CR 2006/2

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2006

Public sitting

held on 27 February 2006, at 10.30 a.m., at the Peace Palace,

President Higgins presiding,

***in the case concerning the* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Serbia and Montenegro)**

VERBATIM RECORD

ANNÉE 2006

Audience publique

tenue le 27 février 2006, à 10 h 30, au Palais de la Paix,

sous la présidence de Mme Higgins, président,

***en l'affaire relative à l'*Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)**

COMPTE RENDU

Present:	President	Higgins
	Vice-President	Al-Khasawneh
	Judges	Ranjeva
		Shi
		Koroma
		Parra-Aranguren
		Owada
		Simma
		Tomka
		Abraham
		Keith
		Sepúlveda
		Bennouna
		Skotnikov
	Judges *ad hoc*	Ahmed Mahiou
		Milenko Kreća
	Registrar	Couvreur

Présents : Mme Higgins, président
M. Al-Khasawneh, vice-président
MM. Ranjeva
Shi
Koroma
Parra-Aranguren
Owada
Simma
Tomka
Abraham
Keith
Sepúlveda
Bennouna
Skotnikov, juges
MM. Ahmed Mahiou,
Milenko Kreća, juges *ad hoc*

M. Couvreur, greffier

The Government of Bosnia and Herzegovina is represented by:

Mr. Sakib Softić,
as Agent;

Mr. Phon van den Biesen, Attorney at Law, Amsterdam,

as Deputy Agent;

Mr. Alain Pellet, Professor at the University of Paris X-Nanterre, Member and former Chairman of the International Law Commission of the United Nations,

Mr. Thomas M. Franck, Professor of Law Emeritus, New York University School of Law,

Ms Brigitte Stern, Professor at the University of Paris I,

Mr. Luigi Condorelli, Professor at the Faculty of Law of the University of Florence,

Ms Magda Karagiannakis, B.Ec, LL.B, LL.M., Barrister at Law, Melbourne, Australia,

Ms Joanna Korner, Q.C., Barrister at Law, London,

as Counsel and Advocates;

Mr. Morten Torkildsen, BSc, MSc, Torkildsen Granskin og Rådgivning, Norway,

as Expert Counsel and Advocate;

H.E. Mr. Fuad Šabeta, Ambassador of Bosnia and Herzegovina to the Kingdom of the Netherlands,

Ms Laura Dauban, LL.B (Hons),

Mr. Wim Muller, LL.M, M.A.,

Mr. Mauro Barelli, LL.M (University of Bristol),

Mr. Ermin Sarajlija, LL.M,

Mr. Amir Bajrić, LL.M,

Ms Amra Mehmedić, LL.M,

Mr. Antoine Ollivier, Temporary Lecturer and Research Assistant, University of Paris X-Nanterre,

Le Gouvernement de la Bosnie-Herzégovine est représenté par :

M. Sakib Softić,

comme agent;

M. Phon van den Biesen, avocat, Amsterdam,

comme agent adjoint;

M. Alain Pellet, professeur à l'Université de Paris X-Nanterre, membre et ancien président de la Commission du droit international des Nations Unies,

M. Thomas M. Franck, professeur émérite à la faculté de droit de l'Université de New York,

Mme Brigitte Stern, professeur à l'Université de Paris I,

M. Luigi Condorelli, professeur à la faculté de droit de l'Université de Florence,

Mme Magda Karagiannakis, B.Ec., LL.B., LL.M., *Barrister at Law*, Melbourne (Australie),

Mme Joanna Korner, Q.C., *Barrister at Law*, Londres,

comme conseils et avocats;

M. Morten Torkildsen, BSc., MSc., Torkildsen Granskin og Rådgivning, Norvège,

comme conseil-expert et avocat;

S. Exc. M. Fuad Šabeta, ambassadeur de Bosnie-Herzégovine auprès du Royaume des Pays-Bas,

Mme Laura Dauban, LL.B. (Hons),

M. Wim Muller, LL.M., M.A.,

M. Mauro Barelli, LL.M. (Université de Bristol),

M. Ermin Sarajlija, LL.M.,

M. Amir Bajrić, LL.M.,

Mme Amra Mehmedić, LL.M.,

M. Antoine Ollivier, attaché temporaire d'enseignement et de recherche à l'Université de Paris X-Nanterre,

Ms Isabelle Moulier, Research Student in International Law, University of Paris I,

Mr. Paolo Palchetti, Associate Professor at the University of Macerata (Italy),

as Counsel.

The Government of Serbia and Montenegro is represented by:

Mr. Radoslav Stojanović, S.J.D., Head of the Law Council of the Ministry of Foreign Affairs of Serbia and Montenegro, Professor at the Belgrade University School of Law,

as Agent;

Mr. Saša Obradović, First Counsellor of the Embassy of Serbia and Montenegro in the Kingdom of the Netherlands,

Mr. Vladimir Cvetković, Second Secretary of the Embassy of Serbia and Montenegro in the Kingdom of the Netherlands,

as Co-Agents;

Mr. Tibor Varady, S.J.D. (Harvard), Professor of Law at the Central European University, Budapest and Emory University, Atlanta,

Mr. Ian Brownlie, C.B.E., Q.C., F.B.A., Member of the International Law Commission, member of the English Bar, Distinguished Fellow of the All Souls College, Oxford,

Mr. Xavier de Roux, Masters in law, avocat à la cour, Paris,

Ms Nataša Fauveau-Ivanović, avocat à la cour, Paris and member of the Council of the International Criminal Bar,

Mr. Andreas Zimmermann, LL.M. (Harvard), Professor of Law at the University of Kiel, Director of the Walther-Schücking Institute,

Mr. Vladimir Djerić, LL.M. (Michigan), Attorney at Law, Mikijelj, Janković & Bogdanović, Belgrade, and President of the International Law Association of Serbia and Montenegro,

Mr. Igor Olujić, Attorney at Law, Belgrade,

as Counsel and Advocates;

Ms Sanja Djajić, S.J.D., Associate Professor at the Novi Sad University School of Law,

Ms Ivana Mroz, LL.M. (Minneapolis),

Mr. Svetislav Rabrenović, Expert-associate at the Office of the Prosecutor for War Crimes of the Republic of Serbia,

Mme Isabelle Moulier, doctorante en droit international à l'Université de Paris I,

M. Paolo Palchetti, professeur associé à l'Université de Macerata (Italie),

comme conseils.

Le Gouvernement de la Serbie-et-Monténégro est représenté par :

M. Radoslav Stojanović, S.J.D., chef du conseil juridique du ministère des affaires étrangères de la Serbie-et-Monténégro, professeur à la faculté de droit de l'Université de Belgrade,

comme agent;

M. Saša Obradović, premier conseiller à l'ambassade de Serbie-et-Monténégro au Royaume des Pays-Bas,

M. Vladimir Cvetković, deuxième secrétaire à l'ambassade de Serbie-et-Monténégro au Royaume des Pays-Bas,

comme coagents;

M. Tibor Varady, S.J.D. (Harvard), professeur de droit à l'Université d'Europe centrale de Budapest et à l'Université Emory d'Atlanta,

M. Ian Brownlie, C.B.E., Q.C., F.B.A., membre de la Commission du droit international, membre du barreau d'Angleterre, *Distinguished Fellow* au All Souls College, Oxford,

M. Xavier de Roux, maîtrise de droit, avocat à la cour, Paris,

Mme Nataša Fauveau-Ivanović, avocat à la cour, Paris, et membre du conseil du barreau pénal international,

M. Andreas Zimmermann, LL.M. (Harvard), professeur de droit à l'Université de Kiel, directeur de l'Institut Walther-Schücking,

M. Vladimir Djerić, LL.M. (Michigan), avocat, cabinet Mikijelj, Janković & Bogdanović, Belgrade, et président de l'association de droit international de la Serbie-et-Monténégro,

M. Igor Olujić, avocat, Belgrade,

comme conseils et avocats;

Mme Sanja Djajić, S.J.D, professeur associé à la faculté de droit de l'Université de Novi Sad,

Mme Ivana Mroz, LL.M. (Minneapolis),

M. Svetislav Rabrenović, expert-associé au bureau du procureur pour les crimes de guerre de la République de Serbie,

Mr. Aleksandar Djurdjić, LL.M., First Secretary at the Ministry of Foreign Affairs of Serbia and Montenegro,

Mr. Miloš Jastrebić, Second Secretary at the Ministry of Foreign Affairs of Serbia and Montenegro,

Mr. Christian J. Tams, LL.M. (Cambridge),

Ms Dina Dobrkovic, LL.B.,

as Assistants.

M. Aleksandar Djurdjić, LL.M., premier secrétaire au ministère des affaires étrangères de la Serbie-et-Monténégro,

M. Miloš Jastrebić, deuxième secrétaire au ministère des affaires étrangères de la Serbie-et-Monténégro,

M. Christian J. Tams, LL.M. (Cambridge),

Mme Dina Dobrkovic, LL.B.,

comme assistants.

The PRESIDENT: Please be seated. The sitting is open.

The Court now meets to hear the oral arguments of the Parties on the merits in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*.

I note initially that Judge Buergenthal informed the President, pursuant to Article 24, paragraph 1, of the Statute, that he considered he should not take part in the case.

I further recall that since the Court does not include upon the Bench a judge of the nationality of either of the Parties, both Parties have availed themselves of the right, under Article 31, paragraph 2, of the Statute, to choose a judge *ad hoc*. Bosnia and Herzegovina originally nominated Sir Elihu Lauterpacht. Following the resignation of the latter, Bosnia and Herzegovina chose Mr. Ahmed Mahiou. Serbia and Montenegro chose Mr. Milenko Kreća.

Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*.

Mr. Kreća was duly installed as judge *ad hoc* in the case on 25 August 1993 during the hearings on the further requests for provisional measures. In accordance with Article 8, paragraph 3, of the Rules of Court, he is not required to make a new declaration for the present phase of the case. Although Mr. Mahiou has been a judge *ad hoc* and made a solemn declaration in a different previous case, Article 8, paragraph 3, of the Rules of Court provides that he must make a further solemn declaration in the present case. In accordance with custom, I shall first say a few words about the career and qualifications of Mr. Mahiou before inviting him to make his solemn declaration.

Mr. Mahiou, who is of Algerian nationality, is a *docteur d'Etat* of the Faculty of Law at Nancy and is *agrégé* in public law and political science. He has held a number of teaching and research posts at the University of Algiers and in other countries, particularly in France. Mr. Mahiou has represented Algeria at several international conferences and has served on various international bodies including the International Law Commission, of which he was Chairman at its Forty-eighth session in 1996. Mr. Mahiou is a member of a number of academic institutions and

bodies and is an Associate of the Institut de Droit International. He has published numerous works and articles in various fields of international law. Mr. Mahiou was a judge *ad hoc* in the case concerning the *Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina)*.

I shall now invite Mr. Mahiou to make the solemn declaration prescribed by the Statute, and I would request all those present to rise.

M. MAHIOU:

«Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The PRESIDENT: Thank you. Please be seated. I take note of the solemn declaration made by Mr. Mahiou and declare him duly installed as judge *ad hoc* in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*.

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In light of the length and complexity of the procedural history of the case, I shall not now enter into the detail of the procedure followed thus far. However, for the convenience of the public and the media, a press release containing a full account of the procedural history of the case has been issued this morning. Paper copies have been made available at the entrance of the Great Hall of Justice and an electronic version has been posted on the website of the Court.

At this stage, I will simply recall the following procedural events.

The Application instituting proceedings was filed by Bosnia and Herzegovina on 20 March 1993. In Orders dated 8 April 1993 and 13 September 1993, the Court indicated certain provisional measures. Bosnia and Herzegovina filed its Memorial on 15 April 1994 and, within the time-limit fixed for the filing of the Counter-Memorial, the Federal Republic of Yugoslavia raised

preliminary objections concerning the Court's jurisdiction to entertain the case and to the admissibility of the Application. By Judgment of 11 July 1996, the Court dismissed the preliminary objections and found that it had jurisdiction to adjudicate on the dispute on the basis of Article IX of the Genocide Convention and that the Application was admissible. The Federal Republic of Yugoslavia subsequently filed its Counter-Memorial on 27 July 1997. Bosnia and Herzegovina's Reply was filed on 23 April 1998 and the Rejoinder of the Federal Republic of Yugoslavia was filed on 20 February 1999.

On 24 April 2001, the Federal Republic of Yugoslavia filed an Application instituting proceedings whereby, referring to Article 61 of the Statute, it requested the Court to revise the Judgment delivered on Preliminary Objections on 11 July 1996. On 4 May 2001, the Federal Republic of Yugoslavia also submitted in the present case a document entitled "Initiative to the Court to Reconsider *Ex Officio* Jurisdiction over Yugoslavia", in which it requested the Court to adjudge and declare that it had no jurisdiction *ratione personae* over the Federal Republic of Yugoslavia and requested the Court to suspend the proceedings on the merits.

In the Judgment of 3 February 2003 in the *Application for Revision* case, the Court found that the Federal Republic of Yugoslavia's Application for revision, under Article 61 of the Statute of the Court, of the Judgment of 11 July 1996 on Preliminary Objections was inadmissible. Subsequently, in a letter dated 12 June 2003, Serbia and Montenegro was informed that the Court had decided that it could not accede to the Respondent's request that the proceedings be suspended until a decision was rendered on the jurisdictional issues raised in the Initiative; however, should it wish to do so, Serbia and Montenegro would be free to present further oral argument on jurisdictional questions during the oral proceedings on the merits.

We have now reached the opening of the oral proceedings on the merits.

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Having ascertained the views of the Parties, the Court decided, pursuant to Article 53, paragraph 2, of its Rules, that copies of the pleadings and the documents annexed would be made accessible to the public on the opening of the oral proceedings. Further, in accordance

with the Court's practice, the pleadings without their annexes will be put on the Court's website from today.

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I note the presence at the hearing of the Agents, counsel and advocates of both Parties. In accordance with the arrangements on the organization of the procedure which have been decided upon by the Court, the hearings will comprise a first and a second round of oral argument. Between the two rounds of oral argument, the Court will hear the witnesses, experts and witness-experts called by the Parties.

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The first round of oral argument will begin today. Bosnia and Herzegovina will have ten sessions and will thus conclude its first round of argument on Tuesday 7 March 2006. On Wednesday 8 March 2006 at 10 a.m., Serbia and Montenegro will begin its first round of oral argument and will have the same number of sessions for this purpose as Bosnia and Herzegovina. The first round of oral argument will accordingly be concluded on Thursday 16 March 2006. On Friday 17 March at 10 a.m., the Court will begin the hearing of the witnesses, experts and witness-experts and this will end on Tuesday 28 March 2006. There will then be a break in the hearings until Tuesday 18 April 2006 at 10 a.m. when the second round of oral argument will begin. Bosnia and Herzegovina will have eight sessions and will thus conclude its second round of argument on Monday 24 April 2006. On Tuesday 2 May 2006 at 10 a.m., Serbia and Montenegro will begin its second round of oral argument and will dispose for this purpose of the same number of sessions as Bosnia and Herzegovina. The second round of oral argument and the hearings in the case will accordingly be concluded on Tuesday 9 May 2006.

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As I mentioned, Bosnia and Herzegovina, which is the Applicant in the case, will be heard first. I now give the floor to Mr. Sakib Softić, the Agent of Bosnia and Herzegovina. You have the floor.

Mr. SOFTIĆ:

1. Madam President, let me begin with congratulating you on behalf of Bosnia and Herzegovina, on behalf of my Government and of my colleagues in our legal team, with your election to this most honourable post of President of the International Court of Justice. Also, let me avail myself of this opportunity to congratulate the four newly elected Members of this Court, who were sworn in this morning. In this Great Hall of Justice there is no need for me to elaborate on the importance of the rule of law, nor on the importance of the International Court of Justice, whose eminent task it is to make the rule of law visible to the world.

2. Madam President, distinguished Members of the Court. For me, this is the second time that I have the honour to appear before this Court. From a professional point of view this is an extremely great honour, an honour to represent my country and its citizens in this effort to obtain justice for the immeasurable harm inflicted upon us.

3. This case is of immense importance to my country, to its citizens and to the State of Bosnia and Herzegovina, which I represent here today. The hundreds of victims who have peacefully assembled here today in The Hague at the gates of the Peace Palace are a vivid demonstration of this importance.

4. The armed violence, which hit our country like a man-made tsunami in 1992 and which continued to chastise the non-Serb population in 1993, 1994 and 1995, destroyed the very character of Bosnia and Herzegovina and certainly destroyed a substantial part of its non-Serb population. If at all possible, it will take several generations to overcome this destruction and to heal the painful, numerous injuries caused by the same. At the same time much of the personal and cultural damage done to the specifically targeted non-Serbs of Bosnia will not be able to be healed at all.

5. Madam President, we used to be 4.3 million Bosnians living together, often intimately connected through so-called mixed marriages. Now, we are somewhat over 3.5 million citizens of Bosnia and Herzegovina, living within two entities which make up the present day structure of our

country. Especially the territory of the Republika Srpska has changed into a more than 90 per cent mono-religious, mono-ethnic region from which any notion of multi-ethnicity has effectively disappeared.

6. For this, we do not entertain feelings of revenge towards the Bosnian Serbs in our country. After all, they have been clearly misled by their leaders who carried out what the Respondent initiated in the early 1990s of the past century. So, revenge is not guiding us, neither is any notion of collective guilt doing that. This case is not about blaming each and every Bosnian Serb for the acts of genocide committed against the non-Serbs of Bosnia and Herzegovina.

7. Rather, we are here because the Belgrade authorities have, knowingly, taken the non-Serbs of Bosnia and Herzegovina on a path to hell — a path littered with dead bodies, broken families, lost youths, lost futures, destroyed places of cultural and religious worship, destroyed property, destroyed homes, destroyed towns and villages; on a path towards a world where living memories were erased and where the intimate living environment was destroyed.

8. Madam President, Members of the Court, many Serbian leaders have, over a long period of time, developed the victim-concept into a tool to define Serbian history and, at the same time, as a tool to mobilize their constituency. We do not want to minimize the truly horrific suffering that came onto the Serbian people in the past, including the suffering of the Second World War. That suffering should not be forgotten and we may only speak about this in the most respectful of ways. At the same time, we are not able to ever accept that these historic pains are utilized to incite the victims thereof to commit acts of genocide against others.

9. The victim-rhetoric has played an always present role in the propaganda used to mobilize the Serbian people into allowing and supporting the Serbian authorities to engage the Federal Republic of Yugoslavia in armed conflict. The victim-concept was, obviously, defined in ethnic terms. This propaganda, therefore, aimed at defining the non-Serbs in the former Yugoslavia as *the enemy*; the enemy which, according to this hate speech, had allegedly, clear genocidal plans in mind for the Serbs of the former Yugoslavia. This is how all of this was started. During these pleadings we will elaborate on all aspects of the real genocide that followed.

10. While the images of the massacres which hit the non-Serbs of Bosnia and Herzegovina are not leaving anyone’s memories, already now, in Serbia, denials are part of the public debate:

"we did not have anything to do with it, Srebrenica did not happen, mass-scale rapes did not occur, we were not the aggressors", and so on and so on. This is what many, many people in Serbia want their fellow citizens to believe.

11. Actually, the position taken by the Respondent in the written pleadings in this case is at the heart of this denial-position. In their Counter-Memorial as well as in the Rejoinder, the Respondent takes exactly this position: "it was not us, we were not involved, we have done nothing wrong". In the Counter-Memorial, the Respondent even added that not the Respondent was responsible for genocide, but, on the contrary, Bosnia and Herzegovina is the guilty party.

12. This case is before this Court and is explicitly continued before this Court to do away with precisely this rude falsifying of history. This case is before this Court for truth-finding purposes. A rebuilding of Bosnia and Herzegovina against the backdrop of continued denial seems virtually impossible. Developing good-neighbour relations with Serbia and Montenegro against the backdrop of continued denial is virtually impossible. Sitting next to each other in the European Parliament does not look like a realistic, future option if the representatives of the Respondent keep entertaining totally false views on what their State did to its neighbours.

13. The *ad hoc* Tribunal which the United Nations has established in order to bring to justice the perpetrators of genocide in Rwanda considered in one of its judgments that "cessation of the atrocities of the conflict does not necessarily imply that international peace and security has been restored, because peace and security cannot be said to be re-established adequately without justice being done"[1].

14. Yes, the truth may be painful to many people in Serbia and Montenegro as well as, for that matter, in the Republika Srpska. But no one will deny that this particular pain will not ever come close to the immeasurable pain which, effectively, has been inflicted on the non-Serbs of Bosnia and Herzegovina. Healing that almost unhealable pain is also the reason for our deep desire that this Court delivers a positive judgment on our submissions.

15. Madam President, the Government of my country does not deny that during the time that ethnic cleansing raged across my country, Bosnian Serbs have also become victims of war crimes.

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[1]ICTR, *Prosecutor* v. *Joseph Kanyabashi*, case No. ICTR-96-15-T, Decision on the Defence Motion on Jurisdiction, 18 June 1997.

Without any reservations we stipulate here that we deeply deplore that. However, never ever have these incidents been part of any policy authorized by the Government of my country. At no point in time has this Government engaged in perpetrating crimes, let alone in the perpetration of genocide.

16. Madam President, this case is not aimed at the individual citizens of Serbia and Montenegro, let alone at the individual citizens, my fellow Bosnian citizens, in Republika Srpska. This case is about State responsibility and seeks to establish the responsibilities of a State which, through its leadership, through its organs, committed the most brutal violations of one of the most sacred instruments of international law. This case does, by far, supersede the level of individual responsibility and it is only left to other tribunals and courts to see that individuals who deserve so are properly punished. Bosnia is, through this case, *not* seeking to punish individuals.

17. At the same time, the healing aspect of this case is explicitly also aimed at repairing the damage done to those, who became the victims of ethnic cleansing which, in Bosnia, is so clearly equal to genocide.

18. Madam President, this perspective on what this case is *not* about and on what it, indeed, is about, seems to be shared by quite a few people in Serbia proper. Several civil society organizations in Belgrade have publicly declared that they want to see justice done through this Court's establishing that, indeed, Serbia and Montenegro is to blame for genocide in Bosnia and Herzegovina.

19. Not so the Respondent. The Respondent is not particularly fond of the truth. Apart from denying the truth, it also seems to focus on a strategy aimed at keeping the Court from reaching a conclusion on the merits of this case. Basically, the Respondent is trying to hide from being held accountable before this independent and authoritative Court. Given the issues at stake that is not a very laudable choice. However, for us today the most important issue is to state clearly before this Court, Madam President, that we are convinced that the Respondent, as far as the Respondent is trying to do so, will, again, engage in an undertaking not worth any cause and, in any event, in an endeavour not worth being honoured by this Court.

20. Madam President, after almost 13 years the time has arrived for Bosnia and Herzegovina to publicly present its case. This presentation will inevitably lead to the conclusion that Serbia and

Montenegro have violated all of its obligations under the Genocide Convention. I will not take up more time, but I will ask you to give the floor now to the members of Bosnia's legal team, who have not only put all of their significant professional, legal and litigating skills in this case, but who have also invested enormous amounts of personal energy and personal commitment in this case.

21. First of all, I am honoured to ask the Court to give the floor to our Deputy Agent, my friend and colleague, Phon van den Biesen. Thank you.

The PRESIDENT: Thank you, Mr. Softić. I now give the floor to the Deputy Agent Mr. van den Biesen.

Mr. van den BIESEN:

INTRODUCTION

General

1. Madam President, Members of the Court, this is the third time I appear before this Court, while representing Bosnia and Herzegovina. I am honoured to be pleading before the World Court and I am much honoured by Bosnia and Herzegovina having me do so. If any case is worth pleading, to me, this is the one. If any case deserves to be judged by this Court, again, to me, this is the one.

2. Madam President, this is not going to be a pleasant week of pleadings. We will have to present to this Court the story of a prolonged, ugly, extremely vicious, genocidal, assault on people whose only mistake it apparently was not be born as a member of the Serbian nation. An armed onslaught which not only included "regular" war crimes, but which also had, from the very, very early stages onward, the apparent characteristics of a military undertaking aimed at the destruction in whole or in part of a clearly ethnically, religiously defined group of people.

3. This case is for many reasons exceptional, the overriding reason being the fact that this is the very first time that this Court was called upon to apply the Genocide Convention. Besides that, this case is exceptional since it is related not to just a few factual events, not to just some incidental violations of the laws of war. In this case, this Court needs to look at the totality of an abundance of facts covering an entire episode of armed, genocidal conflict.

4. We trust that the Court will give due notice to each and every provision of the Convention which is at stake in this case. We will provide proper assistance to the Court in addition to that which we already gave during the written stages of these proceedings.

5. In our pleadings we will, in accordance with Article 60, paragraph 1, of the Rules of Court, not repeat the facts and arguments already contained in the written pleadings. We will, however, continuously refer back to the written pleadings. Not only to refresh our memories, but also to provide for consistency and to demonstrate our consistency in what we are requesting the Court to adjudge and declare.

Our written pleadings

6. Madam President, we are not embarrassed in admitting that there is an important difference in the quality of each of our written pleadings.

7. The Application of 20 March 1993 was clearly drafted under the pressure of actual mass killing of the non-Serb population of Bosnia and Herzegovina. This Application, in the first place, had to function as groundwork for the request for provisional measures, which was submitted to the Court on the same date. As we know, the Application was effective for that purpose and it led, together with the request, to a positive Order of your Court dated 8 April 1993. An Order which, by the way, was totally ignored by the Respondent; it was totally violated by the Respondent. The same was true for your second Order of 13 September 1993, which not only literally repeated the earlier one, but added that the earlier one should be "immediately and effectively" implemented. So, on two subsequent occasions the Respondent not only demonstrated utter contempt for this Court, but also — within half a year — twice violated its related obligations under international law[2]. Obviously, Bosnia and Herzegovina will at the end of these pleadings request that the Court, indeed, finds that the Respondent twice totally ignored this Court's Order and not only that but it continued for many years to do precisely what the Court had ordered it to stop doing, this fact, also, entails its responsibility.

[2] *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109 and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, para. 263.

8. The Memorial of 15 April 1994 provided a further, firm foundation for our case. However, the drafting of that written pleading was seriously hampered by the fact that, in spite of the two Orders just mentioned, and in spite of numerous resolutions of the Security Council of the United Nations, the genocidal atrocities continued. This made proper communications with, within and from the besieged capital, Sarajevo, virtually impossible. It goes without saying that the Respondent did not encounter this type of obstruction when drafting its Counter-Memorial.

9. In our Reply of 23 April 1998 we were, for the first time, better positioned to provide the Court with a more detailed picture of what exactly had happened in Bosnia and Herzegovina and how these events should be appreciated from a legal perspective.

New evidence since April 1998; ICTY

10. Since April 1998, almost seven years went by. In that period of time an enormous amount of new materials and many, many previously unknown existing materials with respect to the ethnic cleansing in Bosnia and Herzegovina surfaced; hundreds of articles in the media, various documentary films, many, many books, and — even more extremely relevant for our case — thousands and thousands of documents and reports which have served as a foundation for the numerous judgments which have been delivered by the various Chambers of the International Criminal Tribunal for the former Yugoslavia. We will try to avoid acronyms during our pleadings, but we will frequently refer to this Tribunal by the acronym ICTY.

11. Studying and analysing the materials from the ICTY thoroughly leads not only into an horrendous and continued confrontation with the "scenes from hell", to which ICTY Judge Fuad Riad referred when he, in 1995, in his ruling confirming the Indictments against Karadzić and Mladić[3], spoke. At the same time, seen from the perspective of our case, these materials — with no exception — provided support for the analysis of the facts, the same analysis of the facts, which we have presented to the Court before. As far as the facts themselves are concerned, all of the findings of the ICTY in relevant cases are entirely in line with what we have presented to this Court earlier. Exactly the same applies for the facts presented by the Prosecutor

[3]ICTY, *Prosecutor* v. *Radovan Karadžić and Ratko Mladić* ("Srebrenica"), case No. IT-95-18-I, Review of the Indictment, 16 Nov. 1995, p. 1.

of the ICTY in cases against indictees from Serbia and Montenegro and their affiliates from Republika Srpska, which indictments at all times were confirmed by an independent judge.

The Respondent's approach

12. That the facts revealed since April 1998 are so overwhelmingly in support of our position may be an explanation why the factual part of our submissions has hardly been disputed — and in any event certainly not seriously disputed — by the Respondent. The Respondent, actually, has not been forthcoming with any serious defence. Instead of that, Serbia and Montenegro has chosen to — other than what Article 49, paragraphs 2 and 3, of the Rules of Court call for — rely on all sorts of propaganda which the Bosnian people have been hearing for much too long.

13. Madam President, Members of the Court, if the Respondent at all plans to become more substantial in its defence during the present pleadings, this necessarily needs to become visible in their first round in order to enable Bosnia and Herzegovina to properly rebut. Saving any defence for the second round of these oral pleadings would almost certainly lead to a violation of the principle of fair trial.

14. So, Madam President, what exactly did the Respondent do instead of — within the setting of these proceedings — properly responding to the submissions put forward by Bosnia and Herzegovina? It seems that Serbia and Montenegro has focused on trying to prevent the Court from delivering a judgment on the substance of this case. In doing so, more often than not they have focused on putting up some sort of defence *outside* of these proceedings.

No peace without justice

15. The fact that we are here today demonstrates that in this respect the Respondent has not been successful, and rightly so. The extremely horrific nature of the substance of this case and the utmost infamy of the violations of the Genocide Convention for which the Respondent is responsible, simply demand that justice be done — justice provided by the highest and most authoritative Court, created in the name of the peoples of the world.

16. Not only the people of Bosnia and Herzegovina, but also the peoples of the world, are entitled to see that the justice system of the United Nations, indeed, functions properly and is, indeed, capable of delivering justice. Justice to a State and justice to a people which suffered from

the most brutal violations of norms; norms that are considered to be *jus cogens* and by which, as the Respondent time and again stipulated, the, then, Federal Republic of Yugoslavia was indeed bound. This case, therefore, provides this Court with the opportunity, indeed with the duty, to demonstrate to the peoples of the world that, yes, the rule of law will prevail. The whole world is watching. The Balkans are watching, the surviving victims of the only genocide that occurred in Europe since the Second World War, and hopefully the very last one, are very closely, and filled with expectations, watching.

Procedural history of the case

17. Madam President, in your introduction, you referred to the procedural events. Some of those deserve some further observations. The public record with respect to this case would not be complete without a proper accounting of its procedural history, which accounting needs to include a public accountability as to why and how it is that it took almost 13 years for this case to be publicly heard, since the initial Application in March 1993.

18. Indeed, Bosnia and Herzegovina in a way shares part of the responsibility for this, albeit a very minor part: Bosnia did not meet the first deadline set by the Court for the submission of its Memorial. Due to the ongoing ethnic cleansing, we were forced to request an extension of six months of the first time-limit until April 1994.

19. For reasons of equality of arms, this provided the Respondent with a time-limit of one year, until April 1995, to submit its Counter-Memorial. However, on 9 February 1995, the Respondent requested the Court to extend the time-limit until 15 November 1995. Bosnia obviously objected to this, and the Court only partly honoured the request, extending the deadline until 30 June 1995. At that point in time the Federal Republic of Yugoslavia did not submit a Counter-Memorial but it did submit preliminary objections in which it included a considerable amount of grounds, certainly an exhaustive amount of grounds, on which the Court would have to declare it had no jurisdiction or that the Application was not admissible. This Court has rejected all of that in its Judgment of 11 July 1996 and declared that, indeed, it does have jurisdiction and declared the Application admissible.

20. One year later, on 22 July 1997, two years after the Srebrenica massacre, the Respondent submitted its Counter-Memorial. At that point in time, it took an unparalleled step, seen from the perspective of the substance of this case: it submitted counter-claims. It stated, in our words, "it wasn't us who committed genocide, it was Bosnia and Herzegovina". The Respondent plainly and without any shame stated this, however without providing even the tiniest bit of evidence which could possibly support this preposterous and extremely insulting claim.

21. Of course, while realizing full well that counter-claims as such usually are considered to be admissible, Bosnia could not but object to permitting this particular counter-claim. To protect the honour of the true victims of genocide, which our case is all about, Bosnia and Herzegovina was under an obligation to strongly protest against this impertinent manoeuvre of the other side. The Court did not agree with us and through its Order of 17 December 1997 it declared the counter-claims admissible. After that, on 23 April 1998, we submitted our Reply, after a short extension of the time-limit was requested and granted. This was followed by the Rejoinder on 22 February 1999, after the already prolonged deadline of 22 January 1999 had again been extended at the request of the Respondent.

22. After that Bosnia, from a procedural point of view, was entitled to produce another written pleading, a rejoinder with respect to the counter-claims. However, Bosnia had all along during these proceedings stressed that it wanted to keep the pace and it had pointed out repeatedly that the case had suffered ample delays already. Therefore, Bosnia and Herzegovina waived its right to submit a rejoinder.

23. Then the Parties met on 19 April 1999 — that is, almost seven years ago now — with the President of the Court to discuss the proper conducting of the oral pleadings for which the Court was then about to fix the dates.

24. Before the Court could actually do so, the Respondent engaged in a — seen from the procedural point of view — rather shameless action. On 9 June 1999, the Bosnian Serb Member of the Bosnian Presidency, Zivko Radisić, sent a letter to the Court stating that he had appointed a new Co-Agent of Bosnia[4]. The day after, this freshly "appointed" new Co-Agent sent a letter to

[4]Letter from Zivko Radisić, "President of Presidency" of Bosnia and Herzegovina, to the President and Members of the International Court of Justice, Banja Luka, 9 June 1999.

the Court stating that Bosnia and Herzegovina "is not going on" with the case[5]. And again, a few days after that, the Agent of the Respondent sent a letter to the Court stating:

> "I have the honour to inform you that the Federal Republic of Yugoslavia has accepted the proposal of Bosnia and Herzegovina to discontinue the proceedings in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia) under conditions stated in the letter of the Applicant."[6]

25. Obviously, Madam President, all of this was a total fraud. There was no decision of the Presidency to appoint this Mr. Miletić. More importantly, there was never a decision taken by the Presidency of Bosnia and Herzegovina to withdraw the case — and everybody knew that. Clearly, this strongly suggests a concerted operation between Belgrade and some Bosnian Serb authorities. As such, it was nothing else than a perfect demonstration of the ever ongoing close co-operation between Belgrade and the Bosnian Serb side. A party acting in good faith would, of course, not have sent a letter like the one that Belgrade sent on 15 June to the Court, but it rather would have waited for the reaction of the earlier and properly appointed Agent. In any event, in any event, a party acting in good faith would have withdrawn its letter after Bosnia's truly appointed Agent informed the Court on 14 June 1999 about the actual situation. In this letter the Agent stated, among other things:

> "The Presidency of Bosnia and Herzegovina has not taken any action to either appoint a new Agent or Co-Agent or to terminate the current proceedings before the Court . . . Therefore, Mr. Radisić's communications to you are without the authority of the Presidency of Bosnia and Herzegovina, the Dayton/Paris Peace Accords, or the Rules of Procedure of the Presidency . . . If there is to be a change in my capacity as Agent or Bosnia and Herzegovina's pursuit of the current case before the Court, this will be decided by the Presidency as a whole and will be communicated to the Court as such."[7]

26. We are grateful that the Court handled this issue very carefully, although — as we did mention several times in meetings with the President of the Court — this did take much longer than was justified considering the grave issues at stake in this case. Thus, it took over a year-and-a-half for this issue to stop being an issue, and for the Court to resume the planning of the oral pleadings.

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[5]Letter of Svetozar Miletić, claiming to be "Co-Agent of Bosnia and Herzegovina", to the President and Members of the Court, The Hague, 10 June 1999.

[6]Letter of Rodoljub Etinski, Agent of the Federal Republic of Yugoslavia, to the President and Members of the Court, Belgrade, 15 June 1999.

[7]Facsimile letter of Muhamed Sacirbey, Agent of Bosnia and Herzegovina before the International Court of Justice, to the Registrar of the International Court of Justice, New York, 14 June 1999.

27. However, not long before the actual announcement of the planning of the oral pleadings was expected, Serbia and Montenegro sent another letter to the Court. Among other things this letter asked for "a stay of proceedings, or alternatively, for a postponement of the opening of the oral proceedings for a period of twelve months . . ." And then the Respondent went on to state:

> "Elections for the President and for the Federal Assembly of Yugoslavia held on September 24, 2000, massive demonstrations of hundreds of thousands of citizens which brought about recognition of the results of the September elections, as well as the December 23, 2000, elections for the Serbian National Assembly, have marked the end of a most dramatic and painful decade in Yugoslav history. The result of these events was not just a simple change of government. What took place is a fundamental and dramatic change in the basic orientation and policies of our country . . ."

And the letter continues:

> "The Federal Republic of Yugoslavia has already taken decisive steps in order to improve relations with its neighbours, and with the international community as a whole. Notably, Yugoslavia established diplomatic relations with Bosnia and Herzegovina on 15 December 2000 . . .
>
> In the light of the fundamental change of policies as well as the new international position of the Federal Republic of Yugoslavia, my Government will have to undertake a careful review of Yugoslavia's position in our cases pending before the International Court of Justice . . .
>
> The improvement of Yugoslavia's relations with Bosnia and Herzegovina might open the way for finding an amicable solution to all outstanding controversies . . ."[8]

28. Bosnia and Herzegovina welcomed this approach in its response to the Court and just expressed the hope that there was new resolve and good faith. But it also let known to the Court that:

> "It must be taken into consideration that the request for a one year 'freeze' on the case does have prejudicial consequences for Bosnia and Herzegovina, both in terms of the substantive and practical considerations. Nonetheless, we have given indications of our willingness to resolve amicably the outstanding matter with the FRY on the basis of a mutually acceptable methodology to settle Bosnia and Herzegovina's claims, and the FRY's commitment to international legality in terms of international cooperation with the War Crimes Tribunal for the former Yugoslavia.
>
> Unfortunately, the above has not as yet occurred and there are indications to the contrary, in terms of the willingness of the FRY to meet its international obligations and cooperate with the Tribunal."[9]

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[8]Letter of Goran Svilanović, Federal Minister for Foreign Affairs of the Federal Republic of Yugoslavia, to the President of the International Court of Justice, Belgrade, 18 January 2001.

[9]Letter of Muhamed Sacirbey, Agent of Bosnia and Herzegovina, to the Registrar of the International Court of Justice, New York, 25 January 2001.

And the letter ends requesting that the Court would continue to plan the oral pleadings and not to provide for a delay.

29. None of the conditions proposed by Bosnia were ever, ever met; nor was any substantive or serious initiative for any "amicable solution" — which was the reason given for the request for the stay of the proceedings — ever developed. Moreover, Serbia and Montenegro also at that point in time continued its policy of non-co-operation with the ICTY.

30. The so-called "careful review" of the FRY position with respect to the pending cases aimed at finding "an amicable solution" with Bosnia and Herzegovina turned out not to be related at all to the reasons provided by the Respondent in support of its request for an extension. Yet again, Serbia and Montenegro had misled Bosnia and Herzegovina and, for that matter, the Court. The extension allowed by the Court, eventually, merely led to Serbia and Montenegro's submitting a new case, the request for a revision. As is well known, this request was rejected by the Court on 3 February 2003[10]. And from that point in time, again, the fixing of the schedule for the present hearings became possible.

The present oral pleadings

31. Madam President, without any doubt, the delaying tactics of the Respondent are to be characterized as an entirely inappropriate way to deal with Bosnia and Herzegovina and, for that matter, to deal with this Court. They have clearly been aimed at escaping factual and legal accountability for the worst atrocities committed in Europe since the Second World War. The approach of Serbia and Montenegro in the course of these proceedings is another deeply hurting blow in the face of the victims, on top of what they already have suffered. The only positive side to this is that, over the last couple of years, an extensive body of additional evidence in support of our case has become available, especially through the mechanism of the ICTY. During the course of our pleadings we will refer frequently to those materials. Whenever we do so, we will include detailed references in footnotes but we are not going to read out the references. We are grateful to the Registry for including the references in the verbatim records of the pleadings. Also, we will, at

[10] *Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina)*, Judgment, *I.C.J. Reports 2003*.

the end of our first round, as a matter of convenience provide the Court and the Respondent with a CD-ROM containing the electronic version of all the ICTY materials that we will have, by then, referred to.

32. Also, and obviously, Madam President, during the course of our pleadings, we will respond to the contents of the Rejoinder. However, we will not, we will not spend *any* time discussing the contents of those sections of the written pleadings of the Respondent which exclusively relate to its counter-claims. As is well known, the Respondent has withdrawn the counter-claims, because they no longer fit the strategy of the Respondent, which changed into focusing on the revision of the Court's Judgment with respect to its jurisdiction. The President of the Court has, on 10 September 2001, placed on record that the counter-claims by Yugoslavia have been withdrawn, and that Bosnia and Herzegovina had indicated that it had no objection.

33. During our pleadings, we will, more or less, closely follow the structure of the written pleadings in the Reply. We will not repeat the points we made earlier, but we will expand and we will elaborate.

34. Today we will, after the coffee break, provide the Court with a general overview of the years of genocide that hit Bosnia and Herzegovina, including the years leading up to it.

35. Tomorrow morning will be devoted to some remarks with respect to the present jurisdictional situation, which we consider to be clearly *res judicata* and we will go into evidentiary issues. In particular, we will provide the Court with an overview of the types of ICTY sources to which we will refer during these pleadings.

36. From tomorrow afternoon through Thursday 2 March we will focus on the acts of genocide. From Friday morning 3 March through the morning of Tuesday 7 March we will focus on State responsibility, i.e. the attribution of the acts of genocide to the Respondent. The Tuesday morning session will be concluded by general concluding observations. Needless to say that the structure we are following may not be considered as a strict separation of the two main issues at stake — genocide and State responsibility — since, at all times, they are closely interconnected and we will show that to the Court.

37. Madam President, as we have done all along during the proceedings, in presenting the facts, we will rely entirely on facts made available by independent and authoritative sources. The

choice to do so is in the first place a matter of principle; at the same time we do not resist acknowledging that this choice also was easy and obvious. The abundance of materials available, with respect to the ethnic cleansing of a large part of Bosnia and Herzegovina, to anyone who takes some trouble to digest and understand these materials points in only one direction: the Respondent, its authorities and its organs have been continuously, intensively and entirely involved in the preparation, the conducting and the execution of this genocidal war.

38. Clarifying the relevance of the Genocide Convention under present-day conditions will be of immense importance to the world at large. First and foremost, it will be of immense importance to Bosnia and Herzegovina and to all people on the Balkans that the record of this horrendous period is set straight in the most authoritative way that is available to the civilized world: precisely the judgment that we are asking this Court to come to. Thank you very much.

The PRESIDENT: Thank you, Mr. van den Biesen. The Court will take a very short break and will later resume.

The Court adjourned from 11.40 a.m. to 11.55 a.m.

The PRESIDENT: Please be seated. Thank you. Mr. van den Biesen you have the floor.

Mr. van den BIESEN: Thank you very much, Madam President.

GENERAL PICTURE OF THE GENOCIDE HITTING BOSNIA AND HERZEGOVINA 1992-1995

Politics and propaganda

1. Madam President, Members of the Court, as we have demonstrated in the written proceedings, the actual beginning of the atrocities in Bosnia and Herzegovina may have been in March 1992, but the preparation for this campaign of ethnic cleansing started a long time before that date.

2. The ending of the cold war and the — related — dissolution of the Yugoslav Communist Party at its 14th Congress in January 1990 may have been the "outside" factors. However, the "inside" factors were actually fuelling the process.

3. First, obviously, there was politics, and, then, there was propaganda. The draft Memorandum of the Serbian Academy of 1986 reflects the message of these politics and of this propaganda: "We are victims" that is the message. The Serbian people are continuously described as victims: victims of the very structure of the former Yugoslavia, victims of genocide over a century's long period of time and — most importantly in this propaganda — victims-of-genocide-to-be; victims-of-genocide-to-be if no decisive actions would be undertaken. The victims-of-genocide-to-be approach comes back all the time in this sort of propaganda and the theme is used by many of the key players in this case.

4. This propaganda translated into a political programme of action under the heading of the Greater Serbia ideology. This political programme may be summarized in only a few words: "All Serbs in one State". As time showed this was not only a political programme but this included, from the very beginning onwards, a military campaign aimed at ethnic cleansing as well.

5. The purpose of the propaganda was not unclear whatsoever: strengthening of the Serbian Republic, putting the Serbian people first, hammering the historic importance of Kosovo Polje, the place where the famous battle of Kosovo was fought and lost by the Serbians 600 years ago in 1389. All Serbian children were taught for a long time already that one day they would have to serve as the avenger of this battle lost to the Ottomans by the Serbian Prince Lazar. This is the language which began to define the public rhetoric of the authorities of the late 1980s in Serbia. Milosević, who became the President of the Serbian Communist Party in 1987, was soon turned into and promoted as an all-Serbian hero. With the decline of the importance of the communist platform in the former Yugoslavia, the Serbian-focused rhetoric gained in importance as a factor to build and to retain a political power basis. The well-known mass meeting at Kosovo Polje on 28 June 1989 celebrating the 600th anniversary of the lost battle was attended by an unprecedented number of half a million Serbs. Not only that, portraits of both Prince Lazar and Milosević had been widely distributed beforehand and those two portraits determined the looks of the crowd. The metaphor could not have been clearer: Milosević had himself portrayed as the "avenger" and "saviour" of the Serbian nation. It was at this occasion that Milosević suggested that armed conflict would be part of the renewed struggle on behalf of the Serbian nation — we refer to that in the written pleadings.

6. The resonance of precisely this message was unmistakably present six years after that in July 1995, in Srebrenica: Mladić, when arriving in Srebrenica at the take over of this United Nations "safe area", stated in front of Serb television cameras that this was the moment for revenge on the Turks[11].

7. From the beginning onwards, the Serb authorities clearly defined what they would soon begin to call "the enemy". The same is true for the material substance of the issues at stake. Milosević stated on 15 January 1991 that "it would be unacceptable for Serbs to live in separate States". That was the message: "it would be unacceptable for Serbs to live in separate States", and he added that the Serbian nation would, indeed, live in one State, in one single State, thus echoing the message of the 1986 Memorandum. He explained his vision of the future Yugoslavia: the borders of the constituent Republics of the former Yugoslavia would not be defining for this future Yugoslavia; what would be defining would be borders which would ensure that the Serbian *nation*, not to be confused with the Serbian *State*, would be brought together in one single State[12]. The Vice-President of Milosević's Serbian Socialist Party said it this way on 9 October 1991; Michaelo Marković, talked about the new State and he said there would be at least three federal units: Serbia, Montenegro and a united Bosnia and Knin region[13].

8. This approach, Madam President, of the Belgrade authorities is precisely the reason why we, during these pleadings, will quite regularly, in our explanations and in our analysis, include the Republika Srpska Krajina, across the border, in our observations. This is the region in Croatia just north-west of Bosnia and it has a counterpart in Bosnia itself, by the name Bosnian Krajina. The events in Bosnia and Herzegovina, in the territory of Bosnia and Herzegovina, *only* represented one part of the Greater Serbia project; from the very beginning onwards, the Belgrade authorities looked at the larger picture and acted accordingly. We will do the same. We will do the same in order to provide the Court with the best understanding of what exactly happened.

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[11]Included, among others, in the documentary film "Triumph Of Evil", SENSE Tribunal, 2003.

[12]Memorial, 15 April 1994, para. 2.3.1.4; Tanjug, 1939 gmt, 15 January 1991, source: BBC Summary of World Broadcasts.

[13]Reply, 23 April 1998, Chapter 4, Section 1, para. 12; Tanjug, 1746 gmt, 9 October 1991.

One State for all Serbs

9. Clearly, the one State for all Serbs approach was bound to have most repercussions in Bosnia and Herzegovina: more than any other of the Republics of the former Yugoslavia, Bosnia and Herzegovina had a very mixed population. According to the official count, the census of 31 March 1991[14], the figures are as follows: at that time, the total population of Bosnia counted a little over 4.3 million people, and the division, the listing of them, was as follows:

— a little over 43 per cent Bosnian Muslims

— 31 per cent Bosnian Serbs

— 17 per cent Bosnian Croats, and

— almost 8 per cent Others.

Most municipalities had truly mixed populations, although in certain areas, there was a clear prevalence of a specific group.

10. So, the authorities of Serbia aimed at creating one State for the entire Serbian nation, a State in which all Serbs living in the territory of the former Yugoslavia would be united, whether that would be in the form of one single State or in the form of a federation State, made up out of several smaller republics. The new entity would have to cover all of the areas where Serbs at the time were actually living. That the creation of this new Yugoslavia, this new Greater Serbia, would not just be a matter of redrawing borders and related negotiations was, to the promoters of this concept, clear from the very beginning. And, therefore, this undertaking turned into a well-prepared military, political and propaganda operation.

11. The first thing that needed to be done was to strengthen the position of Serbia proper. For this purpose the, relatively, autonomous status of the two Serbian provinces, Kosovo and Vojvodina, was put to an end. The way in which this was realized is generally considered to have been entirely illegal. In one of the cases before the ICTY the Prosecutor described the process as follows and it is related to Kosovo:

> "In early 1989, the Serbian Assembly proposed amendments to the Constitution of Serbia which would strip Kosovo of most of its autonomous powers . . . Kosovo

[14]1991 Census Population of Bosnia and Herzegovina, State Institute for Statistics of the Republic of Bosnia and Herzegovina, Sarajevo, December 1993.

> Albanians demonstrated in large numbers against the proposed changes[15]. On 23 March 1989, the Assembly of Kosovo met in Pristina/Prishtinë and, with the majority of Kosovo Albanian delegates abstaining, voted to accept the proposed amendments to the constitution. Although lacking the required two-thirds majority in the Assembly, the President of the Assembly nonetheless declared that the amendments had passed. On 28 March 1989, the Assembly of Serbia voted to approve the constitutional changes, effectively revoking the autonomy granted in the 1974 constitution."[16]

Again, this was only about Kosova but, at the same time, in the same procedure, at the same vote, this was done to the autonomous status of Vojvodina. Soon after that Milosević delivered his 1989 speech, to which I referred a minute ago.

12. In the beginning of the 1990s, this rude reorganization of Serbia proper was followed by actual military, political and economic steps, initiated in Belgrade, in preparation of the envisaged new Yugoslavia.

Military preparations

13. First came the military steps. We discussed the role of Mihalj Kertes in the Memorial and the Reply[17]. Mihalj Kertes, who was at the time the Deputy Minister of the Interior in Belgrade, was crucial in the arming of the Bosnian Serbs. In itself this arming of the Bosnian Serbs was an elaborate and extensive operation, undoubtedly something different from what the Respondent argued in its Counter-Memorial, where the Respondent stated:

> "The Serb population in Croatia and Bosnia and Herzegovina spontaneously armed itself always when it felt threatened. The arms for the most part came from the depots of the territorial defence which were under the control [says the Respondent] of the local population. Part of the arms . . . belonging to territorial defence units was in the houses of members of the territorial defence according to the regulations in force at that time. The Serb population in these areas procured part of the arms by illegal or legal purchases."[18]

Now the facts, Madam President. As the facts show and as the extensive involvement of the Yugoslav National army, the JNA, and of Belgrade demonstrate, there was *nothing* spontaneous about this arming of the Serb population. If the Respondent states that the depots of the territorial

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[15]ICTY, *Prosecutor* v. *Nebojsa Pavkovic, Vladimir Lazarevic, Vlastimir Djordjevic, Sreten Lukic*, case No. IT-03-70, Initial Indictment, 22 September 2003, para. 49.

[16]*Ibid.*, para. 51.

[17]Memorial, 15 April 1994, paras. 2.3.4.1-2.3.5.2; Reply, 23 April 1998, Chapter 8, Section 2, para. 24 and Section 6.

[18]Counter-Memorial, 23 July 1997, p. 102, para. 1.3.17.2.

defence were under the control of the local population, this is, to a certain extent, correct. However, at the time the "local population" was of mixed ethnicity. Part of the not-so-spontaneous operation was precisely to take away arms from the control of non-Serbs and to secure them exclusively for use by the Serbs in Bosnia and Herzegovina.

14. At roughly the same time while the arms were distributed and redistributed into exclusively Serb hands, the political structures were adapted. We have a statement of someone who was totally involved at the time, the statement of Mrs. Plavsić, which she gave to the ICTY when she pleaded guilty to crimes against humanity. Mrs. Plavsić was a member at the time of the Bosnian Serb Presidency. She declared:

> "In addition, the [Serbian Democratic Party of Bosnia and Herzegovina] SDS prepared and distributed instructions to SDS [that is the political party] municipal leaders to form crisis staffs [we will get back to the crisis staffs later] to proclaim Serbian Municipal Assemblies and carry out preparations for the formation of municipal governmental bodies and to mobilise Bosnian Serb police and Territorial Defence forces and [subordinate them] to JNA command. The municipal crisis staffs implemented these objectives and directives in the field, including ultimately the objective of separation by force."[19]

And then we are talking about people — "separation by force". This, Madam President, again, is exactly in line with what we stated earlier in our written pleadings[20]. And I would like to stress that Mrs. Plavsić acknowledges here, explicitly, in so many words, that the Bosnian Serb Police and Territorial Defence Forces acted in *subordination* to the JNA, the Yugoslav National army.

Reviewing political structures

15. So after the structural reorganization of Serbia proper, the political structures outside Serbia proper needed to be created so as to enable the establishment of Serb power when the time came. On 19 December 1991, the Main Board of the Serbian Democratic Party (SDS, i.e. Karadzić's) issued a document entitled "Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in extraordinary circumstances", In general, reference to this document is made under the title "Variant A and B Instructions". This document essentially mapped out the takeover of power by Bosnian Serbs (1) in municipalities where they

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[19]ICTY, *Prosecutor* v. *Biljana Plavsic*, case No. IT-00-39&40-PT, Factual basis for plea of guilt, 30 September 2002, para. 12.

[20]Reply, 23 April 1998, Chapter 4, Section 1, paras. 14-15.

constituted a majority of the population, and those were named the "Variant A" communities, and (2) in municipalities where they were in a minority, and those were named "Variant B". The document also included the directive that the SDS Municipal Boards should form those crisis staffs of the Serbian people in their respective municipalities, with the primary task of ensuring the co-operation between — and then there is a listing — the political authorities, the JNA — the Yugoslav army — the Territorial Defence and the police within their respective areas of jurisdiction[21].

Reviewing financial structures

16. Parallel to this process, financial structures were created. In the autumn of 1991, helped by the previous declarations of independence of Croatia and Slovenia, the Serbian authorities in Belgrade took complete control over the Board of Governors of the National Bank of Yugoslavia and, consequently, in doing so, the political authorities took complete control over Yugoslavia's monetary policy. This created the desired room for, *inter alia*, the conspicuous financing of the JNA, which was fundamental for the realization of the plan.

17. The relevance of this restructuring of the finances cannot easily be underestimated — we mentioned that in the Reply and were surprised to see that the Respondent, in its Rejoinder, totally ignored the issue[22]. This operation would, in years to come, result in the integration of the economies of the Federal Republic of Yugoslavia, the Republika Srpska and the Republika Srpska Krajina. Later on this week one of us will further elaborate on this particular issue.

Disintegration of SFRY

18. What the combination of these preparations would lead to would soon become visible. While first Milosević — as early as 1989 — had signalled that one should count with armed struggle, Karadzić was much more outspoken. On 14 October 1991, he — in precisely these words — at the meeting of the Assembly of Bosnia and Herzegovina, threatened the Muslims of Bosnia with annihilation. Indeed, the preparations which took place between these two speeches

[21]"Instructions for the Organisation and Activity of Organs of the Serbian People in BiH in extraordinary circumstances" (Variant A and B Instructions), ICTY, *Prosecutor* v. *Radoslav Brdjanin*, case No. IT-99-36-T, Exhibit No. P25.

[22]Reply, 23 April 1998, Chapter 8, Section 9, paras. 346-368.

demonstrate that Milosević was not merely referring to theoretical possibilities in 1989; nor was Karadzić doing so in 1991.

19. It is clear that the Serbian propaganda, together with the described preparations, went not unnoticed by the other Yugoslav Republics. Professor de la Brosse, a propaganda expert from the University of Reims in France, in his expert report prepared for the ICTY in the *Milosević* case, puts it this way:

> "The anti-Albanian propaganda of the early days would be followed by anti-Slovenian, anti-Croatian and then anti-Bosnian propaganda, multifaceted propaganda used for one and the same political goal: the creation of a State for all the Serbs."[23]

There is no doubt that these combined Serbian undertakings speeded up the process of disintegration of the former Yugoslavia.

20. When Slovenia declared independence on 25 June 1991, Belgrade, i.e., Serbia, did at first respond with military force, but soon decided not to worry too much since no substantial part of the Serbian nation was affected by this.

21. The Croatian declaration of independence, also on 25 June 1991, did lead to strong reactions from Belgrade: the JNA, restructured and led by a great majority of exclusively Serb generals, responded, indeed. It did so in close concert with paramilitaries from Serbia proper. This is what happened: Vukovar, in Croatia, was taken. It was first pounded and shelled by the JNA army, then the paramilitaries were called in to do the killing and hundreds, hundreds of men Serbs in Vukovar, indeed, were killed. And we all remember the images of the hospital in Vukovar — the hospital that as such was shelled. And after a cleansing operation which took three months, all the remaining and surviving non-Serbs were driven out of the town.

A pattern develops

22. Not only Vukovar received this Serb "treat" of destruction. Precisely this approach was repeated in many other parts of Croatia and resulted in the JNA and local Serbs occupying about one third of Croatian territory. "Occupation", Madam President, is, in this context, a much too

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[23]Professor de la Brosse, 'Political Propaganda and the Plan to Create a State for all Serbs: Consequences of using the media for ultra-nationalist ends' for the OTP in ICTY, *Prosecutor v. Slobodan Milosević*, Case No. IT-02-54-T, p. 55 para. 58, Exhibit No. P446.2.

mild description of what actually happened. This is what one of the ICTY Trial Chambers established in its Judgment of 29 June 2004 in the case against Milan Babić, who became President of the Republika Srpska Krajina in December 1991, the day when the Serbian Autonomous Region of Krajina (SAO) proclaimed itself a Republic; the Trial Chamber found:

> "from about 1 August 1991 to 15 February 1992, Serb forces comprised of JNA units, local Serb Territorial Defence Units, territorial defence units from Serbia and Montenegro, local MUP [Ministry of Interior] police units, MUP police units from Serbia, and paramilitary units attacked and took control of towns, villages, and settlements in the Serb Autonomous Region of Krajina. After the takeover, in cooperation with the local Serb authorities, the Serb forces established a regime of persecutions designed to drive the Croat and other non-Serb civilian populations from these territories. The régime . . . included the extermination or murder of hundreds of Croat and other non-Serb civilians in Dubica, Cerovljanji, Bacin, Saborsko, Poljanak, Lipovaca, and the neighbouring hamlets of Skabrnja, Nadin, and Bruska in Croatia; the prolonged and routine imprisonment and confinement of several hundred Croat and other non-Serb civilians in inhumane living conditions in the old hospital and the JNA barracks in Knin, which were used as detention facilities; the deportation or forcible transfer of thousands of Croat and other non-Serb civilians from the SAO Krajina; and the deliberate destruction of homes and other public and private property, cultural institutions, historic monuments, and sacred sites of the Croat and other non-Serb populations."[24]

23. This is exactly the pattern we earlier described in our Reply[25]. A pattern which would, indeed, become visible in Bosnia throughout the period of ethnic cleansing, including at the Srebrenica massacre.

24. Moreover, precisely this same pattern would, again, be visible in Kosovo in 1998 and 1999, when the crisis in Kosovo developed. The Prosecutor in the *Milosević* case observes exactly the same:

> "The unlawful deportation and forcible transfer of thousands of Kosovo Albanians from their homes in Kosovo involved well-planned and coordinated efforts by the leaders of the Federal Republic of Yugoslavia and Serbia, and forces of the FRY and Serbia, all acting in concert. Actions similar in nature took place during the wars in Croatia and Bosnia and Herzegovina between 1991 and 1995. During those wars, Serbian military, paramilitary and police forces forcibly expelled and deported non-Serbs in Croatia and Bosnia and Herzegovina from areas under Serbian control utilizing the same method of operations as were used in Kosovo in 1999: heavy shelling and armed attacks on villages; widespread killings; destruction of non-Serbian residential areas and cultural and religious sites; and forced transfer and deportation of non-Serbian populations."[26]

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[24]ICTY, *Prosecutor* v. *Milan Babic*, case No. IT-03-72-S, Judgement of 29 June 2004, paras. 14, 15.

[25]Reply, 23 April 1998, Chapter 4, Section 2, paras. 19-27.

[26]ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-99-37-T, Second Amended Indictment filed on 16 October 2001, para. 103.

Of course, on top of this, the Prosecutor demonstrates that the pattern of takeovers in Kosovo mirrored those in Bosnia with the liquidation of the élite and the separation of the men from the women, the former being killed and the latter being deported[27].

25. Actually, it is not surprising that the picture of the takeovers and the following human and cultural destruction looks indeed similar from 1991 through 1999. These acts were perpetrated as the expression of one single project, which basically and effectively included the destruction in whole or in part of the non-Serb group, wherever this ethnically and religiously defined group could be conceived as obstructing the all-Serbs-in-one-State concept.

26. Back to 1991. President Izetbegović has received quite some criticism, Madam President, from many people in Bosnia for being too naive about these developments. Indeed, Izetbegović did not seriously prepare for an armed confrontation, since he just did not think that was conceivable, he did not think that was coming, let alone that he would have expected genocide.

27. Karadzić, who — at the time, and not only then — was in close contact with the Belgrade authorities, expressed clearly, and more than just ironically, the general knowledge that the Bosniacs did not have arms — I am referring to the Bosnian Muslims as Bosniacs, as since 1993 that is the accepted denomination. This is what Karadzić said when he addressed for the last time the Bosnian Parliament on 14 October 1991 — and he talked to the Bosniacs, he talked expressly to Mr. Izetbegović, who was President:

> "You want to take Bosnia and Herzegovina down the same highway of hell and suffering that Slovenia and Croatia are travelling. Be careful. Do nothing that will lead Bosnia to hell and do nothing that may lead the Muslim people to their annihilation, because the Muslims cannot defend themselves if there is war. How will you prevent everyone from being killed in Bosnia?"[28]

28. That "the Muslims" could not defend themselves if there would be war, was, indeed, correct; it was also a fact which was generally known. The year following these ominous words of Karadzić indeed showed how the JNA, how the paramilitaries, how the Serb leadership in Bosnia and in Serbia actually operated on the basis of their knowledge that they were up to an adversary

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[27] *Ibid.*, paras. 66 *b, c, d, e, g, i,* and 87.

[28] Speech by Radovan Karadzić to the BiH Parliament on 14 October 1991 as cited in ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54-T, Decision on Motion for Judgment of Acquittal, 16 June 2004, para. 241.

side who was not able to defend itself. In no time 70 per cent of the territory of Bosnia and Herzegovina was taken over, which capture was followed by the truly ugliest of crimes, the ethnic cleansing of this territory in order to create this ethnically pure, single State for all Serbs.

29. Even when the killing had started already in Croatia and even while the Bosnian Serbs had already opted out of the Bosnian State institutions, the Bosnian Presidency did not seem to believe that an armed struggle would be a real option.

30. The atrocities committed by the JNA and Belgrade paramilitaries in Croatia led the international community to become more involved. International diplomatic efforts to find a solution to the different crises in the former Yugoslavia were first formalized in early September 1991 and talks were held in The Hague, Brussels, Lisbon and Sarajevo. On 2 January 1992, the JNA and Croatia reached an agreement in Sarajevo that ended the Croatian war, although a political solution was deferred.

31. At the same time the JNA, the Yugoslav National army, was drastically restructured. On 1 January 1992, Sarajevo was elevated from a position of being the headquarters of just an army corps to the headquarters of the Second Army District with responsibility for five army corps. Before this reorganization the territory of Bosnia fell under the responsibility of separate military districts: the first, which also covered part of Serbia, and the fourth, which also covered part of Croatia. The result of the reorganization was that the territory of Bosnia and Herzegovina came to fall under one single military district, i.e., under one single military command, this being the second military district. The first general to have this second military district was General Kukanjac. At the same time, Bosnian Serb recruits serving in other Yugoslav Republics were transferred to Bosnia and Herzegovina, while non-Serbian soldiers employed in Bosnia and Herzegovina were sent closer to their native home — there was a reshuffle of the Serbians of the various armies and the officers. As a consequence of this operation, by March 1992, some 90 per cent of the 90,000 JNA troops in Bosnia were of Bosnian Serb descent. It is, in a way, a sort of cleansing process of the army only with totally different means and goals.

32. The JNA's attention shifted to Bosnia and Herzegovina. The same was true for the attention of the international community. The European Community convened in Lisbon. José Cutileiro (on behalf of the EU) succeeded in getting the parties to agree to a principle

agreement, a "Statement of Principles", which provided for a Bosnian and Herzegovinian State composed of three constituent units based on ethno-national characteristics.

33. In fact these negotiations did not end in Lisbon but they continued in Sarajevo, in Brussels and again in Sarajevo in March. But, even before the second talks took place in Sarajevo, President Izetbegović sent a letter to Cutileiro stating that the Bosnian Serb Party, the SDS, was planning to proclaim a constitution for the Republika Srpska in violation of the constitution of Bosnia and Herzegovina and, therefore, was undertaking unilateral steps in contravention of the Lisbon agreement. In other words, Izetbegović came to be convinced that further meetings would serve no purpose unless the Serbs opted for a different course. Given the preceding years of Greater Serbia propaganda and given the preceding preparations for the actual creation of a new Serbian entity or, for that matter, the creation of several Serbian entities, it was, indeed, not to be expected that the Serb side would drop those plans and would, indeed, have accepted the Lisbon agreement.

34. On the contrary, the violent approach of the Serb side, which we have already seen in Croatia, soon began to dominate the entire picture. What exactly did those actions look like in Serbia?

35. We have seen what it looked like in Vukovar and we have heard what the Prosecutor at the ICTY has stated about the events in Vukovar. But the Vukovar approach was not especially a one-off event. In view of the result of the referendum held on 29 February 1992 and 1 March 1992, Bosnia and Herzegovina officially declared its independence on 6 March 1992. Subsequently the new State was recognized by the European Community and the United States on 6 and 7 April 1992. Apparently, first the declaration of independence and, later, the international recognition triggered the Belgrade authorities to begin an all-out and, indeed, genocidal war in Bosnia.

36. The armed attack, which would immediately turn into ethnic cleansing, was rather successful due to the fact, as I mentioned before, that the non-Serb population was left with practically no weapons after the reorganization of the Territorial Defence (TO). It was a blitzkrieg, a blitzkrieg which succeeded in achieving what apparently was its main goal: to destroy, to destroy in whole or in part, the non-Serb population of the better part of Bosnia and Herzegovina, in line

with the political goals propagated during the preceding years. This, then, was meant to lead to the creation of several Serb entities which would make up one single State, a State which would hold the Serbian nation, the entire Serbian nation within its borders.

Relabelling the JNA

37. On 25 April 1992, at the time that Bosnia was already recognized as an independent State by the international community, General Mladić was appointed as Commander of the 2nd Military District of the JNA — the Yugoslav army — and he was appointed to that function by the political authorities in Belgrade. Thus Mladić received the responsibility of the command over all JNA forces, all Yugoslav army forces, in Bosnia and Herzegovina. Madam President, Mladić was not exactly appointed to lead the total withdrawal of the JNA armed forces. The contrary was the case. He was to stay in Bosnia, he was to stay in this post, he was to head the reconstructed Yugoslav army. And as soon as the JNA changed its name into VRS, the army of Republika Srpska, Mladić was not called back to Belgrade, but he became Commander-in-Chief of the Bosnian Serb army. This, basically, implied the continued responsibility covering exactly the same territory, the same troops, etc., as he had had as JNA Commander of the 2nd Military District. Also, at the employment level, nothing changed for General Mladić: he remained, for a very long time, at least until 2002, a General of the Yugoslav army. That was not a bureaucratic issue. He was even promoted by the Supreme Defence Council — the highest military and political authority in Belgrade — to the rank of General of the Yugoslav army, and this promotion took place on 24 June 1994[29].

38. In Belgrade, within the also newly-labelled Yugoslav army (VJ), a new department would be created for all officers of the Republika Srpska army, and it was the 30th Personnel Centre. Through this department, continued payment of the officers who were serving their duty in the territory of the Republika Srpska was implemented. Also, all other related personnel matters fell under the responsibility of this VJ bureau, obviously in subordination to the Serbian leadership. A similar structure was not only served for Bosnia. A similar structure or exactly the same

[29]ICTY, *Prosecutor* v. *Momcilo Perisic*, case No. IT-04-81, Amended Indictment, 26 September 2005, para. 39.

structure was put in place in order to secure the army of the so-called Serbian Republika Krajina, and that became the 40th Personnel Centre.

39. While in this way all of the officers of the Republika Srpska army remained at the same time officers of the Yugoslav army, received their payments, their pensions, their promotions, directly from Belgrade, the rest of the RS army — the number is mentioned of 200,000 men — was paid by Pale out of the Republika Srpska budget, which in itself was entirely covered by Belgrade.

40. In other words, without Belgrade paying the 30th Personnel Centre officers and without Belgrade at the same time funding the rest of the army, the armed assault could never have begun in the first place and certainly the ethnic cleansing campaign could not have been continued. This becomes even clearer if one realizes that it was the Yugoslav army, the JNA under its former name, that started — together with the Serbian and local Serb paramilitaries — the military violence in Bosnia and Herzegovina. The so-called withdrawal of the JNA on 19 May 1992 did not obstruct the Serb side in doing what they did before this so-called withdrawal. All of the military equipment, as well as the officers, was left in Bosnia and Herzegovina at the Republika Srpska's disposal. This way the Serb side could, indeed, continue the blitzkrieg, begun by the JNA in March 1992. "Continue" is exactly the right terminology here, since the military campaign was started by the JNA and, indeed, continued, without any sort of interval, by the very same army that started it. Only the labelling of this army had changed.

41. Of course, armies run out of fuel, they run out ammunition, they run out of weapons or weapons are destroyed or they will need spare parts, and recruits and officers need training. All of this was actively supplied by Belgrade within the course of its normal doings with respect to the army. This supply continued unabated throughout the entire period of ethnic cleansing.

42. It was not only Republika Srpska which received this sort of funding, exactly the same would be true for the Republic of Serbian Krajina. The leadership there would simply send letters to Belgrade; they would send the invoice for expenses incurred and they would get paid. The amount of money was soon so high that the taxpayers' contribution in Serbia and Montenegro was no longer sufficient. That was no reason for the Belgrade authorities to stop or to curb or restrict

their spending. They simply instructed its financial institutions to print as many additional dinars as were needed to cover the expenses of the ongoing war effort.

43. Now, did all Bosnian Serb soldiers within the former JNA want to fight against their fellow citizens? No, Madam President, no not at all. Many tens of thousands of them refused and fled the country. Those who fled to the Federal Republic of Yugoslavia made a serious mistake: the Belgrade authorities had them arrested and they were simply sent back and handed over to the Bosnian Serb authorities.

44. Again, all of these types of support continued throughout. Given the substance and the size of this support — "support" is actually not the right word to use, since the input continuously delivered by Belgrade clearly by far exceeds the threshold of one side "supporting" another. The situation should rather be defined in terms of "collective effort", "partnership", single enterprise", and it is certainly not accurately reflected by labelling it as Belgrade providing "support" to Pale. This is especially true since, as we are demonstrating in this case, Belgrade's role in the alliance was at all times the role of the principal partner within the collective enterprise.

The pattern in Bosnia

45. It is this continued partnership which enabled the Serb side to actually and successfully wage this *blitzkrieg*, to take over some 70 per cent of the territory of Bosnia and Herzegovina by the end of 1992, and to establish the most brutal régime, for the non-Serbs that is, that Europe has seen since the end of the Second World War.

46. Roughly, the pattern for the take-over of each and every municipality looked the same — and I will just refer back to what I have said about that earlier.

47. Part of it, in any event was that people would be put into camps and that generally men would be separated from women. If any reason for this was provided at all the standard phrase of the Serbs would be: "We do this for purposes of interrogation, we are looking for war criminals" or they would say "to exchange them as prisoners of war".

48. It took some time before the existence of camps became known to the world at large. The well-known reports of Roy Gutman and the likewise known images of ITV television are

engrained in the memories of civilized people. They brought home the message of what precisely went on in Bosnia and Herzegovina.

49. In every municipality at least one and usually many more camps where established. Thus, 520 Serb-controlled camps and detention facilities were active in some 50 different municipalities[30]. In these camps, in total, at least 100,000 people of all ethnicities — not including Serb ethnicities obviously — were detained from 1992 to 1995[31].

50. Many of these camps were reserved for women and became the horrific scenes of repeated mass rapes. Indeed, because it housed the largest number of women and girls, the Trnopolje camp became very known as an infamous camp in terms of mass raping. However, rape and sexual assault were found to have occurred all over Bosnia as a vicious and integral part of a recurring pattern of ethnic cleansing by Serb perpetrators; this has been confirmed by the ICTY in numerous judgments and will be discussed extensively later on this week.

51. Madam President, if the Srebrenica massacre is generally defined as genocide, the extensive, organized, large-scale and effective murder, torture and rape of the civilian non-Serb population during the first year of the ethnic cleansing campaign most certainly meet the criteria of this definition.

52. This becomes even clearer when we realize how the Serb side chose to handle the cultural heritage of the people which they killed, tortured, put in camps, raped or forcibly transferred. The account of this particular destruction prohibits any misreading of the purposes of the Serb side.

53. The striking aspect here is that all of the destruction of mosques, catholic churches, cemeteries and other sanctuaries, usually took place after the actual takeover of a municipality. In other words, the destruction was not part of some sort of armed battle (again there weren't many armed battles, because the non-Serb side did not have any arms), but it was the result of deliberate destruction. Generally, in the parts of Bosnia-Herzegovina ethnically cleansed by Serb forces, 75 per cent of all Roman Catholic churches and almost 100 per cent of all Muslim houses of

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[30]List compiled by the Alliance of Detainees of Bosnia and Herzegovina, submitted by the OTP in ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54-T, Exhibit No. P404.7a.

[31]ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54-T, witness testimony of Melike Malesević, 10 March 2003, p. 17428.

worship were either damaged or destroyed, and if they were damaged then 90 per cent of the damaged mosques and churches suffered serious damage. *Clearly*, the purpose here was to prevent the non-Serb part of the Bosnian population to ever again return to live in their homeland.

54. Later on, you will have the opportunity to hear one of the experts that we have called to appear before this Court, Andras Riedlmayer, who is a renowned academic and renowned recorder on this chilling and, indeed, telling chapter of the ethnic cleansing in Bosnia and Herzegovina and he will appear during the experts' sessions.

55. The destruction of cultural property continued until the very end; it was not something that was just done in the beginning, it was part of it all along and it continued also in July 1995 when the mosques in Srebrenica were destroyed after the massacre. However, when we look at it — the totality of the picture — by far most of the damage done happened in the first nine, or maybe 12, months of the ethnic cleansing campaign.

Casualties

56. Indeed, 1992 was, by far, the worst year as far as casualties are concerned. But from the point of view of hardship, 1993 and 1994 easily come up to the level of 1992. Obviously, 1995, alone measured by the Srebrenica massacre, demonstrates that the eagerness of the Serb side to implement its initial plans, had not diminished towards what would become the end stages of the four years in which Bosnia suffered under the ethnic cleansing of most of its territory.

57. During the entire period relevant to our case, the siege of Sarajevo was an ongoing element. The purpose of this siege, clearly, was to prevent the existence of a viable independent State of Bosnia and Herzegovina. At the same time, it served as an ongoing opportunity for the Serb side to, literally, keep pounding the non-Serb population, in order to make a decent life for them virtually impossible. According to the number of victims, the Serb side was rather successful. The endurance of the citizens of Sarajevo (including, by the way, many Bosnian Serbs, who did not support the ethnic cleansing) eventually made them survive. A more detailed analysis of the Sarajevo situation will follow tomorrow in the afternoon.

58. The clear aim of the entire military campaign started by the JNA in March 1992 and continued throughout, albeit dressed in RS uniforms, was to cleanse the territory from its non-Serb population.

59. Estimates of the amount of people actually killed as part of the ethnic cleansing do vary between 100,000 and 200,000 victims. In our Memorial (para. 2.1.0.8) we have mentioned a provisional number, based on documented figures, which amounted to a little over 142,000 people killed**.** Recently two experts have submitted several reports on demographics to the ICTY and they have been able to estimate a figure of 102,000 dead, which, given that "the records from the Republika Srpska and from exhumations are far from being known, it is still not complete"[32], according to these researchers. We do not wish, Madam President, to question the validity of these findings. At the same time it is acknowledged that these numbers do not include people who were not directly killed but who did actually die due to the wartime circumstances. Indeed, the aforementioned estimated total does not include excess deaths due to harsh living conditions, as well as mortality among refugees, and, lastly, death records of those who moved out of Bosnia during the conflict.

60. From the point of view of morality, obviously, there is no relevant difference between an amount of 100,000 or 200,000 killed. From the perspective of law there is no relevant difference either. As we all know, the Genocide Convention covers far more than "killing". Professor Franck will elaborate on the reach of the Convention later on this week, beginning tomorrow. He will observe, among many other things, that the true dimension of what happened here is further defined by the fact that, as of December 1997, 816,000 persons were internally displaced and over 1.3 million persons were refugees according to the UNHCR (1997)[33]. This amounts to around 50 per cent of the population of Bosnia and Herzegovina, which, as I mentioned before, counted a little over 4.3 million in 1991. Just imagine the size of this: would this have happened in France? It would have implied 30 million displaced persons. Would this have been Mexico? We would have talked about 53 million and so on, and so on. More precisely, with regard to the *Milosević*

[32]Ewa Tabeau and Jakub Bijak, War-related Deaths in the 1992-1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results, *European Journal of Population*, Vol. 21, N. 2-3, June 2005.

[33]Ewa Tabeau and Jakub Bijak, *ibid.*, p. 210.

case area, which is a restricted area part of Bosnia (47 municipalities), a report[34] prepared for the ICTY estimated an overall number of more than 745,000 internally displaced and refugees. Of these, 73 per cent were non-Serbs. Thus several hundred thousand non-Serb citizens of Bosnia were forced to leave their home, their municipality, their region and were forced to try and rebuild a life in the 30 per cent of the territory of Bosnia where they would not be harassed, nor killed by the Serb side; otherwise they were forced to move abroad. This devastation of the non-Serb population of Bosnia and Herzegovina did not occur by coincidence; it did not occur in a random disorganized manner. It was the result of a carefully designed and meticulously prepared, political, military and economic plan.

"Humanitarian aid"

61. As I mentioned before, Madam President, the entire undertaking was paid for by Belgrade, by the citizens of Serbia-Montenegro, and through the printing of new money.

62. For one time Milosević spoke the truth, when he publicly stated in 1993 that the FRY had put a lot of effort in supporting their Serb friends across the Drina River:

> "Most of the assistance was sent to people and fighters in Bosnia-Herzegovina, but a substantial amount of aid was given to the 500,000 refugees in Serbia . . . Serbia finds it difficult to sustain the burden of the great assistance which goes to Bosnia . . . and there is no reason for it to sustain the burden if the war in Bosnia stops. We have of course not excluded further humanitarian aid to the population of Bosnia-Herzegovina, but the people there will in peace-time become capable of rebuilding their economy and taking care of their own lives . . . Serbia has lent a great, great deal of assistance to the Serbs in Bosnia. Owing to that assistance they have achieved most of what they wanted."[35]

63. I just said that Milosević spoke the truth when he stated this. Well, it wasn't exactly "the truth and nothing but the truth" what he said, since the labelling of the aid as "humanitarian aid" is not precisely correct. Most of the Bosnian Serbs' spending went to military spending. And this is exactly what the so-called assistance given by Belgrade, in currency as well as in kind, was meant for.

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[34]Ewa Tabeau, Marcin Zoltkowski, Jakub Bijak, Arve Hetland (Demographic Unit, Office of the Prosecutor, ICTY), "Ethnic Composition, Internally Displaced Persons and Refugees From 47 Municipalities of Bosnia and Herzegovina, 1991 to 1997-98", submitted as an Expert Report in the case of Slobodan Milosević, 4 April 2003.

[35]Yugoslav Telegraph Service, 1553 gmt, 11 May 1993; source: BBC Summary of World Broadcasts.

64. Milosević was not the only one using this "humanitarian-aid" terminology. On 28 May 1993, two weeks after Milosević made this declaration, a fax was sent from Belgrade to the Commander of the VRS [the Republika Srpska army], of the 1st Krajina Corps General Momir Talic — a fax from Belgrade to the Commander of the Republika Srpska, and it says:

> "Mr. General, today I was informed at the Federal Administration for Commodity Reserves, by the Deputy Manager, Nede Bodiroga, that all provisions of goods in the RS can be issued only upon a decision by the FRY Government and only as humanitarian aid . . . It should not be mentioned that this is for the needs of the army."[36]

65. Part of this so-called "humanitarian" aid was — really the last word in generosity — the provision of an entire, recently totally restructured and reorganized, army. Since this has never been a secret, and has not been treated as a State secret by the Respondent either, the actual size of this "generosity" was extensively described by Mladić in his report to the 50th Session of the Assembly of Republika Srpska in April 1995[37]. It follows from this report that from the beginning of the ethnic cleansing to 31 December 1994, 90 per cent — 90 per cent — of the infantry ammunition was provided by first the JNA and later the VJ; the same is true for 73 per cent of the artillery ammunition, while 95 per cent of the anti-aircraft ammunition came from the resources of the Yugoslav army.

66. Earlier, two years before, in April 1993, Mladić presented the so-called "Analysis of the Combat Readiness Report of the VRS in 1992" to the Republika Srpska Assembly. In this report the level of so-called support given to the VRS in 1992 is discussed in more detail. It is a peculiar document and we will come back to that later on. This is what Mladić stipulates in the introduction to his report on the year 1992: "We have carried out individual and concerted battle operations according to a single design and plan."[38]

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[36]ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54-T, Exhibit No. P464.23; See also ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54-T, Witness Testimony of Osman Selak, 12 June 2003, pp. 222197-22243.

[37]ICTY, *ibid.*, "The Assembly of Republika Srpska, 1992-95: Highlights and Excerpts", Expert Report of Dr. Robert J. Donia, 29 July 2003.

[38]Analysis of the Combat Readiness and Activities of the Army of Republika Srpska in 1992, ICTY, *Prosecutor* v. *Radoslav Brdjanin*, case No. IT-99-36, Exhibit P2419.

67. Indeed, Madam President, everything went according to a single plan. The pattern described earlier was, indeed, continued throughout 1992 and after 1992, for that matter. The "plan" that Mladić refers to, was most certainly not a plan which the leaders of the self-proclaimed Republika Srpska at the time designed on the day that they proclaimed the "independent Republic", and it was not a plan that the Republika Srpska leadership only began to draft on 20 May 1992, the day after the so-called "withdrawal" of the JNA. This plan simply refers to something which formed the guideline for Belgrade's policies already for quite some time, which policies were from May and June 1992 onwards very much implemented by the Pale leadership. This guideline fits the Greater Serbia plan and the strategies to be employed in order to achieve the goal thereof. The ICTY has established this through, for example, the acknowledgement of Mrs. Plavsić, who said the following:

> "The SDS and the Bosnian Serb leadership were committed to a primary goal that all Serbs in the former Yugoslavia would remain in a common state. One method of achieving this goal was by separating the ethnic communities in BH. By October 1991, the Bosnian leadership, including Mrs. Plavsić, knew and intended that the separation of the ethnic communities would include the permanent removal of ethnic populations, either by agreement or by force and further knew that any forcible removal of non-Serb from Serbian-claimed territories would involve a discriminatory campaign of persecution."[39]

Paramilitaries

68. Madam President, I mentioned several times the involvement of so-called paramilitaries. Later on during the pleadings we will spend some more time on this issue. For now, just a few additional observations. Already, in early reports of Human Rights Watch and also in United Nations reports, mention is made of the brutal role played by these units of non-army military personnel. Apparently, at the time, many of these units were put in place. Sometimes linked to a particular politician, sometimes linked to a so-called "businessman". Most of them originated from Belgrade and had clear connections to the Belgrade political establishment.

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[39]ICTY, *Prosecutor* v. *Biljana Plavsić*, case No. IT-00-39&40-PT, Factual basis for plea of guilt, 30 September 2002, para. 10.

69. The most notorious names here are Šešelj, Stanišić and Simatović, and Arkan, all indicted by the ICTY. When one reads these indictments, the sheer ferocity, the sheer cruelty of these persons and their units become inescapable[40].

70. At the same time, the consistent feature of these indictments is that these paramilitaries, as a rule, operated in close concert with regular army units. Not only that, they performed their role in close concert with the JNA — beginning at Vukovar in August 1991 and continued to do so in Bosnia and Herzegovina throughout the Srebrenica massacre, and after that for that matter. Usually, in Bosnia, they operated in close concert with the Bosnian Serb army (VRS), sometimes in co-operation with both the Bosnian Serb army and the Yugoslav army (VRS and the VJ). And finally, these same paramilitaries were again present in Kosovo in 1999, as confirmed by the Security Council in its resolution of 10 June 1999[41]:

MUP

71. Another feature of this entire period is that not only the paramilitaries formed part of the pattern but that, also, and consistently the Ministries of the Interior of the Respondent would be involved — the Ministry of the Interior also known as MUP. This was particularly true for the Ministry of the Interior (MUP) of Serbia. At all times of involvement the MUP would harmonize its efforts with the Pale Ministry of the Interior (RS-MUP).

72. In the Reply we have demonstrated the significant role of the Serbian MUP, including its Secret Service and the Police, in the various stages of the ethnic cleansing, including the preparational stages[42]. The Respondent, in its Rejoinder, did not address the issue at all. The MUP would assist in the arming of the Territorial Defence in Bosnia and Herzegovina, after these were purified into exclusively Serb units; the MUP would provide weapons to the paramilitaries; the MUP would provide Yugoslav passports for those non-Serbs who were forced to leave their country. The Serbian MUP would also take care of arresting conscripts from the territory of Republika Srpska who were trying to escape being part of the killing exercises.

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[40]ICTY, *Prosecutor* v. *Vojislav Šešelj*, case No. IT-03-67, Modified Amended Indictment, 15 July 2005; ICTY, *Prosecutor* v. *Jovica Stanišić and Franko Simatović*, case No. IT-03-69-PT, Second Amended Indictment, 20 December 2005; ICTY, *Prosecutor* v. *Željko Ražnjatović*, case No. IT-97-27, Initial Indictment, 23 September 1997.

[41]United Nations Security Council resolution 1244 (1999) of 10 June 1999, paras. 3, 9.

[42]Reply, 23 April 1998, Chapter 8, Section 6, paras. 206-238.

73. Besides all that, the MUP would participate in offensive actions of the army. And this was definitely not restricted to the first months in 1992, but continued throughout and included participation in the massacre at Srebrenica. Later on during these pleadings we will, obviously, discuss Srebrenica at greater length. For now it suffices to point out that in our Reply we already informed the Court about the participation of several units from the Belgrade Ministry of the Interior in offensive actions on the territory of Bosnia and Herzegovina, and we referred among other things to actions that took place as late as June and July 1995. In the Reply we listed the "Skorpions" — one of the units from the Serbian MUP — as participating in the battle at Trnovo, which is some 30 km south of Sarajevo[43]. This Skorpions unit is precisely the same unit which has been registered on video while killing several young boys who were under arrest — boys from Srebrenica whom they killed by shooting them in their backs. In its Rejoinder the Respondent did not deny what we stated in the Reply with respect to the Skorpions. All the Respondent did was to state in very general terms that "the special forces of the Army of Yugoslavia" took part in another operation "under the command of the Main Headquarters of the Republic of Srpska Army"[44].

74. As the Serbian military obviously falls under the political responsibility of the Belgrade authorities, this was all the more true for the Serbian MUP, being part of the very same authorities. One of the names that also keeps popping up here, is that of Michael Kertes. He was the one that was in charge of arming the Territorial Defence in Croatia and Bosnia, but he also played a crucial role in the organization of paramilitary groups. James Gow, in one of his testimonies before the ICTY states:

> "Kertes, in his role of Deputy Federal Interior Minister and Head of the Federal Security Service, was instrumental with Radmilo Bogdanović (the Head of the Serbian Security Services) in helping to organize and establish the paramilitary groups."[45]

In fact, Kertes apparently was one of the persons most trusted by Milošević, since he was also, upon instructions of Milošević, responsible for channelling enormous amounts of deutsch marks,

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[43]Reply, 23 April 1998, Chapter 8, Section 6, paras. 227-232.

[44]Rejoinder, 22 February 1999, para. 3.2.2.7.

[45]Testimony of Dr. J. Gow in ICTY, *Prosecutor* v. *Duško Tadić*, case No. IT-94-1-T , 8 May 1996, p. 256.

hundreds of millions of deutsch marks, from the Serbian Customs Services to various foreign bank accounts[46].

United Nations organs on FRY's role

75. Madam President, while it is unmistakably so that Belgrade at all times was the principal partner in this collective enterprise known as ethnic cleansing, Milošević has chosen to play hide-and-seek about it, making up various stories to cover up his and his Government's predominant role. Whoever may, in 1993 and in 1994, have believed Milošević, not the Security Council of the United Nations. The list of the numerous Security Council resolutions and related sanctions upon the former Yugoslavia and, later, the Federal Republic of Yugoslavia (FRY), can be summarized by just naming a few:

— resolution 713, which imposed a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia — the resolution was adopted in 1991;

— resolution 757 adopted on 30 May 1992 imposing economic and other sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro), including a full trade embargo, a flight ban, and the prevention of the participation of the FRY in sporting and cultural events;

— resolution 787 of 16 November 1992 stating that the transhipment through the FRY of petroleum, coal, steel and other products, unless authorized on a case-by-case basis by the committee, would be prohibited;

— resolution 820 of 17 April 1993 further strengthening the sanctions against the FRY.

76. Apart from the suspension on 23 September 1994 of a few minor bans[47], it was only on 22 November 1995 that the Security Council, one day after the Dayton Agreement was concluded, passed its resolution 1022 which suspended all the sanctions against the Federal Republic of Yugoslavia indefinitely.

77. The Security Council was clearly not the only United Nations body not to believe Milošević on his face. The Order of this Court of 8 April 1993 is clear and, if it were not clear

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[46]Amended Expert Report of Morten Torkildsen, paras. 12-26, submitted by the OTP on 7 June 2002, ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T.

[47]United Nations Security Council resolution 943 (1994) of 23 September 1994, S/RES/943 (1994), regarding civilian passenger flights to and from Belgrade airport, ferry services and participation of the FRY in sports and cultural exchanges.

enough, the Order of 13 September 1993 of this Court left no doubts whatever. The Orders of this Court were, apparently, not able to stop the FRY, which was obviously for many, many reasons very regrettable. In the first place it was very distressing for all the victims of FRY's continued ignoring of this Court's Orders. Madam President, our pleadings will manifest that justice requires that the Respondent is told in no unclear language that it should have respected this Court's earlier rulings and that its contemptuous treatment of this Court throughout these proceedings will in no way be rewarded. Thank you very much.

The PRESIDENT: Thank you Mr. van den Biesen. The oral argument of Bosnia and Herzegovina will resume at 10 o'clock tomorrow morning and will continue tomorrow afternoon. There being no further business before the Court, the Court now rises.

The Court rose at 1.10 p.m.

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