Pursuant to Rules of the Court Article 50(2), Ukraine has provided only an extract of the original document constituting this Annex. In further compliance with this Rule, Ukraine has provided two certified copies of the full document with its submission.

For Note 4

THE CRIMEA QUESTION:
Identity, Transition, and Conflict

Gwendolyn Sasse

Distributed by Harvard University Press
for the Harvard Ukrainian Research Institute

Splinter Political

Note 4

as a way to directly challenge Ukrainian sovereignty and independence.[42] Aleksandr Solzhenitsyn's claim that Crimea is Russia's "natural southern border" is but one prominent example of this rhetoric, readily taken up by populist Russian politicians like Iurii Luzhkov or Vladimir Zhirinovskii. The Communist Party under Gennadii Zyuganov also has kept alive the Soviet-era myth. The Russian movement in Crimea has used the Sevastopol myth to lend itself historical credibility and to connect with the claims of certain Russian politicians. The Sevastopol myth dominated the rhetoric of the early post-Soviet polarization in Crimea. Admiral Igor' Kasatonov, for example, claimed that the loss of the Black Sea Fleet, which he commanded, would throw Russia back to the time before Peter I.[43] In 1996, in what can only be described as a coup of the regional media, the alleged descendants of three famous Crimean War commanders—Pavel Nakhimov, Vladimir Kornilov, and Vladimir Istomin—appealed to the Russian authorities not to loosen their control over Sevastopol.[44] The local fears of linguistic and political "Ukrainization" of Crimea, real or imagined, led to talk of a "third Sevastopol siege."[45]

Crimean Tatar Historiography

The ethnogenesis of the Crimean Tatars is presented differently depending on who wrote its history.[46] The Crimean Tatars resent the predominant Soviet portrait of their relatively late arrival in Crimea during the Mongol era, which projects their origin into the depths of Asia or presents them as a subgroup of the Volga Tatars. This view effectively undermines the Crimean Tatars' claims to be an indigenous group with a special right to the territory. Crimean Tatar historians take issue with this interpretation and emphasize the Crimean Tatars' pre-Mongol links to Crimea. Williams describes the Crimean Tatars as "an eclectic Turkic-Muslim ethnic group that claims direct descent from the Goths, Pontic Greeks, Armenians, the Tatars of the Golden Horde, and other East European ethnic groups." For most of their history, the Crimean Tatars were not a homogeneous group; their differences resulted from the diverse geography of Crimea itself. Against the background of these diverse ethnic and geographic loyalties, Islam increasingly became the primary marker of a collective cultural identity which linked the inhabitants of Crimea to the wider

international Muslim community (*umma*) rather than the territory of Crimea. By the fifteenth century, the process of Islamization had created the foundation for a wider Crimean Tatar group identification.

The historically most contested period is that of Russian colonial rule over Crimea. Crimean Tatar and Turkish historiography provide the mirror image of the Russian and Soviet-Russian views. For Crimean Tatar and Turkish historians, the year 1783 represents a national disaster. The subsequent waves of emigration to the Ottoman Empire are linked to Russian repression. An estimated 400,000 Tatars emigrated from Crimea to the Ottoman Empire in the eighteenth and nineteenth centuries, and about forty percent of the Crimean population emigrated after the Crimean war, reducing the number of Crimean Tatars to about 100,000 by 1865. However, Crimean Tatar historiography tends to downplay both the religious incentives to emigrate, which still superseded territorial attachments, and the mass response to the explicit invitation by the Ottoman sultan.[47]

The identification with Crimea as an ethnically defined Crimean Tatar homeland is by and large a twentieth-century creation. Paradoxically, "it was the Soviet state that completed the development of a secular Crimean Tatar national identity…and the construction of the Crimea as a homeland."[48] The Soviet regime first fostered this ethnoterritorial identity in the 1920s. After the deportation of 1944, this fused territorial and cultural identity served as a common bond and means of survival in exile. The urge to find out more about Crimean Tatar history, a taboo subject under the Soviet regime, was one of the starting points for the Crimean Tatar national movement from the 1950s and 1960s and the Soviet dissident movement in general.[49] As elsewhere in the FSU, the "history debate" of the perestroika period from 1986–87 marked a key turning-point for nationalist mobilization. In the case of the Crimean Tatars, this momentum grew into a mass return to Crimea in the early 1990s.

Oral history plays an important part in the historical consciousness of the Crimean Tatars. The written historical record prior to the early twentieth century is sparse.[50] Moreover, the Tatars "have generally had their enemies as their historians."[51] A modernization of educational policies for the Muslims in the Russian Empire got under way only at the end of the nineteenth century.[52] The key formative stage

Annex 1016

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CRIMEAN SOCIETY: DIVIDING LINES AND PROSPECTS OF CONSOLIDATION

The AR of Crimea is a special region of Ukraine, not only because of its autonomous status, but also thanks to its unique historic and cultural heritage, ethnic composition of the population, geopolitical situation. It may be said without exaggeration that the ability to integrate Crimea into the pan-Ukrainian political and socio-cultural space presents a key test of maturity and effectiveness of the Ukrainian state. This determines the extreme importance of Crimean segment in the Ukrainian policy. But unfortunately, there are no grounds to claim serious success in that domain; rather, things are developing in the opposite direction.

It may be stated that the socio-political situation in the AR of Crimea, after the relative stability of late 1990s – early 2000s, has deteriorated lately.

In the result of serious political contradictions, deregulation of the executive branch, lack of system and consistency in the Ukrainian state policy regarding Crimea, interaction between the republican and central authorities in some sectors is far from standards of constructive cooperation, which leads to continual non-execution or even open obstruction of decisions of the central authorities dealing with Crimea.

This brings to light drawbacks in the effective legislation describing the rights and powers of the AR of Crimea, regimenting the autonomy's relations with Kyiv, presentation and defence of its interests in the supreme bodies of state power.

Meanwhile, radical, first of all – pro-Russian public and political forces stepped up their activity in Crimea, manifested, in particular, in stronger opposition to actions of the state authorities aimed at rapprochement with Euro-Atlantic structures, and in moral support for Russia and its Black Sea Fleet during the armed conflict with Georgia in August 2008.

The problems of amenities for and social rehabilitation of repatriates, first of all – representatives of Crimean Tatars, are far from final solution. Despite the deep study of those problems by the Ukrainian authorities and representative bodies of the Crimean Tatar people, full mutual understanding between its political leadership and the state authorities in the issues of restoration of economic, social, cultural and political rights of the Crimean Tatar people, definition of its place in Ukraine's legal framework and its state system is still absent. Given the evident deficiency of means of protection of collective interests available to Crimean Tatars, this undermines trust in the authorities, both Ukrainian and Crimean, and deteriorates inter-ethnic relations in Crimea.

The absence of strategic approaches of the Ukrainian authorities to comprehensive solution of Crimean problems, prevalence of the policy of situational response to separate problems or their neglect have an effect on the public consciousness of the Crimean residents in the form of growth of separatist and irredentist spirits, unpopularity of the prospects of further development of Crimea within the constitutional framework of Ukraine.

External influences on the situation in the AR of Crimea in economic, political, religious and information sectors are growing. Not all of them may be termed negative, but many of them are designed to entirely cut Crimea from Ukrainian political and socio-cultural space or to make the latter a factor of political and cultural disintegration of the Ukrainian society and state.

Against that background, Crimean society witnesses processes of transformation, in particular, consolidation of the main ethnic groups by socio-cultural features, growth of competition among them in the political, socio-economic and symbolic domains. Evolution of relations among the most numerous Crimean socio-cultural communities towards aggravation of contradictions will threaten the socio-political stability of not only Crimea but Ukraine as a whole, give a pretext for interference of outside forces in its internal affairs, moreover, given the precedents of implementation of similar political scenarios.

Study of the situation in the AR of Crimea, identification of factors influencing it and search of ways of the most optimal solution of the existing problems are all covered by the Ukrainian-Swiss project "Socio-political, inter-ethnic and inter-confessional relations in Crimea –state, problems, ways of solution", jointly implemented by Razumkov Centre and University of Basel's Europainstitut[1]. This Analytical Report deals with the second stage of the project.

Analytical Report consists of three sections.

First section on the basis of data of sociological surveys identifies the main socio-cultural communities of Crimea, examines their mutual perception, the character and prospects of relations, prospects of emergence of a single Crimean identity.

Second section analyses the main factors influencing the situation in Crimea – political, socio-economic, cultural, religious, information.

Third section carries conclusions of the prospects of formation of the Crimean identity, specificities of the main socio-cultural communities of Crimea, the character and prospects of their relations, and presents proposals as to the ways and lines of improvement of the socio-economic and socio-political situation in the autonomy.

[1] Razumkov Centre compliments Professor G.Kreis (University of Basel's Europainstitut) for valuable advice and proposals at the stage of generation of the working hypotheses of this report and the study toolset.

1. DOMINANT COMMUNITIES OF CRIMEA: SELF-IDENTIFICATION, CHARACTER OF RELATIONS, PROSPECTS OF THEIR EVOLUTION (in Crimean and pan-Ukrainian contexts)

The first stage of the study performed by Razumkov Centre at the end of 2008 revealed a number of topical problems of public life in Crimea that required a deeper survey. The problems included, in particular, processes of formation of the Crimean regional identity and the character of relations among the main communities formed in Crimea[1]. Meanwhile, the study demonstrated that the communities exerting "institutional" influence on socio-political developments in the autonomy are not always formed on ethnic grounds. Socio-cultural orientations, including language and cultural preferences, civic and religious self-identification, play the decisive role here.

This section describes features of the main socio-cultural groups of Crimean society distinguished by the results of studies conducted during the second stage of the project, their mutual assessments, ideas of the ways of solution of regional problems.

1.1. SOCIO-CULTURAL COMMUNITIES OF CRIMEA: SPECIFICITY OF SELF-IDENTIFICATION AND PROSPECTS OF FORMATION OF A COMMON CRIMEAN IDENTITY

Prediction of socio-political processes in Crimea is impossible without a clear idea of self-identification of the residents of that region, since their self-identification is among the most important factors shaping the character of social behaviour of citizens, as they first of all follow the values, norms, beliefs, convictions dominating in the social group they affiliate themselves with. So, we examined specificities of the socio-cultural self-identification of the Crimean residents and singled out their socio-cultural communities[2]. The results generally reiterated the preliminary conclusions of the first phase of the project, saying that "by mentality characteristics as well as regarding their attitude towards Ukraine, Ukrainian citizenship, Crimea's perspectives, etc., the majority of Ukrainian and Russian residents present a unified social and cultural community"[3], while Crimean Tatars substantially differ from them.

1.1.1. Criteria of distinction of socio-cultural communities

Language. The numeric prevalence of Russians in Crimea leads to the prevalence of the Russian-language environment in the autonomy; as a result, the overwhelming majority (85.1%) of ethnic Ukrainians in Crimea consider Russian their native language, 98.5% speak it at home (among ethnic Russians – respectively, 99.6% and 98.4%). The share of Crimean Tatars considering Russian their native language is rather small (6%, although the share of those who mainly speak it at home is higher − 31.5%).

Affiliation with a cultural tradition. 75.9% of ethnic Russians affiliate themselves with the Russian cultural tradition, another 17.4% − with the Soviet. The majority (52.7%) of ethnic Ukrainians affiliate with the Russian cultural tradition (another 26.6% − with the Soviet cultural tradition, only 9.7% − the Ukrainian). Crimean Tatars distance themselves from the Russian cultural tradition – only 0.5% affiliated with it, 91.9% − with the Crimean Tatar.

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[1] For more detail see: Crimea: people, problems, prospects (Socio-political, inter-ethnic and inter-confessional relations in Crimea). Razumkov Centre Analytical Report. – "National Security & Defence", No.10, 2008.

[2] The Report builds on the results of all-Crimean public opinion polls representative of the adult population of the AR of Crimea and Sevastopol by the key socio-economic indicators (age, sex, settlement type, nationality). The polls were conducted by the Razumkov Centre Sociological Service: on **July 29 – August 11, 2004** (3,143 respondents above 18 years polled in the AR of Crimea and Sevastopol, the sample's theoretical error does not exceed 1.2%); **October 18 – November 9, 2008** (6,891 respondents above 18 years polled in the AR of Crimea and Sevastopol, the sample's theoretical error does not exceed 1.2%); **May 7-20, 2009** (2,016 respondents above 18 years polled in the AR of Crimea and Sevastopol, the sample's theoretical error does not exceed 2.3%).

Also used were the results of focus groups (group interviews) held by Razumkov Centre Sociological Service in Simferopol in May 2009 (three focus groups – of ethnic Russians (**R**), Ukrainians (**U**), Crimean Tatars (**T**)) and an expert poll (held by Razumkov Centre Sociological Service on May 23 - June 3, 2009, with 80 experts polled in Kyiv and Crimea).

Unless specified otherwise, cited are the results of the latest Crimean poll.

[3] See: Crimea: people, problems, prospects (Socio-political, inter-ethnic and inter-confessional relations in Crimea)…, p.11.

This gives grounds to note that the majority of Ukrainians in Crimea identify themselves as representatives of a common with Russians socio-cultural community, resting on domination of the Russian-language culture. When directly asked if they agree that there are actually no differences between ethnic Russians and Ukrainians in Crimea, and they make one socio-cultural community, a positive answer was given by 73.7% of ethnic Ukrainians living in Crimea, the same opinion is shared by the majority (76.2%) of Russians (Table "*There is an opinion that there are almost no differences between ethnic Russians and Ukrainians in Crimea...*").

There is an opinion that there are almost no differences between ethnic Russians and Ukrainians in Crimea, and they make a unified socio-cultural community. Do you agree with this statement?
% of those polled

	CRIMEA	Ukrainians	Russians	Crimean Tatars
Agree	**37.4**	34.1	40.1	28.8
Most likely agree	**35.3**	39.6	36.1	20.1
Most likely do not agree	**9.8**	12.4	7.3	18.5
Do not agree	**4.5**	5.2	3.9	7.6
Hard to say	**13.0**	8.7	12.6	25.0

Confessional self-identification. Confessional self-identification is an important aspect of socio-cultural self-identification. At that, self-identification with some religious community is often determined not by religious convictions but, rather, by the perception that affiliation with a certain religion is an attribute of affiliation with some ethnic community. For instance, according to the poll conducted by Razumkov Centre in November 2008, 58.4% of the polled Crimeans agreed that "the ethnic and religious affiliation of a person should be related with traditional perceptions, for instance, Russian – Orthodox, Pole – Catholic, Crimean Tatar – Muslim, etc".

According to the May 2009 poll, 85.1% of ethnic Ukrainians and 84.9% of Russians called themselves Orthodox, while 97.8% of Crimean Tatars − Muslims (Table "*With what religion are you affiliated?*").

With what religion are you affiliated?
% of those polled

	CRIMEA	Ukrainians	Russians	Crimean Tatars
Orthodoxy	**76.5**	85.1	84.9	1.1
Islam	**9.5**	0.2	0.2	97.8
I am just Christian	**5.4**	6.0	6.1	0.0
Roman Catholicism	**0.4**	0.4	0.1	0.0
Greek Catholicism	**0.2**	0.2	0.1	0.0
Protestantism	**0.2**	0.2	0.3	0.0
Judaism	**0.2**	0.0	0.0	0.5
Buddhism	**0.0**	0.0	0.1	0.0
Other	**0.0**	0.0	0.1	0.0
I am not affiliated with any religion	**7.5**	8.0	8.1	0.5

Socio-cultural communities. Proceeding from the above, one may distinguish the main socio-cultural communities of Crimea.

The most numerous group is presented by those representatives of the Russian and Ukrainian ethnoses who by their socio-cultural orientations gravitate to the Russian cultural and language identity, the geopolitical community that may be termed "the Russian world". One may distinguish three main ideological reference points important for affiliation with the "Russian world": (1) adherence to the Russian culture, Russian language; (2) support for Orthodoxy as the spiritual and uniting basis of the "Russian world"; (3) unity of the East Slavic world led by Russia. That group was conventionally termed "Slavic community" (58.7% of those polled).

The Crimean Tatar community (9.1% all of those polled) even in the conditions of forced long exile managed to preserve a high level of national self-identification and unity, the native language, the feeling of affiliation with the Crimean Tatar cultural tradition and traditional religion – Islam.

Namely the relations between those two socio-cultural groups (Crimean Tatars and the Slavic community) largely shape the public life in the autonomy in different sectors (cultural, social, political, etc).

Alongside with those two "core" groups, we distinguished rather a motley group of "others" (32.2% of those polled) that, being distinguished by the "negative" criterion (i.e., stay beyond the two former groups), is very heterogeneous by its structure. Within it, we separated another small group – "Crimean Ukrainians" (6.5% of those polled) that included Ukrainians unwilling to associate themselves with the "united Russian-Ukrainian community of Crimea".

1.1.2. Specificities of self-identification of socio-cultural communities[4]

Slavic community

Individual criteria of self-identification. The importance of national, language and religious self-identification for representatives of different socio-cultural groups may be judged from answers to the question "*What group of people you can say about "That is us", in the first place?*". National self-identification was first in none of the groups, being the least important for representatives of the Slavic community − there, only 3% reported "We are representatives of our nationality" (in other groups – from 16% to 21%). For representatives of the Slavic community, the main individual criterion of self-identification is presented by the affiliation with a language community ("We are Russian-speaking" − 66%).

Affiliation with a cultural tradition. Three-quarters (74.6%) of representatives of the Slavic community affiliate themselves with the Russian cultural tradition. Quite many representatives of the Slavic community affiliate themselves with the Soviet tradition. However, the younger representatives of that group are, the less they

[4] The summary results of the latest public opinion poll dealing with the specificity of self-identification of socio-cultural communities are cited in Annex 1, pp.10-13 of this magazine.

tend to identify themselves like that. For instance, among people above 60 years, affiliation with the Soviet cultural tradition was reported by 38.9%, while in the age from 18 to 29 years – by only 6.5%.

Territorial-spatial identity. The Crimean regional identity prevails among representatives of the Slavic community – 65.4% reported "Crimeans" as the group that could be termed by them as "us". Only 7.4% in the first place called themselves citizens of Ukraine.

Somewhat different answers were produced when representatives of that group were asked what they associated themselves with in the first place. 35.9% associated themselves with Crimea – much fewer than those who said "we are Crimeans", mainly because this question suggested answers that, on one hand, allowed deeper "localisation" of their identity – "with the place of residence (city, village)" (25.6%), and enabled identification with Russia (16.6%) or the Soviet Union (11.7%). Only 3.6% of them associated themselves with Ukraine.

Rather demonstrative for comprehension of the territorial-spatial identity of different socio-cultural groups were the answers to the question of their idea of what the Crimea is. 40.2% of representatives of the Slavic community said "Crimea is Russia", 34.8% – "Crimea is both Ukraine and Russia".

The prevalence of the local identity produces rather high share (41%) of people convinced that all Crimeans, irrespective of their ethnic origin, have common traits that differ them from Ukrainians, Russians, representatives of other peoples. At that, 36.9% believe that the existence of those common traits may with time lead to the creation of a single community –Crimean nation (the opposite opinion is shared by 26.1%).

Nearly two-thirds (65.7%) of representatives of the Slavic community believe that Russians and Ukrainians are the same people.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

U: "*Every nationality has such trait as love for the small Motherland. So, the specific character of Ukrainians and Russians in Crimea may be described as "Crimean patriotism". I used to spend much time outside Crimea. We felt kindred because we were Crimeans, and only after that, Russians, [or] Ukrainians. That was the kinship based on the Crimean patriotism. Other residents of Ukraine did not understand that. In some companies, they called us…"Crimeans". I mean that this factor of kinship…influences human consciousness*".

U: "*When I was employed at one organisation (not in Crimea), we had a Tatar from Dzhankoy at work, and there happened to be a Russian from Crimea. When they met, they embraced each other, and were so happy. They had common subjects [for conversation], talked about nature, walked together, and when one got a job, and the other did not, they kept contact over the phone. People from Crimea are kind of more united than people from other regions of Ukraine*".

Attributes of the common Crimean identity. Although in all socio-cultural groups those who believe that Crimeans have common traits that differ them from those living outside Crimea are in a relative majority, the perceptions of what exactly unites (or should unite) the Crimeans in one community substantially differ. For representatives of the Slavic community, the top five such "uniting" traits are: (1) "common language used by the majority of Crimeans is Russian"; (2) "positive attitude to Russia"; (3) "desire to see Ukraine in a union with Russia and Belarus"; (4) "common Motherland is Crimea"; (5) "negative attitude to NATO".

That is, orientation to Russia and association of the Crimean community with the "Russian world" are seen as the main value-based pillars of the Crimean community. The negative perception of NATO appears among the main attributes of the unity of the Crimean community exactly because NATO is seen as a geopolitical alternative to the "Russian world".

Civil identity. Only 27.3% of representatives of the Slavic community consider themselves members of the Ukrainian political nation ("Ukrainian people, including, according to the Constitution of Ukraine, citizens of Ukraine of all nationalities"), while 44.2% do not feel like that.

Religious identity. The overwhelming majority (90.5%) of representatives of the Slavic community consider themselves Orthodox, although only 53.3% of representatives of the Slavic community who called themselves Orthodox affiliate themselves with the Ukrainian Orthodox Church (43.5% do not affiliate themselves with any Orthodox church, saying "I am just Christian").

Crimean Tatars

Subjective criteria of self-identification. Crimean Tatars first of all identify themselves as Muslims (61.4%), another 6.5% − as members of Ummah (the world Muslim community).

Religious identity. 97.8% of Crimean Tatars consider themselves Muslims. Half (50%) of Crimean Tatar followers of Islam believe that a faithful Muslim should follow such Islamic prescriptions as Sadaka (voluntary donations and alms to the poor) and Salat (namaz, five prayer, 49.2%). Sawm (the fast of the month of Ramadan) was mentioned by 42.5%, Shahadah (words of declaration of belief) – 30.6%, more rarely mentioned were Hadj (pilgrimage to Mecca, 16%) and Zakat (obligatory tax on property and revenues for the community benefit, 12.7%). The fact that faithful Muslims least of all tend to see Zakat as an obligatory prescription of Islam to be followed may witness poor control of Crimean Muslim leaders over believers.

Idea of the right stand of a faithful Muslim in public life. Half (50.6%) of Crimean Tatars who consider themselves Muslims believe that a Muslim should follow the covenants of Islam, while remaining a loyal citizen

of his country. 20% of representatives of that group believe that a Muslim should seek rearrangement of the state he lives in on Islamic principles, 25.6% − aspire restoration of Caliphate (World Islamic state). So, it may be assumed that Islamist convictions are rather widely spread among Crimean Tatars.

Affiliation with a cultural tradition. 91.9% affiliate with Crimean Tatar cultural tradition, only 0.5% – with the Russian.

Territorial-spatial identity. 78.3% chose "Crimeans" as the group termed "us", only 7.6% consider themselves citizens of Ukraine in the first place. Somewhat different answers were produced when representatives of that group were asked what they associated themselves with in the first place. 38.3% associates themselves with Crimea – far less than those who reported "we are Crimeans". Other options of self-identification at answer to this question were reported by still fewer representatives of that group, 22% remained undecided. The large share of undecided Crimean Tatars is in the first place attributed to those representatives of that group who share Islamist convictions – 45.1% of them were undecided[5], while among Crimean Tatars who do not share Islamist views undecided made only 1.9%, whereas 58.9% of them in the first place associated themselves with Crimea.

For a relative majority (35.3%) of Crimean Tatars, the Crimea is neither Ukraine nor Russia. For every fourth (23.9%), Crimea is both Ukraine and Russia. Again, the answers substantially differ dependent on adherence to Islamist principles, first of all, concerning the option "Crimea is Ukraine". Among those who share Islamist views, it was chosen by only 1.2%, among those who do not – 26.5%.

Crimean Tatars more than other groups tend to believe that the existence of common traits may with time lead to the creation of a single community – Crimean people (43.2%).

Attributes of a common Crimean identity. For Crimean Tatars, the top five traits making the Crimeans feel a single community included "common Motherland is Crimea", "own territory is Crimean peninsula", "historic place names", "tolerable attitude to representatives of all nationalities and faiths living in Crimea", "Ukrainian citizenship", i.e., common territory, common history, tolerance, common Ukrainian citizenship. Meanwhile, speaking about historic place names, they mean restoration of Crimean Tatar names. As discussed below, that idea is rejected by the majority of representatives of the other Crimean socio-cultural groups.

Civil identity. Only 20.7% of Crimean Tatars consider themselves representatives of the Ukrainian political nation, and roughly as much (23.9%) do not. The majority (55.4%) remained undecided on that issue. The "doubts" of the majority of Crimean Tatars may stem from the fact that they still do not feel integrated into Ukrainian society. Also demonstrative, every tenth polled Crimean Tatar did not mention his Ukrainian citizenship.

If we examine groups of Crimean Tatars who share and do not share Islamist convictions separately, the difference is striking. While among those who do not share Islamist convictions, 37.3% considers themselves representatives of the Ukrainian nation, 30.4% do not, and 32.3% are undecided, no adherent of Islamism reported to be a representative of the Ukrainian political nation, 17.1% reported they were not, 82.9% were undecided. It may be assumed therefore that the popularity of Islamist views is strongly related with the non-integration of Crimean Tatars into the Ukrainian or Crimean society.

Social status and socio-economic standing[6]. The social status greatly depends on education. According to the survey results, Crimean Tatars differ from the other socio-cultural groups – they produced a somewhat lower than the Crimean average share of respondents with higher education, and a somewhat higher – with uncompleted secondary education. As a result, they have fewer professionals (respectively, 8.7% and 16.2%). 12% of Crimean Tatars reported that they had no job (among all those polled in the Crimea – 5%). A Crimean Tatar member of a focus group noted: "*When Crimean Tatars were coming back, it was difficult for them to find a job, because of a "taboo" to hire Crimean Tatars. Crimean Tatars proved industrious and began to create jobs for themselves*". Crimean Tatars reported a higher than Crimean average share of entrepreneurs (respectively, 9.3% and 5.9%),

Financial standing and affiliation with a social class. Among Crimean Tatars, notably more respondents, describing the material standing of their family, give the answer "Hardly make ends meet, money is insufficient to buy even necessary foodstuffs" (60.3%). Among representatives of the Slavic community, they make 45%, among "other" – 35.8%.

Due to the low self-assessment of their well-being, Crimean Tatars more than representatives of other groups tend to affiliate themselves with the lower social class (58.2%, among all those polled – 43.1%).

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5 The answer "hard to say" may witness either an undecided stand or the reluctance to frankly give an answer not shared by the majority of the population in some area or region.

6 Socio-demographic features of socio-cultural groups of Crimea are presented on the map, pp.8-9 of this magazine.

Group of "other"

By many features, the group of "other" is close to the Slavic community. For its representatives, too, the main individual criterion of self-identification is presented by self-identification with a language community ("we are Russian-speaking" – 46.5%). More than half (54.7%) of representatives of that group affiliate themselves with the Russian cultural tradition.

Among the attributes of the common Crimean identity, representatives of that group more often referred to "a common language used by the majority of Crimeans is Russian", "common Motherland is Crimea", "a positive attitude to Russia", "tolerable attitude to representatives of all nationalities and faiths living in Crimea", "negative attitude to NATO", "own territory is Crimean peninsula", "desire to see Ukraine in a union with Russia and Belarus". That is, the stand of representatives of that group is very much similar to that of the Slavic community.

However, by contrast to the Slavic community and Crimean Tatars, a relative majority (44.2%) of that group consider themselves representatives of the Ukrainian political nation[7].

So, social processes in Crimea, the public life in different domains (cultural, social, political, etc.) are largely determined by the character of relations between two socio-cultural groups – Crimean Tatars and the Slavic community. At that, for representatives of the Slavic community and "other", the most important individual criterion of social self-identification is presented by the language criterion ("we are Russian-speaking") as a symbol of affiliation with the "Russian world", while for Crimean Tatars – the confessional criterion ("we are Muslims" or "we are members of Ummah").

The Crimean regional identity generally prevails among the Crimeans. It dominates in all socio-cultural groups. The prevalence of the local identity makes many representatives of all socio-cultural groups sure that all Crimeans, irrespective of their ethnic origin, have common traits differing them from Ukrainians, Russians, representatives of other nations.

Meanwhile, there are two evidently different approaches to the building of the Crimean community: "Crimean Tatar" and "pro-Russian". The former rests on the comprehension of the territorial, historic, civic unity and the need of national tolerance (with restoration of rights of the Crimean Tatar people); the latter (supported by the majority of the Crimean population) mainly relies on association of the Crimean community with the "Russian world" (with a negative perception of stay in Ukraine).

In such conditions, there can be no talk of the existence of a "single Crimean community" as a real, not declared Crimean identity, since the ideas of the principles of its building in Crimean Tatars and pro-Russian Slavic community are too different. Rather, it goes about the formation of two communities, two identities – Crimean Tatar and Slavic.

The majority of representatives of the Slavic community do not consider themselves representatives of the Ukrainian political nation. Among Crimean Tatars, the majority were undecided on that issue, possibly because they still do not feel integrated into Ukrainian society. The survey results leave place for the assumption that the spread of Islamist views is related with the non-integration of Crimean Tatars into both the Ukrainian and Crimean society.

Furthermore, support or non-support for Islamist principles by Crimean Tatars seriously influences their self-identification and perception of the key social problems.

The main socio-cultural communities of Crimea are in unequal socio-economic conditions. The standing of Crimean Tatars is evidently worse, which affects their social comfort and may pose a factor of destabilisation of the situation in Crimea.

CRITERIA OF DISTINCTION OF SOCIO-CULTURAL COMMUNITIES IN CRIMEA

1. **Crimean Tatar**s (by self-identification) (9.1% all of those polled).

2. **Slavic community** (58.7% all of those polled)

Ethnic Russians and Ukrainians, who:

- consider Russian their native language;
- speak Russian at home;
- do not affiliate themselves with the Ukrainian, Crimean Tatar or other ethnic cultural tradition;
- agree that there is actually no difference between ethnic Russians and Ukrainians in Crimea and they make one socio-cultural community;
- when asked about religious affiliation, report that they are Orthodox, or just Christians, or do not affiliate themselves with any confession.

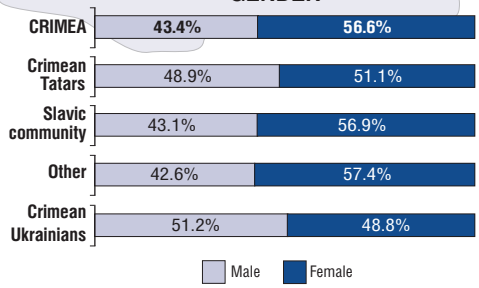
3. **Other** – all respondents not included in the two former groups (32.2% all of those polled).

In that group, we also distinguished the group of "**Crimean Ukrainians**" (6.5% all of those polled) – ethnic Ukrainians who do not share the opinion that there is actually no difference between Russians and Ukrainians in Crimea and they make one socio-cultural community.

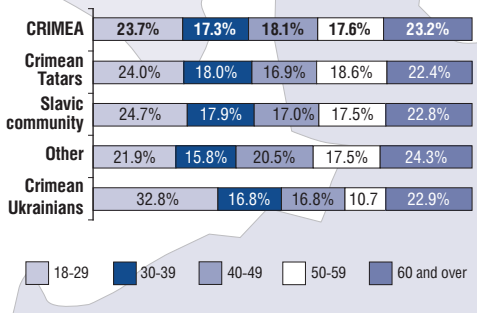
[7] The majority (59.5%) of "Crimean Ukrainians" (being a part of the group of "other") consider themselves representatives of the Ukrainian political nation.

SOCIO-DEMOGRAPHIC FEATURES
% of the polled in each

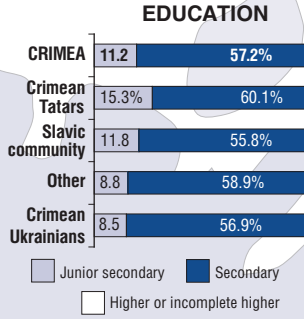
GENDER



AGE



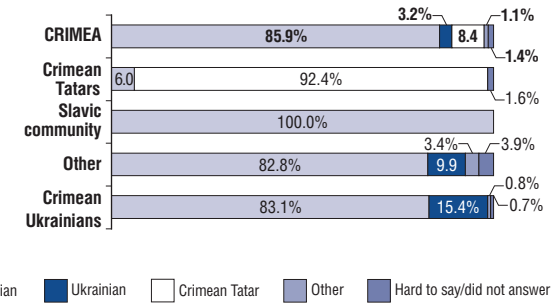
EDUCATION



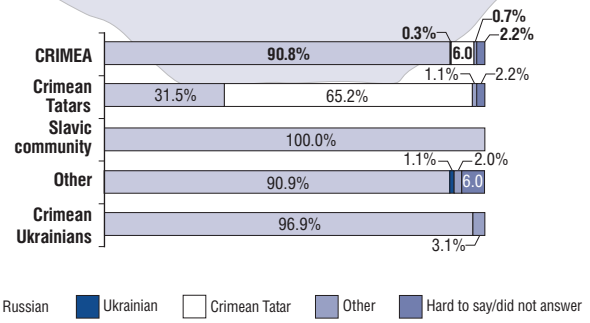
SOCIAL STATUS

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians
Civil pensioners	**26.5**	25.7	26.3	26.9	27.1
Specialist in humanitarian sciences (incl. economists, lawyers, specialists in education, arts, healthcare, etc.)	**12.5**	7.1	13.2	12.8	14.7
Pupil, student	**10.4**	12.6	11.2	8.2	15.5
Housewife	**9.1**	13.7	8.4	9.0	5.4
Skilled worker	**8.9**	4.9	10.4	7.4	5.4
Businessman	**5.9**	9.3	5.0	6.6	10.9
Employee	**5.8**	6.0	5.7	5.7	3.9
Off-the-job (not registered as unemployed)	**4.2**	8.7	3.0	5.3	4.7
Unskilled worker	**3.9**	1.6	4.3	3.7	6.2
Technical specialist	**2.3**	0.5	2.4	2.3	3.9
Specialist in natural sciences	**1.4**	1.1	1.6	1.1	0.0
Head (manager) of the department of an enterprise	**1.1**	0.0	1.4	0.9	0.8
Disabled (incl. invalids)	**0.8**	0.5	0.7	1.1	0.0
Officially registered as unemployed	**0.8**	3.3	0.7	0.5	0.0
Navy servants, servants of the State Security Service, Ministry of Internal Affairs of Ukraine	**0.7**	0.0	0.9	0.5	0.0
Agricultural worker	**0.6**	0.5	0.3	0.9	0.8
Pensioner of the Soviet Army, Navy	**0.5**	0.0	0.5	0.6	0.0
Pensioner of the Ukrainian Army, Navy	**0.3**	0.0	0.3	0.3	0.0
Pensioner of the Russian Army, Navy	**0.3**	0.5	0.3	0.2	0.0
Head (manager) of the enterprise, establishment	**0.2**	0.0	0.1	0.6	0.0
Farmer, tenant	**0.2**	0.0	0.4	0.0	0.0
Servant of the Armed Forces of the Russian Black Sea Fleet	**0.1**	0.0	0.2	0.2	0.0
Other	**2.3**	3.3	2.1	2.2	0.0
Did not answer	**1.2**	0.7	0.6	3.0	0.7

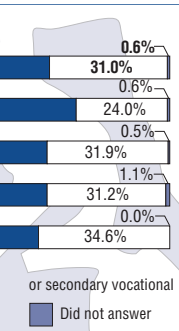
NATIVE LANGUAGE



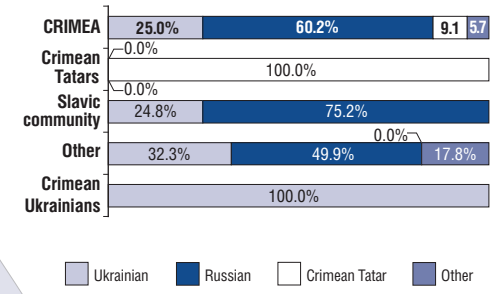
LANGUAGE MAINLY SPOKEN AT HOME



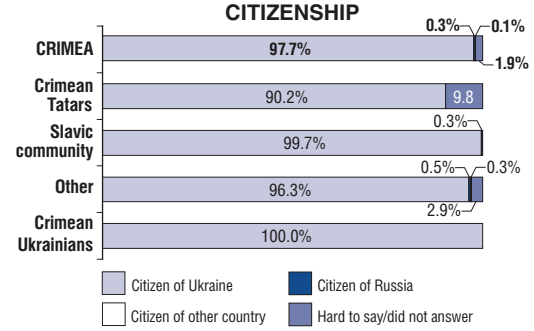
OF SOCIO-CULTURAL GROUPS OF CRIMEA,
social group



ETHNIC BACKGROUND



CITIZENSHIP



FOR HOW LONG HAVE BEEN LIVING IN CRIMEA

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians
Born in Crimea	**66.0**	34.2	75.8	57.1	55.7
Moved to Crimea before 1944	**2.7**	0.5	3.4	2.2	1.5
Moved to Crimea during 1944-1954	**4.3**	0.5	4.6	4.8	7.6
Moved to Crimea during 1955-1969	**9.2**	3.3	7.9	13.1	17.6
Moved to Crimea during 1970-1980	**9.3**	16.8	5.8	13.4	10.7
Moved to Crimea in 1990s	**5.1**	33.7	0.8	4.9	3.8
Moved to Crimea in 2000s	**1.7**	5.4	0.9	1.9	3.1
Hard to say/did not answer	**1.7**	5.6	0.8	2.6	0.0

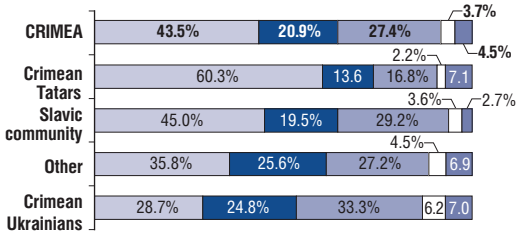
FOR HOW LONG HAVE REPRESENTATIVES OF PREVIOUS GENERATIONS (parents, grandparents, etc.) BEEN LIVING IN CRIMEA

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians
Lived in Crimea before 1944	**47.5**	77.2	50.0	34.5	21.4
Moved to Crimea during 1944-1954	**11.9**	0.5	14.6	10.2	8.4
Moved to Crimea during 1955-1969	**13.2**	2.7	12.4	17.5	26.7
Moved to Crimea during 1970-1980	**7.7**	6.0	6.8	9.9	14.5
Moved to Crimea in 1990s	**1.5**	4.9	1.3	1.1	0.8
Moved to Crimea in 2000s	**0.6**	0.5	0.7	0.3	0.0
Representatives of previous generations do not live and did not live before in Crimea	**8.5**	1.6	6.0	14.8	13.7
Hard to say/did not answer	**9.1**	6.6	8.2	11.7	14.5

SETTLEMENT TYPE

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians
Town with population of 100-999 thousand persons	**44.3**	37.0	46.3	42.9	39.2
Town with population of 50-99 thousand persons	**7.8**	5.4	8.1	7.7	1.5
Town with population of 20-49 thousand persons	**2.8**	0.5	3.6	2.2	0.0
Town with population less than 20 thousand persons	**0.7**	0.0	1.3	0.0	0.0
Urban-type settlement	**12.5**	15.8	12.6	11.4	13.8
Village	**31.8**	41.3	28.1	35.8	45.4

FINANCIAL STANDING*



Hardly make ends meet, money is insufficient to buy even necessary foodstuffs

It is sufficient for food and acquisition of inexpensive necessary items

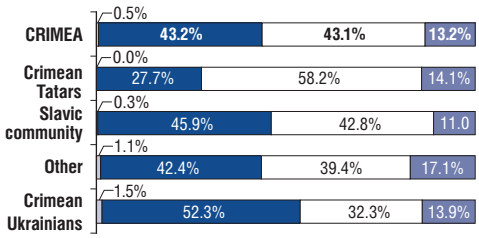
By and large, can live with it, but acquisition of some durables, such as furniture, refrigerator, TV set causes difficulties

Do well but so far cannot afford some purchases (an apartment, a car, etc.)

Hard to say/did not answer

* Answer variant "*Can afford actually anything we want*" was not chosen by a single respondent.

SOCIAL CLASS



SPECIFICITIES OF SELF-IDENTIFICATION OF SOCIO-CULTURAL COMMUNITIES

Annex 1

What group of people you can say about "That is us", in the first place?
% of those polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
We are Russian-speaking	**54.0**	2.7	66.0	46.5	34.6	54.6	51.3	55.6	53.1	55.0	54.2	54.4
We are Orthodox	**26.9**	5.4	29.8	27.7	26.9	25.7	27.4	24.4	27.7	28.7	26.2	27.6
We are the representatives of our nationality	**8.9**	20.7	3.0	16.2	19.2	8.6	9.8	9.3	9.6	7.7	8.7	9.3
We are Muslims	**5.8**	61.4	0.0	0.8	0.8	6.3	6.6	6.0	6.2	4.5	6.8	5.1
We are the representatives of ummah (*the world's Muslim community*)	**0.6**	6.5	0.0	0.0	0.0	0.0	0.3	0.8	0.3	1.5	0.6	0.6
None of the listed	**2.1**	1.1	0.5	5.4	13.8	1.9	2.0	3.3	2.0	1.7	2.8	1.6
Hard to say	**1.7**	2.2	0.7	3.4	4.7	2.9	2.6	0.6	1.1	0.9	0.7	1.4

With what cultural tradition do you associate yourself?
% of those polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
Russian	**61.4**	0.5	74.6	54.7	46.9	73.7	70.1	58.0	54.9	49.5	60.6	62.2
Soviet	**18.8**	1.6	21.3	19.0	13.1	5.8	10.9	19.0	25.1	32.8	17.6	19.9
Crimean Tatar	**8.7**	91.9	0.0	0.9	0.8	9.2	8.6	8.5	9.3	8.3	10.0	7.9
Ukrainian	**3.4**	1.6	0.0	10.0	15.4	2.1	3.2	2.5	4.2	5.1	3.3	3.4
Pan-European	**3.4**	1.6	2.0	6.5	10.8	2.9	4.3	6.3	3.7	0.9	4.7	2.5
Other	**0.2**	0.0	0.0	0.6	0.0	0.4	0.0	0.0	0.6	0.0	0.2	0.2
Hard to say	**4.1**	2.8	2.1	8.3	13.0	5.9	2.9	5.7	2.2	3.4	3.6	3.9

What group of people you can say about "That is us", in the first place?
% of those polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
We are Crimeans	**61.5**	78.3	65.4	50.0	33.1	69.7	68.8	67.9	55.1	48.1	63.7	61.4
We are citizens of the former Soviet Union	**19.8**	1.1	22.3	20.7	15.4	4.8	9.5	16.2	28.0	39.5	19.4	20.5
We are citizens of Ukraine	**10.4**	7.6	7.4	16.7	31.5	14.0	10.6	9.6	10.2	6.6	9.5	10.9
We are Europeans	**2.4**	3.3	1.5	3.7	6.2	4.6	2.9	1.9	1.4	1.3	2.7	2.3
None of the listed	**2.2**	6.5	0.8	3.4	8.5	2.7	2.0	1.6	2.3	2.1	2.4	2.1
Hard to say	**3.7**	3.2	2.6	5.5	5.3	4.2	6.2	2.8	3.0	2.4	2.3	2.8

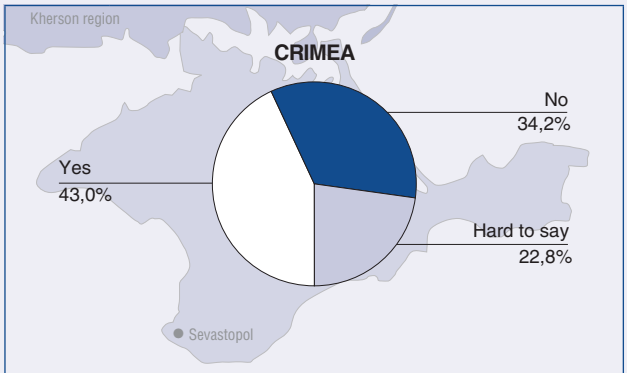
What of the following do you connect (identify) yourself with, in the first place?
% of the polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
With the region – Crimea	**35.6**	38.3	35.9	34.4	41.5	39.0	39.2	37.5	31.8	30.8	35.2	36.4
With town or village	**26.5**	15.8	25.6	31.0	27.7	25.6	24.8	23.8	29.0	28.8	26.9	26.2
With Russia	**14.4**	10.9	16.6	11.3	5.4	11.7	13.8	16.2	14.6	15.6	13.6	15.2
With Soviet Union	**9.5**	0.5	11.7	8.2	4.6	10.7	6.9	6.0	9.3	12.8	10.1	9.1
With Ukraine	**5.5**	2.7	3.6	9.6	15.4	4.0	7.2	7.4	6.2	4.1	5.8	5.4
With Europe	**0.3**	0.5	0.2	0.5	0.8	0.6	0.0	0.3	0.6	0.0	0.5	0.2
Other	**2.0**	9.3	0.6	2.5	0.8	1.3	2.9	1.4	3.9	1.1	1.6	2.2
Hard to say	**6.2**	22.0	5.8	2.5	3.8	7.1	5.2	7.4	4.6	6.8	6.3	5.3

With what of the following statements do you agree more?
% of those polled

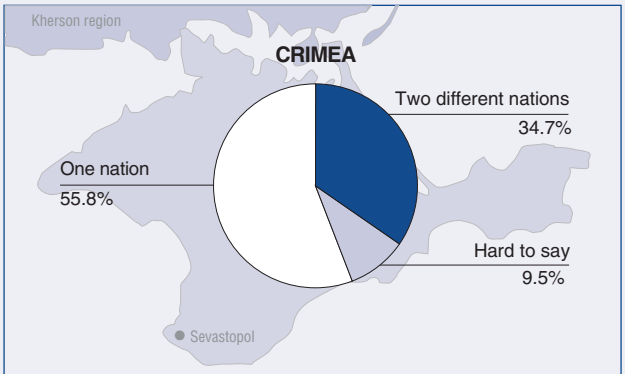
	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
Crimea is both Ukraine and Russia	**32.8**	23.9	34.8	31.9	26.7	31.8	29.7	35.6	32.0	34.8	33.1	32.9
Crimea is Russia	**30.9**	4.3	40.2	21.6	10.7	29.7	28.2	26.5	31.4	37.6	29.9	32.1
Crimea is neither Ukraine nor Russia	**16.5**	35.3	13.0	17.3	19.1	17.6	20.5	18.0	14.7	12.4	17.1	16.3
Crimea is Ukraine	**9.8**	14.7	5.1	17.1	26.7	11.1	10.1	10.5	9.9	7.9	9.9	9.9
With any of the statements	**3.8**	4.3	1.6	7.7	12.2	2.7	5.2	3.6	5.4	2.8	4.3	3.6
Hard to say	**6.2**	17.5	5.3	4.4	4.6	7.1	6.3	5.8	6.6	4.5	5.7	5.2

Do you think that all Crimeans, regardless of their ethnic background, have common traits which distinguish them from Ukrainians, Russians, representatives of other nations?
% of those polled



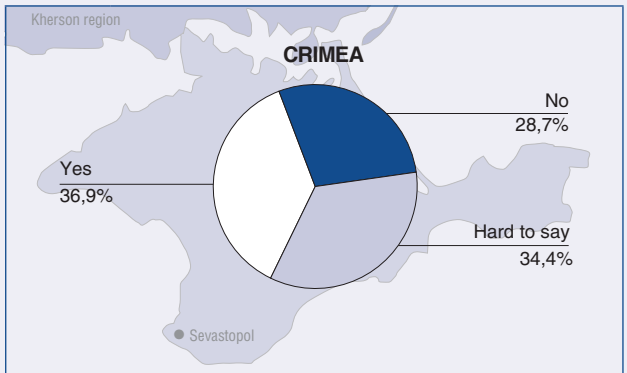
	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
					18-29	30-39	40-49	50-59	60 and over	Male	Female
Yes	38.3	41.0	47.8	45.0	36.6	43.7	45.1	44.5	46.2	42.3	44.1
No	30.1	35.1	34.0	38.2	35.4	35.1	34.6	34.6	31.8	35.4	33.5
Hard to say	31.6	23.9	18.2	16.8	28.0	21.2	20.3	20.9	22.0	22.3	22.4

How do you think, are Russians and Ukrainians one nation (socio-cultural community), or they are two different nations?
% of those polled



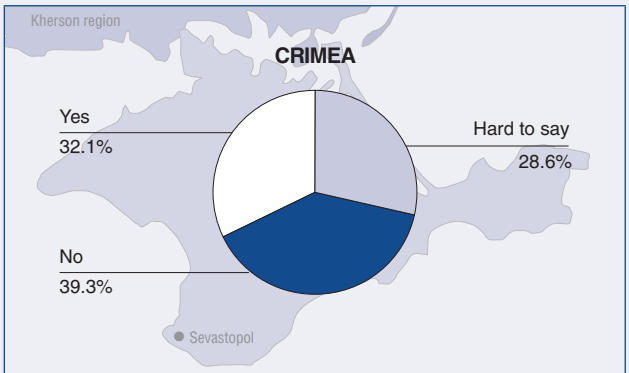
	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
					18-29	30-39	40-49	50-59	60 and over	Male	Female
One nation	40.8	65.7	42.0	26.0	53.3	56.5	55.2	52.4	60.7	56.7	55.2
Two different nations	38.6	29.5	43.1	61.8	34.5	33.7	36.0	37.2	32.9	34.4	34.9
Hard to say	20.6	4.8	14.9	12.2	12.2	9.8	8.8	10.4	6.4	8.9	9.9

Do you think that existence of these common traits can lead in the future to the formation of a single community – Crimean nation?
% of those polled



	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
					18-29	30-39	40-49	50-59	60 and over	Male	Female
Yes	43.2	36.9	35.2	28.5	33.0	35.3	39.3	38.4	39.2	37.9	36.9
No	23.5	26.1	35.1	42.3	24.0	28.7	32.7	28.0	31.0	29.2	28.4
Hard to say	33.3	37.0	29.7	29.2	43.0	36.0	28.0	33.6	29.8	32.9	34.7

Do you consider yourself a representative of Ukrainian nation to which, according to the Constitution of Ukraine, belong citizens of Ukraine of all nationalities?
% of those polled



	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
					18-29	30-39	40-49	50-59	60 and over	Male	Female
Yes	20.7	27.3	44.2	59.5	35.2	34.8	29.9	29.3	30.6	33.4	32.5
No	23.9	44.2	34.6	21.4	32.5	37.6	44.1	40.6	42.6	38.8	41.4
Hard to say	55.4	28.5	21.2	19.1	32.3	27.6	26.0	30.1	26.8	27.8	26.1

How important for self-sentiment of Crimeans as a unified community is each of the following features?*
average mark

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
Common language being used by the majority of Crimeans is Russian	**4.69**	4.29	4.87	4.45	4.26	4.67	4.68	4.68	4.67	4.73	4.64	4.72
Common Motherland is Crimea	**4.58**	4.75	4.69	4.34	4.16	4.57	4.53	4.57	4.61	4.62	4.57	4.59
Positive attitude to Russia	**4.55**	4.11	4.76	4.29	3.96	4.54	4.56	4.57	4.54	4.56	4.55	4.55
Own territory is Crimean peninsula	**4.50**	4.69	4.62	4.20	3.90	4.53	4.49	4.47	4.53	4.46	4.48	4.51
Negative attitude to NATO	**4.45**	3.82	4.67	4.20	3.86	4.38	4.39	4.47	4.45	4.57	4.42	4.48
Desire to see Ukraine in union with Russia and Belarus	**4.45**	3.58	4.73	4.19	3.88	4.38	4.44	4.49	4.34	4.60	4.43	4.47
Tolerable attitude to representatives of all nationalities and faiths living in Crimea	**4.42**	4.52	4.50	4.25	3.95	4.45	4.40	4.36	4.40	4.47	4.40	4.43
Common Crimean holidays	**4.32**	4.32	4.50	3.98	3.59	4.27	4.28	4.35	4.32	4.39	4.31	4.33
Desire to strengthen Crimean autonomy from Ukraine	**4.31**	4.21	4.50	3.99	3.80	4.39	4.25	4.33	4.26	4.30	4.33	4.30
Famous historic personalities connected with Crimea	**4.30**	4.22	4.51	3.92	3.68	4.31	4.22	4.30	4.24	4.38	4.32	4.28
Common history	**4.29**	4.39	4.44	3.99	3.76	4.33	4.26	4.36	4.21	4.29	4.29	4.30
Common traditions, customs	**4.20**	4.10	4.40	3.86	3.43	4.29	4.14	4.30	4.10	4.16	4.19	4.21
Authorities, Constitution of the AR of Crimea, official symbols of the AR of Crimea: Emblem, Flag, Anthem, etc.	**4.16**	4.19	4.34	3.81	3.64	4.22	4.10	4.18	4.12	4.15	4.18	4.14
Belonging to Orthodox church	**4.12**	3.57	4.42	3.68	3.20	4.15	4.09	4.10	4.08	4.17	4.09	4.15
Historic names of localities, geographic names	**4.06**	4.53	4.16	3.72	3.53	3.94	4.00	4.13	4.04	4.18	4.07	4.04
Negative attitude to being a part of Ukraine	**3.99**	3.65	4.25	3.60	3.22	4.02	3.94	3.96	3.97	4.05	3.97	4.01
Positive attitude to the Soviet past	**3.95**	3.75	4.11	3.70	3.62	3.86	3.86	4.07	3.94	4.03	3.98	3.93
Common psychology, national character	**3.90**	4.33	4.05	3.51	3.35	3.94	9.84	3.94	3.76	3.96	3.90	3.89
Ukrainian citizenship	**3.53**	4.46	3.44	3.44	3.19	3.46	3.50	3.57	3.58	3.54	3.52	3.53
Perception of current status of Crimea as a part of Ukraine	**3.42**	4.12	3.42	3.24	3.04	3.43	3.41	3.41	3.48	3.39	3.41	3.43

* On a five-point scale from 1 to 5, where "1" means "not important at all", and "5" – "very important".

With what religion are you affiliated?
% of those polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
Orthodoxy	**76.5**	1.1	90.5	72.3	81.7	73.9	77.5	78.8	74.4	78.0	74.3	78.1
Islam	**9.5**	97.8	0.0	1.7	0.0	9.8	9.2	9.6	10.1	8.8	10.7	8.7
I am just Christian	**5.4**	0.0	3.9	9.7	7.6	5.8	4.3	4.7	5.4	6.4	4.2	6.3
Roman Catholicism	**0.4**	0.0	0.0	1.1	0.0	0.2	1.2	0.3	0.3	0.0	0.6	0.2
Greek Catholicism	**0.2**	0.0	0.0	0.6	0.0	0.2	0.0	0.6	0.0	0.2	0.2	0.2
Protestantism	**0.2**	0.0	0.0	0.8	0.0	0.6	0.0	0.0	0.6	0.0	0.5	0.1
Judaism	**0.2**	0.5	0.0	0.6	0.0	0.0	0.0	0.6	0.6	0.2	0.2	0.3
Buddhism	**0.0**	0.0	0.0	0.2	0.0	0.2	0.0	0.0	0.0	0.0	0.1	0.0
Hinduism	**0.0**	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Paganism	**0.0**	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other	**0.0**	0.0	0.0	0.2	0.0	0.2	0.0	0.0	0.0	0.0	0.0	0.1
I am not affiliated with any religion	**7.5**	0.5	5.6	11.4	10.7	9.0	7.5	4.7	7.9	6.0	8.5	5.8
Did not answer	**0.1**	0.0	0.0	1.4	0.0	0.0	0.3	0.8	0.8	0.4	0.7	0.3

With which Orthodox denomination are you affiliated?
% of those who consider themselves Orthodox

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
Ukrainian Orthodox Church	**49.1**	0.0	53.3	39.4	41.9	45.8	45.9	49.0	54.5	51.0	50.0	50.2
I am just Orthodox	**45.8**	0.0	43.5	51.4	48.6	50.0	47.0	46.5	41.7	43.0	46.6	46.3
Ukrainian Orthodox Church - Kyiv Patriarchy	**2.2**	0.0	0.5	6.2	6.7	2.0	3.7	1.7	1.5	2.5	2.3	2.2
Ukrainian Autocephalous Orthodox Church	**0.1**	0.0	0.2	0.0	0.0	0.6	0.0	0.0	0.0	0.0	0.2	0.1
Do not know	**2.7**	0.0	2.6	3.0	2.9	1.6	3.4	2.7	2.2	3.6	0.9	1.2

What of the listed is obligatory for every Muslim?*
% of Muslims

	CRIMEA	Crimean Tatars	Age (Crimea)					Gender (Crimea)	
			18-29	30-39	40-49	50-59	60 and over	Male	Female
Sadaka (*voluntary donations and alms to the poor*)	**50.7**	50.0	52.2	48.5	50.0	58.3	43.9	48.4	52.5
Salat (namaz) (*five prayer*)	**49.5**	49.2	42.6	53.1	54.3	47.2	52.5	50.0	49.0
Sawm (*the fast of the month of Ramadan*)	**43.7**	42.5	44.7	37.5	50.0	41.7	43.9	54.3	33.7
Shahadah (*pronouncing words of declaration of belief*)	**32.5**	30.6	25.5	34.4	31.4	30.6	40.0	32.3	32.7
Hajj (*piligrimage to Mecca*)	**18.0**	16.0	14.9	15.2	25.0	19.4	17.1	18.3	18.2
Zakat (*obligatory tax at a fixed rate in proportion to the worth of property, collected from the well-to-do and distributed among the poor Muslims*)	**14.8**	12.7	10.6	15.6	11.4	25.0	12.2	15.2	14.1
Nothing of the listed	**0.7**	0.6	2.1	0.0	0.0	0.0	0.0	0.0	1.0
Hard to say	**3.2**	3.3	6.4	3.0	2.8	2.8	2.5	2.2	4.0

* Respondents were asked to mark all acceptable answer variants.

Which of the three assertions listed below corresponds the most to your own convictions?
% of Muslims

	CRIMEA	Crimean Tatars	Age (Crimea)					Gender (Crimea)	
			18-29	30-39	40-49	50-59	60 and over	Male	Female
A faithful Muslim is to obey the commandments of Islam, at the same time being a loyal citizen of his country	**50.5**	50.6	54.2	42.4	55.6	48.6	45.0	54.3	48.0
A faithful Muslim is to obey the commandments of Islam, and work for renewal of Caliphate (World Islamic state)	**25.1**	25.6	27.1	36.4	16.7	18.9	27.5	23.9	26.5
A faithful Muslim is to obey the commandments of Islam, at the same time striving to rebuild the country he is living in according to the principles of Islam	**20.4**	20.0	14.6	18.2	19.4	27.0	25.0	18.5	22.4
None of the listed	**1.1**	1.1	2.1	0.0	2.8	2.7	0.0	1.1	1.0
Hard to say	**2.9**	2.7	2.0	3.0	5.5	2.8	2.5	2.2	2.1

1.2. SPECIFICITIES OF COMMUNICATION AND CONFLICT POTENTIAL IN RELATIONS BETWEEN DOMINANT SOCIO-CULTURAL GROUPS

The nature and forms of relations between different socio-cultural groups depend on the specificity of their self-assessments and mutual perception, stereotypes and biases, ability to understand the opinions and needs of the other group.

Each of the main socio-cultural groups has a specific set of perceptions of moral and socio-psychological features of itself and of other groups it coexists with. The content of those perceptions exerts direct influence on the relations between representatives of those groups.

Similarly, each of those groups has its opinion of sensitive for its self-identification issues concealing a conflict potential in relations between them. Such issues in the Crimean context include: language, assessments of certain historic events, values and symbols, ideas of the autonomy's future.

Assessment of specific features of representatives of different socio-cultural groups[8]

Self-assessment and assessment of other communities by Crimean Tatars. Representatives of Crimean Tatars ascribe to their national community such positive traits as goodwill, religiousness, ability to defend their own interests; less intrinsic are the striving for justice, hard-working, ability to understand the interests of others.

Specific of **Russians**, as seen by Crimean Tatars, are goodwill, striving for justice, hard-working, to a far smaller extent – religiousness, national unity.

Among the main good features of **Ukrainians**, Crimean Tatars mentioned hard-working, openness, religiousness, ability to defend their own interests; the least inherent – striving for justice.

By and large, Crimean Tatars tend to ascribe to Ukrainians more positive qualities than to Russians. However, they more readily ascribe all positive qualities to their own community than to the other two mentioned communities.

Results of discussions in focus groups made up (separately) of ethnic Russians, Ukrainians and Crimean Tatars show that Crimean Tatars treat Russians and Crimean Ukrainians rather tolerantly and amicably. The tension arising in communication is usually attributed to the historic heritage in the form of distorted stereotypes of mutual perception, negative media reports, etc. At that, they note that in everyday life, relations will gradually normalise when people better know each other.

[8] See Table "Specificities of identity of dominant socio-cultural groups of Crimea", pp.22-28 of this magazine.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

T: *"After the mass arrival of Tatars, the situation began to stabilise little by little. People began to see Tatars as their neighbours. Now, my Ukrainian friends say: "Tatars are hard workers, hospitable people, always ready to help".*

T: *"In everyday life, everything is more or less good, all talk to each other. The mistrust observed 20 years ago is beginning to fade away".*

T: *"If we come back to the Russian people, it is openness, amicability, support".*

T: *"Russians are very quiet people, they are very passive in Crimea, posing no threat, they are immigrants. The authorities have always decided instead of them, that is why they are not dangerous. While previously, they were reserved, let nobody on threshold, now, as I come, they right let a man in, serve coffee. Rather industrious, many learned people you can talk to".*

T: *"The more you deal with Russians, the better. They are sympathetic at work. Treat little children with awe".*

By and large, Crimean Tatars clearly distinguish perception of Russians (and Ukrainians) in everyday life and in public. In the former case, they are generally viewed as equals, facing the same troubles as Crimean Tatars, which makes it easy to come to terms with them, in principle.

Publicly, Crimean Tatars associate Russians with the deportation of their people and identify them with the Crimean authorities, treated mainly negatively. For Crimean Tatars, the authorities – central to the smaller and local to the greater extent – are a source of violation of their rights. Regarding the growth of tension in inter-ethnic relations, a great deal of fault was vested on radical Slavic (mainly, Cossack) organisations, and on some mass media.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

T: *"When I graduated from the institute, nobody took me to work here, on national grounds, so I had no record of work. They did not say it to me outright but this was felt at conversations, meetings".*

T: *"It so happens in Crimea that if a Tatar is appointed minister, his deputy can never be Tatar. This is also discrimination, because selection should be made by professional qualities".*

T: *"My father had an accident in 2001 – he was hit [by a car]. We went to the investigator who … spoke rudely to us. They arranged different tests, invented some rain. Then they said that he was in dark clothes, and there was a young man driving, not the one they showed him".*

T: *"In 2003, before the election of the President of Ukraine, skinhead structures appeared here. Right here, in Crimea. First, there were cases of attacks on Palestinians, than on Armenians, than on Crimean Tatars… My personal opinion is that it is a Russian project, used before elections to divide society into several parts... And those Cossacks … It is an organised group of people that can be set against, creating a conflict situation".*

T: *"The situation is provoked, Cossacks are used to pull down tent camps, our guys are treated badly".*

T: *"Such political figures as…* (a Crimean politician – *Ed.*) *also speak up from time to time and stir up the situation. Before the elections…* (a Crimean politician – *Ed.*) *spoke on Lenin square and said that if you elect Yuschenko, tomorrow NATO will be here and will trample you Russians down, if Yuschenko comes, there will be only Crimean Tatars here, while Russians will be deported. There is a video recording but those people are not brought [to responsibility, although] this is clear destabilisation in the region, and it is deputies who do this".*

While in everyday life, Ukrainians are seen by Crimean Tatars on par with Russians (although Crimean Tatars disapprove assimilation of Ukrainians), publicly, Crimean Tatars distinguish Ukrainians from Russians and treat them more positively, since they, in the opinion of the focus group participants, from the very\beginning positively treated Crimean Tatars. However, this refers to Ukrainians by and large rather than Crimean Ukrainians.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

T: *"I also noted that the Ukrainians I meet consider themselves Russians. They are shy to speak Ukrainian and sometimes oppose the Ukrainian language more than Russians do".*

T: *"I do not like that, one should not forget his ancestors. Otherwise, they are kind people".*

T: *"Ukrainians may claim to be Ukrainians but try to think and act like Russians. If one asks: "You are Ukrainian, why do you act like that?", he says "It is better for me this way, more convenient".*

T: *"They were simply said that they were Russians for 70 years, and such life stereotype arose".*

T: *"Good for them, they treated us well from the very beginning. The only [bad] thing is that they are absent here, despite the claimed 23%".*

T: *"After resettlement to Crimea, my sister's family lived a whole winter in a Ukrainian family. They even now maintain good relations".*

T: *"Russians are viewed by Crimean Tatars as a people involved with deportation. Next, Tatar stereotypes: mistrust in any authorities, because Crimean Tatars were not let to power. And today, Russians are in power in Crimea. Regarding Ukrainians, many Crimean Tatars took a pro-Ukrainian stand".*

Self-assessment and assessment of other communities by Slavs[9]. In the opinion of representatives of the Slavic community, the main good features of Russians are goodwill, openness, striving for justice, while the least inherent traits are religiousness, ability to defend their own interests and national unity. Focus group results also demonstrate low assessments of the national unity of Russians and their ability to defend their interests.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

R: *"We Russian-speakers are just kind of calm, quiet. Tatars need not be compelled to rise. If you just tell them at 8 AM, they all stand at 10:00 … We are not".*

Moderator: *"What is good in the nature of a Russian man?"*

R: *"They tolerate long".*

R: *"I just wanted to say, patience. No matter whom, they tolerate, I do not know why".*

R: *"Slavs! Slavs keep on tolerating. We are very patient: we are humiliated, to tell the truth, and lowered our heads".*

Moderator: *"And what traits do you consider negative in Russians?"*

R: *"We have no negative traits".*

R: *"May I mention tolerance?".*

R: *"And plenty of love, because we can love, carouse, suffer – all from the heart".*

Representatives of the Slavic community consider more specific of Crimean Tatars their ability to defend their own interests, national unity, feeling of national pride and religiousness, less – the ability to understand interests of others and openness.

[9] Analysing the answers of representatives of the Slavic community, one should keep in mind that their assessments of the ethnic groups of Russians and Ukrainians to some extent (dependent of the share of representatives of each ethnos in that socio-cultural community) present a self-assessment, while assessments of Crimean Tatars characterise their attitude to "other".

During focus group discussions, Russians mainly negatively described Crimean Tatars, stressing that their unity in the defence of their interests, in the opinion of the panellists, often goes together with aggressiveness towards representatives of other nations. Negative assessments of Crimean Tatars also prevailed in the Ukrainian focus groups.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

R: On Crimean Tatars: *"what Russians call baseness, they call wisdom, cunning… Many Turcomans, not only Crimean Tatars …, actually all. Evidently, the roots are somewhere in Islam. Just in religion"*.

R: *"I can tell you what Tatars exactly are: ill-mannered crumps, they behave like kings of the nature"*.

R: *"Another trait, kind of instilled – permissiveness"*.

R: *"They are indeed well-organized to go out to meetings, we all see this regularly"*.

R: *"If you touch Tatars, they get organised very quickly. And will override us, trample us down"*.

U: *"I would call them more aggressive. Stay here till the 18th of May* [mourning meeting in commemoration of victims of deportation – ***Ed***.], *and we will see what you say"*.

U: *"Aggressiveness is bad, the ability of Tatars to achieve what they want is good to me. Not all methods are good though"*.

U: *"We all go to market. Who sells radishes? And who resells it? Did any Russian buy radishes from a Tatar [for resale]? Their industriousness, mainly Tatars trade in the market, but this does not mean that they grow all this"*.

U: *"I want to intercede. A Tatar laid tiles in my bathroom … "clever fingers" – laid tiles like that. Earning for his family… He may shoot, too, if something happens"*.

Although Russians in focus groups mentioned aggressiveness of Crimean Tatars, they also admitted aggression on the part of representatives of the Slavic community. They also noted the negative role of politicians in the instigation of inter-ethnic conflicts. However, negative descriptions of Crimean Tatars prevailed, there were even statements of the need to evict them and fears that "they will evict us".

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

R: *"My neighbour was beaten up. They just took him for a Tatar, although he is a Jew. A mob gathered… Beat him up on purpose, abused, called him Tatar, so and so"*.

Moderator: *"Between representatives of what nationalities did such problem situations arise?"*

R: *"It appears, Orthodox and Muslim"*.

R: *"We now mainly have conflicts … from the Crimean Tatar population"*.

R: *"I never had a conflict with anyone. My opinion about this… we are all people. Every nation has good and bad people. No matter who you are: Russian, Ukrainian or Tatar. People are susceptible to influences, someone said something into the microphone – and they all run as a mob to beat Russians, or Tatars, or Ukrainians, or, all together, Jews"*.

R: *"Yes, this is done intentionally, such is my opinion. They above designed it, and we here live with all that"*.

R: *"Poor Russians, for Tatars, we are not humans, for Ukrainians, we are inferior, a minority, I want to feel like human"*.

R: *"They [Crimean Tatars] came here to dictate… They came here as masters". "They came offended, misfortunate, deported. In their opinion, it is not Stalin who is to blame, not the regime but we all are to blame, because we appeared here somehow… They came as masters, we are inferiors for them, they always look at us, well, as if – when they have a leader who will pack us in trains… Say, I certainly dislike, … dislike their, as I put it, those extremes (Islam). My God, you cannot evict them somewhere! Previously, there was Russia, the Soviet Union, a lot of space, but where here in Small Russia?"*

R: *"Western Ukraine loves them a lot"*.

R: *"Send them there!"*

R: *"Tatars do not understand, on one hand, that Ukrainians, especially nationalists, first, fight Moscovites, and then: "Wait comrades, you are not that many, we will deal with you later"*.

R: *"Have you heard anything about the united Arab Caliphate, that idea now in the air? And how much money the Islamic world "plugs" in that subject: Tatar problem, creation of that Caliphate, that crazy idea"*.

R: *"We will give you money, but you, if something happens, will go kill Russians"*.

Representatives of the Slavic community mentioned among the main virtues of Ukrainians national pride, hard working and amicability, least of all – openness. By and large, by assessments of representatives of the Slavic community, all good qualities are manifested in Ukrainians more evenly than in Russians and Crimean Tatars.

The results of focus groups show that Russians distinguish Ukrainians living in Crimea from those living in other regions of Ukraine, stressing that "ours", i.e., Crimean Ukrainians "are just like us". Meanwhile, assessments of Ukrainians are influenced by the stereotypes of perception of "Western Ukrainians": Russians consider them "nationalists", imparting that term a negative meaning ("*they, Western, are certainly terrible nationalists*").

This fact may lead to extension, transfer of assessments of Western Ukrainians to "locals". As a result, representatives of the Slavic community, suggesting that there is actually no difference between Russians and Crimean Ukrainians, more rarely than Russians ascribe to Crimean Ukrainians the qualities undoubtedly seen as positive (goodwill, openness, ability to understand the interests of others, striving for justice). The assessment of Ukrainians may also be influenced by the negative perception of Ukrainisation.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

R: *"We have no Ukrainian people here, I at least never met them. Never met them, as a people. Some individuals, but just some – they consider themselves residents of Crimea – and do right"*.

R: *"Even if they are Ukrainians, they do not consider themselves such"*.

Moderator: *"What good traits of the Ukrainian national character, Ukrainians, could you mention in the first instance?"*

R: *"Good – singing"*.

R: *"I do not see a single good trait. I live in Ukraine, that is why I do not see a single good trait"*.

R: *"I dislike [the Ukrainian people] … I try to avoid Ukrainians. Because I do not know the Ukrainian language, I do not learn it on principle… do not read, do not watch Ukrainian movies. What I dislike about Ukrainian is that I am forced to listen… to the radio only in the Ukrainian language…. I cannot stand them, dislike with all of my soul"*.

R: *"Genuine Ukrainians" are all rather amicable, hospitable, always ready to share"… For me, Ukrainians are anyway divided into Western and "ours" who, in my opinion, are just like us"*.

R: *"I am very happy that so far, they [nationalists] still keep in Western Ukraine… For instance, I would be happy [to divide Ukraine] right along the Dnieper, in a civilized way, all willing, even Kyiv might be given [to Poland]"*.

Meanwhile, Ukrainians in focus groups demonstrated rather a vague idea of their national identity and unwillingness to be distinguished as a separate national group.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

U: *"The specific character of Ukrainians and Russians in Crimea may be termed "Crimean patriotism".*

U: *"My personal opinion is that people should not be divided by nationality".*

U: *"I studied at a university, department of Ukrainian language and literature, and till the junior year we did not know who Russian was, who – Ukrainian, although there were Crimean Tatars, too. We never divided".*

U: *"I am more frightened when we Ukrainians are set against Russians".*

U: *"I guess that neither Russian nor Ukrainian have a specific character".*

Knowledge of cultures of Crimea's peoples and interest in them

Representatives of the main socio-cultural groups of Crimea belong to different cultural traditions. That is why mutual knowledge of their cultures, traditions, customs, and desire to learn more are important for maintenance of an inter-cultural dialogue, mitigation of tension in relations.

Crimean Tatars demonstrated the best knowledge of the culture of their people – the overwhelming majority of them know a lot about it, while the number of those who know little is meagre. They also reported rather good knowledge of the culture of Russians and Ukrainians, of which the overwhelming majority of Crimean Tatars knows much or "something".

The overwhelming majority of Crimean Tatars is highly interested or tends to be interested in the cultures of other peoples of Crimea. Among peoples of whose culture they would like to learn more, they mainly mentioned Karaites and Greeks, less often – Krymchaks and Germans, and very rarely – Ukrainians and Russians (maybe because Crimean Tatars consider their knowledge in that field deep enough).

The overwhelming majority of representatives of the Slavic community reported good knowledge of the culture of Russians and Ukrainians. Far fewer reported good knowledge of the culture of Crimean Tatars, while more than half have some knowledge of it.

Meanwhile, they are more than Crimean Tatars eager to learn more about the culture of other peoples. They mainly reported the desire to learn more about the culture of Karaites and Krymchaks, less – Greeks and Bulgarians, but quite many would like to learn more about the culture of Crimean Tatars, Russians and Ukrainians alike.

Stand of socio-cultural groups in the language issue

There are only two numerous language groups in Crimea – Russian-speakers and Crimean Tatars. The Ukrainian language is on the outskirts in all sectors – public life, culture, education, everyday life, etc. Even among ethnic Ukrainians, the number of those who consider Ukrainian their native language is rather low, of those who speak it at home – meagre. Such standing of the Ukrainian language in Crimea contrasts with its official status that, however, does not allow its total neglect.

For instance, in all socio-cultural groups of Crimea more than half or nearly half believe that every state servant in the authorities and local self-government bodies of the autonomy should know the Ukrainian language, and this conviction is the strongest among Crimean Tatars (57.6%). Meanwhile, the overwhelming majority of Crimeans believe that every official should also know the Russian language. However, the opinions of the officials' duty to know the Crimean Tatar language show substantial disparities: while the majority (67.4%) of Crimean Tatars admit such need, in other socio-cultural groups this opinion is shared by no more than a quarter.

Similar disparities exist in the opinions of different socio-cultural groups on the obligatory command of specific languages by every resident of Crimea and their obligatory teaching in all Crimean schools, irrespective of the main languages of studies. The necessity of the Russian language arouses the least differences in the former and latter cases. In all groups without exception, the overwhelming majority believe that every resident of Crimea should know it, and it should be taught in all schools.

Big differences, however, are recorded regarding obligatory teaching of the Ukrainian language and its knowledge by every Crimean. More than half of Crimean Tatars consider it necessary both in the former and in the latter case. The Slavic community supports the former by 10%, the latter – by 30%. Even greater disparities are observed in the opinions of Crimean Tatars and Slavs about the obligatory knowledge and teaching of the Crimean Tatar language.

The Russian language is evidently recognised as the language of inter-ethnic communication in Crimea by all socio-cultural groups. However, while representatives of the Slavic community tend to freeze the language situation in the autonomy, Crimean Tatars would be happy with wider use of their native and the official languages.

The fact that Crimean Tatars more often than representatives of other socio-cultural groups consider use of the Ukrainian languages in the key public sectors and its knowledge by citizens and state servants obligatory illustrates the attitude of Crimean Tatars to the Ukrainian state, largely resting on hopes that the state will be the institute that will ensure fully-fledges integration of Crimean Tatars on their historic Motherland. At that, focus group result show that Crimean Tatars are often puzzled and irritated by the stand of many Crimean Ukrainians who, in their opinion, largely lost their national consciousness.

During discussions in focus groups ethnic Russians, speaking of their idea of the language policy, mainly stressed the expediency of several official languages (Russian, Crimean Tatar, Ukrainian or only Russian and Crimean Tatar) – often suggesting however that this will require from officials not mandatory knowledge of all official languages, but sufficient command of at least one of them (as well as study of only one language at school). They also suggested that Russian should be the only state (official) language.

Ukrainians during discussions in focus groups spoke out for the use of the Ukrainian languages in state service and education, stressing that this should be done gradually, and that there should be a choice. The also suggested that higher educational establishments should teach students of Slavic nationalities the Crimean Tatar language, too.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

R: *"Russian, Ukrainian and Crimean Tatar. I would refuse from Ukrainian, but who will let me do that? Ukrainian may be dropped. Nobody here speaks it. There might be two languages: Russian and Crimean Tatar, let them calm down".*

R: *"Only the Russian language would be ideal. What we have now: my child studies Ukrainian, and if Tatar is added – must he study Tatar?"*

U: *"Not everyone can immediately start speaking Ukrainian, they should begin with the younger generation. Gradually, quietly, without collisions. And, of course, the prestige of being Ukrainian must be shown".*

U: *"It seems to me that the [Ukrainian] language should of course be introduced. They just want to do it fast... Teaching Ukrainian at school should be introduced gradually… Moreover, I guess that the Tatar language should also be delivered to children of Slavic nationalities at higher educational establishments. That nation exists and is big enough, one should at least understand what two persons say behind your back".*

R: *"Ukrainian and Crimean Tatar may be admitted, but a man should always have the right of choice of one or another language in paperwork".*

U: *"There should be a choice in the language and in education".*

R: *"A Slav is really unable to learn the Crimean Tatar language, moreover adult".*

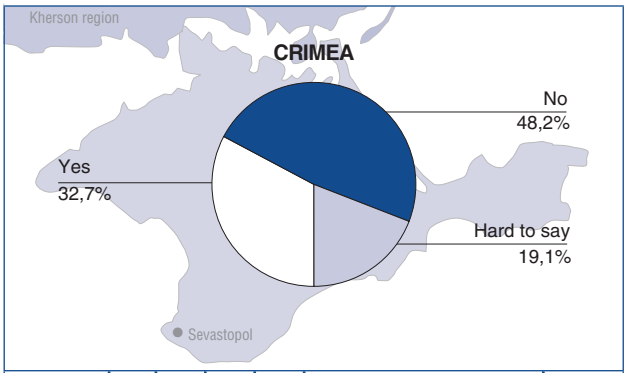
R: *"There should be official languages, at least in Crimea, spoken by the majority of people. If we, say, make a majority, of course, it must be the Russian language. A developing language (all linguists will say) can never be official, while it is developing".*

R: *"One official language (Russian)".*

U: *"One cannot live in society and be free from society. Of course, as a Ukrainian, I believe that everybody should know the official language. State servants – "fluent command of the [Ukrainian] language is mandatory". But how to learn the language? It should be started from kindergarten, gradually adding at school. There should be a planned policy, special programmes prepared for that".*

T: *"Now, Crimean Tatar children speak Ukrainian best of all. At all events devoted to Shevchenko, Crimean Tatar children read verses, Crimean Tatar children take part in competitions".*

Do you have enough possibilities to bring up your children according to the cultural traditions of your people?
% of those polled



	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
					18-29	30-39	40-49	50-59	60 and over	Male	Female
Yes	21.7	29.2	42.2	33.6	28.9	32.0	33.8	34.5	35.0	32.5	33.1
No	67.9	53.3	33.2	37.4	40.8	53.6	50.3	51.1	47.4	46.9	49.5
Hard to say	10.4	17.5	24.6	29.0	30.3	14.4	15.9	14.4	17.6	20.6	17.4

Regarding limitations on the use of the native languages, Crimean Tatars are in the worst situation, since the majority of them face limitations in everyday life – at work, during studies, in public activity, communication with representatives of the authorities, law-enforcement, judicial bodies (most often), doctors, sales people, employees of utility services. The majority of representatives of all other socio-cultural groups reported absence of such limitations.

Ability to bring up children in cultural traditions of their people

The majority of Crimean Tatars and more than half of representatives of the Slavic community reported that they did not have enough possibilities to bring up children in the cultural traditions of their people. Only a fifth of the former and more than a quarter of the latter believe that they have such possibility.

In secondary and higher education, Russian is the most desired language for the main socio-cultural groups of Crimea, to a different extent though. The absolute majority of representatives of the Slavic community and a relative majority of Crimean Tatars would like their children to study at school or a higher educational establishment in that language.

The difference between the socio-cultural groups is that only a bit more than a quarter of Crimean Tatars would prefer the language of their people as the language of secondary and higher education for their children.

Perception of the problem of "Ukrainisation of Crimea" and idea of its signs

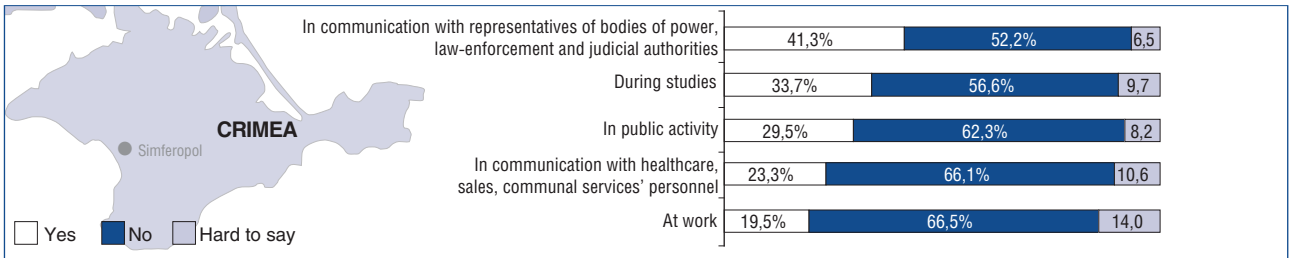
The problem of Ukrainisation remains sensitive for Crimea. Representatives of all socio-cultural groups agree or tend to agree that this phenomenon exists, and this opinion is widely shared even by Crimean Tatars, although much less than in the Slavic community.

In all socio-cultural groups, the majority (actually the same share) sees forcible Ukrainisation in the ban on broadcasting of Russian TV channels in Ukraine whose programmes were not adapted to the requirements of the Ukrainian legislation. Also, nearly half of Crimean Tatars and the majority of representatives of the other groups referred to translation of prescriptions, manuals, description of goods in Ukrainian and dubbing movies on TV and in the cinema.

More than half of representatives of all socio-cultural groups, except Crimean Tatars, also see Ukrainisation in translation of business documentation to the Ukrainian language.

The focus group results revealed different perceptions of Ukrainisation by the main ethnic groups of Crimea. In Russians, it arouses flat rejection, even aversion. Ukrainians are generally not against Ukrainisation as such but against extremes and haste accompanying it, in their opinion. Crimean Tatars are the most receptive of Ukrainisation, but suggest that it should be accompanied with the development of Crimean Tatar education, wider use of the Crimean Tatar language. In its absence, Ukrainisation will only do harm to the Crimean Tatar people.

Did you personally experience restrictions in use of your native language?
% of those polled



		Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
In communication with representatives of bodies of power, law-enforcement and judicial authorities	Yes	71.2	40.1	35.0	33.1	37.7	41.8	42.6	38.6	45.7	43.1	40.6
	No	20.7	54.7	56.5	56.2	53.8	52.2	51.6	54.6	49.4	52.5	53.2
	Hard to say	8.1	5.2	8.5	10.7	8.5	6.0	5.8	6.8	4.9	4.4	6.2
During studies	Yes	62.0	34.0	25.2	28.2	39.5	34.3	33.0	29.6	30.8	37.2	34.5
	No	30.4	56.0	65.1	59.5	52.7	55.3	61.5	61.1	54.7	59.2	60.9
	Hard to say	7.6	10.0	9.7	12.3	7.8	10.4	5.5	9.3	14.5	3.6	4.6
In public activity	Yes	58.2	29.5	21.5	13.1	29.7	27.1	30.2	29.1	30.6	30.8	28.9
	No	31.0	62.8	70.1	76.2	60.5	64.8	64.3	61.3	61.5	62.9	63.1
	Hard to say	10.8	7.7	8.4	10.7	9.8	8.1	5.5	9.6	7.9	6.3	8.0
In communication with healthcare, sales, communal services' personnel	Yes	53.6	21.7	17.6	15.4	20.7	23.3	20.3	26.8	25.6	23.6	23.3
	No	36.1	69.1	69.0	69.2	68.1	66.3	69.2	64.7	62.2	65.8	66.7
	Hard to say	10.3	9.2	13.4	15.4	11.2	10.4	10.5	8.5	12.2	10.6	10.0
At work	Yes	46.7	16.3	17.4	12.3	17.7	19.5	23.4	21.0	17.3	20.1	20.4
	No	42.9	66.8	72.5	80.0	65.1	68.4	63.9	66.9	68.2	67.9	69.9
	Hard to say	10.4	16.9	10.1	7.7	17.2	12.1	12.7	12.1	14.5	12.0	9.7

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

R: *"Ukrainisation is a problem of not only Crimea, it is a problem of the whole country. The Ukrainian language never existed and probably never will. The whole of Ukraine speaks Pidgin Ukrainian, only its nature changes dependent on the region... There is no single Ukrainian language as such…"*

R: *"We are forcibly ukrainised. Pity our children who enter institutes... Not all lecturers at higher educational establishments can teach in Ukrainian. I guess, if English were imposed upon us like that, we would similarly dislike English".*

U: *"Ukrainisation should not go on at such a pace in Crimea. Although we should support it… I noticed that as soon as they began to translate movies, that sector [cinema] became loss-making in Crimea. One should take into account not only political importance of issued laws, but also economic".*

U: *"It seems to me that Ukrainisation should be a process of building the Ukrainian self-identification. For a man to be Ukrainian and think Ukrainian. Best of all is to begin with mass media. But on the other hand, why do we deprive other peoples, say, Russians, of the right to bring up their children in their language?"*

T: *"Ukrainisation in Crimea goes on very slowly, but it does. I see that children now without difficulty watch and understand everything in the Ukrainian language. It may be difficult for our parents but easy for a child. The next generation will be ukrainised... If Crimea is in the Ukrainian state, the only second official language may be Crimean Tatar after Ukrainian … Ukrainisation should be adapted to Crimea".*

T: *"Ukrainisation is hostile to our people. My niece in Crimea learns verses about Kyiv. Why not about Crimea, mosques, even in the Ukrainian language? And another thing: I will welcome Ukrainisation if it goes along with Tatarisation. In the result of Ukrainisation alone, nothing will be left from my people tomorrow".*

Attitude to historic heritage and assessment of historic events

The problems of historic heritage, assessments of historic events are of special importance because they fall within the segment of so-called "historic myths", being a vital element shaping consciousness of socio-cultural groups. Those problems, as a rule, arouse great interest and expressive emotional response even in those who little care about the problem of history, since they touch value symbols in human consciousness.

Assessment of deportation of Crimean Tatar people. The majority of representatives of Crimean Tatars and the Slavic community disagree that deportation of Crimean Tatars was a justified act of the Soviet leadership. However, the degree of disagreement in those groups substantially differs. While nearly half of Crimean Tatars entirely disagree with that statement, among Slavs, only half tends to disagree, and only 7.3% disagree entirely.

Deportation is justified by more than a quarter of representatives of the Slavic community and nearly one-fifth of Crimean Tatars.

So, despite some differences, deportation is not justified by the majority in all socio-cultural groups.

Approaches to restoration of historic Crimean Tatar place names in Crimea. Opinions of Crimean Tatars and Slavs regarding the expediency of restoration of historic (Crimean Tatar) place names in Crimea are diametrically opposite. Some 70% of Crimean Tatars see it expedient, and actually as many representatives of the Slavic community – inexpedient.

This is a contentious subject for representatives of those socio-cultural groups, since the change of place names will witness a change in "symbolic value space" in Crimea to the benefit of one of them, and command of that space means control of the material space, with all its resources.

Idea of the Crimea's future. A relative majority of Crimean Tatars remained undecided on the most desired for them option of the Crimea's future. Roughly equal groups (a bit more than 10% each) chose such options as secession of Crimea from Ukraine and getting the status of an independent state, transfer to Russia, transformation into a Crimean Tatar autonomy within Ukraine, preservation of the current status with expanded rights and powers.

The least desired for Crimean Tatars are the prospects of transfer of the Crimea to Turkey and granting it the status of a region within Ukraine[10].

Among representatives of the Slavic community, more than a third would like Crimea to be part of Russia, nearly a quarter – be transformed into a Russian national autonomy as a part of Ukraine. The least wanted are such options as the *oblast* status for the Crimea and transfer to Turkey. Very few people would like Crimea to stay an autonomy within Ukraine with the existing rights and powers or to be an independent state. None of the polled would like Crimea to be the Crimean Tatar national autonomy.

So, by and large, the stand of the Slavic community looks more definite than of Crimean Tatars, and that stand, judging by the two most acceptable for that community options of the Crimea's future, is evidently pro-Russian. The unpopularity among representatives of both communities of once the most acceptable option of preservation of the present status of the autonomy with wider rights and powers witnesses threatening trends in the social consciousness of the Crimeans, in particular, disbelief of the majority in positive prospects of Crimea staying within the state system of Ukraine.

The main Crimean socio-cultural groups are highly ethno-centrist. This is seen in self-assessments and mutual assessments of human qualities inherent in socio-cultural groups, their attitude to cultural traditions, languages, problems of other socio-cultural groups.

Assessments of human qualities of representatives of other group by the main socio-cultural and ethnic groups substantially differ from self-assessments of those groups: as a rule, representatives of their group are ascribed more positive qualities, while otherwise positive qualities associated with representatives of other communities in the end acquire a negative tint. At that, Crimean Tatars assess Russians and Ukrainians much better than they are assessed by representatives of those nations. Russians demonstrated least of all tolerance and amicability to the other national groups.

Ukrainians in Crimea are actually not seen by representatives of other communities as a separate socio-cultural group, and their own national self-identification is weak. At that, Crimean Tatars generally treat Ukrainians more positively, Russians – more negatively.

Representatives of the main socio-cultural communities demonstrated rather good knowledge of the culture, traditions, customs of the main ethnic groups of Crimea – Russians, Ukrainians, Crimean Tatars. At that, Crimean Tatars know the culture, traditions, customs of Russians and Ukrainians somewhat better than representatives of the Slavic community – the culture, traditions, customs of Crimean Tatars.

Representatives of the main socio-cultural and ethnic groups of Crimea, in principle, are united regarding mandatory knowledge and desirability of study of the Russian language, while serious differences are observed concerning other languages. At that, Russians are happy with the present situation of actual monolingualism in the Crimea. Ukrainians would not mind wider use of their native language, gradual though. Crimean Tatars support wider use in Crimea of their native and the official languages. They also face the toughest limitations in the use of their language in actually all social sectors, while the majority of Ukrainians and Russians never encountered such problem.

Meanwhile, the majority of representatives of the main socio-cultural groups of the Crimea recognised that they did not have enough possibilities to bring up their children in the cultural traditions of their people.

Along with some differences in assessments of the rationale of deportation by the Slavic and Crimean Tatar communities, there are fundamental differences between them regarding the restoration of historic Crimean Tatar place names. Contradictions in symbolic values conceal a significant potential of conflicts.

1.3. IDEAS OF WAYS TO HARMONISE INTER-ETHNIC AND INTER-CONFESSIONAL RELATIONS IN CRIMEA

The attitude of the main socio-cultural groups to the institutes of governance, their influence on the situation, views of the ways of solution of existing problems present the basis for development of the situation in the field of inter-ethnic relations in the autonomy.

In this context, the depth of differences between groups may present both a precondition for search of a common stand, and a factor of their division. In particular, their opinions are similar as soon as they deal with economic and social problems, and differ as soon as they deal with political problems and problems of inter-ethnic relations[11].

Assessment of the focus of central and Crimean authorities

The attitude of representatives of actually all socio-cultural groups may differ only in the range from critical to very critical.

Central authorities. Nearly 40% of representatives of all socio-cultural groups believe that the policy of the central authorities in Crimea pursues interests of oligarchic clans. A bit fewer people (21-23%) in the main socio-cultural groups believe that it pursues the interests of Ukraine as a whole. There is notable difference between assessments of Slavic and Crimean Tatar groups, on one hand, and the group of "other" (7.4%). The number of Slavs and Crimean Tatars who believe that that policy pursues interests of specific ethnic groups is small. Only some of the "other" and "Crimean Ukrainians" believe that that policy pursues interests of Ukrainians – 7.9% and 17.4%, respectively.

Crimean authorities. Perception of the policy of local authorities by representatives of all socio-cultural groups is more critical, compared to the attitude to Kyiv's policy. Almost half of representatives of the Slavic and Crimean

[10] For more detail on the attitude of the Crimeans to the autonomy's problems see: Crimea: people, problems, prospects. Razumkov Centre Analytical Report. – "National Security & Defence", No.10, 2008.

[11] Results of the previous phase of the project show that the main Crimean ethnic groups differently see the desired future status of the peninsula, and some alternatives acceptable for a specific group, if attempted, can cause serious conflicts, including with the use of force. For more detail see: Crimea: people, problems, prospects…, pp.19-22.

Tatar communities believe that Crimean authorities pursue a policy in the interests of oligarchic clans. However, in the Slavic community, twice more people (10.9%) believe that it pursues the interests of the Crimeans.

Therefore, representatives of all socio-cultural groups have similar, rather critical assessments of the policy of both central and Crimean authorities. Representatives of the Slavic community more often note the "pro-Crimean" nature of actions of the local authorities, compared to representatives of the other communities.

Ideas of ways to enhance the effectiveness of the Crimean authorities

Differences in the assessments of measures at improvement of operation of the central and local authorities by representatives of different socio-cultural groups are not fundamental and mainly deal with their importance and priority.

Central authorities. Representatives of the **Slavic community** mentioned among the most effective measures at enhancement of the effectiveness of operation of the central authorities in Crimea formulation and implementation of the strategy of development of the Crimea (24.4%), elimination of corruption (20.5%). They attach less importance to the issues of organisation and human resources (11-16%): replacement of executives with more professional; extension of greater powers to the Crimean authorities, wider representation of Crimea in the central bodies of power, reversal of the party affiliation and political course of the central authorities. The stand of the group of "other" is very much the same.

The stand of **Crimean Tatars** in that issue differs by that they attach the highest priority to fighting corruption (36.2%), and see reversal of the party affiliation and political course as the main organisational and HR step (17.3%).

Noteworthy, Crimean Tatars pay less attention than the Slavic community to wider powers for the Crimean authorities and stronger representation of Crimea in the central bodies of power – only some 4%.

Crimean authorities. Representatives of the Slavic community mentioned as the most important measures at enhancement of the effectiveness of the Crimean authorities: elimination of corruption (50.2%), working out and implementation of the Crimea's development strategy (46.7%), replacement of its leadership with more professional (39.3%). The opinions of "other" and "Crimean Ukrainians" are close, the main difference being that they consider replacement of its leadership with more professional the second most important step.

The difference in the stand of **Crimean Tatars** lies in their emphasis on measures at broader representation of the deported peoples in the Crimean authorities (54.3%), where they are supported by only 3-5% of representatives of the other groups.

Representatives of different groups are generally united in their perceptions of the need and ways of enhancement of the effectiveness of the central and Crimean authorities. Crimeans prioritised removal of corruption, making the authorities' policy strategic and personal changes for their improvement.

Interestingly, Crimean Tatars, emphasising their greater involvement in local authorities, pin little hope on representation of the Crimea in central bodies of power.

Ideas of ways to solve problems in the sphere of inter-ethnic relations

The most important for all Crimeans, from the viewpoint of influence on inter-ethnic relations, are problems in two sectors: political and socio-economic. Crimean Tatars also attach greater importance than representatives of other groups to measures in the cultural, language and educational sectors.

Socio-economic sphere. The majority of all Crimeans are united that inter-ethnic relations in Crimea may get better with the recovery of industry and agriculture. The main socio-cultural groups also show little differences in the assessment of the importance of such measures as rise of wages and pensions, development of the recreational sector and, interestingly, fair solution of the land problem to the benefit of representatives of all nationalities.

Meanwhile, **representatives of the Slavic community and the group of "other"** far more often than Crimean Tatars noted the urgency of the problem of dealing with unemployment (58.1% and 62.6% against 29.3%, respectively).

On their part, **Crimean Tatars** see it more urgent, compared to representatives of the other communities, to increase funding of measures aimed at amenities for repatriates and solution of land problems.

Political sphere. Crimean Tatars consider as the most important political measures: establishment of a commission for solution of inter-ethnic, religious and political conflicts involving representatives of the authorities and public organisations; conduct of presidential elections and change of the President of Ukraine; fighting corruption at land allotment; passage of a programme of Crimea's development, taking into account the interests of all strata and ethnic groups; equal treatment of representatives of all national groups living in Crimea by the central and Crimean authorities; fighting corruption in the authorities as a whole.

The fact that "replacement of the President of Ukraine" was mentioned by 43.5% of Crimean Tatars largely witnesses the assessment of not only the President but all supreme bodies of power in Ukraine in solution of problems of the deported peoples, including Crimean Tatars.

Among the key political measures that could have a positive effect on inter-ethnic relations in Crimea, **representatives of the Slavic community** the most often mentioned extension of the Agreement of Russia's Black Sea Fleet stationing in Sevastopol after 2017; presidential elections and change of the President of Ukraine; fighting corruption in the authorities as a whole; Ukraine's accession to the Federal State of Russia and Belarus; fighting corruption in law-enforcement and judicial bodies.

Therefore, **the Slavic community and Crimean Tatars share the urgency of eliminating corruption and change of the President**.

The main socio-cultural groups substantially differ by their perception of the Black Sea Fleet stationing in Crimea. Representatives of the Slavic community (75.5%)

view that factor as a guarantee of an acceptable for them status of Crimea. Here, they are supported by 47.6% of the group of "other". Among Crimean Tatars, only 19.6% consider that it exerts positive influence on inter-ethnic relations.

Legal sphere. Almost a third of **Crimean Tatars** see as the most important measures granting the status of an indigenous people of Ukraine for the Crimean Tatar people and official recognition of Majlis by the Ukrainian state as a plenipotentiary representative body of the Crimean Tatar people. Here, they are supported by only 1-3% of representatives of the Slavic community and the group of "other".

Representatives of the **Slavic community** more often mention in that field: greater activity of law-enforcement bodies at suppression of activity of public organisations instigating inter-ethnic hatred in Crimea; limitation of activity or prohibition of such organisations; cancellation of registration of mass media whose materials instigate inter-ethnic hatred; permission of dual citizenship (Ukrainian and of another state at their choice) for Crimean residents.

Those measures were also mentioned by 19% to 27% of Crimean Tatars, but proceeding from the results of focus groups, when Crimean Tatars and representatives of the Slavic community speak of the need to ban extremist national organisations and publications stirring up inter-ethnic hatred, they mean different organisations and publications: representatives of the Slavic community – Crimean Tatar, Crimean Tatars – pro-Russian.

Cultural, language, information spheres. The most important measures, as seen by **Crimean Tatars**, include an effective possibility of study in the native language for all who wish so; refusal from Ukrainisation of the Crimean information space and educational sector; legislative provision of obligatory command of the Crimean Tatar language for state servants and officials of local self-government bodies, its obligatory study at secondary schools.

Representatives of the Slavic community see as the most important measures: refusal from Ukrainisation of the Crimean information space and educational sector; an effective possibility of study in the native language for all who wish so; the status of Russian as the second official language in Ukraine. Here, their opinions coincide with those of the **group of "other".**

So, representatives of all socio-cultural groups are united by the negative perception of Ukrainisation of the information sector (although the support for that step among Crimean Tatars is twice lower than in the Slavic community – 27.7% and 58.7%, respectively).

Sphere of inter-confessional relations. Specific of that sector, the importance of the proposed measures for each socio-cultural group substantially differs.

For instance, representatives of the Slavic community consider much more effective than Crimean Tatars the following measures: refusal of registration of religious organisations whose doctrine and ideology contain calls for forcible spread of their religion, establishment of a theocratic state, intolerance to representatives of other religions and non-believers (24.2% and 10.9%, respectively); introduction of the practice of consultations of the state bodies with leaders of the main churches and religious organisations of Crimea at registration of new religious organisations, communities (17% and 4.9%, respectively); refusal of the leadership of churches and religious organisations from missionary outreach among representatives of other confessions (11.9% and 1.6%, respectively).

Crimean Tatars consider the most effective introduction in the secondary school curricula of a subject dealing with the history and fundamentals of teaching of traditional religions of Crimea (22.8%, against 16.6% in the Slavic community).

By contrast to the two former groups, representatives of the **group of "other"** attach greater importance to measures at expansion of mutual contacts of churches and religious organisations of Crimea, development and implementation of common social, charitable, cultural programmes and enhancement of the educational level of the clergy.

Therefore, representatives of the Slavic community are somewhat greater than the other groups worried by the problem of spread of other religions in Crimea. Representatives of Crimean Tatars emphasised spread of knowledge about the traditional for Crimea religions, including Islam, among youths, representatives of the group of "others" are more disposed to the inter-church dialogue and accord.

Representatives of all socio-cultural groups are generally united in views of the ways of enhancement of the authorities' effectiveness and solution of socio-economic problems (while Crimean Tatars stress the need of greater attention to the problems of repatriates).

In the policy sector, the opinions of the Slavic community and Crimean Tatars coincide in admission of the need of defeating corruption and change of the President. The greatest contradictions between Slavs and "other", on one hand, and Crimean Tatars – on the other, are caused by the presence of Russia's Black Sea Fleet in Sevastopol.

In the legal field, the desire of Crimean Tatars to get the status of an indigenous people of Ukraine and to secure official recognition of Majlis by the Ukrainian state is shared by very few representatives of other communities of Crimea.

Representatives of the main socio-cultural groups feel cautious about each other, which is manifested in the implications of their desire to ban public organisations instigating inter-ethnic hatred in Crimea – meaning organisations that do not belong to their group.

Representatives of all socio-cultural groups reported a mainly negative perception of Ukrainisation of the educational and information sectors. Serious differences are observed in the attitude of the socio-cultural communities to the status of the Crimean Tatar language. While many Crimean Tatars see it necessary to legislatively provide for obligatory command of the Crimean Tatar language for state servants and officers of local self-government bodies, its obligatory study at secondary schools, among representatives of the Slavic community, support for this opinion is extremely low. ■

SPECIFICITIES OF IDENTIFY OF DOMINANT SOCIO-CULTURAL GROUPS OF CRIMEA					
	Crimean Tatars	**Slavic community**	**Other**	**Crimean Ukrainians**	**CRIMEA IN GENERAL**
IDENTIFICATION DIMENSIONS					
"Crimean identity"					
Do you consider yourself a representative of Ukrainian nation to which, according to the Constitution of Ukraine, belong citizens of Ukraine of all nationalities?	Hard to say (55.4%) No (23.9%) Yes (20.7%)	No (44.2%) ... Yes (27.3%)	Yes (44.2%) No (34.6%)	Yes (59.5%) No (21.4%)	No (39.3%) Yes (32.1%)
What group of people you can say about "That is us", in the first place?	We are Crimeans (78.3%) We are citizens of Ukraine (7.6%) None of the listed (6.5%) ... We are citizens of the former Soviet Union (1.1%)	We are Crimeans (65.4%) We are citizens of the former Soviet Union (22.3%) We are citizens of Ukraine (7.4%)	We are Crimeans (50%) We are citizens of the former Soviet Union (20.7%) We are citizens of Ukraine (16.7%)	We are Crimeans (33.1%) We are citizens of Ukraine (31.5%) We are citizens of the former Soviet Union (15.4%)	We are Crimeans (61.5%) We are citizens of the former Soviet Union (19.8%) We are citizens of Ukraine (10.4%)
What of the following do you connect (identify) yourself with, in the first place?	With Crimea (38.3%) Hard to say (21.3%) With the place of residence (15.8%) With Russia (10.9%) ... With Ukraine (2.7%) With Soviet Union (0.5%)	With Crimea (35.9%) With the place of residence (25.6%) With Russia (16.6%) With Soviet Union (11.7%) ... With Ukraine (3.6%)	With Crimea (34.4%) With the place of residence (31%) With Russia (11.3%) With Ukraine (9.6%) With Soviet Union (8.2%)	With Crimea (41.5%) With the place of residence (27.7%) With Ukraine (15.4%) With Russia (5.4%) With Soviet Union (4.6%)	With Crimea (35.6%) With the place of residence (26.5%) With Russia (14.4%) With Soviet Union (9.5%) ... With Ukraine (5.5%)
Do all Crimeans, regardless of their ethnic background, have common traits which distinguish them from Ukrainians, Russians, representatives of other nations?	Yes (38.3%) ... No (30.1%)	Yes (41%) No (35.1%)	Yes (47.8%) No (34%)	Yes (45%) No (38.2%)	Yes (43%) No (34.2%)
How important for self-sentiment of Crimeans as a unified community are the following features?[1]	Common Motherland is Crimea 4.75 Own territory is Crimean peninsula 4.69 Historic names of localities, geographic names 4.53	Common language being used by the majority of Crimeans is Russian 4.87 Positive attitude to Russia 4.76 Desire to see Ukraine in union with Russia and Belarus 4.73	Common language being used by the majority of Crimeans is Russian 4.45 Common Motherland is Crimea 4.34 Positive attitude to Russia 4.29	Common language being used by the majority of Crimeans is Russian 4.26 Common Motherland is Crimea 4.16 Positive attitude to Russia 3.96	Common language being used by the majority of Crimeans is Russian 4.69 Common Motherland is Crimea 4.58 Positive attitude to Russia 4.55
With what of the following statements do you agree more?	Crimea is neither Ukraine nor Russia (35.3%) Crimea is both Ukraine and Russia (23.9%) ... Crimea is Ukraine (14.7%) Crimea is Russia (4.3%)	Crimea is Russia (40.2%) Crimea is both Ukraine and Russia (34.8%) Crimea is neither Ukraine nor Russia (13%) ... Crimea is Ukraine (5.1%)	Crimea is both Ukraine and Russia (31.9%) Crimea is Russia (21.6%) Crimea is neither Ukraine nor Russia (17.3%) Crimea is Ukraine (17.1%)	Crimea is Ukraine (26.7%) Crimea is both Ukraine and Russia (26.7%) Crimea is neither Ukraine nor Russia (19.1%) ... Crimea is Russia (10.7%)	Crimea is both Ukraine and Russia (32.8%) Crimea is Russia (30.9%) Crimea is neither Ukraine nor Russia (16.5%) Crimea is Ukraine (9.8%)

Which variant of the Crimea's future is the most preferable for you? Would you like Crimea to…?	Hard to say (36.3%) Secede from Ukraine and become an independent state (11.4%) Secede from Ukraine and join Russia (10.8%) Preserve its current status of the autonomy as a part of Ukraine with expanded rights and powers (10.3%) Become Crimean Tatar national autonomy as a part of Ukraine (10.3%)	Secede from Ukraine and join Russia (37.1%) Become Russian national autonomy as a part of Ukraine (24.7%) Hard to say (16.3%) Preserve its current status of the autonomy as a part of Ukraine with expanded rights and powers (12.3%)	Secede from Ukraine and join Russia (29.8%) Preserve its current status of the autonomy as a part of Ukraine with expanded rights and powers (17.3%) Preserve its current status of the autonomy as a part of Ukraine with existing rights and powers (13.9%) Become Russian national autonomy as a part of Ukraine (13.4%) Hard to say (11.6%)	Secede from Ukraine and join Russia (26%) Preserve its current status of the autonomy as a part of Ukraine with existing rights and powers (19.8%) Preserve its current status of the autonomy as a part of Ukraine with expanded rights and powers (19.8%)	Secede from Ukraine and join Russia (32.3%) Become Russian national autonomy as a part of Ukraine (19.5%) … Preserve its current status of the autonomy as a part of Ukraine with expanded rights and powers (13.8%)
Socio-cultural identity of Crimea's social groups					
What group of people you can say about "That is us", in the first place?	We are Muslims (61.4%) We are representatives of our nationality (20.7%) We are representatives of ummah (*world's Muslim community*) (6.5%)	We are Russian-speaking (66%) We are Orthodox (29.8%) We are representatives of our nationality (3%)	We are Russian-speaking (46.5%) We are Orthodox (27.7%) We are representatives of our nationality (16.2%)	We are Russian-speaking (34.6%) We are Orthodox (26.9%) We are representatives of our nationality (19.2%)	We are Russian-speaking (54%) We are Orthodox (26.9%) We are representatives of our nationality (8.9%)
With what cultural tradition do you associate yourself?	Crimean Tatar (91.9%) … Ukrainian (1.6%) Pan-European (1.6%) Soviet (1.6%) Russian (0.5%)	Russian (74.6%) Soviet (21.3%) … Pan-European (2%) Ukrainian (0.0%) Crimean Tatar (0.0%)	Russian (54.7%) Soviet (19%) Ukrainian (10%) … Pan-European (6.5%) Crimean Tatar (0.9%)	Russian (46.9%) Ukrainian (15.4%) Soviet (13.1%) … Pan-European (10.8%) Crimean Tatar (0.8%)	Russian (61.4%) Soviet (18.8%) Crimean Tatar (8.7%) … Ukrainian (3.4%) Pan-European (3.4%)
Language orientations					
Knowledge of what languages is required from every citizen of Crimea?	Russian (70.1%) Crimean Tatar (63%) Ukrainian (53.3%)	Russian (77%) There is no need to require an obligatory knowledge of a language from Crimeans (20.6%) Ukrainian (10.3%) Crimean Tatar (4.4%)	Russian (68.8%) Ukrainian (30.3%) There is no need to require an obligatory knowledge of a language from Crimeans (24.9%) Crimean Tatar (12.3%)	Russian (49.6%) There is no need to require an obligatory knowledge of a language from Crimeans (38.5%) Ukrainian (33.1%) Crimean Tatar (9.2%)	Russian (73.7%) There is no need to require an obligatory knowledge of a language from Crimeans (21.8%) Ukrainian (20.7%) Crimean Tatar (12.3%)
Knowledge of what languages is required from every official of bodies of power and self-government bodies in Crimea?	Russian (77.2%) Crimean Tatar (67.4%) Ukrainian (57.6%)	Russian (87.2%) Ukrainian (49.8%) Crimean Tatar (25.7%)	Russian (71.1%) Ukrainian (44.7%) There is no need to require an obligatory knowledge of a language from officials (21.8%) Crimean Tatar (19.9%)	Russian (53.1%) Ukrainian (45.8%) There is no need to require an obligatory knowledge of a language from officials (29.2%) Crimean Tatar (16.8%)	Russian (81.1%) Ukrainian (48.9%) Crimean Tatar (27.7%)

1 On a five-point scale from 1 to 5, where "1" means "not important at all", and "5" – "very important".

	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	CRIMEA IN GENERAL
What languages should be obligatory for teaching in all schools of Crimea regardless of the main language of instruction?	Russian (78.3%) Crimean Tatar (73.4%) Ukrainian (59.2%)	Russian (76%) Ukrainian (30%) Crimean Tatar (18.7%)	Russian (74.2%) Ukrainian (39.4%) There should be no languages obligatory for teaching (19.2%) Crimean Tatar (14.4%)	Russian (58.8%) Ukrainian (39.2%) There should be no languages obligatory for teaching (31.3%) Crimean Tatar (10.8%)	Russian (75.6%) Ukrainian (35.7%) Crimean Tatar (22.3%)
What language of instruction would you prefer for your children in the middle school?	Russian (42.9%) Crimean Tatar (29.3%) Hard to say (24.1%) ... Ukrainian (0.5%)	Russian (95.3%) Ukrainian (2.1%) ... Crimean Tatar (0.0%)	Russian (78.5%) Ukrainian (9.7%) ... Crimean Tatar (0.5%)	Russian (70.8%) Ukrainian (14.6%) ... Crimean Tatar (0.8%)	Russian (85.2%) ... Ukrainian (4.4%) Crimean Tatar (2.8%)
What language of instruction would you prefer for yourself or for your children in the higher educational establishment?	Russian (42.9%) Crimean Tatar (27.2%) Hard to say (22.9%) ... Ukrainian (1.6%)	Russian (94%) ... Ukrainian (1.9%) Crimean Tatar (0.3%)	Russian (77.4%) Ukrainian (9.6%) ... Crimean Tatar (0.5%)	Russian (70.8%) Ukrainian (13.1%) ... Crimean Tatar (0.8%)	Russian (84%) ... Ukrainian (4.4%) Crimean Tatar (2.8%)
INTER-ETHNIC RELATIONS					
How well are you acquainted with culture, traditions, customs of representatives of the following peoples inhabiting Crimea?					
Russians	Know a lot (46.2%) Know something (38%) Know very little (14.1%)	Know a lot (82.9%) Know something (15.3%) ... Know very little (0.6%)	Know a lot (71.1%) Know something (24.9%) Know very little (3.1%)	Know a lot (76.2%) Know something (20%) Know very little (3.8%)	Know a lot (78.8%) Know something (20.5%) Know very little (2.6%)
Ukrainians	Know something (50%) Know a lot (36.4%) Know very little (11.4%)	Know a lot (70%) Know something (26.5%) Know very little (1.9%)	Know a lot (56.4%) Know something (36.4%) Know very little (5.5%)	Know a lot (63.4%) Know something (30.5%) Know very little (5.3%)	Know a lot (62.6%) Know something (31.8%) Know very little (4%)
Crimean Tatars	Know a lot (86.4%) Know something (11.4%) Know very little (1.6%)	Know something (53.2%) Know very little (23.6%) Know a lot (16.7%)	Know something (45.4%) Know very little (24.7%) Know a lot (17.9%)	Know something (31.5%) Know very little (29.2%) Know a lot (28.5%)	Know something (46.9%) Know a lot (23.4%) Know very little (21.9%)
Are you interested in culture, traditions, customs of other peoples inhabiting Crimea?[2]	Interested (66.3%) Not interested (25%)	Interested (80.5%) Not interested (10.3%)	Interested (60%) Not interested (31%)	Interested (54.2%) Not interested (36.7%)	Interested (72.6%) Not interested (18.4%)
Culture, traditions, customs of what peoples inhabiting Crimea would you like to know more about?	Hard to say (39.7%) Karaites (20.7%) Greeks (19%) Know enough, there is no need to know more about culture of any of the peoples (15.8%)	Krymchaks (35.7%) Karaites (32.3%) Hard to say (23.5%) Greeks (22.1%)	Hard to say (30.3%) Karaites (27.5%) Krymchaks (25.8%) Greeks (20.9%)	Hard to say (34.6%) Karaites (30.5%) Krymchaks (28.5%) Greeks (20%)	Krymchaks (30.4%) Karaites (29.7%) Hard to say (27.2%) Greeks (21.4%)

To what extent each of the following qualities is pronounced in the peoples listed below?[3]					
Russians	Goodwill 3.48 Striving for justice 3.43 Hard-working 3.41 Ability to defend their own interests 3.37	Goodwill 4.43 Openness 4.26 Striving for justice 4.26 Sense of national pride 4.10	Goodwill 4.51 Openness 4.21 Sense of national pride 4.16 Striving for justicei 4.06	Goodwill 4.46 Openness 4.22 Sense of national pride 4.02 Hard-working 3.94	Goodwill 4.37 Openness 4.15 Striving for justice 4.12 Sense of national pride 4.05
Crimean Tatars	Goodwill 4.48 Religiosity 4.32 Ability to defend their own interests 4.32 Sense of national pride 4.30	Ability to defend their own interests 4.38 National unity 4.25 Sense of national pride 4.14 Religiosity 4.13	Ability to defend their own interests 4.37 National unity 4.28 Sense of national pride 4.22 Striving for justice 3.30	National unity 4.48 Ability to defend their own interests 4.43 Sense of national pride 4.33 Religiosity 4.18	Ability to defend their own interests 4.37 National unity 4.25 Sense of national pride 4.18 Religiosity 4.16
Ukrainians	Hard-working 3.61 Openness 3.61 Religiosity 3.56 Ability to defend their own interests 3.55	Sense of national pride 4.18 Hard-working 4.14 Goodwill 4.03 Religiosity 3.98	Goodwill 4.14 Hard-working 4.08 Sense of national pride 4.08 Striving for justice 3.78	Goodwill 4.26 Hard-working 4.18 Sense of national pride 4.01 Openness 3.89	Hard-working 4.07 Sense of national pride 4.06 Goodwill 4.02 Religiosity 3.86
Did you personally experience restrictions in use of your native language?					
At work	Yes (46.7%) No (42.9%)	No (66.8%) ... Yes (16.3%)	No (72.5%) Yes (17.4%)	No (80%) Yes (12.3%)	No (66.5%) Yes (19.5%)
During studies	Yes (62%) No (30.4%)	No (56%) Yes (34%)	No (65.1%) Yes (25.2%)	No (59.5%) Yes (28.2%)	No (56.6%) Yes (33.7%)
In public activity	Yes (58.2%) No (31%)	No (62.8%) Yes (29.5%)	No (70.1%) Yes (21.5%)	No (76.2%) Yes 13.1	No (62.3%) Yes (29.5%)
In communication with representatives of bodies of power, law-enforcement and judicial authorities	Yes (71.2%) No (20.7%)	No (54.7%) Yes (40.1%)	No (56.5%) Yes (35%)	No (56.2%) Yes (33.1%)	No (52.2%) Yes (41.3%)
In communication with healthcare, sales, communal services' personnel	Yes (53.6%) No (36.1%)	No (69.1%) Yes (21.7%)	No (69%) Yes (17.6%)	No (69.2%) Yes (15.4%)	No (66.1%) Yes (23.3%)
Do you have enough possibilities to bring up your children according to the cultural traditions of your people?	No (67.9%) Yes (21.7%)	No (53.3%) Yes (29.2%)	Yes (42.2%) No (33.2%)	No (37.4%) Yes (33.6%)	No (48.2%) Yes (32.7%)
Do you agree with the statement that deportation of Crimean Tatars and representatives of other nationalities was a justified act of Soviet leadership?[4]	Do not agree (58.9%) ... Agree (18.9%)	Do not agree (51.9%) Agree (26.9%)	Do not agree (51.1%) ... Agree (21.4%)	Do not agree (68%) ... Agree (10.7%)	Do not agree (52.3%) Agree (24.4%)
Is it reasonable to return historic (Crimean Tatar) place names (toponyms) in Crimea?	Yes (68.5%) ... No (10.3%)	No (67.5%) ... Yes (5.6%)	No (58.6%) ... Yes (10.3%)	No (54.5%) ... Yes (12.1%)	No (59.5%) ... Yes (12.8%)

2 In this question answer variant "*interested*" is made up of sum of answers "*very interested*" and "*most likely interested*", and "*not interested* " – of "*not interested*" and "*most likely not interested*".

3 On a five-point scale from 1 to 5, where "1" means "*not pronounced at all*", and "5" – "*very much pronounced*".

4 In this question answer variant "*agree*" is made up of sum of answers "*agree*" and "*most likely agree*", and "*do not agree*" – of "*do not agre*" and "*most likely do not agree*".

	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	CRIMEA IN GENERAL
Attitude to the problem of "Ukrainisation of Crimea"					
Do you agree with the statement that the population of Crimea is enduring forced Ukrainisation?[5]	Agree (77.2%) Do not agree (19%)	Agree (92.9%) Do not agree (5.2%)	Agree (73.3%) Do not agree (22.2%)	Agree (66.2%) Do not agree (29.2%)	Agree (85.3%) Do not agree (12%)
How is it demonstrated?[6]	Termination of broadcasting in Ukraine of the Russian TV channels, whose programmes were not adapted to the requirements of Ukrainian legislation (64.3%) Translation of prescriptions, leaflets to medications and goods into Ukrainian language (51%) Dubbing of feature films on television and in the movie theatres in Ukrainian language (47.9%) Ban on using other languages in citizens' communication with bodies of power, law-enforcement and judicial authorities (39.4%)	Termination of broadcasting in Ukraine of the Russian TV channels, whose programmes were not adapted to the requirements of Ukrainian legislation (67.5%) Translation of prescriptions, leaflets to medications and goods into Ukrainian language (65.6%) Dubbing of feature films on television and in the movie theatres in Ukrainian language (64.8%) Making the local mass media to change to Ukrainian language (51.6%)	Translation of prescriptions, leaflets to medications and goods into Ukrainian language (70.5%) Termination of broadcasting in Ukraine of the Russian TV channels, whose programmes were not adapted to the requirements of Ukrainian legislation (66.7%) Dubbing of feature films on television and in the movie theatres in Ukrainian language (62.9%) Translation of business documentation into Ukrainian language (59.8%)	Translation of business documentation into Ukrainian language (62.8%) Translation of prescriptions, leaflets to medications and goods into Ukrainian language (55.8%) Making the local mass media to change to Ukrainian language (54%) Termination of broadcasting in Ukraine of the Russian TV channels, whose programmes were not adapted to the requirements of Ukrainian legislation (50%)	Termination of broadcasting in Ukraine of the Russian TV channels, whose programmes were not adapted to the requirements of Ukrainian legislation (67%) Translation of prescriptions, leaflets to medications and goods into Ukrainian language (65.8%) Dubbing of feature films on television and in the movie theatres in Ukrainian language (62.9%) Translation of business documentation into Ukrainian language (51.8%)
AUTHORITATIVE PUBLIC INSTITUTES/TRUST IN THEM					
Public institutes and organisations					
Do you trust the following public institutes and organisations?[7]					
Church	Trust (41.6%) ... Do not trust (20%)	Trust (43.2%) ... Do not trust (26.4%)	Trust (39.3%) ... Do not trust (28.8%)	Trust (38.9%) ... Do not trust (24.4%)	Trust (41.7%) ... Do not trust (26.6%)
Trade unions	... Do not trust (38.6%) Trust (17.9%)	Trust (38.4%) Do not trust (33.9%)	Do not trust (47.2%) ... Trust (20%)	... Do not trust (41.2%) Trust (13.8%)	Do not trust (38.6%) ... Trust (30.6%)
National-cultural communities, unions, organisations	Trust (42.1%) ... Do not trust (26.3%)	Do not trust (57.3%) ... Trust (17.6%)	Do not trust (53.6%) ... Trust (18.6%)	Do not trust (55.4%) ... Trust (6.2%)	Do not trust (53.2%) ... Trust (20.2%)
Public organisations	Trust (42.9%) Do not trust (29.4%)	Do not trust (60.5%) ... Trust (16.4%)	Do not trust (58.2%) ... Trust (16.5%)	Do not trust (56.5%) ... Trust (5.3%)	Do not trust (56.9%) ... Trust (18.9%)
Political parties	Do not trust (69.8%) ... Trust (10.2%)	Do not trust (85.6%) ... Trust (4.8%)	Do not trust (71.4%) ... Trust (11.9%)	Do not trust (65.4%) ... Trust (10%)	Do not trust (79.6%) ... Trust (7.6%)
ATTITUDE TO THE AUTHORITIES					
In the interests of who is the policy of central Ukrainian authorities being led in Crimea?	Oligarchic clans (40.2%) Ukraine in general (20.7%) Other (16.8%) ... All population of Crimea (2.7%) Ukrainians (2.2%) ... Russians (0.0%) ... Crimean Tatars (0.0%)	Oligarchic clans (37.4%) Ukraine in general (23.4%) Hard to say (13.7%) ... All population of Crimea (4.3%) Ukrainians (2.5%) ... Crimean Tatars (0.5%) ... Russians (0.2%)	Oligarchic clans (40.7%) Hard to say (17.3%) ... Ukrainians (7.9%) Ukraine in general (7.4%) ... All population of Crimea (4.5%) ... Crimean Tatars (0.9%) Russians (0.8%)	Oligarchic clans (35.6%) Ukrainians (17.4%) Hard to say (14.4%) ... Ukraine in general (6.1%) ... All population of Crimea (3%) Crimean Tatars (3%) ... Russians (0.0%)	Oligarchic clans (38.8%) Ukraine in general (18%) Hard to say (14.3%) ... All population of Crimea (4.2%) Ukrainians (4.2%) ... Crimean Tatars (0.6%) Russians (0.4%)

In the interests of who is the policy of local authorities being led in Crimea?	Oligarchic clans (50.5%) Hard to say (10.5%) … Ukraine in general (4.9%) All population of Crimea (4.3%) … Ukrainians (0.0%) Russians (0.0%) Crimean Tatars (0.0%)	Oligarchic clans (48.4%) Hard to say (12.9%) All population of Crimea (10.9%) … Ukraine in general (7.3%) … Ukrainians (1.2%) .. Crimean Tatars (0.7%) Russians (0.3%)	Oligarchic clans (41.7%) Hard to say (21.7%) … All population of Crimea (5.9%) ... Ukrainians (3.1%) Ukraine in general (2.6%) … Russians (0.5%) Crimean Tatars (0.5%)	Oligarchic clans (32.6%) Hard to say (21.9%) Ukrainians (8.3%) Business of other countries (8.3%) … Ukraine in general (3.8%) All population of Crimea (3.8%) Russians (0.0%) Crimean Tatars (0.0%)	Oligarchic clans (46.5%) Hard to say (15.4%) … All population of Crimea (8.7%) Ukraine in general (5.6%) … Ukrainians (1.7%) … Crimean Tatars (0.6%) Russians (0.3%)
What is to be done in the first place to raise the effectiveness of central authorities' work in Crimea?	Eliminate corruption (36.2%) Work out the strategy of Crimea's development and implement it (18.9%) Fundamentally change the party contingent and lines of policy (17.3%)	Work out the strategy of Crimea's development and implement it (24.4%) Eliminate corruption (20.5%) Replace the executive staff by more professional (15.9%)	Eliminate corruption (20.6%) Work out the strategy of Crimea's development and implement it (17.6%) Replace the executive staff by more professional (16.5%)	Work out the strategy of Crimea's development and implement it (18.5%) Eliminate corruption (17.7%) Fundamentally change the party contingent and lines of policy (15.4%) Give more powers to Crimean authorities (15.4%)	Eliminate corruption (22%) Work out the strategy of Crimea's development and implement it (21.7%) Replace the executive staff by more professional (15.9%)
What is to be done to raise the effectiveness of Crimean authorities' work?	Ensure broader representation of deported peoples in the bodies of power of Crimea (54.3%) Eliminate corruption (46.2%) Replace the executive staff by more professional (33.7%)	Eliminate corruption (50.2%) Work out the strategy of Crimea's development and implement it (46.7%) Replace the executive staff by more professional (39.3%)	Eliminate corruption (51.2%) Replace the executive staff by more professional (45.8%) Work out the strategy of Crimea's development and implement it (38.1%)	Eliminate corruption (45.8%) Replace the executive staff by more professional (45.8%) Work out the strategy of Crimea's development and implement it (36.6%)	Eliminate corruption (50.2%) Work out the strategy of Crimea's development and implement it (42.4%) Replace the executive staff by more professional (40.9%)
VISION OF WAYS TO SOLVE THE PROBLEMS IN RELATIONS BETWEEN CRIMEA'S SOCIO-CULTURAL GROUPS					
Taking measures in which of the following spheres can most positively influence inter-ethnic relations in Crimea?	In political sphere (25.4%) In socio-economic sphere (21.6%) ... In cultural, language, information sphere (18.4%) In legal sphere (14.1%)	In political sphere (32%) In socio-economic sphere (28.3%) In legal sphere (17%) In cultural, language, information sphere (12.6%)	In socio-economic sphere (29.4%) In political sphere (22.6%) ... In legal sphere (13.1%) In cultural, language, information sphere (12.4%)	In socio-economic sphere (30.5%) In cultural, language, information sphere (19.8%) … In legal sphere (18.3%) In political sphere (13%)	In political sphere (28.4%) In socio-economic sphere (28%) In legal sphere (15.5%) ... In cultural, language, information sphere (13%)
Which of the suggested measures in the political sphere can positively influence inter-ethnic relations in Crimea?	Creation of the commission for solving inter-ethnic, religious, and political conflicts, which would include the representatives both from the authorities and public organisations (52.2%) Conduct of presidential elections and change of the President of Ukraine (43.5%) Lowering the level of corruption in the sphere of land allocation (40.8%)	Prolongation of the treaty of the Black Sea Fleet stationing in Sevastopol after 2017 (75.5%) Conduct of presidential elections and change of the President of Ukraine (51.6%) Lowering the level of corruption in bodies of power (50%)	Lowering the level of corruption in bodies of power (53.1%) Prolongation of the treaty of the Black Sea Fleet stationing in Sevastopol after 2017 (47.6%) Adoption of the programme of Crimea's development which takes into account the interests of all strata and ethnic groups (44.3%)	Lowering the level of corruption in bodies of power (48.5%) Adoption of the programme of Crimea's development which takes into account the interests of all strata and ethnic groups (46.9%) Lowering the level of corruption in law-enforcement and judicial authorities (43.1%)	Prolongation of the treaty of the Black Sea Fleet stationing in Sevastopol after 2017 (61.4%) Lowering the level of corruption in bodies of power (49.7%) Conduct of presidential elections and change of the President of Ukraine (47.5%)

5 In this question answer variant "*agree*" is made up of sum of answers "*agree*" and "*most likely agree*", and "*do not agree*" – of "*do not agre*" and "*most likely do not agree*".

6 This question was answered only by those who gave answers "*agree*" and "*most likely agree* " to the previous question.

7 In this question answer variant "*trust*" is made up of sum of answers "*trust*" and "*most likely trust*", and "*do not trust*" – of "*do not trust*" and "*most likely do not trust*".

	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	CRIMEA IN GENERAL
Which of the suggested measures in the socio-economic sphere can positively influence inter-ethnic relations in Crimea?	Rebirth of industry and agriculture (61.4%) Increase in salaries and pensions (57.1%) Development of resort industry (56%)	Rebirth of industry and agriculture (69.4%) Increase in salaries and pensions (59.6%) Development of resort industry (58.8%)	Rebirth of industry and agriculture (72.4%) Lowering the unemployment rate (62.6%) Increase in salaries and pensions (59.4%)	Rebirth of industry and agriculture (77.9%) Lowering the unemployment rate (63.4%) Lowering the prices for goods and services (59.5%)	Rebirth of industry and agriculture (69.6%) Increase in salaries and pensions (59.3%) Lowering the unemployment rate (56.9%)
Which of the suggested measures in the legal sphere can positively influence inter-ethnic relations in Crimea?	Granting Crimean Tatar people the status of indigenous people of Ukraine (32.6%) Official recognition of Crimean Tatar Majlis by Ukrainian state as a fully legitimate representative body of Crimean Tatar people (30.4%) Restriction or banning the activity of Crimean intolerant[8] socio-political organisations (26.6%)	More active steps of law-enforcement bodies toward suppression of the activity in Crimea of the intolerant public organisations (46.3%) Restriction or banning the activity of Crimean intolerant socio-political organisations (44%) Withdrawal from registration of the intolerant mass media (43.3%)	More active steps of law-enforcement bodies toward suppression of the activity in Crimea of the intolerant public organisations (51.2%) Withdrawal from registration of the intolerant mass media (39.6%) Restriction or banning the activity of Crimean intolerant socio-political organisations (30.1%)	More active steps of law-enforcement bodies toward suppression of the activity in Crimea of the intolerant public organisations (52.3%) Restriction or banning the activity of Crimean intolerant socio-political organisations (39.2%) Withdrawal from registration of the intolerant mass media (38.5%)	More active steps of law-enforcement bodies toward suppression of the activity in Crimea of the intolerant public organisations (45.9%) Withdrawal from registration of the intolerant mass media (40%) Restriction or banning the activity of Crimean intolerant socio-political organisations (37.9%)
Which of the suggested measures in the cultural, language, information sphere can positively influence inter-ethnic relations in Crimea?	Real ensuring the opportunity to study in native language for those who wish so (46.7%) Refusal from Ukrainisation of Crimea's education sphere (34.8%) Legislative recognition of the need to know Crimean Tatar language for officials of the state bodies of power and local self-government bodies, obligatory study of the language at schools (33.7%) Refusal from Ukrainisation of Crimea's information sphere (27.7%)	Refusal from Ukrainisation of Crimea's information sphere (58.7%) Refusal from Ukrainisation of Crimea's education sphere (51.2%) Real ensuring the opportunity to study in native language for those who wish so (48.1%) Giving Russian language the status of the second state language on the territory of Ukraine (42.7%)	Giving Russian language the status of the second state language on the territory of Ukraine (47.9%) Refusal from Ukrainisation of Crimea's information sphere (44.4%) Real ensuring the opportunity to study in native language for those who wish so (37.5%) Refusal from Ukrainisation of Crimea's education sphere (36.4%)	Refusal from Ukrainisation of Crimea's information sphere (54.2%) Refusal from Ukrainisation of Crimea's education sphere (42.3%) Giving Russian language the status of the second state language on the territory of Ukraine (41.2%) Real ensuring the opportunity to study in native language for those who wish so (41.2%)	Refusal from Ukrainisation of Crimea's information sphere (51.3%) Refusal from Ukrainisation of Crimea's education sphere (44.9%) Real ensuring the opportunity to study in native language for those who wish so (44.5%) Giving Russian language the status of the second state language on the territory of Ukraine (41.5%)
Which of the suggested measures can positively influence inter-confessional relations in Crimea?	Hard to say (28.3%) Introduction to the middle schools' curricula of a subject giving knowledge about history and fundamentals of beliefs in traditional religions of Crimea (22.8%) … Refusal to register intolerant and disloyal religious organisations[9] (10.9%) Refusal of church and religious organisations' leadership to place religious attributes outside the cult buildings' territory (9.8%)	Hard to say (27%) Refusal to register intolerant and disloyal religious organisations (24.2%) Introduction by government authorities of practice of consultations with leadership of major churches and religious organisations of Crimea while registering new religious organizations, communities (17%) Introduction to the middle schools' curricula of a subject giving knowledge about history and fundamentals of beliefs in traditional religions of Crimea (16.6%)	Refusal to register intolerant and disloyal religious organisations (25.8%) Hard to say (22.3%) Broadening of mutual contacts of Crimea's churches and religious organisations, development and implementation of joint social, charitable, cultural programmes (21.6%) Improving the educational level of clergymen (20.1%)	Refusal to register intolerant and disloyal religious organisations (29.2%) Improving the educational level of clergymen (23.8%) Broadening of mutual contacts of Crimea's churches and religious organisations, development and implementation of joint social, charitable, cultural programmes (22.9%) Hard to say (20%)	Hard to say (25.6%) Refusal to register intolerant and disloyal religious organisations (23.5%) Introduction to the middle schools' curricula of a subject giving knowledge about history and fundamentals of beliefs in traditional religions of Crimea (16.8%) Broadening of mutual contacts of Crimea's churches and religious organisations, development and implementation of joint social, charitable, cultural programmes (16.1%)

8 Which by their actions contribute to the incitement of ethnic hatred.

9 Whose beliefs and ideology have calls to forced spread of their religion, creation of theocratic state, intolerable attitude to representatives of other religions and non-believers.

2. FACTORS INFLUENCING THE SITUATION IN CRIMEA

The events of 2005-2009 in the AR of Crimea bear some resemblance to early 1990s, first of all, from the viewpoint of weakening influence of the central authorities on Crimean developments, growing activity of pro-Russian forces, growth of conflicts in social and especially inter-ethnic relations.

The "intermediate" stage of 1994-2004 brought some stabilisation of the situation. However, starting from 2005, the vector of its development changed, and in the second half of 2008, it might be termed as pre-conflict.

In such conditions, contradictions in different sectors of public life – political-administrative, socio-economic, humanitarian – turned into factors of aggravation of tension in the relations between dominant socio-cultural groups in the AR of Crimea.

2.1. INEFFECTIVE MANAGEMENT OF SOCIAL PROCESSES IN CRIMEA

Management of social processes in Crimea bears a number of shortcomings directly and indirectly contributing to the aggravation of social relations in the autonomy. The main of those shortcomings are the ineffectiveness of the central and Crimean authorities and their interaction, lack of effective mechanisms which consider the needs of Crimean Tatars, corruption in the bodies of power.

Low effectiveness of the authorities (both central and Crimean) at solution of the key problems of Crimea, poor interaction among the institutes of governance of Ukraine and the autonomy stem from many long-standing problems resolved in Ukraine very slowly or not resolved at all. Such problems include, first of all: absence of a systemic approach in the authorities' activity; organisational problems of institutional interaction; ineffectiveness of the mechanisms considering the interests of the AR of Crimea during state policy formulation; political contradictions; low executive discipline.

Absence of a systemic approach in the authorities' activity. Although yet in 1994-2004, the situation in the AR of Crimea was somewhat stabilised, this was done through tactical measures effective in the short run, at the expense of accumulation of "delayed problems", manifested now, in their combination and in a new quality[1].

The need of a systemic, strategic approach to solution of complex problems is realised very slowly, and its practical implementation is hindered on all levels of the bureaucratic machinery. Apparently, the absence of an overall strategy of Ukraine's development is the main outside factor seriously complicating the planning of Crimean development strategy.

The central authorities still have no effective and clear policy with respect to Crimea and no strategy of the autonomy development within Ukraine. Such situation largely deprives the autonomy of the right reference points and gives it an opportunity to set their own ones, that may run contrary to the prospects of development of Ukraine as a whole, as seen by the central authorities.

Say, Ukraine's Parliament has not passed the Law "On Fundamentals of Home and Foreign Policy of Ukraine" and conceptual legislative documents (concepts, principles of the state policy) in the most sensitive for Crimea sectors: ethno-national, language, information, religious.

Only at the beginning of 2006, the President of Ukraine announced plans of working out a strategy of development of the AR of Crimea, specified its key parameters and made some practical steps[2]. However, those plans remained just plans.

Instead, in 2006-2008, the President of Ukraine issued a number of decrees effectuating NSDC decisions on Crimean issues. Those documents mentioned a wide

[1] Application of this approach, also known as "crisis management", has become "a chronic disease" of the entire state and authorities on all levels in the years of Ukraine's independence. It is most vividly manifested in "replication" of great many concepts, strategies, programmes, not related with each other and having no common basis – a strategy of development of Ukraine. It is contrasted by a systemic approach that provides for elaboration of a set of interrelated measures, backed with resources and encompassing the entire range of state (region, branch, etc.) development objectives.

[2] On February 21, 2006, Ukraine's President V.Yushchenko had a meeting with the autonomy leadership, where a decision was taken to set up a working group for drafting the Strategy. The working group was led by then head of the Presidential Secretariat O.Rybachuk and NSDC Secretary A.Kinakh. According to then NSDC Secretary A.Kinakh: "…Special attention at the Strategy development will be paid to improvement of the investment climate, creation of new working places, development of the tourism and recreation industry, fair solution of the land issue, promotion of extraction of energy resources..., the strategy will provide for creation of mechanisms of cooperation between the authorities and the public, an effective human resources policy, maintenance of law and order, fighting corruption.., particular attention will be paid to harmonisation of inter-ethnic relations, creation of proper conditions for representatives of deported peoples without violation of legitimate interests of the present population of Crimea". See: Working visit by the Head of Secretariat to the AR of Crimea. – Press Service of the President of Ukraine, February 27, 2006, *http://www.president.gov.ua*

range of problems topical for the autonomy. However, the great number of assignments given to the authorities in pursuance of those decisions looked like an attempt to solve all problems at a time, each dealing with a set of different problems (for instance, distribution of land resources, creation of new working places, guarantee of the right to education in the native language, etc.), and required special preparation and everyday attention[3].

Deemed strategic, with some reservations, may be the State Programme of Socio-Economic Development of the AR of Crimea through 2017 approved by the Cabinet of Ministers in August, 2007.[4] But in absence of a strategy of development of entire Ukraine, the Programme targets of budget funding cannot be considered at least tentative, and the designed plans – realistic[5].

Regarding the problems of repatriates, transition of the central authorities in 2002 and Crimean authorities in 2006 from programmes of solution of important but local tasks guaranteeing the rights of Crimean repatriates to comprehensive programmes of their settlement and amenities was a positive step[6]. However, the funding of those programmes is insufficient to call them effective (Table "*Budget expenditures on programmes of amenities for repatriates*"[7]): absolute growth of budget expenditures is offset by inflation and growth of prices of land and housing[8]; actual satisfaction of programme requirements during the implementation of the latest Programme gradually goes down (from 80% to 70% – for national and from 99% to 54% – for Crimean); state budget funds are allocated irregularly (mainly in the last quarter, which complicates their use).

Budget expenditures on programmes of amenities for repatriates,
UAH million

Budgets	2002	2003	2004	2005	2006	2007	2008	*2009 plan*
State	40.0	46.0	50.0	61.4	53.1	66.3	64.4	*53.3*
Republican	10.5	18.3	19.8	21.3	24.5	26.0	30.0	

Lack of realism in the programmes of settlement and amenities for repatriates (including construction of housing and utility infrastructure, schools, healthcare establishments, etc), absence of practical results of the land reform (inventory and development of the land cadastre, land management, rational development of recreational and preserve areas, urban construction[9]) lead to differences between programmes of development of the humanitarian sector, other programmes and plans. In addition to the imposed deficit of resources for social needs, including of repatriates (and associated rivalry for resources), such situation prompts excessive politicisation of social relations, corruption, growth of radical protest spirits in society[10].

So, absence of a strategic, systemic approach to solution of problems on the central and republican levels leads to their gradual accumulation, aggravation, affecting the character of social relations in the AR of Crimea.

Legal and organisational problems of institutional interaction between the central and Crimean authorities. Tension in the relations between the central and Crimean authorities has been evident since Ukraine's independence. It is prompted by the vagueness and controversy of some provisions of the fundamental documents – the Constitutions of Ukraine and the AR of Crimea – and other Ukrainian laws specifying the powers of the Verkhovna Rada of the autonomy. In particular, the Constitution the AR of Crimea refers to its competence some functions not provided by the Constitution of Ukraine, including participation in the formulation and implementation of Ukraine's foreign policy, which results in legal collision and aggravation of political confrontation[11]. The Law of Ukraine "On Verkhovna Rada of the AR of Crimea" (item 2, Article 9) vests the exclusive right to amend the Constitution of the autonomy to the Verkhovna Rada of the AR of Crimea. At that, pursuant to the same Law (Article 1), the Verkhovna Rada of the autonomy is to act "within powers specified by the Constitution and laws of

[3] President of Ukraine Decree "On Decision of the National Security and Defence Council of Ukraine of February 8, 2006 "On Social Situation in the AR of Crimea"" No. 154 of February 28, 2006.

[4] Approved by the Cabinet of Ministers' Resolution No. 1067 of August 30, 2007.

[5] For more detail see: Competitiveness of the regions of Ukraine: state and problems. Razumkov Centre Analytical Report. – "National Security & Defence", 2008, No. 4, pp.2-31.

[6] Cabinet of Ministers' Resolution "On Approval of the Programme of Settlement of and Amenities for Deported Crimean Tatars and Persons of Other Nationalities who Returned for Residence in Ukraine, their Adaptation and Integration into Ukrainian Society through 2005" No. 618 of May 16, 2002. The following Programme through 2010 was approved by the Cabinet of Ministers' Resolution No. 637 of May 11, 2006. The Verkhovna Rada of the AR of Crimea Resolution No. 102-5 of June 21, 2006, approved a programme of the same title, funded from the republican budget.

[7] Report by the Director of Department for Affairs of Former Deportees on Ethnic Grounds of the State Committee of Ukraine for Nationalities and Religions "Implementation of the Programme of Settlement of and Amenities for Deported Crimean Tatars and Persons of Other Nationalities who Returned for Residence in Ukraine, their Adaptation and Integration into Ukrainian Society". May 8, 2009, *www.scnm.gov.ua/article/132148?annId=132149*

[8] According to the State Statistics Committee, in 2008, the inflation rate in the AR of Crimea hit 23.2%, as of May, 2009 – 8.9%. In the beginning of 2008, land and housing prices in the autonomy were growing by some 45% per annum. See: "…from 2008, all operators expect intense growth of prices in Crimea (up to 50% per annum)". Real Estate in Crimea. – Kyiv and Ukrainian Real Estate Portal, *http://freehouse.com.ua/9*

[9] Such problems (and more of them) are specific of Ukraine as a whole. For more detail on the problems of the land policy in Ukraine see: State land policy in Ukraine. – Working materials of Razumkov Centre for the Round-table "State and strategy of today's land policy in Ukraine", May 21, 2009, pp.4-13.

[10] M.Dzhemilev: "It may be said that a state policy regarding Crimean Tatars is actually absent. I would not call it discriminatory. There is no thought-over policy. That is the problem. And the lawlessness taking place here, gross violations of human rights are authorised not from Kyiv but from local chauvinist pro-Russian-minded elements". See: Artemenko M. "Third force" trying to make Crimean Tatars separatists? – "Holos Kryma", March 14, 2008.

[11] For more detail see. Crimea on the political map of Ukraine. Razumkov Centre Analytical Report. – "National Security & Defence", 2001, No. 4, pp.14-17. On June 6, 2006, the Verkhovna Rada of the AR of Crimea passed a declaration protesting against the presence of units of the US and NATO armed forces on the territory of the autonomy, calling for declaration of Crimea a NATO-free territory and demanding cancellation of the military exercise *Sea Breeze 2006* in the autonomy. See: Verkhovna Rada of the AR of Crimea refuses to cancel its decision declaring Crimea "a NATO-free territory". – UNIAN, September 5, 2006. A group of members of the Verkhovna Rada of the AR of Crimea initiated a Crimean referendum on declaration of the autonomy a "NATO-free territory". See: Conduct of a local referendum on Ukraine's NATO membership does not fall within the competence of the Verkhovna Rada of the AR of Crimea. Representation of the President in Crimea. – UNIAN, October 9, 2006. Sea also: Crimean Parliament calls for boycott of the National Council decision which bans broadcasting of Russian TV channels. – UNIAN, October 23, 2008.

Ukraine". However, the absence of laws on some domains (e.g., on fundamentals of home and foreign policy) and internal controversy of the current legislative framework of Ukraine give Crimeans a free hand in the promotion of their initiatives and political interests.

Meanwhile, according to the Constitution of Ukraine, Ukraine's Parliament may, under certain conditions, terminate powers of the Verkhovna Rada of the AR of Crimea ahead of time (item 28, Article 85), and the President is entitled to invalidate acts of the Council of Ministers of the AR of Crimea (item 16, Article 106). In practice, however, there have been no such precedents.

There are serious drawbacks in the organisation of the system of governance in the autonomy. For instance, the Council of Ministers and local state administrations in the AR of Crimea, on one hand, are elements of the state executive branch[12]. Meanwhile, according to Crimean Constitution, the Council of Ministers is formed by the Verkhovna Rada of the AR of Crimea and is accountable to it. District state administrations (DSA) in Crimea belong to the single system of executive bodies of Crimea. Those bodies and their heads report and are accountable to the Council of Ministers of the AR of Crimea[13]. Meanwhile, DSA heads are appointed by the President of Ukraine upon the submission by the Cabinet of Ministers of Ukraine, their deputies – by DSA heads, but upon coordination with the Cabinet of Ministers of Ukraine.

Therefore, the Council of Ministers of the AR of Crimea and DSAs *de jure* have dual subordination and powers, whose division with central executive bodies and procedures of exercise are not always clear, lack mechanisms of control and responsibility. In particular, this refers to the management of budget funds (central agencies) and responsibility for implementation of programmes and plans (Crimean executive bodies).

Insufficiently clear division of areas of responsibility between the central and Crimean authorities, in presence of political contradictions between them, creates preconditions for disregard or even wilful obstruction to implementation of decisions of the central authorities on the territory of the autonomy by Crimean bodies of power. One example here is presented by the practice of disregard of some decisions of the central authorities by local bodies of power or even opposition to them rooted in 2006-2008 (especially in "politically sensitive" sectors, such as foreign, information, educational policy)[14].

Furthermore, according to the Constitution of the AR of Crimea (Article 26), heads of some territorial units of central executive bodies (ministries, state committees, etc.) active on the territory of the autonomy are appointed and dismissed with the consent of the Verkhovna Rada of the AR of Crimea[15]. Experience proves that differences on specific candidates may also cause tension in the relations between Kyiv and Simferopol[16].

Therefore, legal uncertainty and imperfection of the system of governance in Ukraine at different levels strongly contribute to ineffective institutional interaction between the central and Crimean authorities. The supreme Ukrainian authorities do not fully employ their available powers and possibilities for implementation of the state policy in the autonomy.

Absence of mechanisms of account of Crimean interests in the formulation of the state policy. The Constitution of the AR of Crimea (Article 3) guarantees "account of the specificity of the AR of Crimea envisaged by the Constitution of Ukraine by Ukrainian bodies of state power passing decisions concerning the AR of Crimea", and "participation in formulation and implementation of the main principles of home political, foreign economic and foreign political activity of Ukraine in issues concerning the AR of Crimea"[17]. However, the mechanisms of such participation are poorly specified or ineffective.

For instance, Crimea is represented in the Verkhovna Rada of Ukraine by 11 MPs[18] who belong to different parliamentary factions (not more than three in each) and, given the ideological differences and political contradictions among parliamentary factions, cannot act as a united "Crimean lobby".

There is a consultative-advisory body under the President of Ukraine – the National Council for Interaction between the State Authorities and Local Self-Government Bodies, whose main task lies in "review, discussion and generation of a coordinated position on issues of state and regional importance"[19]. Crimea has six representatives in that body[20]. However, the Council acts rather formally (it met only once), and practical results of its activity are absent.

According to the Constitution of the AR of Crimea, the autonomy has its Permanent Representation in Ukraine's capital. However, its duties are mainly confined to organisational support for the interaction of Crimean

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[12] According to the Law "On Cabinet of Ministers of Ukraine" (Article 1), the Government of Ukraine "exercises executive power directly and through ministries, other central executive bodies, the Council of Ministers of the AR of Crimea and local state administrations, directs, coordinates and controls the activity of those bodies". Furthermore, according to Article 41 of that Law, the Cabinet of Ministers of Ukraine "directs and coordinates the activity of the Council of Ministers of the AR of Crimea at implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine and acts of the Cabinet of Ministers of Ukraine on the territory of the AR of Crimea".

[13] Regulations of the Council of Ministers of the AR of Crimea (Article 33), approved by a resolution of the Council of Ministers of the AR of Crimea of September 23, 1998.

[14] Volkova A. Ministry of Education of Crimea allowed teachers not to follow Kyiv's order of Ukrainisation of schools. – "Krym-Novosti" internet publication, August 27, 2008, *http://from.crimea.ua*

[15] E.g., Head of the Main Administration of the Ministry of Internal Affairs of Ukraine in Crimea, Head of the Main Administration of the Ministry of Justice in Crimea, General Director of "Krym" State Television and Radio Company. The candidacy of the Public Prosecutor of the AR of Crimea is agreed only during his appointment.

[16] E.g., the conflict concerning the appointment of M.Ilyichov the Head of the Main Administration of the Ministry of Internal Affairs of Ukraine in Crimea.

[17] Constitution of the AR of Crimea (Item 3, Part 1, Article 18). We do not consider here the correspondence of this provision to the Constitution of Ukraine, emphasising that the provision is valid and gives the AR of Crimea the relevant rights.

[18] All colours of the nation. Full list of national deputies of the 6th convocation (prepared by "Expert Centre"). – "Obkom" internet publication, October 16, 2007, *http://www.obkom.net.ua*

[19] President of Ukraine Decree "Issue of the National Council for Interaction between the State Authorities and Local Self-Government Bodies" No. 241 of March 20, 2008.

[20] The are: Chairman of the Verkhovna Rada of the AR of Crimea A.Hrytsenko, Chairman of the Council of Ministers of the AR of Crimea V.Plakida, People's Deputy of Ukraine M.Dzhemilev, Permanent Representative of the President of Ukraine in the AR of Crimea L.Zhunko, Simferopol City Mayor H.Babenko, Head of Sevastopol City State Administration S.Kunitsyn.

authorities and their leaders with the central Ukrainian authorities, including document circulation.

The Permanent Representation of the President of Ukraine in the AR of Crimea, with its status and powers (mainly controlling and information-analytical),[21] can contribute to consideration of the specificity of the peninsula and the opinion of Crimean authorities during passage of the relevant decisions by the central authorities. However, in 2005-2008, the representation saw frequent personal changes, which impaired the ability of that body to be a sound "communicator" between the President and Crimean authorities[22].

Therefore, the mechanisms of consideration of interests of the autonomy at formulation of Ukraine's state policy are either not used, or used ineffectively, which widens the split between central and regional authorities, including political, and disables tools of solution of urgent problems.

Political contradictions between central and Crimean authorities. Some normalisation of the situation in the AR of Crimea in late 1990s - early 2000s rested on the relative loyalty of the local authorities to the central. Not least of all, such loyalty was ensured by the electoral support of Crimeans for the President elected in 1994 and 1999 (at the former elections, L.Kuchma won support of 83% of Crimeans, at the latter – slightly yielded to P.Symonenko: 34% against 38%).

After the elections-2004, the situation changed fundamentally. The overwhelming majority of Crimean voters (81%) in the repeated second round of elections of the President of Ukraine (December 26, 2004) voted for V.Yanukovych, while V.Yushchenko, elected Ukraine's President, got votes of 15% of Crimeans; in particular, in Sevastopol, the ratio was 89% to 8%[23].

Therefore, the majority of Crimean residents did not support the new "Orange" rulers (including the Government led by Yu.Tymoshenko and other authorities led by representatives of the "Orange team"), which affected the relations between Kyiv and the autonomy[24].

In 2005, the relations between the central and Crimean authorities resembled a "wait-and-see" policy, due to the forthcoming elections of the Verkhovna Rada of Ukraine and local self-government bodies, whose results could influence the character of those relations.

The results of the elections held in March 2006 added to the confrontation between the central authorities, on one hand, and the authorities and local self-government bodies of Crimea – on the other. The elections gave the majority in the Verkhovna Rada of the AR of Crimea to the political forces opposing the central authorities. The coalition formed the Council of Ministers of the autonomy led by V.Plakida. The opposition to the central authorities also got control over the majority of city and district councils in the autonomy[25]. The early parliamentary elections- 2007 only deepened the rift.

Ideological positions of the central (the President, the parliamentary coalition and the Cabinet of Ministers formed by it) and Crimean authorities on a number of sensitive for society issues (language, foreign political orientation of Ukraine, attitude to the historic past) proved **irreconcilable**. The rift ran along the lines "wider use of the Ukrainian or Russian language as the second official language; accession to NATO or to the Federal State of Russia and Belarus", etc. Advocacy of those positions during election campaigns contributed to the split in society and prompted further complication of the situation in the autonomy.

The conflict was further aggravated by the fact that the political forces that came to power in Crimea (the Party of Regions) saw Crimean elections as kind of a "revenge" for their defeat at the election of the President of Ukraine[26]. The same were the feelings of the majority of Crimeans who, as we noted above, disapproved the "Orange authorities".

This laid down the conflict background for the relations of the central and Crimean authorities, against which, ineffective management of social processes, concentration of the authorities on political "battles" shattered respect for them in society, impaired tools of influence on the situation and prompted citizens to solve problems by their own efforts.

Low executive discipline. In 2005-2008, a number of decisions were passed whose implementation could contribute to normalisation of the situation in the autonomy, solution of some problems or neutralisation of conflicts' factors. However, those decisions were never implemented – in part, due to their poor planning, in part, because of the low executive discipline.

The low executive discipline is showily demonstrated by the above-mentioned Decrees of President V.Yushchenko on Crimean issues[27]. While the first of them, following an NSDC decision, set tasks for the state authorities covering the whole range of problems of amenities for Crimean Tatar repatriates and their integration into Ukrainian society, the other two stated non-implementation (or late implementation) of the previous and set new tasks that were implemented not much better.

In particular, the President of Ukraine Decree No. 154 of February 28, 2006, assigned the Government to draw up and submit "within four months a bill of fundamentals of the ethno-national policy". Such a bill prepared by the Cabinet of Ministers was registered in the Verkhovna Rada of Ukraine six months later – only on December 30, 2008.

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[21] Law of Ukraine "On Representation of the President of Ukraine in the AR of Crimea".

[22] In 2005-2008, five permanent representatives of the President of Ukraine in the AR of Crimea changed seats. The post was occupied by V.Kulish (September 2005 – May 2006), H.Moskal (May 2006 – January 2007), V.Shemchuk (February 2007 – May 2007), V.Khomenko (July 2007 – December 2007), L.Zhunko (since January 2008).

[23] Data of the official web site of the Central Election Commission of Ukraine, *http://www.cvk.gov.ua*

[24] According to then Chairman of the Council of Ministers of the AR of Crimea S.Kunitsyn, the situation in Crimea in late 2004 – early 2005 "was so tense that one wrong move could lead to bloodshed". See: Kunitsyn believes that after the Orange Revolution, information and political freedom appeared in Ukraine. – UNIAN, November 22, 2006.

[25] For more detail see: Tyshchenko Yu., Khalilov R., Kapustin M., Socio-political processes in the AR of Crimea: key trends. Kyiv, Ukrainian Center for Independent Political Research, 2008. – *http://www.ucipr.kiev.ua*

[26] Election to Ukraine's Parliament of a number of politicians known for their extreme "anti-Orange" stand during the presidential elections-2004 (e.g., N.Shufrych, D.Tabachnyk) also contributed to that process.

[27] President of Ukraine Decrees "On Social Situation in the AR of Crimea" No. 154 of February 8, 2006; "On Decision of the National Security and Defence Council of Ukraine of September 20, 2006 "On Implementation of the Decision of the National Security and Defence Council of Ukraine of February 8, 2006 "On Social Situation in the AR of Crimea" No. 822 of October 9, 2006; "On Decision of the National Security and Defence Council of Ukraine of May 16, 2008 "On Progress of Implementation of Decisions of the National Security and Defence Council of Ukraine on Situation in the AR of Crimea" No. 589 of June 26, 2008.

Presidential Decree No. 589 assigned the Cabinet of Ministers of Ukraine to officially investigate the reasons for non-implementation of NSDC decisions and subsequent decisions of the Government concerning the AR of Crimea and take appropriate measures upon its results, including bringing those guilty to responsibility. So far, nothing has been reported about the results of the official investigation and associated penalties.

Parliament's attention to the problems of the AR of Crimea and parliamentary control in that sector is clearly insufficient. It is suffice to remind that the latest parliamentary hearings on those issues took place on April 20, 2000, their recommendations were implemented only in part, and the reasons for non-implementation are unknown[28].

In some cases, low executive discipline causes additional tension in society. The most recent example was presented by a Crimean Tatar picket at the Cabinet of Ministers of Ukraine (from April 11, 2009) in response to non-fulfilment of the Prime Minister's promise to solve the land issue in Crimea[29]. Escalation of events is demonstrative – evolution of pickets with purely land requirements into a hunger strike and protest under political slogans: demands of picketers to allot Crimean Tatars 845 hectares of land managed by the central authorities yielded to slogans "We will do our best for the world to know true face of Ukrainian authorities", "We will cut Ukraine's road to European Union" [30].

Low executive discipline, along with political obstruction of decisions of the central authorities on Crimean issues, make those decisions actually no-go, depriving the authorities of trust of citizens who ever more resort to protest actions.

Disregard of needs of Crimean Tatars

Poor regard of the needs of Crimean Tatars is one of the factors of growth of tension in social relations in the AR of Crimea. Its main reasons include limited representation of Crimean Tatars in the bodies of power, their deprivation of the ability to solve problem issues by referendums and bias of local authorities to their rights and needs.

Limited representation of Crimean Tatars in the Ukrainian bodies of power. The political leadership of Crimean Tatars seeks a higher status for national self-government bodies of Crimean Tatar people – **Kurultay** and **Majlis**[31] – and greater effectiveness of their interaction with the central and Crimean authorities. However, those aspirations meet little support from the central and Crimean authorities.

For instance, in the Verkhovna Rada of Ukraine of the 6th convocation, the interests of Crimean Tatar people are represented by one MP – Majlis leader M.Dzhemilev (parliaments of previous convocations had no more than two Crimean Tatars).

The Council of Representatives of Crimean Tatar People under the President of Ukraine was established in 1999[32]. During L.Kuchma's presidency, it met rather regularly, although far from all assignments given upon the meeting results were executed, which was from time to time brought to the attention of the Presidential Administration by the Majlis Legal Service. However, over the entire term of presidency of V.Yushchenko, the Council of Representatives of Crimean Tatar People met only once – in the first half of 2005, and since then, the President has issued only one document relating to formal aspects of its activity[33].

There is the Council for Ethno-National Policy under the Head of State, including one representative of Crimean Tatar people[34]. However, so far, that body exerts little influence on policy making and implementation in that sector.

Therefore, the mechanisms of interaction of national self-government bodies of Crimean Tatars with Ukraine's state authorities are still confined to participation of their representatives in consultative-advisory bodies under the President of Ukraine, whose activity is mainly declarative.

Representation of Crimean Tatars in bodies of power of the autonomy[35] (Insert "*Legal framework for participation of Crimean Tatars in bodies of power*"). After the latest (2006) elections held on a proportional basis, seven representatives of Crimean Tatars were elected to the Verkhovna Rada of the AR of Crimea. For comparison: at the elections-1998 held under the majority system (after the cancellation of the national quota), only one Crimean Tatar was elected to the Verkhovna Rada of the AR of Crimea, with support of Crimean republican CPU organisation. After the elections-2002, also held by the majority system, eight Crimean Tatars were elected to the Supreme Verkhovna Rada of the AR of Crimea, six of them – supported by Kurultay of Crimean Tatar people. It was much more than local experts expected, but very few, in the opinion of Crimean Tatar politicians – half of Crimean Tatar's share in the population of the autonomy.

The Permanent Commission of the Verkhovna Rada of the AR of Crimea for Inter-Ethnic Relations and Problems of Deportees (15 persons) includes three representatives

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28 For the results of the Parliamentary hearings see: official web site of the Verkhovna Rada of Ukraine, *http://portal.rada.gov.ua*

29 On the road to Crimean Tatar autonomy. – "Odna Rodina" Internet project, December 18, 2008, *http://odnarodyna.ru/articles/6/415;*

30 Crimean Tatars promise to cut Ukraine's road to the European Union. – "Ukrainska Pravda", June 9, 2009, *http://ua.pravda.com.ua/news/2009/6/9/96170*; Crimean Tatars will complain to the EU and UN about Ukraine. – "Glavred", June 9 2009, *http://ua.glavred.info/archive/2009/06/09/100523-18*

31 **Kurultay** of Crimean Tatar people – national congress, supreme plenipotentiary representative body of Crimean Tatar people. **Majlis** of Crimean Tatar people is the only supreme plenipotentiary representative body of Crimean Tatar people in-between Kurultay sessions. It is elected by Kurultay from among its delegates. The hierarchy includes local Majlises subordinated to Majlis of Crimean Tatar people. See: Procedures of Kurultay… and Regulations of Majlis... – Centre of Information and Documentation of Crimean Tatars, *http://www.cidct.org.ua*

32 President of Ukraine Decree "On Council of Representatives of Crimean Tatar People" No. 518 of May 18, 1999

33 President of Ukraine Decree "On Amendment of Regulations of Council of Representatives of Crimean Tatar People" No. 767 of September 21, 2.006

34 President of Ukraine Decree "On Council of Representatives of Crimean Tatar People" No. 428 of May 22, 2005.

35 Third Report of Ukraine on implementation of the Council of Europe Framework Convention for the Protection of National Minorities, 2009 – official web site of the State Committee of Ukraine for Nationalities and Religions, *http://www.scnm.gov.ua/control/uk/publish/article?art_id=131306*.

of Crimean Tatars (including the Commission Chairman R.Ilyasov), the Permanent Commission for Restoration of Rights of Rehabilitated Persons (nine members) – one.

Under the Chairman of the Verkhovna Rada of the AR of Crimea, there is the Council for Human Safety and Development acting as a consultative-advisory body in the field of inter-ethnic relations (22 members) that includes two representatives of Crimean Tatar people. In 2007-2009, the Council held two meetings (dealing with the land issue and problems of housing and utility services) and a round-table on the role of small business.

Representatives of Crimean Tatar people hold rather high posts in the highest echelons of executive power in Crimea[36], but their representation is of political, sometimes – of personal rather than legal character. Since the Council of Ministers is formed by the Verkhovna Rada of the AR of Crimea, representation of Crimean Tatars on the upper levels of the executive branch entirely depends on the political will and interests of the majority in Crimean Parliament. The executive authorities of Crimea, including in Council of Ministers of the autonomy, ministries and committees, now employ 140 state servants who are repatriates (12.9% of all officers of those bodies).

Republican executive bodies employ 27 state servants of category I-III from among repatriates, including one First Deputy Chairman of the Council of Ministers of the AR of Crimea; one minister; three heads of republican committees.

On the level of local state administrations (in particular, district – DSA), Crimean Tatars are represented among DSA heads and deputy heads, first of all, in districts where their share of the population is high enough. Representation of specific national groups in DSAs depends on the political will of Ukraine's President and the Government. 18 repatriates work at 14 DSAs in Crimea as heads, first deputy and deputy heads of district state administrations, two of them – DSA heads. All in all, DSAs and executive bodies of local councils employ 165 state servants who are repatriates (12.4% of all officers).

125 Crimean Tatars are members of city and district councils. Out of 309 elected settlement and village elders, 24 (7.7%) are Crimean Tatars (for data of the share of Crimean Tatars in local self-government bodies of the AR of Crimea see map, pp.42-43).

There is a large disparity in the number of Crimean Tatars in elected bodies of power of Crimea: in the Verkhovna Rada – 7%, in local self-government bodies – from 5.6% to 22%, which is 1.5-2.5 times below their share in the population of the autonomy and its separate districts.

Participation in referendums. In principle, some problems of Crimean Tatars may be solved by direct manifestation of people's will, without mediation of the authorities – through all-Ukrainian, republican and local referendums. However, the effectiveness of that method is doubtful.

The Law "On All-Ukrainian and Local Referendums" envisages, apart from all-Ukrainian, a republican referendum in the AR of Crimea and local referendums. A Crimean republican referendum may concern adoption, amendment or cancellation of decisions on issues referred by the Ukrainian legislation to the competence of the AR of Crimea. A local referendum may concern adoption, amendment or cancellation of decisions referred by the legislation of Ukraine to the competence of local self-government bodies of the relevant administrative-territorial units.

However, proceeding from the norms of the effective legislation, a national minority can initiate a referendum,

LEGAL FRAMEWORK FOR PARTICIPATION OF CRIMEAN TATARS IN BODIES OF POWER

The Law of Ukraine "On Election of Members of the Verkhovna Rada of the AR of Crimea, Local Councils and Village, Settlement, City Mayors" provides that members of the Verkhovna Rada of the AR of Crimea are elected under the proportional system, i.e., its members are elected by election lists of republican organisations of political parties and election blocs of organisations of political parties in the multi-mandate election district whose boundaries coincide with the boundaries of the AR of Crimea. The Law prohibits any direct or indirect privileges in election rights, including on ethnic grounds.

Members of district, city district and city councils in the AR of Crimea are elected under the proportional system, members of village and settlement councils – under the majority system in single mandate constituencies, into which the territory of the concerned settlement or a rural community uniting residents of several villages is divided. Voting rights require affiliation with the concerned territorial communities, permanent residence on the territory of the concerned administrative unit (in the given case – the AR of Crimea).

According to the Ukrainian legislation, entitled to serve in local self-government bodies are persons who have the appropriate education and professional training, command the official language in the scope sufficient to discharge official duties. The Law does not envisage any privileges on ethnic grounds for employment at local self-government bodies*.

The Law of Ukraine "On State Service" specifies few but clear criteria of getting the right to state service – appropriate education, professional training, competitive selection. No other privileges for state service are envisaged, including on ethnic grounds.

* Law of Ukraine "On Service in Local Self-Government Bodies". Under certain circumstances, the procedure of employment enables indirect application of the ethnic criterion. For instance, pursuant to Article 10, on as-needed basis, with the parties' consent, an official of a local self-government body may be moved to an equivalent or lower position or position of an advisor of consultant without competitive selection. The very procedure of competition specified by the Cabinet of Ministers of Ukraine Resolution "On Approval of the Procedure of Competition for Vacant Positions of State Servants" No. 169 of February 15, 2002, allows application of subjective, including ethnic, criteria during competitive selection, for instance, during interviews with candidates.

[36] Namely, the Minister of Labour and Social Policy, the First Deputy Minister of Housing and Communal Services, a Deputy Minister of Economy, a Deputy Minister of Culture and Arts, a Deputy Minister of Education and Science, a Deputy Minister of Health, the Head and Deputy Head of the Republican Committee for Inter-Ethnic Relations and Deportees, the Head of the Republican Information Committee, the Head of the Republican Committee for Waterwork Construction and Irrigated Farming, a Deputy Head of the Republican Committee for Land Resources, a Deputy Head of the Republican Committee for Religions.

and moreover, secure the required result, only if it manages to convince in its rightfulness the necessary number of representatives of other ethnic groups, or (in case of a local referendum) if it makes a majority of the population of the concerned administrative-territorial unit. In such conditions, Crimean Tatars actually have no chances to succeed at an all-Ukrainian, Crimean republican referendum or local referendums in Crimea[37].

Therefore, Crimean Tatars have no adequate representation in the authorities and self-government bodies of Crimea, their ability to influence the authorities in issues concerning their interests is limited. This prompts representatives of that community to resort to other forms of defence of their interests, including those that can stir up a conflict between Crimean Tatars and representatives of the Slavic community of Crimea.

Bias of Crimean authorities in sensitive for inter-ethnic relations issues. In 2004-2009, most decisions of the Verkhovna Rada of the AR of Crimea dealing with inter-ethnic problems dealt with the language issue. Twelve out of fifteen such documents pursued protection and development of the Russian language in different sector, two – Ukrainian, one – Crimean Tatar[38]. Analysis of the content of those decisions gives grounds for the conclusion of bias of that body in language issues, in particular, its focus on protection of the interests of only one, Russian-speaking community[39].

Also demonstrative in this respect were some resonance decisions on foreign policy and humanitarian issues[40]. They fully match the system of values of the "Slavic community" dominating on the peninsula. That approach may be deemed to contribute to conflicts in inter-ethnic relations.

In the issues of amenities for repatriates, Crimean authorities as a matter of principle insist on solution of socio-economic issues, irrespective of nationality (while Crimean Tatars insist that they were deported on national grounds).

In that period, Crimean Council of Ministers passed more than 30 resolutions on inter-ethnic relations. Those decisions mainly dealt with amenities and socio-cultural development of repatriates (approval of annual plans of implementation of the relevant programmes of amenities, measures at commemoration of anniversaries of the deportation, preservation and development of languages and cultures, etc), solution of concrete problems in specific districts and settlements of the autonomy. In the result of ineffectiveness of inter-budget relations and limitations of the republican budget, most of those decisions remain on paper.

In the field of socio-economic relations, most violations that may conventionally be attributed to ethnic reasons are observed on the level of local authorities and local self-government bodies. They mainly deal with land issues and provision with housing.

In the result of ineffectiveness of the central and Crimean authorities, excessive politicisation of their relations and lack of constructive interaction between them, an unhealthy situation has been formed in Crimea with access of citizens and communities to basic life resources: administrative-legal (representation in the bodies of power, employment), material (land, housing), socio-cultural (education, sources of information in native language). Crimean Tatars suffer greater discrimination in access to those resources.

Corruption in Crimean bodies of power

The high rate of corruption in Ukraine in general is recognised within the country and by the international community, and requires no proof. The official statistics is unreliable and produce no idea of the true scale of that phenomenon. The data obtained during expert and public opinion polls deserve more trust. According to the expert poll, the problem of corruption is the second important (32.5%) for Crimea (after land problems – 36.2%), while public opinion polls ranked corruption first among the socio-political problems that bother Crimeans. The urgency of solution of that problem in the authorities is generally recognised by 49.7% of those polled, in law-enforcement and judicial bodies – by 38,5%, in the field of allotment of land – by 34.8%.

People consider the worst hit by corruption the sectors immediately dealing with human life (land as the place of residence and a life resource, healthcare, education, transport, utilities) [41].

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[37] International organisations, in particular, OSCE, worked out recommendations for effective participation of representatives of national minorities in socio-political life. In this connection, the difference of the status of national minorities and indigenous peoples important for Crimean Tatars is disregarded, with the emphasis made on the mechanisms of involvement in socio-political life instead.

[38] See, in particular: resolutions (decisions) of the Verkhovna Rada of the AR of Crimea: "On Approval of the Programme of Development and Functioning of the Ukrainian Language in the AR of Crimea in 2004-2010" No. 856 of March 17, 2004; "On Appointment of a Republican (Local) Consultative Referendum on the Initiative of Citizens of Ukraine Permanently Living in the AR of Crimea" No. 1578 of February 22, 2006; "On Progress of Implementation of the Verkhovna Rada of the AR of Crimea Resolution of April 15, 1998, No. 1505 "On Guarantee of Functioning of the Official, Russian and other Languages in the AR of Crimea" No. 214 of October 18, 2006; "On Progress of Implementation of Resolutions of the Verkhovna Rada of the AR of Crimea on Issues of Use the Official, Russian and other Languages in the AR of Crimea" No. 391 of March 22, 2007; "On Use of Languages at Organisation of Educational Process in Educational Establishments of the AR of Crimea" No. 905 of June 18, 2008; "On Appeal to the Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine on the Need of Conduct of External Independent Evaluation of Progress in Studies of Graduates of Educational Establishments of the AR of Crimea in the Languages of Study" No. 962 of September 17, 2008; "On Draft Law of Ukraine "On Amendment of the Law of Ukraine "On Television and Radio Broadcasting" No. 3963 of September 17, 2008, and "On Constitutional Inquiry about Correspondence to the Constitution of Ukraine (Constitutionality) of Parts One and Two of Article 42 of the Law of Ukraine of December 21, 1993, No. 3759 "On Television and Radio Broadcasting" No. 1042 of November 19, 2008; "On Measures in Support for the Russian Language in the Field of Education in the AR of Crimea" No. 1248 of May 20, 2009.

[39] For more detail see subsection 2.2 of this section.

[40] In particular, the Verkhovna Rada of the AR of Crimea Decision "On Inadmissibility of Conduct on the Territory of the AR of Crimea of the Ukrainian-US Military Exercise *Sea Breeze 2009*" No. 1211 of April 22, 2009; "On Barring Propaganda of Fascism and Racial Intolerance, Rehabilitation and Glorification of Fascist Collaborationists" No. 1213 of April 22, 2009 (the Appeal of the Verkhovna Rada of the AR of Crimea to Verkhovna Rada of Ukraine approved by that Decision expresses protest against actions aimed at rehabilitation of OUN-UPA "and their leaders S.Bandera and R.Shukhevych").

[41] Crimea: people, problems, prospects. Razumkov Centre Analytical Report. – "National Security & Defence", 2008, No. 10, pp.36-38

Corruption, creating artificial preferences or impediments for access of rank-and-file citizens to land resources, seriously aggravates tension in relations between different ethnic groups. Actually all publicised conflicts between representatives of different groups recorded in Crimea in the recent years stemmed from the land issue. The same is witnessed by the differentiation of answers of respondents from different socio-cultural groups: among Crimean Tatars, facts of corruption in land issues were encountered by 71% of those polled, among Russians – 63.1%, Ukrainians – 59.7%[42].

In 2003, the Committee on Fighting Organised Crime and Corruption of the Verkhovna Rada of Ukraine noted the actual absence of reaction of Crimean law-enforcement bodies to the spread of unlawful acts and "evident corruption of officials of local authorities" in the land sector, replacement of fighting organised crime and corruption with "disclosure of minor crimes and administrative responsibility for corrupt acts of secondary officials"[43].

After the presidential elections of 2004, the new authorities pledged to step up efforts at fighting corruption. Within a year after the inauguration of President Elect V.Yushchenko, the supreme bodies of power passed a number of acts intended to step up that fight[44]. Problems of corruption in Crimea were dealt with in the NSDC decision of October 26, 2006, stating the need of implementation of a set of "additional measures at detection, prevention and suppression of cases of corruption and organised crime in the AR of Crimea"[45]. In pursuance of anti-corruption initiatives of the central authorities, authorities of the AR of Crimea passed some decisions and took a number of measures[46].

For instance, according to the head of Crimean police M.Ilyichov, in the result of a special operation of the Ministry of Internal Affairs and the General Prosecutor's Office of Ukraine on the territory of the AR of Crimea conducted on June 12, 2008, a "record" bribe in the amount of $5.2 million was documented. That bribe was demanded by "functionaries from Partenit for allotment of 17 hectares of land"[47].

Departmental statistics of law-enforcement bodies and reports of Crimean authorities give corruption data in different forms, mixed with other data (e.g., of economic crime, see Insert "*Dynamics of economic crime in Crimea in 2005-2008*"), which complicates comparison of data and assessment of the real situation. For instance, the data of the Ministry of Internal Affairs of Ukraine and the Main Administration of the Ministry of Internal Affairs in the AR of Crimea presented in Insert reveal different assessments, and therefore, different approaches to fighting corruption.

Dynamics of economic crime in Crimea in 2005-2008

	2005	2006	2007	2008
Detected crimes,	2,067	1,562	1,550	1,439
in that, grave and especially grave	*1,011*	*657*	*588*	*565*
Appropriation, embezzlement or capture of property through abuse of official powers,	418	267	282	332
in that, on an especially large scale	*29*	*29*	*16*	*19*
Legalisation (laundering) of proceeds of crime	13	10	13	14
Violation of legislation on the budget system of Ukraine	5	2	3	1
Official crimes,	982	745	648	571
in that, abuse of power or office	*288*	*185*	*124*	*79*
bribery	*145*	*154*	*112*	*98*

Source: "State and structure of crime in Ukraine" in the period of 2005-2008 (by year). – Official web site of the Ministry of Internal Affairs of Ukraine, *http://www.mvs.gov.ua*

REPUBLICAN REPORT OF PROGRESS OF FIGHTING CORRUPTION IN 2008

"In 2008, compared to the previous year, the number of detected corrupt acts among state officials and representatives of local self-government bodies **increased by 11.2%** (139 cases in 2008 against 125 – in 2007). 43 out of 139 offences were closed in accordance with the procedure established by the law".

The most common offences included: provision of unlawful preferences to individuals or legal entities at preparation and passage of relevant decisions; denial of information extension of which is envisaged by legal acts to individuals or legal entities; intentional delay of getting information; presentation of untrue or incomplete information; violation of the procedure of declaration; unlawful extension of bonuses and preferences to subordinates or unlawful obtaining of bonuses, awards upon the results of work; issue, signing of fake reports, forms, certificates; issue of various permits to individuals and legal entities without sufficient grounds; unlawful interference in activity of other state bodies or officials with the purpose of prevention of discharge of their powers.

* *Source:* Information on the work of executive bodies of the AR of Crimea, local self-government bodies and district state administrations in the AR of Crimea in 2008 in pursuance of the Law of Ukraine "On Fighting Corruption", assignments of the President of Ukraine and the Cabinet of Ministers of Ukraine on that issue in 2008", *http://www.crimea-portal.gov.ua*

42 *Ibid.*

43 Decision of the Committee on Fighting Organised Crime and Corruption of the Verkhovna Rada of Ukraine of November 19, 2003.

44 See, e.g.: Verkhovna Rada of Ukraine Resolution "On Progress of Fighting Organised Crime in 2004-2005" No. 3070-IV of November 3, 2005; President of Ukraine Decree "On Priority Measures at Legalisation of Economy and Countering Corruption" No. 1615 of November 18, 2005 and "On Decision of the National Security and Defence Council of Ukraine of November 25, 2005 "On Establishment of Interdepartmental Commission of the National Security and Defence Council of Ukraine for All-Round Solution of Problems in the Field of Fighting Corruption" No. 1865 of December 28, 2005.

45 See: President of Ukraine Decree "On Decision of the National Security and Defence Council of Ukraine of September 20, 2006 "On Implementation of Decision of the National Security and Defence Council of Ukraine of February 8, 2006 "On social situation in the AR of Crimea"" No. 822 of October 10, 2006.

46 See, e.g.: Resolution of the Council of Ministers of the AR of Crimea "On Organisation of Implementation of the Cabinet of Ministers of Ukraine Directive No. 657p of August 15, 2007" No. 837 of December 13, 2007, *http://www.crimea-portal.gov.ua*

47 N.Ilyichev: "Police has never had easy times". – Public Relations Department of the Main Administration of the Ministry of Internal Affairs of Ukraine in the AR of Crimea, *http://www.crm-mia.gov.ua/*

Proceeding from public assessments and media reports of facts of corruption in Crimea, it may be said that fighting corruption left the bulk of corrupt officials in the AR of Crimea intact. Isolated attempts of law-enforcement bodies to reach corruption on the upper levels of Crimean authorities were vain[48]. It is proved by the answers of Crimeans to the question "*In the interests of who is the policy of central and local authorities being led in Crimea?*". The relative majority of the polled, in view of the cource of central and local authorities'policy, put in the first place (with substantial prevalence) "interests of oligarchic clans" – 38.8% and 46.5%, accordingly.

The most publicised such case was the attempt to bring to responsibility for corrupt acts Chairman of the Verkhovna Rada of the autonomy A.Hrytsenko, that turned a public scandal[49]. Apart from the failure of that attempt, some leaders of the Verkhovna Rada of the AR of Crimea even proposed "steps in response" against Crimean law-enforcement bodies[50]. This is not a unique case when actions of law-enforcement bodies persecuting for corrupt acts officials, even detained during commitment of a crime, met counteraction of local Crimean authorities[51].

Such facts prove that fighting corruption has not become a priority for the central and local authorities alike. Meanwhile, the Crimean residents believe that elimination of corruption should be a priority task among the steps aimed at enhancement of the effectiveness of the central and republican authorities – respectively, 22% and 50.2%. The rating of other measures at enhancement of the effectiveness of the Crimean authorities looks as follows: development and implementation of the Crimea's development strategy (42.4%), replacement of executives with more professional (40.9%) and accretion of powers of the autonomy authorities (23.7%)[52].

Specific Crimean reasons of corruption include: ties between Crimean leaders and representatives of supreme Ukrainian institutes of power, leading political forces, enabling attainment of economic and property interests of the latter in Crimea[53]; disinterest of representatives of Crimean authorities and local self-government bodies in liquidation of corrupt schemes in the most economically attractive sectors; corruption in the law-enforcement bodies and judicial system in Crimea[54].

Dependent on the nationality of corrupt officials and interested parties (that gained or suffered), cases of corruption may become a catalyst or even grow into inter-ethnic tension[55].

Therefore, fighting corruption in Crimea so far has produced no notable changes in the situation for the better. Corruption was and still is one of the serious factors of conflicts on the peninsula, since it complicates solution of Crimean problems in general, especially where interests of representatives of different socio-cultural groups of the autonomy come to collision. Corrupt acts reduce the amount of resources, being the source of conflicts (first of all, land).

Absence of effective opposition to corruption undermines respect for the authorities (both central and Crimean), and therefore, their efforts at prevention of ethnic conflicts or their settlement.

2.2. UNRESOLVED PROBLEMS OF INTEGRATION OF CRIMEAN TATARS INTO UKRAINIAN SOCIETY

The growth of conflicts in social relations in the AR of Crimea is caused by the passivity and sometimes inconsistency of the central authorities at solution of political-legal, socio-economic and ethno-national problems, their attempts to escape interference in conflict situations, in the result of which disputable issues were solved not through the concerned institutes of power but by means of direct demonstration of the will and forcible actions of separate groups and entities.

All this causes accumulation of the critical mass of problems and protest potential, and the authorities cannot but interfere any more. And given the specificity of political preferences and the structure of central and Crimean authorities, unavailability of reliable assessments of the situation and effective tools of influence on it, such interference in many cases is inadequate, sometimes – biased against some national groups, which causes further escalation of tension.

Unsettled issues of legislative restoration of rights of repatriates, political and legal status of indigenous peoples of Ukraine, their national self-government bodies

Settlement of those issues is critical for the "temperature" of social relations in Crimea, since the absolute majority of repatriates are Crimean Tatars claiming the status of an indigenous people of Ukraine, as provided by the Ukrainian Constitution.

The political leadership of Crimean Tatars spoke of the need to solve those issues actually right after the beginning of the mass return of Crimean Tatars to their homeland. In particular, the Bill "On Measures at Practical Restoration of Rights of the Crimean Tatar People and National Minorities Subjected to Deportation and Genocide in the Years of World War II" prepared

[48] See, e.g.: Samar V. Babylon XXI. – "Dzerkalo Tyzhnya", September 27, 2008.

[49] See, e.g.: Speaker Beat Up Witness, When Familiarised with Possible Corruption Case. – *Ukrayinska Pravda*, September 18, 2008, *http://www.pravda.com.ua*; Samar V. With Verbal Process. – "Dzerkalo Tyzhnya", August 9, 2008.

[50] Vice Speaker of Parliament of the AR of Crimea proposes suspension of funding of Crimean militia. – UNIAN, October 2, 2008.

[51] See, e.g.: Verkhovna Rada of the AR of Crimea requests General Prosecutor of Ukraine to investigate validity of participation of officers of the Ministry of Internal Affairs in detention of a village council chairman in the autonomy. – UNIAN, October 2, 2008.

[52] By contrast to rank-and-file citizens, experts prioritised other measures at enhancement of the effectiveness of the Crimean authorities: development and implementation of the Crimea's development strategy – 66.3%, elimination of corruption – 53.8%, replacement of personnel with more professional – 47.5%, change of the party contingent and lines of policy – 28.8%, expansion of powers – 17.5%.

[53] E.g., according to former Permanent Representative of the President of Ukraine in the AR of Crimea H.Moskal, "stand of some executives of the General Prosecutor's Office enabled release from custody of a member of the Supreme Council of the AR of Crimea O.Melnyk detained by a special group of the Ministry of Internal Affairs and the General Prosecutor's Office investigating notorious crimes of past years, considered the leader of one of former Crimean organised criminal groups *Seilem*". See: Karavan V. "Moskal. Not a Ceremonial General". – "Fokus", November 6, 2006, *http://focus.in.ua*

[54] See, e.g.: Deputy Minister of Internal Affairs Yevdokymov calls upon Crimean police to clean their ranks of turncoats. – UNIAN, September 7, 2006.

[55] See, e.g.: Samar V. Minefield guide. – "Dzerkalo Tyzhnya", August 30, 2008.

by Majlis in 1992 contained a set of interrelated key provisions, providing for the following[56]:

- Ukraine's condemnation of deportation and assumption of responsibility for practical restoration of rights of repatriates, while respecting rights and interests of all citizens of Ukraine, irrespective of their nationality;
- creation on the central and republican levels of mechanisms to control the observance of the Law, involving Majlis of the Crimean Tatar people; recognition of Majlis as a party representing the Crimean Tatar people in solution of all issues dealing with the exercise of its rights;
- development of a State Programme of return and restoration of rights of the Crimean Tatar people with the purpose of effective and planned use of resources needed for practical restoration of rights of persons subjected to repressions;
- recognition of the right of the Crimean Tatar people to self-identification and restoration of its statehood on the ground that it was formed on the territory of the Crimean peninsula (i.e., recognition of its status as an indigenous people, although the term is not used in the document);
- specification of the forms, scope and mechanisms of reimbursement of material and moral damage inflicted to repatriates by deportation.

Over the period of independence, bills on those issues were submitted to Ukraine's Parliament (mainly by MPs representing the Crimean Tatar people), but they remain unsettled even now (see Insert "*Legislative initiatives aimed at settlement of political and legal problems of the Crimean Tatar people*", p.40).

Those problems caused complication of the situation in the AR of Crimea, first of all, intensification and radicalisation of the protest activity of Crimean Tatars[57]. By the beginning of 2000s, the situation was only somewhat mitigated, but the conflict potential in the Crimea remained high[58].

In April, 2000, the Verkhovna Rada of Ukraine hosted parliamentary hearings "Problems of legislative regulation and implementation of the state policy of guarantee of rights of Crimean Tatar people and national minorities that were deported and voluntarily return to Ukraine".

The Recommendations of the hearings, *first*, noted that the Ukrainian state "should establish a set of political and legal conditions guaranteeing preservation and development of the Crimean Tatar ethnos in Ukraine and its equal participation in political, economic and cultural life of the state", given that "the historic Motherland of Crimean Tatars where they were formed as an ethnos lies on the territory and under the jurisdiction of the Ukrainian state"[59]. *Second*, the document contains two provisions fundamental for settlement of political and legal problems of Crimean Tatars:

- the Verkhovna Rada of Ukraine was advised to "take measures for development and passage of laws dealing with implementation of provisions of Article 11, 92 (Item 3) of the Constitution of Ukraine *(concerning indigenous peoples and state guarantees of their rights – Ed.)*, and guarantee of the rights of the Crimean Tatar people and national minorities that were deported and voluntarily return to Ukraine";
- the President of Ukraine was advised to "give assignment of signing of the International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries" *(prior to the adoption of the relevant UN Declaration, that document made the core of the international legal framework on the status and rights of indigenous peoples. – Ed.)*.

So, Ukraine's Parliament yet in 2000 admitted legal grounds for satisfaction of the main political and legal requirements of Crimean Tatars. However, recommendations of the Verkhovna Rada are not implemented even now.

So, compared to early 2000s, the situation with solution of the key political and legal problems of Crimean Tatars actually did not change[60]. It is shaped by the stand of the parties to settlement of political and legal problems of Crimean Tatars, namely: political leadership of the Crimean Tatar people, on one hand, and the Ukrainian authorities – on the other.

Specific of the stand of the political leadership of Crimean Tatars are clear strategic goals, push and insistence at their achievement. The main means of their attainment include legislative initiatives pushed through representation in the bodies of power, presence in the public political space (statements, declarations, forums) and ties with international organisations[61].

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[56] Centre of Information and Documentation of Crimean Tatars. *http://www.cidct.org.ua/ru/publications*

[57] See: The Crimea on the political map of Ukraine…, pp. 8-9.

[58] *Ibid*., pp.12-13.

[59] Verkhovna Rada of Ukraine Resolution "On Recommendations of Parliamentary Hearings "Problems of Legislative Regulation and Implementation of the State Policy of Guarantee of rights of the Crimean Tatar People and National Minorities that Were Deported and Voluntarily Return to Ukraine"" No. 1660 of April 20, 2000.

[60] See: The Crimea on the political map of Ukraine…, pp.17-20.

[61] See, e.g.: Appeal of the Crimean Tatars people "Defend us from discrimination – help restore our rights". – OSCE Conference on Combating Discrimination and Promoting Mutual Respect and Understanding, Romania, Bucharest, June 7-8, 2007. *http://www.osce.org/documents/cio/2007/06/24962_ru.pdf*. The Appeal mentions the key problems of Crimean Tatars: extinction of rights at privatisation; absence of compensation of lost property; discrimination at employment; discrimination of the Crimean Tatar language; eradication of the cultural heritage; distortion of historic place names; evasion of legislative establishment of the status of the Crimean Tatar people in Ukraine and restoration of its rights.

The political leadership of Crimean Tatars views the status of an indigenous people as a key precondition for preservation of the Crimean Tatar people and all-round exercise of its rights[62]. The rights of Crimean Tatars are to be exercised through national self-government bodies recognised by the state – Kurultay and Majlis – that should have effective channels of interaction with the Crimean Tatar community, Ukrainian and Crimean authorities, the Diaspora and international organisations[63].

The stand of the authorities in those issues may generally be termed as rather passive. In the legislative activity, it takes the form of "reaction" to legislative initiatives of Crimean Tatars[64], showing no practical interest and making no sufficient practical efforts for solution of the existing problems[65]. In particular, Crimean Tatars argue that the "Ukrainian state over the years of independence has not passed a single legislative acts aimed at restoration of political, economic, social and cultural rights of the Crimean Tatar people, which is the reason of preservation of actual inequality and discrimination of Crimean Tatars"[66].

Those statements are reasonable insofar as they deal with the main political and legal requirements of Crimean Tatars, since there are no legislative acts aimed at restoration of rights of repatriates and on the status of indigenous peoples of Ukraine. Such stand of the authorities may stem from: the absence of an integral idea of the ways to problem solution; fear of their possible consequences (both socio-political and socio-economic); assessment of available resources as insufficient to support legislatively provided measures at satisfaction of the requirements of Crimean Tatars. Of course, the political factor may also play a role.

Passivity of the central authorities leads to conservation of the situation and resultant growth of tension in society. Some signs of breaking the ice appeared at a meeting of Ukraine's Prime Minister Yu.Tymoshenko with Majlis Leader M.Dzhemilev on October 31, 2008. During the meeting, the parties considered and came to an agreement on issues of restoration of social and political rights of "Crimean Tatars as an integral indigenous people of Crimea", legal provision of those rights, return to Crimea of 100 thousand Crimean Tatars staying in places of deportation", etc.[67]

But non-performance of the promises given by the Government made Crimean Tatars picket the Cabinet of Ministers in May 2009, which with time evolved into a political protest action[68].

Problems of Crimean Tatars and approaches to their solution are closely interrelated and require systemic, considerate and well-reasoned decisions. The most controversial political issue is the legal status of indigenous peoples of Ukraine and their national self-government bodies[69], especially in view of perception of their solution by the Slavic community of Crimea.

Meanwhile, the need of solution of the problem of restoration of rights of deported peoples as directly dealing with basic human rights is beyond doubt, and opposition to its solution is mainly caused by different forces fighting for natural resources in Crimea. The central and republican authorities should primarily concentrate on the removal of that impediment[70].

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[62] "If we want to preserve Crimean Tatars as a people with a rich original culture, provide economic and political conditions for true equality, such decisions *(passage of the law on the status of the Crimean Tatar people as an indigenous people of Ukraine – Ed.)* are inevitable. And we are proposed to confine ourselves with the status of a national minority, which means assimilation and ethnic death. Of course, we will never agree to that". See: Bekirov N. Crimean Tatar problem in connection with legislative support for rights of nationalities in Ukraine. – Materials of the conference "Crimean Tatars and Ukrainian society: problems of political and social integration". – Kyiv, November 26-27, 1998, p.28.

[63] Procedures of Kurultay and Regulations of Majlis of the Crimean Tatar people. – Centre of Information and Documentation of Crimean Tatars, *http://www.cidct.org.ua*

[64] We leave beyond the scope of this study actions of the authorities dealing with amenities for repatriates and satisfaction of their socio-economic and socio-cultural needs.

[65] For more detail on its possible reasons see subsection 2.1 of this section.

[66] Resolution of the all-Crimean mourning meeting devoted to the memory of victims of the genocide of the Crimean Tatar people – deportation of May 18, 1944, and decades of its forcible retention in the places of exile. See web site "Crimea and Crimean Tatars", May 18, 2009, *http://kirimtatar.com*

[67] On the road to the Crimean Tatar autonomy. – "Odna Rodina", December 18, 2008, *http://odnarodyna.ru/articles/6/415*. Many political figures and experts have doubts concerning the risk of the reached arrangements becoming a subsidiary coin at the following presidential elections. See: Power play: Presidential Secretariat prepares mass riots of Crimean Tatars to overthrow Tymoshenko? – Relying on the materials of RIA "Novyi Region", April 4, 2009, *http://www.otechestvo.org.ua/main/20094/0124*

[68] Crimean Tatars promise to cut Ukraine's road to the European Union. – "Kyivska Pravda", June 9, 2009, *http://ua.pravda.com.ua/news/2009/6/9/96170*

[69] See, e.g.: Decision of Kurultay of the Crimean Tatar people "On Situation Concerning the Law of Ukraine "On Restoration of Rights of Persons Deported on Ethnic Grounds". – Centre of Information and Documentation of Crimean Tatars, *http://www.cidct.org.ua*

[70] For more detail on the possible ways to solve political and legal problems of the Crimean Tatar people see the article by Yu.Yakymenko published in this magazine.

LEGISLATIVE INITIATIVES AIMED AT SETTLEMENT OF POLITICAL AND LEGAL PROBLEMS OF THE CRIMEAN TATAR PEOPLE

Bills on the status of the Crimean Tatar people[1]

Since 1999, two bills **"On the Status of the Crimean Tatar people"** have been submitted to the Verkhovna Rada of Ukraine.

The first one was drawn up by Ukraine's MP R.Bezsmertnyi, **No. 4041 of September 10, 1999. Main features**: definition of the legal status of the Crimean Tatar people as an indigenous people of Ukraine; creation of the State Register of the Crimean Tatar people (on a voluntary basis); guaranteed representation of the Crimean Tatar people in the Verkhovna Rada of Ukraine and the Verkhovna Rada of the Autonomous Republic of Crimea (not less than 15% of total deputies); recognition of Kurultay and Majlis as representative bodies of the Crimean Tatar people and powers of Majlis in relations with Ukrainian state authorities; commitments of the state with respect to the Crimean Tatar people.

The bill was not put on the agenda of the Verkhovna Rada of Ukraine and, respectively, not considered by it.

The second was the bill prepared by people'sl deputies of the Verkhovna Rada of Ukraine of the 4th convocation R.Bezsmertnyi, M.Dzhemilyov, V.Taran and R.Chubarov **No. 4098 of September 3, 2005.**

The bill mainly repeated provisions of the previous one.

Meanwhile, it also listed grounds for recognition of the Crimean Tatar people as indigenous (Article 2), specifically:

- its historic Motherland – the territory where it was formed as an ethnos – entirely lying within the borders of the Ukrainian state;
- preservation of its ethnic identity, different from the identity of the Ukrainian nation (title ethnos) and a national minority of Ukraine, and aspiration for conservation and development of such identity;
- unique language and culture;
- conservation and development of its own traditional ethnic institutes;
- absence of an ethnically identical national state or Motherland beyond Ukraine;
- self-perception of an indigenous people of Ukraine.

The bill also introduced the notion of local Majlises, representing interests of Crimean Tatars on the level of administrative-territorial units.

Article 3 laid down the key principles of the state policy with respect to the Crimean Tatar people: "establishment of a new type of relations between the state and indigenous people, resting on recognition of its ethnic, cultural, language and religious uniqueness"; "guarantee of effective involvement of the indigenous people in the process of decision-making of the state authorities and local self-government bodies pertaining to its life activity".

Article 9 named representative bodies of the Crimean Tatar people: **Kurultay** – the national congress of the Crimean Tatar people; **Majlis** of the Crimean Tatar people elected by the Kurultay delegates.

The latter bill was criticised by the Main Scientific Expert Department of the Verkhovna Rada: "…passage of such Law can make an impression of legal inequality between the Crimean Tatar people, that has a separate Law "of its own", and other peoples of Ukraine that have no such laws… In case of passage of this Law it is not ruled out that representatives of other national minorities will also demand passage of similar laws concerning their peoples"[2].

In June 2005, in the new political situation, the bill "On the Status of the Crimean Tatar People" **was termed by the newly elected President V.Yushchenko as urgent, but Parliament did not consider it**. In the Verkhovna Rada of the present convocation, relevant bills were not even registered.

Bills on restoration of rights of persons deported on ethnic grounds

In 2004, two Bills "On Restoration of Rights of Persons Deported on Ethnic Grounds" were submitted for consideration to the Verkhovna Rada of Ukraine, No. 4526 and No. 4526-1, respectively, by the Cabinet of Ministers of Ukraine and national deputies M.Dzhemilev and R.Chubarov. The governmental bill was taken as the basis and finalised with account of some provisions of the second bill, in particular, concerning categorisation of repatriates on the basis of their belonging to the Crimean Tatar people, and a few articles added, specifying the concrete forms of restoration of rights of repatriates (e.g., compensation, rehabilitation, satisfaction) and concrete obligations of the state in that respect (the bill of M.Dzhemilyov and R.Chubarov mentioned among such forms restitution – an issue concealing a serious conflict potential; the term was removed from the agreed bill, although the essence of the relevant form of restoration of rights was preserved in the article dealing with compensation).

The law was passed by the Verkhovna Rada and sent to President L.Kuchma for signing. **The President returned it** with reservations and proposals. One of the most serious reservations was that it "grants a special status to deportees and specifies the procedure of compensation of their associated losses, **proceeding from affiliation of the persons with the Crimean Tatar people**, not from facts of violation of human rights committed with respect to such persons. This directly contradicts provisions of the Constitution of Ukraine and may question the constitutional definition of the Ukrainian people as the community of Ukrainian citizens of all nationalities". With the President's proposal, the Law might be adopted. However, that did not happen because of political developments of late 2004 - early 2005.

In 2005, Ukraine's MPs M.Syatynya and S.Ratushnyak submitted the Bill "**On Restoration of Rights of Ownership of Individuals Forcibly Taken by Bodies of the USSR**" No. 8332 of October 21, 2005. It **received a negative conclusion of the Cabinet of Ministers and was not reviewed by the Verkhovna Rada of Ukraine**.

In 2008, the Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada for consideration the Bill "**On Restoration of Rights of Persons Deported on Ethnic Grounds**" No. 3142 of September 11, 2008. It defined the category of deported persons as those "who were citizens of the former USSR and in the period of 1941-1944 were deported on ethnic grounds from places of permanent residence within the present territory of Ukraine, and settled in another place prescribed by the authorities of the former USSR (special settlement)". Therefore, ethnic grounds were not used to define deported persons.

By and large, the bill was rather concise: by contrast to the one passed in 2004 and vetoed down by L.Kuchma, it contained only the general lines of the state policy of restoration of deported persons' rights and specified powers of the authorities and self-government bodies at its implementation without mentioning concrete measures. That is, from the viewpoint of interests of the Crimean Tatar people, it may be seen as a step back, compared to the previous one.

Meeting **Ukraine's Prime Minister Yu.Tymoshenko** on **October 31, 2008**, the Majlis leader M.Dzhemilev suggested **withdrawal of that bill from the Verkhovna Rada**, to be replaced with a new version drawn up on the basis of the bill passed by the Verkhovna Rada in 2004. According to media reports, "**the participants of the meeting agreed to work out new approaches to this issue in the near future**"[3].

On May 13, 2009, the draft Law of Ukraine "On restoration of rights of persons deported on ethnic grounds" No. 3142 submitted by the Cabinet of Ministers of Ukraine was considered by the Committee on European Integration of the Verkhovna Rada of Ukraine. The bill was termed as not contrary to the European law, and recommended to be submitted to the Verkhovna Rada of Ukraine after finalisation, for basic passage.

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1 For the texts of the bills, memos and expert conclusions see: Official web site of the Verkhovna Rada of Ukraine, *http://www.rada.gov.ua*

2 Some scholars see the variety of interpretations of the mentioned categories and the vagueness of conceptual principles of political nation and civil society building in Ukraine as a deficiency of Ukraine's Constitution itself, and note the controversy of introduction of the term of "indigenous nations" thereto. See, e.g.: Kotyhorenko V. Crimean Tatar repatriates: problem of social adaptation. – Kyiv, 2005, p.189; Nahorna L. Regional identity: Ukrainian context. – Kyiv, I.F. Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine, 2008.

3 "Tymoshenko Interested in Meetings…" – "Avdet", November 3, 2008.

Hindrance of provision of amenities for repatriates[71]

Starting from 1991, they in the AR of Crimea built for repatriates at the expense of state and republican budget funds 444.5 thousand m^2 of housing (against the required 700-800 thousand m^2), seven schools for 2,043 pupils, laid 873.6 km of water supply lines, 1,181.5 km of power lines, 44 km of roads, 340 km of gas supply lines, commissioned other social and cultural facilities[72].

The effectiveness of measures aimed at provision of amenities for repatriates, especially Crimean Tatars[73], is insufficient. According to the Accounting Chamber of Ukraine, at provision of amenities for repatriates in 2007-2008, planned terms of commissioning of housing and utility facilities, water, gas and electricity networks were disrupted. Some social facilities and residential buildings remain non-operational, so that repatriates cannot get proper services[74].

The unemployment rate remains high – according to the Razumkov Centre polls, 12% of Crimean Tatars are unemployed (among Slavs – 3.7%; "Crimean Ukrainians" – 4.7%; Crimean average – 5%). 60% of Crimean Tatar families do not have enough money even for food. For many of them, pension and retail trade are the main sources of subsistence.

One should admit that similar problems are experienced by the rest of the Crimean population. However, Crimean Tatars are seen as a special problem group because of the controversy of issues of their settlement, provision with land and housing. Hindrance of solution of those issues causes social tension in the AR of Crimea, gaining traits of a pre-conflict situation.

Settlement. Acuteness of the problems of settlement of Crimean Tatars is caused by the legislative uncertainty of the rights of deportees, passivity of the central authorities and reluctance of some bodies of the Crimea to solve issues of Crimean Tatars to the detriment of the rights of the Russian-speaking population on whose support they rely, and the main thing – to the detriment of their own "business projects" of distribution of land plots. **Crimean Tatars rest their requirements** on the fact that they "not simply return to Crimea, they return to their roots. But the **Crimean authorities** do not take into account the national interests of Tatars and settle them on land at their discretion"[75].

There are 300 localities and areas of compact residence of repatriates in Crimea now. Most of all Crimean Tatars (15 thousand people and more) live in Simferopol, Bahchysarayskiy, Bilogirskiy, Dzhankoyskiy, Krasnogvardiyskiy, Sakskiy rayons (districts) (66% of all repatriates). Crimean Tatar city population is mainly concentrated (2.5 thousand persons and more) in the cities of Simferopol, Sudak, Feodosiya, Alushta, Dzhankoy, Kerch, Yalta (some 20%). In no district of Crimea, they are in a majority, making from 33.7% in Bilogirskiy district to 9.2% – in Dzhankoyskiy district.

The problem of settlement of Crimean Tatars has two dimensions: the "problem of the South-Eastern coast" and the problem of settlement in rural areas – in their turn, closely related with provision of Crimean Tatars with land and housing.

"Problem of the South-Eastern coast". According to the 1939 census, 218.9 thousand Crimean Tatars lived in the Crimean ASSR, 75% of them – in villages, 25% – in cities. All in all, Crimean Tatars made 10.2% of the total city and 29% of the village population of the republic. They mainly lived on the South-Eastern coast of Crimea. In rural areas, Crimean Tatars were concentrated in Sudakskiy (89.2% of the district population), Yaltinskiy (81.4%), Bahchysarayskiy (79%), Sevastopolskiy (63.7%) and Karasubazarskiy (46.8%) districts. Among the city population, Crimean Tatars were in a majority only in Bakhchysaray (71%) and Gurzuf (54.7%). In other cities of the South-Eastern coast their share in the population made 12-43%[76].

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[71] Official data of provision of resources for repatriates in Crimea are fragmentary, varied, their trustworthiness arouses doubts, which complicates or even bars their summarisation. Absence of a cadastre registration system in land management and land relations makes any statistics in that sector unreliable. That is why the study mainly relied on estimates of trends (not absolute figures) of separate indices, and prudent use of official data and their comparison with data from independent sources.

[72] Report by Director of Department for Affairs of Former Deportees on Ethnic Grounds "Implementation of the Programme of Settlement of and Amenities for Deported Crimean Tatars and Persons of Other Nationalities Who Returned for Residence to Ukraine, their Adaptation and Integration into Ukrainian Society". May 8, 2009, *http://www.scnm.gov.ua/article/132148?annId=132149*. On the need for housing, see: Formation of ethnic tolerance in Crimea through joint activity of national cultural societies. *Local Government and Public Service Reform Initiative*, *http://lgi.osi.hu/ethnic/csdb/doc/rkoroste.doc*. The possibility to buy housing for own funds was extremely limited: as of June, 2002, the value of 1-2-bedroom apartments in Central Asian cities where repatriates used to live ranged from $650 to $1,500, in the Crimean cities – from $7,000 to $12,000 (on the South-Eastern coast – 15-20 times more). The average value of movement of a family of four exceeded $1,000. See: Representative of Majlis of the Crimean Tatar people in Central Asia. Reference "On issues and problems faced by deported Crimean Tatars returning from the Republic of Uzbekistan to Ukraine" of July 22, 2002. – "Crimea and Crimean Tatars", *http://www.kirimtatar.com/Problems/spravka_2207*

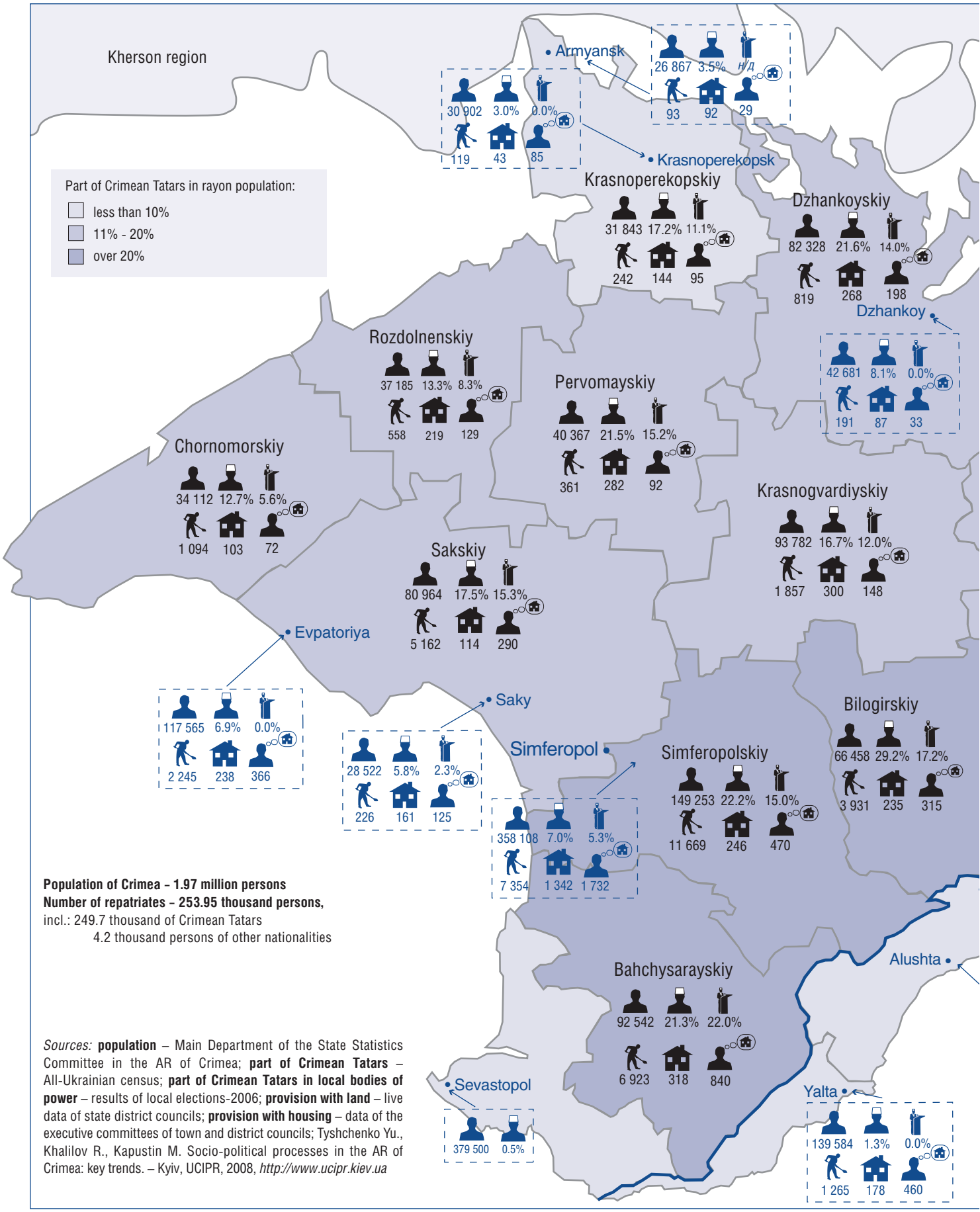
[73] According to the Ministry of Internal Affairs of Ukraine, as of January, 2009, there were 253.95 thousand deportees in the AR of Crimea, including 249.7 thousand Crimean Tatars and 4.2 thousand persons of other nationalities.

[74] Programme of amenities for repatriates in Crimea is not implemented. – Accounting Chamber Press Service, February 11, 2009, *http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=1372474&cat_id=411*

[75] Chubarov calls upon the central authorities to pay attention to the problem of illegal use of land resources in Crimea. – UNIAN, November 12, 2007.

[76] Khayali R. Crimean Tatar people in the population of the Crimean ASSR (1921-1939). – *http://www.nbuv.gov.ua/Articles/Kultnar/knp66/knp66_74-80.pdf*. See also: Kabachyi R. From the other world. Non-violent return to Crimea became the cause of several generations of Crimean Tatars. – "Ukrayinskyi Tyzhden", February 27, 2000, pp.42-43.

STATE OF SETTLEMENT AND AMENITIES



Population of Crimea – 1.97 million persons
Number of repatriates – 253.95 thousand persons,
incl.: 249.7 thousand of Crimean Tatars
4.2 thousand persons of other nationalities

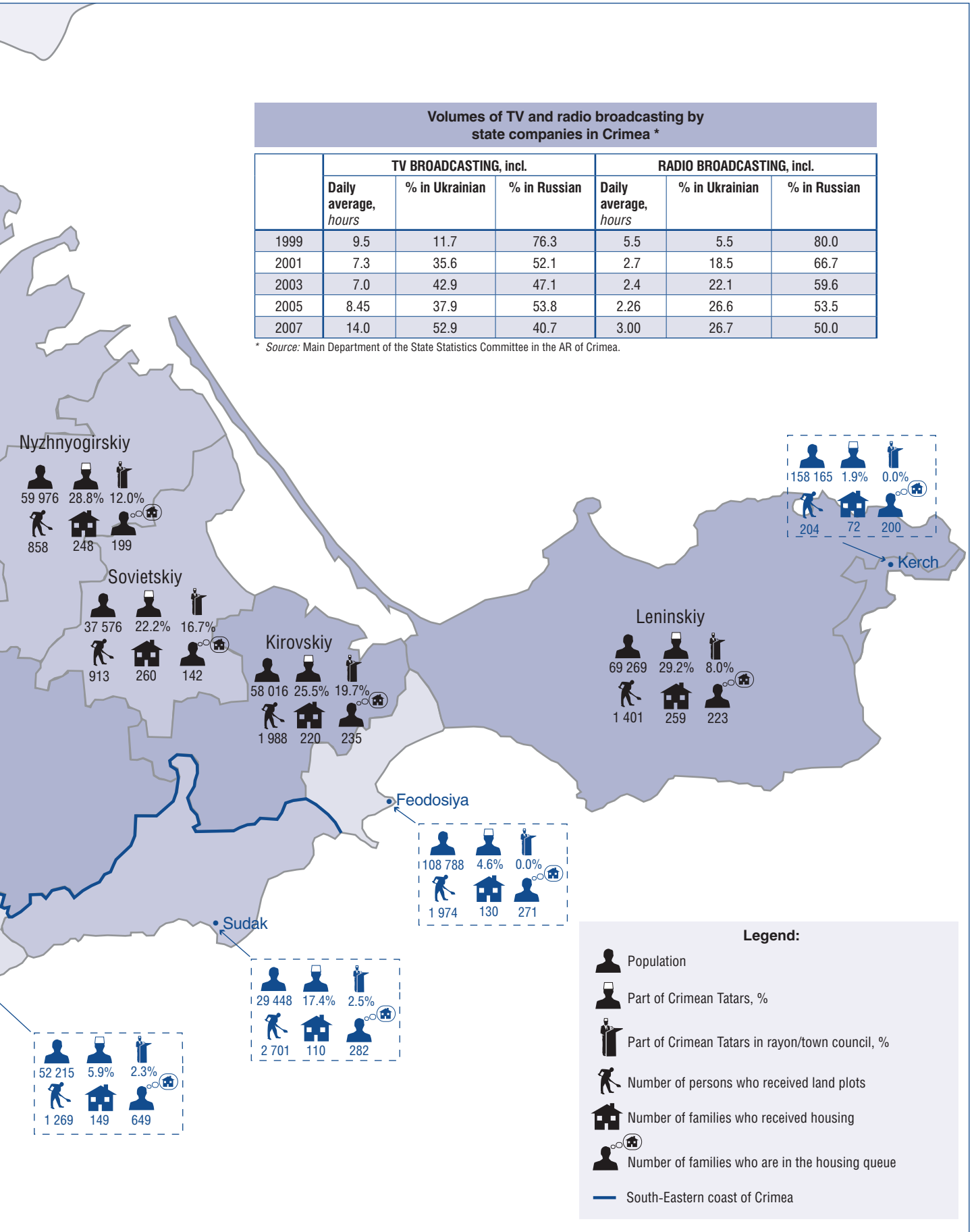
Sources: **population** – Main Department of the State Statistics Committee in the AR of Crimea; **part of Crimean Tatars** – All-Ukrainian census; **part of Crimean Tatars in local bodies of power** – results of local elections-2006; **provision with land** – live data of state district councils; **provision with housing** – data of the executive committees of town and district councils; Tyshchenko Yu., Khalilov R., Kapustin M. Socio-political processes in the AR of Crimea: key trends. – Kyiv, UCIPR, 2008, *http://www.ucipr.kiev.ua*

FOR CRIMEAN TATARS IN CRIMEA

Volumes of TV and radio broadcasting by state companies in Crimea *

	TV BROADCASTING, incl.			RADIO BROADCASTING, incl.		
	Daily average, *hours*	% in Ukrainian	% in Russian	Daily average, *hours*	% in Ukrainian	% in Russian
1999	9.5	11.7	76.3	5.5	5.5	80.0
2001	7.3	35.6	52.1	2.7	18.5	66.7
2003	7.0	42.9	47.1	2.4	22.1	59.6
2005	8.45	37.9	53.8	2.26	26.6	53.5
2007	14.0	52.9	40.7	3.00	26.7	50.0

* *Source:* Main Department of the State Statistics Committee in the AR of Crimea.



During repatriation, Crimean Tatars returning to their homeland were 90% channelled to the Steppe Crimea, three quarters – to rural areas[77]. Some 60% of repatriates who before deportation and in exile lived in cities had to settle down in villages and city suburbs[78], competing with the local population on the labour market and in access to material benefits. Combined with ineffectiveness and inadequate actions of the authorities, **this prompts escalation of social tension, growth of the protest potential in the area, causes emergence of local conflicts**.

The number and intensity of such conflicts grew in 2006-2008. According to then Permanent Representative of Ukraine's President in the AR of Crimea H.Moskal, from January till October, 2006, there were 9,636 mass protests, which is three times more than in the same period of 2005 (3,047). 8,846 actions (91.8%) were organised by Crimean Tatars[79].

Protests were radicalising; at times, they grew into open clashes involving law-enforcement bodies (sometimes inadequately, with arms and even armoured vehicles)[80]. The most publicised were the incidents in Bakhchysaray on July 8, 2006,[81] and the conflict on the Ai-Petri plateau in November, 2007.[82]

Problems of settlement in rural areas. According to the 2001 census, the ratio of the village and city population of Crimean Tatars in the AR of Crimea was 2:1, of Russians – 1:2.4, Ukrainians – 1:1.4. Now, some 72% of Crimean Tatars live in rural areas. The Chairman of the Permanent Commission of the Verkhovna Rada of the AR of Crimea for Inter-Ethnic Relations R.Ilyasov said in his presentation at a Congress of the Crimean Tatar people on May 20, 2009, that three quarters of settlements housing Crimean Tatars were provided with running water and some 98% – with electricity. The level of provision with gas does not exceed 15%. Only 12% of settlements have paved roads. Sewerage networks are actually absent. Issues of transport communication and telephone lines in settlements also remain unresolved[83].

Amenities in villages are a common Crimean problem. Monitoring of rural areas showed that 568 out of over 1,000 villages and urban-type settlements accommodating nearly 38% of the autonomy's population as of May 26, 2008, had no educational establishments, 485 – post offices, 483 – pharmacies, 296 – healthcare establishments, 188 – shops. 143 settlements were not provided with public transport, 135 – with running water[84].

Rural areas report a high unemployment rate. The most critical situation with employment is observed in Kirovskiy, Krasnoperekopskiy, Sovetskiy, Chornomorskiy districts[85]. 55% of Crimean Tatar families living in rural areas do not have enough money even for foodstuffs (in the "Slavic community" – 52%, Crimean average – 46.8%)[86]. Many of them have to live on a pension and proceeds from retail trade, while pensioners make the most numerous group of Crimean Tatars – almost 32% (in the "Slavic community" – 23%, Crimean average – 26.1%). For Crimean Tatars, the situation is aggravated by alleged discrimination at sharing of farming land (see below).

Poor living conditions are another reason "driving" villagers, including Crimean Tatars, from rural areas in search of a better life to cities, mainly on the South-Eastern coast. Along with the desire to return home and attractiveness of the southern territories of the peninsula, this exerts additional pressure on internal migration, mainly directed from the Steppe Crimea to the South-Eastern coast (see map, pp.42-43), densely populated by representatives of the Slavic community, leading to the growth of tension between the two socio-cultural groups.

Provision of repatriates with non-farming land plots is the acutest Crimean problem.

According to representatives of the **republican authorities and local self-government bodies**, Crimean Tatars are already provided with land better than representatives of all other ethnic groups, but try to get

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77 Data of the Republican Committee for Nationalities and Deported Persons under the Council of Ministers of Crimea, *http://www.comnational.crimea-portal.gov.ua*

78 Integration of Crimean Tatars into Ukrainian society: problems and prospects. Analytical assessments of the National Institute of Strategic Studies. – Kyiv, National Institute of Strategic Studies, 2005, *http://www.niss.gov.ua/book/krim.htm*

79 Permanent Representative of the President of Ukraine in Crimea H.Moskal suggests that the situation with squatters on the peninsula went out of control. – Interfax Ukraine, October 24, 2006.

80 See: Ishyn A., Bednarskyi O., Shvets I. On the issue of manifestations of ethno-political contradictions in Crimea at the present stage. – Simferopol, Regional branch of the National Institute of Strategic Studies, 2005, p.34.

81 S.Kunitsyn: "Bahchysaray events are the result of distortions and mistakes in inter-ethnic relations" – UNIAN, August 17, 2006.

82 Confrontation in Crimea: armed "Berkut" attacked Ai-Petri. – UNIAN, November 6, 2007.

83 Presentation by the Chairman of the Permanent Commission of the Verkhovna Rada of the AR of Crimea for Inter-Ethnic Relations R.Ilyasov at the Congress of the Crimean Tatar people. – *http://hatanm.org.ua/forum/index.php?action=printpage;topic=1827.0*

84 Crimean Public Prosecutor's Office drew up a map of socially unfit regions of the peninsula. – REGNUM news agency, *http://www.regnum.ru/news/1006356.html*

85 On socio-economic standing of the AR of Crimea in 2008. – Main Statistic Department in the AR of Crimea, Simferopol, 2009.

86 The financial crisis substantially deteriorated the standing of Crimean Tatar families; the number of families who do not have enough money even for food increased among Crimean Tatars 3.3 times, against 1.6 times in the Slavic community. Estimate made by comparison of the results of polls of October 18 – November 9, 2008 and 2009.

more land, seizing attractive land plots for subsequent resale[87], intentionally provoking "land" conflicts[88]. In particular, the stand of the Verkhovna Rada of the AR of Crimea is that the land issue in Crimea should be solved irrespective of the nationality of citizens[89], and therefore, Crimean Tatars have no special rights to land plots on the peninsula.

On their part, **representatives of Crimean Tatars** refute reports of the Crimean authorities saying that Crimean Tatars are well provided with land[90] (insert "*Provision of repatriates with non-farming land*"). They stress that squatting is prompted by the poor material standing and sense of injustice at division of land for the benefit of persons connected with the authorities[91].

The scanty reserve of land intended for repatriates, non-transparency of the process and low effectiveness of control of the authorities greatly sharpen the problem, contributing to the flight of land to the grey market using corrupt schemes[92] and provoking Crimean Tatars to squat land. According to the Minister of Environmental Protection of Ukraine, as of April, 2009, 74 cases of squatting land with the total area of 1.7 thousand hectares were recorded in Crimea[93].

PROVISION OF REPATRIATES WITH NON-FARMING LAND

As of December, 2008, total of 400.8 thousand land plots with an area of 48.4 thousand hectares were allotted for individual housing construction. Repatriates received 82.4 thousand plots (20.5% of total) with an area of 9.8 thousand hectares (12%).

For commercial activity, 8,294 land plots with an area of 1,650 hectares were allotted, in that, 1,055 plots (nearly 12%) with an area of 65 hectares (4%) – to repatriates.

By and large, land plots for individual housing construction and commercial activity were granted to 58% of the repatriates who expressed such need, or 21% of their total number.

The issue of allocation of land plots is especially acute in big cities (Alushta, Yalta, Sudak, Simferopol, Feodosiya), where the number of applications for land plots exceeds the number of local repatriates, in particular, in the result of intra-regional migration.

To solve that, a stock of land should be created. In pursuance of the President of Ukraine Decree[1], the Council of Ministers of the AR of Crimea drafted a programme of provision of repatriates with land for individual construction[2], providing for the allocation of land plots with the total area of approximately 3,920.4 hectares. The task can partially be solved at the expense of land controlled by some state and non-state structures but not needed to them or used ineffectively.

For instance, according to the State Land Inspection in the AR of Crimea, as of May 28, 2009, 1,127.4 hectares of the lands mentioned in the draft programme were permanently used by various state and non-state structures, including:

- the Ministry of Agricultural Policy of Ukraine – 413.4 hectares;
- the Ukrainian Academy of Agricultural Sciences of the AR of Crimea – 598 hectares;
- the Ministry of Defence of Ukraine – 62 hectares.

Another 41 hectares belong to forest lands, 13 hectares – to the natural reserve stock[3]. The State Land Inspection in the AR of Crimea reported that all those lands were used ineffectively or non-productively, but their transfer was impossible without passage and coordination of relevant decisions by the Cabinet of Ministers of Ukraine, the Ukrainian Academy of Agricultural Sciences of the AR of Crimea, republican authorities and local self-government bodies. However, those efforts continuously meet artificial bureaucratic barriers.

The main roots of problems in provision of repatriates with land plots include:

- uncompleted cadastre registration system, inventory of land, delimitation of land staying in state and communal ownership;
- uncompleted register of repatriates entitled to and claiming social assistance, housing and land plots for individual housing construction (as of January, 2009, the electronic database of the consolidated register of repatriates and their families contained data of only 115.9 thousand persons, or less than 40% of their total number);
- absence of regulatory provided mechanisms of refusal of owners or users from land plots offered for the programme of provision of repatriates with land and their transfer to local self-government bodies for subsequent allocation to repatriates;
- slow pace of development of city planning documentation necessary for passage of decisions of land allocation for housing construction, etc.

[1] President of Ukraine Decree "On Additional Measures to Guarantee Observance of the Right to Land for Citizens Living on the Territory of the AR of Crimea" No. 435 of May 14, 2008.

[2] Draft Comprehensive Regional Programme of Allocation of Land Plots for Individual Construction to Citizens Deported on Ethnic Grounds and their Descendants Who Returned for Permanent Residence in the AR of Crimea and Previously Obtained no Land Plots for Construction and Maintenance of Residential Buildings, through 2010.

[3] Information report by the State Land Inspection, *http://www.dzi.com.ua/page25.html*

[87] Crimean Tatars sell out land "won over" from the authorities by squatting and mass riot. – "Novyi Region – Krym". August 30, 2006.

[88] Crimean Vice Premiere: There is no inter-ethnic enmity in the autonomy, but a desire of the Crimean Tatar leaders to create a conflict. – UNIAN, August 10, 2006.

[89] See: Crimean Parliament believes that the situation with allotment of land on the peninsula did not approve and shows a worsening trend – Interfax-Ukraine, December 20, 2006.

[90] See: Crimean Tatars cut Yalta-Simferopol road, demanding solution of land issue. – UNIAN, March 17, 2007.

[91] See: Majlis leader told who seized land in Crimea, and how much of it is held by deputies. – "Ukrayinska Pravda", March 17, 2009, *www.pravda.com.ua*

[92] See, e.g.: Kunitsyn told how Yanukovych and Azarov got land "for free". – "Ukrayinska Pravda", March 3, 2009, *http://www.pravda.com.ua/news/2009/3/3/90585*. According to the Public Prosecutor's Office of the AR of Crimea, inspections of observance of the land legislation in 2008 revealed new facts of abuses in land management, unlawful withdrawal of territories protected by the law, use of fake documents and unreasoned court rulings for illegitimate seizure of land. Facts of use of fake decisions of local authorities, applications and lists of citizens were revealed in Bahchysaray and Simferopol districts, the city of Simferopol. All in all, in 2008, Public Prosecutor's Offices in the AR of Crimea initiated 15 criminal cases for violations of the land legislation. Numerous violations were revealed in the activity of officials of executive and local self-government bodies – unlawful decisions of allotment of territories of the preserve and forest stock and withdrawal of land from state enterprises were cancelled.

[93] 74 cases of squatting land with the total area of 1.7 thousand hectares were recorded in Crimea. – Ministry of Environment. – Information agency "RBK-Ukraine", April 15, 2009, *http://www.rbc.ua/rus/newsline/2009/04/15/531519*

In many instances, grey dealers (high-ranking officials, influential politicians, Ukrainian and Russian businessmen), using the hard material standing of Crimean Tatar families, buy up land intended for repatriates for a song[94]. Meanwhile, grey operations with land more than once involved Crimean Tatars[95], which causes indignation in the Slavic community and provides an argument for rejection of Crimean Tatar claims to land.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

R: *"Indeed, there is no problem as such, until someone is trying to earn with the "hymn of national minorities". It appears that if they seize land, everything gets by, nobody is punished. If Ukrainians or Russians did that, I guess that tomorrow, a militia regiment would raze them to ground…"*

U: *"…Crimean Tatars sooner than we push decisions for their benefit … No Ukrainian or Russian will go, write an application and get a land plot, even in bad need, as fast as a Tatar will do… I know no Ukrainian or Russian who affords behaving like that, and who is allowed to behave like that".*

T: *"… If we file documents to get a land plot as envisaged by the law, they do not even put me on the queue, as a Crimean Tatar, I don't know on what grounds. Or they accept documents, and then say: "you are refused", referring to lots of unclear clauses".*

More than that, squatting is specific of not only Crimean Tatars – it is ever more used by representatives of the Slavic community. According to the Majlis estimates, Crimean Tatars are responsible for only a quarter of cases of squatting[96]. Meanwhile, republican law-enforcement bodies persecute mainly Crimean Tatars[97].

Provision with farming land. According to estimates made by activists of the Crimean Tatar national movement, before the beginning of forced deportation in 1944, over 90% of Crimean Tatars lived in rural areas[98]. All the adult population of Crimean villages was made up of members of collective farms and other agricultural enterprises with the total area of 732.4 thousand hectares[99].

According to the State Statistics Committee of the AR of Crimea, in 2000, the rural population of Crimea was **16.2%** made up by Crimean Tatars (158.3 thousand persons, more than 75% of them – able-bodied adults). At the time of land sharing, 199.3 thousand Crimean collective farmers were entitled to land tenures, including **18.3** thousand Crimean Tatars. Certificates for land tenures were issued to 191.8 thousand Crimeans, including **16.9** thousand Crimean Tatars, making only some **9%** of all certificate holders, or nearly **14%** of the adult able-bodied Crimean Tatar rural population[100].

According to the Republican Committee for Land Resources, by 2003, the situation somewhat improved: 77.2 thousand Crimean Tatars got land plots (or permits for their allotment) with an area of 178.1 thousand hectares[101]. As of December 2008, due to migration and changes in the structure of land ownership[102], the number of land plot owners among Crimean Tatars decreased (to 72.2 thousand persons), while the area of the plots increased (to 186.1 thousand hectares)[103]. The average area of a personal farmstead of repatriates is 1.71 hectares (Crimean average – 1.96 hectares)[104].

Low quality of land granted to Crimean Tatars[105], poor living conditions in villages, problems with water supply for irrigation, practical absence of assistance from the central and republican authorities greatly complicate farming activity of Crimean Tatars and **contribute to the growth of social tension in and beyond places of their compact settlement**.

Provision with housing. In 1991-2008, nearly 6.1 thousand repatriate families got housing at the expense of budget funds of all levels, 36.7 thousand families solved their housing problem for their own expense[106]. Before 2002, amenities for Crimean Tatars were provided under various annual plans and programmes (of housing, utility services, roads, etc). Starting from 2002, mid-term programmes of settlement and amenities for deported Crimean Tatars and persons of other nationalities that returned for residence to Ukraine, their adaptation and integration into Ukrainian society are implemented in Crimea[107]. Despite the annual growth of absolute funding (except last year), there is

94 Ryabov M. Majlis told how much land Yanukovych has in Crimea and how Russia buys up the peninsula. – "Novyi Region", March 17, 2009, *http://new-region-2.livejournal.com/39748338.html*

95 M.Dzhemilev: "Being aware that the authorities will not give them the land anyway but they can earn at least something, some Crimean Tatars agreed to those disgraceful deals. However, given their hard social standing, I do not want to comment their actions. They got for such mediation almost nothing – not more than a thousand dollars for 400-600 square metres". See: Russians buy up Crimea, covering themselves with Tatars. – Rustbelt-Ukraine, March 17, 2009, *http://www.rosbalt.ru/2009/03/17/626354*

96 M.Dzhemilev: "According to the Crimean Republican Committee for Land Resources, as of April 1, 2007, land seizures by Crimean Tatars accounted for 37% of all cases. Other seized territory falls on the Russian-speaking population". See: Majlis leader told who seized land in Crimea, and how much of it is held by deputies. – "Ukrayinska Pravda", March 17, 2009, *http://www.pravda.com.ua/news/2009/3/17/91470*.

97 "Many cases of unlawful occupation of land were covert, for bribes to functionaries or by an order from above and with silent consent of those who are supposed to protest aloud and write applications to public prosecutor's offices". See: Kasyanenko M. Sources of "carve-up". – "Den", January 24, 2008, *http://www.day.kiev.ua/195154*

98 Those data differ from the data of the 1939 census cited above.

99 Abduraimov V. Land and freedom? – "Ostrov Krym" almanac, No.1, 2002, *http://www.ok.archipelag.ru/part1/zemlya*

100 Economic and legal problems of social adaptation and integration of Crimean repatriates. – Centre of Information and Documentation of Crimean Tatars, *http://www.cidct.org.ua/uk/publications/Etnopolitika/18*

101 Republican Committee for Nationalities and Deported Persons. Information on provision of previously deported persons with land plots in the AR of Crimea as of March 21, 2003. – *http://www.comnational.crimea-portal.gov.ua/uk/index.php?v=1&tek=5&par=0&l=&art=48*

102 On problems of the land market, see: State land policy in Ukraine. – Working materials of Razumkov Centre for the Round-table "State and strategy of today's land policy in Ukraine", May 21, 2009, pp.4-13.

103 Provision of previously deported population of the AR of Crimea with land plots. – State Committee of Ukraine for Land Resources. – *http://dkzr.gov.ua*

104 Data of the Republican Committee for Land Resources and State Committee for Land Resources of late 2008 - early 2009.

105 "Now, according to our surveys, Crimean Tatars in rural areas have per capita on the average 2.5 times less land than non-Tatars, let alone the quality of fallows and remoteness of land plots from places of residence". See: M.Dzhemilev: "We should have been thanked for having done everything we could to neutralise separatism in Crimea". – "Dzerkalo Tyzhnya", May 21, 2005, *http://www.zn.ua/1000/1030/50110*

106 Report of the Republican Committee for Nationalities and Deported Persons on implementation of the Programme … in 2008, *http://www.comnational.crimea-portal.gov.ua/rus/index.php?v=1&tek=5&par=0&l=&art=180*. According to the Representation of the President of Ukraine in the AR of Crimea, some Crimean Tatars solved their housing problem with foreign assistance – from Turkey (1,000 families) and UAE (20 families).

107 Cabinet of Ministers' Resolution "On Approval of the Programme of Settlement of and Amenities for Deported Crimean Tatars and Persons of Other Nationalities Who Returned for Residence to Ukraine, their Adaptation and Integration into Ukrainian Society through 2005" No. 618 of May 16, 2002. The subsequent Programme through 2010 was approved by the Cabinet of Ministers of Ukraine Resolution No. 637 of May 11, 2006. Now, two programmes are implemented in the AR of Crimea: governmental, funded from the state budget, and approved by a Resolution of the Verkhovna Rada of the AR of Crimea No. 102-5 of June 21, 2006 – from the republican.

a trend towards underfunding of programme activities (both from the state and republican budgets), compared to the programme targets (Table "*Progress of implementation of the Programme of settlement of and amenities for deported Crimean Tatars…*").

Given such funding, the high inflation rate in Crimea (in 2008 – 23.2%, as of May 2009 – 8.9%[108]) and significant growth of prices of land and housing in the autonomy (at the beginning 2008 – some 45% a year[109]), one may hardly hope for a higher pace of repatriate provision with housing than now – 340 apartments a year. If this pace persists, satisfaction of housing needs of repatriates will take 23 years (now, the housing queue includes some 7.8 thousand families of repatriates, or nearly 10% of all Crimean residents who need better housing conditions[110]).

Progress of implementation of the Programme of settlement of and amenities for deported Crimean Tatars…, as of December of the relevant year

	2006	2007	2008	*2009 (plan)*
State Budget, plan* *UAH million*	66.4	82.0	94.8	53.3
in fact, %	*80.0*	*80.8*	*67.9*	
Republican budget, plan* *UAH million*	24.5	26.0	30.0	
in fact, %	*99.5*	*73.4*	*53.9*	
Total, plan* *UAH million*	90.9	108.0	124.8	
in fact, % %	*85.1*	*79.0*	*64.5*	
Construction of housing, $м^2$	7,803.7	11,520.5	5,971.4	7,800
Buyout of housing, $м^2$	5,737.3	1,254.1	823.7	
Power lines, *km*	5.6	9.9	7.3	5.8
Water supply networks, *km*	28.4	24.7	25.8	30.7
Gas supply networks, *km*	77.0	75.3	50.4	22.9
Telephone lines, *km*	–	1.25	–	
Radio networks, *km*	–	1.25	–	
Sewerage, *km*	0.7	–	–	
Roads, *km*	2.6	–	–	

* Envisaged by the Programme.

Source: Information of the Republican Committee for Affairs of Nationalities and Deported Persons on implementation of programmes of settlement of and facilities for deported Crimean Tatars and persons of other nationalities… for the relevant years, *http://www.comnational.crimea-portal.gov.ua*

The State Budget allocated to the Programme implementation in 2009 UAH 58.3 million less than envisaged by the Programme (some 48% of the need). See: web site of the State Committee of Ukraine for Nationalities and Religions. – *http://www.scnm.gov.ua*

Proceeding from the results of audit of the programme implementation, the main factors of unsatisfactory fulfilment of plans of amenities for repatriates included[111]:

- organisational deficiencies – uncertainty of relations between the body responsible for the Programme (Republican Committee for Nationalities and Deported Persons) and the body managing budget funds (State Committee of Ukraine for Nationalities and Religions) bars their effective interaction, management of the Programme and control of its implementation;
- non-target and ineffective use of financial resources by management bodies at all levels, resulting in underfulfilment of tasks, impairment of the quality and delay of terms of provision of repatriates with housing and utility services;
- ineffective management of property created for budget funds and intended for repatriates by the State Committee of Ukraine for Nationalities and Religions, republican authorities and local self-government bodies in the AR of Crimea, its unlawful use for the benefit of other individuals and legal entities;
- absence of effective and transparent mechanisms (in particular, accounting and registration systems) for settlement of repatriates and satisfaction of their needs.

The main consequences hindering the processes of provision of amenities for repatriates include:

- rise of corruption, joint irresponsibility, uncontrolled division of land resources, which substantially sharpens rivalry of rank-and-file citizens for resources;
- growth of legal nihilism in land relations and among citizens, including on ethnic and confessional grounds;
- loss of public trust in the authorities and a growing feeling of the need to rely on own powers, prompting radicalisation of social relations and ever more leading to extremist behaviour of some social groups;
- political and social instability, escalation of the pre-conflict situation (on evolution of actions dealing with land issues into political ones see subsection 2.1 and item 1 of this subsection).

Legal and economic factors seriously contribute to aggravation of the situation in the AR of Crimea. There are resources for problem solution, but they are used ineffectively, not for their target use, for selfish personal and corporate interests.

Given the absence of a clear migration policy, registration of repatriates and their needs, a timely created land and housing stock, lack of funds, the problem of settlement of Crimean Tatars remains unresolved, causing strong social tension and adding to confrontation between the Slavic and Crimean Tatar communities.

The situation is aggravated by confrontation of political forces, imperfect legal and practical mechanisms of solution of land issues, non-transparent activity of the authorities. Those drawbacks enable unlawful modification of the target use of land, its uncontrolled allotment for non-target use, present one of the main factors of corruption, causing indignation of citizens, prompting them to illegal acts and stirring up enmity among social groups.

In view of all this, the acuteness of the pre-conflict situation concerning the settlement of and amenities for Crimean Tatars cannot be assessed by the frequency of disputes and protests alone. It should be considered in the context of the general institutional, socio-economic and political processes in the Crimea and whole of Ukraine.

[108] Data of the State Statistics Committee of Ukraine.

[109] "…All operators expect intense growth of prices in Crimea (up to 50% per annum)". Real Estate in Crimea. – Kyiv and Ukrainian Real Estate Portal, *http://freehouse.com.ua/9*

[110] Now, 77.3 thousand persons who need better housing conditions are on the housing queue in Crimea. – e-Krym information agency, June 10, 2009, *http://e-crimea.info/2009/06/10/23257.shtml*

[111] Why Is the Programme of Settlement of and Amenities for Deported Crimean Tatars and Persons of Other Nationalities Not Implemented? – Accounting Chamber Press Service, June 13, 2005, *http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=468127&cat_id=41434*

2.3. FRAGMENTATION OF INFORMATION SPACE OF CRIMEA AND ITS VULNERABILITY TO EXTERNAL INFLUENCES

The situation in the information space of the AR of Crimea reflects developments in society. On the other hand, behaviour of some actors in the information space contributes to formation of relevant spirits, including negativist, in society.

The information space of the autonomy is evidently dominated by the Russian language and pro-Russian ideology. There are several reasons for that: (*a*) the nature of the audience, almost totally understanding Russian[112]; (*b*) an active policy of Russian-language mass media and pro-Russian organisations; (*c*) absence of an active and effective information policy of the central authorities.

Crimean media actively employ the "language of enmity", making them a catalyst of social tension.

Description of media resources[113]

Crimean media resources are distinctly structured by language. This especially applies to the printed media, where the state information policy is very poorly represented. That policy is more felt on TV and radio, namely – in the language issues.

Printed media. Russian-language printed media present the biggest and rather stable segment; the Crimean Tatar segment is smaller, but growing; Ukrainian-language is the smallest. Such segmentation is observed in actually all kinds and elements of media resources.

The aggregate (one-time) circulation of Russian-language printed products published in the Crimea exceeds 1.5 million copies. Meanwhile, the total circulation of printed periodicals in the Ukrainian and Crimean Tatar languages does not exceed 7.2% of the total volume (Insert "*Publication of printed output in Crimea in 2005-2008*").

PUBLICATION OF PRINTED OUTPUT IN CRIMEA IN 2005-2008*

Books and brochures

Language of editions	2005		2006		2007		2008	
	Number, *units*	Circulation, *thousand copies*	Number, *units*	Circulation, *thousand copies*	Number, *units*	Circulation, *thousand copies*	Number, *units*	Circulation, *thousand copies*
AR of Crimea, incl.:	**170**	**196.3**	**241**	**319.3**	**188**	**211.3**	**477**	**430.8**
Ukrainian	*19*	*25.7*	*38*	*20.7*	*18*	*7.9*	*55*	*77.2*
Russian	*119*	*145.7*	*161*	*264.5*	*131*	*163.0*	*343*	*300.9*
Crimean Tatar	*14*	*14.9*	*19*	*24.0*	*19*	*31.4*	*24*	*25.6*
Sevastopol, incl.:	**92**	**75.9**	**112**	**114.8**	**132**	**99.4**	**142**	**101.2**
Ukrainian	*3*	*2.6*	*9*	*6.5*	*6*	*3.8*	*6*	*1.0*
Russian	*72*	*56.8*	*81*	*90.9*	*100*	*91.2*	*108*	*27.6*
Crimean Tatar	*1*	*3.0*	-	-	-	-	-	-

Newspapers

Language of editions	2005			2006			2007			2008		
	Number of editions, *units*	Number of issues, *units* .	Total average (one-time) circulation, *thousand copies*	Number of editions, *units*	Number of issues, *units* .	Total average (one-time) circulation, *thousand copies*	Number of editions, *units*	Number of issues, *units* .	Total average (one-time) circulation, *thousand copies*	Number of editions, *units*	Number of issues, *units* .	Total average (one-time) circulation, *thousand copies*
AR of Crimea, incl.:	**48**	**2,357**	**1,324.4**	**48**	**1,825**	**1,124.9**	**53**	**2,555**	**1,019.7**	**50**	**2,420**	**1,040.2**
Ukrainian	*2*	*95*	*14.3*	*2*	*80*	*19.5*	*2*	*95*	*14.6*	*3*	*107*	*16.0*
Russian	*46*	*2,262*	*1,310.1*	*46*	*1,745*	*1,105.4*	*51*	*2,460*	*1,005.1*	*47*	*2,313*	*1,024.2*
Crimean Tatar	-	-	-	-	-	-	-	-	-	-	-	-
Sevastopol, incl.:	**6**	**125**	**782.5**	**3**	**109**	**9.0**	**5**	**335**	**297.1**	**5**	**273**	**170.2**
Ukrainian	*1*	*6*	*3.3*	*1*	*10*	*5.0*	*1*	*12*	*5.0*	*1*	*7*	*5.0*
Russian	*4*	*69*	*777.2*	*1*	*51*	*2.0*	*3*	*223*	*290.1*	*3*	*166*	*163.2*
Crimean Tatar	-	-	-	-	-	-	-	-	-	-	-	-

Periodicals

Language of editions	2005			2006			2007			2008		
	Number of editions, *units*	Number of issues, *units* .	Total average (one-time) circulation, *thousand copies*	Number of editions, *units*	Number of issues, *units* .	Total average (one-time) circulation, *thousand copies*	Number of editions, *units*	Number of issues, *units* .	Total average (one-time) circulation, *thousand copies*	Number of editions, *units*	Number of issues, *units* .	Total average (one-time) circulation, *thousand copies*
AR of Crimea, incl.:	**33**	**99**	**25.2**	**38**	**155**	**69.4**	**37**	**154**	**35.6**	**43**	**144**	**39.6**
Ukrainian	*1*	*3*	*0.3*	*1*	*3*	*0.2*	*1*	*1*	*0.1*	*3*	*7*	*1.8*
Russian	*14*	*55*	*15.3*	*19*	*86*	*59.0*	*19*	*65*	*24.6*	*17*	*49*	*23.4*
Crimean Tatar	-	-	-	*1*	*4*	*1.2*	-	-	-	*1*	*3*	*1.8*
Sevastopol, incl.:	**12**	**42**	**3.0**	**9**	**32**	**3.6**	**16**	**39**	**6.0**	**15**	**41**	**5.5**
Ukrainian	-	-	-	*1*	*4*	*1.0*	*1*	*3*	*1.0*	*1*	*6*	*1.0*
Russian	*6*	*18*	*1.9*	*4*	*11*	*1.1*	*6*	*14*	*2.0*	*7*	*16*	*2.5*
Crimean Tatar	-	-	-	-	-	-	-	-	-	-	-	-

* *Source:* The Book Chamber of Ukraine.

[112] According to the sociological survey, 90.8% of Crimean residents speak Russian at home. According to the Crimean poll of 2008, 91.5% of Ukrainians and 79.9% of Crimean Tatars are fluent in the Russian language.

[113] Unless specified otherwise, data are taken from the official web site of the State Committee for Television and Radio Broadcasting of Ukraine, where information is presented as of the end of 2008, *http://comin.kmu.gov.ua*. Data of the Book Chamber differ from the data of the State Committee for Television and Radio Broadcasting and are cited here as an estimate of summary data and for illustration of the dynamic of periodicals.

Only two newspapers in Crimea are published in the Ukrainian language – "Krymska Svitlytsya" and "Budmo".

Published only in the Crimean Tatar language are newspapers "Maarif Ishler", "Yanyi Donya", "Uchan-Su" (an attachment to newspaper "Vremya, vpered") and magazines "Tasil" and "Qasevet".

Quite many printed Crimean Tatar periodicals are published in several languages (Crimean Tatar, Ukrainian, Russian), including newspapers: "Qirim/Krym", "Hidayet", "Areket", "Kerch Haberjisi", "Tesir", "Yurt", "Vatan Hatima", "Maalm", "Qasaba/Selyshche", "Kurman", "Altin Yaruq/Zolotyi Blysk", "Halq Sedasi", "Baladar Dunyasi", "Gezlev", "Zaman", "Dialog", "Golos Molodiozhi", "Haberci", "Avdet", "Devir" and magazine "Tan"[114].

All-Ukrainian and Russian printed periodicals are also distributed in Crimea, including versions of the latter registered in Ukraine, more preferred by Crimeans, as compared to the Russian.

Printed products are distributed by 2 inter-regional, 2 republican, 27 city, 33 district, 9 inter-district organisations. The biggest media distribution networks are operated by "Krymposhta" (postal agency) (distribution of subscribed publications, municipal newspapers and printed periodicals) and "Krymsoyuzpechat" (sells in Crimea 70% of all Crimean periodicals and 30-50% of Ukrainian periodicals).

TV and radio resources. There are 86 TV and radio companies registered and operating in Crimea, including: 14 air TV companies; 15 air radio stations; 12 radio studios; 44 cable TV and radio companies; 1 air-cable TV and radio company.

TV COVERAGE OF THE CRIMEAN TERRITORY

TV networks

national: UT-1 – 97%; UT-2 ("Studio 1+1") – 80%; UT-3 ("Inter") – 80% of the Crimean territory;

regional: "Krym" State Television and Radio Company – 74.63%; "Chornomorska" Television and Radio Company – 84.11%; "Zhysa" Television and Radio Company – 30% (Simferopol, more than 30 TV channels, including from Russia and other countries).

Mountainous villages housing almost 160 thousand Crimeans have poor air coverage (or no coverage at all)[115].

Radio networks

national: UR-1 – 86%, UR-2 – 82% of the Crimean territory;

regional: "Trans-M-Radio" – 70%.

TV and radio companies are especially active in Simferopol city and district, with five regional and local TV channels, 17 FM radio stations.

The Crimean retransmission network operates more than 200 transmitting devices, 185 of them used for state broadcasting. TV and radio programmes are mainly retransmitted by the state enterprise Radio and TV Transmission Centre of the AR of Crimea.

There are 259,915 wired radio outlets in the Crimea. The number of wire radio subscribers in Ukraine steadily goes down. The wire network, especially in rural areas, is in a poor state.

The Crimean TV and radio space is dominated by the Russian language, although Ukrainian gradually gains ground, at least on state TV channels (Table "*Volumes of TV and radio broadcasting by state companies...*" on map, pp.42-43). According to the State Committee for Television and Radio Broadcasting, today, no broadcaster in Crimea except "Krym" State Television and Radio Company observes the legislative norm of not less than 50% of "national audio-visual products or musical compositions by Ukrainian performers" in total air[116].

Purely Crimean Tatar audience is targeted by ATR TV channel (planned 80% coverage of the autonomy's territory) and "Meydan" radio station (only the central and steppe part of the Crimea). A Crimean Tatar national editorial board of "Krym" State Television and Radio Company is active.

Internet resources. According to the public opinion poll, 16.4% of Crimeans (over 310 thousand persons) have Internet access at home, which fits the data of Internet user registration[117]. Internet is available mainly in big cities and resorts of the South-Eastern coast of Crimea. For instance, in Simferopol, some 20% of families are Internet users, while the Crimean average rate is 4%[118].

In the recent years, there appeared more personal web sites of political figures, public organisations, heads of big state and non-state structures that somewhat changed the socio-political content of the Crimean Internet space[119]. 350-400 printed media, TV and radio companies have Internet versions. The Internet is dominated by the Russian language.

The Internet is mainly used by youths and people of the middle age. Due to its global nature and democracy of communication with the audience ("read not what I am given but what I find"), the Internet promotes language mobility of the mentioned groups of the population. Meanwhile, saturation of its content and relative accessibility of the Internet pose a risk of spread of xenophobic information, which arouses ever greater concern[120].

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[114] Third Report of Ukraine on implementation of the Framework Convention of the Council of Europe concerning Protection of National Minorities (2009), p.67

[115] Interview with H.Ioffe, Chairman of the Permanent Commission of the Verkhovna Rada of the AR of Crimea for Parliamentary Ethics and Mass Media, during the Round-table "Crimean TV: yesterday, today and tomorrow". – "Krymskoe Ekho", September 11, 2008, *http://kr-eho.info/index.php?name=News&op=article&sid=1404*

[116] According to the State Committee for Television and Radio Broadcasting, TV programmes of "Krym" State Television and Radio Company are 65.5% transmitted in the Ukrainian, 5% – Crimean Tatar, 29.5% – Russian and other languages. Radio programmes: 42% – Ukrainian, 38.7% – Russian.

[117] As of February, 2009, the Ukrainian Internet audience totalled 10.9 million persons; with the share of Crimean users making 2.9%, or nearly 316 thousand persons. Data of the Ukrainian portal *Bigmir)net* "Global statistics of Ukrainian Internet" for February, 2009. – UNIAN, March 10, 2009.

[118] Bohdanovych O. Internet in Ukraine: Crimean autonomous access. – Proceedings of V.I. Vernadskyi Tavrian National University, Simferopol, No.1, 2008, pp.310-313.

[119] Information space of the AR of Crimea as an element of the Ukrainian information space: problem of balance. Memorandum of the Simferopol Regional Branch of the National Institute of Strategic Studies, May 2008 – Official web site of the National Institute of Strategic Studies, *http://www.niss.gov.ua*

[120] See, e.g.: Third report on Ukraine. European Commission against racism and intolerance, Strasbourg, February 12, 2008, p.7.

Do you have access to Internet?*
% of those polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
Do not use Internet	**65.7**	63.6	64.3	68.8	61.5	37.2	51.9	65.6	78.5	95.1	60.9	69.3
Have access to Internet at home	**16.4**	11.4	15.1	20.4	24.6	29.7	24.8	15.7	9.3	2.6	18.1	15.0
Have access to Internet at work, at the educational establishment	**14.2**	15.2	16.4	9.7	12.2	23.8	20.5	15.1	11.0	1.5	15.9	13.0
Use Internet at the Internet-café	**4.9**	10.9	5.8	1.7	3.8	11.9	6.3	3.8	1.7	0.0	6.7	3.6
Use Internet at the post-office	**0.5**	1.1	0.3	0.9	1.5	1.5	0.3	0.3	0.0	0.4	0.9	0.3
Hard to say	**1.4**	0.5	1.4	1.9	0.8	2.1	0.9	1.7	1.4	0.9	1.3	1.6

* Respondents were asked to mark all acceptable answer variants.

Information agencies. Information products for mass media are professionally offered mainly by four information agencies: Crimean branch of Context-Media Information Agency (all-Ukrainian), Crimean News Agency, Crimean Information Agency (republican), Information-Analytical Agency "Novyi Region – Crimea" (Russian). There is a Crimean Tatar agency QHA (*Qirim haber ajansi*, registered as "Crimean News" Agency), the only one in Ukraine entitled to provide information in five languages (Russian, Turkish, Ukrainian, English and Crimean Tatar, using however mainly the Russian and Turkish languages, with some reports translated in English)[121].

According to assessments of the Committee for Monitoring of Freedom of Press in Crimea, the Crimean journalist corps 90% consists of Russian-language journalists working in the Russian-language press; the rest works in the Crimean Tatar and Ukrainian languages, the latter making a meagre part[122]. **The most demanded are Crimean Tatar journalists** commanding their native, Russian and Ukrainian languages, more tolerant in communication and less biased in coverage of events and the general situation[123].

Media owners. By the form of ownership, mass media are divided into state, municipal and private.

State: newspaper of the Verkhovna Rada of the autonomy "Krymskie Izvestiya" (in Russian, with Ukrainian-language attachment "Krymskyi Dialog"), distributor of printed periodicals "Krymposhta", and state TV and radio company "Krym".

Municipal: 27 municipal publications and seven municipal radio studios founded by local bodies of state power.

Private: the overwhelming majority of printed mass media, the main distributors of printed products ("Krymsoyuzpechat", "Krymkniga") and 78 TV and radio companies are privately owned. Private Crimean mass media are owned by a few persons closely related with certain political forces and lobbying political and business interests via the controlled media[124].

Ideological content of media space

The Crimean media space, as a reflection of social relations in the autonomy, is extremely polarised, bears elements of intolerance and even aggression. This is witnessed by conclusions of many political figures, political scientists, analysts in the field of socio-political relations, results of polls of Crimean residents and special focus group studies, including those conducted by Razumkov Centre[125].

Mass media made a huge "contribution" to inadequate mutual mental perception by representatives of different Crimean social groups, creating an unfavourable background for the development of inter-ethnic relations in Crimea. The main reasons for that include excessive politicisation of those relations, outside influence on mass media, mainly passive reaction of the state authorities to violations of the Ukrainian legislation, and internal problems of the Crimean journalism, all together resulting in intentionally distorted coverage of events and developments in the autonomy and growth of tension in society.

In particular, according to experts, "tides of conflicts in the field of inter-ethnic relations largely stemmed from provocative behaviour of some politicised groupings and mass media, and witness non-professionalism and short-sightedness of many actors of political and information processes"[126]. The dynamic and subjects of Crimean media reports in the field of inter-ethnic relations largely depend on PR activity of ethnic organisations (Diagram "*Information activity of national public and political organisations of Crimea in 2008*"). In turn, the frequency

[121] *Ibid*.

[122] From presentations at the Radio "Svoboda" Round-table "Problems of Crimean Mass Media". – Radio "Svoboda", April 2, 2009, *http://www.svobodanews.ru/content/transcript/1601398*

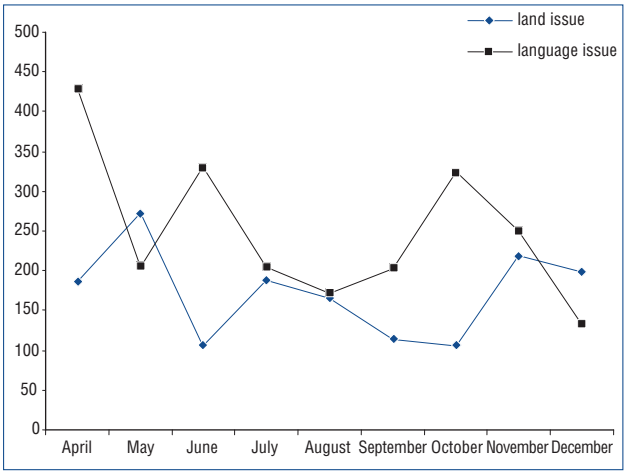
[123] Presentation by the Head of the Committee for Monitoring of Freedom of Press in Crimea. – *Ibid*.

[124] Mentioned among big owners of Crimean media (or political figures they serve) are A.Senchenko, Yu.Yekhanurov, V.Horbatov, A.Tretyakov, V.Shklyar, I.Khaibullayev, S.Kunitsyn and others. See: Sergeev G. Who owns Crimean media. – "Pervaya Krymskaya", August 8, 2008, *http://1k.com.ua/236/details/6/2*

[125] For more detail see section 1 of the Analytical Report.

[126] Monitoring of Crimean mass media, conducted in April-December 2008 by the Kuras Institute of Political and Ethno-National Studies together with *Partkom* Information Agency as part of the study "Social adaptation of Crimean Tatar repatriates: challenges for the state policy". The monitoring covered 23 printed periodicals, five news agencies and Internet sites of the autonomy.

Information activity of national public and political organisations of Crimea in 2008*,
number of messages



* *Source:* survey "Social adaptation of Crimean Tatar repatriates: challenges for the state policy".

and character of media coverage of sensitive for Crimean society land and language issues present an important factor of the conflict potential and growth of tension in relations among socio-cultural groups.

General media coverage of inter-ethnic relations in Crimea. Now, the situation in that field may be termed as dangerous instigation of racism, xenophobia and other forms of intolerance in inter-ethnic relations by mass media.

According to the results of special surveys[127], the lack of tolerance is one of the acutest problems of the Crimean media, and the "language of enmity" has become a common thing in the information space of the autonomy, where many publications cover national problems is a biased manner, and the ethnic component is present all too often, not always reasonably, in materials about everyday life, historic articles, features about specific persons, descriptions of Ukraine's residents, even in ads[128].

From October till mid-December 2008, in 32 out of 35 publications selected for monitoring nearly 800 reports were discovered, containing elements of the "language of enmity", signs of racism, xenophobia and other forms of intolerance. The list of periodicals whose materials contain the most frequent and "harsh" expressions is led by Crimean publications "Avdet", "Krymskoye Vremya", "Golos Kryma", "Krymskaya Pravda"[129].

Internet with its "feedback" capabilities occupies a special place – on forums, readers can present their opinions and assessments. The practice of discussion of inter-ethnic problems on such forums shows that they often become a platform for xenophobic spirits, tactless and openly hostile expressions about representatives of other nations.

Furthermore, it is no secret that on some web sites one can find all kind of instructions, from cooking to terrorist. And in that case, nobody mentions language or any other discrimination.

Political aspect. Despite the above-mentioned formal division of mass media in the Crimea into state, municipal and private, in reality, they are divided by control of certain political and business circles and their representatives. Now, this division is actually over[130]. Political affiliation of media owners influences the trend and nature of their products. Under their influence, especially to gain votes before elections, the mentioned media often speculate on the problems of inter-ethnic relations[131].

According to the Chairman of the Committee for Monitoring of Freedom of Press in Crimea V.Prytula, "the main distinction of Crimea is that the information market here is developing not as a business but as an ideological battlefield used for information wars"[132]. The "language of enmity" has become an indispensable element of political discourse in the Autonomy. It is present in speeches in the Verkhovna Rada of the AR of Crimea, activists at meetings, in the air of TV channels, in the press[133]. Mass media has become a tool of attainment of political goals.

The development of journalism and mass media in Crimea is badly affected by the local authorities. The main problems here include[134]:

[127] Starting from 2002, Information and Research Centre "Integration and Development" performs all-round monitoring of periodicals (Crimean and national) to detect the "language of enmity", signs of racism, xenophobia and other forms of intolerance. The latest monitoring was conducted in October-December, 2008. See web site of the Information and Research Centre "Integration and Development", *www.integration.org.ua*. In early 2008, the Association of Polish Journalists in Ukraine on the order of public organisation "Information Press Centre" conducted in Crimea a focus group study "Identification of the degree of tolerance of Crimean mass media, signs of ethnic and religious xenophobia in materials of journalists". See: Language of Enmity against Inter-Ethnic Relations. – Association of Polish Journalists in Ukraine, June 1, 2008, *http://www.sdpnu.org.ua/?subpage=155*

[128] Crimean press – a den of misanthropes? – *Novosti Kryma* Crimean News Agency, November 19, 2008, *http://news.allcrimea.net/news/2008/11/19/1227080640*; Klymenko N. Crimean media demonstrate national intolerance. – *e-Crimea* information agency, March 17, 2009, *http://www.e-crimea.info*

[129] Anti-Tatar and anti-Ukrainian publications in newspapers "Krymskaya Pravda" and "Krymskoye Vremya" were considered by the Commission for Journalist Ethics yet in 2004. The Commission's statement of July 19, 2004, termed actions of journalists and managers of those newspapers as "conscious violation of norms of journalist ethics, absolutely inconsistent with principles of professional ethics". – Web site of the Commission for Journalist Ethics, *www.cje.org.ua/statements/20*

[130] Meanwhile, the Crimean media market is being monopolised through consolidation of producers and distributors of information products. E.g., the largest distribution company ("Krymsoyuzpechat") was bought by *Kartel* group of companies. The group structures include All-Ukrainian Subscription Agency, uniting some 300 retail outlets selling press in Ukraine. *Kartel* belongs to *IFD Kapital* group allegedly owned by LUKOIL top managers. See: *Kartel* publishing group bought press sale network in Odesa. – "Kommersant-Ukraina", July 24, 2007, *http://www.kommersant.ua/doc.html?DocID=789399&IssueId=41355*

[131] Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine. Monitoring of Crimean mass media…

[132] Interview with V.Prytula, Chairman of the Committee for Monitoring of Freedom of Press in Crimea. – Web site *Marketing Media Review*, August 15, 2008, *http://mmr.net.ua/interview/id/51/index*

[133] For more detail see: Antonenko K. Racism, chauvinism and xenophobia, ethnic discrimination in the AR of Crimea: specificity of the region and new challenges for Ukrainian statehood in 2008 – Simferopol, Crimean Independent Centre of Political Scientists and Journalists, April-September, 2008.

[134] Yearbook "White Book of Crimean Journalism 2008". – Committee for Monitoring of Freedom of Press in Crimea, Simferopol, 2008. According to the White Book of Crimean Journalism 2006, in 2006, such pressure was experienced by "Krymskaya Gazeta", "Krymska Svitlytsya", "Golos Kryma", "Yanyi Donya", "Qirim".

- existence of censorship as a system of control on the part of the authorities in actually all state and municipal media of Crimea and many independent publications;
- preservation of the trend towards political pressure on journalists and physical impediment for their legitimate professional activity, and absence of an adequate reaction to that on the part of law-enforcement bodies;
- growing non-publicity of the authorities, violation of the right to free collection of information by restriction of journalist access to it;
- limitation or threat of limitation of publication funding.

But despite the strong influence of the political factor on inter-ethnic relations, the public gradually realises the manipulative nature of the information policy of some media and views them accordingly.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

U: "The problems we see on TV and read about in the Crimea seem artificial".

T: "The level of relations now depends on mass media and politics".

T: "As far as mass media are concerned, I advise looking through periodicals since the return of Crimean Tatars. *Krymskaya Pravda* and *Krymskoye Vremya* newspapers... are pursuing a target-minded policy of instigation of ethnic enmity".

T: "If the Crimea is for one year isolated from mass media, from news... I am 99% sure that the opinion of everyone, Ukrainians, Russians, all, will change. The level of relations now depends on mass media and politics".

External influence. The most effective tools of influence on the Crimean information space are available to Russia. Active use of those tools not only meets no counteraction but presents a priority of Russia's foreign policy and an important method of influence in its relations with Ukraine[135]. Information influence is exerted not only directly, via Russian printed and electronic media, but also through actualisation of certain subjects, ideas, problems in the local media, determination of the character and sequence of their coverage (influencing the editorial policy of controlled publications, PR-events of concerned ethnic public organisations, etc). The latter is much more dangerous than direct influence, since problems imposed in such way from outside are seen by the Crimean residents as their own, that cannot be ignored but must be solved somehow.

The Ukrainian state lost influence in Crimea even on the media where it was a founder. They are often used for propaganda against Ukraine's European choice, accession to NATO, in support for the Russian status of Crimea[136].

The level of external information threat is witnessed by an extract from the decision of the Board of the State Committee for Television and Radio Broadcasting "On the State of Information Space of the AR of Crimea" of May 29, 2008: "The territory of the peninsula is under strong information influence of the neighbouring countries. The autonomy's territory is the scene of information-psychological campaigns deceiving society, posing a threat to the territorial unity of the country, hindering pursuance of the state policy of the European and Euro-Atlantic integration"[137].

The problem lies not only in the scale and depth of foreign influence, but first of all – in the absence of an adequate by scale and quality policy of the central Ukrainian authorities, from the viewpoint of prevention of negative consequences, and an adequate response to dangerous trends:

- **absence of safeguards** is mainly seen in the lack of system (and logic) in actions of the authorities, absence of a strategy of socio-economic development, regional and ethno-national policy, in particular, in Crimea, and a system of protection of national interests in line with that strategy. In such conditions, local authorities and external actors are free to pursue their policy[138]. Collision of their interests gives rise to confrontation of different political forces seeking support from voters, which in the end affects citizens and their relations. More than that, actions of the central authorities sometimes look provocative due to the neglect of the Crimean specificity[139];
- **inadequate reaction of the authorities** is manifested in the absence of adequate legal assessments and proper actions on the part of both central (Ministry of Internal Affairs, Security Service of Ukraine, National Council for Television and Radio Broadcasting, State Committee for Television and Radio Broadcasting) and republican (Republican Committee of the AR of Crimea for Information) authorities.

Internal problems of Crimean journalism. Along with the influence of external and internal political factors, development of journalism and mass media in Crimea, enhancement of their role in civil society building are hindered by problems related with their breach of the Ethic Code of a Ukrainian Journalist, in particular:

- selective presentation of information, disrespect for the right of society to full and unbiased information about facts and events;
- distortion of reality, mixing facts, personal judgements and authors' assumptions in publications;

[135] Strategy of National Security of the Russian Federation through 2020. – Web site of Russia's Security Council, *http://www.scrf.gov.ru/documents/99.html*; Defence and popularisation of the Russian language is a priority task of Russian Foreign Ministry – Lavrov. – UNIAN, November 3, 2008. The Russian language and Russian culture are promoted by 50 Russian centres of science and culture and 26 representative offices of "Roszarubezhtsentr".

[136] Interview with V.Prytula, Chairman of the Committee for Monitoring of Freedom of Press in Crimea …

[137] Web Site of the State Committee for Television and Radio Broadcasting, *http://comin.kmu.gov.ua/control/uk/publish/printable_article?art_id=64968*

[138] See: Artemenko M. "Third force" tries to turn Crimean Tatars separatists? – "Golos Kryma", March 14, 2008.

[139] The biggest echo in Crimea was caused by the Ministry of Education and Science of Ukraine Order No.461 of May 26, 2008 "On Approval of Branch Programme of Improvement of Study of Ukrainian Language in General Educational Establishments with Study in Languages of National Minorities for 2008-2011" and the National Council of Ukraine for Television and Radio Broadcasting Decision "On Non-Implementation by Programme Service Providers of Decisions of the National Council and Articles 40 and 42 of the Law of Ukraine "On Television and Radio Broadcasting". The appearance of those documents and their inconsiderate fulfilment met a negative response of not only the Crimean authorities but the wide audience of Russian-language mass media.

- bias and partiality in materials, disparity in coverage of opposite opinions and assessments by independent experts;
- intentional shift of emphasis in information about events in domestic and criminal sectors, etc. to inter-ethnic and inter-confessional relations, which may be seen as discrimination on language, racial, religious and ethnic grounds and an attempt to provoke or step up tension in society[140].

Information preferences of Crimeans[141]

Fragmentation of the audience of Crimean mass media is caused by the specificity of identities of socio-cultural groups of the Crimea, it takes the form of preference and trust of Crimeans in some sources of information and therefore secures fragmentation of the information space.

Trust in mass media. According to public opinion poll, Crimeans tend to trust Ukrainian, Crimean and Russian media, distrust – Western and, to some extent, Turkish media[142]. The Russian media are the most respected in Crimea (they are trusted by more than half of those polled). They are followed by the Crimean and Ukrainian media, trusted by more than 40% of Crimeans.

Meanwhile, the level of trust in mass media among representatives of different socio-cultural groups seriously differs. For more than half of representatives of the Slavic community and for "Crimean Ukrainians", Russian media are the most respected. Crimean Tatars less trust mass media (the level of trust does not exceed 40%), and if they do, they trust Ukrainian and Crimean media. Russian mass media enjoy trust of less than a quarter of the Crimean Tatar audience. The Turkish media enjoy similar trust, while the Western media are trusted by less than one-fifth of Crimean Tatars.

Main sources of socio-political information. The main sources of socio-political information for Crimeans are television and local press. Ukrainian TV channels were noted as such by almost three-quarters of respondents, local – nearly two-thirds, Russian – a bit more than half.

The local press (Crimean, city, district newspapers) serves as a source of socio-political information for more than half of Crimeans, all-Ukrainian newspapers – a bit more than a quarter, Russian newspapers – less than 5%. Local radio stations are a source of socio-political information for approximately a quarter of Crimeans, Ukrainian and Russian – nearly one-fifth.

Those who get socio-political information from the Internet mainly take it from Russian, Ukrainian and local Internet sites. Differences among socio-cultural groups regarding Internet access are small.

Level of trust in news reports on TV. More trusted by Crimeans news programmes include Ukrainian, local, and Russian alike. The most trusted among TV news are "Podrobytsi Tyzhnya" and "Novyny" on "Inter" TV channel, "Volna" programme of "Chornomorska" Television and Radio Company – they are trusted by half of the total TV audience. Noteworthy, only 5% of Crimeans watch "Novyny" on UT-1 state TV channel – mainly, "Crimean Ukrainians".

The second group of TV news programmes includes: TSN ("Studio 1+1") – trusted by a third of Crimeans; "12 Minutes of News" ("Krym" State Television and Radio Company) and "Vremya" (ORT) – more than a quarter.

Less trusted are such programmes as "Segodnya" (NTV); "Vesti" ("Russia" channel); "Fakty" (ICTV); "Vikna-Novyny" (STB).

With few differences, representatives of both the Slavic community and Crimean Tatars most of all trust news reports of local and all-Ukrainian channels.

The most popular printed media. The popularity rating of printed media among Crimeans is undoubtedly led by "Krymskaya Pravda" newspaper. "Pervaya Krymskaya", "Vecherniy Gorod", "Fakty i Kommentarii", "Komsomolskaya Pravda v Ukraine", "Kommunist Kryma" are also rather popular. Less but still popular are newspapers "Krymskie Izvestia' (official publication of the Verkhovna Rada of the AR of Crimea) and "Segodnya".

There are some differences in the popularity of printed media among representatives of different socio-cultural groups. For instance, "Krymskaya Pravda", local versions of Russian publications (first of all, "Komsomolskaya Pravda v Ukraine"), and "Kommunist Kryma" are much less popular among Crimean Tatars, compared to the Slavic community. Instead, "Poluostrov" newspaper is more popular[143].

The Crimean information space is evidently divided by language. The absolute majority of Crimean media are published in the Russian language. The Crimean Tatar segment is on the rise. The Ukrainian segment in the Crimean media space is minimal.

Actually all Crimean media are influenced by the authorities or political structures and used as a tool of direct or concealed manipulation of the public opinion by political forces struggling for power and resources in the region.

Crimean media often stir up inter-ethnic tension by publications in the "language of enmity", promoting xenophobia, instigating anti-Tatar and anti-Ukrainian spirits.

The Crimean media space is subject to strong foreign, mainly Russian, influence exerted directly by Russian and via local Russian-language mass media. Ukraine's influence on the Crimean information space is minimal.

Such fragmentation of the Crimean information space not only reflects the division of Crimean society into socio-cultural communities but deepens it by instilling ethno-centric feelings and forcing tension.

[140] Results of monitoring of xenophobia in Crimean Mass Media by the Information and Research Centre "Integration and Development". – "Novosti Kryma", November 19, 2008, *http://news.allcrimea.net/news/2008/11/19/1227080640*

[141] For summary data of the latest public opinion poll dealing with information preferences of Crimeans, see Annex 2, p.54 of this magazine.

[142] Those media have respectively a positive or negative balance of trust (difference between the aggregates of "Trust" and "Most likely trust", and "Do not trust" and "Most likely do not trust" to the question "*Do you trust the following mass media?*").

[143] This Russian-language newspaper is linked to the Crimean Tatar political organisation "Milli Firka". See: Information space of the AR of Crimea as an element of the Ukrainian information space: problem of balance …

INFORMATION PREFERENCES OF CRIMEANS

Annex 2

Do you trust the following mass media?
% of those polled?

		CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
							18-29	30-39	40-49	50-59	60 and over	Male	Female
Russian mass media	Trust	**12.3**	4.3	13.4	12.8	9.2	13.4	8.1	11.3	12.4	15.1	12.5	12.4
	Most likely trust	**39.6**	19.5	43.5	38.1	42.3	35.8	40.6	43.5	44.9	35.8	39.0	40.5
	Most likely do not trust	**17.8**	27.6	14.7	20.5	29.2	18.7	21.0	16.3	16.7	16.0	19.4	16.3
	Do not trust	**13.5**	16.2	11.8	15.9	14.6	13.8	14.1	13.8	11.6	14.1	13.1	14.0
	Hard to say	**16.8**	32.4	16.6	12.7	4.6	18.3	16.2	15.1	14.4	19.0	16.0	16.8
Crimean mass media	Trust	**9.0**	6.5	9.9	8.0	0.8	10.3	7.5	7.2	8.5	10.7	8.7	9.3
	Most likely trust	**40.2**	31.4	42.9	37.9	54.6	38.7	39.1	43.5	44.6	36.8	41.5	39.7
	Most likely do not trust	**19.0**	14.6	16.1	25.7	29.2	18.2	21.0	18.7	19.5	18.2	18.7	19.0
	Do not trust	**14.7**	14.1	13.9	16.1	10.0	13.8	16.1	15.2	12.7	15.4	14.3	15.1
	Hard to say	**17.1**	33.4	17.2	12.3	5.4	19.0	16.3	15.4	14.7	18.9	16.8	16.9
Ukrainian mass media	Trust	**7.4**	3.8	8.5	6.6	4.6	7.7	5.2	6.9	7.9	8.8	7.7	7.2
	Most likely trust	**38.1**	34.8	41.3	32.9	36.6	35.4	37.4	40.8	44.8	34.6	37.8	38.5
	Most likely do not trust	**22.5**	15.2	18.9	31.0	40.5	22.4	26.4	21.8	20.0	22.2	22.7	22.4
	Do not trust	**16.6**	15.2	15.7	18.5	13.0	16.1	16.1	17.9	14.6	17.3	16.4	16.8
	Hard to say	**15.4**	31.0	15.6	11.0	5.3	18.4	14.9	12.6	12.7	17.1	15.4	15.1
Western mass media	Trust	**1.8**	2.7	1.4	2.2	3.8	3.1	2.9	1.1	1.1	1.1	2.7	1.2
	Most likely trust	**21.7**	14.7	25.3	17.3	16.8	20.9	24.2	28.1	20.8	16.2	21.2	22.5
	Most likely do not trust	**24.0**	16.3	25.0	24.4	36.6	22.8	26.2	16.3	28.5	26.3	24.4	23.8
	Do not trust	**29.6**	22.8	29.9	31.0	19.1	28.5	25.9	32.5	28.7	31.8	30.3	29.5
	Hard to say	**22.9**	43.5	18.4	25.1	23.7	24.7	20.8	22.0	20.9	24.6	21.4	23.0
Turkish mass media	Trust	**0.9**	2.7	0.2	1.5	3.1	1.5	1.1	1.4	0.3	0.2	1.2	0.7
	Most likely trust	**5.0**	19.5	4.4	2.0	0.8	5.8	6.0	4.1	6.5	3.0	5.6	4.5
	Most likely do not trust	**22.7**	11.4	24.5	22.7	27.7	20.5	25.9	21.4	25.6	21.5	21.6	23.9
	Do not trust	**35.0**	19.5	37.1	35.5	28.5	35.9	32.2	36.8	32.1	36.9	35.1	35.8
	Hard to say	**36.4**	46.9	33.8	38.3	39.9	36.3	34.8	36.3	35.5	38.4	36.5	35.1

What mass media are the main source of information about the events in Crimea for you?*
% of those polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
Ukrainian TV channels	**73.7**	67.9	81.3	61.3	57.7	72.2	73.2	75.3	75.7	73.3	75.2	72.7
Local TV channels (Crimean, city)	**60.6**	58.2	64.1	54.8	59.5	56.3	57.1	64.8	64.4	61.7	59.4	61.7
Local newspapers (Crimean, city, district)	**54.0**	52.7	61.2	41.1	29.2	46.9	52.7	55.5	56.3	59.2	54.4	53.6
Russian TV channels	**52.5**	51.6	55.2	47.7	37.7	54.8	53.6	54.3	49.3	50.4	53.9	51.5
Central Ukrainian newspapers	**26.5**	17.4	30.5	21.9	19.2	25.9	28.8	33.8	25.6	20.3	28.4	25.0
Local radio (Crimean, city)	**23.0**	31.5	22.7	21.0	16.8	23.8	21.9	21.4	25.1	22.4	24.0	22.3
Ukrainian radio	**20.9**	16.8	24.5	15.4	13.0	28.5	23.6	17.9	20.8	13.1	23.9	18.5
Russian radio	**18.4**	16.3	22.2	12.1	8.4	28.0	21.0	15.1	16.3	10.5	20.9	16.5
Russian Internet sites	**12.6**	14.7	12.2	12.7	14.6	25.3	18.4	10.7	6.5	1.3	16.2	10.0
Ukrainian Internet sites	**10.0**	13.0	10.5	8.3	6.2	20.1	14.9	8.0	5.4	1.3	13.2	7.7
Local Internet sites (Crimean, city)	**9.6**	14.1	9.8	8.0	7.6	17.8	16.1	8.0	5.4	1.1	11.7	8.1
Other foreign Internet sites	**6.3**	7.6	6.1	6.3	4.6	12.3	10.1	6.0	2.3	0.6	8.5	4.7
Russian newspapers	**4.9**	1.1	3.7	8.0	5.4	3.8	4.0	8.0	3.7	4.9	5.2	4.6
Other foreign radio	**2.7**	5.4	3.0	1.5	3.1	6.1	3.7	2.2	1.1	0.2	3.8	1.9
Other foreign TV channels	**1.1**	0.5	1.2	1.2	1.5	2.7	0.9	0.5	0.8	0.2	1.8	0.5
Other foreign newspapers	**0.4**	0.0	0.3	0.8	0.0	0.6	0.0	0.3	0.0	0.9	0.0	0.7
Other	**1.4**	4.3	1.0	1.4	0.8	1.7	0.6	1.1	2.0	1.5	1.4	1.5
Hard to say	**5.8**	4.3	4.2	9.1	13.7	4.6	6.3	5.2	4.5	8.3	5.4	6.3

* Respondents were asked to mark all acceptable answer variants.

What news programmes do you trust?*
% of those polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
"Podrobnosti", "Novyny" ("Inter" channel)	**51.0**	59.2	53.9	43.3	42.3	48.4	52.0	52.5	50.1	52.8	52.9	49.6
TSN (Studio "1+1")	**33.6**	41.8	33.3	31.6	33.1	33.5	34.9	37.1	34.6	28.8	33.5	33.6
"Volna" (ChernomorskayaTRK)	**49.1**	52.2	51.8	43.2	40.5	46.2	49.9	51.9	45.4	52.2	49.3	49.2
"12 minut novostey" (GTRK "Crimea")	**27.6**	33.7	32.0	17.9	14.6	26.5	25.1	28.6	31.0	27.6	27.8	27.8
"Vremya" (ORT)	**26.2**	27.7	26.5	25.3	14.6	27.8	25.9	25.3	24.2	27.1	25.6	26.6
"Segodnya " (NTV)	**20.5**	26.6	19.0	21.6	18.3	21.5	23.3	20.3	20.8	17.1	21.4	19.7
"Vesti" ("Russia" channel)	**18.2**	12.5	22.0	13.1	9.2	18.6	17.2	19.0	14.4	21.2	19.0	17.7
"Facty" (ICTV)	**17.7**	10.9	19.4	16.5	14.6	17.3	20.4	16.8	18.6	15.6	19.8	15.9
"Vikna-novyny" (STB)	**14.4**	19.6	13.6	14.4	12.2	16.1	13.0	19.6	11.0	12.4	16.4	13.0
"Haberler" (GTRK "Crimea")	**6.5**	69.0	0.1	0.5	0.0	6.5	7.2	5.0	7.6	6.4	6.8	6.3
"Nashy novosti" ("ITV" channel)	**6.3**	0.5	7.8	5.1	1.5	4.0	5.7	6.6	5.9	8.8	5.8	6.4
"Sobytiya" (TRK "Ukraine")	**5.6**	8.2	4.6	6.8	4.6	5.0	7.8	5.8	5.9	4.3	5.6	5.6
"Novosti " (TRK "Neapol")	**5.3**	9.8	3.8	6.8	4.6	8.1	4.6	6.0	2.3	4.9	5.8	5.0
"Novyny" (UT-1)	**5.1**	2.7	5.7	4.9	8.4	3.1	4.0	7.4	6.8	5.3	5.5	4.8
"Nashe vremya" – "Nash chas" (Sevstopol GTRK)	**4.3**	0.5	5.6	3.2	3.1	4.0	2.3	5.5	5.9	4.3	3.6	4.9
"Reporter" ("New channel")	**4.1**	1.6	5.3	2.8	0.8	7.3	4.9	3.0	3.1	1.9	5.1	3.4
"Vremya novostej " – "Chas novyn" (5th channel)	**2.9**	12.5	1.4	2.6	6.2	1.9	2.3	3.0	3.4	3.8	3.7	2.2
News channel "24"	**2.8**	6.5	2.3	2.6	0.8	1.3	3.7	3.3	2.3	3.8	2.6	2.9
"Sevinformburo" ("NTS" channel)	**2.1**	0.5	2.5	2.2	0.8	2.1	2.9	2.2	1.7	1.9	2.3	2.1
"Novyny" (TRK "Briz")	**1.7**	0.0	1.8	2.0	1.5	1.0	1.1	2.5	2.3	1.7	1.5	1.8
"Odyn den'. Novyny" ("K1" channel)	**1.5**	6.5	0.9	1.1	0.0	1.9	2.3	1.4	1.1	1.1	1.5	1.6
Information programme "24" (*RenTV*)	**0.8**	0.5	0.8	0.9	1.5	1.0	1.2	0.5	0.8	0.6	0.7	1.0
"Yaltinskiy objective" ("Yalta-TV" channel)	**0.8**	0.0	0.9	0.6	0.0	0.8	0.3	0.8	0.6	1.1	0.9	0.7
Other	**0.3**	0.5	0.2	0.5	0.0	0.0	0.3	0.5	0.3	0.4	0.2	0.4
Do not trust any news programme	**6.6**	3.3	6.6	7.4	5.4	6.5	6.3	6.3	8.5	6.0	7.9	5.6
Do not watch news programmes	**3.3**	1.1	2.6	5.2	10.0	3.8	4.9	2.7	2.3	3.0	2.9	3.5
Hard to say	**3.6**	5.4	0.8	8.3	7.6	5.2	3.2	3.3	2.8	3.0	3.3	4.0

* Respondents were asked to mark all acceptable answer variants.

What newspapers have you read or looked through during the last two weeks?*
% of those polled

	CRIMEA	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
						18-29	30-39	40-49	50-59	60 and over	Male	Female
"Krymskaya pravda"	**22.8**	10.3	26.1	20.2	14.6	13.8	22.2	26.1	24.9	28.4	23.7	22.1
"Pervaya krymskaya"	**12.9**	11.4	13.5	12.2	17.6	12.1	17.5	17.4	13.8	6.0	13.8	12.2
"Vecherniy gorod"	**12.4**	6.5	14.6	10.0	6.2	13.0	10.7	11.8	13.0	13.2	12.8	12.1
"Facty i kommentarii"	**11.8**	10.3	14.3	7.4	9.2	13.2	14.1	12.9	13.8	5.8	13.2	10.6
"Kommunist Kryma"	**10.3**	0.0	14.1	6.0	0.0	1.5	4.0	8.2	13.0	23.5	8.9	11.4
"Komsomolskaya Pravda v Ukraine"	**10.2**	3.8	12.0	8.7	13.0	15.7	11.2	11.6	6.2	5.6	11.4	9.3
"Krymskie izvestiya"	**7.3**	7.1	8.5	5.4	0.0	4.4	6.1	8.5	9.0	9.0	6.9	7.8
"Segodnya"	**6.0**	6.5	6.7	4.8	9.2	5.0	9.2	7.2	7.1	3.0	6.8	5.5
"Slava Sevastopolya"	**4.7**	0.5	4.9	5.4	5.4	3.8	4.3	5.5	5.6	4.5	5.0	4.3
"Krymskaya gazeta"	**4.3**	7.6	3.5	4.9	4.6	3.3	2.9	5.2	3.4	6.4	3.8	4.8
"Izvestiya - Ukraina"	**2.5**	0.5	3.8	0.8	0.8	4.8	2.6	1.9	2.3	0.6	2.9	2.2
"Region – Sevastopol"	**2.0**	0.5	2.3	1.9	0.0	1.5	1.7	2.5	1.7	2.8	2.3	1.5
"Krymskoye vremya"	**1.9**	1.6	2.0	1.7	0.8	2.7	1.1	2.5	1.7	1.5	2.0	1.9
"Poluostrov"	**1.9**	6.0	1.6	1.4	0.0	3.3	2.6	1.9	1.7	0.2	2.1	1.8
"Golos Kryma"	**1.7**	11.4	0.7	0.8	0.0	2.3	2.3	0.5	2.0	0.6	1.9	1.3
"Krymska svitlytsya"	**1.7**	0.5	1.9	1.7	3.1	4.4	0.9	1.4	0.6	0.9	2.3	1.3
"Pravda Ukrainy "	**1.4**	0.5	2.2	0.3	0.0	0.8	0.6	2.2	1.1	2.4	1.8	1.1
"Vechirni visti"	**1.0**	0.0	0.8	1.7	3.1	1.3	0.3	1.4	0.8	1.1	1.0	1.1
"Golos Ukrainy"	**1.0**	0.5	0.8	1.5	3.1	0.8	0.9	1.1	1.1	1.1	0.9	1.1
"Veteran Sevastopolya"	**1.0**	0.0	1.4	0.6	0.0	0.0	0.6	1.1	0.6	2.6	1.3	0.8
"Sevastopolskaya pravda"	**1.0**	0.0	1.4	0.6	0.0	0.6	0.6	0.8	0.6	2.1	0.6	1.3
"Podrobnosti"	**0.9**	4.3	0.4	0.8	0.0	0.6	1.2	1.1	0.3	1.1	1.4	0.4
"Sevastopolskiy meridian"	**0.8**	0.0	0.9	0.8	0.8	1.0	0.6	1.6	0.3	0.4	0.6	1.1
"Zerkalo nedeli"	**0.7**	0.0	0.3	0.2	0.0	0.6	0.9	1.4	0.3	0.4	0.9	0.5
"Sevastopolskaya gazeta"	**0.7**	0.0	0.8	0.8	0.0	0.4	0.3	1.1	0.3	1.5	0.5	1.0
"Avdet"	**0.6**	4.9	0.0	0.5	0.8	0.2	0.3	1.1	0.8	0.6	0.9	0.4
"Flag Rodiny"	**0.4**	0.0	0.3	0.6	0.0	0.0	0.0	0.3	0.6	1.1	0.6	0.2
"Krasnaya zvezda"	**0.3**	0.0	0.3	0.3	0.8	0.0	0.3	0.0	0.3	0.6	0.3	0.2
"Trud-Ukraina"	**0.3**	0.5	0.2	0.5	0.0	0.2	0.6	0.3	0.6	0.0	0.3	0.3
"Panorama"	**0.3**	0.0	0.5	0.0	0.0	0.4	0.6	0.3	0.3	0.0	0.5	0.2
"Sevastopolskie izvestiya"	**0.3**	0.0	0.5	0.2	0.0	0.2	0.3	0.5	0.3	0.4	0.1	0.5
"Den"	**0.2**	0.0	0.3	0.2	0.0	0.2	0.3	0.0	0.3	0.2	0.2	0.2
"Zerkalo"	**0.2**	0.0	0.0	0.5	0.8	0.2	0.0	0.5	0.0	0.0	0.0	0.3
"Flot Ukrainy"	**0.1**	0.0	0.1	0.2	0.0	0.2	0.3	0.0	0.0	0.0	0.2	0.0
"Koleso"	**0.1**	0.0	0.0	0.2	0.8	0.0	0.0	0.3	0.0	0.0	0.0	0.1
"Nash vzglyad"	**0.0**	0.0	0.1	0.0	0.0	0.0	0.3	0.0	0.0	0.0	0.0	0.1
Other	**15.6**	4.9	16.1	17.9	12.2	13.8	12.4	19.0	17.5	16.0	14.4	16.7
Any newspaper	**27.4**	28.8	24.3	32.6	38.5	29.5	31.7	23.4	26.3	26.1	26.6	27.9
Do not remember	**7.1**	7.1	7.1	7.0	6.2	10.5	6.3	7.4	5.1	5.3	7.0	7.1

* Respondents were asked to mark all acceptable answer variants.

2.4. DISPARITIES IN THE EXERCISE OF SOCIO-CULTURAL RIGHTS AND NEEDS IN CRIMEA

The nature of inter-ethnic relations in Crimea greatly depends on the confidence of the main socio-cultural groups in their ability to preserve/revive and leave to descendants their identity, language, culture, traditions. If this possibility seems doubtful, there arises a feeling of estrangement of a group from Ukrainian and/or local society, and it looks for a way out, including beyond the constitutional framework of Ukraine.

Educational needs

The ability of meeting educational needs is an important factor influencing social feelings of citizens, ensuring preservation of their national and ethnic originality. According to the results of public opinion polls, residents of the Crimea rather critically assess the ability of getting education in the mother language, with Russians and Crimean Tatars feeling less satisfied than Ukrainians[144].

The actual provision of the right of the Crimean residents to education in native language is witnessed by statistic data (Table "*Figures of study in different languages at Crimean educational establishments*")[145].

Figures of study in different languages at Crimean educational establishments

Type of educational establishment	Total number of pupils/ students	Study in the Ukrainian language	Study in the Russian language	Study in the Crimean Tatar language
General	177,863	12,860 (*7.2%*)	159,359 (*89.6%*)	5,644 (*3.2%*)
Evening	5,916	–	5,818 (*98.3%*)	98 (*1.7%*)
Higher educational establishments of I-II accreditation levels	8,600	348 (*4%*)	8,252 (*96%*)	–
Higher educational establishments of III-IV accreditation levels	58,981	6,170 (*10.5%*)	52,811 (*89.5%*)	–
Total	**251,360**	**19,378 (*7.7%*)**	**226,240 (*90%*)**	**5,742 (*2.3%*)**

The problems that immediately influence the exercise of rights and needs of Crimean Tatars in study in the native language include disparities in the number of educational establishments, lack of textbooks and poor quality of pedagogical training.

In particular, the Chairman of the Republican Committee for Affairs of Nationalities and Deported Persons S.Saliev said in May 2008, that in order to meet the general educational needs of Crimean Tatars, 10-12 schools with the Crimean Tatar language of study should be built and 15-20 schools should be overhauled and expanded in the near future[146]. The main obstacle for that is presented by the lack of budget funds, caused by the absence of political will to identify true priorities and allocate resources to their attainment. For instance, over the period of implementation of the Programme of Settlement of and Amenities for Deportees… through 2006-2010, school construction was planned only once – in 2006 (in Simferopol, for 200 pupils).

However, according to the First Deputy Head of Majlis R.Chubarov, even in the existing Crimean Tatar schools, the educational process is complicated by the lack of textbooks in general educational disciplines in the Crimean Tatar language, which complicates fully-fledged secondary education[147]. However, according to the State Committee for Nationalities and Religions, the situation is gradually improving[148].

There is a problem of pedagogues for Crimean Tatar schools. Now, they are trained at the Crimean Engineering-Pedagogical University in the specialities "Teacher of Crimean Tatar language and Russian language", "Teacher of Crimean Tatar language and Ukrainian language", "Teacher of Crimean Tatar language and English language", "Teacher of elementary school", and in V.I. Vernadskyi Tavrian National University in the speciality "Teacher of Crimean Tatar language and literature"[149].

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

T: *"There are only 15 national Crimean Tatar schools, but even those schools are converted from old kindergartens. They do not meet sanitary-hygienic norms. They are called national only because of deeper study of the Crimean Tatar language, or Ukrainian, but teaching is in Russian…"*

Another not less important problem dealing with education, development and use of the Crimean Tatar language lies in the absence of higher educational establishments with the Crimean Tatar language of study. The situation with teaching of the Ukrainian language in Crimea is also cheerless[150]. However, while young Crimeans who learned in Ukrainian at school can continue education at higher educational establishments of Ukraine, their Crimean Tatar mates are deprived of this possibility. Furthermore, a language not used in higher education can hardly develop as a language of science, politics, administration and judiciary. This substantially impairs motivation to learn in the mother language that can later be used only in everyday communication.

EXTRACTS FROM RECORDS OF DISCUSSIONS IN FOCUS GROUPS

T: *"When you send a child to school, you know that there are no... institutes... in the Crimean Tatar language – this makes it unnecessary".*

T: *"Today, there is no higher educational establishment in Crimea where one could study in the Crimean Tatar language. I realise that this problem cannot be solved within a year or two but there must be a state policy aimed at gradual solution of the problem".*

[144] Crimea: people, problems, prospects… p.26.
[145] Third Report of Ukraine on implementation of the Framework Convention …
[146] ARC Committee for Deportees: at least 10-12 more Crimean Tatar schools should be opened in Crimea. – UNIAN, May 28, 2008.
[147] *Ibid*.
[148] "In 2008, the Ministry of Education and Science of Ukraine issued for Crimean Tatar general educational establishments textbooks of the Crimean Tatar language and literature for pupils of the 8th form, translated into Crimean Tatar textbooks of Ukraine's history, world history, algebra, geometry, biology, physics, chemistry, physical geography, Ukrainian-Crimean Tatar and Crimean Tatar-Ukrainian terminological dictionaries. They also developed textbooks of the Crimean Tatar language and literature for pupils of the 9th form and educational programmes for pupils of the 10th-12th forms of specialised schools". See: Third Report of Ukraine on implementation of the Framework Convention …, p.66.
[149] *Ibid*., p.67
[150] In Crimean higher educational establishments, only 5% of disciplines are taught in the Ukrainian language. See: I.Vakarchuk: Crimean higher educational establishments do not respect Ukrainian language. – "Novyi Region" Information Agency, *http://new-region-2.livejournal.com/36359008*

Therefore, it may be assumed that the worst situation with satisfaction of the need for education in the native language is observed in the Crimean Tatar community, the best – in the Slavic (mainly – Russians and Russified Ukrainians). It would be logical to assume therefore that the local authorities should make efforts to remove disparities in the guarantee of one of the constitutional rights of citizens.

However, analysis of regulatory acts of the supreme representative body of the autonomy shows that it concentrated on an entirely different domain. The majority of resolutions, decisions and appeals of Crimean Parliament in 2004-2009 in one or another way dealing with inter-ethnic problems and devoted to the language issue mainly pursued protection and development of the Russian language – not only in the autonomy but in the whole of Ukraine[151].

The language situation in the autonomy at the beginning of 2004 is described in the Programme of Development and Functioning of the Ukrainian Language in the AR of Crimea for 2004-2010[152]: "The Ukrainian language is assigned a key role in nation-building. Meanwhile, its proper development has not been ensured in the recent years. The Ukrainian language, as official, has not become sufficiently spread yet in all functional domains on the territory of the AR of Crimea. Not everything has been done for full-scale introduction of the Ukrainian language in all sectors of public life". The thrust of the above-mentioned resolutions passed in the subsequent years is entirely inconsistent with this conclusion.

The key measures suggested by those regulatory acts included[153]:

- appointment of a republican (local) consultative referendum on the initiative of Ukrainian citizens permanently living in the AR of Crimea, with the question "*Do you stand for the status of the second official language for the Russian language?*"[154];
- guarantee of the right of citizens to the use of the official, Russian and other national languages in all sectors of public life in the AR of Crimea[155];
- approval of a plan of annual measures at free development and use of the Russian language in the fields of education and culture in the AR of Crimea in 2007-2010 and its budget. Local self-government bodies and district state administrations were advised to work out and approve plans of similar measures for the same term and annually allocate funds for those purposes during local budgeting[156];
- amendment of a number of Ukrainian laws for actual introduction of bilingualism in the judiciary, notary services, registration of family status, healthcare and advertising, documentation on labour safety, place names, etc.[157];
- planning and approval of measures at development and use of the Crimean Tatar language in the AR of Crimea in 2008-2010 with "funding at the expense of funds allocated to socio-cultural development in the Programme of Amenities for and Socio-Cultural Development of Deported Persons in the AR of Crimea for 2006-2010, and other sources of funding envisaged by the effective legislation"[158];
- indefinite postponement of introduction of independent testing in the official language in Crimea[159];
- permission for TV and radio companies to independently, in line with the programme concept, decide the hours for broadcasting in the Ukrainian language, no less than 51% of the total daily air (pursuant to the Law "On Television and Radio Broadcasting" – 75%)[160];
- recognition of unconstitutionality of the requirement of adaptation of foreign programmes retransmitted

[151] See subsection 2.1 of the Analytical Report.

[152] Resolution of the Verkhovna Rada of the AR of Crimea No.856 of March 17, 2003

[153] Unless specified otherwise, documents of the Verkhovna Rada of the AR of Crimea are listed in the order of passage.

[154] Resolution "On Appointment of Republican (Local) Consultative Referendum on the Initiative of Ukrainian Citizens Permanently Living in the AR of Crimea" No.1578 of February 22, 2006.

[155] Resolution "On Progress of Implementation of the Verkhovna Rada of the AR of Crimea Resolution of April 15, 1998 No.1505 "On Support for Functioning of the Official, Russian and Other Languages in the AR of Crimea" No.214 of October 18, 2006, notes that "over the past eight years, the stand of the official language, actively used in all sectors of public life, substantially strengthened". Meanwhile, it noted "neglect by state servants, especially employed in bodies of central subordination", of Resolution 1998, which "results in regular and unjustified violations of rights of the majority of population of the republic, for which Russian is the native language". Those violations were seen in the use of the official language in pharmacology, notary services, judiciary, trade, advertising, on radio and TV, in the activity of law-enforcement bodies, even in education. The text of the Resolution leaves an impression that the Ukrainian language in Crimea drove Russian out in all domains, which is not true.

[156] Resolution "On Progress of Implementation of the Verkhovna Rada of the AR of Crimea Resolutions on Issues of Use of Official, Russian and Other Languages in ARof Crimea" No.391 of March 22, 2007.

[157] Annexes to resolutions No.214 and No.391.

[158] Resolution "On Amendment of the Verkhovna Rada of the AR of Crimea Resolution of March 22, 2007 No.391 "On Progress of Implementation of the Supreme Council of the Autonomous Republic of Crimea Resolutions on Issues of Use of Official, Russian and Other Languages in AR of Crimea" No.694 of December 19, 2007. The Plan of Measures for 2009-2010 was approved by the Council of Ministers' Resolution No.108 of March 3, 2009. By the way, only three items of the plan envisaged measures that technically could not be implemented within set terms: preparation and publication of a 10-volume collection of works by classics of the Crimean Tatar literature; unification of orthographic and orthoepic norms of the Crimean Tatar language; integrated scientific expeditions and field studies for collection of Crimean Tatar folklore and dialectological material, socio-linguistic study of the Crimean Tatar language in Crimea.

[159] Decision "On Appeal to the Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine on the Need of Conduct of External Independent Evaluation of Progress in Studies of Graduates of Educational Establishments of the AR of Crimea in the Languages of Study" No.905 of June 18, 2008; "On Provision of Orderly Conduct of External Independent Evaluation of Progress in Studies of Graduates of Educational Establishments of the System of General Secondary Education of the AR of Crimea" No.1126 of February 18, 2009.

[160] Resolution "On Draft Law of Ukraine "On Amendment of the Law of Ukraine "On Television and Radio Broadcasting" No.3963 of September 17, 2008.

in Ukraine to the requirements of the Ukrainian legislation, since, according to the authors, such adaptation presents a form of censorship[161];

- approval of a Comprehensive Plan of Annual Measures at Development of the Russian culture, use of the Russian language, maintenance of Russian educational and cultural-historic sites and facilities in the AR of Crimea for 2009-2015[162];
- obstruction of the Law "On Concept of Official Language Policy of Ukraine" and "On Official Language and Languages of National Minorities of Ukraine", since Crimean MPs believe that they overly expand the sphere of use of the official language at the expense of Russian and other languages of national minorities[163];
- an increase in the number of academic hours allocated to the Russian language and literature in general educational establishments of the AR of Crimea, and a demand "to provide for… placement of information... in the Russian language… in all educational establishments...". Since this applies to all educational establishments, those steps may be seen as Russification of schools where teaching is conducted in the official language or languages of national minorities[164].

The situation in the language sector was aggravating with every step of the Crimean authorities in response to Kyiv's. Another peak occurred after the Ministry of Education and Science of Ukraine Order "On Approval of Branch Programme of Improvement of Study of Ukrainian Language in General Educational Establishments with Study in Languages of National Minorities for 2008-2011" No.461 of May 26, 2008. In particular, the Programme envisaged, for preparation of external independent evaluation of progress in studies of graduates of educational establishments studying in the languages of national minorities, to increase the number of academic hours allocated to the Ukrainian literature in senior classes and to introduce bilingual study of Ukraine's history and geography. Junior classes (2-4) were to add academic hours for the Ukrainian language, others – to introduce bilingual study of Ukraine's history, geography, maths. It was also planned to fully transfer to the Ukrainian language study of the history of Ukraine from the 6th form, geography – from the 7th. Later on, it envisaged gradual transition to teaching a number of subjects (history of Ukraine, geography of Ukraine, labour training, defence of Motherland, etc.) in the Ukrainian language.

The Crimean authorities harshly responded to the Order. In particular, First Deputy Chairman of the Verkhovna Rada of the AR of Crimea S.Tsekov said that the Order broke rights of citizens provided by the Constitution of Ukraine, and suggested that the autonomy's Parliament should pass a resolution in defence of the constitutional right of Ukraine's citizens to get education in the native language. Chairman of the Standing Commission of the Verkhovna Rada of the AR of Crimea for Science and Education A.Zhylin said that the Ministry of Education of Ukraine Order destroyed school education in national languages, and the Minister of Education and Science of Ukraine I.Vakarchuk should resign[165]. According to the Minister of Education of the AR of Crimea V.Lavrov, Crimea "left to pupils and parents the right of choice of the language of study in general and in separate subjects", actually making clear that Crimean schools were allowed not to follow the Ministry of Education Order on wider use of the Ukrainian language at schools[166].

Such reaction of those officials looks quite natural, given that S.Tsekov heads the Russian Community of Crimea, A.Zhylin is his deputy, V.Lavrov – a CPU member. The Order was also criticised by the Association of Crimean Tatar Education Workers "Maarifchi". Its statement said that the planned measures would have a negative effect on teaching in native languages. According to "Maarifchi", the Order undermined the roots of the Crimean Tatar language, reborn in the historic Motherland. In the end, the statement demanded "restoration on the territory Crimea of the official status of the Crimean Tatar language and measures guaranteeing development of education in the Crimean Tatar language as a subsystem in the single system of education of the AR of Crimea and Ukraine"[167].

Parliament of the autonomy practically responded to the Ministry of Education Order with decisions noting the inadmissibility of performance of the Ministry's orders[168].

Need of preservation/restoration of historic memory

The identity of any social group (from a political nation to an ethnic or confessional community) rests on historic memory, envisaging some interpretation of historic events and processes, a pantheon of heroes and prominent personalities, assessment of historic figures, ideas of enemies and allies, and so on. Respectively, a stable group identity requires preservation (restoration) and continuous actualisation of historic memory, materialised in the totality of objects of symbolic value – texts, monuments, memorial places, place names, etc.

On the other hand, historic memory belongs to the value structures of public and individual consciousness, and therefore, largely motivates social behaviour of a group and its separate representatives. So, **satisfaction of the right of social groups to preservation of their historic memory is critical for relations among them and for the integrity of entire society**.

Analysis of the Crimean situation from this viewpoint shows that the autonomy in fact witnesses competition between the Slavic and Crimean Tatar communities, in particular, for symbolic values and historic roots on the peninsula.

[161] Resolution "On Constitutional Inquiry of Correspondence to the Constitution of Ukraine (Constitutionality) of Parts One and Two, Article 42 of the Law Ukraine of December 21, 1993 No.3759 "On Television and Radio Broadcasting" No.1042 of November 19, 2008.
[162] Approved by Resolution No.1138 of February 18, 2009.
[163] Decision No.1207 of April 22, 2009.
[164] Resolution "On Measures at Support for the Russian Language in the Field of Education in the AR of Crimea" No.1248 of May 20, 2009.
[165] Crimean politicians and pedagogues are indignant with orders from Ivan Vakarchuk. – Press Service of the Russian Community of Crimea, August 8, 2008, *http://www.ruscrimea.ru/news.php?point=123*
[166] Volkova A. Crimean Ministry of Education allowed teachers not to follow Kyiv's order on Ukrainisation of schools. – "Krym-Novosti" Information Agency, August 27, 2008, *http://from.crimea.ua/obshhestvo/minobraz-kryma-razreshil-uchitelyam-ne-vypolnyat-kievskij-prikaz-ob-ukrainizacii-shkol*
[167] Khalilova L. Notorious Order of Ministry of Education violates pupils' rights. – Web Site of Crimean Youth, *http://www.crimean.org/crimea/crim_news.asp?NewsID=7921*
[168] Decision "On Use of Languages at Organisation of Educational Process at Educational Establishments of the AR of Crimea" No.962 of September 17, 2008.

That is why the issues of return, restoration and building of religious and memorial structures, erection of religious symbols and monuments to prominent figures of the past, return of historic names to populated localities, etc. are so important for Crimea. What is seen as restoration of historic justice or exercise of rights to satisfaction of religious needs by one community is sometimes presented by another as an act of aggression, humiliation of its national and/or religious feelings. A showy example of controversy in assessments of historic events and figures is presented by polemics about the person of Parthenius of Kiziltash (Insert "*Actualisation of historic events and figures in Crimea*").

ACTUALISATION OF HISTORIC EVENTS AND FIGURES IN CRIMEA

Parthenius of Kiziltash – Hegumen of Kiziltash Monastery in the Eastern Crimea, murdered in 1866, according to then official version, by local residents – Crimean Tatars, as he did not let them illegally cut the surrounding forest and graze cattle on monastery pastures.

Instead, representatives of the Crimean Tatar community believe that the Crimean Tatars accused of the Hegumen's murder and sentenced to death were innocent victims of slander on the part of police informers, and their trial was a political process. In 1998, the Crimean Tatar community built a monument to them in the village of Dachne (Taraktash) of Sudakskiy district. On the other hand, in 2000, Bishop's Council of the Russian Orthodox Church (ROC) sanctified Parthenius of Kiziltash as a righteous martyr. In 2008, several issues of the newspapers "Golos Kryma" published an article by I.Abdullaev "Taraktash tragedy". It negatively assessed the figure of Hegumen Parthenius considering it in a wider context of the ROC activity that "in mid-XIX century, with active support from colonial administration of Crimea, began another stage of the policy of seizure and appropriation of old Crimean Christian holy places, in that way laying claim to the more than millennium-old spiritual, historic and cultural heritage of indigenous peoples of the peninsula evicted in 1778 - Tats and Urums (Christians), Crimean Tatars (Muslims), Karaites"[169].

In response to that publication, the Press Service of the Simferopol and Crimean Eparchy of UOC issued a statement saying that allegations of I.Abdullaev "cause moral sufferings to all faithful Christians of Ukraine and offend their religious feelings"[170]. The polemic seems not to be over yet.

Such misunderstanding by the communities of the needs and interests of each other stems not only from historic stereotypes but from present-day circumstances – in particular, actual inequality in the communities' ability to satisfy their needs of preservation of historic memory as an integral attribute of their identity.

Furthermore, it may be argued that the authorities openly support claims of one community – Slavs – to symbolic values of Crimea. This is especially manifested in the support for Orthodoxy, represented by UOC, vs. restoration of Muslim shrines in Crimea.

The situation with construction of the memorial Grand Mosque (Cuma Camii) in Simferopol is demonstrative here. In 2004, the city Muslim community requested the City Council to allot for construction of the mosque a part of "Vorontsovka" park (Victory Square) where Crimean Tatars were brought in May 1944 for further deportation beyond Crimea. The City Council that previously transferred that square to the UOC community for restoration of the Cathedral of Saint Prince Alexander of Neva refused the Muslim community under the pretext of a ban on construction in the city's green areas. They allotted a plot for the construction of the mosque on the outskirts of the city, but in 2007, the City Council cancelled its own decision of allocation and qualified fencing of the site and keeping construction materials there as squatting[171].

Demonstrative in this context was the statement of the Chairman of the Republican CPU Committee L.Hrach made in Simferopol at a solemn meeting on the occasion of celebration of the Victory Day in 2005: "Those who lift hand against our shrines, including Orthodoxy, should know: we are more than many, and nobody will ever conquer us"[172].

Monuments symbolising the Crimean past in the Russian empire are restored and erected with assistance from the authorities. For instance, in June, 2008, a monument to Empress Catherine II was inaugurated in Sevastopol; in April 2009, events related with restoration of a monument to Catherine II were held in Simferopol. In this connection, First Deputy Chairman of the Verkhovna Rada of the AR of Crimea, leader of the Russian community of Crimea S.Tsekov submitted to Crimean Parliament a draft resolution of restoration of that monument and annual arrangement of Crimean-wide festivities devoted to the Manifest of Catherine II "On Admission of the Crimean Peninsula, Island of Taman and the Whole Side of Kuban under the Russian State" on April 19[173].

Those events, along with others, prompt radicalisation of the spirits and stand of both dominant communities and cause conflicts among their representatives, sometimes growing into violent clashes. The widest publicised conflicts occurred:

- in Bahchysaray in 2001 and 2004 – for the disputed territory claimed by the Assumption Monastery and Muslims for restoration of an old spiritual educational establishment – Zinjirli Madrasah; in 2006 – for the territory of a local market and removal of market structures from the territory of Azizler Muslim cemetery[174];
- in Feodosiya in 2006 – in connection with the erection of a monument to Apostle Andrew the First-Called – between Crimean Tatars, on one hand, and Cossacks and representatives of pro-Russian organisations, on the other.

[169] Abdullaev I. Taraktash tragedy. – "Golos Kryma". September 12, 2008, *http://www.goloskrima.com/?p=884*

[170] Statement by Press Service of Simferopol and Crimean Eparchy of UOC. October 10, 2008. – Web site of Simferopol and Crimean Eparchy, *http://www.crimea.orthodoxy.su/Chronica/2008-10-10-Zayavleniye*

[171] See: US Ambassador visited would-be Grand Mosque Cuma Camii. – *Maidan* information web site, *http://maidan.org.ua/static/newskrym/1232642378*

[172] Bobrov A. Cross-cutting in Crimea. – *Russkiy Dom* information web site, *http://www.russdom.ru/2005/200508i/20050832*

[173] Monument to Russian Empress Catherine the Great in Simferopol, Crimea, will be erected for budget funds. – "Krymskiy Analitik" information web site, *http://www.agatov.com/content/view/1353/63*

[174] Clashes in Bahchysaray on July 8 and August 12, 2006, involved 300 persons on each side. See: Bahchysaray events are the result of distortions and mistakes in inter-ethnic relations – Kunitsyn. – UNIAN, August 17, 2006. Meanwhile, thanks to interference of representatives of political forces in the conflict, in particular, leader of the Crimean Republican Organisation of Party "Russian Bloc", member of the Verkhovna Rada of the AR of Crimea O.Rodyvilov and representatives of the Russian Community of Bahchysaray, it was presented as national and shown like that by some Ukrainian and Russian TV channels. See: Regionals in the Crimean leadership discredited Yanukovych more than his opponents. – UNIAN, August 13, 2006.

Use of different place names by the Slavic and Crimean Tatar communities poses a separate problem, since every place name involves some interpretation of the history of the concerned place (settlement). The very name "Tavrida" (Tavrian province) given to Crimea after its annexation by the Russian Empire appealed, bypassing Crimean Tatars, to the Greek cultural and historic heritage of Crimea, claimed by tsarist Russia as the successor of the Byzantine Empire.

Today, the Slavic community is using names that appeared in Crimea after the deportation of Crimean Tatars (traditional use, even in the Soviet times, of such Crimean Tatar name as Koktebel instead of official Planerskoe was an exception, along with some Crimean Tatar or Turkized Greek place names left in Crimea).

Instead, Crimean Tatars in media publications and official documents of their public and political organisations use old, mainly Crimean Tatar place names, and not only in case of relatively big cities, such as Akemesjit (Simferopol), Kafa (Feodosiya), Gezlev (Yevpatoriya), Karasubazar (Bilogirsk), but also mentioning former Crimean Tatar villages and settlements populated by Russians and Ukrainians after World War II. Therefore, Crimean Tatars are made to believe that Crimea is their historic land and will again be the one some day.

The demand of restoration of Crimean Tatar place names in Crimea was again put forwards at the mourning meeting in Simferopol on the occasion of the 65th anniversary of deportation, where the Majlis leader M.Dzhemilev called upon Crimean Tatars to collect money and erect at approaches to every locality in Crimea signs with historic names. At that, he "warned the anti-Tatar-minded part of the Crimean population against opposing efforts of Crimean Tatars at erection of road signs with historic place names", hinting that in that case, Russian-language signs could be destroyed.

His first deputy R.Chubarov said that mass restoration of historic place names might begin as soon as within a month or two in all places of residence of Crimean Tatars. He stressed that the campaign was prompted by inaction of the authorities, and would not be accompanied with liquidation of Russian place names: "We will begin to restore our historic names. If the authorities do not want to do this, we will. We will not demolish anything, including names, but there will be centuries-old names nearby specific of Crimea, reflecting the Crimean Tatar culture, traditions and religion"[175].

Although the main socio-cultural groups of Crimea now recognise the Russian language as a language of inter-ethnic communication in the autonomy, they are not united on other aspects of the language issue.

The educational sector in the Crimean is entirely dominated by the Russian language. The official language is actually marginalised, due to the actual absence of public support for the development of education in the Ukrainian language. Education in the Crimean Tatar language, despite public support and demand, is developing too slowly and disproportionately.

The attitude of the Crimean authorities to the official and two most spoken in Crimea languages may be described as follows:

the official language – forced, often formal, support and assistance; Crimean Tatar – formal and limited assistance, a tribute to political correctness rather than the desire to solve a real difficult problem of preservation and development of the Crimean Tatar language that does not have a single literary standard or alphabet; Russian – full assistance and protection, first of all, from wider use of the Ukrainian language.

Rulings actually reversing decisions of central authorities in the autonomy may also be viewed in the context of emergence of a separate Crimean identity intended to oppose Crimea to Ukraine politically and culturally.

The acutest contradictions between the Crimean Tatar and Slavic socio-cultural groups are observed in the field of symbolic values, and exactly there, rivalry can have the gravest consequences.

2.5. TRENDS OF ETHNIC AND RELIGIOUS INTOLERANCE IN THE ACTIVITY OF CRIMEAN PUBLIC ORGANISATIONS

Out of 589 registered and 205 legalised by notice Crimean public organisations, local branches of all-Ukrainian and international public organisations, more than 100 were established on ethnic grounds. We will focus on public associations of representatives of the peoples claiming domination or active involvement in socio-political life and management of affairs in the autonomy. Collision of their interests is the gravest, influencing not only the present situation but the future of Crimea[176].

Ukrainian public organisations are poorly represented in the Crimean socio-political space. They do not make a force that could noticeably influence the socio-political situation in the Crimea[177]. More or less active are only the Crimean regional organisation of "People's Movement of Ukraine" (Rukh) and the Crimean republican organisation of the All-Ukrainian Association "Svoboda". Therefore, more attention is paid to pro-Russian (Slavic) and Crimean Tatar public associations that, according to public opinion polls and monitoring of socio-political activity, enjoy the greatest influence in Crimea (Annex 3 "*Crimean organisations exerting the greatest influence on inter-ethnic and inter-confessional relations*", p.66).

[175] Crimean Tatars erect on the peninsula signs with Crimean Tatar names of cities. – "Zavtra" media group, *http://www.zavtra.com.ua/news/1/121735*

[176] Less attention is paid to organisations of representatives of peoples of the former USSR living in Crimea (Azeris, Georgians, Lithuanians, Estonians, etc.) and indigenous peoples of Crimea (Karaites and Krymchaks). Those organisations are small, their interests lie beyond politics, and they exert little influence on inter-ethnic relations. The public influence of organisations of representatives of former deported national groups (Bulgarians, Armenians, Greeks, Germans) also does not go beyond their national communities and has no political dimension.

[177] This conclusion coincides with the opinion of the Committee for Affairs of Nationalities and Deported Persons of the AR of Crimea, that representatives of the Ukrainian public "…are insufficiently involved in the inter-ethnic dialogues", and as a result, "…the second largest ethnos actually does not influence the development of inter-ethnic relations in Crimea". See: Information on inter-ethnic relations in AR of Crimea. – Internet portal "AR of Crimea", *http://comnational.crimea-portal.gov.ua*

Pro-Russian organisations

The most active pro-Russian organisations are the Russian Community of Crimea (RCC), People's Front "Sevastopol-Crimea-Russia", National Front "Sevastopol-Crimea-Russia", Crimean regional organisation of the Progressive Socialist Party of Ukraine (PSPU) and Party "Russian Bloc"[178], Crimean division of the Eurasian Union of Youth (EUY), "Proryv" organisation.

They target the Slavic community, to instil in the public consciousness of that ethno-social group a set of ideas: of historically reasoned and legitimate belonging of Crimea Russia and its accidental, short-timed stay in Ukraine; of Crimea as an integral part of the Russian socio-cultural and geopolitical space; of inadmissibility of spread of the Ukrainian language and culture in Crimea. In line with those goals, the Slavic community of Crimea, feeling affiliation with that space and valuing ties with Russia, should feel the only rightful and legitimate master of the Crimean land. So, any attempts of Ukraine to spread its language and cultural presence in Crimea and Crimean Tatar demands of restoration of their rights are viewed by the Slavic community of the autonomy as illegitimate encroachment on the rights of the Slavic community, its traditions, way of life, and meet a strong negative reaction.

Those ideas are disseminated through various forms of activity of public organisations and their activists: seminars, round-tables, press conferences; distribution of propagandist materials; participation in the work of representative authorities, first of all, the Verkhovna Rada of the AR of Crimea, and executive bodies; interaction with Russian public and political organisations and authorities; mass events (meetings, demonstrations, pickets) for propaganda of their ideas among residents of Crimean cities, first of all, Simferopol; opposition to decisions of Ukrainian authorities contrary to those ideas, pressure on local authorities, e.g., the Verkhovna Rada of the AR of Crimea, if they, in the opinion of leaders and activists of the mentioned organisations, demonstrate inconsistency or hesitation in the attainment of those ideas or oppose their attainment.

People's Front "Sevastopol-Crimea-Russia" on January 31, 2007, together with EUY held a meeting near the Verkhovna Rada of the AR of Crimea, demanding that Crimean MPs pass a declaration of reunification of Crimea with Russia, removal of "occupational", i.e., Ukrainian state symbols from the building of Crimean Parliament and obliging local authorities and their subordinate institutions to hang up state symbols of the Russian Federation.

In February, 2007, the People's Front jointly with the Crimean division of EUY announced an indefinite human rights campaign "Ukraine without Crimea" aimed at "an end to the annexation of the peninsula by Ukraine and return of Crimea and Sevastopol under the jurisdiction of the Russian Federation by legal means"[179]. The campaign envisaged mass filing of administrative suits by the Crimean residents to courts demanding that they oblige the Verkhovna Rada of Ukraine to amend Ukraine's Constitution, removing Chapter 10 "AR of Crimea" and mention of the AR of Crimea and Sevastopol from its text. In case of refusal, it planned to appeal to the ombudsman, international organisations whose member Ukraine is, and international courts.

At the beginning of the campaign, they mentioned resolutions of Russia's State Duma "On Legal Assessment of Decisions of Supreme Bodies of State Power of RSFSR Changing the Status of Crimea, passed in 1954" of May 21, 1992 and "On Status of Sevastopol" of July 9, 1993. Those documents were produced by organisers of the event as a legal argument backing stated claims.

On January 21, 2008, the Popular Front activists called press conference "On non-implemented results of referendum of January 20, 1991", where they proposed that Crimea goes to Russia in order not to appear in NATO together with Ukraine. Following the press conference, the Security Service of Ukraine initiated a criminal proceeding against the Popular Front coordinator V.Podyachyi and leader of the Russian Community of Yevpatoriya S.Klyuev under Article 110 of the Criminal Code of Ukraine – "encroachment on territorial integrity of Ukraine". The Security Service of Ukraine head V.Nalyvaychenko said that the investigators would request the court to impose a penalty of up to five years of imprisonment upon the defendants[180].

However, the prosecution did not bar V.Podyachyi to continue his campaign that involved suits against the Verkhovna Rada of the AR of Crimea and its Chairman A.Hrytsenko for their refusal to cancel the 1998 Constitution of the AR of Crimea "as contrary to the results of the Crimean referendum of January 20, 1991", and consider the issue "of passage of a Declaration of reunification of Crimea with Russia and an appeal to the Presidents of Russia and Ukraine, governments of the Russian Federation and Ukraine, the State Duma and Verkhovna Rada demanding immediate talks of return of Crimea under the jurisdiction of the Russian Federation"[181].

Apart from the declared goal, the campaign was evidently designed to prove that activists of the Popular Front were trying to attain their objectives within the legal framework of Ukraine, so, their prosecution was groundless.

National Front (NF) "Sevastopol-Crimea-Russia" held the campaign "Russian boycott of early elections" in 2007, to organise boycott of extraordinary elections of the Verkhovna Rada of Ukraine. It argued that no parliamentary party in Ukraine was defending the interests and rights of Russians, and subsequent elections would not change the situation, so, it was senseless to take part in them. Speaking at a press conference on October 3, 2007, the NF leader S.Shuvainikov said he was satisfied with the results of the event since, in his words, some 10%

[178] For more detail see: web site of the "Russian Movement of Ukraine" and Party "Russian Bloc" – *http://www.rblok.org.ua/index.php?option=com_content&task=view&id=12&Itemid=26*

[179] We declare indefinite campaign "Ukraine without Crimea". – Web site "Russian Popular Assembly of Sevastopol", *http://sevrus.narod.ru*

[180] Fighting half-decay. Kyiv getting ready to try Russian patriots of Crimea. – *Lenta.ru*, January 22, 2009, *http://www.lenta.ru/articles/2009/01/22/skr*

[181] "Sevastopol-Crimea-Russia": Trial of invalidation of Constitution of the AR of Crimea held in Sevastopol. – "Novyi Region", *http://www.nr2.ru/ua/225923*

of Crimeans boycotted the elections, and due to the low return, the Party of Regions lost votes in Crimea. He warned that NF was planning to boycott all subsequent elections until a true "Russian party" appears in Ukraine, since "today, no political party is willing to recognise the legal status of the Russian people..., all are trying to forcibly assimilate Russian people in the constitutional notion of the "Ukrainian people"[182]. At the end of 2007 S.Shuvainikov announced his intention to establish the Russian Party of Ukraine[183].

Activists of the Crimean regional organisation of PSPU in July 2008, took an active part in protests against a joint Ukrainian-NATO military exercise in Crimea. On October 23, 2008, they jointly with activists of RCC, Russian Bloc party and other organisations held a meeting in Simferopol protesting against the National Council of Ukraine for Television and Radio Broadcasting decision to ban from November 1 of that year transmission of Russian TV channels not adapted to the requirements of the Ukrainian legislation in cable TV networks.

In May 2009, PSPU leader N.Vitrenko announced the possibility of calling a referendum about secession of Crimea from Ukraine and joining Russia, if the Verkhovna Rada of Ukraine passed a decision terminating the powers of Sevastopol City Council in response to its decision of May 19, 2009, obliging all city schools to teach in the Russian language.

Crimean division of EUY took part in anti-NATO events in Mykolayiv and Feodosiya in 2006, held a meeting in Sevastopol demanding withdrawal of the Ukrainian Navy from the Crimea in March 2007.

"Proryv's" leaders in 2006 demanded from Russia's President V.Putin denunciation of the Russian-Ukrainian "Big Treaty" signed in 1997. Later, the Sevastopol Business Court passed a ruling banning "Proryv". However, despite the ban, "Proryv" remains active in Crimea, on a smaller scale though.

By and large, pro-Russian youth organisations are much more extremist and controlled by specific public and political forces of the Russian Federation. This prompts greater attention to them on the part of the Ukrainian law-enforcement bodies.

However, the effectiveness of Crimean pro-Russian organisations is impaired by their rivalry and mutual defamation. For instance, RCC was repeatedly criticised by NF "Sevastopol-Crimea-Russia", and that organisation itself was established as an alternative to RCC that, according to one of the NF leaders S.Kompaniets, "is not interested in reunification of Crimea and Sevastopol with Russia, since it realises its own irrelevance, should such reunification comes true".

Yet in 2002 NF leader S.Shuvainikov made a number of statements aimed at defamation of RCC head S.Tsekov, accusing him of corruption, in particular, uncontrolled use of funds allocated by the Moscow Government for humanitarian activity of Russian organisations in the Crimea, and RCC in general – of refusal from protection of the interests of Russian residents of Crimea. The Popular Front, with which the National Front has much common in ideology and political goals, was termed as an organisation fit for nothing that "has nothing positive".

NF "Sevastopol-Crimea-Russia" actually opposed itself to other Crimean pro-Russian associations and organisations. According to S.Shuvainikov, "there is no political force today pursuing a Russian policy in Crimea, that is why **Russian people need their representative body – an analogue of Crimean Tatar Kurultay and its executive body Majlis**. **It is not a public organisation, not a political party but a structure that will take into account the experience of Majlis and Kurultay defending the rights of their people**"[184].

In response, opponents called NF a clone of the People's Front, and one of the leaders of the latter, head of the Russian Community of Kerch O.Tkachenko, said that "the National Front was established by special services of Ukraine as a political-technological counterbalance to the truly People's Front "Sevastopol-Crimea-Russia".

In connection with the above-mentioned boycott of early elections-2007, the Popular Front leader V.Podyachyi described the NF activity as follows: "A joint project of the Presidential Secretariat and the Security Service of Ukraine titled "Russian boycott of election of Ukrainian oligarch masters" let Ukraine have one foot in NATO!"[185].

The above-mentioned statement by N.Vitrenko of the possibility of a referendum about cessation of Crimea from Ukraine was criticised by one of the People's Front leaders as indirect recognition of stay of Crimea in Ukraine's legal framework.

Among the reasons for conflicts among Crimean pro-Russian organisations and their inability to unite, experts mention rivalry for funds coming from Russia, laying the blame for vanity of all attempts of unification first of all on the "the Kremlin politicians, unwilling to understand that grey funding has long turned patriotism into business on national feelings"[186].

However, despite serious differences and confrontation, Russian public and political organisations of Crimea and their leaders can display solidarity under certain circumstances. For instance, the Popular Front activists V.Podyachyi and S.Klyuev, when subjected to criminal prosecution, found a defender in the person of Deputy Chairman of the Verkhovna Rada of the AR of Crimea and RCC leader S.Tsekov, although the Verkhovna Rada, RCC and Party of Regions, whose member S.Tsekov is, were strongly criticised by the People's Front. Nevertheless, S.Tsekov turned to ombudsman N.Karpachova actually acquitting S.Klyuev and V.Podyachyi and requesting her to personally monitor their case[187].

[182] "Sevastopol-Crimea-Russia" Front to blame for low return. – Crimean online news service, *http://news.allcrimea.net/comments/1191419719*

[183] "Sevastopol-Crimea-Russia" National Front leader wants to create Russian Party of Ukraine within a year. – *Crimean News Agency*, *http://www.start.crimea.ua*

[184] Tyshchenko Yu., Khalilov R., Kapustin M. Socio-political processes in the AR of Crimea: key trends. – Kyiv, 2008, p.70.

[185] *Ibid*, pp.64-70.

[186] Sergeev G. Russian linguists will be turned… politicians. – "Pervaya Krymskaya", June 5, 2009.

[187] S.Tsekov asks Verkhovna Rada of Ukraine Human Rights Commissioner N.Karpachova to personally monitor criminal case of Crimeans accused of separatism. – *Portal of Russian People of Ukraine*, *http://www.ruscrimea.ru/news.php?point=359*

Soon, the list of pro-Russian organisations may include one more – all-Ukrainian human-rights organisation "Russian-speaking Ukraine" (tentative name). The idea of its creation was announced during the Third Festival "Great Russian Word" recently held in the Crimean Livadia palace. According to the festival's organising committee head S.Tsekov, the activity of the new organisation "will focus on protection of rights of Russian and Russian-cultural citizens of Ukraine"[188]. Regarding the roots of that idea, S.Tsekov said that "the initiative in the given case was not Crimean"[189].

Cossack associations make a separate group of Slavic organisations. Among them, the greatest activity in the recent years has been displayed by the Crimean Cossack Union, the Association of Cossacks of the AR of Crimea "Krymska Palanka", the Union of Cossacks of Feodosiya Region, "Sobol" Cossack Community.

The goals of **Cossack associations** somewhat differ from those of the above-mentioned pro-Russian organisations. While the latter have evidently political goals and pursue integration of the Crimea – if not immediately in the Russian state, than at least in the sphere of Russian geopolitical influence, the goals of Cossacks include: maintenance in the public consciousness of the idea of Crimea as an integral part of the Russian spiritual, religious and cultural space; protection of the Slavic population from "encroachments by unorthodox" (first of all Muslims (Crimean Tatars)) on its sanctuaries and land; assistance to the spread of religious and memorial symbols related with the idea of unity of Crimea and Russia in Crimea.

The main mechanisms of attainment of those goals include: educational and enlightenment activity; public events, including international; participation in mass events of other pro-Russian organisations; direct opposition to Crimean Tatars; safeguarding of political and religious events; cooperation with Russian Cossack organisations, first of all – the Union of Cossack Troops of Russia and Abroad.

Actions of Cossacks in defence of memorial sites or prevention of their establishment – guarding monuments to Andrew the First-Called in Feodosiya (2006) and Catherine II in Sevastopol (2008), prevention of installation of a memorial board in Hrafska Pier in Sevastopol (2008) in honour of the 60th anniversary of the Black Sea Fleet raising Ukrainian ensigns, escort of cross-bearing processions at sanctuaries of the Eastern Crimea (since 2005) and other acts – well fit in the scheme of the "wars of symbols" intended to make the territory of residence of some ethnic group a space of symbolic value and at the same time prevent creation or restoration of symbolic values of other ethnic groups living on the same territory[190]. Cossacks, too, are called to play the symbolic role of Christian warriors, defenders of the Russian land and Orthodox faith for the Slavic population of Crimea.

Evidently, the "Orthodox church" that allegedly needs defence from Muslim (Crimean Tatar) extremists in this case also means not a real religious institute but a national symbol necessary for instilment of the Russian identity of Crimea, its unbreakable connection with the Russian socio-cultural space. The image of Crimean Tatar "extremists" also plays a symbolic role in this context, personifying all negative the Russian mentality traditionally associates with the Muslim world. For instance, the above-mentioned report of the press service of the Union of Faithful Cossacks about the monument to Apostle Andrew the First-Called in Feodosiya says: "It is the monument from which last year's confrontation of Cossacks with miscreants began"[191]. I.e., Crimean Tatar residents of Feodosiya who at the beginning of June 2006 picketed construction of the monument for religious reasons are presented as "miscreants" – representatives of Islam historically hostile to the Christian world.

Crimean Cossack organisations also have other functions closely related with the above. In Crimea and whole Ukraine, they present an outpost of the pro-Kremlin part of Russian Cossacks united in the Union of Cossack Troops of Russia and Abroad, and an important link of Crimeans with the Russian socio-cultural and political space. The activity of those organisations dealing with inter-ethnic and inter-confessional relations in Crimea is largely determined by their relations with the Union of Cossack Troops of Russia and Abroad led by the Ataman of the Great Army of the Don, Supreme Ataman of the Union of Cossack Troops of Russia and Abroad, a member of Russia's State Duma and coordinator of the "United Russia" Party for ties with Cossacks V.Vodolatsky.

The nature of relations between the Crimean and Russian Cossacks is revealed by the following clauses of V.Vodolatsky's order on guarding the monument to Catherine II in Sevastopol in July 2008: "1. All structural units of the Union of Cossack Troops of Russia and Abroad form and detach peacekeeping Cossack teams to Sevastopol to guard the monument to Catherine the Great. 2. Coordination of team actions rests with Ataman of the Association of Cossacks of the AR of Crimea "Krymska Palanka" military foreman S.N.Yurchenko"[192].

Those relations are not sporadic but continuous, seen in events regularly held in the Crimea, in particular: II International Forum of Cossack Culture (May 31 - June 3, 2007), accompanied with laying of a memorial stone in Simferopol in the place of the would-be monument to Catherine II and floral tribute in Feodosiya to the monument to Apostle Andrew the First-Called; I International Cossack Forum (June 12-14, 2008) on the occasion of celebration of the Day of Russia (12 June) and 225th anniversary of Sevastopol; another International Forum of Cossack Culture is to take place in June 2009 in Poltava on the occasion of the 300th anniversary of the Battle of Poltava. V.Vodolatsky forbidden from Ukraine since 2008 will not

[188] Obukhovskaya L. God and Russian language are with us. – "Krymskaya Pravda", June 11, 2009.

[189] Sergeev G. Russian linguists will be turned… politicians. – "Pervaya Krymskaya", June 5-11, 2009.

[190] For more detail see: Why repeat Crimean wars. – OBKOM, May 29, 2007, *http://www.obkom.net.ua*; Sevastopol confrontation. Cossacks of the Don announced a march on Sevastopol. – Interfax, *http://www.interfax-russia.ru/r/B/eventday/438.html?menu=5&id_issue=1208*; From Toplu to Feodosiya. – web site *Russkaya Liniya*, December 8, 2008, *http://www.rusk.ru/st.php?idar=113565*; Bohomolov O., Danylov O., Semyvolos I. Islam and policy of identities in Crimea: from symbolic wars to admission of cultural variety. – Analytical report, Kyiv, 2009.

[191] International Forum of Cossack Culture in Crimea. – All-Russian Monarchic Centre, June 6, 2007, *http://www.monarchruss.org/index.php?option=com_content&task=view&id=664&Itemid=30*

[192] Monument to Empress Catherine the Great in Sevastopol guarded by Cossacks. – "Novosti Sevastopolya", July 8, 2008, *http://sevastopol.su/news.php?id=5349*

be present at the forum, but he made its goal clear – to pay tribute to the Russian-Ukrainian history, "for nobody could repaint history the colours that may be to somebody's liking or not"[193].

The trend of the Russian influence is witnessed by the "Common appeal of Atamans of Military Cossack associations of Russia and Ukraine to the President, Verkhovna Rada, Cossacks and People of Ukraine" of April 25, 2009, signed, in particular, by V.Vodolatsky, V.Cherkashyn and S.Yurchenko: "We cannot quietly watch rewriting and distortion of our common history, honouring in Ukraine people and events that left a black trace not only in the Russian and Ukrainian but in the World history... We cannot stay indifferent, when the official authorities of Ukraine support forces aimed against Russia, and in the end, against the Ukrainian people"[194].

The importance of the Cossack movement in Crimea in the eyes of pro-Russian forces is witnessed by the words of the Chairman of the Republican CPU Committee and All-Ukrainian Association "Heirs of Bohdan Khmelnytskyi" L.Hrach: "Today, the Black Sea Fleet and Cossacks are the only factor keeping Crimean Tatars from large-scale radical actions and implementation of the Kosovo scenario in Crimea. Since the Ministry of Internal Affairs and the Security Service of Ukraine do not effectively stop actions of Crimean Tatar extremists, Cossacks remain the only force that does not allow radicals to seize land and saw down crosses at Orthodox cemeteries"[195]. One may add to that a phrase from a report by the press service of the Union of Faithful Cossacks and the Kyiv Monarchic Centre – an organisation cooperating with Crimean and Russian Cossack associations: "They [Cossacks] enjoy respect and love of the Slavic Orthodox population of Crimea. Not once or twice – regularly do Cossacks defend the Orthodox Church and people from Muslim extremists, from attempts to make Crimea another Kosovo"[196].

Crimean Tatar public and political organisations[197]

The most active and influential Crimean Tatar public and political organisations are: Majlis of the Crimean Tatar people, Organisation of Crimean Tatar National Movement (OCTNM), "Adalet" party, "Avdet" public organisation, National Movement of Crimean Tatars (NMCT), "Milli Firka" party. They have common goals: return and amenities for Crimean Tatars on their historic Motherland; socio-economic, national, spiritual and cultural development of the Crimean Tatar people; restoration of its political rights. Some organisations ("Adalet", "Avdet") make particular emphasis on the rebirth of Islam in Crimea as one of their priorities.

Those goals are attained through: activity of national representative bodies (Majlis and local Majlises); work in Crimean and Ukrainian representative and executive bodies (representatives in those bodies are mainly nominated by Majlis); participation in the work of consultative-advisory bodies of the authorities (in particular, the Council of Representatives of the Crimean Tatar people under the President of Ukraine traditionally included representatives of Majlis); educational, enlightenment, scientific research and human rights activity; organisation of mass events (meetings, demonstrations, pickets) both in Crimea and in Kyiv; organisation of squatting of land plots with subsequent legalisation of those acts; active cooperation with international organisations (first of all, OSCE), public, political and governmental structures of other countries (first of all, Turkey).

Among Crimean Tatar public and political organisations, considered potentially contentious may be the activity of "Adalet", "Avdet", NMCT and "Milli Firka".

- **"Adalet"** – due to the radicalism of some elements of its ideology, emphasis on physical training of the organisation members, association with paramilitary detachments of *askers* in the public consciousness.
- **"Avdet"** – due to connection with Crimean Tatar squatting, every time meeting tough reaction, sometimes – resistance of the Slavic community. The possibility of radicalisation of that organisation was confirmed by a statement of one of coordinators of a picket near Ukraine's Government organised by "Avdet" (April 2009), R.Shaimardanov: "If Ukraine considers problems of Crimean Tatars little important, we will make the Crimean Tatar problem the main problem of Ukraine... We will cut Ukraine's road to the European Union"[198].
- **NMCT and "Milli Firka"** – due to their pro-Russian orientation, denial of legitimacy of Kurultay and Majlis, defamation of their leadership. Although their activity is quite peaceful, it adds to political disorientation of Crimean Tatars, promotes centrifugal processes among them, stirs up anti-Ukrainian spirits.

Meanwhile, the activity of those organisations beyond their national community is very limited, compared to Slavic public and political and Cossack associations, and much less aggressive. That is why their conflict potential is considered to be much lower.

Crimean Tatar public and political organisations also compete for ideological leadership and influence. There are fundamental differences in the assessment of the legitimacy of Majlis as the representative body of the Crimean Tatar people (NMCT, "Milli Firka"). Some ideological opposition to Majlis is demonstrated by OCTNM, "Azatlyk". Recently, "Avdet" has gained popularity and influence in the Crimean Tatar community. Majlis took a tough stand against NMCT – the Majlis leadership terms NMCT members as "traitors" and "provocateurs", and the movement itself – as one of "political organisations in due time created by the Soviet KGB and opposed to the main Crimean Tatar national movement".

[193] Ataman of the Don Cossacks barred from Cossack Forum in Poltava. – "Korrespondent", January 5, 2009, *http://korrespondent.net/ukraine/politics/700404*

[194] Cossacks appealed to the President, Verkhovna Rada, Cossacks and people of Ukraine in connection with the unstable situation in the Ukrainian state. – Russians in Ukraine, May 8, 2009, *http://www.rus.in.ua/news/1245*

[195] Hrach L. Crimean "knot". – "Yedinoye Otechestvo", *http://www.otechestvo.org.ua/statyi/2004_02/st_24_02*. Ethnic, inter-confessional and even inter-civilisational differences are on the rise in Crimea.

[196] International Forum of Cossack Culture in Crimea…

[197] Alongside, there are Crimean Tatar non-political organisations, for instance: League of Crimean Tatar Women, League of Crimean Tatar Lawyers INICIUM, Crimean Human Rights Association "Arqadash", Association of Crimean Tatar Education Workers "Maarifchi", Society of Researches of History and Culture of Crimean Tatars, Information-Educational Centre "Borazan". By contrast to Slavic, they are directly involved in the political life of their people, for instance, create election blocs or independently nominate candidates at election of Kurultay delegates.

[198] Kapustin M. Majlis has got a rival. – "Sobytiya", June 12, 2009.

There are some differences in the terms of restoration of rights of the Crimean Tatar people and ideas of political forms of their exercise: both tactical (Majlis – OCTNM and "Adalet") and strategic (Majlis – NMCT and "Milli Firka").

One should separately mention organisations setting the goals of religious rebirth of the Crimean Tatar people, its rapprochement with the Muslim world – i.e., branches of the Islamic party "Hizb al-Tahrir", Salafites (from the Arabic "salafa" – "original"), more often termed as Wahhabites, after the founder of that Islamic trend Mohammed ibn Abd el-Wahhab, followers of the "Tablighi Jamaat" movement (from the Arabic "*tabligh*" – "sermon").

The main forms of their activity include sermon, study, religious education, charity, organisation of mass enlightenment events, distribution of the relevant literature.

The Muslim community of Crimea is especially concerned about the activity of Muslim groups sharing the ideology of "Hizb al-Tahrir" party. Despite peaceful rhetoric, representatives of that party do not reject the possibility of establishment of an Islamic state on part of Ukraine's territory. They stress however that their goal lies not in building that state but solely in Islamic education, formation of new relations among Muslims, as the basis for establishment of an Islamic state. At that, "Ukraine, as an independent state, will itself establish relations with the Islamic state after its appearance, and this is not related with "Hizb al-Tahrir" party. Moreover that it [Ukraine] already has such historic experience. For instance, agreements made between Crimean Khan Islam Girey III and Bohdan Khmelnytskyi".

Such a trend in the party activity runs contrary to the Constitution of Ukraine and, given the socio-political spirits in the autonomy, can have a negative effect. Furthermore, representatives of "Hizb al-Tahrir" indirectly admit legitimacy of violence as a means of spread of Islam and establishment of the Islamic rule: "As regards Jihad (*holy war against* "*infidels*" – Ed.), it is a method of spread of Islam all over the world, being a duty of an Islamic state"[199].

Such ideology is often considered extremist even in the countries where "Hizb al-Tahrir" party is not considered tied with terrorism and violence, and not officially banned. Furthermore, that ideology can be adopted by other political or religious groupings, unwilling to content themselves with peaceful methods of spread of Islam and restoration of Caliphate.

Regarding Crimean Tatar national problems, the Crimean adherents of "Hizb al-Tahrir" stress that Islam has always been the core of the Crimean Tatar national identity, and now, it alone, not secular national ideologies, can save Crimean Tatars from assimilation. Spread of the ideology of "Hizb al-Tahrir" and expansion of its structure may complicate its relations with the Spiritual Administration of Muslims of Ukraine and Majlis, destabilise the socio-political situation in the Crimean Tatar community of the autonomy.

In fact, "Hizb al-Tahrir" is a political opponent of Majlis, since it opposes the idea of restoration of the Crimean Tatar autonomy in Crimea, criticises the Declaration of National Self-Determination of the Crimean Tatar People, calling it "another self-deception", and therefore totally discredits the Majlis activity[200].

On March 27, 2008, draft resolution "On Draft Law of Ukraine "On Ban on Activity of Political Party "Hizb al-Tahrir"" was registered at the Verkhovna Rada of the AR of Crimea. The draft was criticised by First Deputy Head of Majlis R.Chubarov who said that it ran contrary to the Constitution and legislation of Ukraine and was intended to publicise its authors[201].

At the same time, R.Chubarov strongly criticised "Hizb al-Tahrir", saying that its activity, "as well as of religious sects, is dangerous for Crimean Tatar society, since it threatens with "distortion of spiritual consciousness of Crimean Tatars", and suggesting that the party was funded from abroad, from Russia. However, he mentioned "Hizb al-Tahrir" on a par with pro-Russian radical groupings, such as "Proryv" and the Eurasian Union of Youth[202]. The latter proves that criticising the mentioned draft resolution of the Verkhovna Rada of the AR of Crimea, R.Chubarov did not defend "Hizb al-Tahrir" but spoke out against a selective approach of Crimean MPs who sought a ban for extremist Crimean Tatar national organisations, leaving no less extremist pro-Russian organisations unattended.

Citizens' attitude to non-governmental institutes

Results of the public opinion poll witnessed differences in the degree of trust of different socio-cultural groups in public organisations and low involvement of representatives of all socio-cultural groups in their activity[203].

Public organisations, including national-cultural associations, enjoy the greatest trust among Crimean Tatars (more than 40%). Representatives of the Slavic community trust them far less (16-18%). Those institutes are least of all trusted by "Crimean Ukrainians" – a bit more than 5%, due to the low influence of Ukrainian organisations on the socio-political situation in the autonomy, and low public activity of the group itself, in particular, in the defence of their national-cultural interests.

The rather strong trust of Crimean Tatars in public organisations stems from the fact that those organisations were created for defence of their interests, and many of them really do that. Meanwhile, nearly a third of Crimean Tatars (mainly those who mistrust them) stays beyond their influence.

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[199] *Ibid*.

[200] Emiruseinov R. National autonomy will not meet hopes of our people. – Portal of Muslims of Crimea, March 19, 2008, *http://qirim-vilayeti.org/content/view/171/97*

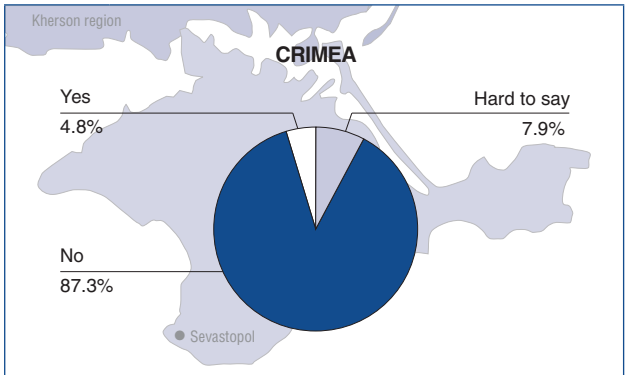
[201] Comments by R.Chubarov on the mentioned draft Resolution of the Verkhovna Rada of the AR of Crimea. – Portal of Muslims of Crimea, April 3, 2008, *http://qirim-vilayeti.org/content/view/189/97*

[202] Majlis believes that Islamic extremists in Crimea are funded by Russia. – OBKOM, *http://obkom.net.ua/news/2008-04-07/1700.shtml*

[203] For summary data of the latest public opinion poll of public perception of non-state institutes see Table "*Specificities of identity of dominant socio-cultural groups of Crimea*", pp.22-28 of this magazine.

The rate of involvement of representatives of all socio-cultural groups in the activity of public organisations is low – 3-6%. This level is insufficient to speak of large-scale activity of public organisations, existence of a stabilising factor of civic activity or, moreover, signs of civil society. However, the reported level is sufficient for beginning of radicalisation of social relations and further escalation of tension.

Are you a member, or do you participate in the activity of a national-cultural community, union, organisation?
% of those polled



	Crimean Tatars	Slavic community	Other	Crimean Ukrainians	Age (Crimea)					Gender (Crimea)	
					18-29	30-39	40-49	50-59	60 and over	Male	Female
Yes	3.8	5.8	3.2	3.1	9.4	4.6	4.4	2.3	2.6	6.3	3.8
No	85.9	85.4	91.2	92.4	82.0	88.0	86.3	88.4	92.1	87.4	89.9
Hard to say	10.3	8.8	5.6	4.5	8.6	7.4	9.3	9.3	5.3	6.3	6.3

Therefore, Slavic and Crimean Tatar public and political associations in Crimea have not just different but often conflicting and even opposite goals that cannot be attained in one political and legal environment.

Those parties compete not only for the Crimean political and economic space but also for symbolic values, more dealing with the national identity, national consciousness, that is why any actions of the opposite side in that space are met especially painfully and aggressively. Rivalry for symbolic values can make inter-ethnic contradictions inter-confessional, lead to their aggravation and involve new parties in the conflict.

Other factors of growth of inter-confessional tension may include superficial interpretation of Islamic ideological trends and unreasonable allegations of existence of cause-effect relations between them and extremist organisations and movements (of Crimean Wahhabites, "Tablighi Jamaat"). As a result, a distorted, frightening image of bearers of those trends is formed in the public consciousness, which may give rise to negative reactions – from fear to aggression – and stir up internal contradictions, growth of the conflict potential in the Muslim community of Crimea and aggravation of tension in inter-confessional and inter-ethnic relations.

Both the Slavic and Crimean Tatar public and political communities have rather serious internal contradictions that, on one hand, undermine the effectiveness of the concerned organisations, on the other – politically disorient citizens making their social basis, creating background for breach of socio-political stability.

Annex 3

CRIMEAN ORGANISATIONS EXERTING THE GREATEST INFLUENCE ON INTER-ETHNIC AND INTER-CONFESSIONAL RELATIONS

Russian public and political associations

Russian Community of Crimea (RCC). Established in 1993 (registered in 1994) on the basis of the Republican Party of Crimea. Enjoys the greatest influence among Russian public and political associations. RCC is led by S.Tsekov

The RCC ideology rests on nostalgia for the USSR, seen as the successor to the Russian Empire; idea of illegality of Crimea's transfer to Ukraine in 1954; rejection of attempts of integration of the Crimea in the Ukrainian socio-cultural space; perception of Russia as their historic Motherland.

The organisation declares two main goals:

- restoration of political, economic, cultural ties of Crimea with the Russian Federation, cut during the break-up of the USSR;
- defence of the Russian socio-cultural space.

At elections to the Verkhovna Rada of the AR of Crimea in 1998, pro-Russian forces, weakened by the crisis of mid-1990s, suffered a defeat, and in 1998-2002, RCC had no representation in the Crimean authorities.

At the 2002 elections, six representatives of the election alliance "Russian Bloc of Crimea" made on the basis of RCC, Congress of Russian Communities of the Crimea (CRCC) and Party "Union" were elected to the Verkhovna Rada of the AR of Crimea, including four RCC members. However, those MPs did not manage to form one faction. Later, confrontation within the Russian Bloc of Crimea resulted in the withdrawal of CRCC and political accusations of RCC leader S.Tsekov (of corruption, uncontrolled use of funds allocated by the Moscow Government to Russian organisations of Crimea for humanitarian purposes) and RCC as a whole (refusal from defence of the interests of Russian residents of Crimea).

In 2003, RCC admitted the Russian Movement of Crimea that greatly contributed to the victory of the "Russia" bloc at elections of the Verkhovna Rada of the AR of Crimea in 1994.

In 2003, RCC supported at elections of the Verkhovna Rada of the AR of Crimea election bloc "For Yanukovych!" (Party of Regions – Party "Russian Bloc") that won 19 seats, and S.Tsekov was elected First Deputy Chairman of the Verkhovna Rada of the AR of Crimea.

People's Front "Sevastopol-Crimea-Russia". The organisation was established on August 24, 2005, by 10 public organisations of Crimea and Sevastopol, including the Russian Popular Assembly of Sevastopol, the Russian Popular Assembly of Simferopol, Sevastopol

and Yalta organisations of the Movement of Voters of Crimea and others. Its coordinator is V.Podyachyi.

The Declaration of establishment of the People's Front stated[1] that "Ukraine, of course, as all states, has the right to sovereignty, independence, but without lands stolen from Russia and millions of Russians compactly living there". It formulated the goal of the newly established organisation: "on the basis of domestic and international law, commonly accepted humanitarian norms, historic facts, as soon as possible, to restore historic justice – reunite Sevastopol, the Crimea with our Motherland – Russia".

That organisation is much more radical than RCC. Its activity is openly separatist; it set the goal of not defence of the socio-cultural space or restoration of Crimea's ties with Russia, but its transfer to Russia. The very Declaration of establishment of the Front was a breach of the Constitution of Ukraine.

National Front "Sevastopol-Crimea-Russia". Established in November 2006 as a coalition of public and political organisations of the AR of Crimea and Sevastopol that united 15 organisations, including CRCC, the Russian Front of Sergey Shuvainikov, the Union of Orthodox Citizens of Crimea, the Russian Community of Simferopol, Bilogirya and Sevastopol, Sevastopol Movement against Illegal Immigration. The alliance was led by S.Shuvainikov.

Goals of the alliance: struggle for recognition of the legal status of the Russian people and Russian nation in the Constitution and laws of Ukraine; an official status for the Russian language; "organisation of a representative body of Russian self-government – Russian Constituent Assembly of Crimea (national congress) and its executive body – Russian Duma of Crimea; restoration of historic justice and recognition of conformity of the status of Sevastopol and Crimea provisionally annexed by the Ukrainian state to international norms and popular will".

It plans gradual secession of Crimea from Ukraine and joining Russia: a new legal status for the Russian national minority within Ukraine's legal framework and creation of national self-government bodies; withdrawal from the legal framework of Ukraine (as a mirror image of the goals and methods of the Crimean Tatar movement).

Youth organisations. In the recent year, youth pro-Russian organisations have been active in Crimea, such as **the Crimean division of the Eurasian Union of Youth** (EUY) – Russian organisation of the chauvinist-imperial trend. The Crimean division of EUY is led by K.Knyryk.

Political goals and tasks of EUY suggest restoration of the Russian empire and separation of the Crimea from Ukraine for its salvation[2].

Youth organisation "**Proryv**" acts under the motto of unification of Crimea with Russia and anti-Ukrainian slogans. Its activity also covers other regions of Ukraine, where it "defends churches of the Moscow Patriarchate", confronts "Ukrainian nationalists", etc.

Cossack organisations of Crimea. There are 18 Cossack organisations registered in Crimea and five legalised by notice. A few more act without official legalisation. The most active were **the Crimean Cossack Union**, **the Association of Cossacks of the AR of Crimea "Krymska Palanka"**, **the Union of Cossacks of Feodosiya Region**, **the International Union of Cossacks of Tavrida**.

Supreme Ataman of the Crimean Cossack Union V.Cherkashyn, denying the militarised and anti-Tatar nature of Crimean Cossacks and stressing that "all actions of Cossacks pursue peace, accord and order in Crimea", also terms defence of the Orthodox church as its priority: "Having come to the peninsula, you will see 30 strong organisations standing in defence of the Ukrainian Orthodox Church of the Moscow Patriarchate"[3].

Crimean Tatar public and political associations

Majlis of the Crimean Tatar People[4]**.** Established at the II Kurultay (national congress) of the Crimean Tatar people in June, 1991. Elected its leader was M.Dzhemilev, who occupies that post till now. Majlis to a large extent controls the political and public life of Crimean Tatars, actually represents them in relations with the central state authorities, has representatives in the Verkhovna Rada of the AR of Crimea, supreme republican executive bodies.

Majlis may be termed as a public and political organisation only with serious reservations. By its functions, it is a plenipotentiary executive body of Crimean Tatar self-government – "the only supreme plenipotentiary representative body of the Crimean Tatar people, elected by Kurultay from among its delegates". It has its executive hierarchy – local Majlises, subordinated to Majlis of the Crimean Tatar People. In turn, Kurultay is the national Crimean Tatar congress, the supreme representative plenipotentiary body of the Crimean Tatar people.

In pursuance of the powers approved on November 10, 2001, Kurultay takes decisions on all material issues of socio-political, socio-economic, cultural and other aspects of life of the Crimean Tatar people. Furthermore, "decisions of Kurultay are binding on its delegates, their bodies and the whole system of national representation and self-government of the Crimean Tatar people: Majlis of the Crimean Tatar people, regional and local Majlises, committees for assistance with return of Crimean Tatars, their branches and bodies, representatives of Majlis in other states".

One of the main goals of Majlis lies in restoration of national and political rights of the Crimean Tatar people and exercise of its right to free national-state self-determination on its national territory. Therefore, the Crimean Tatar people is *a priori* termed as political nation that may seek own statehood. The intermediary political goal of Majlis is to secure "establishment of the status of Crimea in Ukraine by the national-territorial principle on the basis of exercise by the Crimean Tatar people of its inalienable right to self-government and guarantee of observance of rights

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1 For Declaration of establishment of the People's Front "Sevastopol-Crimea-Russia" see: Russian People's Assembly of Sevastopol, *http://sevrus.narod.ru/#v25*

2 Knyryk K.: "To seek creation of an empire, first of all, to tear Crimea from Ukraine, for saving it". See: Khan R. Crimeanjugend: youth political organisations of the peninsula. – Eurasian Union of Youth, *http://www.rossia3.ru*

3 Kravchenko S. Cossack cover. – BOSPOR, January 31, 2008, *http://bospor.com.ua/articles/1089.shtml*

4 For documents on Kurultay and Majlis of the Crimean Tatar people see: web site of the Centre of Information and Documentation of Crimean Tatars, *http://cidct.org.ua*

and freedoms for all people, irrespective of their race, nationality, political views and faith".

Kurultay and Majlis position themselves as Crimean Tatar national self-government bodies whose political goals deal with the whole Crimean Tatar people as the core of the future Crimean political nation.

Organisation of Crimean Tatar National Movement (OCTNM). Established at the Fifth All-Union Conference of representatives of spearhead groups of the Crimean Tatar national movement held on April 29 - May 2, 1989 in the city of Yangiyul (Tashkent region, Uzbek SSR). M.Dzhemilev was elected the first OCTNM head. The first OCTNM congress was held on August 23-25, 1991. In 1991-1994, after M.Dzhemilev was elected Majlis leader, the post of the OCTNM head was entrusted to R.Chubarov. At that time, OCTNM and Majlis had no differences whatsoever.

OCTNM largely shares the Majlis ideology but is more uncompromising. It remains generally loyal to Majlis and its leadership and recognises their powers.

"Adalet" ("Justice") Party. Established on August 19, 1995, at the 1st (constituent) congress. Its programme objectives include: assistance to "soonest return of Crimean Tatars to their historic Motherland", "return to the Crimean Tatar people of all property criminally taken from it in the result of deportation of 1944", "building in Crimea of a national state resting on the exercise by the Crimean Tatar people of its natural right to self-determination". The party firmly stands on the Islamic position and opposes spread of other religious teachings, first of all, Christianity, among Crimean Tatars and conversion of Crimean Tatars to other religions. It advocates "purification" of Crimean Tatar society from alien (non-Islamic) morality, fighting crime and lechery, preservation and development of the Crimean Tatar language and culture.

"Adalet" is associated with the establishment of paramilitary units (so-called *askers*), tasked to defend Crimean Tatars from attacks of criminal groups and pro-Russian, first of all, Cossack, organisations. Meanwhile, Majlis praises participation of "Adalet" in the work of national self-government bodies and considers it one the most important and effective national parties.

Information and civil rights movement "Azatlyk" ("Freedom"). Established in April 2005 to make the authorities free Crimean Tatars involved in the mass fight between Crimean Tatar and Slavic youths in Simferopol bar "Cotton club" and sentenced to different terms of imprisonment. After the goal was achieved, the activity of the organisation went down.

The Movement's conference in 2008 did not support the negative stand of its leadership (N.Bekirov, A.Mustafaev) towards the supreme representative bodies of the Crimean Tatar people, which made those leaders to quit the Movement.

Public organisation "Avdet" ("Return"). Registered in April 2007, has 15 thousand members and 120 divisions. It has two priority lines of activity: enhancement of the well-being and revival of spiritual values of the Crimean Tatar people. The organisation is especially active in the field of provision of repatriates with land (execution of relevant documents, legal support) and takes part in talks with the authorities, defence of activists of "fields of protest" from "arbitrariness of militia and officials".

"Avdet" programme envisages assistance for revival of Islam and Islamic values on the peninsula, in particular: help in construction of a mosque in every populated locality of the Crimea and opening of a madrasah at it; restoration of historic Crimean Tatar place names; promotion and development of genealogical programmes[5].

National Movement of Crimean Tatars (NMCT). Established, according to its representatives, on May 18, 1944 – in the first day of deportation. Before 1993, NMCT was led by Yu.Osmanov whose works, along with those by I.Gasprinskiy, N.Trubetskoy and L.Gumilev, are considered the ideological basis of the movement. NMCT does not recognise Majlis as the plenipotentiary representative body of the Crimean Tatar people.

By contrast to Majlis, NMCT took a pro-Russian stand and shares the idea of reintegration of the post-Soviet space under the auspices of Russia, popular in the Russian political community.

Coordinating Council of Public and Political Forces of the Crimean Tatar People (CC). Established 2002 on the initiative of NMCT as an alternative to Majlis. CC does not recognise the legitimacy of Majlis and local Majlises, accusing it of indulgence towards the Ukrainian authorities, and is trying to discredit its leadership by all means. Its demands on the Ukrainian authorities are more radical than of Majlis. For instance, in the fall of 2002, CC submitted to the Verkhovna Rada of Ukraine for consideration draft Law "On Rehabilitation of the Crimean Tatar People" providing for restoration in Crimea of the Crimean Tatar autonomy and proposed relevant amendments to the Constitution of Ukraine. Now, it has a low profile in the socio-political life of the autonomy.

"Milli Firka" ("People's Party"). Established in 2007. The elected Chairman of its Board (*Kenesh*) is V.Abduraimov who before 2000 led NMCT. "Milli Firka" is in opposition to Majlis, accusing its leadership of usurpation of power in Crimean Tatar representative bodies, corruption and betrayal of the interests of the Crimean Tatar people. It described the World Congress of Crimean Tatars as a "vast international affair"[6].

As well as NMCT, "Milli Firka" is very critical about the Ukrainian authorities, demanding from them full rehabilitation of the Crimean Tatar people. It mainly contacts with the Russian authorities. In September 2008, it transferred via the General Consulate of the Russian Federation in Simferopol an appeal to the Russian President D.Medvedev, Prime Minister V.Putin and President of the Republic of Tatarstan M.Shaimiev with a call "to defend on behalf of the Russian Federation the indigenous and other small ethnoses of the Crimea from endless genocide by the nationalist-minded official authorities of Ukraine"[7]. However, the organisation is not united on this issue.

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5 For more detail see: Information-analytical portal of public organisation "Avdet", *http://awdet.org/way.htm*

6 "Milli Firka" returned the leader who called upon Russia to defend Crimean Tatars from genocide on the part of Ukrainian authorities. – "Novyi Region – Crimea", May 15, 2009, *http://www.nr2.ru/ua/232420*

7 Vovchenko P. "Milli Firka" calls Russian tanks to the Crimea?". – "Sobytiya", September 12, 2008, *http://www.sobytiya.com.ua/index.php?number=136&doc=1221207061*

Islamic organisations and movements

Party "Hizb al-Tahrir" (full name: "Hizb al-Tahrir al-Islam" – "Islamic Liberation Party"). Established in 1953 in Jerusalem by a judge of the Shariah court of appeal Taqiuddin al-Nabhani. Active in 40 countries of the world. The largest party branch operates in Great Britain (up to 10 thousand members). The party is banned in Egypt, Kazakhstan, Russia, Tajikistan. In some countries "Hizb al-Tahrir", not officially banned, is persecuted, and its members are subjected to repressions (Libya, Syria, Uzbekistan). Meanwhile, it is active in such Islamic countries as Yemen, Indonesia, Lebanon, Malaysia, UAE and Palestinian Autonomy. In Europe (except Germany) and the USA, the party also functions legally. It is often criticized for extremist statements of its members, but no connection with terrorism and violence has been revealed.

The declared goal of "Hizb al-Tahrir" is to return Muslims to the Islamic way of life and spread Islam all over the world. That goal is to be attained through restoration of the Caliphate – a theocratic state uniting all Muslims of the world and built on the socio-political principles on which the Caliphate was built at the time of Prophet Muhammed and the first four righteous Caliphs – Abu Bakr, Omar, Osman and Ali. It proclaims purely peaceful methods of restoration of the Caliphate – building of party structures, propaganda and education, winning political support: "Hizb al-Tahrir" is a political party whose ideology is Islam. Its activity focuses on ideological and political struggle without any physical action"[8].

Adherents of "Hizb al-Tahrir" follow a fundamentalist approach to Islam, recognising as righteous only what was sermonised at the time of its early dissemination and rejecting later novelties and local national traits.

Influence of the "Hizb al-Tahrir" ideology is periodically seen in separate communities and spiritual schools. This may be attributed not as much to special propagandist talents of missionaries of that organisation as to the fact that against the background of economic problems, social injustice, moral decay and unemployment hitting youths the most, slogans of equality of Muslims, social justice, purity and decency in personal and public relations, criticism of capitalism find an echo in the hearts of Crimean Tatars, especially of the younger generation.

Wahhabites. By contrast to the ideology and activity of "Hizb al-Tahrir", wahhabism, often mentioned in discussions of the religious situation in Crimea, looks less than certain. It is often either not distinguished from "Hizb al-Tahrir"[9], or described in general terms. The emergence of wahhabism in Crimea is associated either with Arab influence or penetration of Chechen fighters to the peninsula.

Assessments of the activity of Crimean Wahhabites are controversial. Some consider them remote from politics preachers carrying alien for Crimean Tatars religious perceptions and customs, others – a criminal-terrorist grouping[10]. Reports of military camps where armed Wahhabites led by foreign instructors studied the art of subversion and terrorism were not proven with facts.

Wahhabites in Crimea are not numerous, not united in one organisation and display little activity beyond religion.

"Tablighi Jamaat" Movement. Founded in 1927 by Maulana Muhammad Ilyas al-Kandhlawi to disseminate Islam among poor Indian villagers who were nominally considered Muslims but converted by Hindus dominant in that region into their religion. "Tablighi Jamaat" rests on six principles: (1) invitation ("*tabligh*" – invitation, sermon) to Islam is not a task for theologians but a duty of every Muslim; (2) one should not wait while people come to sermon, a preacher should himself go to the people; (3) preachers should themselves care about their financial support; (4) representation of all social strata in the movement; (5) strengthening of the faith of Muslims; (6) main goal – unity of all Muslims; theological and political differences in the movement are prohibited[11].

Data of the Movement are rather controversial: some authors state that it acts "as a recruiter of *shahids* for Muslim terrorist organisations", other describe it as "quite an apolitical Movement for moral perfection through diligent observance of religious canons"[12], and note that "the Movement does not recognise the idea of Jihad as a holy war against infidels. Instead, "Tablighi Jamaat" terms Jihad as efforts aimed at strengthening creed in the hearts of Muslims".

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[8] Who is the true dissident? – Portal of Muslims of Crimea, August 4, 2008, *http://qirim-vilayeti.org/content/view/732/202*

[9] Crimean Tatar Majlis loses influence: Wahhabites and "Hizb al-Tahrir" gain ever greater popularity on the peninsula. – "Yedinoe Otechestvo", *http://www.otechestvo.org.ua/main/20085/2210.htm;* Dorofeev A. Wahhabites are already in Crimea. – Web site *Anti-Orange*, 28 June 2005, *http://www.anti-orange-ua.com.ru/content/view/928/67*

[10] Crimea does not belong to Ukraine. – "Stolichnye Novosti", July 6, 2004, *http://cn.com.ua/N316/resonance/resonanc*

[11] *Ibid*.

[12] Litvinova E. Islamic organisations in Ukraine. – Information-Analytical Centre for Study of Socio-Political Processes in Post-Soviet Space, December 14, 2006, *http://www.ia-centr.ru/archive/public_details5717.html?id=257*

3. CONCLUSIONS AND PROPOSALS

The results of the surveys show that the nature of socio-political, inter-ethnic and inter-confessional relations in the AR of Crimea is largely determined by the specific traits of the emerging identities of its residents.

Such specific traits in the first place originate from the emergence of the Crimean identity, actually in isolation from the formation of a common identity of Ukraine's citizens[1], the existence of two main "socio-cultural centres" of formation of such identity (identities) – the "Russian world", on one hand, and Crimean Tatar traditions, with the important role of affiliation with Islam – on the other.

In such conditions, two identities are actually being formed in Crimea. Common of both, they are spatially localised and claim the whole of Crimea as their territory and living space.

The main difference between them is that the Slavic community, whose identity, resting on the values of the "Russian world", sees Crimea as a part of Russia (formally or informally – as a Russian ethnic autonomy in Ukraine), while the "Crimean Tatar"community views Crimea as a part of Ukraine. At that, the bearers of both identities are not integrated into the Ukrainian socio-cultural space, with for former displaying actually a hostile attitude to it, the latter more disposed to integration, on the condition of preservation of their originality.

Evidently, if the *status quo* persists, the prospects of formation of a common identity of the Crimean residents as an integral part of the pan-Ukrainian identity will look doubtful. A more likely scenario presumes continuation of formation of the two main local identities described above.

In such conditions, the two dominant socio-cultural groups will remain the main actors of socio-political, inter-ethnic and inter-confessional relations – Slavic community, including almost all ethnic Russians living in Crimea and the majority of Crimean Ukrainians, on one hand, and Crimean Tatars – on the other. The performed surveys show that the relations between those groups are tense, and from the viewpoint of potential dynamics, they may be described as pre-conflict.

The main dividing lines between those groups are: in the political domain – unequal possibilities for satisfaction of their needs and interests through the Crimean authorities and self-government bodies; in the socio-economic – unequal access to the Crimean resources (first of all, land, work, housing); in the legal domain – legislative disregard of the specificities of the status of the parties and rights conditioned by that status; in the socio-cultural – evident disparity in the parties' opportunities in the sectors of education and information, and claims of each community to their "roots" in Crimea, i.e., to its symbolic values.

What is especially dangerous is that, *first*, the split goes between the two most numerous communities making the majority of the Crimean population; *second*, in most issues, one community (Crimean Tatar) is discriminated, which strengthens protest spirits in it; *third*, there is no mediator between the parties – the authorities cannot be the one due to the mistrust of both parties, and no other socio-cultural community in Crimea can perform that mission because of insufficient influence, uncertainty of its position, gravitation to Slavic community, etc.

Threatening, from the viewpoint of probability of a direct conflict between the main communities, are negative stereotypes of perception and bias against the other party in both communities (but much more – among Slavs). Those stereotypes are actively instilled by certain political forces, public associations, mass media, being an additional factor of tension. Absence of mutual interest, indifference of communities to each other's problems, lack of inter-group communication, in absence of traditions of life in a multicultural society, make them concentrate on their own problems and see each other only as rivals or even potential enemies.

Tension in relations between the main socio-cultural communities of Crimea may be stirred up by: absence of a thought-over strategy of Crimea's development in central authorities, fundamentals of the state policy in the most critical for the autonomy sectors, situational, sometimes chaotic reaction to developments, and inheritance of approaches of the previous years – abstention from passage of maybe unpopular for some part of the population but necessary decisions, resulting in growing accumulation of problems.

Inability of the central authorities to provide for implementation of the passed decisions concerning the

[1] Not least of all – due the dim image of a common identity of Ukraine's citizens on the national level, and therefore – absence of purposeful actions of the authorities for its formation.

AR of Crimea discredits them in the eyes of Crimean residents and, along with insufficient consideration of the Crimean specificity, adds to estrangement between the capital and the autonomy.

Corruption in the local authorities is the main factor exerting negative influence on the relations between the main socio-cultural communities, which restricts access to the main resources of the peninsula and toughens competition for them among different groups. Tension in relations between the main socio-cultural communities is also stirred up be decisions of the Crimean authorities biased against some group (groups), including justified by formal abidance by the principle of equality.

In such conditions, external influence on the situation can play a destructive role, given the susceptibility of both communities to it. Since much greater resources and tools of influence are available to Russia, seen as a socio-cultural – and largely geopolitical – model for the most numerous socio-cultural community of Crimea, this factor deserves particular attention.

The situation in Crimea in the recent years has been closely monitored by the expert community, many reasonable recommendations have been generated for the state authorities on different levels for solution of urgent problems of the autonomy. However, the degree of their implementation is extremely low – due to the neglect of those recommendations by the authorities for which they were made, their inability to provide for implementation of their own decisions, or for other reasons[2].

Razumkov Centre's experts believe that further conservation of the situation in Crimea is fraught with an acute conflict among representatives of different socio-cultural groups. The state authorities should formulate and implement an integral and reasonable policy in different domains. Presented below are the Centre's proposals as to the lines of activity and practical decisions that can have a positive effect on the situation in Crimea[3].

Priority lines of the state policy that might have a positive effect on the overall situation in the AR of Crimea, socio-economic well-being of citizens and indirectly – on inter-ethnic and inter-confessional relations in the autonomy:

- general improvement of the socio-economic situation in the AR of Crimea, development of the recreational branch, a decrease of the unemployment rate;
- comprehensive solution of existing problems in the land sector;
- fighting corruption in the state authorities, local self-government bodies, courts and law-enforcement bodies;
- implementation of programmes of amenities for repatriates, their full-scale funding at the expense of the central and republican budgets;
- pursuance by the central authorities of a balanced policy in the educational, cultural and information sectors aimed at satisfaction of the needs of different ethnic groups of the autonomy[4].

Priority measures whose implementation could bring immediate positive effect:

- passage of a Law on restoration of rights of persons deported on ethnic grounds;
- soonest completion of development of the registration-cadastre system of land management, inventory of land, delimitation of state and communal land, coordination of plans of urban planning and development of territories;
- formation of a resource-backed state order for social advertising intended to weaken the influence of negative stereotypes of mutual perception by representatives of different socio-cultural groups;
- greater attention of law-enforcement bodies to preventive activities concerning public associations whose activity contributes to the growth of tension in relations among different socio-cultural, ethnic and confessional communities;
- prompt response of the concerned state bodies in line with the effective legislation to the actions of mass media conducive to aggravation of inter-ethnic and inter-confessional tension.

In view of the approaching presidential election campaign, it would be nice if the candidates abstain from speculation on splits existing between the main socio-cultural communities in Crimea.

Measures that should be taken in the short and middle run:

Political-legal sphere

To pass to a system of strategic management of processes in the autonomy.

To amend the Constitution of the AR of Crimea and the effective legislation of Ukraine for removal of contradictions between the Ukrainian and Crimean Constitutions, clearer division of competences and powers of the central authorities and Crimean authorities. For generation of coordinated proposals, to establish a special commission involving MPs of Ukraine and of the AR of Crimea, representatives of the central and Crimean authorities, experts.

To expand possibilities for bringing to the attention of the central authorities of Ukraine and consideration at passage of decisions concerning the AR of Crimea the opinion of the authorities of the autonomy. With that purpose:

- given the special status of the Crimean autonomy, to consider giving the Verkhovna Rada of Crimea the legislative initiative in the Verkhovna Rada

[2] For instance, many of the current problems of Crimea are caused by the factors noted by Razumkov Centre yet in 2001, for the solution of which it put forward its recommendations. However, most of those recommendations were not implemented and remain on the agenda. See: The Crimea on the Political Map of Ukraine. Razumkov Centre Analytical Report. – "National Security & Defence", No. 4, 2001, pp. 35-39.

[3] Since the state authorities passed many regulatory acts dealing with different sectors of life in Crimea, the emphasis is on the general lines of the state policy, presuming that the decisions passed must be implemented, without their duplication. Detailed down to the level of specific measures are only the proposals not yet reflected in the relevant state documents.

[4] In the foreign policy domain, positive influence on the situation in Crimea can be made by normalisation of Ukraine-Russia relations, but this issue requires separate examination.

of Ukraine on issues referred by the Constitution of Ukraine to the competence of the AR of Crimea;

- activate the National Council for Interaction of the State Authorities and Local Self-Government Bodies under the President of Ukraine;
- step up activity on all levels and enhance the effectiveness of consultative-advisory bodies including representatives of the Crimean Tatar people;
- provide for stable and effective operation of the Permanent Representation of the President of Ukraine in the AR of Crimea (increasing, if necessary, its staff, funding, etc.);
- expand powers of the Representative of the AR of Crimea in Kyiv, to empower him to attend and speak at sessions of the Verkhovna Rada of Ukraine, meetings of the Cabinet of Ministers of Ukraine, Ukraine's NSDC at consideration of issues concerning the AR of Crimea;
- perfection of Ukraine's election system, to take into account the need of wider representation of regions, including the AR of Crimea, in the Verkhovna Rada of Ukraine;
- introduce the practice of consultations of the central authorities at preparation of decisions concerning the AR of Crimea with republican authorities of the relevant specialisation, representatives of Crimean academic and expert organisations;
- arrange in the Verkhovna Rada of Ukraine parliamentary hearings to consider the state of socio-political, inter-ethnic and inter-confessional relations in the AR of Crimea, analyse the progress of implementation of decisions of previous parliamentary hearings devoted to Crimean problems.

For regimentation of the legal status of indigenous peoples and their institutes, assistance with solution of problems of repatriates, as part of formulation of a single ethno-national and regional state policy, to work out and pass the Law on indigenous peoples of Ukraine, ensuring its conformity with international legal documents on the status of indigenous peoples and providing for regimentation of the status of institutes of ethnic self-government.

To provide for utmost de-politicisation of development of those laws, publicity and transparency, a qualified, expert approach to the content of the documents.

For better consideration of the interests of all ethnic communities of Crimea by the republican authorities and self-government bodies:

- amend the legislation on election of the Verkhovna Rada of the AR of Crimea and local self-government bodies, providing for cancellation of proportional elections by closed lists and modification of the election system for greater influence of voters on personal membership of the corps of MPs;
- provide for nomination of candidates at elections of the Verkhovna Rada of the AR of Crimea from public associations created on ethnic grounds;
- at passage of the new wording of the Law of Ukraine "On All-Ukrainian and Local Referendums", to provide mechanisms enabling ethnic minorities to initiate referendums on issues concerning them;
- study the possibility of employment of foreign experience of representation of ethnic communities in state authorities and self-government bodies.

Socio-economic sphere

To work out and approve the Strategy of Socio-Economic Development of the AR of Crimea as an integral long-term document. The document should be consistent with the national strategy of development of Ukraine and documents laying down fundamentals of the state policy in the sectors especially critical for the AR of Crimea: ethno-national, language, information, church and religious.

Till the passage of the Strategy, to provide for full-scale funding of the State Programme of Socio-Economic Development of the AR of Crimea through 2017 and implementation of measures envisaged thereby.

To review state programmes in different domains dealing with the AR of Crimea, for their mutual coordination. To ensure full-scale funding of programmes of settlement and amenities for repatriates from the state and republican budgets.

Socio-cultural sphere

For implementation of an integral approach to solution of problems in the field of inter-ethnic and inter-confessional relations, language and information policy, creation of a conceptual basis for development of the legislation in the relevant sectors, including for solution of problems existing in the AR of Crimea, to pass the following legislative acts:

- the Law on the Fundamentals of the Ethno-National Policy in Ukraine;
- the Law on the Concept of State-Confessional Relations in Ukraine[5];
- the Law on the Concept of the State Language Policy and a New Wording of the Law on Languages in Ukraine;
- the Law on the Concept of the Information Policy of Ukraine.

For study of the issue of preservation and restoration of the historic and cultural heritage of peoples of Crimea, to create a commission at the Council of Ministers of the AR of Crimea, including representatives of ethnic communities of Crimea, the authorities, local self-government bodies, scholars, experts.

Implementation of the above proposals would contribute to the solution of the most urgent problems giving rise to conflicts among representatives of the main socio-cultural communities of Crimea, mitigate tension in their relations, create favourable conditions for maintenance of a dialog. ■

[5] For the relevant bill developed within the framework of the permanent Round-table "Religion and power in Ukraine: problems of relations" under the supervision of Razumkov Centre and supported by the All-Ukrainian Council of Churches and Religious Organisations see: "National Security & Defence", No. 8, 2007, pp.2-9.

CRIMEAN PROJECT OF THE RUSSIAN FEDERATION: AN ATTEMPT OF POLICY RECONSTRUCTION ON THE BASIS OF *AD HOC* DECISIONS

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Crimea is a special region of Ukraine. Specific of the political process on the peninsula is the interconnection of common Ukrainian factors, a number of purely Crimean variables and the Russian influence. **Purely Crimean is combination, sometimes – confrontation of three nationalisms:** Ukrainian, Russian and Crimean Tatar.

Crimean peninsula is the only region where **ethnic Russians make a small but absolute majority** (up to 60%). Another important factor is produced by the presence in Crimea of a **politically organised (through the Majlis system) ethnic community** – Crimean Tatar people (up to 270 thousand persons), traditionally professing Islam in its Sunni version.

The situation on the peninsula is **seriously complicated by the weakness, sometimes – corruption of the state authorities, lack of consistency in their actions, low executive discipline and resultant non-implementation of state decisions,** including of Ukraine's National Security and Defence Council, decrees of Ukraine's President. All this goes together with the continuing **redistribution of property, first of all, local land resources**, whose value, according to independent estimates, hits tens of billions of dollars. In fact, those issues in many instances determine the level of political tension in Crimea.

Political developments are also influenced from abroad, first of all – from Russia. However, the **Russian factor**, understood as activity of governmental, non-governmental and business structures of the Russian Federation in issues dealing with Crimea, **is not decisive** for the socio-political processes on the peninsula, exerting adjusting influence, rather serious though.

This article is intended to identify the key features of the Russian factor in Crimean political process, or, rather, the specificities, priority goals and lines of the Russian external influence. Noteworthy, the notion of the Russian factor is wider, as its components may also include the demonstrative effect of revival of Russia's might, attractiveness of the Russian high culture, numerous personal, including family, ties, etc. By contrast, influence is understood here as the totality of conscious and sometimes unconscious actions of the Russian side pushing its interests[1].

Overall context

First, a number of introductory comments. The modern **Russian state** is the direct legal ideological and institutional **heir to the USSR**. This primarily refers to the pursuance of **foreign policy and security functions of the state**, i.e., structures of the **Ministry of Foreign Affairs, Armed Forces and special services** (Federal Security Service, Foreign Intelligence Service and Main Intelligence Department of Russia's Armed Forces). At that, continuity is realised and sometimes even emphasised, even officially.

[1] There is a number of Ukrainian and foreign surveys on allied issues. Among them, one should mention collective monographs, e.g.: by Bohomolov O., Semivolos I., Danylov S. Islam and identity policy in Crimea: from symbolic wars to admission of cultural variety. – Kyiv, 2009; Tyshchenko Yu., Khalilov R., Kapustin M. Socio-political processes in the AR of Crimea. Basic trends. – Kyiv, 2008; the work by Maigre M. Crimea – The Achilles Heel of Ukraine. – Tallinn, ICDS, November 2008; as well as the Razumkov Centre studies.

This article uses some ideas from the mentioned materials.

Specific of such continuity of the state is **conservation of the institutional memory**, *inter alia*, mechanisms of decision-making, including strategic[2]. This in no way means invariability of policy goals and means, rather – kind of kinship and continuity of the ways of thinking, world outlook and style of decision-making. The present Russian leadership may hardly be termed as the continuer of Stalin's course, but the historic heritage continues to hang over the masters of the Kremlin and Presidential Administration.

That is why it makes sense to refer to historic precedents of the Russian (Soviet) policy towards "temporarily lost territories". An interesting example is presented by Stalin's Baltic policy, perfectly analysed in E.Zubkova's monograph "*The Baltics and the Kremlin*"[3]. According to her conclusions, in late 1930s, J.Stalin was only aware of the strategic goal of his policy – establishment of full control over Lithuania, Latvia and Estonia. According to archives, there was no detailed plan of political, economic, military and other steps or even an approved strategy. Everything was done on-the-run, **decisions were made *ad hoc*, dependent on the situation**. At that, **every following step was prompted by the opponent's weakness**: where the Soviet policy met serious resistance, other ways and mechanisms were to be found.

Now, too, it may be assumed with a high probability that **the Kremlin has no distinct, clearly formulated programme of action with respect to Crimea and whole Ukraine**. Decided (although maybe not quite consciously) are only the key tasks, lines and applied toolset, while tactical and operational decisions are made dependent on the situation. This, however, does not rule out the existence of **a far-going goal and a target-minded policy, especially retrospective.**

This conclusion is proven with manifestations of the Russian foreign policy. *First*, K.Zatulin tried to outline the Ukrainian strategy of the Russian Federation[4]. Of course, a member of the Russian State Duma is not an official person, but his statements reflect the stand of quite influential Russian circles. K.Zatulin puts forward an ultimatum where preservation of territorial integrity of Ukraine is conditioned by its transition to "special relations"[5] with the Russian Federation, in fact – the Russian protectorate over a weak Ukraine[6]. It is not an eventual plan of action but a set of strategic goals and tasks, lines and priorities. The specific current actions of Moscow (as seen by the circles represented by K.Zatulin) will depend on the developments, first of all – Ukraine's reaction.

Second, Russia's public and elites in their mass **see Crimea as an accidentally, unfairly lost territory**, "our land", temporarily held by another state, in this case – Ukraine, due to Khrushchev's whim[7]. Many Russians view (maybe not always consciously) restoration of control over Crimea as a strategic task of the foreign policy. So, the peninsula plays a key role in the Russian policy.

Third, the present-day Russian ruling circles, as always and everywhere, **have a "party of war" ("hawks") and a "party of peace" ("doves")**. **Reluctance of the Ukrainian side to work with Russia**, lack of effectiveness and target-mindedness of the state policy, sometimes apparent lack of professionalism, childish emotionality, no matter under what patriotic slogans they are disguised, **contribute to strengthening of the "party of war"**. Meanwhile, many problems in bilateral relations ensue from ill communication, weakness and ineffectiveness of the mechanisms of dialogue and coordination of positions.

Fourth, **officially, including on the top level, the Russian Federation more than once stressed its unconditional adherence to signed agreements and deep respect for current, legally agreed borders of Ukraine, including Crimean peninsula**. Meanwhile, the Concept of the Foreign Policy of the Russian Federation and the Strategy of National Security of the Russian Federation clearly formulate the Russian interests in Ukraine in general and Crimea in particular. First of all, they include **barring of Ukraine's accession to NATO**, "defence of interests of the Russian-speaking population", etc., that is, maintenance of Ukraine in the sphere of influence, "privileged interests" of Russia. Presented below is an attempt to reconstruct the actions of influential Russian political and economic groups, employing both state and non-state tools.

What is being done, and how

The analysis of developments makes it possible to single out the following main objectives of the policy of influential Russian circles regarding Crimea at the current stage.

1. Testing technologies of socio-political destabilisation. At that, the peninsula is seen as kind of a testing range for new approaches and technologies.

2. Making Crimea an effective tool of influence on Kyiv's political and economic course by means of inspiration of controlled, in a way even fake, socio-political instability in the region.

3. Assumption of **control over the peninsula's economy**, its consistent reorientation on Russia.

4. Extension of deployment of the Russian Black Sea Fleet in Sevastopol and Crimea after 2017. At that, the Fleet itself provides one of the mightiest tools of the Russian influence on the situation on the peninsula.

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2 Tilly Ch. Coercion, capital, and European states: 1990-1992. – Moscow, 2009.

3 Zubkova E. The Baltics and the Kremlin: 1940-1953. – Moscow, 2008.

4 Zatulin K. Russia's strategy in Russian-Ukrainian relations. – Presentation at the conference "Russian-speaking Ukraine: opportunities and problems of consolidation", April 27, 2009, – *www.materik.ru*

5 The neutral status of Ukraine, its federalisation, an official status for the Russian language, preservation of the standing of the Moscow Patriarchy.

6 K.Zatulin states the Russian Federation policy objectives that may be reworded as: weakening of Ukraine's state machinery; consolidation of pro-Russian political forces with simultaneous marginalisation of pro-Western ones; curtailment of cooperation with NATO countries, first of all – the USA, especially in the security sector; adaptation of Ukraine's socio-cultural and economic sectors to the Russian standards, free access for the Russian capital, special status of the Crimea and Sevastopol as actually Russian-controlled territories, etc.

7 On May 11, 2009, *Google* web search facility in response to the inquiry "*Ukraine Russia transfer*" produced 21 thousand results, to "*Ukraine Russia unlawful transfer*" – 160 thousand results. The inquiry "*Crimea Russia*" produced 7,970 thousand, or almost 8 million entries, "*Crimea Russia return*" – 1,020 thousand.

To attain those objectives, activity is underway along the following main lines: gaining ground in the establishment and economy (buy-up of property); information-propagandist and cultural-educational steps; support for pro-Russian socio-political movements. Actions in those domains promote creation and consolidation of appropriate tools of influence.

Establishment. Advancement of the Russian hand in Crimean establishment is facilitated by its special status. Yet in the Soviet times, representatives of Crimean elites maintained direct ties with Moscow beyond Kyiv and had a privileged standing, thanks to the unofficial status of the South Coast of Crimea and, first of all, Yalta as the summer capital of the USSR, where actually all leadership of the Soviet Union and socialist states spent their vacations. Some ties and even embedment in the Russian social networks have persisted.

Economy. Over the years of independence, the presence of the Russian business on Crimean peninsula, especially the South Coast, was steadily growing – not only in the industry, recreational sector, other real estate, but, much more importantly, also in the land resources.

On one hand, the Russian economic presence on the peninsula surely presents a stabilising factor complicating resort to forcible means. On the other, defence of economic interests gives another pretext for foreign influence.

Information-propagandist and cultural-educational activity. Presently, out of some 1,500 media registered in Crimea, over 98% of newspapers, magazines and radio stations use Russian language. The autonomy sells up to 150 Russian printed periodicals, while Russian programmes proper account for up to 40% of its air. All this offers comfortable conditions for the Russian information and propagandist activities.

The relevant infrastructure has been set up and operates on the peninsula. There is a Russian Cultural and Information Centre. The Russian Black Sea Fleet publishes public affairs newspaper "Flag Rodiny", a TV centre of the Black Sea Fleet is active, and its programmes are widely broadcast by local TV and radio companies.

Among local publications active in the tideway of Russian nationalism and actually involved in pro-Russian propaganda campaigns, one should primarily mention "Krymskaya Pravda", followed by "Krymskoye Vremya" and "Russkiy Krym".

Currently, the main subjects of the Russian propaganda include: instigation of anti-Western, first of all – anti-US and anti-NATO spirits, fomentation of xenophobia, mainly in the form of so-called "Tatar, Muslim threat", inspiration of separatist and autonomist views among the Russian-speaking population of the peninsula, etc.

Pro-Russian media provide forum for numerous Russian figures: political scientists, philosophers, preachers, propagating appropriate ideological messages. Up until recently, the Russian information and propaganda activities have included repeated visits by such figures as Moscow's Mayor Yu.Luzhkov, members of the Russian State Duma V.Zhirinovsky, K.Zatulin, S.Baburin, S.Markov.

In other words, the media policy aims at conservation and instigation of Russian nationalist views, and therefore, the associated public movement on the peninsula and attempts of indirect control of its activity. Specific of it are its, so to speak, reactive character, defensive drive, pessimistic, sometimes even catastrophic world outlook.

The real danger stems not from pro-Russian propaganda but from the weakness, sometimes – absence of a pro-Ukrainian, pro-European alternative. The actual monopoly of ideas of the Russian nationalism in the Russian-language Crimean media gives rise to unfavourable trends in political developments on the peninsula.

Russian structures remain active in the **cultural and educational sector**. There are up to 10 branches of Russian higher educational establishments, including the Black Sea branch of the Moscow State University. The Russian influence in the sector is facilitated by obvious reasons. The school statistics is demonstrative: according to the official data of the Ministry of Education and Science of Crimea, 12,860 pupils (7.2%) are taught in the Ukrainian language in Ukrainian schools and Ukrainian classes of other schools (largely fictitious), 159,568 (89.6%) – in the Russian language.

Controlled and ideologically kindred socio-political movements and non-governmental organisations present both an important tool and a domain of the Russian influence. What is meant here is the establishment and activity of structures institutionally supporting formulation, development and public representation of pro-Russian views (in fact, the Russian nationalism, mainly in its post-Soviet version) on the territory of Ukraine, including Crimea.

The best known such structures include the "Russian Bloc", the Russian Community of Crimea, People's Front "Sevastopol-Crimea-Russia", revived "Proryv" (Breakthrough), the Eurasian Union of Youth (now active mainly in the Internet) and others. One should also mention the "Kyiv Rus" party, set to be joined by the "Proryv". Although those structures are generally rather small and enjoy less support on the peninsula, compared to early 1990s, they rather effectively perform their function of public representation of the pro-Russian position and crystallisation (aggregation) of the Russian nationalism.

Radical organisations do not exist in vacuum. They are closely tied with more respectable political forces, often acting as kind of a lightning rod. And while Crimean republican organisations of CPU and especially PSPU themselves do not try to avoid harsh statements, for Crimean organisation of the Party of Regions, its allies from the "Russian Bloc" quite often serve, consciously or unconsciously, as rather a useful tool.

The Ukrainian state is taking necessary counter measures. In particular, in January 2009, Ukraine's Security Service filed to court a criminal case of anti-state activity of the People's Front "Sevastopol-Crimea-Russia". Also through court, the Security Service stopped the activity of Crimean branch of the Eurasian Union of Youth.

One should also mention various Cossack formations that can well support some political events by means of force. The range of those quasi-military structures is rather wide: from allegedly Ukrainian-minded to members of the Union of Cossack Troops of Russia and the CIS.

Recently, new attempts have been made to set up pro-Russian organisations in Crimean Tatar community. Termed as such may be "Milli Firka" led by V.Abduraimov.

There are also attempts to attain Russian interests via **religious organisations**, first of all, structures close to the Ukrainian Orthodox Church of the Moscow Patriarchy. Although the leaders of the whole Church and its Simferopol eparchy have taken a considerate stand, some church and mainly quasi-church figures are trying to use the ambo for purely worldly purposes, including promotion of the ideas of the "Russian world", or even undisguised service to the current political interests of Moscow.

The Russian Black Sea Fleet is the key tool of the Russian policy in Crimea and the whole of Ukraine. The very presence of a Russian military task force on Crimean soil strongly promotes the Russian interests. What is meant here is the known effect of "demonstration of ensign". The Fleet possesses appropriate intelligence and special propaganda units, pursues an active memorial and, as we noted above, information policy. Under certain conditions, the purely military, power component can prove no less important.

The issue of the degree of consistency and target-mindedness of the listed tools largely remains open. To be sure, attempts are being made to coordinate their activity, now more successful than before. The present state of the Russian society and the state presents the main limiting factor here.

What should Ukraine do?

Speaking of reasonable **priority measures of the Ukrainian state at neutralisation of negative consequences of the Russian influence**, one should stress the need to move from reaction to problems to pursuance of a target-minded state policy in all domains. At that, emphasis should be made not on restrictive and punitive but on encouraging and educational measures.

The **organisational and administrative potential** of the Ukrainian state in the autonomy should be enhanced. This primarily means fuller employment of the opportunities provided by the effective legislation, in particular, to the Representative of the President of Ukraine in the AR of Crimea.

One should consider **greater integration of Crimean economy into the Ukrainian**, first of all, in production chains. It is high time to think and act for solution of socio-economic issues that will rise after the withdrawal of the Russian Black Sea Fleet, subsequent **demilitarisation of Sevastopol**, the need of moving that potentially very promising commercial city to another trajectory of economic development.

A quality Russian-language but Ukrainian-minded newspaper, radio station and TV studio are badly needed. The network of Ukrainian educational establishments should be expanded, creating new rather than converting the Russian ones. One should finally decide the issue of setting up branches of the leading Ukrainian higher educational establishments in Crimea and Sevastopol, including the Kyiv National University, the National University of "Kyiv-Mohyla Academy", and others.

More opportunities should be created for **integration of Crimean youths of all nationalities in the pan-Ukrainian space**, in particular, by admission to the leading Ukrainian universities in Kyiv, Lviv, Odesa, Dnipropetrovsk, Donetsk.

Modern Russian cultural initiatives should be encouraged, **to form a Russian-speaking community in Crimea looking at Kyiv, not Moscow**; at Europe, not present Russia.

There should be a programme of **support for civil society institutes** on the peninsula, wider employment of the potential of Ukrainian non-governmental organisations for solution of Crimean problems, first of all, in the educational, information, cultural and other sectors, information-analytical support for the state policy.

To improve **the practice of movement/rotation of state officials across different regions of Ukraine**, giving Crimeans an opportunity to work in other regions of the country.

One should **develop a system of prevention and settlement of conflicts** on property (first of all, land), ethnic, religious grounds; introduce mechanisms of mediation between parties to potential and actual conflicts.

One should ensure **steadfast observance of the effective legislation**, including on information; provide for inevitability of lawful punishment imposed by the court for instigation of ethnic, racial, religious enmity, other illicit actions.

There are other domains for the activity of Ukrainian governmental and non-governmental structures as well. The main of them are counterintelligence and other special measures, effective enforcement of the current legislation of Ukraine on citizenship and passport procedures, etc.

To sum up, we once again stress that the nature and general outlook of socio-political processes in Crimea and Ukraine as a whole are mainly shaped by internal factors. By and large, the Russian, as well as any other foreign influence, is only secondary. External forces do not determine public processes but use available opportunities, first of all, let by the Ukrainian authorities. In principle, the effectiveness of foreign influence is limited by the Ukrainian society and Ukrainian state. So, most problems are of the domestic origin and therefore can be solved only in Ukraine and only by Ukraine. ■

CONFLICT ASPECTS OF POLITICAL COMMUNICATION IN CRIMEA: INTER-ETHNIC CONTEXT

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The general ethno-political situation in Crimea is shaped by the tangled contacts among the three biggest ethnic groups – Crimean Tatars, Russians and Ukrainians, and the problems arising in course of inter-ethnic, inter-cultural communication in the social, economic, socio-cultural, political spheres.

Problems in inter-ethnic contacts are also witnessed by data of public opinion polls. For instance, when asked "*May Crimea be called a conflict region?*", 51% of Crimeans gave a positive answer, and only a third disagreed with that statement[1]. Those who see Crimea as a possible hotbed of conflicts see their roots in: contradictions between the Ukrainian authorities and the population; contentiousness in the triangle of Crimean Tatars – other population – Ukrainian authorities; Kyiv's nationalist policy, "arbitrariness of Majlis" and absence of effective authorities; land conflicts; non-democracy and "violence" by Kyiv's authorities, mainly in the humanitarian life of Crimeans; inter-ethnic conflicts between Tatars and Slavs, growth of Islamic extremism. Among potential reasons for conflicts, a number of geopolitical factors were mentioned: "interests of many states meet in Crimea". Some of the polled harshly spoke about the Ukrainian state – "occupation of Crimea by Ukraine"[2].

Problems of inter-ethnic contacts

Specific of inter-ethnic contacts in the region is a number of problem factors in social, cultural, political communication between Crimean Tatars, on one hand, and Ukrainians and Russians ("Slavs") – on the other. Those problems lie in different ideas of the ways of solution of issues of local development, distribution of resources in the autonomy, socio-cultural changes, different foreign political orientations. By and large, problems arise in the following sectors:

- *socio-cultural* (revival of historic memory through restoration of Crimean place names, revision of the Soviet history, development of cultures of ethnic groups);
- *state governance* (coordination of relations of central and regional authorities at formulation and implementation of the state policy towards Crimea, activity of local authorities that may be guided by ethnic stereotypes in decision-making with regard to the public life);
- *socio-economic* (unemployment and its ethnic dimension, distribution of resources, especially land, in the autonomy);
- *language* (possibility of education in the native language for ethnic groups (Crimean Tatars, Ukrainians), support for the Ukrainian language on the peninsula, solution of the problem of domination of the Russian language in the political and public life, media space).

Inter-ethnic relations in Crimea are being shaped against the background of solution of problems of integration of Crimean Tatars in Ukrainian society, traditionally divided into:

- *political and legal* (legal non-rehabilitation of the Crimean Tatar people, definition of the status of the Crimean Tatar people, recognition of Crimean Tatars as an indigenous people of Ukraine, legalisation of Crimean Tatar representative bodies (Kurultay, Majlis), representation in the authorities, first of all – of the AR of Crimea, and law-enforcement bodies);

[1] Sociological survey held by *SOCIUM* Centre of Sociological and Marketing Studies on September 11-23, 2008, as part of a project to study the problems of economic, political and civil identification of the population in different regions of the CIS for study of the public opinion of the Crimean residents on the most urgent problems of current socio-political life.

The survey was held by quota sampling representative of the adult population of Crimea by the key socio-demographic indicators (age, gender, nationality). 1,478 respondents were polled.

[2] The question about the conflict potential was open-ended. Data were obtained soon after the military conflict in the Caucasus, which might influence respondent opinions. – Web site of *SOCIUM* Centre of Sociological and Marketing Studies, *www.socium.info*.

- *socio-economic* (inadequate provision of repatriates with land plots, high unemployment rate, poor infrastructure in places of compact residence);
- *language and cultural* (opening schools with the Crimean Tatar language of study, restoration of Crimean Tatar place names, provisions for use of the Crimean Tatar language in Crimea, return of cultural values, restoration of "holy places" – old mosques, azizas, and so on).

In the ethno-political sector, the main indicators of tension in the process of inter-ethnic communication and contacts between Crimean Tatars and the Slavic majority are: poor socio-economic standing of ethnic groups; perceptions and ideas of the socio-economic, politico-legal and cultural-language status of own ethnic group, compared to the perception of the status of other ethnic groups; dissatisfaction with the representation of own ethnic group in different branches of power[3].

Interesting are the results of a survey of mutual perception and potential factors of conflict in inter-ethnic relations conducted in Crimea yet in 2003 among ethnic Russians, Ukrainians and Crimean Tatars[4]. In particular, serious differences were observed in the perception of unemployment by the Slavic and Crimean Tatar population. In Bilogirsk district, equal difficulties in employment for all ethnic groups were admitted by 33.3% of Crimean Tatars, in Krasnogvardiyskiy – 23.1%. 87% of Crimean Tatars in Bilogirsk and 84.6% – in Krasnogvardiyskiy districts noted serious problems looking for a job. This cannot be interpreted only as a result of perception of own socio-economic status as very low, compared to other ethnic groups. Both Russians and Ukrainians called the difficulties faced by Crimean Tatars in that issue more serious than their own. However, opinions about the employment of Crimean Tatars were sometimes fundamentally different. On one hand, they reported that it was difficult for Crimean Tatars to find a job. On the other – it was noted that getting a job depended on professional qualities, not on ethnic affiliation. Meanwhile, Russians and Ukrainians paradoxically reported a higher standard of life among Crimean Tatars, compared to Slavs. Such inconsistency in perception of the status and difficulties of Crimean Tatars, on one hand, and simultaneous description of that ethnic group as more successful in survival – on the other reflects negative stereotypes of the outgroup: "they are cunning", "they get out", and, in general, "they are dangerous". However, perceptions of other communities by Crimean Tatars may also be termed inadequate, to a smaller extent though. For instance, Crimean Tatars more than Slavs tend to describe the standard of life of their ethnos as low, while terming the standard of life of Slavs "above average" and "high"[5].

Problems of integration of Crimean Tatars

Settlement. In connection with mass unorganised return of Crimean Tatars and entirely insufficient financial, material and technological backing of their settlement and amenities, the bulk of repatriates till mid-1990s settled in the submountane part of the peninsula, namely in Bahchysarayskiy, Bilogirskiy, Kirovskiy, Dzhankoyskiy, Krasnogvardiyskiy and Simferopolskiy districts. **Places of compact settlement of Crimean Tatars mainly lie far from developed areas** hosting enterprises, educational, healthcare, cultural establishments, local self-government bodies. The situation is aggravated by poor provision with communication means, which greatly radicalises their spirits.

Legislation. The problem of legislative support for the process of return and amenities for repatriates and their rights under the national and international law remains pressing. The effectiveness of practical measures taken for solution of socio-economic and humanitarian problems is undermined by the absence of a definite regulatory-legal framework[6]. Representative bodies of Crimean Tatars (Kurultay, Majlis) are still not officialised, politically and legally. This gives their political opponents grounds to publicly present the national movement of Crimean Tatars as "national radicalism", a "fascist" movement, allegedly seeking to "cut its [Crimea's] ties with Russia and the Russian culture, uniting Crimean society in a comprehensive whole, forcibly tear it out of the East Slavic world"[7]. **Such rhetoric, reflecting and shaping specific spirits of the Crimean residents, leads to aggravation of the socio-political situation and kind of segregation of that region from Ukraine, conserves ideological clichés formed in the Soviet times**.

Land. The issue of allotment of land plots to Crimean Tatars for individual construction and business activity in the South coast of Crimea remains hot. The situation is aggravated by the sharp growth of internal migration (from Chornomorske, Rozdolne, Dzhankoy and other steppe districts to the Crimean coast). This is proven with squatting and other actions of protest in Sudak, Morske, Vesele, Simeyiz, Yalta, Alushta and other populated localities. Due to ethnic bias (and possible involvement in corrupt schemes), local authorities are reluctant to allot land to Crimean Tatars, especially in the southern regions of Crimea.

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3 Chornyi Ye. Conflict potential of inter-ethnic relations. – Web site of Ukrainian Centre of Political Management, *http://www.politik.org.ua/vid/magcontent.php3?m=6&n=21&c=195*

4 *Ibid*. Selected as the base for the pilot stage of the survey were Bilogirskiy and Krasnogvardiyskiy districts, with 150 persons polled in each district; proceeding from the figure, specifications of the sample by gender, age, ethnic affiliation, place of residence were determined.

5 Chornyi Ye. Conflict potential of inter-ethnic relations. – Web site of Ukrainian Centre of Political Management, *http://www.politik.org.ua/vid/magcontent.php3?m=6&n=21&c=195*

6 The fate of the Law "On Restoration of Rights of Persons Deported on Ethnic Grounds" is demonstrative in this respect. The Verkhovna Rada in 2004 passed that Law in the first reading but refused to approve it in the second. After the President of Ukraine proposal to speed up the process, the Law was passed on June 24, 2004. However, the President returned it for amendment, suggesting that MPs settle discrepancies of some provisions in the Law with norms of the Ukrainian Constitution. As a result, the basic document regimenting most aspects of repatriation is still absent.

7 See: Hrach L. Anniversary of Crimean referendum. – Web site "Leonid Hrach – leader of Crimean communists", January 15, 2008, *http://www.grach.crimea.com/content/view/401/4/*

Noteworthy, conflicts or inter-ethnic tension are prompted by the problem of distribution of resources and provision of Crimean Tatars with land. In 2006-2007 the Crimea saw the second (since early 1990s) tide of seizure of land plots. It was the Crimean Tatar response to the activity of the Crimean authorities that often allotted large land areas to non-transparent structures and phony companies.

For instance, in November 2007, there was a conflict concerning a land plot in Balaklavska St. (Simferopol) between Crimean Tatars who got that land plot and a private firm that claimed it. The conflict situation is unresolved even now.

Another conflict occurred on Ai-Petri Plateau, where Crimean Tatar entrepreneurs erected their stalls (November 2007). Militiamen guided by a court ruling of demolition of one structure erected on the plateau without permission pulled down almost all structures there. On November 6, the plateau was attacked by nearly 950 policemen, against some 40 Crimean Tatars who tried to defend the structures, in the result, several Crimean Tatars were taken to hospital.

A time bomb under the land problem in Crimea was laid in the legislation. In particular, on September 12, 2006, the Verkhovna Rada of Ukraine basically passed the Law "On Amendment of the Criminal and Criminal Procedure Codes of Ukraine concerning Responsibility for Unauthorised Seizure of a Land Plot"[8]. The bill envisaged criminal responsibility for squatting and more effective protection of legitimate rights of land plot owners and land users. Majlis leaders strongly opposed passage of that law, arguing that it might be applied selectively: bypassing businessmen and officials who illegally got big land plots in Crimea, it would be used against ordinary people who cannot legitimately obtain land for housing construction. Crimea still does not have a single land cadastre, despite numerous directives and Decrees of Ukraine's President. The situation may be attributed to the fact that **today, both local and central authorities are not interested in an orderly and transparent system of land relations, since this would reduce opportunities for uncontrolled distribution of land and bar corrupt schemes**.

Representation. The problem of representation of Crimean Tatars in the authorities remains pressing. The Majlis leadership insists on adequate employment of Crimean Tatar specialists, in particular, in republican and local executive bodies, arguing that their current number is not only inconsistent with the share of Crimean Tatars in the population but expressly witnesses discrimination on ethnic grounds[9].

Politicisation of problems of inter-ethnic contacts: factor of local policy and regional mass media

Issues of inter-ethnic relations are often speculated on by Crimean politicians who assume the role of defenders of the "Slavic population" for their political image, to gain votes in Crimea. During the focus group study "Topical issues of management of inter-ethnic relations in Crimea"[10] the participants reported conflicts in everyday life between Slavs and Crimean Tatars but attributed them to socio-economic problems rather than inter-ethnic relations.

> *"Inter-ethnic passions are somewhat pumped before elections, to be true, when our high politicians begin to "work up" the population, canvass at elections. Of course, every community reaches for its party. Then, inter-ethnic tension is felt a little. Even among neighbours... People normally communicate before elections, everything begins as soon as politics interfere in people's lives"* (Sovetskiy).
>
> *"We have to return to problems among parliamentary groups, among party organisations, that provoke. I would say, they provoke instability in inter-ethnic relations. Not the people. They provoke, lead a small group of people, and the media then blow up, saying that people follow them. I do not want to offend MPs but I think that 80% of MPs do not represent people. Our MPs represent their parties, and a party embodies plans and ideas of a group of people, not of the whole people"* (Bilogirsk).
>
> *"A public meeting was held in Myrne, with information read out in a hall. Rodyvilov and others gathered people. There were seizures in Myrne, also by Russian-speaking, Slavs, of that land… They gathered people and told them that their land problem would be resolved. Everybody came to that hall, 500 people. And he began [saying] from the rostrum that land should not be distributed on ethnic grounds. He threw such words in the hall. Within 20 minutes, everybody realised that that meeting was intended not to solve the land issue, to move it somehow, but to aggravate and to earn an image among Russian-speakers, among Russians, to aggravate the conflict. Respectively, the other party says: on what grounds did you gather us? On what grounds did you take land from us? Again, polemics begin: who are you, who am I, and so on"*(Bahchysaray).

Tension in inter-ethnic relations on the peninsula is stirred up by media, often used by politicians to create the required "public opinion" and form negative ethnic stereotypes. **Some media by their publications contribute to the spread of negative ethno-political stereotypes and myths**. Focus group participants in the first place attributed this to politicisation of inter-ethnic differences, political background, stand of media owners and existence of rather durable stereotypes in the consciousness of ethnic communities.

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[8] Law "On Amendment of Some Legislative Acts of Ukraine concerning Enhancement of Responsibility for Unauthorised Occupation of a Land Plot" passed on January 11, 2007. – *Ed.*

[9] The total number of Crimean Tatar state servants (as of 2007) is 407 (7.9%), in that: in the Crimean executive bodies – 104 (8.4%), at District State Administrations – 178 (12.5%), in local self-government bodies – 114 (4.8%), in the AR of Crimea Property Fund – 4 (4.3%). Crimean Tatars elected national deputies of Ukraine – 1 person; members of the Verkhovna Rada of the AR of Crimea – 7; city and district councils: 125 (by the People's Movement of Ukraine (Rukh) list), 2 (Crimean Tatar Bloc), 8 (BYuT), 2 (other parties); village and settlement councils – more than 900. 24 out of 309 elected village and settlement heads (7.7%) are Crimean Tatars. All in all, the share of Crimean Tatars among different council members in the AR of Crimea exceeds 15%.

[10] For more detail see: Data of focus group study during the 4th phase of the project "Towards a peaceful and tolerant society in Ukraine. Inter-ethnic relations in the AR of Crimea: education and training". – UCIPR, April 2009.

> "*There is still a distinction between Crimean Tatars and the Russian-speaking population. And there are Crimean media that earn rating and make their image on that. Take any issue of "Krymskoye Vremya" newspaper, there will always be an article contributing to that, focusing attention*" (Bahchysaray).
>
> "*Republican media, now I guess to a smaller extent than before but still, do not promote tolerance in Crimea. Because some of our newspapers, to put it mildly, misbehave with respect to some part of the population. We well understand that all media are sponsored. Those who begin to badmouth some part of the population today, unfortunately, lead to a split*" (Dzhankoy)[11].

So, not last among the factors causing inter-ethnic tension in Crimea is presented by **numerous stereotypes in the consciousness of the Slavic majority of residents regarding the Crimean Tatar community**. The influence of that factor on the public opinion and inter-ethnic relations is aggravated by "a target-minded anti-Tatar and islamophobic PR-campaign, Russian-speaking Crimean publications in numbers carry materials that may be called not just incorrect or defamatory but stirring up inter-ethnic enmity"[12].

Language sphere

By and large, in view of the ethnic specificity, the ethno-language situation in the region differs from the rest of Ukraine. According to the all-Ukrainian census of 2001, 77% of the Crimean residents called Russian their mother language, 10% – Ukrainian, 11% – Crimean Tatar. The share of Russian-language schools in the autonomy exceeds the share of ethnic Russians due to Russian-language self-identification of representatives of other ethnic communities, first of all, Byelorussians, Jews, Germans, and so on. If we refer to the language of figures, Russian was reported as the native language by 97% of the Crimean Jews, 89% – Germans, 82% – Byelorussians, 79% – Koreans, 78% Bulgarians, 73% Greeks and 61% – Ukrainians. All in all, Russian was termed as the native language by 23% of the non-Russian population of the region[13].

When asked "*Do you consider it necessary to grant the Russian language an official status in Ukraine?*", 89% of Crimeans give a positive answer, only 4.4% – negative. According to sociological surveys, now, mainly the Russian language is spoken in Crimea by 92.3%, Ukrainian – 3.3%. 2.2% of citizens speak at home Ukrainian and Russian (as the case may be), 2.2% – other languages[14].The specificity of the language situation influences the educational policy in Crimea, actually freezing mentioned specificity.

Crimean Tatars themselves raise the issue of an integral policy of preservation and development of the Crimean Tatar language. According to the Majlis leader M.Dzhemilev, "Relevant amendments to the effective Constitution of the autonomy should be sought to equate the status of the Crimean Tatar language to the status of the Ukrainian and Russian languages"[15]. Article 10 of the Crimean Constitution proclaims that the AR of Crimea, alongside with the official language, provides for functioning, development, use and protection of the Russian and Crimean Tatar languages and languages of other nationalities on its territory. As is noted, "the Russian language as the language of the majority of the population convenient for inter-ethnic communication is used in all sectors of public life", and Article 11 proclaims that according to the Ukrainian legislation, "official documents certifying the status of a citizen" in the AR of Crimea "are executed in the Ukrainian and Russian languages, and on a citizen's request – also in the Crimean Tatar language"[16]. M.Dzhemilev noted that "the greatest problem lies in preservation of the national identity by our compatriots, if we fail to build a system of education in the native language and cover all our children with such education, the nation will face assimilation, dissolution in the Russian-speaking environment"[17].

The authorities might see their task in search of a compromise in the language policy and educational sector. Instead, those sectors see an undeclared war of decisions of central and local authorities. For instance, the Concept of Development of Education in the AR of Crimea through 2012 bears only one provision concerning "creation of conditions for deeper study of the Ukrainian, Russian and Crimean Tatar languages"[18]. However, it does not elaborate the facts, causes and effects of the language disparity observed in the educational sector.

One may note improper support for education in the Crimean Tatar language on the peninsula, difficulties arising due to the absence of a regional approach to the language dimension of the educational policy in the Crimea. Shortage of teachers, lack of textbooks, limited financial capabilities of local self-government bodies to fund educational establishments also pose a problem.

Authorities

Local conflicts of the recent years in Crimea may also be interpreted as conflicts between Crimean Tatars and authorities taking place because of the reluctance of local self-government bodies to solve problems of repatriates.

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[11] Survey held by *SOCIUM* Centre of Sociological and Marketing Studies on September 11-23, 2008, as part of a project of study of problems of economic, political and civil identification of the population in different regions of the CIS.

The survey was held by quota sampling representative of the adult population of the Crimea by the key socio-demographic indicators (age, gender, nationality). 1.478 respondents were polled. – Web site of *SOCIUM* Centre of Sociological and Marketing Studies, *www.socium.info*.

[12] Kresina I. On the issue of manifestations of discrimination on racial and ethnic grounds. – Web site of Ukrainian Centre of Political Management, *http://www.politik.org.ua*

[13] Meanwhile, experts in language policy argue that "the census held in Ukraine in 2001 does not allow more accurate identification of the ratio of bearers of the Ukrainian and Russian languages, since the wording of questions describing language features of respondents did not take into account the fact that part of the Russian-speaking Ukrainians still reported Ukrainian as the native language, symbolically related with their national self-identification. The questions in Item 7 of the questionnaire describing the language identification respondents were formulated as follows: "Your language features: (*a*) native language; (*b*) if your native language is not Ukrainian, report if you are fluent in the Ukrainian language; (*c*) another language you are fluent in". See: Masenko L. Language situation in Ukraine. – Independent culturological journal "*i*", 2004, No.35.

[14] 6.6% was undecided. Public opinion poll "Ukrainian society 2008" held by the Institute of Sociology of the National Academy of Sciences of Ukraine in April, 2008, by the distributed polling method. 1,800 respondents above 18 years were polled in all regions of Ukraine, the AR of Crimea and Sevastopol. The sample statistic error is 2.3%.

[15] Speech by M.Dzhemilev at the 1st Session of the 5th Kurultay of the Crimean Tatar People (December 7-9, 2007).

[16] Law of Ukraine "On Approval of the Constitution of the AR of Crimea".

[17] Speech by M.Dzhemilev at the 1st Session of the 5th Kurultay of the Crimean Tatar People …

[18] Approved by the Verkhovna Rada of the AR of Crimea Resolution No.215 of October 18, 2006.

Although such conflicts have purely economic grounds, they are "not protected" against use by political forces for getting potential electoral dividends through speculations on the known image of "defenders from aliens".

Local conflicts were usually settled with interference of the central authorities, mainly not to prevent one but to soften a conflict that came into the open. What deserves attention however is that previously, the conflict between Crimean Tatars and the authorities was seen as inability to come to terms, first of all, with Crimean leaders. Now, the situation is changing due to stagnation of legal solution of the problems of Crimean Tatars. In particular, representatives of Crimean Tatars ever more note that the state authorities "openly ignore the rights of the Crimean Tatar people" due to "long non-passage of laws aimed at restoration of rights of the Crimean Tatar people, including its inalienable right to national-territorial autonomy within the Ukrainian state, persistent unwillingness to assist with return of tens of thousands Crimean Tatars, wilful delay of fair solution of issues related with provision of Crimean Tatars with land plots, absolute legal and judicial vulnerability of Crimean Tatars defending their legitimate rights and interests, tough opposition to restoration of Crimean place names inalienably connected with the historic memory of the Crimean Tatar people..."[19].

The Council of Representatives of the Crimean Tatar People under the President of Ukraine has not met the Head of State in full membership since 2004. **Regular, open communication of the Ukrainian political leadership with the Crimean Tatar representative bodies is absent**.

Despite efforts of the state at implementation of the State Programme of settlement and amenities for deported Crimean Tatars and persons of other nationalities who returned to Ukraine for residence, their adaptation and integration in Ukrainian society through 2010, local problems are being resolved too slowly. In their dialogue with Crimean Tatars, party leaders in Kyiv are often guided by possible electoral support, while noting disunity in voter opinions. **Present political contacts are motivated by tactical considerations regarding Crimean Tatar support for specific political leaders in official Kyiv**. There is no strategic vision of cooperation and low effectiveness of implementation of the policy of harmonisation of the overall socio-political situation in the AR of Crimea[20].

On the local level, there are isolated attempts of political contacts between leaders of the Crimean authorities (Verkhovna Rada of the AR of Crimea, Council of Ministers of the AR of Crimea) and political leadership of Crimean Tatars. They are, too, mainly related with current implementation of the State Programme and attempts of extinguishing arising conflicts, first of all, in the field of land relations. One may cite as an example establishment of a joint commission of the Verkhovna Rada, Crimean Government and Majlis for solution of the land problem in Balaklavska St. (Simferopol, 2007), although it failed to help resolve the conflict.

Noteworthy, the policy of "measures of enhanced support" for repatriates, e.g., implementation of state and local programmes of amenities and integration, is quite often seen by the Slavic population as unjust, not as "evening rights".

The mechanism of communication on the district level presents a system of public boards. For instance, for discussion of pressing for the district issues in Bahchysaray, a Public Board was established at the District State Administration, made up of representatives of national-cultural associations, local self-government bodies, political parties. Meanwhile, for constructive cooperation between the public and authorities on the district level, society needs understanding of the decision-making procedure, to pass from "jive talking and criticism" to expert assessment of solution of urgent problems in general and in the field of inter-ethnic relations in particular.

An inter-confessional board was established under the District State Administration Head in Dzhankoy, including representatives of Orthodox, Muslim, Protestant religious communities. Cultural events aimed at promotion of cultures of ethnic groups and communities (competitions, festivals, etc.) are held on the district level.

Paradoxically, it seems that **political communication and inter-ethnic contacts are obstructed on the higher levels of regional and central authorities, while poly-ethnic village communities show numerous examples of inter-cultural, inter-ethnic contacts and communication.**

Socio-cultural sphere

The situation with local place names, restoration of historic names in Crimea remains actually frozen. **In 1944, more than 90% of geographic names of populated localities were instituted by special decrees of the USSR Supreme Council** in order to "wipe from the face of the earth" all mention of existence of Crimean Tatars. Only one decree of the Presidium of the Supreme Council of RSFSR dated May 18, 1948, renamed 1,062 populated localities in Crimea. It produced similar names – Pionerskoe, Radostnoe, Pervomaiskoe, Tankovoe, Udachnoe, etc. Crimean place names reflecting its history were actually abolished. However, with the return of Crimean

[19] Resolution of all-Crimean mourning meeting devoted to the memory of victims of the genocide of the Crimean Tatar people – deportation of May 18, 1944, and decades of its forcible retention in the places of exile. May 18, 2009, Simferopol, *http://www.kirimtatar.com*

[20] Another Decree of the President of Ukraine dealing with the Crimean issues "On Implementation of the Decision of the National Security and Defence Council of Ukraine of February 8, 2006 "On Social Situation in the AR of Crimea" No. 822 of October 9, 2006, noted that "in the result of non-implementation of a great deal of tasks envisaged by the National Security and Defence Council of Ukraine Decision of February 8, 2006, No. 154, the socio-political situation in the AR of Crimea continues to remain difficult and controversial, destabilising factors and sources of threats to the national security of Ukraine in the region are not neutralised", and "activity of the concerned central and local executive bodies at attainment of tasks in that field is mainly ineffective". The National Security and Defence Council of Ukraine Decision of May 16, 2008, "On Progress of Implementation of Decisions of the National Security and Defence Council of Ukraine on Situation in the AR of Crimea" enacted by Presidential Decree No. 589 of June 26, 2008, too, termed implementation of measures and provisions of that Decree ineffective. This first of all refers to "tasks of regimentation of use of land resources on the territory of the Crimean peninsula and development of the media space of the AR of Crimea".

Tatars, old names again came into being and are unofficially used alongside with official. Nevertheless, the issue of restoration of place names remains on the agenda as a political demand of Crimean Tatars. Noteworthy, according to the effective legislation, decisions of renaming villages rest with local authorities and are passed at local referendums supporting such decisions, but such initiatives are not supported on the local level, first of all, by the Slavic population. Meanwhile, in cities and districts where Crimean Tatars are in a majority, streets have new Crimean Tatar names.

Three-dimensional problems of actualisation of historic heritage especially contribute to aggravation of the socio-political situation on the peninsula. On one hand, they include contradictions between the pro-Russian and Ukrainian interpretation of history and the historic-cultural heritage, on the other – the difference between the "pro-Slavic" interpretation of history and the historic memory of Crimean Tatars. One example is presented by elements of the "language of enmity" in history textbooks terming actions of Crimean Tatars as "conquests", "raids", of Ukrainian Cossacks and Russians – as "marches".

Mass clashes in Bahchysaray in the summer of 2006 became a showy example of misunderstanding and disrespect for common history. There had long been a market on the site of an ancient Muslim cemetery, although the USSR Council of Ministers yet in 1963 entered the monuments located there in the register monuments, and in 2001, they were entered in the National Register of Real Property Facilities of Cultural Heritage of Ukraine. Muslims for years demanded transfer of the unauthorised market[21], but when the market management began construction works in the conservation zone of one of the old mausoleums, Crimean Tatars blocked the entry to the market and arranges a mass picket, demanding transfer of the market to another place. The authorities reported readiness to allot land for market construction in another place, but the market management rejected the proposal. Picketers were assaulted by representatives of local Cossacks and the Russian Community. A few persons were injured. The conflict was settled on the level of the President and Prime Minister of Ukraine[22].

In the Third Report on Ukraine, the European Commission against Racism and Intolerance expressed concern about the situation in Crimea, where tension was very high in relations between Crimean Tatars and ethnic Russians, also in connection with land and historic monuments. The document reads: "...it is also regrettable that some politicians, authorities and religious leaders have failed to act responsibly, by fanning the flames of ethnic hatred". Hence, ECRI was concerned that "the gap between different communities living in Crimea has widened since its second report". Although in 2006, then State Committee for Nationalities and Migration issued a statement condemning such actions after a spate of particularly violent ethnic clashes, the authorities should be more proactive in combating the climate of mutual suspicion and racial tensions that currently prevails in that region"[23].

Acts of vandalism were recorded at Christian and Muslim cemeteries. For instance, on February 11, 2008, trespassers ruined or damaged over 200 gravestones on a Muslim cemetery in the settlement of Nyzhnyogirske. Previously, acts of vandalism were recorded in the villages of Marfivka (satanic inscriptions on Slavic and Muslim graves) and Voikove (124 Slavic graves ruined) in Leninskiy district[24]. Majlis leader M.Dzhemilev stressed the frequency of "vandalism against mosques, cemeteries, monuments to victims of deportation of Crimean Tatars, Majlis offices, etc.". In particular, "since the convocation of Kurultay in 1991, Majlis central office in Simferopol alone suffered more than 10 night attacks... but none of those crimes was solved and no one was detained. More than that, attempts a being made to shift responsibility for those crimes to Crimean Tatars themselves"[25].

By and large, Crimea now actually witnesses a "war of monuments", a conflict between symbols of the Soviet and imperial age, today's Ukraine, and historic symbols of Crimean Tatars, also in the process of "appropriation of their history". In particular, this refers to the erection of monuments to Catherine II in Simferopol and possible construction of a monument to Stalin in Livadia, opposed by the Ukrainian and Crimean Tatar community. Yet in 1999 representatives of Crimean Tatars initiated inauguration of a monument to the human rights champion P.Hryhorenko, while party "Union" urgently began to prepare a site for a monument to Catherine II, in the eyes of Crimean Tatars personifying annexation of Crimea by Russia. The memorial sign in honour of the Russian Empress was established in Simferopol in 2007 on the initiative of the Simferopol Mayor's Office, Moscow Mayor's Office and Cossack formations from Russia, Ukraine and other CIS states.

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[21] The conflict situation arose yet 10 years ago. According to the Bahchysaray District State Administration Land Resources Department Head Aliev, the issue has long been considered in courts. Aliev reported that the market obtained from Bahchysaray authorities some 0.20 hectares of land, and seized another 0,47. Director of Bahchysaray Historic-Cultural Preserve Ye.Petrov noted that the market illegally occupied the territory of the ancient Muslim cemetery and an architectural complex of the national significance. In July, 2006, than Permanent Representative of the President of Ukraine in the AR of Crimea H.Moskal said that the autonomy leadership in the person of the Verkhovna Rada and the Council of Ministers and Bahchysaray City Council kept aloof from the solution of the issue of the District Consumer Society's market, which caused confrontation between Crimean Tatars and the Slavic population. On July 21, Ukraine's President V.Yushchenko in a letter to the Crimean authorities requested information about the solution of a number of problems on the peninsula.

[22] See: Land conflict and inter-ethnic confrontation in the AR of Crimea . – UCIPR web site, *http://www.ucipr.kiev.ua;* "Crimean electric ray": problem of "hot spots" in Crimea. – *Ibid*.

[23] For more detail see: European Commission against Racism and Intolerance. Third Report on Ukraine adopted on June 29, 2007, Strasbourg, 2008, p.18.

[24] According to official versions, cited cases have no "inter-ethnic or inter-religious grounds. The vandals were local residents living an asocial life, abusing alcohol, with a low consciousness", Home Ministry reported. – UNIAN, February 11, 2008.

[25] Crimean Tatars in Crimea and the world: Problems and prospects of national revival. – Report by Majlis Head at the World Congress of Crimean Tatars, Simferopol, May 19, 2009.

Another example of the "war of monuments" deals with installation of a three-meter-high stele in memory victims of the Ukrainian Insurgent Army in Simferopol: "In memory of victims of the Soviet people fallen from the hands of Nazi aiders – OUN-UPA fighters and other collaborators"; funds for its establishment were collected by communists of Ukraine and Crimeans[26]. The monument named "Shot in the back" was inaugurated in 2007 in Sovetskaya Square. PSPU was the first to oppose installation of the stele in that place[27].

Historic memory in the region is extremely politicised, also by geopolitical subjects. An example of such manipulations is presented by the recent events concerning commemoration of the Day of Victims of Famine. In particular, participants of the international campaign "Everburning Candle" brought to the Crimean peninsula a 200-kg symbolic candle. CPU activists tried to prevent the event, interpreting it as accusation of Russia and the Russian people of genocide of Ukrainians.

The state of most monuments of the Crimean Tatar history and culture is extremely poor and requires large-scale research and restoration[28]. The issue of construction of the Grand Mosque in Simferopol remains unresolved due to the stand of the local authorities obstructing implementation of their own decisions of land allotment, problems exist with restitution of Islamic religious structures.

Conflict of identities

There is kind of a conflict of identities in Crimea between the Crimean Tatar and Slavic communities caused and motivated both by the age features of Crimeans and their political and ideological likings, as well as ethnic and cultural-historic factors. It is manifested in a set of socio-cultural and geopolitical inputs, such as foreign political preferences, since, by contrast to the Slavic majority, the Crimean Tatar community does not position itself as pro-Russian. "Our partners have always been political forces declaring ideas of democracy, in a word, I would term them the national democratic forces of Ukraine, speaking of accession to the EU and NATO" – says First Deputy Head of Majlis R.Chubarov[29]. "A large part of the Crimean population is made up of people resettled here from internal regions of Russia after deportation of Crimean Tatars and their descendants. So, their gravitation to their historic Motherland is understandable. But by contrast to us, who 50 years fought for return to the Motherland, they want to return to their Motherland not as we did – having taken our suitcases and gotten on a train. They want to Russia together with our historic Motherland. And we can never agree with that. Please, go back, the road is open – but what does this have to do with our land? ... Some 70% of the Russian-speaking population of Crimea see its future in the Russian Federation, but this is not a reason for transfer of Crimea to another state"[30] – Majlis leader M.Dzhemilev said at the World Congress of Crimean Tatars.

Proposals

Harmonisation of the ethno-political situation in the autonomy requires a comprehensive strategic policy (language and cultural, information, socio-economic, regional) aimed at encouragement of a dialogue between representative bodies of Crimean Tatars and regional and central authorities. Within the framework of that policy, the issue of legislative restoration of the rights of Crimean Tatars should be solved. Furthermore, the following steps are needed:

- implementation of measures for enhanced support for repatriates and the Ukrainian community in Crimea – to level the socio-economic disparity in Crimean society, explain preferences for the Crimean Tatar community from the viewpoint of solution of the relevant problem. That policy should be transparent and publicly controlled, to avoid possible corrupt schemes;
- passage of the Law "On Restoration of Rights of Persons deported on Ethnic Grounds", involvement of representative bodies of ethnic communities in Ukraine's political and legal framework;
- provision of effective safeguards (for instance, "an agreement of the elites") against political forces' speculation on inter-ethnic contradictions (first of all, during election campaigns), which has a negative effect on the general climate in Crimea; introduction in Crimea of an educational policy upbringing tolerance, promoting inter-cultural dialogue, patriotic education, organisation and conduct of inter-regional exchanges – to enhance the awareness of society (first of all, children) about national traditions of the peoples of Ukraine, cultural exchanges and mutual enrichment of cultures;
- popularisation of cultures of ethnic groups and communities, support for initiatives of local communities for solution of social and economic problems;
- extension of interest-free loans to Crimean Tatars for housing construction (in the context of amenities for all repatriates);
- establishment of all-round cooperation between representatives of the local authorities with local and regional Majlises, implementation of measures in support for the study of the culture, history, language and religion of ethnic groups;
- development of cooperation with international institutions rendering assistance in solution of urgent issues of infrastructure development in the autonomy.

One should note, however, that those objectives cannot be attained without general democratisation of Ukrainian society, transparency of decision-making, a considerate human resources policy, removal of the effects of negative ethnic stereotypes, fighting corruption. ■

[26] Number of opponents of recognition of OUN-UPA goes down. – UNIAN, January 17, 2008. According to a public opinion poll, 13.4% of Crimeans fully or with reservations supports provision of privileges and status of participants of World War II to OUN-UPA fighters, almost 77% does not. – Sociological survey conducted by the Democratic Initiative Foundation and Ukrainian Sociology Service company on 5-18 December 2007 by personal interview. 1,800 respondents above 18 years were polled in all regions of Ukraine. The sample statistical error does not exceed 2.3%.

[27] The reason however lied not in ideology but in business interests: a member of the City Council representing that party is the director of the "Simferopol" cinema house located nearby.

[28] As of 2003, there were more than 900 architectural sites – monuments of the Crimean Tatar history and culture in Crimea. According to experts, less than 10% of them are entered to the Register of National Cultural Heritage, kept on state registration and protected by the state. See: Brief review of the state of ethnic identity, cultural heritage, traditions and religion of the Crimean Tatar people in Ukraine (2003).

[29] Creation of national autonomy of Crimean Tatars in Crimea – indicative issue of pre-election in Ukraine. – Radio "Svoboda" web site, October 23, 2008, *http://www.svobodanews.ru*

[30] Interview with M.Dzhemilev "Significant part of Ukraine lied within Crimean Tatar Khanate". – "Kievskie Vedomosti", November 7, 2008, *http://www.kv.com.ua/archive/19093/political/19117.html*

POLITICAL AND LEGAL PROBLEMS OF CRIMEAN TATAR PEOPLE: APPROACHES TO SOLUTION

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Problems of definition of the legal status of Crimean Tatar people as indigenous people of Ukraine, involvement of its institutes in the legal system and legislative restoration of the rights of persons deported on ethnic grounds remain unresolved. Uncertainty of the situation presents a factor of tension in the relations between the authorities and the political leadership of Crimean Tatar people, complicates creation of amenities for repatriates.

Meanwhile, solution of those problems requires consideration of some risks, in particular, its effect on inter-ethnic relations in Crimea and Ukraine as a whole.

The article examines possible ways to solve political and legal problems of Crimean Tatar people.

A national minority or an indigenous people?

It should be noted that the approaches to the definition of the status of indigenous peoples and legitimisation of the institutes of Crimean Tatar people cause more discussion than the issues of legislative restoration of rights of persons deported on ethnic grounds (repatriates).

The Ukrainian Constitution establishes the principle of equality of all citizens, irrespective of their ethnic origin; therefore, bills providing a special status for some ethnic group may be interpreted as contrary to that principle. Meanwhile, the wording of the Basic Law itself uses several terms to denote specific ethnic communities. Of particular importance in this respect is the reference, along with "national minorities" (Articles 10, 11, 92, 119), to "indigenous peoples" (Articles 11, 92, 119).

The term "national minorities" is defined in Article 3 of the Law "On National Minorities in Ukraine" as "groups of citizens of Ukraine who are not Ukrainians by nationality, demonstrate a feeling of national self-identification and community". On this basis, all non-Ukrainian ethnic groups living on the territory of Ukraine may be considered national minorities, enjoying an equal status.

However, the mention of "indigenous peoples" and "national minorities" in the Constitution enables their treatment as two different categories of communities[1]. Furthermore, the Constitution (Article 92) expressly provides that the rights of indigenous peoples, as well as the rights of national minorities, are determined "exclusively by the laws of Ukraine". Hence, the legislative uncertainty of the status and, respectively, rights of indigenous peoples may be seen as a gap in Ukraine's legal framework, which gives representatives of peoples considering themselves indigenous grounds to demand legislative regimentation of their status[2].

Another reason for such demands is presented by the definition of the status of indigenous peoples, their rights and principles of relations with the state in documents of international organisations joined by Ukraine. The main such documents are the UN Declaration on the Rights of Indigenous Peoples (2007) and the International Labour

[1] Scientists yet in 1996 noted the possibility of a discussion caused by introduction of the term "indigenous peoples" to the Constitution. For more detail see: Kotyhorenko V. Crimean Tatar repatriates: problem of social adaptation. – Kyiv, 2005, p.189.

[2] See, e.g.: Bekirov N. Crimean Tatar problem in connection with legislative support for rights of nationalities in Ukraine. – Materials of the conference "Crimean Tatars and Ukrainian society: problems of political and social integration". – Kyiv, November 26-27, 1998, pp. 18-21.

Organisation (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (1989).

The ILO Convention preceded the UN Declaration and was genetically related with previous ILO documents dealing with narrower issues of protection of first labour, and with time – other rights of indigenous peoples[3]. Although the document is not ratified by Ukraine, in the opinion of foreign experts, it establishes the "legal international standard for the use of the term "indigenous"[4].

Pursuant to Article 1 of the Convention (Item *b*), it applies to "peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions". Important for identification of peoples as indigenous is part 2 of that Article, whereby "Self-identification as indigenous… shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply".

Those criteria may well be applied to Crimean Tatar people. The relevant documents in the first place refer to peoples that inhabited some territories prior to their colonisation by other peoples, were driven from their places of residence by force, deprived of land, etc. In particular, the mentioned international documents derive the special status and rights of indigenous peoples from "their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation…"[5]. Those documents imply definition of indigenous peoples as the ones that did not accept the ways of the "coloniser" peoples, preserved their own, different from them way of life, and their institutes.

Proceeding from the statements of its leaders, Crimean Tatar people consider "annexation of Crimea by Russia in 1783" an act of conquest, terms the Russian rule as occupational and argues that that act caused mass emigration of Crimean Tatars from Crimea[6]. The community of the "conqueror", or "coloniser", enables perception of Crimean Tatar people in the same context with many peoples of Russia living on territories "conquered" by the former empire and, according to the federal legislation of the Russian Federation and legislation of the federation members, considered indigenous on those territories[7]. Furthermore, Crimean Tatar people suffered from another expatriation – total deportation on ethnic grounds in 1944.

While Ukraine did not sign the discussed ILO Convention, the UN Declaration does not require signing or ratification, and Ukraine must observe it as a member of that international organisation[8]. That is why passage of the Declaration was hailed by the leadership of Crimean Tatar people, who saw it as an "international legal document for solution of issues evaded by the authorities for the past 17 years"[9].

DECLARATION OF THE UNITED NATIONS ORGANISATION ON THE RIGHTS OF INDIGENOUS PEOPLES
Adopted by General Assembly Resolution No.61/295 of September 13, 2007 (extract)[10]

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

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3 For more detail see: The ILO and Indigenous and Tribal peoples. – UN Guide for Indigenous Peoples. Leaflet No.8, *http://www.unhchr.ch/html/racism/00-indigenousguide.html*

4 See: Dallmann W., Goldman H. Indigenous – native – aboriginal: Confusion and translation problems. – ANSIPRA Bulletin, June 2003, *http://www.npolar.no/ansipra*

5 See: Item *b*, Article 1 of the Convention.

6 See: Crimean Tatars in Crimea and the world: Problems and prospects of national revival. – Report by the Head of Majlis of the Crimean Tatar people at the World Congress of Crimean Tatars, Simferopol, May 19, 2009. – Web site "Crimea and Crimean Tatars", *http://kirimtatar.com*

7 There is, however, some legal specificity dependent on the strength of a specific people. For more detail see: Dallmann W., Goldman H. Indigenous – native – aboriginal: Confusion and translation problems.

8 Ukraine abstained at voting for the Declaration.

9 R.Chubarov. UN Declaration on the Rights of Indigenous Peoples and assignment for Ukrainian politicians. – "Crimean Studies" web site, No. 3-4, June-September, 2007, *http://cidct.org.ua*

10 See: Official UN web site, *http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf*

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(*a*) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(*b*) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(*c*) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(*d*) Any form of forced assimilation or integration;

(*e*) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

According to one of the Majlis leaders R.Chubarov, "clear norms of the UN Declaration on the Rights of Indigenous Peoples adopted by the General Assembly prove the legitimacy of many requirements of Crimean Tatars concerning restoration of their rights, including the right to self-determination on the condition of preservation of the territorial integrity of the Ukrainian state, and "bless" restoration of their national institutes, in particular, Kurultay of Crimean Tatar people"[11].

Therefore, both the national legislation (Constitution) and international legal documents open up the possibility of passage of a legislative act on the status and rights of indigenous peoples, as demanded by representatives of Crimean Tatars.

Issue of the institutes

The UN Declaration may also be of use to solve the problem of regimentation of the legal status of Crimean Tatar national self-government bodies– Kurultay and Majlis. The Ukrainian legislation does not allow establishment of self-government bodies on ethnic grounds, leaving space only for the establishment of such public associations, being the only way of legitimisation of Kurultay and Majlis of Crimean Tatar people in the present situation.

However, Crimean Tatar leadership continuously rejects that option, as inconsistent with the actual status, role and functions of those bodies. Palliative measures to that end (e.g., establishment of the Council of Representatives of Crimean Tatar people under the President of Ukraine) are seen as provisional, and their effectiveness, as experience proves, largely depends on political factors (in particular, the person of the President and his stand on Crimean Tatar issue).

The UN Declaration contains a number of articles (e.g., 5, 20, 23) that admit the right of indigenous peoples to preserve and build their own political, economic, social and cultural institutes. Evidently, it may be applied to the national self-government bodies of Crimean Tatar people and gives grounds for their legalisation in that special quality.

Expected risks

Some provisions of the Declaration, in particular, dealing with the right of indigenous peoples to self-determination (Articles 3 and 4), may be viewed as additional legal justification of the intention of Crimean Tatar people to establish in Crimea, contrary to the Constitution of Ukraine, a national territorial autonomy.

[11] R.Chubarov. UN Declaration on the Rights of Indigenous Peoples and assignment for Ukrainian politicians. – "Crimean Studies" web site, No. 3-4, June-September, 2007, *http://cidct.org.ua*

However, Crimean Tatars argue that Ukraine already has one administrative-territorial autonomy – the Autonomous Republic of Crimea, and they, as an indigenous people, would like it to be national[12].

Design of the ways of solution of political and legal problems of Crimean Tatars should take into account the fact that a conflict can be provoked both by stagnation of the current situation, and by acts aimed at its change (e.g., passage of the relevant legislative acts).

For instance, a legal precedent of granting special status to some people living on the territory of Ukraine may prompt similar claims (even unreasoned) by other ethnic communities, heated disputes on those issues in the political community and society. The same refers to a special status of national self-government bodies of some national communities.

Data of public opinion polls show that for the majority of Crimeans, provision of the status of an indigenous people for Crimean Tatars and official recognition of Majlis may present a factor of conflict that will step up tension in inter-ethnic relations. Representatives of other ethnic communities of Crimea may view them as steps towards Crimean Tatar goal of establishment of their national territorial autonomy on the peninsula. The majority of Russian and Ukrainians in Crimea are ready to peacefully protest against such decision, and quite a few – even take up arms to fight it[13]. Therefore, the socio-political situation on the peninsula will become even more vulnerable to destabilising influences.

Possible solutions

In view of the above considerations, risks at solution of problems of Crimean Tatar people could be minimised by the sequence of the following steps.

First of all, one should delimit the issues of legislative definition of the status of indigenous peoples and restoration of rights of persons deported on ethnic grounds.

The first legislative act is to contain clear criteria of classification of peoples living on the territory of Ukraine as indigenous, define their status and specific (including collective) rights in line with the UN Declaration on the Rights of Indigenous Peoples. That legislative act must in the first place provide:

- clear criteria of classification of ethnic groups as indigenous peoples of Ukraine and, respectively, their comprehensive list[14];
- correspondence to the principles provided by the UN Declaration on the Rights of Indigenous Peoples, including not only the rights of those peoples and their guarantee by the state but also limitations on the exercise of such rights established by that document (Article 46).

The second law is to deal with Ukrainian citizens of all nationalities who suffered from forced deportation, to establish the mechanisms and scope of restoration of their rights. That law should reiterate that the Ukrainian state is not a legal successor to the former USSR and bears no legal responsibility for forced deportation of Crimean Tatars and other peoples from Crimea. Furthermore, that law and expected consequences of its effectuation should not result in limitation of legislatively provided rights of representatives of other ethnic groups living on the peninsula.

The former law should make emphasis on collective rights of indigenous peoples, in line with the spirit of the relevant UN Declaration, the latter – on individual rights of representatives of deported peoples. The spheres of legal regulation of those laws should not overlap. This will make it possible to avoid "privileges" for some people, since each law will deal with several ethnic communities and their representatives (*in the former case – indigenous peoples, in the latter – peoples subjected to deportation*).

To avoid negative socio-political response to the passage of the relevant legislative acts, their drafting should be made utmost transparent, employing politically unbiased scholars and experts[15].

Another way to prevent possible negative consequences is to make the relevant laws an element of wider efforts at perfection of Ukraine's legal framework in the field of ethno-national relations[16]. Evidently, that will require substantial improvement of the entire legal framework, including, if necessary, amendment of Ukraine's Constitution. This approach might rest on the Concept of the State Ethno-National Policy of Ukraine, remaining unfinished and not approved for years[17]. Such approaches could promote a compromise between representatives of different ethnic communities in Ukraine. ■

[12] This circumstance was noted by R.Chubarov. See: Materials of the conference "Crimean Tatars and Ukrainian society: problems political and social integration". – Kyiv, November 26-27, 1998, p.44.

[13] See: Crimea: people, problems, prospects. Razumkov Centre Analytical Report. – "National Security & Defence", 2008, No. 10, p.21.

[14] Elaboration of such criteria should build on the experience of preparation of the relevant bills. For more detail see: section 2.2 of the Analytical Report published in this magazine.

[15] The following sequence of action is proposed: establishment of a working group for bill drafting, employing scholars, experts, representatives of the concerned ethnic groups; preparatory activities, including analysis of possible positive and negative effects of passage of the law; submission for parliamentary hearings in the Verkhovna Rada of Ukraine and the Verkhovna Rada of the AR of Crimea; submission for consideration to the Verkhovna Rada of Ukraine.

[16] See, e.g.: Kotyhorenko V. Crimean Tatar repatriates: problem of social adaptation. – Kyiv, 2005, pp.200-203.

[17] Two relevant bills have been registered in the Verkhovna Rada: "On the Concept of the State Ethno-National Policy" (No. 3581 of December 30, 2008) submitted by the Cabinet of Ministers of Ukraine, and "On Approval of the Strategy of the State Ethno-National Policy" (No. 3106 of September 2, 2008) submitted by National Deputy of Ukraine M.Papiyev.

Annex 1017

Andrew Wilson, Needs Assessment for the Crimean Tatars and Other Formerly Deported Peoples of Crimea (2012)

NEEDS ASSESSMENT FOR THE CRIMEAN TATARS AND OTHER FORMERLY DEPORTED PEOPLES OF CRIMEA Dr. Andrew Wilson, 2012

1. Introduction

Crimea, now part of independent Ukraine, is regarded by many Russians as part of their historical "homeland", but is also home to many other ethnic traditions. It is currently the only region of Ukraine with a majority population of ethnic Russians (1.18 million or 58.5 per cent at the last census in 2001, the next is due in 2013); but is also home to almost 300,000 (13.3 per cent) of the former deported peoples (FDPs), mainly Crimean Tatars (just over 12 per cent),[1] who were expelled under Stalin in the 1940s and have only able to return since the late 1980s. Their homecoming has been difficult. The Crimean Tatars in particular claim that they are an artificial minority, a former majority progressively reduced by death and migration even before the Deportation in 1944 (in Crimean Tatar *Sürgünlik*), and have therefore claimed special political rights. There is, however, not even a basic legal framework to define their position. The socio-economic status of the returnees remains extremely difficult. Some progress has been made in integration in the last twenty years, but not as much as was expected when the USSR disappeared in 1991. Rather, time itself is a factor, with a lack of progress leading to some signs of radicalization on all sides. Although much was done to help with the immediate problems of return in the mid-1990s, many longer-term tasks remain and the potential for future conflict remains high.

2. Historical background

While the exact development of the Crimean Tatar ethnos is disputed, it is widely accepted that the Crimean Tatars have inhabited the Crimean peninsula at least since Mongol tribes arrived in the thirteenth century and subsequently intermixed with native and Turkic tribes. The Mongol "Golden Horde" eventually split into several Khanates, but the Crimean Khanate was the longest lasting, from 1428 until Imperial Russia annexed the peninsula in 1783. After 1475 the Khanate was linked to the Ottoman Empire, but a specific Crimean Tatar national identity developed on the peninsula, so it is even argued that the Crimean Tatars should be more simply known as "Crimeans" (*Qırımlar*).

The Crimean Tatars remained the majority population until Russian annexation in 1783 (83 per cent, or 171,000 ten years later), but their numbers fell sharply with successive waves of out-migration, mainly to the Ottoman Empire; the first immediately after annexation and the second after the Crimean War in 1853-6. It is hard to be precise, as the outflow first began with the Russo-Turkish War of 1768-74; but there was little formal Russification until the Crimean War, during and after which an aggressive programme of Christianization sought to turn the peninsula into the "Russian Athos".[2] Christianity had had a presence on the peninsula dating back to Roman times, but the Russian and Ukrainian presence was initially minimal. From the 1850s, however, the Crimean Tatars were increasingly marginalized by first Russian and then Soviet *raison d'état* and the perceived strategic need to incorporate Crimea, and, later, by the Ukrainian desire to increase the ethnic Ukrainian presence throughout the new settler communities of southern Ukraine or "New Russia". In the process, the Crimean Tatars were increasingly depicted as a marginal presence, and as culturally and religiously alien and as politically unreliable.

The "historical" Christian population of about 50,000 at the time of annexation was largely made up of Greeks and Armenians.[3] The Greeks predated the Crimean Tatars by more than a thousand years. Armenians fleeing the Seljuk invasions in the eleventh century formed *Armenia Maritima*, one of the largest parts of the medieval diaspora until 1475. The local

1 By 2012, the percentage of Crimean Tatars was unofficially 13.5 per cent, as the overall population of Crimea had fallen.
2 Mara Kozelsky, *Christianizing Crimea: Shaping Sacred Space in the Russian Empire and Beyond* , (DeKalb, Illinois: Northern Illinois University Press, 2010).
3 Ibid., p. 3.

German community, on the other hand, was largely invited to settle in Crimea and the southern steppe by Catherine the Great, and the Bulgarians were refugees from the Ottoman wars either side of 1800; though both helped to displace the Crimean Tatars (in 1897 the Taurida province, which also included parts of the northern Black Sea coast, contained 78,000 Germans and 41,000 Bulgarians). Crimea was also home to the Krymchaks, who spoke a Turkic language and were culturally kin to the Crimean Tatars, but wrote in Hebrew characters, as well as the Karaim or Crimean Karaites, who were also Turkic speaking Jews, but messianic and anti-rabbinical. Both groups claimed to predate the Crimean Tatars on the peninsula, at least in terms of the Mongol incursion of the thirteenth century.

At the time of the 1917 Revolution the Crimean Tatars still made up about a quarter of the local population. Several rival bodies claimed power, including a Crimean Tatar assembly or *Qurultay* (set up in December 1917), the monarchist White Russians, Ukrainians and local Bolsheviks. The Communists were only finally victorious in 1921, setting up a Crimean Autonomous Socialist Soviet Republic (Crimean ASSR) as part of the Russian Republic, though it had less freedom of action after 1936. Formally, this was a territorial, not an ethnic republic, although the Crimean Tatars benefited to a limited extent from the "indigenization" policies practised elsewhere in the USSR in the 1920s.[4] Crimean Tatars were reasonably well represented in government. Under the constitutions of 1921, 1926 and 1938 there were two official languages in Crimea: Russian and Crimean Tatar. An infrastructure of Crimean Tatar education was expanded up to university level *(*see Marina Gurbo, "Assessment of the Educational Needs of Crimean Tatars and Other Formerly Deported Peoples", 2013*).* This cultural revival ended in 1928, four years after the death of Lenin, with Russification pressures increasing after 1936, after which the Crimean Tatar language had to be written in Cyrillic. The 1930s also brought the horrors of de-kulakization and the *Holodomor*, the man-made famine that killed millions throughout Ukraine and in south-western Russia, and further purges and repression in 1937-8. This was in addition to the earlier famine at the end of the Civil War in 1921-22, in which 100,000 perished in Crimea, of whom at least 60,000 were Crimean Tatars.[5] According to the historian Alan Fisher, 'between 1917 and 1933, approximately 150,000 or 50 per cent of the Crimean Tatars had either been killed or forced to leave the Crimea',[6] even before the Deportation of the rest in 1944.

The Crimean SSR was downgraded into a mere oblast of the Russian SFSR in 1945, then transferred to the Ukrainian SSR in 1954 in honour of the 300th anniversary of the Treaty of Pereyaslav which, in the official Soviet view, established eternal Russian-Ukrainian friendship.

3. The deportation[7]

In May 1944 the Crimean Tatars were accused of collaboration with the German occupiers, and also with desertion, and deported from Crimea *en masse*[8]. Since most adult Crimean Tatar men were either at the front or mobilizing as guerilla forces in Crimea, 86.1 per cent of the original deportees consisted of the elderly, war invalids, women, and children, a fact supported by Soviet statistics from that era.[9] The main Deportation on May 18 was then followed by another wave of Crimean Tatar soldiers serving in the Soviet armed forces. Some Crimean Tatars had

4 Talk show "Gravitation". What statehood is necessary to Crimean Tatars? (Токшоу "Гравитация".Какая государственность нужна крымским татарам?) http://atr.ua/pages/programs.aspx?video=2012-10-12-22-53-39-6158265.

5 Alan Fisher, *The Crimean Tatars* , (Standford: Hoover Institution Press, 1978), p. 137.

6 Ibid., p. 145.

7 On the Deportation, see Aurélie Campana, "Sürgün: The Crimean Tatars; Deportation and Exile", *Online Encyclopedia of Mass Violence*, 2008, http://www.massviolence.org/Article?id_article=163.

8 According to the official Soviet documents, the number is approximately 200,000. This number is debated by Crimean Tatars who state that numbers were deflated. *USIP Peaceworks 19*, states that more than half of the Crimean Tatar population died during deportation and shortly thereafter, and specifies this number as 240,000. "Sovereignty after Empire, Hopes and Disappointments: Case Studies – Crimea," *USIP Peaceworks 19* at http://www.usip.org/pubs/pworks/pwks19/chap3_19.html, p.14.

9 Brian Williams, *The Crimean Tatars The Diaspora Experience and the Forging of a Nation*, (Leiden, Boston, Koln: Brill, 2001), p.393.

indeed defected to the German side (just over 9,000), but 20,000 had been mobilized into the Soviet Armed Forces since 1941.[10] In Crimea, Crimean Tatars made up about a fifth of the Soviet partisans who were involved in guerilla warfare.[11] According to two local historians, "after the Russians, the largest number of local guerrillas fighting among the Soviet partisans in the Crimea was actually Crimean Tatars not the more numerous Ukrainians."[12] The Soviet authorities were also motivated by long-standing stereotypes against the "treacherous" Crimean Tatars, by the desire to make Crimea more firmly Russian (and less Ukrainian) and by aggressive geopolitical rivalry with Turkey at the time.

At least 180,000 in total were deported to Siberia, Central Asia and the Ural Mountains (some estimates go as high as 195,000; according to the 1939 Soviet census there were 218,179 Crimean Tatars in the Crimean ASSR, 19.4 per cent of the total population, but many had perished in the war).[13] The loss of life during the Deportation (in guarded and sealed cattle-trains without food or water, and in appallingly unsanitary conditions) was substantial. According to NKVD estimates, 27 per cent of the population perished in the first three years alone.[14] Crimean Tatar analysts in the 1960s put the figure as high as 46 per cent, almost half of the population, perishing in the first years following the operation.[15]

The Bulgarian, Greek, German and Armenian communities were also collectively deported. Approximately 60,000 Germans suffered the first wave of deportation at the outbreak of war in August 1941. They were then followed on June 2 1944 by the deportation of 14,000 Crimean Greeks, 11,000 Armenians and 12,000 Bulgarians.[16] Beria claimed the same reason of "collaboration", backdated to the 1930s, even though the "traditional Christian" communities had usually been among the most loyal allies of Russian power. The deported were confined to special settlement camps, where they provided cheap labor for the economic development of the regions to which they were exiled.

In 1956 Khrushchev delivered his famous Twentieth Party Congress speech denouncing Stalin. Although the majority of deported groups (Chechens, Ingush, Karachais, Balkars, Kalmyks, and Koreans) were rehabilitated at this time and allowed to return home, the Crimean Tatars, Meskhetian Turks, and Volga Germans (who had been deported from regions other than Crimea) were excluded for reasons that remain unclear, though it seems likely they reflected the geopolitical and strategic importance of the peninsula to the Soviet regime. A decree in 1967 absolved the Crimean Tatars of the charges of collaboration, but was given little publicity outside of Central Asia and stopped well short of full rehabilitation: the Crimean Tatars continued to be as unwelcome in Crimea as ever. Those Crimean Tatars who in spite of everything managed to return to Crimea were often re-deported. Significant numbers were only able to begin returning once the Soviet system began to weaken in the late 1980s.

4. The late Soviet era

The Crimean Tatars renewed their dissident movement early in the *perestroika* era. Ironically, they were promised better treatment by the last Soviet authorities than they have been offered by independent Russia or Ukraine. In 1989 the newly elected Soviet Supreme Soviet formed a commission under Genadiy Yanaev, later the Vice-President of the USSR, and in November 1989 issued a decree

10 Williams, *The Crimean Tatars* , p.376. J. Otto Pohl, *The False Charges of Treason against the Crimean Tatars,* www.iccrimea.org/scholarly/pohl20100518.pdf.
11 B. Broshevan and P. Tygliiants', *Izgnanie i Vozvrashchenie*. (Simferopol: Tavrida, 1999), p.34.
12 Ibid.
13 Edward Allworth, "Renewing Self Awareness", in Allworth (ed.), *Tatars of the Crimea: Return to the Homeland* , (Durham and London: Duke University Press, 1998), pp. 1-26, at p. 11. The National Movement of Crimean Tatars estimates that up to 238,000 persons were deported of whom 206,000 were women and children. They also state that about 110,000 persons died as a result of starvation and unbearable living conditions.
14 Bugai, Nikolai Fedorovich, ed. *Iosif Stalin – Lavrentii Beriia: "Ikh Nado deportirovat": Dokumenty, fakty, kommentarii* [Joseph Stalin – L. Beria: "They Must be Deported": Documents, Facts, commentary] (Moscow: Druzhba Narodov, 1992).
15 Aleksandr M. Nekrich, *The Punished Peoples*, (New York, WW Norton and Company, 1978).
16 Y. M. Biluha and O.I. Vlasenko, Deported Crimean Tatars, Bulgarians, Armenians, Greeks, Germans: documents, facts, evidence (1917–1991) (Ukraine: State Committee of Ukraine on Nationalities and Migration, 2004) (Білуха,Ю. М., О. І. Власенко, Депортовані кримські татари, болгари, вірмени, греки, німці: документи, факти, свідчення (1917-1991)(Державний комітет України у справах національностей та міграції, 2004), p.16.

"On the recognition as unlawful and criminal the repressive measures against peoples subjected to forced deportation, and the guaranteeing of their rights". This called into question a series of previous Soviet decrees, included the downgrading of the Crimean ASSR into a mere oblast of the Russian Soviet Republic in 1945. The Crimean oblast was indeed transformed into an Autonomous Republic once more, after a referendum in January 1991 that won 93 per cent support. The manoeuvre was accepted in Kiev in order to meet halfway the Russian majority in Crimea that was threatening to secede. The local elite ensured that the referendum referred to their desire to be "a subject of the Soviet Union and a party to the [proposed new] Union Treaty", but while the Republic was restored in February 1991, the latter demand was ignored. The new Autonomous Republic of Crimea (ARC) remained part of Ukraine and so joined it when the Ukrainian parliament declared independence in August 1991, a decision confirmed by an all-Ukrainian referendum in December 1991, though since disputed by many Russians. About 100,000 Crimean Tatars had returned to the peninsula by January 1991, but they boycotted the referendum because they would have preferred to establish a national-territorial (Crimean Tatar) republic.

In 1989, the USSR Supreme Soviet also recommended that the Crimean Tatars be returned to Crimea under a government-sponsored plan.[17] This proved abortive, but the decision itself was a major turning point for the Crimean Tatars. The 1989 Soviet census showed their number in Crimea to be 38,365. The mass return to Crimea now gathered pace, with the highest numbers returning from 1990 to 1993.

The newly independent post-Soviet states, however, took different paths with regard to the rehabilitation of FDPs. According to the Bishkek Agreement signed in October 1992, all countries of the former Soviet Union except the three Baltic States and Georgia agreed that FDPs had the right to return from the places of their deportation. The contracting parties further agreed to provide equal political, economic, and social rights to returnees, including guaranteeing equal access to housing, jobs and social services. In particular, the participant countries promised to share the cost of the Crimean Tatars' return to Crimea. However, there was no enforcement mechanism for non-compliance. The Agreement was prolonged for ten years in 2003, but is due to expire in 2013.

Ukraine, on the other hand, has to date never passed a law on the rehabilitation of FDPs, so their return was not mainstreamed into Ukrainian legislation and policies. Return was also made difficult by the economic crises throughout the former USSR in the 1990s, and in Ukraine in particular. The lip-service paid by most signatories to the Bishkek Agreement[18] was manifest in inadequate and untimely funding, the reluctance of local authorities to allot land and provide housing, legal and bureaucratic obstacles to speedy access to the citizenship essential to employability and for political participation, and an overall atmosphere of general public hostility (see Noel Calhoun and Dmitriy Pletchko, "Legal Aspects of Return and Legalization in Ukraine of Formerly Deported Persons (FDPs)", 2013). A new trauma of return made the old trauma of deportation even more profound.

17 "Yanaev Komisyon Raporu" ("The Report of the Yanaev Commission"), *Kirim Journal* (Kirim Turklerinin Aylik Dergisi), April 1990, p. 44.

18 Even from the beginning, the Bishkek Agreement remained largely on paper. As early as December 1992, in a letter from the Russian Minister of Finance in response to the appeal of the Ministerial Council of Crimea to allot money in Russia's 1993 budget for the return of FDPs from Russia, it was stated that in 1992 Russia had already transferred 500 million roubles to Crimea as repatriation assistance and couldn't continue this support because of its own need to accommodate the influx of refugees and migrants and because "the resettlement of Crimean Tatars in Crimea is a voluntary private matter of the Crimean Tatars"; (Kopiia. V Gosudarstvennyi Komitet po delam federatsii i natsional'nostei, 3 December 1992).

5. Life in independent Ukraine

Figure 1: Ukraine and Crimea

Crimea is the only administrative subdivision of Ukraine where ethnic Russians are a majority. According to the 2001 Census, Crimea had a total population of 2,024,000.[19] Ethnic Russians constituted 58.5 per cent,[20] Ukrainians were 24.4 per cent, and the Crimean Tatars were then 12.1 per cent of the population, rising to 13.5 per cent by 2012. The remaining 5.4 per cent consisted of smaller ethnic groups, including Jews (4,500), Siberian and Volga Tatars (11,000), Belarusians (29,200), Karaites (670) and Krymchaks (204); in addition to the four groups defined as the Formerly Deported Peoples (FDPs): the Armenians (8,700); Germans (2,500); Bulgarians (1,800); and Greeks (2,800).[21] The rate of return of FDPs is summarized in the table below. As with the rest of Ukraine (and Russia), economic and public health difficulties have led to an overall population decline, in Crimea's case down by 400,000 from 2.4 million in 1989 to just under two million in 2012.

Table 1: Estimated figures on Formerly Deported Peoples.

ETHNIC GROUP	DEPORTED	RETURNED[22]
Crimean Tatars	180 000	265 985
Bulgarians	12,000	855
Germans	60,000	884
Armenians	11,000	589
Greeks	14,000	2579

Table provided by Veljko Mikelič. Source: Data of Returned persons - Official statistic from the Verkhovna Rada Krima (Crimean Parliament), figures on deported persons are approximate based on historic documents and the interviews held with ethnic group leaders in Crimea in September 2012. Note: Germans were mainly deported earlier, in 1941.

The current majority of ethnic Russians in Crimea dates from the Crimean Tatar Deportation in 1944, though the peninsula is still regularly depicted as an historically Russian *rodina* (homeland). Russian nationalists in both Russia and Crimea have continued to question the legality of Khrushchev's 1954 "internal transfer" of Crimea from the Russian to the Ukrainian SSR. These separatist tendencies are further exacerbated by the unresolved status of the famous Russian Black Sea Fleet, located in the Crimean port city of Sevastopol.

Soviet Ukraine held censuses every ten years; independent Ukraine has only held one - the next census has been delayed twice and is currently due in 2013. The authorities fear it will show out-migration and general population fall, and are always sensitive to the size of the ethnic Russian and Russian-speaking populations – hence not holding the census in 2012,

19 Although there has been no census taking since 2001, according to the State Statistical Committee of Ukraine (SSCU) in 2011 the population of Crimea was assessed as 1,952,000. The Republican Committee on Nationalities and Deported Peoples in the Autonomous Republic of Crimea (Reskomnats) report, "Informatsia o sostayanii i problemikh vosprosakh obespecheniya prav nationalnikh menshestv v Avtonomnoi Respublike Krim," p.1. At the end of 2012, the population was up a little, at 1.965,000.

20 See http://www.ukrcensus.gov.ua/eng/results/general/nationality/.

21 See http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/.

22 Includes direct descendants of deported persons.

which was an election year. But when the census is finally held, it can be reliably predicted it will show an increase in the size of the Crimean Tatar population, with less change for the other FDPs, given overall population loss, higher Crimean Tatar birth rates and the diminished but steady rate of return since 2001. Crimean Tatar children already make up 20 per cent of the school population (see Marina Gurbo, "Assessment of the Educational Needs of Crimean Tatars and Other Formerly Deported Peoples", 2013). The Crimean Tatar population in Crimea has a birthrate double that of the local Slavs, at 4.5 per thousand (or 2.3 per woman, above replacement ratio). The overall population of Crimea is still falling at -0.4 per cent per annum, while the Crimean Tatar population is growing by +0.9 per cent.

The rate of return for Crimean Tatars and other FDPs has slowed since the early 1990s because of economic difficulties and legal obstacles, although at least 100,000 are estimated to remain in Central Asia. Fewer have returned from the global Crimean Tatar diaspora, estimated at five to six million, which is strongest but most diffuse in Turkey, where the Kemalist tradition was to classify everyone as "Turks".[23]

Table 2: The returning Crimean Tatar population

Crimean Tatar Return Waves	Crimean Tatar population (approximate)
1967-1979 (First wave – the frontiers)	5,400
Spring 1988	17,500
1989 (Last Soviet Census)	38,365
1989-1992 (Mass return)	204,000
1993-1996 (Deceleration period)	259,000
(official 2001 census, Crimea only)	243,400
As of 2012	266,000

Before the Deportation, the Crimean Tatars mainly lived in the regions north of the mountains that rise behind the southern beaches – their historical capital was at Bakhchisaray. However, settlement was relatively widespread both in the main agricultural regions (the further north, the more problems with the water supply) and in the southern coastal strip, whose ports were the historical link to the Ottoman Empire and the Mediterranean world (see Figure 2).

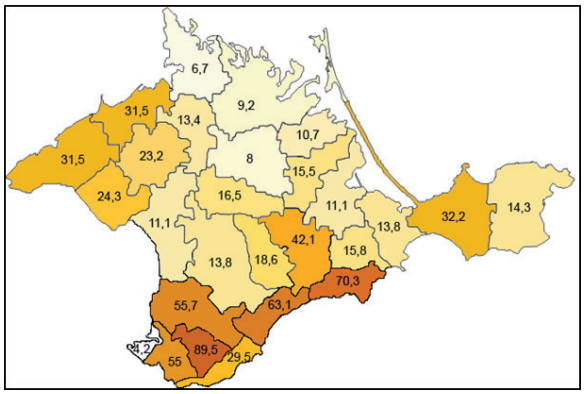

Figure 2: Distribution of percentage of Crimean Tatars by region in Crimea, according to the 1939 Soviet census

Since the return of Crimean Tatars in the late 1980s and early 1990s, however, settlement patterns have been different. Returnees have been discouraged from settling in the southern coastal strip, where the (post-) Soviet tourist industry developed. The unwillingness of the local authorities to allocate land to FDPs in historical areas as well as the (corrupt) sale of land to private investors has led Crimean Tatars to seek available land elsewhere, mostly in the central part of Crimea close to main urban areas. As a result, the biggest concentration of Crimean Tatars is now in the Bilogorsk district (over 30 per cent of the total population). Other significant concentrations of Crimean Tatars can be found in Bakhchisaray, as well as in Simferopol, Pervomaysky, Kirovsky, and the Sovetsky districts, where they represent from 24 per cent to 29 per cent of the total population. As shown in Figure 3, with the exception of Koktebel and Sudak, only a very limited number of Crimean Tatars have managed to settle on the southern coast, in cities like Yalta and Alushta. Few Crimean Tatars live outside the ARC, in the separate administrative district of Sevastopol, which is actually almost a mini-republic. More than the port, it incorporates the towns of Balaklava and Inkerman, but only a quarter of its territory is urban.

23 Brian Glyn Williams, *The Crimean Tatars: The Diaspora Experience and the Forging of a Nation*, (Leiden, Boston, Koln: Brill, 2001).

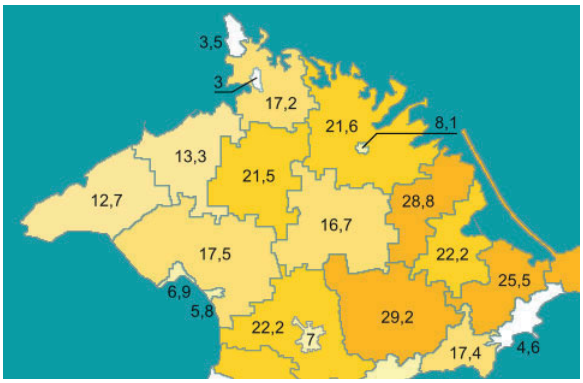

Figure 3: Distribution of Crimean Tatars by regions in Crimea (in percentages), according to the 2001 Ukrainian census

About three quarters of the Crimean Tatar population still live in rural areas. They have therefore been forced to build their own settlements, which have only gradually become connected to local utility supplies. Land rights are insecure and "irregular constructions" are common (see Veljko Mikelic, "Housing, Land and Property Issues of FDPs in Crimea", 2013). Crimea as a whole also has plenty of development problems: its economy is overly reliant on the old-fashioned and beach-dependent post-Soviet tourist industry. The Crimean Tatars still tend to live separately from other groups; their standard of living is below average, and has not grown much in twenty years. A Crimean Tatar middle class has yet to fully emerge.

6. Religion and culture

The Crimean peninsula is home to a strong Russian Orthodox Church (technically the "Ukrainian Orthodox Church - Moscow Patriarchate", but this UOC-MP is still organizationally part of the broader Russian whole). In Ukraine generally, Orthodox believers are split into three major and one minor Churches, but in Crimea the vast majority of Orthodox communities, 519 out of 589 as of 2010, belong to the UOC-MP.[24]

There are at least six rival bodies claiming to represent Muslims in Ukraine. The main three in Crimea are the Spiritual Directorate of Muslims of Crimea (DUMK), which is an elective body linked to the Crimean Tatar Qurultay and led since 1999 by the Mufti of Crimean Muslims Emirali Ablaev. DUMK oversees the Crimean *Muftiyat* and practises traditional Sunni Islam of the Hanafi school, which is traditionally more open-minded to other cultures. DUMK models itself on and co-operates closely with similar groups in Turkey. The Spiritual Directorate of Muslims of Ukraine (DUMU) is its all-Ukrainian equivalent established in 1992, and represents "official Islam" led by a Lebanese citizen, Sheik Ahmet Tamim, the self-styled Mufti of Ukraine who follows the Habashi version of pan-Sufism and can be relied on to condemn all forms of extremism. Tamim is a controversial figure, however, whose authority is contested by many Muslims in Ukraine, particularly because of his role in allocating reserved places for the annual Hajj and alleged profiteering from the position. DUMU also has an offshoot in Crimea, the Spiritual Centre of Muslims of Crimea (DTsMK), which, although currently led by a Crimean Tatar Ridvan Veliev, is multi-ethnic. At the end of 2010 the Ukrainian authorities controversially registered the DTsMK as a "second Muftiyat". A fourth group in Crimea are the followers of *Hizb ut-Tahrir al-Islami* (HUT) - the Party of Liberation, known colloquially as the 'Hizbis' - who are supporters of a pan-Islamic Caliphate. A Wahhabite extreme exists within this extreme, but so far has found it difficult to expand in Crimea.

Relations with Turkey are obviously important. The *Diyanet* (Turkish Presidency of Religious Affairs) supports the DUMK. The *Diyanet Vakfi* charitable fund has helped with mosque building and campaigned against HUT. In 2006-09 the Turkish Agency for International Co-operation and Development (TIKA) funded 41 educational projects worth over $3 million; but the Ukrainian authorities have continued to go slow on officially registering its activity.[25]

Relations with the North Caucasus have ironically been facilitated by the apparent rapprochement

24 See the report at www.irs.in.ua/index.php?option=com_content&view=article&id=581%3A1&catid=51%3Astats&Itemid=79&lang=uk.
25 Official statistics are at www.risu.org.ua, but are not always up to date.

between Ukraine and Russia since 2010. This has also been exaggerated at the propaganda level, but the Chechen mufti and president supported the opening of a mosque in Krasnoperekopsk in August 2010. Contacts between Crimean Tatars and kin groups amongst the Circassians and Adyghe can also be expected to grow.

Most mosques were deliberately destroyed after the 1944 deportations; most Crimean Tatar place names disappeared. Rebuilding a religious and educational infrastructure has been controversial, with local Crimean leaders preferring the opposite approach of celebrating the Soviet, and even Imperial Russian, past. Schooling and mass media in the Crimean Tatar language remains under-developed, and the language is officially considered by UNESCO to be "severely endangered" (see Idil P. Izmirli, "On Revitalization of the Language and Culture of the Crimean Tatars and Other Formerly Deported People in Crimea", Ukraine: Assessment of Needs and Recommendations, 2013).

7. Politics

Political issues have also generated tensions (see Natalia Mirimanova, "Political participation and representation of Crimean Tatars and other formerly deported people: needs assessment", 2013). The first Crimean Tatar party of the modern era, the National Movement of the Crimean Tatars (NMCT), was set up in 1987, but always saw itself as more of a movement than a party. The NMCT split in 1989; its main successor group organised the election of a Second Qurultay (the first having been in 1917) in Simferopol in June 1991, passing the Declaration of National Sovereignty of the Crimean Tatar People, which claims that "Crimea is the national territory of the Crimean Tatar people, on which they alone have the right to self-determination... The political, economic, spiritual and cultural revival of the Crimean Tatar people is possible only in their own sovereign national state."

In practice, the Crimean Tatars make up just over 13 per cent of the local population. Not all adults have voting rights, but this is offset by traditionally high turnout to create an effective voting block at elections. Given a total figure for Crimean Tatars in Crimea of 266,000 in 2012, the number of Crimean Tatars of voting age is potentially as high as 180,000, assuming 32 per cent are aged from zero to eighteen. Traditionally, their turnout has been high and solid majorities have voted as recommended by the Mejlis (see below).

A one-off special provision granted the Crimean Tatars a quota of 14 out of 98 seats in the local assembly between 1994 and 1998. A "Council of Representatives of the Crimean Tatar People Attached to the President of Ukraine" was set up in 1999, which oversaw several practical improvements to Crimean Tatar life in the early 2000s; but its composition was unilaterally altered in 2010. Numbers were cut from 33 to 19, only eight of whom were now representatives of the Mejlis, and the leader of the Mejlis Mustafa Dzhemilev lost his position as chair of the Council. The leaders of the Qurultay have therefore boycotted the Council since 2010.

Since 1991 the Qurultay and its plenipotentiary body the Mejlis have also claimed to be the sole legitimate representative voice for the Crimean Tatar people: that is a parliament rather than a political party or NGO. The Qurultay is re-elected every five years (in 1991, 1996, 2001 and 2007), with 55 per cent claimed for the most recent round of voting, the special reelections to local Mejlises in 2009.[26] Voting has been based on an indirect 'electoral college' system, but was due to be revamped for the 2013 Qurultay (the 'sixth' – see below).

The assertion of parallel representative authority is an awkward claim for any sovereign state, and the Mejlis' claims are categorically rejected by the Ukrainian authorities who often refer to the Mejlis as an "illegal

26 Oleksandr Bohomolov, Serhii Danylov and Ihor Semyvolos, "The Crimean Political Space: Between the Russian and Islamic Worlds", *National Security and Defence* , no. 4-5 (121-3), 2011, pp. 53-9, at pp. 56-7.

body". Moreover, the Qurultay is not the only voice claiming to speak for the Crimean Tatars: others are the radical *Milli Firka* (National Party), the NGO *Sebat* (Fortitude) and the Crimean Tatar Popular Front set up in January 2012.

The radicals are often referred to as the "Kazan party", as they claim life for Tatars is better under the Russians in Kazan. But there are no regular tests of relative support between the radicals and the Mejlis. The Mejlis won 89 per cent of the vote in the special election for the fourteen Crimean Tatar seats in the local Crimean Assembly in 1994, although that was many years ago. At rival demonstrations on Deportation Day, the Mejlis regularly assembles a far bigger crowd. One 2001 poll by the Razumkov Centre in Kiev put support for the Mejlis at 82 per cent.[27] Another poll in 2011 reported 64.7 per cent of Crimean Tatars saying that the Qurultay/Mejlis supported their interests "fully" or "to some extent".[28] Though this and other polls have been highly controversial: local Slavic politicians were fond of quoting the fact that 25 per cent of Crimean Tatars believed the Mejlis 'fully' defended their interests, and not the 39.7 per cent who said it did 'to some extent'.

The issue of the Crimean Tatars and other FDPs is also situated within broader Ukrainian politics, and within the rivalry between Russia and Ukraine over Crimea. Although initially inchoate in the 1990s, Ukrainian politics has long seemed deadlocked in an existential struggle between East and West, Russia versus Europe, and between east and west Ukraine. The Crimean Tatars have usually allied themselves with Ukrainian "national-democratic" forces as a counterweight against the local Russians, who dominate politics on the peninsula. The Crimean Tatars may not be natural fans of Ukrainian statehood, but have reinvented themselves since 1991 as its strongest proxy force on the peninsula (the local Ukrainians are heavily Russified, especially because there was no "Ukrainianization" period on the peninsula under Soviet rule, as the Crimean ASSR was not part of the Ukrainian Soviet Republic in the 1920s and 1930s).

Since 1991, the Crimean Tatars have also allied themselves with the Ukrainian geopolitical view of the Crimean peninsula as a necessary part of Ukraine's otherwise soft underbelly. Some Kazan radicals have aligned themselves with the type of Russian Eurasianism that sees Crimea as a key pivot to a broader Orthodox civilization and/or sees Eurasia as a marriage of the Orthodox and Islamic/Turkic worlds. But there are also smaller groups who have allied themselves with a specific "Ukrainian Eurasianism" against the allegedly non-European Russians. And there are some radicals who see a future Crimean Tatar Crimea as part of a pan-Turkic or pan-Islamic arc of influence stretching from Bosnia to Central Asia.

As mentioned above, the January 1991 referendum on restoring the Crimean ASSR as a part of a renewed Soviet Union won 93 per cent support. But 54 per cent of local voters also backed an independent Ukraine in a further referendum in December 1991– and the Crimean Tatars were crucial to the narrow "yes" vote in Crimea.[29] In 1992 the local assembly adopted a constitution that all but declared independence; a local Crimean President was elected on a pro-Russian platform in January 1994, followed by a majority for his aptly-named "Russia" block in the Crimean assembly in March 1994.

The Crimean Tatars were largely bystanders to these events, but supported Kiev's reconsolidation of power in 1995-6, without Kiev ever strongly reciprocating. Kiev is forced to govern remotely and indirectly: an informal bargain in 1995 gave local Russian-speaking elites carte blanche to enrich themselves as long as they did not raise the issue of separation. Both the economy and politics are penetrated by local Mafia, many of whom sat openly as local MPs in the 1990s.

27 See http://qtmm.org/en/news/1727-report-of-the-chairman-of-mejlis-mustafa-jemilev-at-the-4th-session-of-qurultay-of-the-5th-convocation.
28 The Razumkov Centre, *National Security and Defence Report* , No. 4, 2001, www.razumkov.org.ua/eng/files/category_journal/NSD16_eng.pdf.
29 http://razumkov.org.ua/eng/journal.php?y=2011&cat=160The Crimean Tatar population in late 1991 was 142,200 or 6 per cent. Many FDPs had either not yet returned or were otherwise unable to vote.

The Crimean Tatars have pushed for various legal measures to enhance their status, but with few results. The Ukrainian constitution adopted in 1996 endorses the concept of "indigenous peoples" (Article 11, the Ukrainians are referred to elsewhere), but does not define who they are - and subsequent attempts to do so have floundered. A 1993 Law on the Rehabilitation of the Victims of Political Repression was as general as it sounds and excluded groups deported from Crimea on an ethnic basis. A more specific law was vetoed by President Kuchma in 2004, allegedly because of Crimean Tatar reluctance to support his chosen successor in the presidential election campaign for that year. Its successor, the Law on the Restoration of the Rights of Persons Formerly Deported on Ethnic Grounds, passed its first reading in June 2012, but its future remains uncertain.

The Crimean Tatars were disappointed that President Viktor Yushchenko (2005-10) did so little to advance their cause after the "Orange Revolution" in Kiev in 2004. The Council of Representatives of the Crimean Tatar People Attached to the President of Ukraine met four times under Kuchma, but only once under Yushchenko. Most Crimean Tatars voted for Yulia Tymoshenko in the 2010 Ukrainian election, but the victory of Viktor Yanukovych with largely east Ukrainian support (48.9 per cent nationally, 78.2 per cent in Crimea) was matched by his Party of Regions winning an unprecedented majority of eighty seats in the Crimean Assembly. The new head of the Crimean government Vasyl Dzharty's first priority was to cement the power of the Party of Regions in Crimea, but he was also powerful enough to be able to cut deals with the Crimean Tatars, symbolically attending the "Appeal to the Descendants" at the would-be site of the Crimean Tatar mosque in Simferopol in March 2011. Dzharty, however, died in August 2011 and was replaced by Anatoliy Mohyliov, who as national Ukrainian Interior Minister had been involved in a violent confrontation with the Crimean Tatars at Ai-Petri in 2007, and had publicly made anti-Crimean Tatar statements referring to them as "Hitler's henchmen".[30] Mohyliov did not have the same power to make compromises; he also represented the narrowing of the governing elite in Crimea to a much smaller outsider group from east Ukraine, and from Yanukovych's home town of Makiivka (the newcomers are therefore known as the *Makedontsy* , the 'Macedonians').[31] Crimea has regained its reputation for corruption.

The Crimean authorities under Mohyliov have been accused of playing an artificial politics of divide-and-rule to marginalize the Mejlis. In March 2013 Mohyliov stated "The Mejlis is a structure outside the legal framework in Ukraine. I am ready to co-operate with Mustafa Dzhemilev [as an individual]. However, let's get rid of this word Mejlis."[32] The Crimean Tatars have never voted for the ruling Party of Regions, including in the key elections of 2010 and 2012, and every vote was likely to count at the next elections in 2015. In 2013 Crimean Tatars sympathetic to the Mejlis were removed from both the Crimean government's Committee on Inter-Ethnic Relations, which oversees spending on FDPs, and the parallel committee in the local assembly, and replaced with regime-friendly loyalists.

The Mejlis also came under pressure to make the 2013 elections to the sixth Qurultay more 'competitive'. It agreed to abolish the electoral college, and fifty seats would be allocated by open competition between Crimean Tatar parties and NGOs, which threatened to lead to confrontation between the Mejlis and its more radical or more Russophile rivals through 2013.

8. Conclusion

Time does not cure all ills. Nor should it be assumed that steady progress has been the default mode for relations between the FDPs and Crimean and Ukrainian

30 'New Head of the Interior Ministry of Ukraine calls Crimean Tatars "Hitler's Henchmen"', 14 March 2010, http://vlasti.net/news/81377

31 Yulia Tyshchenko, "The Crimean Paradoxical Personnel Map: The 'Old Crimean' Guard against 'New Makiivka' Clans", 23 November 2011, www.ucipr.kiev.ua/publications/the-crimean-paradoxical-personnel-map-the-old-crimean-guard-against-new-makiivka-clans/lang/en. Mohyliov was born in Russia, but worked in the Donetsk police from 1982, and headed the Makiivka police from 2000 to 2005.

32 See his remarks at http://www.ukrinform.ua/ukr/news/mogilov_ne_hoche_spivpratsyuvati_z_medglisom_yakiy___poza_pravovim_polem_1805624.

authorities since 1991. There have been improvements in some areas, but paradoxical stagnation in many others under 'Orange' Ukraine from 2005, and a noticeable deterioration of the atmosphere since Viktor Yanukovych became President of Ukraine in 2010, and especially since Anatoliy Mohyliov took over the reins of the Crimean government in late 2011. Successive Ukrainian governments have been rightly accused of neglecting the FDP problem so long as potential Russian separatism remained dormant in Crimea; while under Yanukovych the priority has been to entrench the power of the outsider clan from Donetsk, Ukraine's position as chair of the OSCE in 2013 and the seventieth anniversary of the Crimean Tatars' Deportation in 2014 provides an opportunity to redress some of these trends; but one that will require all the key parties involved to reach more of a common ground on needs assessment and a greater willingness to act before problems on the peninsula escalate.

Annex 1018

Andrew Wilson, The Crimean Tatars: A Quarter of a Century After Their Return, Security and Human Rights 24 (2013)

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The Crimean Tatars: A Quarter of a Century after Their Return

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Abstract
The article looks at the position of the Crimean Tatars, seventy years after their mass Deportation from Crimea in 1944, and twenty-five years since they were able to begin to return to Crimea in 1989. It concentrates on the politics of their position since Viktor Yanukovych was elected President of Ukraine in 2010, looking at arguments within their ranks and at government attempts to play 'divide and rule'.

Keywords
Ukraine; Minority rights; Crimea; Crimean Tatars; Political technology

In 1783, when the Russian Empire annexed the peninsula, the Crimean Tatars who had been the leading force in Crimea since the fourteenth century, were still the majority population, at just over 80%. Successive waves of out-migration reduced their number to 19% (218,000) on the eve of their mass Deportation by the NKVD in 1944. Almost half perished during the Deportation and in the difficult years in Central Asia that followed. Unlike many other 'deported peoples', they were not rehabilitated by Khrushchev

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in 1956, and were not allowed to return to Crimea in significant numbers until the end of the Gorbachev era, after 1989.

The pace of return has slowed since the early 1990s. By 2012, there were 266,000 Crimean Tatars back in Crimea, making up 13.6% of the local population. An estimated 100,000 remain in Central Asia, mainly in Uzbekistan, plus several million in the broader diaspora, mainly in Turkey. There are also around 5,000 other 'Former Deported Peoples' (FDPs) - Bulgarians, Armenians, Germans and Greeks - compared to the 100,000 who were deported in the 1940s. Unlike the Crimean Tatars, they have other homelands to return to. The Crimean Tatars are part of the broader family of ethnicities speaking one of the Turkic languages, but, despite historic links to the Ottoman Empire, Turkey is not their original home. They formed a separate national group, absorbing many local influences, in Crimea. Some Crimean Tatars therefore suggest that they should go by the simpler name of 'Crimeans' or *Qırımlar*.

The Crimean Tatars still face many acute difficulties after their return. They are a minority in what they consider to be their historic homeland, with their historical presence largely erased. Ethnic tensions are often acute, in a region of often severe geopolitical tension. Crimea is part of the new independent Ukraine, but Russia's influence and ability to stir up trouble is still considerable, though the Crimean Tatar issue is exploited by all sides, in Moscow, Kiev and the local Slavic majority. The Crimean Tatars themselves continue to face discrimination and often outright hostility on the ground and their socio-economic problems are severe.

The HCNM Report

In August 2013 the OSCE's High Commission for National Minorities (HCNM) published a 'Needs Assessment' for the Crimean Tatars and the other FDPs in Crimea, for which I was the 'Academic Coordinator'. Interested readers can read the report at www.osce.org/hcnm/104309.

'Needs' were assessed under six headings: the legal and bureaucratic environment, including facilitating the return of remaining FDPs, mainly from Central Asia; socio-economic conditions; land, housing and property; education; language and culture, including religion and cultural heritage; and finally political participation and representation. The findings will be discussed in the second half of this paper. But the one thing that stood out during the preparation of the report was the importance of political problems, many of them artificial. In 2013 Ukraine was chair of the OSCE. May

2014 is the 70th anniversary of the Deportation in 1944. A commitment to upholding minority rights is the least that one might expect from the chair of the OSCE, but Ukraine, under President Yanukovych, has been dragging its feet and even showing signs of outright hostility to the leadership of the mainstream Crimean Tatar organisation, the Mejlis.[1] The explanation, an obsession with monopoly control of politics, via the corrosive techniques of 'political technology', bodes ill for long-term political stability on the peninsula. The authorities are playing with the scarecrow of Islamic radicalism – a phantom which may eventually become real if nothing is done to reverse the neglect of basic socio-economic conditions and cultural demands.

Relations under the Yanukovych Presidency

There was, ironically, a small window of opportunity to improve relations between Kyiv and the Crimean Tatars after Yanukovych's election in February 2010. Among outgoing President Yushchenko's many failings was his neglect of the Crimean Tatar issue. According to the leaders of the Mejlis, "we were surprised by his indifference",[2] the most plausible explanation for which was Yushchenko's relative Ukrainian nationalism and his concern that Crimean Tatar demands for sovereignty were a threat to the Ukrainian state-building project on the peninsula.[3]

After 2010 the new head of the Crimean government was a close confidant of Yanukovych, Vasyl Dzharty. His first priority was to cement the power of Yanukovych's Party of Regions in Crimea, but he was also powerful enough to be able to cut deals with the Crimean Tatars, symbolically attending the 'Appeal to the Descendants' at the would-be site of the Crimean Tatar mosque in Simferopol in March 2011. Dzharty, however, died in August 2011 and was replaced by Anatoliy Mohyliov, an altogether different figure. Mohyliov was in charge of the bulldozers which flattened Crimean Tatar businesses during a notorious confrontation at the disputed holiday/holy site of Ai-Petri in 2007, and has publicly referred to the Crimean Tatars as "Hitler's henchmen" (the official but discredited reason for their Deportation

[1] The Qurultay is an elected representative body claiming to represent all the Crimean Tatars, with 250 members. The Mejlis is its smaller plenipotentiary equivalent, whose 33 members exercise the Qurultay's functions between sessions.

[2] Interview with Mejlis leader Mustafa Dzhemilev, 17 January 2010.

[3] 'Crimean Tatars Dissatisfied with Yushchenko Statement', 31 May 2005, www.unpo.org/article/2565.

in 1944).[4] Mohyliov did not have the same power to make compromises as Dzharty; Mohyliov also represented the narrowing of the governing elite in Crimea to a much smaller outsider group from east Ukraine, many from Yanukovych's home town of Makiivka (the newcomers are therefore known as the *Makedontsy* , like the 'Macedonians' from the north ruling the Greeks to the south).[5] Crimea under Mohyliov has also regained its reputation for outlandish corruption.

Even in the summer of 2010, however, the first scheduled meeting between Yanukovych and the Mejlis leaders did not go well. There was a stand-off after Yanukovych invited radical critics of the Mejlis.[6] The underlying issue was that Crimean Tatar voters had overwhelmingly backed his opponents in a closely-fought election (Yanukovych won by less than 900,000 votes). The leaders of the Mejlis stress that they "have always supported the national-democratic camp. We are a pro-Ukrainian force". They even "support integration into the EU and NATO".[7] All of which was anathema to Yanukovych, even before Ukraine's relationship with the EU hit the rocks in late 2013.

In fact, the Crimean Tatars often seem like the only 'pro-Ukrainian force' in Crimea. The local ethnic Ukrainian minority (24%, compared to 58% who are Russian) is highly Russified. It was only thanks to Crimean Tatar votes that a slim majority in Crimea, just 54%, voted to back Ukrainian independence in the crucial referendum in December 1991. In the 2004 election the 'orange' candidate Viktor Yushchenko won 15% in Crimea, helping towards overall victory, but the leaders of the Mejlis claim "12% of that was us".[8] In the 2010 election the Crimean Tatars provided the same bedrock support for Yuliya Tymoshenko's 12% of the vote in round one and 17% in round two (Yushchenko won 1.3% in round one).

The October 2010 local elections in Crimea saw a landslide victory for the Party of Regions, which was also able both to absorb many of the pro-Russian parties of the 1990s and squeeze the remaining centre parties.

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[4] Anatolii Mogilev [Mohyliov], 'V Krymu zreet konflikt po kosovskomu stsenariiu', *Krymskaia pravda* , 24 January 2008.

[5] Yulia Tyshchenko, 'The Crimean Paradoxical Personnel Map: The "Old Crimean" Guard against "New Makiivka" Clans', 23 November 2011, www.ucipr.kiev.ua/publications/the-crimean-paradoxical-personnel-map-the-old-crimean-guard-against-new-makiivka-clans/lang/en. Mohyliov was born in Russia, but worked in the Donetsk police from 1982, and headed the Makiivka police from 2000 to 2005.

[6] Yurii Zushchik, 'Krymskie tatary tak poliubili Yanukovicha, chto raskololis' na dva lageria', http://vlasti.net/news/98789.

[7] Interview with Refat Chubarov, 17 January 2010.

[8] Ibid.

Effectively there was now a 'two-party system in Crimea' – with the Party of Regions and the Mejlis facing off against one another. The Party of Regions had first 48, then 80 seats out of 100 in the local Crimean Assembly,[9] compared to eight for the older pro-Russian parties, five for the Communists, two for the only remaining centre party, Strong Ukraine, and six for the Mejlis.[10] In the 2012 national elections to the Ukrainian Parliament, the Party of Regions won 52.3% in Crimea versus 13.1% for the opposition party Fatherland (which included Tymoshenko's old party, though she herself was now in prison), the main choice for the Crimean Tatars, and 7.2% for the another opposition party UDAR. The Party of Regions won nine out of ten territorial seats.[11]

Reason number two for the new Ukrainian authorities to oppose the Crimean Tatars is therefore that they do not like two-party system. They would prefer one. Yanukovych has expressly stated this in private to the veteran Mejlis leader Mustafa Dzhemilev: the Mejlis was being punished for voting against him. Conversely, Yanukovych said to Dzhemilev, "Join my team, and all your problems will be over".[12] More generally, the Party of Regions sees the Qurultay/Mejlis as an alien life form. The Party of Regions dislikes any independent political activity, and apathy is its greatest ally, as opposed to the alternative culture of resistance represented by the Mejlis.

In the scramble for votes in the run-up to the next Ukrainian presidential election in 2015, even the tiniest margin will be vital. The Crimean Tatars are the only independent voters left in Crimea. There were 266,000 Crimean Tatars in Crimea in 2012, about 13% of the population. But higher birth rates mean the percentage of Crimean Tatar schoolchildren in the system is already nearer 20%. The number of Crimean Tatars of voting age is therefore potentially as high as 180,000 (assuming a standard 32% are aged from zero to eighteen), so they will also command nearer 20% of the local vote by 2015. And traditionally their turnout has been high and solid majorities have voted as recommended by the Mejlis.

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[9] Since the constitutional settlement in 1995-6, the local Assembly, full name the 'Supreme Council of the Republic of Crimea', has had no powers to make 'law' (*zakon*), but can pass 'decisions and resolutions' (*rishennia ta postanovy*). See the Ukrainian Constitution at http://zakon4.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80. So it is not a 'parliament'.

[10] Tetyana Huchakova, 'Crimean Politics: The Turn of 2011…', *National Security and Defence* , no. 4-5, 2011 (Kiev), pp. 131—6, at p. 133; at www.razumkov.org.ua/eng/files/category_journal/NSD122-123_eng.pdf. See also rada.crimea.ua/structure/factions.

[11] See cvk.gov.ua.

[12] Interview with Dzhemilev, 15 May 2013.

Finally, the power of the Party of Regions in Crimea is only skin-deep. As mentioned above, its leadership is now dominated by outsiders from Donetsk region. The local party is not well integrated in the national party. Only one local Crimean was high up on the Party of Regions' national party list in 2012.

Exaggerating the threat of the Crimean Tatars is therefore seen as a good way of consolidating support for the sometimes precarious local elite, which also faces a long-term threat from Russia, even though Russia's candidates (or more exactly the candidates seeking Russian support) did not do so well in the 2010 Crimean elections, when Russia spread its bets by backing a wide range of parties and politicians: 'Union', the Russia Block, the Communists, the Hrach-Volga Block, Inna Bohoslovska and Nataliya Vitrenko. But the Kremlin is currently heavily backing the machinations of Viktor Medvedchuk, Kuchma's former chief of staff and his 'Ukrainian Choice' NGO (vybor.ua). Medvedchuk now lives in Crimea. Putin is godfather to his daughter. He has plenty of money, but is not a plausible presidential candidate, other than as a 'spoiler' if Yanukovych is not playing ball. There is a danger that a 'Russian Project' in the Ukrainian elections due in 2015 might only succeed in Crimea, where it could take on more radical overtones.

This is despite Ukraine being tied more closely, economically, to Russia. Russian influence will only grow if Ukraine rejects the Agreements negotiated with the EU. And the Crimean Tatars will be even more isolated.

Divide-and-Rule

Overall, after almost a quarter of a century back in Crimea, progress in integrating the Crimean Tatars and other FDPs has been frankly slow. Politically, the lack of progress might have been expected to produce more of a backlash and the growth of a more radical fringe. In fact, at the time of writing in late 2013, it is still the relative unity of the Crimean Tatar movement that stands out. This should be borne in mind, as the Yanukovych administration has been trying to create the opposite impression that the Crimean Tatar community is increasingly divided and the Qurultay is only one voice among many.

The authorities in Kyiv have returned to a hard-line policy of denying the claim of the Qurultay to be a quasi-parliament. Admittedly, the claim is a potential challenge to the sovereignty of any state, particularly as the Qurultay also passed a 'Declaration of National Sovereignty of the Crimean

Tatar People' back in 1991, which claims that 'Crimea is the national territory of the Crimean Tatar people, on which they alone have the right to self-determination'. The Qurultay has also often declared itself to be the only legitimate voice of the Crimean Tatar people. But a formula was found for circumventing this problem back in 1999. A 'Council of Representatives of the Crimean Tatar People attached to the President of Ukraine' was set up to give advice to the said president, and it just so happened that most of its members were leaders of the Qurultay/Mejlis. The Council met four times when Leonid Kuchma was President (until 2005), but only once under Yushchenko (2005-10).

But, as previously stated, Yushchenko's policy was basically one of neglect. Yanukovych's team has been reviving the corrosive practices of 'political technology' once thought buried by the Orange Revolution in 2004, both in Crimea and in Ukraine as a whole to actively 'manage' politics and disable challenges to their power. The trend is new, but the tactics are old (and obvious): divide-and-rule, the creation of scarecrows (*pugal*) and fake oppositions.

In August 2010 Yanukovych cut the size of the Council of Representatives from 33 to 19, only eight of whom were now members of the Mejlis. Dzhemliev was deposed as chair. But three places were suddenly given to the Milli Firka ('National Party').[13] The latter has been around since official registration in 2007, and takes its name from the first Crimean Tatar party originally established in 1917, but is widely seen as an artificial Uncle Tom party covertly playing the authorities' line. Moreover, a whole host of other projects have been launched in a spirit of divide-and-rule: the Crimean Tatar Popular Front in January 2012, the NGO *Sebat* and New Generation, all peddling either a collaborationist or faux-radical line. [14]

Pro-Russian Crimean Tatars are known locally as the 'Kazan Party', as they argue that everything is better for the Volga Tatars in Kazan. According to the Milli Firka leader Vasvi Abduraimov, for example: 'Russia has its Tatars, Ukraine has its [Tatars]. Only the attitude to them is different, for some reason. Crimean Tatars even in their homeland, in the Crimea, are not recognised as the titular nation.'[15] Abduraimov published a notorious

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[13] 'Yanukovych Reduced the Composition of the Council of Representatives of the Crimean Tatar People by Almost Half', *Dzerkalo tyzhnia* , 26 August 2010.

[14] Anvar Derkach, 'A New Crimean Front', *The Ukrainian Week* , 7 March 2012.

[15] Oleksandr Bohomolov, Serhiy Danylov and Ihor Semyvolos, 'The Crimean Political Space: Between the Russian and Islamic Worlds', *National Security and Defence* , no. 4-5, 2011 (op. Cit.), pp. 53—8, at p. 56. Original in Abduraimov, 'Tatarskie druzh'ia i vragi', *Poluostrov* , 29 October 2007.

open letter in September 2008, just after the war in Georgia, to Medvedev, Putin and Shaimiev, the then leader of Tatarstan, asking them 'to defend the indigenous and other small ethnic groups in the Crimea from the nationalist-leaning official authorities in Ukraine' – a fake threat if there ever was one.[16]

The Mejlis boycotted the new Council of Representatives after 2010, but Kyiv upped the ante in 2013 by parachuting in a Yanukovych loyalist, Lentun Bezaziyev, to take it over. His deputy was Vasvi Abduraimov, head of the Milli Firka, who have called for the boycotting Mejlis representatives to be kicked out.[17]

The role of the Crimean Tatars in local government is also decreasing. In 2012-13 leading supporters of the Qurultay were removed from key positions in the Crimean Assembly and Cabinet of Ministers. The Mejlis deputy chair Remzi Ilyasov was replaced as head of the Crimean Assembly's 'Commission on Interethnic Relations and the Problems of Deported Citizens' by Enver Abduriamov, a local 'businessman'. Eduard Dudakov, head of the Republican Committee on Interethnic Relations, which oversees the FDP budget, was replaced by Refat Kenzhaliyev, former deputy head of the Crimean police and a close ally of Mohyliov.[18] The State Committee for Nationalities and Religion was disbanded in 2010.

The shift away from a more proportional election system also damages the Crimean Tatars. Currently, they have only one national MP in Kiev (out of 450), and only five in the Crimean Assembly (out of 100, one defected). Seats are more winnable at a local Crimean level; but Crimean Tatars are still under-represented, holding around 10% of seats on Crimean local councils. Less than 5% of local administration officials are Crimean Tatars, excluding the special case of the Nationalities Ministry (*Reskomnats*).

The New Qurultay

Pressure from above and from the radical 'opposition' led to important changes for the election of the Crimean Tatars' own elected body, the

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[16] Halya Cornash, 'The Crimea's Interests not Represented', 15 September 2008, http://www.khpg.org/index.php?id=1221486403.

[17] '"Milli Firka" calls on the President of Ukraine to renew the Membership of the Council of Representatives', 27 August 2013, http://krymtatar.in.ua/index/artstr/id/976.

[18] 'Mogilev [Mohyliov] "zachishchaet" krymskuiu vlast' ot predstaviltelei Medzhlisa', 24 February 2013, http://zn.ua/POLITICS/mogilev-zachischaet-krymskuyu-vlast-ot-predstaviteley-medzhlisa-117569_.html.

Qurultay, in 2013. This was the sixth Qurultay. The first Qurultay was held in 1917; the revival Qurultay in 1991 was therefore deliberately named 'the second'. New elections have been held every subsequent five years (the change of system meant the 2013 elections were a year late). With the authorities pressing to make the Qurultay look illegitimate, the new system was designed to make it more effective, more legitimate, and even more quasi-'parliamentary', as well as bringing in 'new blood'.[19] The indirect elections of the past would now be replaced with direct votes (the idea was even floated to compress the old convoluted voting process into a one-day and headline-making Crimean Tatar 'general election', but deemed impractical). Two hundred delegates would now be elected from territorial constituencies (nearly all in Crimea, four elsewhere in Ukraine, one in Uzbekistan) and fifty on a PR basis for political parties and blocks. The Crimean Tatars organised their own 'Central Election Commission' to oversee the process, and worked with outside observers, including from the IRI.

The turnout was 50.5% (90,850 Crimean Tatars voted).[20] This might be a long-term decline from the higher levels of political engagement in the early 1990s, but worse had been feared. The turnout was also higher than that among all Ukrainian voters in the 2012 national Ukrainian parliamentary elections, which was only 49.4% in Crimea - the lowest vote for any region in Ukraine, where the national turnout was 58%.[21]

The main pro-Mejlis block Milliy Haq, which was headed by Dzhemilev's long-time deputy Refat Chubarov, came first. The Crimean Tatar National

Table 1 Elections to the sixth Qurultay, 2013 (PR vote)

Milliy Haq Block	29,376 votes	18 seats
İnkişaf	11,861	8
CTNMO	8,382	6
Qardaşlıq-Qarasu - Crimean Tatar Youth Centre Block	6,901	5
Crimean Federation of National Wrestling Kureş	6,728	5
Adalet	5,197	4
Maarifçi	4,587	4

[19] Martyn Bohun, 'Krim'ki [sic] tatary stvoriuiut' paralel'ni derzhavni struktury. Kurultai pratsiuvatyme yak parlament', 15 February 2013; http://texty.org.ua/pg/article/LPB2/read/43478/Krymki_tatary_stvorujut_paralelni_derzhavni_struktury_Kurultaj.

[20] 'Results for Elections to Qurultay Known', 19 June 2013, http://qha.com.ua/results-of-elections-for-qurultay-known-127731en.html.

[21] See http://www.cvk.gov.ua/pls/vnd2012/wp063?PT001F01=900.

Movement and Adalet ('Justice') party are also largely pro-Mejlis, as is the education NGO Maarifçi ('Educator'). Kureş was backed by the businessman Lenur Isliamov, who launched the Crimean Tatar mini-media project ATR (he also supported the film *Haytarma* – see below). The 'Youth Centre' claimed to be a constructive opposition.

İnkişaf ('Development') was in theory also a 'constructive opposition' based in Sakskii region, backed by businessman Eskender Bilialov. However, it was accused of being a pro-Mohyliov front, via Crimean Vice Premier Aziz Abdulaiev, who was using 'administrative resources' (state pressure) to enlist support. İnkişaf's main purpose was supposedly to undermine the Mejlis where it was most vulnerable, by siphoning off business supporters and even businesses linked to leaders of the Mejlis.[22] Indeed, its campaign budget was large.[23] İnkişaf only won eight seats, but at least it made the elections more competitive, which might strengthen the Qurultay in the long run. Other elements of the Crimean Tatar 'opposition', like Milli Firka, boycotted the vote.

The first session of the new Qurultay in October 2013 led to a change of leader, with the retirement of veteran leader Mustafa Dzhemilev, born in 1943, whose youngest son was caught up in a murder case in May 2013, and his replacement by Refat Chubarov, who beat his rival Remzi Ilyasov, who is allegedly close to Aziz Abdulaiev, by 126 votes to 114. The new Mejlis was clearly more pluralistic, if not in a way of which old-style Mejlis leaders necessarily approved.

The Needs Assessment

The first step towards a proper needs assessment is to be precise about facts and figures. Even the very size of the FDP population is disputed, in part because of the unclear legal environment. Ukraine has only held one post-Soviet census since the last all-Soviet census in 1989, and that was late, in 2001. Its successor is even later, still unscheduled in 2013. But we can say that the Crimean Tatar population has grown, albeit not at the rate expected during the early 1990s. The verified number is now 266,000, which is a

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[22] Andrei Latinin, 'New Crimean-Tatar Project "Under Mogilev" is designed to keep the business of the Mezhlis and its "purse-holders"', *Novyi Region-Krym* , 31 May 2013, www.nr2.ru/crimea/441532.htm. Cf'İnkişaf is not a project of Mohyliov, NGO's leader', 4 July 2013, http://qha.com.ua/inkisaf-is-not-project-of-mohyliov-ngo-s-leader-128264en.html.

[23] One source said 300,000 UAH ($37,000), İnkişaf leaders claimed 40,000 UAH; İnkişaf is not a project of Mohyliov.

higher overall percentage, 13.6%, of the overall population of Crimea, as the latter has shrunk to under two million. Higher birth rates mean that the Crimean Tatar population is still expanding at +0.9% per annum, while the overall population of Crimea is declining by -0.4%. As already stated, Crimean Tatar children already make up 20% of the school population.

On the other hand, the number of other FDPs (Armenians, Bulgarians, Germans and Greeks) has not gone back to the levels of the 1940s, when just over 100,000 were deported, and stands at just under 5,000.

Legal status is the second key existential question after numbers, but there is no real legal mechanism to define the status of FDPs (the last attempt was vetoed by President Kuchma in 2004). The 1996 Ukrainian Constitution refers vaguely to the rights of 'rooted [indigenous] peoples', but does not say who they are (the rights of ethnic Ukrainians are separately defined). A mooted 'Law on Rooted Peoples' has never made much progress, but a Law on the 'Restoration of the Rights of Deported People on Ethnic Grounds' was passed by the Verkhovna Rada at first reading in June 2012, only for further progress to be stalled.

Other legal problems include the bureaucratic hurdles and high transfer costs that hinder the return of remaining FDPs, particularly from Uzbekistan. The 1993 Bishkek Agreement regulating conditions for the return of FDPs ran out in May 2013, and the Ukrainian authorities have not yet undertaken any efforts to renew it, despite the recommendations of both the Mejlis and the parliamentary Human Rights Committee.

Back in Crimea, land ownership needs to be properly legally defined, and a registry of ownership drawn up.

Ukraine's 2012 Law on Languages, which legalises the use of minority languages in areas with 10% or more minority population, was designed to expand the use of Russian, but has had paradoxical effects in Crimea. The proposal to raise the threshold to 30% would exclude the Crimean Tatars, who make up around 13% of the Crimean population. The Crimean Assembly refused to discuss the issue before the October 2012 elections.

Crimea is Ukraine's most uniformly Russian-speaking region - there are also severe problems with the use of Ukrainian as the state language. Crimean Tatar children are mainly taught in Russian, although some children of the elite study in the small number of Ukrainian schools. Crimean Tatars make up over 13.6% of the general population and 20% of the school-age population, but only 3% of children are taught in the Crimean Tatar language (though twice as many take it as an elective), and usually only for the first four years. After half a century in Central Asia, most Crimean Tatars are highly Russified. UNESCO categorises Crimean Tatar as an 'endangered

language'. There are only fifteen Crimean Tatar schools in Crimea; between 75 and 80 are needed. Crimean Tatar media is under-developed, and the infrastructure of cultural heritage is badly neglected. Place names were changed overnight in 1944 and have not been changed back. Attacks on Crimean Tatar mosques and cemeteries are frequent. The Kebir Cami Mosque in Simferopol has been returned to active use, but the building of the future Central Mosque on Yaltinskaya Street has been endlessly delayed.

The politics of memory still leads to culture wars in Crimea. Many local Slavs (both Russians and Ukrainians) still believe the 1944 Deportation was justified, because they still believe the discredited charges of collaboration with the Nazis. A textbook published in 2013 once again recycled these myths[24]; in contrast to a much more academic, but allegedly 'anti-Russian', four-volume history of the Crimean Tatars by the Russian scholar Valeriy Vozgrin, a former member of the Mejlis, also published in 2013.[25] Also released in 2013 was the path-breaking film *Haytarma* , which gave a harrowing account of the 1944 Deportation by dramatising the life of Amet-Khan Sultan, a Crimean Tatar who fought in the Soviet Air Force, to rebut the collaboration myth (the Mejlis has called for Simferopol Airport to be named after him).[26] The Russian Consul General to Crimea Vladimir Andreiev was eventually forced to resign after criticising the film. A similar row broke out when Russian actor Aleksey Panin used similar words to Mohyliov in 2008, attacking Crimean Tatars "whom Stalin had not finished off in 1944", after a road-rage incident in August 2013.[27]

There are also increasing divisions in the religious sphere, although many Crimean Tatars again claim they are artificial. Most Crimean Tatars belong to Sunni 'Spiritual Administration of Muslims of Crimea' (DUMK), which is close to the Mejlis. Only about 10% of registered Islamic organisations are outside the DUMK, including various strains of radicalism; [28] but Mejlis leaders admit that the loss of religious and cultural traditions during the long years of exile often means that the young in particular are not

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[24] Vladimir and Maria Shirshovii, *Memory Book of Eastern Crimea. They asked to remember* , (Kirovskii, 2013).

[25] Valeriy Vozgrin, *Istoriia krymskikh tatar* , (St. Petersburg: Nestor-Istoriia, 2013).

[26] Oksana Grytsenko, 'Haytarma', the first Crimean Tatar movie, is a must-see for history enthusiasts', *Kyiv Post* , 8 July 2013.

[27] Claire Bigg, 'Russian Actor in Trouble Over Crimean Tatar Remarks', *Radio Liberty* , 23 August 2013, http://www.rferl.org/content/russian-actor-offends-crimean-tatars/25084413.html.

[28] Ali Tatar-zadeh, 'Four Islamic Lions on the Crimean Savanna', *Media Krym* , 4 July 2011, http://risu.org.ua/en/index/studios/studies_of_religions/45605/.'

insulated against the leap straight into radicalism. The dominant Church in Crimea overall is the Moscow Patriarchate of the Orthodox Church, which is part of the parent Church in Moscow and is often openly hostile even to mainstream Islam (and not just to Islam, but to the rival Kyivan Patriarchate of the Orthodox Church). As of 2013, there were only 180 mosques in Crimea, compared to 3,000 before 1917.

The Crimean Tatars are not integrated economically. Unlike the population pattern before 1944, settlement in the southern coastal tourist zone is nowadays minimal. Three-quarters of the Crimean Tatar population is still rural. An estimated 75,000 FDPs are still living in temporary, uncompleted homes without any basic infrastructure. Between 8,000 and 15,000 still live in 'unauthorised settlements'. Conflicts over 'squatting' (*samozakhvaty*) are still frequent and often violent.

This is one area where money can make a basic difference. The Crimean Tatars' 'irregular constructions' still lack many basic amenities, particularly gas, water and sewage. They often live too far from public services in urban areas. Funds are badly needed for new schools, for the uncompleted Crimean Tatar University in Simferopil and for basic teaching materials.

A local building programme would also help with employment. Unemployment is not as high as might be expected, but the Crimean Tatars are highly dependent on self-employment. They are entrepreneurial, often because they face discrimination in mainstream public and private-sector employment, but their small trading economy is highly vulnerable in Crimea's highly criminalised economy and its numerous protection rackets.

Turkey has played an increasing role,[29] though one that was handicapped until recently by Kyiv's reluctance to give formal approval to the activities of the Turkish aid agency, TIKA. However, Ukraine's deteriorating relations with the EU and pressure from Russia, plus an unspoken desire to be another powerful state on the margin of Europe, has led to a rapprochement between Kyiv and Ankara since 2012. Despite propaganda about the influence of 'foreign Islam', Turkey is a more important force in Crimea than Saudi Arabia or the Gulf States. The Turkish Diyanet (the official 'Presidency of Religious Affairs') supports the mainstream Islam of the DUMK. If Ukraine continues to distance itself from the EU, the Crimean Tatars will inevitably look to Turkey even more.

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[29] Paul Goble, 'Turkey's Crimean Tatars Reach out to Their National Homeland', *Eurasia Daily Monitor* , vol. 10, no. 120, 25 June 2013.

An International Forum

Various sources estimate that between $160 million and $300 million has been spent in the national Ukrainian and Crimean budgets on the reintegration of FDPs since 1991, which is a substantial sum but still inadequate for the socio-economic situation in Crimea.

Since 2010 the Mejlis has been pushing the idea of an International Forum to provide a broader hearing for the problems of the Crimean Tatars. Such a Forum, in whatever format, could also serve as a donors' conference to raise money for the practical needs of FDPs. The Ukrainian authorities have not formally said either yes or no, but have stonewalled on the issue. Little progress was made in 2013, but a date nearer the 70th anniversary of the Deportation in 2014 would carry symbolic weight.

Conclusions

Progress towards integration has been slow in the quarter of a century since mass return to the peninsula became possible in the late 1980s. Unlike so many other post-Communist movements, the discipline of the Mejlis has helped to keep the Crimean Tatar movement relatively united and relatively moderate, keeping the rise of the radical and faux-radical fringe at bay. All that may be under threat in the next quarter century. A more divided politics will make solving practical tasks that much harder.

Recent Developments

This article was completed before Russia's annexation of Crimea, but can hopefully help shed light on the events. Putin has promised to upgrade the Crimean Tatars' status in a Russian Crimea, but the article explains why the leaders of the Mejlis are so sceptical. Crimea is now run by their Russian nationalist opponents, who have been demonising them since 2010 (and earlier). They fear that the pro-Russian 'Kazan Party' will be favoured by the new authorities and that the Mejlis could even be repressed after urging a boycott of Putin's 'referendum'.

Annex 1019

Mike Eckel, A Cry from Crimea, World Policy Journal (2014-2015)

A CRY FROM CRIMEA

SEPTEMBER 30, 2014

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And finally to round out our list, we turn to Crimea, where the struggle for independence rages on. Mikhail Vdovchenko, a native of Simferopol, Crimea, is a mild, if somewhat outspoken Ukrainian activist who was taken as a political prisoner and held for nine days by pro-Russian militants. ***Mike Eckel****, a Washington D.C.-based writer, captures Mikhail's harrowing tale of kidnap, torture, and eventual freedom.*

By Mike Eckel

SIMFEROPOL, Crimean Peninsula—The last free person to see Mikhail Vdovchenko before his descent into nine days of Russian hell was the co-owner of a local musical instrument store. For much of the past year, she's been scared, so much so that she drops her voice to a whisper on the boulevard outside her store when talking to strangers. She glances nervously over her shoulder at passersby. Too frightened to disclose her full name, Natalya is the mother of two teenagers and a four-decade resident of the Crimean Peninsula, which Russia summarily annexed in March, then launched an insurgency in eastern Ukraine sparking the worst crisis between Russia and the West since the Cold War. What happened in Simferopol—the Crimean capital where her store is located—and the entire nation has terrified her.

On March 11, she first made eye contact with Mikhail—Misha, his friends and relatives call him—on a sidewalk a few blocks outside the city center, a little before 4 p.m. She was walking home from the bank. Misha was walking toward her, flanked by three burly men with black truncheons, wearing camouflage. One had a red armband, a sign of membership in the "self-defense" groups that had popped up in Crimea in recent weeks. Their mission, ostensibly, was to protect people like our shopkeeper, all ethnic Russians, from Ukrainians like Misha and her own husband, also an ethnic Ukrainian. Misha's hands were bound in front of him. He looked at her with a terrified, pleading look.

She passed the group near a building housing Russian Unity, a political organization agitating for greater ties with Russia. The men threw Misha onto the sidewalk, then kicked and pummeled him. From across the street, she yelled "Stop it! Enough! Why are you beating him?" Three more men then emerged from the gate and joined the melee.

Now it was Misha's term to scream. "What are you doing? I'm from Simferopol! What are you doing?" he cried, as the shopkeeper looked on. The men then dragged Misha's bloody body through the gate, as a blonde woman emerged, a heavy jacket draped casually over her shoulders. "Why are you doing this? How can you do this? What has he done?" the shopkeeper shouted her question at the heavy-set blonde who just glared back, spitting out the words, "He's a provocateur," before turning on her heels, slamming the gate shut.

This is a story of one man's discovery of national pride and his struggle to maintain a sense of place as leaders in distant capitals play geopolitical chess with his homeland. Forces over which he has no control have seized his own and his neighbors' land, so that he no longer is able to chart the direction of his nation or even of his own private life. Through this Kafka-esque tale emerges a tangible, deeply personal sense of the grim, suffocating reality that Ukrainians, from Crimea to Donetsk, have lived through. And continue to live through, to this day.

NO PATRIOT, NO NATIONALIST

By all accounts, Misha had never been much of a patriot, a nationalist, nor a man of any particularly vocal political leanings. But to his closest friends and his longtime girlfriend, he began to change last November, around the time legions of Ukrainians across the country also began to change. People began massing in the streets of Kiev to oppose the pro-Russian government of

President Viktor Yanukovych. Yanukovych spurned closer ties with the European Union, at Russia's behest, and for many like Misha, this was the last straw. Thousands of Ukrainians took to the barricades in Kiev, in what came to be known as Maidan, forcing Yanukovych to flee the country on February 21. "I understood the need for a change of government, but I didn't see a need to go [to Kiev]," Misha told me later. "In Crimea, there wasn't the feeling, the emotion of Maidan. It was cerebral, not emotional. If I lived in Kiev, maybe I would have been there, fighting on the barricades. In Crimea, we didn't feel it the same way."

After Yanukovych's ouster, camouflaged men with Kalashnikovs and no identifying insignias began appearing throughout Crimea, the Black Sea peninsula whose geography and historic legacy to both Russia and Ukraine staked claims. They were known as "little green men." Random strangers were accosted, harassed, even assaulted by groups wearing masks, many carrying automatic weapons, some with accents from other regions of Ukraine, of Russia, even the South Caucasus.

The "little green men" were accompanied by an onslaught of Russian propaganda promoting a referendum on March 16 that served to ratify the peninsula's accession to Russia. Billboards urged "Crimea: Together With Russia," as posters promised higher wages, higher pensions, and greater benefits. Local television broadcasts became a continuous loop of gauzy, nostalgic propaganda—waving wheat fields and tractor combines, that might have been drawn from Khrushchev-Brezhnev-era Kremlin film archives.

DARKNESS IN SIMFEROPOL

There was a darker element, however. A campaign waged in the shadows, just barely beneath the surface, designed to instill fear, doubt, hesitation, and acquiescence among any who might openly challenge the Kremlin's intentions. Old tactics were dusted off for a new era, the tools of a police state used with devastating efficiency in past eras—Dzerzhinsky after the Bolshevik Revolution, Stalin in the Great Terror of the 1930s, Beria in post-World War II Eastern Europe, and Putin since 2001.

On March 5, Misha stumbled on a YouTube video about a rally in Simferopol where men and women sported signs proclaiming, "We're for Peace!" and "Putin: Hands off Ukraine!" In the video, several men, one wearing ribbons associated with pro-Russian activists, grab the signs and rip them up, yelling "Russia! Russia!" and "Fascism Won't Pass!"

The videos outraged Misha, stirring an upswell of nationalist sentiment and prompting him to tie a blue-and-yellow ribbon to his left breast jacket pocket. After one protest on March 8, he appeared at another the following day, timed for the 200th anniversary of the birth of Taras Shevchenko, a 19th century writer considered the father of the modern Ukrainian language. It was one of the largest demonstrations before the March 16 referendum on the status of Crimea.

Recognizing people he knew from around town, Misha summoned the courage and asked if he could speak. He pointed out the immense enthusiasm at the demonstration. Once people left, he said, they would slink away, taking off their ribbons and hiding their signs. "Wear your ribbons at work, on the streets! Don't be afraid! Go to stores! Wear your ribbons everywhere!" Misha told the rally. "People aren't going to shoot their neighbors. Then they'll see you as people. They'll see we're not Nazis. We're not extremists."

He decided to sew a Ukrainian flag and make a flagpole. On March 11, he brought it to another rally at the Shevchenko statue, standing off to the side of the scrum of activists and TV cameras. He hummed along as people sang the national anthem and chanted "Glory to Ukraine! Glory to the nation! Death to its enemies!"

He was wearing a trademark cap, with ear flaps pulled out, a beige jacket, and

army green pants. He held the 8-foot flagpole with the Ukrainian flag on his shoulder. On his jacket, he sported the blue-and-yellow ribbon. “Last week, I didn’t know I was a patriot,” he told me. “I never thought I’d be wearing a ribbon like this. They’ve turned me into a patriot.”

After the rally, around 1 p.m., Misha walked into town, planning to meet his oldest friend, Anton Zavalii, the chief ear, nose, and throat doctor at Simferopol’s Semeshko Hospital. At the corner of Pavlenko and Karl Marx streets, just a few blocks from the main railway station, Zavalii met Misha, accompanied by a man and woman from Kiev, Maidan activists who warned them that it was too dangerous to wear Ukrainian ribbons and to wave Ukrainian flags.

“You’ll be of more use to your country if you’re alive,” Zavalii later recalled them saying. “I’m just trying to show other Ukrainians not to be afraid,” Misha responded. “I’m a native of Simferopol. This is my home.” “You’re wrong,” the activists told them.

Across the street, next to a district military recruitment center, a man who appeared to be a Cossack yelled at them: “You’re provocateurs. Get lost,” Zavalii recalled. “We said back to him, ‘Listen, we respect you. You have to respect us. If you respect us, just leave us alone. Let us decide our way to walk.’”

As Misha and Zavalii walked on together toward the railway station, two strangers approached, asking oddly pointed questions about Misha’s flag. At the station, just after 3 p.m., Misha and Zavalii parted, with Misha promising to come by Zavalii’s apartment later. An hour later, he called and informed Zavalii he wasn’t home yet. Misha’s voice was calm, Zavalii recalled, saying he had met some acquaintances on the street but would call back later. He never did. Zavalii began sending worried text messages. Misha’s girlfriend, Katya, and his cousin, Sasha Ovechkin, both called Zavalii, alarmed.

ESCAPING CHILDHOOD

Misha’s childhood was troubled. His parents were raging alcoholics; his father later was hooked on amphetamines and other drugs. His half-brother died of a drug overdose. His parents were always fighting. He recalls his mother ending up in emergency rooms on more than one occasion after being hit by his father. Both parents disappeared a few years back; he assumes they’re dead. Misha has never touched alcohol or drugs.

He lived with his maternal grandmother for a time. After she died in 2008, he moved in with Ovechkin and rented out his grandmother’s place, which provided a small income. He worked odd jobs as a carpenter, dishwasher, and cook. Carlos Castaneda, the 1970s psychedelic quasi-academic whose works aren’t well known in this part of the world, is one of the authors Misha and Zavalii used to read. “Castaneda had a powerful influence [on] me, like a Bible is for others,” Misha recalled.

Misha’s flag—spontaneous, handmade—was a bold statement of defiance, both a middle finger to the insidious Russian incursion and, in many ways, a representative gesture of a free-willed man.

Fast forward to March 11. After saying good-bye to Zavalii, Misha walked along Karl Marx Street, which runs alongside a military recruiting station. Some 15 men were standing on the sidewalk, most wearing camouflage and ribbons symbolizing the Soviet war effort in World War II. One stopped Misha and asked him about the flagpole he was still carrying. “Stop provoking people,” the man warned him.

An Italian TV crew was filming near the recruiting station. A Russian woman working with them recalled: “We all noticed [Misha]. We thought ‘wow, here’s this guy with a Ukrainian flag and a Ukrainian ribbon walking past a military post.’”

"Yeah. I understood what I was doing, but this isn't extremism," Misha said later. "Carrying a Ukrainian flag on a pole and suddenly I'm a terrorist? It's idiocy."

As he crossed Tolstoy Street, another group of 30 men, some wearing camouflage, some wearing leather aviator-type jackets, were marching in sync from the opposite direction. The man leading them ordered Misha to step to the side: "Get the hell out of here." Seconds later, 15 of the men came running back toward him, brandishing bats and telescoping batons. Misha ran into an alley, yelling "I'm a local! I'm from Simferopol." The men, who he said spoke with distinctly non-Crimean accents, hit him in the knees and legs with their bats, calling him a fascist and a *banderovets*—an expletive derived from World War II partisan leader Stepan Bandera who, while fighting for Ukrainian independence, allied himself with the Nazis. The men pummeled Misha until the group's leader ripped the blue-and-yellow ribbon off his jacket, demanding identification.

Three of the men then pushed Misha up Karl Marx Street, poking him, yelling at him to sing the Russian anthem and threatening to rip out his fingernails. It was here that he exchanged his pleading look with Natalya. The group then stopped outside the Russian Unity building at 11 Karl Liebknecht Street. "This is it," Misha thought. "I'm going to die," and he tried to run, yelling to bystanders for help. Three more men emerged from the black metal gate that blocked the courtyard, beating him for several minutes, before dragging him inside an adjacent building. A blonde woman with glasses photographed him with a cell phone, gave him water, and dabbed at his bloodied head and face. A guard wearing camouflage and a holstered pistol called the woman the "coordinator for Crimea." Others called her Alyona, or Alina.

Two more men clad in camouflage entered, with Armenian-sounding accents. One asked the guard "Where's Misha?" At that moment, Misha recognized one of the men from two widely circulated YouTube clips that showed him beating up a visiting Kiev businessman. "Hey, I saw you in that video clip," Misha exclaimed. A second Armenian slapped him. The Armenians left as two men wearing the same blue-tinted camouflage, worn by Ukrainian Interior Ministry riot police, entered carrying AK-47s. One barked at him: "Get up. Put your eyes to the floor. Walk forward. Look to either side and I'll shoot you immediately."

They pulled his earflap hat over his eyes, then pushed him forward with a gun barrel, into a minivan, onto the car floor, covering him with a blanket. After a short drive, the van stopped, the guards held Misha's hands behind his back, left the blanket over his head, and led him down 10 steps into a basement illuminated only by flashlights. He was taken to a room, where another guard bound his eyes, feet, and hands behind his back with plastic packing tape. They sat him on a concrete floor against a wall. He could see some shapes and light from under the tape.

Misha realized there were three other men in the room, and the group began talking: "How are you? What's your name?" A guard entered and taped everyone's mouths with plastic packing tape. The room fell silent.

It was sometime in the early evening of March 11.

FEAR AND LOATHING

The days that followed were painful and frightening. "Absolute hell, like Guantanamo, only in Crimea," Misha recalled later. The prisoners could tell time only by the changing shifts of the guards, or by drafts blowing cold air in pre-dawn hours. Sitting on the concrete floor, Misha and the others were questioned every 10 minutes day and night. A man carrying a gun and a flashlight would enter, rip off the tape on their mouths, then shout at them: "Who's paying you? Who paid you to organize the meeting? Who's helping you? Who's your supervisor?" If someone asked for something to eat or drink,

a guard would kick or slap him. Misha's shoulders ached from his hands being tightly bound night and day. He guesses he slept maybe eight to 10 hours in total over nine days. "How do you get any sleep when they're beating you, or people are screaming in the next room?" he asked.

The guards taunted them, saying "We're here, defending our land from Nazis and *banderovtsy*. We'll interrogate you. Then we'll give you to the Chechens." Once, as he dozed off, Misha jerked awake with a violent twitch. A guard jumped up, grabbed his gun, loaded a cartridge, then swore, "What the fuck were you thinking? I could've killed you."

The smell was horrific—unwashed bodies, guards smoking constantly, potentially corpses in his midst. "I thought it was dead bodies or something. Later I thought maybe it was just piss," Misha continued. There were no toilets. "We were just made to hop into the corner of a room nearby" to urinate. Guards would cut their prisoners hands free of tape, then re-tape them as they hopped back into the main room.

"After a couple days, we thought maybe they'll just kill us, and that was it, and they'll just do what they want, dump us in the woods, like during the war. They interrogate you, they get what they want, and they dump you in the woods. I thought that was going to happen," he said.

For the first few days, there were three to five prisoners in the room with Misha at all times. The hours were filled with the sounds of interrogations, yelling, moaning, and often screaming. One of the other prisoners told the guards he had participated in a military training program in the United States for scuba diving. The guards used that as pretext to beat him repeatedly, calling him "NATO guy."

BLOOD-CURDLING

On the night of what seemed to be the second day, the guard brought the prisoners into another room, down the corridor, one-by-one. One of the guards asked his superior officer: "Do we need him? The NATO guy?"

"Take him to the pool," the officer responded. A few minutes later, the sounds of blood-curdling screaming were heard. Later he learned from other prisoners it was electric shocks. Ten minutes after the screaming finished, the guard came back and told the remaining group: "That's all, he's dead. After we cut his throat, there was blood everywhere. He twitched for a bit."

Misha listened carefully to the banter of the guards, who referred repeatedly to a man they called "Mikhailovich" and appeared to have some authority. Thinking he'd been abducted because of his speech at the March 9 rally, Misha asked to speak with him. His feet taped together, Misha hopped down the corridor to a room tiled like a shower stall. From under the blindfold tape, he could make out a man behind a table, wearing camouflage, military boots, a hunting knife in his belt. He spoke in a clipped professional military tone.

Misha explained his March 9 speech to the officer. "I just felt this patriotic urge. I wanted to express my opinion. I just showed up at the meeting. No one paid me to speak. I'm not an extremist." When he finished, Mikhailovich seemed exasperated. "I knew someone like you once. He liked to express his opinions too. I shot him." Another guard suggested, "Maybe I should bring the electric chair?"

"No need," Mikhailovich replied. As Misha hopped back down the corridor to the main room, he told the guard, "I have a request. Please don't cut my throat. Just shoot me." The guard laughed.

Misha hopped into a different room and was pushed onto a pile of burlap sacks. Three others were already there. Misha understood that they weren't about to kill them. The exercise was staged to scare them into revealing whatever information they allegedly possessed.

On the third day, Misha and the others were brought to yet another room, and pushed onto a wooden bench in what appeared to be an anteroom for a sauna. He drifted in and out of sleep, propped against the wall, trying to loosen the tape on his hands. Doors banged constantly; guards talked about how much more money they would make once Crimea was part of Russia.

HIERARCHIES

There were two levels in the hierarchy of their prison overseers. Local volunteers from Crimea stood direct guard over them, punching and slapping them, taping their hands, legs, eyes, and mouths, and escorting them hopping around the basement. Their accents were recognizable, their conversations were amateur, lacking the cadence of military speech. Many of them chatted casually with Misha or the others, talking about where they lived in Simferopol. One guard told Misha they both lived in the same district.

Then there were superior officers, whom local guards referred to as *spetsy*, short for *spetsluzhba,* or special forces. Their accents were not local. At one point, the local guards talked about how great it was that "the Russians showed up and starting giving us weapons."

In their interactions with Misha and the others, the *spetsy* officers, which included Mikhailovich, seemed more professional. Conversations were curt and brusque, occasionally threatening. Like the local guards, the *spetsy* used code names. One was "Doc," another "Maestro." A few days into their captivity, Misha was asked if he wanted to eat something. Misha asked for something resembling cole slaw. Doc offered to supplement it with canned meat, telling him, "You can eat a real meal of a Russian military officer."

Doc appeared interested in building a rapport with Misha, chatting about classic Soviet films. Later on, the rapport turned cold. A night or two before his final release, Doc asked Misha if he would have voted in the referendum. Misha said no. "You've seriously disappointed me, more than anyone else," Misha recalled Doc telling him. "Of everyone that was down here, you're the only one I would shoot."

Physical punishment ranged from mild—slaps to the head and face while blindfolded—to borderline sadistic. One guard bragged about buying a new air pistol especially for the prisoners. He shot Misha three times in the knees and, on the third day, in the calves "just for fun." Another prisoner, Maxim Krividenko, was shot more than 200 times after guards found a photograph on his cell phone that showed him wearing a badge suggesting he'd battled with riot police at Maidan.

Yet another prisoner was wrapped like a mummy entirely in plastic tape as he struggled and swore at them: "I'll kill you all! I'll rip your balls off and feed them to you! I'll fucking kill your mother! I'll kill your grandmother!" Shot repeatedly with the air pistol until he couldn't walk, he was then handcuffed to a radiator.

Then there were the electric shocks. Andrei, a teacher at a Ukrainian cultural center, told Misha and the others after their release that he had been stripped naked and forced to sit on a chair. A man with a Caucasus accent, possibly Armenian, told him, "I'm going to cut out your liver and feed it to you." Guards then attached a wire to Andrei's wrist, another to his back, and plugged the wires into the wall, shocking him until he passed out and fell off his chair. Guards interrogated him, probing for connections to Ukrainian nationalists. Misha had never heard someone scream like that.

COMPASSION, THEN DESPERATION

Captors sometimes showed unusual compassion. Two prisoners—Andrei Schekun and another defiant Ukrainian—wore gold crosses around their necks, a symbol of being baptized. Early on, the local guards took an interest in the

gold jewelry to be pawned. The guards gave Andrei a choice. “Either we take off your ear or we take the cross off your neck—your choice.” Andrei handed over his cross. Later, men who sounded like Russian agents—possibly military intelligence—apologized to the two whose crosses had been stolen. They gave the men small wooden crosses on strings to wear.

On the fifth day, the guards ordered the group, numbering six by now, to scrub themselves. One-by-one, still bound, the men hopped down the corridor to a room with a sink. Their hands and eyes were un-taped, and the men could splash water on themselves. Misha’s eyes were infected from the tape, and a doctor examined him, then told the guards to stop using tape. The guards took the Ukrainian flag hidden in Misha’s pocket, blindfolded his eyes with it, and pulled his hat down. Guards then ordered the group, each man re-bound, out of the room. They hopped down the corridor, up the basement stairs, and into a minivan. What light Misha could see, blindfold and seated on the floor, made it feel like evening. They seemed to be driving north into Ukraine. The guards talked among themselves about a prisoner exchange, with members of Berkut, a widely reviled, now-disbanded special police unit. Many Berkut members ended up fleeing to Crimea.

After a few hours, the van pulled onto the shoulder and stopped. Misha later guessed it was near Chongar, marking Crimea’s border with the Ukrainian mainland. They waited for more than an hour. Then the van drove back to the original location. The guards re-taped everyone’s eyes, hands, and legs and returned them to the foul basement space that had become their entire world.

“We were desperate. We thought we were going to be released. And then nothing,” Misha said. “We all assumed we were going to be killed.”

On March 16, one of the commanders brought bottles of vodka into the basement, and they could hear the guards drinking, toasting, and singing. They were celebrating the referendum vote. Misha said he and the other prisoners tried to be quieter than normal. “There’s nothing more frightening than a drunk Russian soldier,” he recalled. “They’ll put an apple on your head and use you for target practice.” The guards extolled Russian history, lecturing the prisoners on how great it would be to join Russia, and also cursing the group, using the Stalin-era epithet: “You’re all enemies of the people.” Later on, drunken guards forced Maxim to join along as they sung the Russian national anthem.

After March 16, the atmosphere in the basement relaxed. The prisoners, while still bound, could talk to one another without fear of being slapped or punched. An older man named Anatoly Kovalsky, who had been in captivity since before Misha had been kidnapped, was asked to sing a Ukrainian folk song while a guard recorded it for his own mother on his cell phone. “Imagine this. We’re in a basement, wrapped up like pieces of meat, listening to Ukrainian folk songs,” Misha said. “On the one hand, it was totally absurd. On the other hand, it probably saved us. You don’t know what day it is. You’re starving all the time, don’t know how long you’re going to live. You go to the toilet maybe once a day, [and] the smell is overwhelming.”

The following days, Anatoly was asked to sing other songs. One guard made a request that he sing a mournful 19th century Ukrainian folk song: “What a Moon There is on This Night.” The room fell silent as Anatoly sang. The guards, who usually only half-listened, were quiet. Misha’s eyes filled with tears that ran down his cheeks under the blindfold. He heard another guard sniffling. “You’re in prison. You’re thinking about your loved ones, your girlfriend, your family. It was the most incredible feeling. That I’m stuck in a basement, listening to this music. It was the only moment when I had such an emotional feeling; my eyes were pouring out. After that, I thought ‘I feel stronger, that I might actually live.’ The song gave me hope, gave my soul hope, that I might actually make it out alive.”

By March 18, three more men were crowded into the room, making 10 prisoners in all. One said he was a former Soviet military officer. He wouldn’t

stop talking, so guards taped his mouth shut. The other was more articulate, but was convinced of the prisoners' treasonous behavior, and insisted he didn't want to talk in the presence of the *banderovtsy*. The guards taped him up as well.

The prisoners sensed a growing impatience among the guards and their superiors. Interrogations became infrequent. There were fewer physical punishments or torture. It seemed that no one knew what to do with them.

DESPERATION, THEN FREEDOM

One evening, some days after the referendum, the guards brought two of their own into the room, reeking of liquor. Bound with packing tape, the two drunks started yelling. "What are these next to me? *Banderovtsy*?! Cut me loose, and I'll take care of them myself!" A few hours later, another superior officer entered their room. Misha said he threatened the entire room, convinced that the group had secret information: "You have one hour to think about your answers. Otherwise, I'll be back, and we'll do this in a very different way." The hour passed without incident.

Sometime toward dawn, the officer returned and told the guards to cut the prisoners' legs free of tape. Misha and six others were marched out of the basement, blindfolded, and into another minivan. They sat on seats this time, instead of the floor, their hands raised and their heads bowed. The minivan drove for a couple hours to Chongar. One of the guards took off their blindfolds, one-by-one, then videotaped them as each gave their first, middle, and last names. After that the group was pointed toward a Ukrainian checkpoint about 100 yards away, and the minivan drove off.

The Ukrainian guards greeted the group smiling, apologizing for not having any hot water for coffee or tea. A man wearing civilian clothes escorted them into another minivan. Misha assumed he was from the Ukrainian security agency, the SBU. "We were all seeing light for the first time in days, saw one another for the first time," Misha said. "Standing in the open field, the fresh air, what an incredible feeling after all this ordeal. It was like being born again." The group drove to another mainland town, and the SBU agent passed around a cell phone to each group member for them to call friends or family members. He gave them each 200 hryvna, about $18. The next morning a group of volunteers drove the former prisoners to Kiev.

It was March 21, 10 days after Misha was abducted.

11 KARL LIEBKNECHT STREET

A week before the referendum and days before I met Misha, I happened by chance to visit 11 Karl Liebknecht Street, the Russian Unity building. I walked into the building, and the first person I met was a blonde woman, wearing glasses and a jacket thrown over her shoulders—the same woman who accosted Natalya after she tried to intervene while Misha was beaten mercilessly on the sidewalk, the same woman who took Misha's photograph with a cell phone after he was brought inside. I asked her for information about Russian Unity. She gave me some newspapers and leaflets, and told me her name was Alina.

On April 3, weeks after Misha had been released and moved to Kiev, I went back to House Number 11. A woman who answered the intercom at the door said she didn't know anyone named Alina, and hung up after I introduced myself as a reporter. I knocked on the black gate next door, and a man wearing military-style boots and camouflage pants refused to either open the gate to talk to me or answer any questions. "No questions. Go away."

Ovechkin gave me the name of Vladimir Gubar, the detective of the district police precinct where he had filed his missing person's report after Misha's disappearance. At the time, Ovechkin told me, the detective had openly sympathized with him, and made clear the police knew exactly what was

happening. When I showed up at the Zheleznodorozhny district precinct, I asked for Gubar. A duty officer named Vitaly refused to put me in contact with him. I then asked for the precinct commander, but was instead told to contact the press service for the regional Interior Ministry. After a half-dozen phone calls to the press service, I left a voice mail. I never heard back.

I asked Ovechkin to show the place where, by most accounts, the prisoners had been held. I drove with him to Simferopol's northwestern outskirts, to 152 Kievsky Street, site of the regional military recruitment center. The compound was located behind a gas station at the end of a short road lined with shrubbery. Behind a gate a man in camouflage, carrying an AK-47 and sheathed bowie knife strapped to his chest, introduced himself as Sergei. He'd been a crane operator until the turmoil hit Kiev in February, then joined the self-defense units in Simferopol. He smelled as if he hadn't showered in a week, and had been drinking that entire time as well. The Russian flag, he said proudly, had been raised over the guardhouse that morning.

I asked him about kidnappings and prisoners held in the compound. In an expletive-laden response, he denied it. He refused to contact any of his superiors to relay my questions. He then spewed invective against the "Nazis" and "fascists," who he insisted had taken over the country. "I'm happy to be a mere fleck of dirt on Russia's boot. I'm happy to serve, to protect my children, my family, and to protect the honor of my father, who fought the fascist invaders during [World War II]," he said. "The long and short of it is now I won't have to be a slave to Ukraine. I will be a citizen of a great nation, like Russia."

MISHA TODAY

Exile isn't a wholly accurate description of Misha's current condition. He now lives in Kiev, yet he is still a legal resident of Simferopol, where it would be most dangerous for him to return. In most of Crimea, not to mention Russia, the peninsula is now considered a constituent part of the Russian Federation. No other nation has recognized the annexation. If Misha chose to return to Crimea, he would face the decision whether to retain his Ukrainian passport and citizenship, or, like many Crimeans have opted, to apply for Russian citizenship. If he returned to Simferopol, but retained his Ukrainian passport, the local authorities would consider him a foreigner. Given his recent experiences, he would disappear. Most likely for good, he suspects.

The better question, though, is why return to a place where a person can be abducted in broad daylight, ostensibly for demonstrating his patriotism by walking through town with the national flag? Life and livelihood in a police state is arbitrary. A person's right to live and to function is subject to the demands of the state. Misha hardly fits into this equation. But he has no interest in testing this hypothesis again. He is resigned to a new life in a nation that is his own, but in a city far from the one he had known for much of his life.

In the weeks after Misha fled to Kiev, he lived along with his girlfriend Katya in her boss' apartment, sleeping on an un-insulated balcony, on a single cot, their meager belongings jammed into a hall closet. Katya, who was working toward a doctorate, earned a small salary as an analyst at the National Bank of Ukraine. Misha worked on the campaign of an obscure presidential candidate during the May election. Eventually, the two found an apartment of their own, got married, then decided to move into a dormitory for university students to save money. Misha now earns the equivalent of around $400 a month, working at a furniture factory, but the sharp decline in the Ukrainian currency means there's less work than before. "But all's quiet for us. No adventures," he said.

A few years ago, when the notion that the Kremlin might unilaterally redraw the map of Europe and throw into question the fate of millions of people was fanciful, Misha read a book whose significance now seems as relevant today as it was when it was published nearly 50 years ago—Aleksandr Solzhenitsyn's

The First Circle. A semi-fictional tale about prisoners laboring in a state factory during Stalin's reign, the novel carries the themes of much of Solzhenitsyn's writings—an exploration of human fortitude amid the crushing power of the state, the struggle to persist, or resist, in the tiniest way possible, and avoid state-sanctioned oblivion.

"It was so plausible, so realistic," Misha said. "So beautifully written, and so real."

In his examination of Soviet history, Solzhenitsyn called the events he focused on "knots," or turning points, in history. Were he still alive today, he might very well recognize what has happened in Crimea—or Russia—as yet another knot that has snarled lives and fates, and turned history in an unknown direction. At the mercy of political and diplomatic forces over which they have no control, Crimeans remain pawns in a larger but very real game of thrones, with little hope that they will ever be able to embrace the world they once knew.

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Mike Eckel is a Washington, D.C.-based writer and editor who has reported from around the former Soviet Union for more than a decade.

[Photo courtesy of James Rea]

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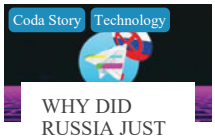

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Annex 1020

Photoreproduction of the Document Signed by Iosif Stalin, in Paul Robert Magocsi, This Blessed Land: Crimea and the Crimean Tatars 118, University of Toronto Press (2014)

For Notes 7 + 8

THIS BLESSED LAND

Crimea and the Crimean Tatars

Paul Robert Magocsi

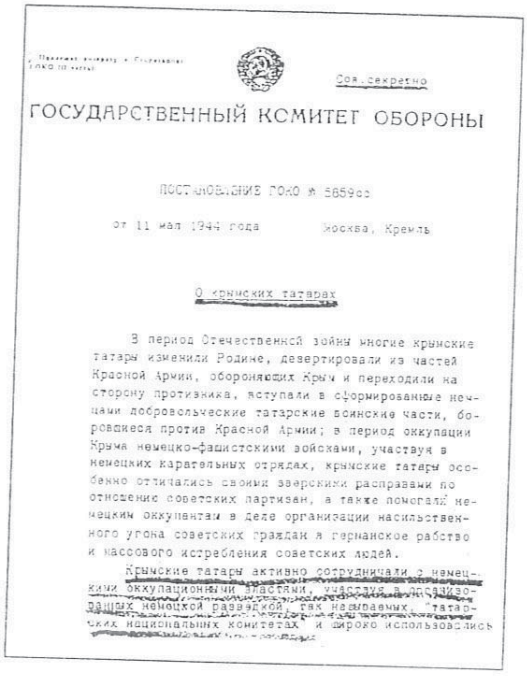
Distributed by the University of Toronto Press
for the
Chair of Ukrainian Studies
University of Toronto
2014

Notes 7–8

Nazi Germany's allies: prisoners-of-war captured from the Romanian Army.

larly problematic was finding some justification for deporting the Greeks, a high percentage of whom fought in the ranks of the Soviet Army or in the Crimean Soviet partisan movement. In the end, over 288,000 persons were deported by Soviet authorities in 1944.[9] In effect, Crimea was ethnically cleansed, so that by the time of the first postwar census (1959) the vast majority of the population of 1.2 million comprised East Slavs, in particular Russians (71 percent) and Ukrainians (22 percent).

Before World War II came to a close, Crimea was thrust into the international spotlight. At the outset of 1945, when the Allied Powers were on the verge of defeating Nazi Germany, their leaders needed to discuss tactical issues concerning the remaining military campaign in Europe and, in particular, to lay out their strategy for the postwar world. President Franklin D. Roosevelt of the United States and Prime Minister Winston Churchill of Great Britain ac-



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ГОСУДАРСТВЕННЫЙ КОМИТЕТ ОБОРОНЫ

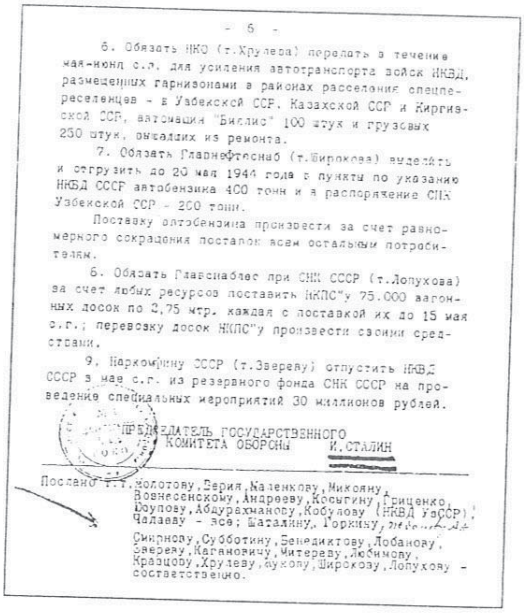
ПОСТАНОВЛЕНИЕ ГОКО № 5859сс

от 11 мая 1944 года Москва, Кремль

О крымских татарах

В период Отечественной войны многие крымские татары изменили Родине, дезертировали из частей Красной Армии, обороняющих Крым и переходили на сторону противника, вступали в сформированные немцами добровольческие татарские воинские части, боровшиеся против Красной Армии; в период оккупации Крыма немецко-фашистскими войсками, участвуя в немецких карательных отрядах, крымские татары особенно отличались своими зверскими расправами по отношению советских партизан, а также помогали немецким оккупантам в деле организации насильственного угона советских граждан в германское рабство и массового истребления советских людей.

Крымские татары активно сотрудничали с немецко-[illegible] оккупационными властями, участвуя в [illegible] разведок, так называемых "татарских национальных комитетах" и широко использовались [illegible]



- 6 -

6. Обязать НКО (т.Хрулева) перелать в течение мая-июня с.г. для усиления автотранспорта войск НКВД, размещенных гарнизонами в районах расселения спецпереселенцев - в Узбекской ССР, Казахской ССР и Киргизской ССР, автомашин "Виллис" 100 штук и грузовых 250 штук, снятых из ремонта.

7. Обязать Главнефтеснаб (т.Широкова) выделять и отгрузить до 20 мая 1944 года в пункты по указанию НКВД СССР автобензина 400 тонн и в распоряжение СНК Узбекской ССР - 200 тонн.

Поставку автобензина произвести за счет равномерного сокращения поставок всем остальным потребителям.

8. Обязать Главснаблес при СНК СССР (т.Лопухова) за счет любых ресурсов поставить НКПС'у 75.000 вагонных досок по 2,75 мтр. каждая с поставкой их до 15 мая с.г.; перевозку досок НКПС'у произвести своими средствами.

9. Наркомфину СССР (т.Звереву) отпустить НКВД СССР в мае с.г. из резервного фонда СНК СССР на проведение специальных мероприятий 30 миллионов рублей.

ПРЕДСЕДАТЕЛЬ ГОСУДАРСТВЕННОГО КОМИТЕТА ОБОРОНЫ И.СТАЛИН

Послано т.т. Молотову, Берия, Каленкову, Микояну, Вознесенскому, Андрееву, Косыгину, Гриценко, Поупову, Абдурахманову, Кобулову (НКВД УзССР), Чадаеву - все; Шаталину, Горкину, [illegible] Сухарнову, Субботину, Бенедиктову, Лобанову, Звереву, Кагановичу, Митереву, Любимову, Крацюбу, Хрулеву, Аукону, Широкову, Лопухову - соответственно.

First and last pages of the decree of 11 May 1944 signed by the chairman of the Soviet State Defense Committee, Joseph Stalin.

on Crimean Tatar deportation, signed

Annex 1021

Greta Uehling, Genocide's Aftermath: Neostalinism in Contemporary Crimea, Genocide Studies and Prevention 9(2015)

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Genocide's Aftermath: Neostalinism in Contemporary Crimea

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The Crimean Tatars' genocide is one of the clearest, and yet least studied of twentieth-century genocides. This article explores that genocide's aftermath, beginning with the Crimean Tatars' attempts to reinscribe their presence in their historic homeland following the 1944 deportation. The ongoing contestations over the past are examined here as a historical habitus informing attitudes and behavior in the present. Drawing on unparalleled interview data with the Russian-speaking population in Crimea, I explore the durability and ontological resonance of constructions of Tatars as traitors both past and present. Ethnographic insight into the local understandings that feed exclusion, discrimination, and hatred enhance our understanding of genocide as a social process. Given the lack of either guilt or shame regarding the 1944 deportation, I suggest that Crimea currently lacks the cognitive and affective foundation to create a more inclusive future.

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The Crimean Tatars' genocide is one of the clearest, and yet least studied twentieth-century genocides. The definition used here is an inclusive one, best summarized by Alexander Hinton as "the more or less coordinated attempt to destroy a dehumanized and excluded group of people because of who they are."[1] The death toll as a result of the 1944 deportation was catastrophic: 46 percent of the population is believed to have perished at that time.[2] In addition to this physical destruction, efforts were made to cleanse all traces of them from the Crimean landscape, and to ensure the assimilation of survivors in places of exile. Analyzing these and subsequent events within the framework of critical genocide studies reveals the treatment of the indigenous Crimean Tatars as an ongoing social practice and technology of power on the part of first the Russian and then the Soviet regimes.[3]

The systematic erasure of the Crimean Tatars was holistic in nature. Crimean Tatar place names were changed to Soviet ones; mosques were turned into movie theatres (or worse); homes, livestock and gardens were given away; and mention of Crimean Tatars was deleted or abbreviated in reference works. Crimean Tatars were not allowed to reside in, or speak of, their homeland. It wasn't even possible to preserve a Crimean Tatar identity in personal documents. In Central Asia, before efforts to assimilate the survivors were underway, Crimean Tatars lived in a Special Settlement regime in which tens of thousands died of malnutrition, dehydration, and disease. They were also demonized. To give but one example, Crimean Tatars describe how children's heads were checked for horns by their Central Asian school teachers.

This article unfolds in several steps. Considering that one component or aftermath of genocide is the attempt to erase the group from official history, I explore sites of memory, especially public commemoration. Although the ability of Crimean Tatars to commemorate their past as part of independent Ukraine at first suggests resilience, their efforts to reinscribe their presence on the peninsula and regain their rights have been met with opposition and resistance. Public commemorations interest me because they are one way in which competing interpretations of history become audible or legible and are then contested. Two insurrections of subjugated knowledge as part of independent Ukraine, billboards and a film, demonstrate these contestations. That the Crimean population, for the most part, does not recognize the treatment of the Crimean Tatars as genocide at all calls for deeper analysis. In the next part of the paper, I explore the thoughts and emotions behind the antipathy that continues to be directed at this indigenous people. Ethnographic insight into the local understandings that feed exclusion, discrimination, and hatred will enhance our understanding of genocide as a social process. My approach extends the work of other scholars of genocide by suggesting there is a historical habitus, or ingrained

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way of interpreting and embodying the past. These interpretations are fortified by what Hinton has called the ontological resonance of genocide. In Crimea, this ontological resonance manifests in categorical distinctions of Crimean Tatars as dangerous Others. Finally, I show how the post-annexation treatment of the Crimean Tatars by local and Russian Federation authorities shows an effort to restructure relations among the living yet again, in part by circumscribing interpretations of the past. Taken together, this exploration leads me ask whether we are witnessing what scholars of genocide would call an extended aftermath, or priming for a new round.

Methods

This article is based on long-term fieldwork conducted in Crimea in 1995, 1997-98, 2001, 2004, and 2011, when I lived and worked among the indigenous Crimean Tatar population. During the 1997-98 fieldwork, I lived in both Central Asia, where the majority of Crimean Tatars remaining in diaspora and their descendants reside, and in Crimea. The ethnography published in 2004 did not delve deeply into the views of Russians in Crimea. This article begins to fill that gap. I returned in 2013 and, struck by signs of neo-Stalinism, collected the data presented here.

The ethnographic fieldwork carried out in May and June 2013 sought to better understand how and why *Tatarophobia*, or xenophobia had become so prevalent on the peninsula. During the fieldwork, I gathered several kinds of data, interpolated here. First, unstructured interviews with political and cultural leaders, school teachers and principals, newspaper editors, journalists, and civil society monitors enabled me to begin tracking the ground level processes through which shared interpretations were being formed. Second, taped, semi-structured interviews conducted with a stratified sample of sympathizers with the Russian Federation[4] (ethnic Russians and mixed Russian and Ukrainians) using visual images of Stalin to elicit responses provided another layer of information. These data are not intended to be representative: my objective is rather to reveal some of the deeper layers informing the abysmal treatment of the Tatars that are obscured in other accounts. I used visual prompts because as Plamper has shown, reverence for Stalin was "overwhelmingly a visual phenomenon, tailored to a population whose mental universe was shaped primarily by images as opposed to written words."[5] The deep psychological and spiritual importance of images of the so-called father of peoples is clear considering that Stalin portraits were often hung in the corner of the home that had previously been reserved for icons.

In 2013, I also drew on a third source of information: participation in a number of commemorative activities related to the Day of Mourning. The interviews and participant observation in Crimea upon which the core of my argument is built are supplemented by ongoing communication with consultants in the region, as well as close attention to Crimean Tatars' news reporting available on the Internet today.

Aftermaths: Independent Ukraine

Any country emerging from a totalitarian, genocidal, or war-torn past must confront questions about how to frame and incorporate that past while designing a better future. As Nanci Adler has argued, "The process of fashioning a good future out of a 'bad past' is tricky and may require the creation of a 'usable past' for the national narrative."[6] The field of reconciliation studies suggests there are multiple layers and approaches here, including acknowledgement, apology, truth, justice, and reparations.[7] And yet, post-Soviet Russia only made limited efforts to confront its Stalinist past, seeming to prefer to suppress memories of repression.[8] As a result, surviving victims of Stalinism have been insufficiently acknowledged. Adler sees the prevalence of the state-sponsored narrative over the victims' counter-histories as part of a larger failure to create adequate transitional justice mechanisms and move toward full-fledged civil society. From her perspective, Russia has not yet created a space for what she calls "engaging dialogues," that could lead to inclusive history.[9]

Within a framework of critical genocide studies, we can go farther. Not only has their been insufficient acknowledgement, but the Crimean Tatar genocide is treated first by Soviet and now Russian Federation authorities as something the Crimean Tatars brought upon themselves. Locals allege the Crimean Tatars' punishment was justified, even though there is no morally or ethically sound justification for the treatment they received. In part, this is a result of diametrically opposed interpretations of history. Russians and those of mixed Russian and Ukrainian heritage who are

pro-Russia tend to deploy an idiom that legitimatizes their presence by referencing the fact that Crimea was a part of Russia from 1783 until 1954, and reiterate the charges of treason during the Nazi occupation of Crimea. The Crimean Tatars counter this by pointing to what the charges elide, which is that members of all ethnic groups contributed to the Nazi occupation, and that these are not the people who were punished by the 1944 deportation, which carried away innocents. That Crimean Tatars soldiers fought (and gave their lives) on the Soviet front and were demobilized into exile is of course a moral outrage. They also emphasize their autochthonous origins on the peninsula, long before Ekaterina II annexed the peninsula. Thus it is important to recognize the extent to which different ethnic groups—and here I will focus on the pro-Russian contingent and Crimean Tatars—have competing idioms for relating to, and when necessary justifying their presence on, the peninsula they share.[10] While their idioms overlap on concern with the meaning of homeland, patriotism, and treason, they have very different reference points.

It is worthwhile to contrast the situation in the Russian Federation with post-genocidal settings where transitional justice mechanisms, however imperfect or limited, have been established. For example, Molly Andrews has argued the South African Truth and Reconciliation Commission created a national narrative and ultimately a common framework for the whole country to understand the past.[11] She suggests that (again, in spite of many shortcomings) the South-African commission managed to forge a dialogue between official and personal narratives, and to formulate an inclusive history. A rich line of research into the reconciliation process explores the nuances of this process in a variety of countries.[12]

As a part of Ukraine, Crimea occupied a volatile and yet fertile position between these two variants. An insurrection of previously subjugated knowledges led, while the Autonomous Republic of Crimea was part of Ukraine, to writing the 1944 deportation back into history books, putting the minarets back on the mosques, and erecting multiple public monuments to commemorate Crimean Tatar military heroes and cultural leaders. While the process was far from complete, and characterized by failures and frustrations, it is important to recognize the extent to which Crimean Tatars were able to reinstate their rightful presence on the peninsula, and reinscribe their history on the landscape they hold sacred.

Even as they became legible on the Crimean peninsula, however, it became a landscape of hatred and distrust as monuments and memorials were marked with swastikas or other xenophobic graffiti, and groups clashed over such matters as placing a market on a Crimean Tatar sacred site. As part of Ukraine, hostility against Crimean Tatars included attacks and pogroms against Crimean Tatar settlements and property in 2004. An attack on a Crimean Tatar settlement backed by special Ukrainian *Berkut* riot police in January and November, 2007; the attack and beating of Crimean Tatars on the *Ay-Petri* plateau in November 2007; and vandalism of Crimean Tatar cemeteries and memorials in Zaprudne, Zuya. Saq, Bagcasaray, Nyznohirskyi and many other locales. The Foundation for Research and Support of Indigenous Peoples that tracks these activities concluded vandalism is more the rule than the exception.[13]

How to understand these contestations? Within the framework of critical genocide studies, a Foucauldian genealogy with its concepts of counter-memory and counter-history helps to decipher the struggle over commemoration and competing visions of the past.[14] This approach is relevant because as part of Ukraine, cross currents of power and resistance appeared to be reshaping the field of commemoration and expanding the space for remembering different, sometimes painful aspects of the past. By way of background, counter-histories try to undo the silences imposed by official histories, and to undermine the unity and continuity that dominant histories produce. The ability to identify omissions and to fill discursive gaps previously imposed by authorities is an important component of exercising agency and resisting both hegemonic power/knowledge frameworks and, at a more concrete level, sociopolitical subjugation.

My 2004 ethnography detailed how activists in the Crimean Tatar national movement such as Mustafa Cemilev, Reshat Cemilev, Aishe Seitmuratov, Rustem Khalilov, Izzet Khairov and many others, clearly articulated a counter-narrative explicating how the 1944 deportation violated the laws and principles of the Soviet regime, and subjected the Crimean Tatar people to decimation. They also make clear that by the time of the deportation, the Crimean Tatar people had survived not just the initial colonization, but confiscation of their property, state-induced famine, purges of clergy and

intellectuals, and Nazi occupation.[15] In a personal interview, this was aptly summarized by Mustafa Cemilev as being caught between to hegemons, neither of whom promised any protection or relief.[16]

What I am concerned with presently is less the historical scholarship and activism facilitating the Crimean Tatars mass return in the 1990s, than the public spaces where ordinary Crimean Tatars, Ukrainians and Russians are now interlocutors. These sites demonstrate that there is no single aftermath of genocide: it becomes a plural noun. Pro-Russian and pro-Crimean Tatar versions of the past are diametrically opposed. The differing perspectives on the past led, unquestionably, to different perspectives on the future. We now see each group has very different access to rights and resources on the peninsula as a legacy of the deportation.

The Contested Past

In spite of attempts to erase and assimilate them, the Crimean Tatars survived their exile, launched a powerful national movement, and mobilized sufficient personal and political resources to repatriate.[17] Since they began returning, Crimean Tatars have struggled to reverse the effects of the literal and discursive cleansing.[18] Examples show the slow movement of a previously marginalized Crimean Tatar past into the Crimean imagined community.

One example is the commemoration of the 1944 deportation, referred to in Crimea as a "день память и скорби" or day of memory and mourning. In a move that would certainly have been quashed 20 years ago, some twelve billboards calling participants to observe the occasion were positioned across Crimea. One billboard calling for observance of the day showed an image of several intersecting lines of barbed wire and a message about the 69th commemoration, bringing knowledge that was previously disqualified and excluded into the public space. Another billboard brings home the point even more clearly.

Figure 1. Billboard of Iminov painting calling for commemoration. Source: Author's photograph.

Rustem Iminov's painting of a crowded train car, once concealed in his private studio on a quiet street in Tashkent, Uzbekistan, was suddenly enlarged many times and thrust into the visual field of all drivers in Crimea, whether Russian, Ukrainian, or Crimean Tatar. The billboard makes visible how women, children, and the elderly were carried away in cattle cars, not to mention the soldiers' unfortunate demobilization. Thanks to the artist's willingness for others to use this image, it has become iconic of the Crimean Tatars' deportation. I turn to the billboards because they are one way that the Crimean Tatars can speak to other residents of Crimea with whom they might not otherwise exchange views.[19]

I first met Iminov and saw the painting in 1998, when he was living in Central Asia. I learned that whereas Iminov's father, also a painter, was forced to communicate his ideas cryptically in symbolic codes, Iminov succeeded in putting his mother's individual memories of deportation in public, pictorial form.[20] The trajectory of this painting from a private Tashkent studio to a Simferopol billboard indexes the Crimean Tatars' own journey from silenced and exiled, to repatriated citizens of independent Ukraine. The billboards constitute an intervention into the hegemonic conception of the past that failed to register the Crimean Tatars during their absence.

A second example of the insurrection of previously subjugated knowledge, and one that generated a great deal more epistemic friction[21] is provided by the 2013 release of a feature film about the 1944 deportation, *Haytarma*.

Figure 2. Promotional flyer for the film *Haytarma*. Source: The image is taken from the jacket of the CD, and was the flyer for the showing of the film as well.

The film is structured around the life of the half Crimean Tatar fighter pilot, Amet-Han Sultan. The film follows the protagonist through his service when he was stationed in Crimea. The major turn in the plot comes when Amet-Han Sultan is given leave to see his family on the eve of the deportation. He and two friends find themselves in Amet-Han's native village on the night of the mass deportation. We then experience a filmic representation of that terrible night.

The film has been criticized on the grounds that it uses the language and iconography of the colonizers to communicate its message.[22] Admittedly, we see a colonized people taking on, and quite literally acting in, the uniform of the oppressor. While this reading of the film is valid on formal grounds, a more nuanced reading is possible if we listen to the conversations about the film among Crimean Tatars. Recalling that Crimean Tatars were banned from speaking of Crimea in exile, and that no images of the actual deportation are known to exist, the film elevated previously silenced and submerged memories of war and deportation. While perhaps not a counter-history in the sense of a full-fledged denunciation of the Soviet regime, the film does critique the Soviet's 1944 deportation. By portraying Amet-Han's bravery and patriotism fighting on the Soviet side, the film also attempts to deconstruct the racist categorization of Crimean Tatars as solely collaborators with the German occupiers, and shows ethnically-integrated villages. Like the billboards, the film fills a visual lacuna.

For younger Crimean Tatars, parents' and grandparents' stories were finally in a visual format. Crimean Tatars who acted in the film describe participation as an intense, even cathartic experience. At the premier I attended, the film was followed by stunned silence and muffled sobbing. The film also received many standing ovations by audiences in Crimea and Kyiv. It is fair to say the film punctured the silenced history of deportation and brought Crimean Tatar patriotism into public view. If respondents in my fieldwork were correct in their assessment, a page that had been left blank, and that had long complicated the mourning process, was now filled, helping to resolve some emotions about the event.

The film's release generated a great deal of epistemic friction concerning how to most accurately portray the Crimean past. The controversy began when the Consul General for the Russian Federation in Crimea, Vladimir Andreev, admonished the Russian generals trained by Amet-Han Sultan not to attend the Premier. Six of the eight surviving generals took his advice.[23]

Mr. Andreev clarified his position publically on Crimean television. Resurrecting a trope from the Second World War (referred to as Great Patriotic War in Crimea), Andreev stated that Russia should not be represented at the premier of a film that falsifies the truth of this war. His primary argument was that the film did not grapple with the ostensibly salient theme of collaboration on the part of Crimean Tatars with the fascist occupiers. Public discourses like these are a primary way that ideologies and cultural stances are not just created, but maintained. Andreev's remark seems designed to create cultural continuity at a moment when it was threatened by change in post-Soviet Ukraine. By resurrecting the old categorizations of Crimean Tatars as somehow disloyal to the homeland, Andreev re-polarized the field of commemoration in a move seemingly intended to inscribe the Soviet-era social hierarchy.

Based on the reaction in the family I was living with at the time, Andreev's comments left the Crimean Tatars feeling angry and emotionally bruised. One of my hosts stood and paced, another turned red in the face, and all three raised their voices to talk back to the TV. Andreev's remarks also set off a series of demonstrations that were publicized on the nightly news. Holding Andreev's portrait flanked by pictures of Beria and Stalin, Crimean Tatars countered the slur by pointing out the symbolic isomorphism between the present Consul General and past Soviet leaders. There were also a series of verbal duels that ricocheted through social media like Facebook.

While the Crimean Tatar contribution in the Second World War remains hotly contested in Crimea, Andreev's intolerance was not accepted, even by authorities. Ukraine's Foreign Ministry immediately requested Russian Federation authorities to evaluate the statements. In an address before the Supreme Council of the Autonomous Republic of Crimea, then Vice President of the Crimean Tatar Mejlis Refat Chubarov demanded the Russian Federation deplore the intolerant statement. The Ministry of Foreign Affairs of the Russian Federation did indeed acknowledge the statement was inappropriate, and Andreev resigned. As we can see from the conflict over Andreev's remarks, references to collaboration with the Nazi forces are particularly toxic in Crimea where, even though all the ethnic groups collaborated, Crimean Tatars have been consistently singled out as responsible. Ukraine rose, however feebly, in the Crimean Tatar defense.

While a great deal of the contemporary friction is generated by the issue of Second World War collaboration, the roots of mistrust lie deeper in the colonial past. The Russian Empire saw Crimean Tatars as uncivilized, inferior to Russians, and potentially disloyal. This references events during the Crimean War. Raids on Muscovy in the Middle Ages are also often cited today.[24] In light of these analyses, Tatarophobia has less to do with the Second World War than the Crimean Tatars' long term positioning on the peninsula. Views of the peninsula's past have remained in separate, diametrically opposed, silos. While ethnic Russians see themselves as the original inhabitants of Crimea, and argue the Crimean khanate had a weak economy and was only a vassal of the Ottoman Empire, Crimean Tatars assert that the Crimean khanate was a highly civilized state in which all faiths were accepted, ethnic groups flourished, and the economy thrived. Both are of course simplified interpretations. What is more destructive is the view (whether embraced by ethnically Russian or ethnically mixed individuals) that Russian culture is superior, supranational, and provides a consolidating function. There is also an essentialism that Crimean Tatars are inherently hostile and cruel, another justification for their removal from Crimea. From a broader perspective, then, the Crimean Tatars were prefigured for *predatel'stvo* or treason.

Neostalinism

To reestablish the Crimean Tatar presence on the peninsula would require restructuring the worlds of meaning in which Crimean Tatars are cast as traitors or villains. Efforts during the Ukrainian period marking the anniversary of the 1944 deportation, erecting monuments to the Crimean Tatar past, and writing the 1944 deportation back into history, re-politicized space and time.[25] As if obeying Newton's Third Law, for every Crimean Tatar action there was an equal and opposite reaction. A paradigmatic example is the counter-movement revalorizing Stalin in Crimea. In 2012, an organization named *Essence of Time* held an exhibition commemorating the 133rd anniversary of Stalin's birth. They combined about 150 images with laudatory comments about Stalin. These were presented on large placards in the center of the capitol city where descendants of the victims of genocide would be sure to look on. The Crimean Tatar executive body, the *Mejlis*, spoke out during

the planning stage, pointing out such an exhibit would be profoundly disrespectful to victims of Stalin. The exhibit took place nonetheless.

Figure 3. Stalin lauded in capitol of Crimea, 2013. Source: Информационное агентство «е-Крым» http://www.e-crimea.info

On the opening day, the Head of the International Relations department of the *Mejlis* went to the exhibit with the head of the Secretariat of the Crimean Parliament.[26] They called on the organizers to take down the images, pointing out that Stalin was found guilty of the death of millions of people, and had personally ordered the deportation of the Crimean Tatars, a criminal act. When the organizers refused to remove the exhibit, the offended visitors dismantled the stands themselves.

Several dozen law enforcement officers present at the rally did not intervene. The authorities' non-response, effectively allowing residents of Crimea to battle for commemorative space themselves, reveals official ambivalence, or perhaps uncertainty about how to effectively moderate competing claims. As one respondent put it, "the Mayor who allowed it knew it was against the law, but in the depths of their souls, they don't want to see us here, they hate us. They know they have taken other peoples' places."[27] The exhibit took place in a time and place when Stalin enjoyed fabulous public ratings. Levada Center polls showed that among other things, people credited victory in the Second World War to Stalin himself, and felt that the importance of the victory far outweighed any mistakes that were made.[28] Another survey suggested that respondents saw Stalin as one of the "most eminent figures of all time."[29]

How could Stalin enjoy such a long political life? Considering there was not one but two intensive efforts de-Stalinize the Soviet Union and facilitate political liberalization, this at first seems remarkable. The first attempt was after the 20th Party speech by Nikita Krushchev, which broke a silence about Stalin's repressive regime and called for the removal of Stalin from public spaces. The second effort was part of President Gorbachev's reforms. Gorbachev recognized the need for the Soviet government to give consistent financial and moral support to people who could speak openly. Gorbachev's de-Stalinization in the 1980s faced many of the same problems that Krushchev's had in the 1960s.[30] Polly Jones suggests the enduring criticisms are that de-Stalinization is a form of "de-heroization," "falsification," and "ideological deviation."[31] The psychology that keeps Stalin alive aligns with the work of Freud, Derrida, and Gilroy on melancholia, helping us to understand neostalinism as an inability to distinguish between past and present.[32] Freud's famous delineation of melancholia from mourning is useful here.

Why wasn't the Soviet government more successful in de-Stalinizing the country? Jones suggests that what is blocking genuine de-Stalinization is what she calls the "mutual interference" of memories of terror and memories of war victory.[33] This is to say that there is a central, seemingly irresolvable tension at the core of public memory: how to celebrate the Soviet victory and confront its failures, so as to recognize the victims too? In Russia, organizations like Memorial have tried to grapple with this issue, and their work has resonated with tens of thousands of people. This is an especially fraught issue in the Autonomous Republic of Crimea, where the problem is ethnically-charged.

Ontological Resonance

The outward struggle over this field of commemoration is energized by what Pierre Bourdieu would call a habitus or durable disposition. Habitus is Bourdieu's notion of a "system of lasting, transposable dispositions which, integrating past experiences, functions at every moment as a matrix of perceptions, appreciations, and actions."[34] Habitus is eminently historical: "The habitus, a product of history, produces individual and collective practices—more history—in accordance with the schemes generated by history."[35] We can understand this as something that is simultaneously micro and macro-sociological: a neo- or pro-Stalinist disposition is acquired through a gradual process of inculcation at the same time that it reflects the social conditions in which it was acquired. A habitus is never independent of its field, what Bourdieu saw as a set of objective, historical relations, anchored by power.[36] Along similar lines, in *Why Did They Kill,* Hinton argues that genocide is complex and involves a certain "ontological resonance" of local cultural knowledge that, through a variety of factors, rises to the level of having motivational force. Like Hinton, I am interested in the role of the patterns of being-in-the-world that are constituted over time as people engage in social practices that ultimately come to inform acts of political violence, whether the Khmer, Russian, or Soviet.[37]

To better understand the disposition informing the exhibit to rehabilitate Stalin in Crimea, and to glean insight into ongoing antipathy towards Crimean Tatars, I interviewed a stratified sample of respondents from the roster of the Russian Society.[38] I used images of Stalin collected in Corbescero's research in Russia as prompts to elicit informants' feelings about the leader.[39] The first image was a famous portrait of Stalin in uniform.

Figure 4. Portrait of Stalin by Aleksandr Laktionov. Source: Corbescero (2011).

The second was the same portrait remade as a vodka label, a third depicted the same Stalin image writ large on a bus to celebrate the 9th of May,[40] and the last image showed demonstrators each carrying an individual Stalin portrait in a demonstration. The images elicited reactions both verbal and visceral: respondents laughed and cried when they viewed the images. Their reactions suggest deep emotional connections to the past and a durable disposition integrating past experiences and present perceptions.

Neither guilt nor shame

Veneration for Stalin reverberated throughout the interviews with Russians and individuals with mixed Russian and Ukrainian heritage but embracing a pro-Russian perspective, in Crimea.

Presented with images of the leader, respondents used expressions like "gratitude that we are alive," "pride for the activities he carried out," "empathy," "neutral," "accepting," and "this is the image of a good person," to describe their feelings. Sometimes, the thinking had twisted logic: "If he was such a tyrant, they would have shot him!" This respondent clearly had not thought through how tyranny works, or the way in which it is the very tyranny of the tyrant that protects him.

One strategy that seemed to help respondents maintain a positive image of the leader was to minimize his crimes:

> How do you feel when you look at this portrait?
> Respondent: How to put it into words? Empathy. Empathy that he may have overplayed his leadership somewhat. True, he was on the cruel side.[41]

In a dizzying moral inversion, this respondent chose to empathize with the leader, rather than his victims. In making the comment, this respondent used the word жестоковата, using a qualifier to say Stalin was "on the cruel side," shrinking massive crimes against humanity into a minor attribute. It is only in the context of this frame of mind that the crude and ultimately inaccurate binary between Russian patriotism and Tatar collaboration can be maintained. Officially sanctioned amnesia of Crimean Tatar patriotism, and willed forgetting of the true level of Stalin's crimes perpetuate this outlook.

Minimization went hand in hand with justification. Part of the justification appeared based on survival. Respondents hypothesized that what Stalin did was necessary for victory, and linked their personal survival to his tactics:

> How do you feel when you look at this portrait?
> Respondent: Gratitude that we are alive [starting to cry] During the war, we had nothing, nothing [explanation of things eaten to survive]. Then, after the war, my mother and I had tea with sugar in it and I will remember that tea for the rest of my life, it made such an impression after going for so long with so little.[42]

The survival of extreme deprivation understandably elicits gratitude. But if we juxtapose the sweetness of the tea with the death toll from Stalin's regime, the "cost" of that tea, and the respondent's apparently complete emotional disconnection from the magnitude of the crimes committed in the name of her homeland, becomes evident. Due to the secrecy surrounding the camps, the length of time that has elapsed, and the variety of means to eliminate people, an exact death toll is difficult to calculate. However, representatives of the Soviet security services gave the figure of 18 million.[43] These facts are lost to residents of Crimea when focused on reliving and recognizing victory. The neostalinist views expressed by non-Crimean Tatar informants suggest a durable disposition or habitus cultivated for decades.

Justifications for deporting innocent women, children, elderly, and war-wounded residents of Crimea were also based on the idea that the Crimean Tatars somehow deserved and, in thinking that stretches credulity, even benefitted from the deportation. Russian justifications tend to be dissociated from the reality of genocide. As one example:

> If Stalin decided it, then that means it was necessary. And the thing is, they [Crimean Tatars] slaughtered whole villages under the fascists. He [Stalin] cast them out, but he sent them to a warmer climate! It was a radical measure that was correct at the time. See how spiteful [Crimean Tatars] are to complain? They left a place where life was good.[44]

The place they left is of course Central Asia in the 1980s and 1990s. The sentiments expressed here are widespread in Crimea, where the non-Crimean Tatar population often alleges that it was "humanitarian" to deport the Tatars to a warm climate rather than exterminating them. The acceptance of Stalin's act emerging in these interviews reveals the affective and cognitive substrate, the habitus informing events like the commemoration of Stalin in the center of Simferopol in 2012, and subsequent events.

Writing about Crimea, Rory Finnin explores the potential of poetry to shift one's perspective from focusing on the victor to a more empathic position in relation to victims. He explores how two poems, one by Chichibabin and one by Nekipelov, create receptivity to perceive the mass deportation of innocents (collaborators are believed to have been evacuated with the retreating German army) as one of Stalin's greatest crimes. Thinking of more tolerant and empathic segments of the population than I spoke with, Finnin suggests that a deep reading of the poems can engage a reader in "an act of guilt-processing conducive to committed activism."[45] Finnin thinks literary works can prompt recognition of the complicity of Soviet citizens in the deportation. The twist is that the process is more likely to succeed when hearing from some subject positions rather than others: if the literary work comes from the victimized community, it is liable to evoke shame, which is apt to prompt to avoidance. Guilt, on the other hand, tends to mobilize efforts to repair and make amends.

It is unlikely that the affective and cognitive recognition of Stalin's act as a crime will occur in a Crimean society overshadowed by accusations of treason. In the 2013 fieldwork, Crimean Tatars frequently lamented the absence of anything resembling guilt. On the contrary, informants' statements seemed to re-sacralize[46] Stalin's authority, perhaps as a way to maintain a dominant position in Crimean society and to reanimate the sense of victory and empowerment that came with his rule. Articulating her response to the picture of Stalin in uniform, a Russian informant stated:

> He was, is, and will always be forever a great leader. It's like he is sacred and you can't just erase that from your heart. Millions of people died with his name on their lips. How can you throw that away? It's too late to change anything now [weeping]. I am sorry about the tears but this is the life I lived.[47]

The reverence for Stalin surfacing in certain segments of the population suggested ongoing enchantment with the leader. I asked this respondent if she thought Russian or Ukrainian residents of Crimea who were not deported or were brought in after the war to take Crimean Tatars' places felt a sense of guilt.

> Me personally? No! Why would I feel guilty? I understand many Russians and Ukrainians live in Tatars homes. I myself live in a Tatar's home! But it was vacant at the time we came.[48]

What this informant had disassociated from is *why* the home was vacant when she and her mother arrived. As actors on a field of public remembering, these respondents used victory to rationalize the price paid by the Crimean Tatar people.

It is not coincidental that the statements made here were uttered in the Simferopol headquarters of the Russian Society. Respondents spoke under posters of Sergei Aksyonov who was then head of the Russia Unity party, and was elected Prime Minister in March 2014. In other words, these are the sentiments of some of his constituency. What I did not know in 2013 was how accurately they foreshadowed the poor treatment of Crimean Tatars accompanying the annexation. An anthropological approach is valuable here because it reveals the ontological resonance of Crimean Tatars as Other, both past and present. The constructions of Crimean Tatars as traitors demonstrate the ontological resonance of categories established in the Russian colonial period. It also foreshadows the treatment of the Crimean Tatars following annexation. The time period following 2014 annexation was marked by a range of human rights abuses: Crimean Tatars were banned from assembling, and threatened, imprisoned, and exiled when they dared to express dissent. Crimean Tatars were harassed with searches and seizures in their homes, schools and mosques. Even worse, there have been arrests, arbitrary detentions, and disappearances.[49]

Reflecting on this pocket of disavowal and amnesia, I asked Mustafa Cemilev what explains the lack of empathy for Crimean Tatars. His insights suggest links between the official history and popular sentiment, and between denial and fear.

> Tatarphobia is understandable given the kind of propaganda that people were stuffed with since the Crimean Tatars were deported. Plus, this propaganda gave them some spiritual

> peace considering they were living in our homes. There is also a fear that maybe what happened to the Tatars will happen to them.[50]

The characterization of Crimean Tatars as 'traitors who sold the motherland' has proven impervious to change. It provides an expedient phrase that encapsulates the ontological resonance prefiguring Crimean Tatars as different, as guilty, and as deserving of punishment.

The challenges associated with acknowledging the genocide are not unique to Crimea: we see very similar issues arising in other settings. Theodor W. Adorno and Max Horkheimer provide important thinking on this topic by suggesting it was a complex defense mechanism against memory that prevented Germans after the Second World War from experiencing feelings of guilt.[51] These scholars saw the disavowal of any complicity, as well as admiration for Adolf Hitler, as the core of a constellation of psychological symptoms including antisemitism. Psychoanalysts have developed this line of thinking to explore how guilt and shame, as well as defenses against them, are passed inter-generationally.[52] Katharina Rothe suggests that antisemitism should be considered a defense against empathizing with the victims in the Second World War.[53]

This idea presents rich possibilities for understanding dynamics in Crimea, where local residents' distrust of Tatars often seems based more on fiction than reality,[54] and where, as Refat Chubarov noted in front of the Crimean Parliament at the time of Consul General Andreev's acerbic remarks, xenophobic statements have become almost fashionable in public discourse.[55] I suspect a similar defense may be animating ongoing anti-Tatarism in Crimea. For some residents, it may be less painful and, as Cemilev pointed out, more expedient, to valorize Stalin and disavow any benefit from his crimes. It is far more difficult, for us all, to see events from another's perspective. The demonization of Crimean Tatars enables those who make allegations of depravity or treason to elevate Stalin, fear Tatars, and avoid both guilt and shame. While some would argue against a sociocultural use of psychoanalytic concepts, I would contend, with LaCapra, that psychoanalysis is misunderstood as a psychology of the individual. He argues that its basic ideas actually connect individual and society. A strict opposition is artificial—what happens to the individual is bound up with larger social, political, and cultural processes.[56]

Genocide as social practice

There are a number of markers we can use to predict the future of the past in Crimea. I have already described how the Crimean Tatars were able to publically commemorate the 1944 deportation when Crimea was a part of Ukraine. If symbolic forms such as these help create and maintain social hierarchies, the billboards announcing the commemorative event in 2013 were particularly significant: the Crimean Tatars leveled, if only temporarily and incrementally, the commemorative field when they publicized their past alongside the Russian one. Russian annexation brought a very different reality to Crimea.

On one hand, Putin assured Crimean Tatar representatives who went to Moscow in May 2014 that Russia will take measures to protect Crimean Tatars and make them feel they are "full fledged masters in their own land."[57] At the same time, Crimean Prime Minister Sergei Aksyonov issued a decree that banned all mass gatherings in the region, effectively outlawing the 2014 commemoration of the deportation. Aksyonov used a kaleidoscope of shifting reasons, mostly centered on national security, for his decision.[58] The central square where Crimean Tatars would have gathered was fenced off, guarded by ranks of Russian riot police as well as pro-Russia so called self-defense units, and lined with armored personnel carriers. Avoiding conflict, Crimean Tatars gathered in a field near their mosque in the Ak Mechet district, just outside the capitol city of Simferopol. There, a foreshortened commemoration was carried out under the whirl of helicopter blades.

This attempt to reorganize relations among the living by banning commemoration of the dead was a way to begin the process of reordering community in post-annexation Crimea. Scholars of genocide are increasingly recognizing how technologies of power such as these make genocide not a discrete event with a beginning, middle, and end, but a social process.[59] Clearly the change in power, and the status of the peninsula as part of the Russian Federation, is reconfiguring more than geopolitics. Leaders like Sergei Aksyonov, the Prime Minister and Head of the Supreme Council,

and Natalia Poklonskaya, the chief prosecutor confirmed by President Putin, are now engaging and intervening in the social process in which the living in Crimea must struggle with the war's legacy: how, when and who to honor?[60] How, when, and who to mourn?

The current authorities' aims within this emotional substrate are clear in light of the ample space afforded to those wishing to commemorate Victory Day: shortly after the Crimean Tatars were banned from mourning their loss, Putin flew to Crimea to publicly commemorate Soviet victory over Nazi Germany in Sevastopol. Tens of thousands were allowed to flow into the streets, and there was a parade with over 60 military vehicles and 70 aircraft.[61] The contraction of commemorative space accorded to Crimean Tatars relative to Russians (and Russian-Ukrainians) throws into bold relief the very real imbalances of power on the peninsula that are papered over by official pronouncements of equality before the law.

The Crimean Tatar response to being banned from carrying out their usual commemoration brings us back to the link between genocide and historical memory. Genocide can be understood as an act that is directly aimed at destroying ethno-national-religious diversity and altering the social fabric of societies so as to remove unwanted traces of undesired peoples.[62] This requires removing people from any sites that would physically register social memory. Refat Chubarov described the decree banning commemoration as an inhumane act, pointing out that the Crimean Tatars had essentially been forbidden to mourn their ancestors. A popular TV talk show host, Lilia Budjorova, asked rhetorically whether the authorities fully understood the meaning that the day of sorrow and remembrance has for the Crimean Tatar people. She warned that the ban would be remembered for many years, and can't be compensated for by any amount of government spending on Crimean Tatars.[63] Budjurova's comments suggest that if Aksyonov wants Crimean Tatar support to secure his rule, the ban may actually be counterproductive to his aims:

> Today, like tens of thousands of my compatriots, I have been banned from coming into the center of my own town to stand next to those who have lost mothers, fathers, and children. I have been banned from sharing their pain. You have taken away my right to make sure that my grandchildren know that this tragedy must never repeat itself.[64]

Budjurova suggested that pain can only be reduced with empathy and understanding. With this, she suggests more empathy would have set a very different tone to relations between the new authorities and the indigenous Tatars. This also jives with what we know about transitional justice. In the repertoire of effective mechanisms, the commemoration of victims is widely considered a crucial part of reconciliation with a repressive past.[65] In 2014, the new Crimean administration headed by Aksyonov missed an opportunity to be more accepting of all members of the society and move to a less polarized future. If the 2014 commemorations are any indication, Crimeans will again be confined to a single narrative that elides the Crimean Tatar experience.

In spite of assurances on the part of President Vladimir Putin and Aksyonov, what has transpired since annexation hardly amounts to protection of the endangered group. For one thing, there has been a rash of disappearances. In one case, a witness reported seeing two men forced into a mini-van by men in black uniforms before they disappeared. Accounts vary but according to Human Rights Watch there have been at least seven and potentially as many as 18 disappearances.[66] Officials only acknowledge four. Searches of Crimean Tatar homes became almost routine in during summer 2014. These were carried out in the name of "protecting" the people. There has also been harassment of mass media outlets: self-defense battalions comprised of men in camouflage gear and balaclavas have searched and seized broadcasting equipment at some of Crimea's major television channels. The systematic attempt to weaken the community has included banning Crimean Tatar leaders from residing in Crimea among their people. First came renowned defender of human rights, Ukrainian parliamentarian, and former Head of the Crimean Tatar Mejlis, Mustafa Cemilev. Then came the elected President or Chairman of the Mejlis, Refat Chubarov. In February 2015, acting Chairman of the Mejlis, Akhtem Chivgoz was arrested and imprisoned. These practices amount to the gradual weakening of this people through discrimination, harassment, and isolation, over time.

Conclusion

As a result of this analysis, I hope to have contributed a deeper understanding of the Crimean Tatar genocide. I have argued that while Crimea was part of Ukraine, it experienced a volatile and yet fertile insurrection of previously subjugated knowledges. Public commemorations became a lightening rod, channeling contestations over the recent and distant past. While previous gaps and omissions were made visible, hegemonic power/knowledge frameworks continued to make one group appear better than another.

These contestations are difficult to fully appreciate without a greater understanding of the historical habitus of individuals in Crimea. Using fresh and now virtually unobtainable data, I provide an ethnographic exploration into the thoughts and feelings of a subset of the non-Crimean Tatar population, showing a durable disposition that informs interpretations of the past. This perspective on the past gains its emotional valence in part from the categorical thinking, the ontological resonance of imagining Crimean Tatars as a threat. Based on the interview data, it seems Crimea lacks the cognitive and affective foundation to formulate an inclusive and civil society. Here, the lack of both guilt and shame with respect to the 1944 deportation are significant.

If we place the Crimean Tatar experience in the framework of critical genocide studies, we see the struggle over the past in Crimea as a technology of power that has an ongoing capacity to restructure relations among the living. I have exposed part of the process through which the aftermath of genocide has become attenuated. More ethnography can clarify if we are witnessing the aftermath of genocide or its prelude. The desecration of graves, the graffiti on historic monuments, hateful discussions on Facebook and other social media, searches of homes, mosques and schools, and the exile and imprisonment of Crimean Tatar leaders beg that question.

The question of what will become of public memory in post-Ukrainian Crimea is an urgent one: will Crimea be obligated to exclusively valorize the Soviet past, or will it "unhide" the human and social costs associated with past victories? In the aftermath of genocide, the contents of Crimean Tatar memory and history continue to be eclipsed, and neostalinism thrives. Any attempt by the new authorities to see only one side of the historic coin will result in a flat and ultimately unsatisfying account of the past.

Endnotes

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2 This figure is based on a survey that Crimean Tatars carried out in the first years of exile (Cemilev, personal interview, June 1995). According to NDVD estimates, 27 percent of the population perished in the first three years Nikolai Zemskov, 1995. "Spetsposelentsy iz Kryma: 1944-1956." [Special Settlers from Crimea 1944-1956] *Krymskie Muzei* 1/94 Simferopol, Tavria, 75.

3 Daniel Feierstein, *Genocide as a Social Practice*, trans. Douglas Andrew Town (New Brunswick: Rutgers University Press, 2014), 12. Ebook.

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7 Johan Galtung, "After Violence: Reconstruction, Reconciliation, and Resolution," in *Reconciliation, Justice, and Coexistence: Theory and Practice,* ed. Abu-Nimer, Muhammed (Lanham, MD: Lexington Books, 2001), 3-23; L. Kriesberg, "Changing Forms of Coexistence," in *Reconciliation, Justice, and Coexistence: Theory and Practice*, ed. Muhammed Abu-Nimer (Lanham, Md.: Lexington Books, 2001); Barbara Tint, "History, Memory, and Intractable Conflict," *Conflict Resolution Quarterly* 27, 3 (2010): 239-256.

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15 Greta Uehling, *Beyond Memory*: *The Crimean Tatars' Deportation and Return* (New York: Palgrave Macmillan, 2004); Greta Uehling "Squatting, Self-Immolation, and the Repatriation of Crimean Tatars," *Nationalities Papers* 28 (2000): 317-342.

16 Interview, Crimean Tatar Mejlis, May 26, 2013.

17 Brian Glyn Williams, *A Homeland Lost: Migration, the Diaspora Experience and the Forging of Crimean Tatar National Identity* (Doctoral Dissertation, University of Wisconsin Madison 1999); Greta Uehling, *Beyond Memory: The Deportation and Return of the Crimean Tatars* (New York: Palgrave Macmillan, 2004); Uehling, "Squatting, Self-Immolation, and the Repatriation of Crimean Tatars," *Nationalities Papers* 28 (2000): 317-342; Greta Uehling, "The Crimean Tatar National Movement: Social Memory and Collective Action," in *Globalizations and Social Movements,* eds., John Guidry, Michael Kennedy, and Mayer N. Zald (Ann Arbor: University of Michigan, 2000).

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20 Uehling, "Beyond Memory," 2004.

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