CR 2006/9

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2006

Public sitting

held on Monday 6 March 2006, at 10 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 lundi 6 mars 2006, à 10 heures, 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

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

Mr. Ermin Sarajlija, LL.M,

Mr. Amir Bajrić, LL.M,

Ms Amra Mehmedić, LL.M,

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comme assistants.

The PRESIDENT: Please be seated. Ms Karagiannakis.

Ms KARAGIANNAKIS:

PARAMILITARY UNITS, VOLUNTEERS AND THE UNITS AND ORGANS OF THE MINISTRIES OF THE INTERIOR OF THE RESPONDENT

1. Madam President, Members of the Court, various irregular forces were involved in the targeting of non-Serbs in Bosnia. They included so-called volunteer units, units of the Ministry of the Interior of Serbia and other Serbian paramilitary units, and Bosnian Serb paramilitary units. This morning I am going to address the Court on the role of organs of the Respondent in controlling, directing and/or supporting these irregular military units. I will also address the Federal and Serbian Ministries of the Interior and the other means through which they participated in the ethnic cleansing in Bosnia.

A. Volunteers

2. In Bosnia's Reply we demonstrated that, in the first months of 1992, the ranks of the "Serbianized" and reorganized JNA were gradually filled up with Serb "volunteers" to make up for the declining number of conscripts in the JNA. They were engaged in the targeting of the non-Serb populations of Bosnia. These volunteers were incorporated into the ranks of the Territorial Defence or the JNA and they were armed and operated under the command of the JNA[1].

3. Since the filing of our Reply a number of documents have come to light which reinforce this point and show that, from mid-1991, "volunteers" were formally incorporated into the armed forces of the Respondent, including the Territorial Defence and the Yugoslav army. They are: the Decree of the Serbian Government on 14 August 1991 on the "Registration of Volunteers in the Territorial Defence"[2]. This Decree was followed by the Instructions on Accepting Volunteers into the Yugoslav army issued by the Federal Secretariat for National Defence, dated 13 September 1991[3]. This was, in turn, augmented by the Order on the Engagement of Volunteers of the Presidency of the SFRY of 10 December 1991, which stated that the JNA and the Territorial

[1]Reply, pp. 477, 562, 470, 472-473.

[2]Exhibit P406, tab 13, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54-T.

[3]Exhibit P406, tab 14, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54-T.

Defence are reinforced by volunteers[4]. In addition, according to Article 39 of the Law on Defence which was passed by the National Assembly of the Republic of Serbia on 18 July 1991, otherwise referred to as the Serbian Law on Defence, "in case of an imminent war threat and state of emergency, the Territorial Defence could be reinforced by volunteers"[5]. The Presidency of the SFRY declared an imminent threat of war on 1 October 1991 and this remained in effect until 22 May 1992[6].

4. According to Radmilo Bogdanović, Serbia's Minister for Internal Affairs until June 1991 and the President of the Security Council of the former Yugoslavia, Arkan's so-called notorious paramilitary group was actually created as a volunteer unit. He said:

> "Our national parliament passed the Law on National Defence, with an amendment according to which volunteer units could be organized, and put under the command of the JNA or the Territorial Defence. Thus Arkan got started. At first with forty volunteers, later with some more."[7]

5. These so-called volunteers participated in the ethnic cleansing of the non-Serb population in Serb-claimed areas of Bosnia. For example, as you have already heard, volunteers from Serbia participated in the ethnic cleansing of Bratunac municipality. Their presence in that municipality had been agreed upon by the top leadership of the SFRY and the Republika Srpska[8].

B. The Serbian and Federal Ministries of the Interior

6. The Serbian and Federal Ministries of the Interior played a cardinal role in the eventual ethnic cleansing of Bosnia. Prior to describing this role I shall say a few words about the manner in which the Ministries of the Interior were organized.

7. In the former Socialist Federation of the Republic of Yugoslavia there were six Ministries of the Interior, otherwise referred to as MUPs, on the Republic level. They were overseen by the Federal Ministry of the Interior. After the dissolution of the SFRY, this federated structure remained so that there was a Republic of Serbia MUP, the Serbian MUP, a Republic of

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[4]Exhibit P387, tab 12, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54-T.

[5]Exhibit P352, tab 24-3, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54-T.

[6]Exhibit P151a-1 and P203a, ICTY, *Prosecutor* v. *Strugar*, case No. IT-01-42-T.

[7]Reply, p. 616.

[8]Pleading of Laura Dauban 2 March 2006, "Ethnic cleansing on the eastern side of Bosnia and Herzegovina" (CR 2006/6, pp. 21-23).

Montenegro MUP and a Federal Republic of Yugoslavia MUP (FRY MUP). In March 1992 a MUP for the Bosnian Serbs was established which functioned in the manner of a Republic level MUP and was eventually called the Republika Srpska MUP[9]. Each of these ministries was responsible for public security and State security. The Serbian MUP was the most powerful of those ministries and its State Security Service, otherwise referred to as the Serbian DB, was critical in controlling, directing or supporting various so-called paramilitary formations. Jovica Stanišić, was the Chief of the Serbian DB and Frenki Simatović was the Commander of the Special Operations Unit of the Serbian DB[10]. Both of these men have been indicted for their participation in targeting non-Serbs in Bosnia[11].

8. In its previous written pleadings Bosnia had demonstrated that the Serbian MUP was a mechanism through which President Milošević and other MUP officials, including Jovica Stanišić and Frenki Simatović, controlled the MUP and utilized it to participate in the targeting of non-Serbs in Bosnia[12]. This control has been most recently confirmed by a number of sources.

9. According to the relevant legal provisions, the President of Serbia had authority over the police forces and personnel of the Serbian MUP. Pursuant to Article 5, paragraph 3, of the Serbian Defence Law, the President of the Republic could "order use of police in war, during an imminent war threat and emergency state"[13]. Further, Article 17 of the Law on Internal Affairs of the Republic of Serbia passed on 17 July 1991 provided that, during a state of emergency, the MUP was to take the security measures established by the orders and other enactments of the President[14].

10. The Trial Chamber in the *Milošević* case has found, in its Decision on the Motion for Judgement on Acquittal, that President Milošević had both *de jure* and *de facto* control over the Serbian MUP and its arm of the State Security Service, the Serbian DB[15].

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[9]Pleading of 28 February 2006, Ms Karagiannakis "Political and military preparations" (CR 2006/4, p. 18, para. 34.)

[10]Reply, p. 597.

[11]ICTY, *Prosecutor* v. *Jovica Stanišić and Frenki Simatović*, case No. IT-03-69, Indictment of 20 December 2005.

[12]Reply, pp. 597-598; 602.

[13]Exhibit P352, tab24-3, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54-T.

[14]Exhibit P526 tab 21, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54-T.

[15]ICTY, *Prosecutor* v. *Milošević*, Decision on Motion for Judgement of Acquittal, case No. IT-02- 54-T, 16 June 2004, para. 305.

11. International diplomats confirmed this control. According to Ambassador Okun, during meetings and negotiations with members of the international community, President Milošević was understood to represent all of the forces operating in Bosnia and Herzegovina, including paramilitary forces[16].

12. The various forms of involvement of the Serbian and Federal MUPs in Bosnia have been set out in our Reply. They included the arming of the SDS, the arming of an ethnically pure Bosnian Serb MUP and the Serbian MUP's participation in joint operations in Bosnia[17].

13. In our Reply we also have demonstrated that the Serbian MUP participated in the capture and return of Bosnian Serbs who had crossed the border in order to avoid being conscripted into the army of the Republika Srpska[18]. This activity was denied by the Respondent which stated in its Rejoinder that such allegations are "simply not true"[19]. Despite this denial, these forced mobilizations have been subsequently confirmed by what we can see of the redacted Supreme Defence Council minutes. In its seventeenth session, held on 10 and 13 January 1994, the SDC concluded that its

> "decision on sending conscripts to the Republic of Serbian Krajina and Republika Srpska should be implemented on the basis of written requests from the governments of these two republics. At the request from the police of the two republics, the MUP of Serbia and Montenegro will find and send conscripts who do not respond to call-ups."[20]

14. The Serbian and Federal Ministries of the Interior closely co-ordinated intelligence exchange with the Repulika Srpska MUP. They would exchange information on a daily basis and would co-ordinate their joint activities. Dragan Kijać, the Minister of the Interior of the Republika Srpska (RS) stated, in the 34th Session of the Assembly of Republika Srpska, held from 27 August to 1 October 1993, that the National Security Service of the RS MUP "every day exchanges security information with the Security Service of the VRS, the Republics of Serbia and

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[16]ICTY, *Prosecutor* v. *Milošević*, Decision on Motion for Judgement of Acquittal, case No. IT-02-54-T, 16 June 2004, paras. 275 and 306.

[17]Reply, pp. 597-612.

[18]Reply, pp. 609-612.

[19]Respondent's Rejoinder, p. 562, para. 3.2.1.3.2.

[20]Minutes from the 17th session of Supreme Defence Council (SDC) held on 10/01/1994 and 13/01/1994, Exhibit 667; ICTY, *Prosecutor* v. *Milošević*, case No. IT-02- 54-T.

Montenegro and RSK [Republika Srpska Krajina]"[21]. In that same session it was said that Mico Stanišić, who was the adviser to President Karadžić and his collaborator, "has the duty of cooperation between the MUP of Yugoslavia and our MUP, he has his two colleagues who take care of business up there, and that is under his authority"[22]. Thus, these various MUPs were effectively operating as different organs of a single State.

15. Significantly, the Serbian MUP along with Federal MUP and the JNA aided the process of ethnic purification by organizing, arming, equipping and training the so-called Serbian paramilitaries[23]. Indeed, forces such as Arkan's men, the Red Berets and the Scorpions were actually part of the Serbian MUP and others such as Šešelj's forces were supported by them and participated in joint operations with them in Bosnia.

C. Forces of the Serbian MUP or those supported by the Serbian MUP

(i) Red Berets

16. The Red Berets were a unit founded under the direction of the State Security Service of the Serbian MUP, i.e. the Serbian DB[24]. They were referred to by protected witness B-129 in the *Milošević* case as "the special unit of the state security service"[25]. This fact is referred to in the indictment against Stanišić and Simatović[26]. President Milošević would read the reports about the activities of the Red Berets[27]. The Red Berets took part in the training of Fikret Abdić's men and

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[21]"The Assembly of Republika Srpska, 1992-95: Highlights and Excerpts" by Dr. Robert J. Donia submitted 29 July 2003; Exhibit No. P 537; ICTY, *Prosecutor* v. *Milošević*, case No. IT-02- 54-T, hereinafter "Dr. Donia Expert Report", p. 39.

[22]Dr. Donia Expert Report, p. 42.

[23]Reply, pp. 602- 604, 614-625, 632-636, 784.

[24]ICTY, *Prosecutor* v. *Milošević*, Decision on Motion for Judgement of Acquittal, case No. IT-02- 54-T, 16 June 2004, para. 305.

[25]Testimony of B-129 given on 16 April 2003, p. 19420, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[26]ICTY, *Prosecutor* v. *Stanišić and Simatović*, case No. IT-03-69, Indictment filed on 20 December 2005, para. 3.

[27]ICTY, *Prosecutor* v. *Milošević*, Decision on Motion for Judgement of Acquittal, case No. IT-02-54-T, 16 June 2004, para. 305.

with Arkan's Tigers[28]. They participated in operations in Bosnia including operations targeting the non-Serbs of the Brčko municipality[29].

(ii) The Scorpions

17. The unit known as the "Scorpions" was deployed in Bosnia as a unit of the Serbian MUP.

18. Their history, like that of Arkan's Serbian Volunteer Guards and Šešelj's men, began in Vukovar, where they were led by Slobodan "Boca" Medić[30]. According to the Prosecutor at the ICTY, this was done under the auspices of the MUP in Belgrade[31]. In addition, the Scorpions participated in the special operation called "Pauk" (Spider), which Mr. van den Biesen spoke about on Friday. In fact, Boča and his special unit are directly mentioned in the diary for that operation[32].

19. The Scorpions have become known for being involved in Srebrenica, and particularly in relation to the massacre carried out in the woods of Mount Treskavica near Trnovo. Mr. van den Biesen, during his pleadings on Srebrenica, went into the role of the Scorpions and pointed out that they were one of the units of the Serbian Ministry of the Interior, which was actually mentioned in Bosnia's Reply[33]. The indictment of Stanišić and Simatović highlights that the Scorpions were "ordered" to travel from Croatia, where they were based, to Trnovo and where they were then under the command of Frenki Simatović, who was running a joint Serbian MUP/State Security command post from Jahorina[34]. The indictment goes on to state that the Scorpions and other special units attacked Bosnian forces close to Sarajevo, in order to draw them away from Srebrenica and Zepa, in preparation for the planned attacks on the enclave[35].

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[28]Testimony of B-129 given on 16 April 2003, p. 19546, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[29]Testimony of B-1405 at pp. 18156-18157, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54 referred to in the ICTY, *Prosecutor* v. *Milošević*, Decision on Motion for Judgement of Acquittal, case No. IT-02- 54-T, 16 June 2004, para. 152; Reply, pp. 602-603.

[30]Testimony of C-017 given on 11 June 2003, p. 22077, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[31]ICTY, *Prosecutor* v. *Stanišić and Simatović*, case No. IT-03-69, Indictment filed 20 December 2005.

[32]Exhibit No. P347, tab 5a, p. 101, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[33]Reply, p. 607.

[34]ICTY, *Prosecutor* v. *Stanišić and Simatović*, case No. IT-03-69, Indictment filed 20 December 2005, para. 59.

[35]*Ibid.*, para. 60.

20. I would like to go through a few documents with the Court which confirm that this unit was in fact a unit of the Serbian Ministry of the Interior, acting in joint operation with forces of the Republika Srpska Ministry of the Interior in Bosnia (RS MUP), during June and July 1995.

21. The first of these documents is a report dated 1 July 1995 from the Special Police Commander in Trnovo which was sent to the Republika Srpska police forces and MUP. The document refers explicitly to the Scorpions as a "Serbian MUP" unit, which is working as part of a combat group with RS police detachments. It states:

> "A combat group consisting of 5th Police Special Detachment and two platoons each from the Kajman Detachment, the 'Blues' and the 'Scorpions' (Serbian MUP) carried out attacks on the feature of Lucevik."[36]

22. This is further confirmed by a report from the headquarters of the police forces in Trnovo dated 24 July 1995, which states: "Night in Trnovo battlefield was calm. 'Skorpija', a unit of Ministry of Interiors of Serbia was replaced by a stand-by police squad from Banja Luka."[37]

23. What this Court saw on the video played last Tuesday was the aftermath of Srebrenica: the Bosnian Serb forces distributed the Bosnian Muslim prisoners to different Serb and Serbian units for the purpose of murdering them. One bus full of prisoners was taken to the base of the Scorpions at Treskavica, from which about 15 male prisoners were taken from the bus for execution by members of the Scorpions. Members of the Scorpions took six of the prisoners by truck to a secluded rural area several kilometres from their base. Under the command of Slobodan Medić (Boča), the Scorpions murdered the prisoners by shooting them[38]. Five members of the Scorpions are currently facing charges for murder in respect of these events, in Belgrade. On 21 February 2005, it was reported in the press that one of these accused had admitted that he had taken part in the murders[39].

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[36]Exhibit No. P432, tab 16a, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54-T.

[37]Exhibit No. P432, tab 17a; ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54-T.

[38]ICTY, *Prosecutor* v. *Stanišić and Simatović*, case No. IT-03-69, Indictment filed 20 December 2005, para. 59.

[38]*Ibid.,* para 62.

[39]"Scorpions' member admits to war crime in Srebrenica", 21 February 2005, *Hina*, Belgrade.

(iii) Arkan's Tigers otherwise known as the Serbian Volunteer Guard

24. The history of Arkan and his special Volunteer Guard, which is otherwise referred to as Arkan's Tigers, was set out at length in our Reply[40]. Prior to coming to Bosnia, Arkan, whose real name was Željko Ražjnatović, and his forces had participated in the ethnic cleansing of Vukovar in Croatia[41]. They then went on to participate in the most brutal ethnic cleansing of non-Serbs in Bosnia. The United Nations Commission of Experts stated that, "there were no reports of paramilitary activity in Bosnia and Herzegovina until early 1992". The first reports concerned paramilitary groups supported by Arkan and Šešelj, which were the "the most active paramilitary groups operating throughout the area of the conflict"[42]. Perhaps the most infamous attacks and ethnic cleansing in which Arkan's units participated, occurred in Bijelina and Zvornik. Arkan's units also participated in other parts of Bosnia, for example, in Višegrad and Sanski Most[43].

25. Arkan's unit was in fact a unit of the State Security Service of the Serbian Ministry of the Interior or the DB. Protected witness B-129, who testified in the *Milošević* case, was a former secretary at the Serbian Volunteer Guard's headquarters and the Serbian Party of Unity in Belgrade from 1993 until 1995. She actually worked for Arkan from 1994 onwards but during 1993 she had contact with the Tigers and Arkan because she shared an office with them[44].

26. In her testimony she stated that Arkan's men acted in the capacity of the reserve force of the MUP or the DB of Serbia and as such, there was frequent contact between Arkan and Frenki Simatović, who was the Commander of the Special Operations Unit of the Serbian DB. While Simatović was in charge of operations involving Arkan, he needed the authorization of Jovica Stanišić, the Chief of the Serbian DB, in order to make decisions[45]. Medical treatment of Arkan's men was taken care of by the DB and they were classed as reserve forces of the MUP on official correspondence regarding this[46].

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[40]Reply, pp. 616-620.

[41]Reply, p. 620.

[42]Reply, p. 625.

[43]Reply, pp.626-630, Pleading of Laura Dauban 2 March 2006, "Ethnic cleansing on the eastern side of Bosnia and Herzegovina" (CR 2006/6, pp. 17-19); ICTY, *Prosecutor* v. *Milošević*, Decision on Motion for Judgement of Acquittal, case No. IT-02-54-T, 16 June 2004, para. 305.

[44]Testimony of B-129 given on 16 April 2003, pp. 19417-19418, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[45]Testimony of B-129 given on 16 April 2003, p. 19446, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[46]Testimony of B-129 given on 16 April 2003, p. 19450, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

27. Witness B-129 described one of the operations that Arkan had been involved in with the Serbian DB when they shared a command post in Treskavica, close to Sarajevo. In this operation, Muslim prisoners had been captured and were subjected to torture including sexual assault[47]. Arkan and his men were paid by the Serbian DB usually in cash which was either delivered to the headquarters or collected. It was sometimes as much as three to four million Deutschmarks at a time and this was newly printed money which had just come out of the mint[48].

28. Witness B-129 was very clear as to whose authority the Tigers were operating under:

> "The state security, the DB, whenever it didn't have enough men for the front, it would take some of the members of the Serbian Volunteer Guard. Or if they didn't have enough men to take up a certain position, then they would engage members of the Serbian Volunteer Guard. The most important thing in this respect is that the Guard could do nothing on its own, nothing without permission from the DB of Serbia. And as far as the frontline goes, they did as best they could there."[49]

29. This testimony demonstrates, first, that the State Security of the Serbian MUP was concerned to have sufficient forces on the front, which at this time could only have been in Bosnia. Second, that Arkan's forces were deployed in Bosnia and finally that Arkan's forces had a subordinate relationship to the State Security Service of the Serbian MUP.

(iv) Šešelj's paramilitaries

30. One of the most prolific paramilitary forces operating in Bosnia was the paramilitary force of Vojslav Šešelj. He has been indicted by the Tribunal for participating in the attacks on the non-Serb population of Bosnia and is currently awaiting trial in The Hague[50]. Bosnia has made extensive reference to the activities of this force in Bosnia in its Reply, particularly in relation to the support Šešelj's forces received from the Serbian and Federal Ministries of the Interior, the President of Serbia and the JNA. Indeed Šešelj's forces participated in joint actions with the Serbian Ministry of the Interior in Bosnia[51].

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[47]Testimony of B-129 given on 16 April 2003, pp. 19479-19480, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[48]Testimony of B-129 given on 16 April 2003, p. 19454, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[49]Testimony of B-129 given on 16 April 2003, p. 19445, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[50]ICTY, *Prosecutor* v. *Šešelj*, case No. IT-03-67, Modified Amended Indictment filed on 15 July 2005.

[51]Reply, pp. 620 – 636 and 602-604; see also ICTY, *Prosecutor* v. *Milošević*, Decision on Motion for Judgement of Acquittal, case No. IT-02- 54-T, 16 June 2004, para. 306.

(v) Relationship of Serbian MUP special forces and associated paramilitaries with the Army during operations

31. According to the United Nations Commission of Experts the JNA and the paramilitaries were deployed together in municipalities which were "within the strategic arc the Serbs need[ed] to link all Serbian populations from BiH and Croatia within a contiguous Serbian State". During these attacks, these units acted as infantry for the JNA which in turn provided artillery, armour and command[52].

32. When Arkan and his unit participated in operations in Croatia, they did so under the command of the JNA. In particular during the siege of Vukovar, Arkan stated that his men were under the command of the JNA[53]. An exhibit in the *Milošević* case entitled "Agreement with the participation of Z. Ražnatović unit in the defence of Pertrijna" and dated 25 November 1991, provides that Arkan's unit was to participate in fighting on the JNA and Territorial Defence positions in that Croatian municipality and that his unit would be part of and under the command of the 622nd Motorized Battalion of the JNA[54].

33. Colonel-General Panić confirmed the operational relationship between the so-called paramilitaries and the army. In an interview he gave for the BBC's "Death of Yugoslavia" series he stated that, in relation to the operations in the Vukovar area, "[a]ll these formations — Arkan's Tigers, Šešelj's Chetniks — were under my command. The people who wanted to act independently were being removed from that area, disarmed and returned home."[55]

34. In a television interview with Brent Sadler of CNN during the Kosovo crisis and after his indictment had been publicized, Arkan confirmed that his Tiger paramilitaries were involved in the wars in Bosnia and Croatia. He went on to say: "In the time, in 1991, when the war, the civilian war in Yugoslavia starts. I was on the part of the Serbian army. I have no some group *[sic]*, or my own army, I was under the command of the Yugoslav army, defending my country in that time."[56]

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[52]Reply, pp. 625-626.

[53]Reply, p. 620.

[54]Exhibit No. P352, tab 172a, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[55]Exhibit No. P596, tab 14, ICTY, *Prosecutor* v. *Milošević*, case No. IT-02-54.

[56]CNN interview: Brent Sadler with Zeljko Ražjnatović ("Arkan"), 31 March 1999, submitted to the Court by Bosnia and Herzegovina on 16 January 2006 as DVD 13.

35. When Arkan's Tigers were deployed in Bosnia prior to the re-hatting of the JNA into the VRS, they would be under military command. General Mladić, the then Commander of the JNA 2nd Military District said as much in an intercepted telephone conversation conducted on 13 May 1992. When a local SDS leader from Ilidža municipality in the greater Sarajevo area advised him that they had some of Arkan's men there and asked Mladić whether "they are under our command". Mladić replied: "All under arms are under my command . . ."[57]

D. Bosnian Serb paramilitary formations

36. Bosnian Serb paramilitaries also operated with paramilitary formations from Serbia with the JNA and the Serbian Democratic Party in targeting the non-Serb civilian population in Bosnia. Their activities have most recently been addressed by the *Brdanin* Trial Chamber in respect of the 13 municipalities in the Autonomous Region of Krajina (ARK) in north-western Bosnia[58].

37. This Trial Chamber found that, by the spring of 1992, a number of Serb paramilitary groups had been formed in Bosnia or had arrived from Serbia. Some of these paramilitary groups were trained and equipped by the JNA and were closely associated with it or with the SDS. At first, their existence and training was kept secret. The paramilitaries created an atmosphere of fear and terror amongst the non-Serb inhabitants of Bosnian Krajina by committing crimes against Bosnian Muslims and Bosnian Croats including rape, murder, plunder and the destruction of property. Serbian paramilitary groups also participated in combat operations of the 1st Krajina Corps throughout the Autonomous Region of Krajina. This was a JNA Corps that had undergone the re-hatting process from the JNA to the VRS.

38. In that case the Trial Chamber was satisfied that both the army as well as the SDS used paramilitary groups as an operative tool that contributed to taking control of the territory claimed for the Serbian State within Bosnia, and permanently removing most of the non-Serbs from this territory.

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[57]Intercepted conversation between Unković and Mladić, Ratko from 13 May 1992 (ET 0322-0204-0322-0205.doc.) at http://www.domovina.net/tribunal/page_006.php .

[58]ICTY, *Prosecutor* v. *Brdanin*, Judgement, case No. IT-99-36-T, 1 September 2004, paras. 97 and 100, 226-228 (general); 98-99, 102;114; 227, 288; 1126 (SOS paramilitaries); 109, 865 and 228 fn. 624 (Wolves of Vucak paramilitaries).

39. From mid-June 1992 onwards, paramilitary groups in Bosnia were formally incorporated into the structure of the Bosnian Serb army (VRS) and put under its command. This formal incorporation occurred as a result of the Decision on the Prohibition of Forming and Activities of Armed Groups and Individuals in the Territory of the Republic which are not under the Unique Command of the Army or Militia. This Decision was adopted by the Presidency of the Republika Srpska on 13 June 1992[59].

40. The Trial Chamber in the *Brdanin* case gave two examples of Bosnian Serb paramilitary groups which were actually incorporated into the VRS. The first one was the SOS or so-called Serbian Defence Forces. The establishment and the action of the SOS was orchestrated by the SDS — that is the Serbian Democratic Party. This paramilitary group participated in targeting the non-Serb populations in Banja Luka and Sanski Most municipalities. The other group that was incorporated into the army was the so-called Wolves of Vučak group, which was under the command of Veljko Milanković. This local Bosnian Serb paramilitary group operated in Prnjavor municipality, where it participated in the attack on the non-Serbs in Lišnjia village. This groups was incorporated in the 327th Motorized Brigade of the 1st Krajina Corps in June 1992. Not only was this Bosnian Serb paramilitary group incorporated into the army but the army command recommended that its leader be decorated[60].

E. Conclusions

41. The various forms of involvement of the Serbian and Federal MUPs in Bosnia included the arming of the SDS and the Bosnian Serb MUP, participation in joint operations in Bosnia, forced mobilization of Bosnian Serbs in Serbia and Montenegro and close co-operation with the Republika Srpska Ministry of the Interior.

42. There were various irregular formations participating in the targeting of non-Serbs in Bosnia, but they were not independent, uncontrolled elements. The JNA and the Serbian MUP were integral in their arming, equipping and training. In many notable cases they were actually

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[59]Respondent's Rejoinder, p. 569, para. 3.2.2.4; ICTY, *Prosecutor* v. *Brdanin,* Judgement, case No. IT-99-36-T, 1 September 2004, paras. 97 and 228 (general).

[60]ICTY, *Prosecutor* v. *Brdanin,* Judgement, case No. IT-99-36-T, 1 September 2004, paras. 97 and 100, 226-228 (general); 98-99, 102;114; 227, 288; 1126 (SOS paramilitaries); 109, 865 and 228 fn. 624 (Wolves of Vučak paramilitaries).

units of the State Security Service of the Serbian Ministry of the Interior, or were co-operating with it, or were volunteers that had been incorporated into the Territorial Defence or the JNA. Finally, when these forces participated in operations they were generally placed under military command.

43. Madam President, distinguished Members of the Court, that concludes my pleading on this topic. I am going to be followed, with the Court's leave, by Mr. Torkildsen who will be speaking about the financial relationship between the FRY, the Republika Srpska and the Republika Srpska Krajina. Mr. Torkildsen has a Bachelor of Science Degree in management sciences from the University of Manchester and a Master of Science from City University Business School. He has had ten years' experience in the Norwegian Serious Fraud Office as a Senior Adviser and Financial Investigator. He was also employed at the ICTY as a financial investigator for the Office of the Prosecutor in the *Milošević* case and, on the basis of his experience and qualifications, was admitted as an expert to testify in those proceedings. He is currently a partner in an investigative legal firm in Norway.

44. Madam President, may I ask you to give the floor to Mr. Torkildsen.

The PRESIDENT: Thank you, Ms. Karagiannakis. I do now give the floor to Mr. Torkildsen.

Mr. TORKILDSEN:

FINANCIAL INTERDEPENDENCY

Introduction

1. Madam President, distinguished Members of the Court, in my presentation this morning I will go into several topics that all directly or indirectly have to do with how Belgrade financially dominated the Serb governmental structures in both the Serb Krajina and in what came to be called Republika Srpska during the period 1992-1995. The first thing I will do is to show the Court why Belgrade used the sources of finance that they did. I will go on to elaborate how the officers of the Bosnian Serb army, the VRS, at all times during the period from its creation on 20 May 1992 until only recently fell under the direct financial responsibility of the army of the Federal Republic of Yugoslavia, the VJ. I will explain how Belgrade financed the three armies, meaning not only the

army of the Federal Republic of Yugoslavia but also the armies of the Bosnian Serbs and the Republika Srpska Krajina. I will further elaborate on how the economies were integrated through the creation of a single economic entity which included the FR Yugoslavia, Republika Srpska and Republika Srpska Krajina. I will demonstrate the importance of such an entity which was entirely implemented and entirely controlled by Belgrade. My conclusion will summarize and list the most important features and deductions of this financial operation executed by Belgrade.

2. It is notable that the financing of Republika Srpska by Belgrade was done in complete secrecy as will be explained through the presentation of documents which are all in the public domain. How this financing actually took place will not become clear until these documents can be put into context and explained how they relate to each other. The financing of the officers of the Bosnian Serb army is not immediately apparent from documents available to the public.

3. For clarification purposes I have translated several of the figures and numbers referred to in the various documents which I will discuss into German marks by using the relevant official exchange rate at the relevant point in time. The German mark was the most relevant and widely available foreign currency used throughout the region at the time. In order to give the amounts some perspective compared to the Euro, it is worth mentioning that when the Euro was first introduced, one German mark was worth approximately 50 per cent of one Euro. This means that for example 10 million German marks was the equivalent of 5 million Euros, the commonly used abbreviation for the German mark is DEM.

The Public Accounting Service (SDK)

4. A central role was played by the Public Accounting Service, also translated as the Public Auditing Service, in the operation of the monetary federation between Serb-controlled regions. The Public Accounting Service was a payment service system used within the Socialist Federal Republic of Yugoslavia (SFRY) for the transfer of funds within and between the federal republics and the two autonomous regions. In the early 1990s, the Public Accounting Service both facilitated payments and supervised financial transactions. The Public Accounting Service operated long before the disintegration of the SFRY. When the disintegration of the SFRY began, the Serb-controlled regions in Croatia and Bosnia and Herzegovina carefully maintained connections

between the Bosnian Serb's part of the SDK system and the SDK system of the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia. This continued connection was important for facilitating ongoing money transfers. Unless a functioning payment system existed, cash would have been the only alternative way of making payments available. Thus, the SDK system was of paramount importance for the Serb-controlled regions in Croatia and Bosnia and Herzegovina and their ability to receive their financial funding from the FRY and the Republic of Serbia. The primary issues made available from the National Bank of Yugoslavia to the Serb-controlled regions in Bosnia and Herzegovina and Croatia were credited to their respective accounts in the Public Accounting Service system. "Primary issues" basically means printing of new money. I will explain this in more detail later in my pleading.

5. At an early stage of the disintegration of the SFRY, the leadership in the Serb-controlled regions in Croatia and Bosnia and Herzegovina realized the importance of taking control of the Public Accounting Service in the areas they aimed to control. A speech by Radovan Karadžić[61] at the Plebiscite of the Serb People on 1 November 1991 where Karadžić is encouraging and preparing the Bosnia Serbs for what actions needed to be taken, his speech also highlights the importance of taking control of the Public Accounting Service:

> "Be prepared soon to take over the SDK decisively. I mean, to appoint your own man in the SDK. Prepare (the ground), first talk to them, ask them whether they're ready to work in a moment that is not legal, in accordance with laws and regulations which you, as the municipality authority, will give them."

6. The importance of taking control of the Public Accounting Service is highlighted and put into practice a few months later. For instance, in the minutes of a joint meeting of the Council for National Security and the Government of the Serbian Republic of Bosnia and Herzegovina, held on 15 April 1992 (where both Karadžić and Krajisnik were present) it was agreed that they should: "send a request to the Governor of the SRJ [NBY] to provide 5,000 million dinars [25 million DEM] in cash and transfer it to the Sokolac Public Auditing Service [SDK]"[62]. Of

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[61]ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54-T, Exhibit P427, tab 19, also referred to as C4346, ERN BCS 0027-0632, translation, p. 2.

[62]ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54, Exhibit P427, tab 60, also referred to as B3292, translation, p. 2.

course it was important for the Bosnian Serb leadership to have control of the transfer channel providing for such amounts of money.

The FRY paid the salaries of the officers of the VRS in the period from 1992 and onwards

7. It is generally known and has been established several times now that the officers of the VRS have been paid in their entirety by the Federal Republic of Yugoslavia. A large number of documents exist that refer to the fact that these officers were paid from Belgrade since the establishment of the VRS on 12 May 1992. At the beginning of the war the officers were paid through the regular channels of the FRY army (the VJ), meaning that no special arrangements were made for payments of these officers; from 15 November 1993 onwards they were paid and administrated through their own personnel centre, the 30th Personnel Centre, within the VJ. This Personnel Centre was created for the sole purpose of gathering for the needs of the RS army officers. This will become apparent from the documents I will refer to during the course of my presentation.

8. As discussed earlier, the JNA was relabelled in both Serbia Krajina and Republika Srpska Krajina, but the officers who served under the new labels were not paid from the budgets of Republika Srpska and Republika Srpska Krajina. They remained on the payroll of the JNA and later the VJ. General Ratko Mladić, in his speech to the Assembly of Republika Srpska on 15 and 16 April 1995, provided a consumption review of weapons and other equipment used by the VRS from the start of the war until 31 December 1994. With respect to the salaries of officers and civilians he remarked: "From the beginning of the war, RS did not participate in financing of professional army members."[63]

9. This statement made by Ratko Mladić is consistent with a report named the "Analysis of Combat Readiness and Activities of the Bosnian Serb Army in 1992", dated April 1993. This report was issued by the main staff of the army of the RS. The document describes three stages in the "Planning of the development and financing of the VRS Army" during the period 20 May 1992

[63]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 54, also referred to as C4920, ERN 0084-5813; ERN translation L000-4907, p. 16.

until 28 February 1993[64]. In the first stage, lasting from 20 May 1992 until 30 June 1992, it states that, "finances were provided mainly from the resources at the disposal of the JNA units". The report goes on to state that by 30 June 1992 the entire financing of the Bosnian Serb army was restricted to, "the personal expenditures (salaries and benefits) of officers, non-commissioned officers, soldiers working under contract, and workers who remained in or joined the Army of Republika Srpska from the former JNA".

The report explicitly stated that these officers and other personnel, "continued to be the responsibility of the FR Yugoslavia". That the total financing from Belgrade would have ended on 30 June 1992 is incorrect. The fact is that the total financing of the VRS from Belgrade continued but this financing was executed in a more discrete manner through Belgrade's covering the budget deficits of Republika Srpska. I will explain this relationship later in my presentation.

10. Even if the VRS and the army of the Republika Srpska Krajina officers and some other personnel continued to be on Belgrade's payroll from 20 May 1992 onwards, this arrangement was not formalized in all respects before late in 1993. Pursuant to an order by the President of the FRY on 10 November 1993, the Chief of the VJ General Staff, Momcilo Perisić, issued an order establishing the 30th Personnel Centre and the 40th Personnel Centre on 15 November 1993. The 30th Personnel Centre and the 40th Personnel Centre were to be the administrative centres in charge of taking care for and administrating the needs of the officers and other personnel serving in, respectively, the VRS and the Army of the Republika Srpska Krajina[65].

11. Although Bosnian-born Serb members of the Yugoslav Peoples Army (the JNA) had been ordered to be deployed in Bosnia and Herzegovina, the army of Republika Srpska (the VRS) was still in constant need of manpower. The FRY army (the VJ) assisted the VRS also in this respect through incentives offered to the VJ military officers who volunteered to serve in the VRS. Among other things, favourable pension conditions were used as incentives for the officers. This arrangement is explained in a document dated 6 August 1994, issued by the 2nd Krajina Corps Command of the Bosnian Serb army:

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[64]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 32, also referred to as C4712, pp. 127-132.

[65]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit B10955.

> "From the command of the 30th Personnel Centre of the VJ General Staff and the command of the Republika Srpska Army Main Staff we have received subsequent explanations regarding regulating years of pensionable service at double rate for professional soldiers (professional officers, professional non-commissioned officers, contract officers, . . .) and based on that explanation, with a view to regulating years of pensionable service at double rate. Every unit of the 2nd Krajina Corps and the VRS (Republika Srpska Army) is authorized to issue certificates only for the period starting 20 May 1992 onward. Those who took part in the war before 20 May 1992 are instructed to file a request, with the exact description of where they were, in which unit, upon whose orders, where the unit was and enclose any proof they may have. As soon as you have collected all the requests, certificates and other proof, forward them to this command (2KK), and the command of the 30th KC (personnel centre) will issue certificates to the effect of recognizing years of pensionable service at double rate."[66]

12. VRS officers and non-commissioned officers of the VRS continued to receive their salaries from the FRY right up until 2002. This is stated in an article entitled "The Future of the Army of the Republic of Srpska" published by the Belgrade based VIP News Services on 5 September 2002, the article mentions 28 February 2002 as the final date[67].

13. As late as 29 December 2005 the Belgrade media reported that Ratko Mladić after his retirement on 28 February 2002 continued to receive his pension until November 2005, through the 30th Personnel Centre. In other words, according to these sources, Belgrade continued its financial support for more than ten years after the Srebrenica massacre took place. In November 2005 the 30th Personnel Centre was closed. We are not able to establish whether and how its role is continued by other State services of the Respondent.

The financing of the armies (the JNA, the VJ, the VRS and the SVK) and the Republika Srpska as such

How the primary issues printed in Belgrade were used to finance the armies and the other needs of the FRY, the RS and the RSK

14. On top of direct payments of the officers of the Bosnian Serb army, nearly the entire budgets of Republika Srpska and Republika Srpska Krajina were financed from Belgrade in the years 1992 and 1993.

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[66]ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54-T, Exhibit P643, tab 1, Expert Report of the Military Analysis Team at the Office of the Prosecutor, Theunes and Borrelli, p. 35.

[67]ICTY, *Prosecutor* v. *Slobodan Milosević*, case No. IT-02-54-T, Exhibit P427, tab 57, also referred to as C5353, FI04-4444.

15. Before the disintegration of the SFRY began, the JNA was financed through the SFRY budget. The SFRY budget was generated by customs and import tax, contributions by the six socialist republics and the two autonomous provinces and by loans from the National Bank of Yugoslavia, the NBY. The increasing disintegration of the SFRY in 1991 adversely affected the budget, especially in the area of income. In a proposal dated 21 July 1991 from the Federal Executive Council, regarding the minimum funds needed in the budget of the SFRY for the period July to September 1991, it is stated that the JNA needed 17.8 billion dinars, the equivalent of 1.4 billion German marks out of the total SFRY budget of 26.8 billion dinars for the same period. In other words, the JNA needed 66 per cent of the total budget. The proposal goes on to estimate that the National Bank of Yugoslavia would have to provide 52 per cent of the total budget. Moreover, the document explains that the amount to be provided by the National Bank of Yugoslavia would have to come from printing new money[68]. The increase in the percentage of the budget to be used to fund the JNA in 1992, and the fact that it would be generated by printing new money, was one reason for the resignation on 20 December 1991 of Ante Marković, the last Croatian President of the SFRY[69].

16. Given the reduced income of the SFRY budget, the most realistic way to finance the JNA was to borrow the funds. Ordinarily, and in contrast to what actually happened, States wishing to or required to make up for a budget deficit would either issue Government bonds or undertake privatization of State-owned companies. Not so the SFRY. Its Serbian leadership designated the National Bank of Yugoslavia as the only available source of borrowing. The National Bank of Yugoslavia would again finance their loans to the federal budget through "primary issues". The creation of primary issue is either the printing of money or the provision of credit by the national bank. In this case, the National Bank of Yugoslavia created money by providing credit to the SFRY budget for the use of the JNA. The documents referred to, for instance a transcript of the

[68]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 5, also referred to as C168, p. 4.

[69]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit C4911, p. F1025396.

SFRY Presidency meeting held on 21 August 1991, state that the National Bank of Yugoslavia was printing money that was then loaned to the SFRY for the primary purpose of financing the JNA[70].

The PRESIDENT: Mr. Torkildsen, could I interrupt you for a moment. This is the first document that you re relying on which is identified by the words "admitted exhibit". Could you explain for the Court the distinction between an "exhibit" and an "admitted exhibit".

Mr. TORKILDSEN: Madam President, all of these documents that I am presenting here today, except for two or three of them, have all been admitted in the prosecution against Slobodan Milošević at the ICTY and all of these documents are in the public domain. I am sorry if it is mentioned in the footnote that some of them have been admitted, implying that others have not been admitted, because they are all in the public domain from the ICTY.

The PRESIDENT: So "admitted" does not mean "agreed"?

Mr. TORKILDSEN: No.

The PRESIDENT: Thank you.

Mr. TORKILDSEN:

17. During the 143rd session of the SFRY Presidency, on 1 October 1991, "the Law on the Provisional Financing of Requirements of the Federation in 1991" was on the agenda. The Presidency endorsed this law and added that, until funds were approved, the National Bank of Yugoslavia could make advance payments to the Federation for the financing of the JNA. The draft minutes state, *inter alia*:

> "Until funds are approved in the manner described in paragraph 2 of this Article, the National Bank of Yugoslavia may make advance payments to the Federation for the financing of the Yugoslav National Army
>
> . . . . . .

[70]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 6, also referred to as C4274 — Admitted Exhibit 328 — tab 26.

> the SFRY Presidency resolved to recommend to the National Bank of Yugoslavia that, until conditions were met for adopting the law, it should make advance payments for financing the JNA . . .”[71]

18. This decision demonstrates that the actual leadership of the National Bank of Yugoslavia was effectively taken over by the political leadership. At the time the political leadership was reduced to the so-called rump Presidency. This process is later described by Mladan Dinkić[72]. Mr. Dinkić became the Governor of the National Bank of Yugoslavia after the fall of Milošević in the period between 2000 and 2003**.** He explains:

> “In the autumn of 1991, the Serbian leadership took complete control over Yugoslavia’s monetary policy. The NBJ [i.e. the NBY] remained the central monetary institution only on paper. Naturally, no one made this public because the main aim was to enable republican authorities to conduct monetary policy in complete secrecy . . .”[73]

In addition, Mr. Dinkić observes:

> “It is quite clear that the state, or rather the ruling party, had a complete monopoly over the issue of money. The NBJ formally created primary money by approving credits from the primary issue to banks and direct clients.”[74]

19. As we mentioned earlier the primary issues coming from the National Bank of Yugoslavia were also needed and used for the financing of the Yugoslav army. Besides that, this method of using primary issues to finance budget deficits was used by the Serbian leadership in Belgrade in the years 1992 and 1993 not only to finance their own budgets, but also the budgets of the RS and the RSK.

20. The question then arises, how did Republika Srpska and Republika Srpska Krajina use the primary issues they received? In short, these payments were used to finance the budget deficits in the RS and the RSK. A large proportion of the expenditure of the budgets of the RS and the RSK were used for military purposes. This is apparent in a large number of documents, for instance in a request for cash from the National Bank of the RSK to the National Bank of Yugoslavia in Belgrade on 24 July 1995, the money should cover the expenses of the military

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[71]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 10, also referred to as C4313; ERN 0050-1747. ERN translation L006-4205/06.

[72]Mladan Dinkić, *Ekonomija destrukcije: Velika pljacka naroda* (1996, Belgrade) ISBN**:** 868257103X.

[73]*Ibid.*, p. 81, BCS, p. 84.

[74]*Ibid.,* p. 84, BCS, p. 87.

forces and the police[75]. In the RS budget of 1993, published in the *Official Gazette* of the Republika Srpska on 30 March 1994[76], we read that the total budget is in excess of 732 thousand billion dinars. We further read that close to 731 thousand billion dinars is allocated for specified purposes. On the next page we see that most of the income is made up from credits, meaning those primary issues were being provided by the National Bank of Yugoslavia in Belgrade. This income labelled credits accounts for an amount in excess of 729 thousand billion dinars. Finally, we can read that most of the amount labelled specified purposes is used to cover "Current Expenses of the Army" with an amount in excess of 700 thousand billion dinars. Based on the relative proportions of these figures I can state that financing the Bosnian Serb army accounts for 95.6 per cent of the total budget. In addition, I can conclude that 99.6 per cent of the budget was financed through "credits". This conclusion, that almost the entire RS budget was funded by credits, is supported by a remark made by Mr. Miletić, a Director in the National Bank of Yugoslavia, in a report of his visit to the National Bank of Republika Srpska between 4 and 8 April 1994[77]. Importantly, Miletić clarifies that the credits were created through primary issue of the National Bank of Yugoslavia itself. These types of military expenditure were often described, as I have mentioned, as "special" purpose expenditure. For instance, in a decision of the Government of the Serbian Republic of Bosnia and Herzegovina on 14 May 1992, we read that, "up to 80 per cent of primary issue will be used for special purposes"[78].

21. The funds allocated to the armies of the RS and the RSK through their budgets were used to pay for all of the army needs: conscripts and other personnel, to acquire quartermaster supplies including food, and to replenish ammunition supplies, and so on, and so on. The Combat Readiness report mentioned earlier provides a good overview of the distribution of resources to the various categories of expenditure[79]. I will elaborate further on this report later in my presentation.

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[75]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 31, also referred to as C4830.

[76]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 59, also referred to as C5358, pp. 153-154.

[77]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit C4769, translation, p. 2, BCS 0211-4115.

[78]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit B3501, p. 17184.

[79]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Combat Readiness Report of the VRS for 1992, Exhibit P427, tab 32, also referred to as C4712.

The funds to cover this expenditure were allocated to the army of Republika Srpska through the Republika Srpska budget.

22. Financing its budget through the use of credits, meaning primary issues originating from Belgrade was not a mechanism used only by the RS and the RSK Governments. In the annual accounts of the FRY for 1993[80] we can read that almost the entire FRY income is listed as credits originating from the National Bank of Yugoslavia. Out of the total income, which was close to 26 thousand billion dinars, more than 25 thousand billion dinars is a credit from the National Bank of Yugoslavia. Out of this total income more than 22 thousand billion dinars were used for "Funds for financing the Yugoslav Army". This means that out of the total FRY income more than 87 per cent has been used for financing the army of the FRY. I must here mention that the reason for these enormous figures in nominal values was that the FRY, Republika Srpska and Republika Srpska Krajina were facing a situation of hyperinflation as a result of the printing of money in Belgrade, that by this point in time had lasted for a long period. Therefore the nominal figures as such must be interpreted with caution; what is important here is the relative proportion of the total income being used to fund the armies of the FRY and Republika Srpska and the large proportion being provided by the National Bank of Yugoslavia.

23. When comparing the annual accounts of the RS and the FRY for 1993, it is clear that their source of finance is the same, the primary issues printed in Belgrade. What the RS and the FRY spend their income on is also more or less the same, their armies. The only difference being that the RS has spent an even higher proportion of its income on the army, 95 per cent, compared to the FRY where "only" 87 per cent was used to cover the needs of the VJ.

24. The primary issues received from the National Bank of Yugoslavia were also to some extent redistributed back to companies in the FRY through the procurement made by the VRS from these companies. Examples of this are apparent in a letter from the RS Ministry of Defence to the National Bank of the RS, dated 18 November 1992[81]. The letter, and an attachment to it, concerns funds to be made available from the primary issues to two companies from which the procurement

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[80]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 63, also referred to as B8742, p. 2.

[81]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 34 *(a)*, also referred to as B4558.

will be made. Both companies are situated in the Republic of Serbia. It is stated in the letter to the National Bank of Republika Srpska:

> "We are asking you to make payments in YU Dinars from the quota of the credit extended from primary emission for the need of the Republika Srpska Army to the following suppliers . . ."

The use of the word "quota" in this letter shows that the provision of primary issues from the National Bank of Yugoslavia to Republika Srpska was part of a regulated financial plan. Further evidence of the use of primary issues is contained in a letter from the General Staff of the Army of Republika Srpska to the Republika Srpska Ministry of Defence, dated 24 November 1992. The General Staff of the Army of Republika Srpska gives its approval for a company named MP DD to receive a credit from the primary issue in Yugoslav dinars in order to procure material from a company in Vranje. Vranje is in the Republic of Serbia. Attached to this letter is a request for credit from the primary issue in Yugoslav dinars from a company called MP DD BLIK in Banja Luka to the RS Ministry of Defence. The company asks for approval of a credit in order to make procurements from a company in the Republic of Serbia:

> "It is known to us that the FRY (Federal Republic of Yugoslavia) has approved certain means from the primary emission for the needs of the Republika Srpska and that the realization is handled by the Komercijalna Banka from Belgrade . . .
>
> With this letter we ask you to approve us a credit of 100 million dinars, the equivalent amount at the time 213,858 Deutschmarks, for procurement of the basic fabric Drvar, manufactured by the cotton factory JUMKO from Vranje."[82]

Direct requests for financial funding and statements made by the decision-makers in Belgrade and the receivers in the RS and the RSK regarding their needs and the use of the funds in the RS and the RSK

25. The government institutions of the Republic of Serbia also provided the materials and financial funding needed by the Serb-controlled regions in Croatia during 1991 and 1992. Actually, the Republic of Serbia's Ministry of Defence played a vital role in financing the Serb-controlled regions in Croatia. This is illustrated widely in several documents. For example in two letters from the Ministry of Defence of the Republic of Serbia to the Government of the Republic of Serbia, dated 1 November 1991, concerning the provision of resources and funds to the

[82]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 35 *(a)*, also referred to as B4557.

Serbian regions in Croatia. One of these documents is a cover letter from the Ministry of Defence addressed to the Secretary of the Government of the Republic of Serbia regarding the inclusion of the subject of assistance to the Serb-controlled regions in Croatia on the agenda for that day's session of the Government. The other document, an attachment to the cover letter, is a letter from the Minister of Defence of the Republic of Serbia, Lt. Gen. Tomislav Simović, to the Government of Serbia regarding the funds to be provided by the Ministry of Defence of the Republic of Serbia to the "Serbian People" in Croatia. The letter mentions that the total necessary material and financial assistance to the Serbs in Croatia from Republic of Serbia Ministry of Defence resources until the end of 1991 would amount to close to 1.3 billion dinars[83]. Six documents are attached to this letter and provide details concerning the amounts described in the letter. It is stated that out of the total amount of 1.3 billion dinars an amount in excess of 1.2 billion dinars has been calculated on the basis of the approximate numerical strength of the needs of the Territorial Defence of the Serb-controlled regions in Croatia for November and December 1991.

The amount of 1.2 billion dinars suggested to be received by the Serb-controlled regions in Croatia from Belgrade, according to official exchange rates, was equivalent to 92.7 million DEM. These documents demonstrate that the highest political and military leaders of the Republic of Serbia were closely involved in decisions to provide financing and materials to the Serb-controlled regions in Croatia.

26. The Government of the Republic of Serbia and the Governor of the National Bank of Yugoslavia were directly involved in decisions entailing the financing of the Serb-controlled regions in Croatia. This follows from the official record of a meeting on 12 November 1992 between the representatives of the Government of the RSK and members of the Government of the Republic of Serbia, including President Slobodan Milošević and the Governor of the National Bank. The venue of the meeting was the office of Slobodan Milošević. During this meeting the parties first of all agreed on the outline and the actual size of the RSK army. Next, it was agreed that the Republic of Serbia would ensure the necessary funding for this defence system for the RSK

[83]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibits P427, tab 37 *(a)*, also referred to as C4347 — Admitted Exhibit 352 — tab 4, and P427, tab 38, also referred to as C4348 — Admitted Exhibit 352 — tab 5.

and, further, that Milošević would direct the VJ to finance the military officers and civilian personnel that remained in the RSK:

> "The way of financial help to the Krajina till the end of this year was established at the meeting. From the domain of the defence, the question of outlining the organisation of the army of the Republic of the Serbian Krajina and the question of financing were set in motion.
>
> The president, Mr. Milošević, accepted the concept of forming the defence system of Krajina and the basis of this system should consist of 23,000 people . . .
>
> The resolution to immediately start the planning of the means for the needs of the army and the police, the way it was in 1992, was accepted. This will be accomplished through the MOD of the Republic of the Serbian Krajina and the MOD of the Republic of Serbia.
>
> The president Milošević stated his attitude that the means for the maintenance of the technical devices should be planned via the Yugoslav army and he said that he will help in realising it and that he will initiate the Yugoslav army to finance the active officers and the civil personnel that stayed in Krajina. All other needs for financing the defence should be planned through the MOD. It was agreed that they would immediately start to plan the means in order to finish this process in time."[84]

In other words, in November 1992 it was decided in Belgrade, by Mr. Milošević, among others, what the army of the RSK should look like, how big it would be and how it should be organized. Also, reference was made to a practice of financing which apparently was in place during 1992. Explicitly it was decided that this way of financing would be continued after 1992. Further it is confirmed that the Yugoslav army would take care of "technical devices" and of payment of active officers and civil personnel. If that were not enough, it was decided that all other financial needs would be taken care of by the Serbian Ministry of Defence.

27. Later, when Milošević was put in prison in Belgrade, he was interviewed as a suspect and stated on 2 April 2001:

> "As regards the resources spent for weapons, ammunition and other needs of the army of Republika Srpska and the Republic of Serbian Krajina, these expenditures constituted a state secret . . ."[85]

It is noteworthy to see that Milošević talks about spending for resources for both the Bosnian Serb army and the Republic of Serbian Krajina as two of a kind. Not only does Milošević take

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[84]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 11, also referred to as C4682 — Admitted Exhibit 352 — tab 16, p. 02012230.

[85]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 3, also referred to as K2575, p. 2.

responsibility for providing resources to both these armies, he also points at this being a State secret.

28. As is well known, in earlier years Milošević had stated that the Republic of Serbia spent substantial amounts of money on Serbs outside Serbia. For instance, in a statement reported by the Yugoslav News Agency, *Tanjug*, on 11 May 1993, Milošević remarks:

> "In the past two years, the Republic of Serbia — by assisting Serbs outside Serbia — has forced its economy to make massive efforts and its citizens to make substantial sacrifices. These efforts and these sacrifices are now reaching the limits of endurance. Most of the assistance was sent to people and fighters in Bosnia-Herzegovina.
>
> . . . . . .
>
> 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."[86]

29. Colonel General Ratko Mladić provided an analysis of the importance to the VRS of the Yugoslav finances to the Serb-controlled regions in Bosnia and Herzegovina in an early report to the VRS Main Staff, dated September 1992. Regarding the establishment of the VRS and the transformation of parts of the former JNA into the VRS, Mladić stated:

> "The decisions of the Assembly of Republika Srpska (RS) of 12 May 1992 enabled the armed people, the Serbs in the former JNA and the available material and equipment (to be used) to transform the units and form the army of Republika Srpska . . ."[87]

On the transformation of the JNA into the VRS, Mladić continues:

> "Our army is one of the rare ones in history to have started a liberation war with a very solid material base especially as concerns combat hardware, ammunition, and food reserves. Apart from the army, the civilian population and institutions are also using a large quantity of this, especially food and fuel."[88]

Madam President, I see that the time is approaching 11.20, and if you think it would be an appropriate moment for the Court to break, I will stop at this time?

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[86]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 56, also referred to as C4721, p. 00359910.

[87]ICTY, *Prosecutor* v. *Slobodan Milošević,* case No. IT-02-54-T, Exhibit P427, tab 2, also referred to as B5507, ERN 0104-2296, ERN translation 0110-3317.

[88]*Ibid.*, ERN 0104-2299, ERN translation 0110-3320.

The PRESIDENT: Yes, thank you. We'll take a short break of ten minutes now. Thank you.

The Court adjourned from 11.20 to 11.30 a.m.

The PRESIDENT: Please, be seated. You have the floor, Mr. Torkildsen.

Mr. TORKILDSEN:

30. The "Combat Readiness Report" of April 1993, issued by the Main Staff of the Army of the RS, reinforces Mladić's analysis. This report demonstrates the extent to which the FRY and the VJ financed the VRS in 1992 and 1993. One chapter of this report has the heading "Planning of the Development and Financing of the VRS Army". It is mentioned in relation to the total expenditure for the VRS: "By 28 February 1993, which can be taken as the end of the 1992 budget year, the amount spent was 81,932,956,000"[89]. It is also mentioned that this figure constituted 153.21 per cent of the approved budget of the VRS. It is further stated that:

> "It is important to mention that the salaries of officers, non-commissioned officers, soldiers under contract as workers in the RS Army, who until 19 May 1992 had been members of the JNA, continued to be the responsibility of the FR Yugoslavia, so that these expenditures were not debited from the budget of the Army of Republika Srpska."[90]

Contained within this chapter is a detailed breakdown of the total amount of expenditures of the VRS that I have referred to. Salaries of conscripts, non-commissioned officers and soldiers doing their regular military service, accounted for 58.49 per cent of the total expenditure, while quartermaster support accounted for 29.92 per cent of the total. The salaries accounted for a high proportion of the total budget; this should be no surprise considering that, "[t]he budget was drawn up for an army which should have numbered 100,000 soldiers, while its average strength was 212,000 troops"[91].

31. This report clarified that, in effect, the Bosnian Serb army fell directly under the financial responsibility of Belgrade. This is also exactly the way it was understood and functioned in

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[89]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 32, also referred to as C4712, pp. 127-132.

[90]*Ibid.*, p. 129.

[91]*Ibid.*, p. 130.

practice. A good example of this responsibility is found within a confidential internal letter of the Krajina Corps of the Bosnian Serb army on 11 September 1992:

> "I am asking you to settle this matter with the GS (General Staff) of the Army of SRJ, who should, and in our opinion has a duty to, help us financially for the purpose of successful combat actions."[92]

This shows not only that the Bosnian Serb Army did have a supply problem, but at the same time, apparently, it is considered to be just normal for the army of the Federal Republic of Yugoslavia to resolve this problem financially, and apparently it did.

32. Again, referring to the report issued by the Main Staff of the army of the RS in April 1993, in which the VRS analyses its combat readiness and activities since its formation on 20 May 1992; there was no war production to meet the needs of the VRS and no imports, except from the FRY[93]:

> "it was only thanks to the maximum efforts and commitment on the part of all factors in the Republic and the Army, and the assistance of FRY and donors that the basic necessities for life and combat activities could be assured. This situation remained basically unchanged until the end of the year."[94]

33. The situation described in the Combat Readiness Report, remained unchanged in 1993 and also in 1994. Towards the end of 1993, a meeting took place at the headquarters of the Yugoslav army General Staff on the topic of co-ordinating tasks between the three armies (VJ, VRS and army of the RSK). In preparation for this meeting, a memorandum dated 17 December 1993, was produced by the Chief of the Office of the RSK army Commander Cedo Radanković[95]. This memorandum demonstrates that Belgrade continued its financing of the two armies, outside the Yugoslav army (VJ). Moreover, it was expected to continue to do so into 1994:

> "We have learned unofficially that of the above total balance of requirements for 1994, the Federal Government will only be able to provide USD 850 million [1.5 Billion DEM] for all three armed forces instead of USD 3.29 billion, i.e., 25.82 per cent of the stated requirements. For the SVK this would amount to USD 79.43 million instead of USD 307.30 million.

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[92]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 51, also referred to as C4652.

[93]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 32, also referred to as C4712, Combat Readiness Report, ERN BCS 0060-7424, ERN translation 0110-3114.

[94]*Ibid.,* Combat Readiness Report, ERN BCS 0060-7428, ERN translation 0110-3120.

[95]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 52, also referred to as C4752.

> Aware of the situation that we are all in together and the continuing unfavourable trends in all areas of life, we ask that at least these minimal finances not be reduced any further."[96]

The document refers explicitly to the provision of money "for all three armed forces", being the armies of Republika Srpska, Republika Srpska Krajina and the Federal Republic of Yugoslavia. It is clear from this memorandum that all three armies are being financed under one plan. And also, it refers to "the situation that we are all in together".

34. In the minutes of the 40th [50th] session of the National Assembly of Republika Srpska held in Sanski Most on 15 to 16 April 1995, the Commander of the Main Staff of the VRS, Colonel General Ratko Mladić, presented a report regarding the current situation in the VRS[97]. It was stated in the report that the VRS received a large part of their ammunition from the supplies inherited from the JNA and from supplies later provided by the VJ. A detailed breakdown of these supplies appears in the report[98]. For instance, it is mentioned regarding the infantry ammunition, which had been consumed by the VRS, that 42.2 per cent came "from supplies inherited and found in the former JNA barracks; 47.2 per cent provided by the Yugoslav Army . . .". This means that 89.4 per cent of the total infantry ammunition consumed by the VRS had been supplied by the JNA and later by the FRY Army.

35. In a document dated 5 May 1994, containing information from the Sarajevo-Romanija Corps Command, a corps of the VRS, it states that regarding the conscript salaries for February 1994, the VRS General Staff was having problems securing cash for these salaries from the National Bank of Yugoslavia:

> "In our daily contacts with the National Bank of Yugoslavia, due to substantial problems we have so far been unable to secure that cash, they have promised us that they would secure the cash by 6 May 1994, so that the payment would commence on 9 May 1994 at the latest . . ."[99]

This supply of cash was made, pursuant to an agreement with the National Bank of Yugoslavia in Belgrade and will be further elaborated upon later in this presentation.

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[96] *Ibid.,* ERN 0207-8161, ERN translation L004-6455/56.

[97] ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 54, also referred to as C4920, pp. 5-26.

[98] *Ibid.,* p. 18. ERN 0084-5822; ERN translation L000-4909.

[99] ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 55, also referred to as C4777, p. 1.

Primary issues and payments

36. A decision was taken by the Government of the Serbian Republic of Bosnia and Herzegovina on 14 May 1992, regarding the use of the funds available from the primary issues[100]: "Primary issue of the National Bank of Yugoslavia/NBY will be used in accordance with the NBY Decision on goals and tasks of the common monetary policy . . ."

This strongly suggests that a decision must have been taken in Belgrade already in May 1992 regarding the provision and the use of the primary issue. We have seen that in fact the use was for the benefit of the Bosnian Serb army. This is absolutely clear from the budgets I have presented.

In short, the National Bank of Yugoslavia acting under the instructions of the political authorities was printing money for Bosnian Serb use. From the decision presented, it is clear that the purpose of these funds was: "to avoid the adverse effects of war on the economy of the Serbian Republic of Bosnia and Herzegovina up to 80 per cent of primary issue will be used for special purposes". When I reviewed the budget of Republika Srpska earlier in my presentation, I showed the Court what these "special purposes" in fact were: the Bosnian Serb army.

37. As I have so far presented, the Government of the Serbian Republic of Bosnia and Herzegovina made direct petitions to the National Bank of Yugoslavia in Belgrade for the immediate transfer of funds. The response is reflected in the presented budgets and the annual accounts of the RS. The situation with lack of financial resources and urgent requests for such from Belgrade was also the same for Republika Srpska Krajina. This is very well illustrated by the observation of Martić, at that time the RSK Minister of the Interior, to Milošević: "The RSK has no real sources from which to fill its budget, as you certainly know."[101]

The creation of a monetary federation and its impact on financing the RS

An overview of the situation

38. During 1992, a single, unified monetary system was initiated and implemented by the FRY with the co-operation of the RS and the RSK. This was done by establishing the National

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[100]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 24, also referred to as B3501 registry, p. 17184.

[101]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 21, also referred to as C4435.

Banks of Republika Srpska and Republika Srpska Krajina and by making sure that these two national banks were under the control of and directly subordinated to the National Bank of Yugoslavia in Belgrade. The central purpose of this integrated monetary system was to facilitate the transfer of funds between the territories of the FRY, the RS and the RSK. The unified monetary system eventually created a single economy operating across the three Serb-controlled regions. It is clear from the budgets and annual accounts of Republika Srpska and Republika Srpska Krajina that primary issues were a major financial vehicle used by the decision makers in the FRY and the Republic of Serbia to implement their programme to provide financial support to the Serb-controlled regions in Bosnia and Herzegovina and Croatia in the period from the second half of 1992 until the end of 1993.

39. As mentioned earlier in my pleadings, a crucial mechanism for the transfer of funds and for the efficient operation of the monetary federation was the SDK, the Public Accounting Service also translated as the Public Auditing Service. The SDK was used to transfer funds between the FRY and the Serb-controlled regions in Bosnia and Herzegovina and Croatia in the period 1992 to 1995.

40. The system of national banks of the former SFRY was gradually restructured in the period 1992-1994. The National Bank of Republika Srpska (the NBRS) and the National Bank of Republika Srpska Krajina (the NBRSK) were established in the summer of 1992 with the assistance and under the supervision of the National Bank of Yugoslavia, and were to be controlled by and subordinated to the NBY. Decisions to provide financial assistance to the Serb-controlled regions in Bosnia and Herzegovina and Croatia were in part implemented through the primary issues granted by the National Bank of Yugoslavia to the National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina.

41. In 1992 primary issues from the National Bank of Yugoslavia were put at the disposal of the Republika Srspka and the Republika Srspka Krajina. The purpose of the payments made to the Governments of the RS and RSK was to compensate for their lack of normal financing and income. The result of the payments was the financing of the Serb institutions, both military and civil, present in these areas during 1992 to 1995. I would like to explain to the Court and elaborate on how these relationships worked by referring to specific documents.

42. The creation of a new federated system of national banks was required because neither Republika Srspka nor Republika Srspka Krajina had any significant source of financing. At the same time, their financial needs were persistent and acute. The financial dependence of the RS on the FRY is shown by an address made by Major General Gvero, VRS Main Staff, during the 34th People's Assembly of the RS. He informed the Assembly, in a meeting held on 29 September 1993[102], that: "We had not budget or material supplies for the war to rely on. We have not purchased a single plane, helicopter, tank, artillery piece, etc."[103]

43. The general financial dependence of the Republika Srspka Krajina on the Republic of Serbia is demonstrated by documents from 1991 to 1993 — most telling, in a document I have previously referred to, a letter dated 28 April 1993, from Milan Martić, the RSK Minister of the Interior, to Slobodan Milošević, and others, stating: "The RSK has no real sources from which to fill its budget, as you certainly know."[104]

44. This statement made by Milan Martić is exactly pinpointing what was also the situation in the RS: the RS had no real sources of income to balance its budget in order to cover the needs of the VRS and other expenses. This is clearly apparent when reviewing the Republika Srpska Annual Accounts for 1992 and the re-balanced budget for 1993[105], where it is clear that Republika Srpska has very little regular income originating from taxes and duties to pay for their expenses. I have previously referred to the re-balanced RS budget for 1993 published in the *Official Gazette* of Republika Srpska on 30 March 1994 where the entire income in the budget originates from primary issues, produced in Belgrade, and where more than 90 per cent of this income is used for the Bosnian Serb army.

45. A detailed explanation of the relationship between the National Bank of Republika Srpska and the National Bank of Yugoslavia is found in the Annual Report of the National Bank of

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[102]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 13, also referred to as B8287, translation, p. 2.

[103]*Ibid.,* ERN 0048-0968, ERN translation 0091-6773.

[104]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 12, also referred to as C3383 — Admitted Exhibit 352 — tab 20.

[105]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibits P427, tab 65, also referred to as B8744 and P427, tab 59, also referred to as C5358.

Republika Srpska for 1992[106]. Here we read: "In the beginning the National Bank of Republika Srpska was given special support by the National Bank of Yugoslavia."[107]

"Special support" took the form of "work methodology, printing of money". Moreover, the Annual Report states that: "The exchange rate for [RS] dinar was tied to FRY dinar, since the ratio was 1:1."[108] This statement is consistent with the summarizing remark in the same document that, after Bosnia and Herzegovina declared itself an independent State on 3 March 1992, "the territory of Republika Srpska remained within the same economic system as the FRY. This practically meant that the National Bank pursued the same monetary policy as the NBY."[109]

46. In a report by the National Bank of Republika Srpska on the meeting with the Bankers' Association of the Republika Srspka, held in May 1994[110], this report stated that: the monetary policies of the RS and the FRY were the same, the economic system was the same. The Republika Srspka and the FRY belonged to a unified payment system, monetary system and unified foreign exchange market. This document provides further evidence of the complete integration of the economic and monetary systems of the RS and the FRY.

47. The primary benefit and primary purpose of the federated restructuring of important aspects of the banking industry and of the creation of the federated banking system was to ensure the closest of financial links between the FRY and its satellite entities, Republika Srpska and Republika Srpska Krajina. Thus, in 1992, the period covered by the NBRS Annual Report, the finances of the FRY and the RS and the RSK were so closely integrated that Republika Srpska and Republika Srpska Krajina were themselves hampered by the embargo placed on the FRY. The FRY was, in practice, the only trade and commercial partner of both Republika Srpska and Republika Srpska Krajina. However, the modifications in the control of the national banks enabled a more formalized and, at the same time, more subordinated relationship between Republika Srpska, Republika Srpska Krajina and the FRY.

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[106]ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 14, also referred to as C4769. This exhibit contains several documents, ERN 0211-4196-4209.

[107]*Ibid.,* ERN 0211-4196-4209; page numbers absent; the statement is on the page immediately following the table of contents, the registry page number (top right) is p. 17282.

[108]*Ibid.,* ERN 0211-4206, registry page number p. 17275.

[109]*Ibid.,* ERN 0211-4199, registry page number p. 17281.

[110]*Ibid.*, ERN 0211-4146-4154, registry page number pp. 17329-17323.

The relationship between the National Bank of Yugoslavia (the NBY) and its subordinated branches, the National Bank of Republika Srpska (the NBRS) and the National Bank of Republika Srpska Krajina (the NBRSK)

48. A report written by Milivoje Miletić, then a Director of the National Bank of Yugoslavia[111]: Miletić was assigned by the management of the National Bank of Yugoslavia to analyse and review the operations of the National Bank of Republika Srpska in terms of the elements to implement the Monetary Policy Programme in the FRY, Republika Srpska and Republika Srpska Krajina. Miletić was visiting the National Bank of Republika Srpska between 4 and 8 April, 1994. Miletić in his report analyses the restructuring of the national banking system; details the three discrete stages of the restructuring; and explains the workings of the restructured banks.

> "*Phase One*: The period when the RS formed the National Bank of RS which performed the function of the central bank in its territory. This period began in the second half of 1992.
>
> *Phase Two*: The period when the 'Elements for the implementation of the programme' began to be applied.
>
> *Phase Three*: The period when the 'Programme for the Reconstruction of the Monetary System and the Strategy for the Economic Recovery of Yugoslavia' was applied."

Phase One

49. Miletić's report characterizes the genesis of Phase One:

> "This was a time when certain institutions of Republika Srpska were formed, including the National Bank of Republika Srpska [the NBRS]. In such circumstances, it was normal to issue primary money on the basis of previous experience, coming primarily from the National Bank of Yugoslavia."[112]

During that period, the monetary and credit policy in Republika Srpska was carried out primarily through expert co-operation between the National Bank of Yugoslavia and the National Bank of Republika Srpska.

Miletić's report, in addition to confirming that the National Bank of Yugoslavia provided "expert assistance", as we read in the 1992 NBRS Annual Report — quoted earlier — also states

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[111] *Ibid.*, ERN 0211-4114-0211-4219.

[112] *Ibid.*, 0211-4115, translation, p. 2.

that the National Bank of Yugoslavia in Belgrade directly provided Yugoslav dinars as well, and further that the largest proportion was given for the budget of the RS:

> "From the second half of 1992 onwards, primary money was issued through banks and the budget so that on 31 December 1992, the balance of primary issue credits was 77.8 billion dinars [the equivalent of 166.4 million DEM]. About 14.3 per cent of these credits, or 11.1 billion dinars, were given through the banks, while the remaining 85.7 per cent or 66.7 billion dinars [the equivalent of 142.6 million DEM] were given for the budget of Republika Srpska."[113] [Equivalent to 166.4 million DEM.][114]

Phase Two

50. The second phase saw the implementation of the "Programme to Regulate a Single Monetary Policy in the FRY, the RS and the RSK". This programme came into force on 1 March 1993, starting with the establishment of "full co-operation" between the National Bank of Yugoslavia, the NBRS and the NBRSK. However, it readily becomes clear from the report that "co-operation" is inappropriate as a description of the relationship between the three national banks. The National Bank of Yugoslavia had the primary role and the NBRS and the NBRSK took decidedly secondary roles.

51. Miletić's report goes on to state that the NBRS and NBRSK *"would bring all monetary and credit regulation instruments in line with relevant monetary and credit regulation decisions of the National Bank of Yugoslavia"*[115]. Moreover, it was especially stressed that the *"interest rate policy and thus the discount rate, the compulsory reserves policy . . . would be completely co-ordinated with relevant instruments of the National Bank of Yugoslavia"*. The National Bank of Yugoslavia would issue orders for the use of the foreign currency reserves from the National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina[116].

52. So, the assets of these national banks fell under the direct control of the Belgrade-based National Bank of Yugoslavia. Miletić concludes that, in the implementation of Phase Two of the policy "the National Bank of Republika Srpska fully co-operated with the NBY".

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[113] *Ibid.,* ERN 0211-4115, translation, p. 2.

[114] The exchange rate data is based on data provided directly by the Governor of the NBY or upon the figures published daily in the Belgrade-based newspaper, *Politika*. For this calculation, the data is taken from what was published in *Politika* on 2 December 1992.

[115] *Ibid.,* ERN 0211-4116, translation, p. 3.

[116] *Ibid.,* ERN 0211-4117, translation, p. 4.

Phase Three: "Programme for the Reconstruction of the Monetary System and the Strategy for the Economic Recovery of Yugoslavia"

53. The programme created a single monetary region to include the FRY, the RS and the RSK. This programme came into effect on 1 March 1994. Here, the NBRS is commended by Miletić because: "As legal tender, the new dinar functions fully in the territory of the Republika Srpska."[117] Additionally, "[t]he bank's interest rate policy is being guided by the National Bank of Republika Srpska in accordance with the intentions of the Programme"[118]

54. The successful monetary integration between the RS and the FRY is also confirmed by a letter, dated 2 June 1995, from the Governor of the National Bank of Republika Srpska to the National Bank of Yugoslavia. This letter concerns the withdrawal and replacement of banknotes by the National Bank of Yugoslavia:

> "During the period of banknote replacement National Bank of Republika Srpska collected 12,506,000 dinars [the equivalent at that time of 12,506,000 Deutschmarks] . . . The said banknotes are hereby delivered to the treasury of the National Bank of Yugoslavia in order to be replaced by the appropriate amount of valid banknotes."[119]

55. In order to facilitate and legitimate the third phase of the programme, the NBRS would have needed to pass domestic legislation in the form of "National Bank Laws" and "Laws on Banks". Miletić's report notes, however, that, due to "delay" and the fact that "by-laws have not been passed by the competent organs" the NBRS took the step of "applying existing regulations of the National Bank of Yugoslavia and regulations passed by the competent organs of the Federal Republic of Yugoslavia"[120].

56. Just as the interest and discount rates of the Republika Srpska and Republika Srpska Krajina were to be governed by those of the National Bank of Yugoslavia, so too was the situation with the banking regulations. In this context, it is significant that the title given to phase three of the process described above was "Programme for the Reconstruction of the Monetary System and the Strategy for the Economic Recovery of Yugoslavia". There is no mention here of the economic

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[117] *Ibid.,* ERN 0211-4120, translation, p. 7.

[118] *Ibid.,* ERN 0211-4120, translation, p. 7.

[119] ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 16, also referred to as C4810.

[120] ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 14, also referred to as C4769, BCS 0211-4120, translation, p. 7.

recovery of the RS or the RSK as independent entities. So, the programme is on "the Economic Recovery of Yugoslavia" and the interest rates of the National Bank of Republika Srpska and Republika Srpska Krajina are to be governed by the National Bank of Yugoslavia, clearly indicating the subordinated relationship of the national banks of the RS and the RSK to their parent bank in Belgrade, the NBY.

57. The operation of the new dinar, the aim of Phase Three, is governed by "Instructions for work with the National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina"[121], which detail the terms and operating conditions of the single monetary policy. The yearly activities of the three entities operate in a structure which, under widely accepted accounting rules, would govern the relationship between a parent company and its subsidiaries. This is what these "instructions" "regulating a single monetary policy in the Federal Republic of Yugoslavia and Republika Srpska and the Republic of Serbian Krajina" tell the various banks to do:

> "9. To form a single consolidated balance sheet of banks and balance sheet of the National Bank of Yugoslavia, the National Banks of Republika Srpska and the Republic of Serbian Krajina will submit their balance sheets and the balance sheets of the banks from those areas for December 1993 and January 1994 by 10 March this year. For the following months, these balance sheets will be submitted to the National Bank of Yugoslavia Centre for Computer Processing and Statistics according to the deadlines that have been established by the National Bank of Yugoslavia for banks from the territory of the Federal Republic of Yugoslavia. The Research Centre of the National Bank of Yugoslavia will make separate monetary policy projections for Republika Srpska and the Republic of Serbian Krajina and monitor the fulfilment of these projections."[122]

"Submit their balance sheets and balance sheets of the banks from those areas . . . 10 March this year." The order is dated "Belgrade, 28 February 1994."

58. We have seen how the National Bank of Republika Srpska regarded its relationship with Belgrade and we have seen the instructions from Belgrade to the National Bank of Republika Srpska tell us about the actual structure of the relationship. We have also seen that the National Bank of Yugoslavia's Director Miletić regarded the subsidiary banks as complying well with the regulations and governing protocols emanating from Belgrade.

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[121] ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 15, also referred to as C4764.

[122] *Ibid.*, BCS 0207-6895, translation, p. 3.

59. If all of the issues and documents discussed before would leave any doubt about the true nature of the financial structure of these three entities, the Official Note "from the meeting of the governors of the three national banks", which took place on 12 May 1994, cannot fail to leave the Court in any doubt whatsoever. This note clearly confirms the subordinated role of the National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina in their relationship to the National Bank of Yugoslavia:

> "2. The National Bank of Republika Srpska and the National Bank of the Republic of Serbian Krajina operate as the main branches of the Yugoslav National Bank and under its authority alone.
>
> . . . . . .
>
> 4. The National Bank of Republika Srpska and the National Bank of the Republic of Serbian Krajina shall implement the decisions of the Yugoslav National Bank in a disciplined manner.
>
> . . . . . .
>
> 7. The Governor of the National Bank of Republika Srpska and the Governor of the National Bank of Republika Srpska Krajina are required to attend the sessions of the Council of the Yugoslav National Bank without a voting right."[123]

Concluding remarks

60. Madam President, Members of the Court, I have demonstrated to you how the Belgrade-controlled financing was twofold, directed at both Serb-controlled areas in Bosnia and Herzegovina and Croatia. The money went directly towards financing the Serb military units and civilian government organs in both of these Statelets.

The documents I have both referred to and presented demonstrate that funding for the army of the Republika Srpska, the army of the Republika Srpska Krajina and the army of the Federal Republic of Yugoslavia emerged from a single financing plan for all three Serb armies. Further, these documents show that there existed only one real source for providing funding for these armies: the National Bank of the Federal Republic of Yugoslavia, which was under the total control of the Serbian political leadership.

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[123] ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, Exhibit P427, tab 18, also referred to as C4779, pp. 2 and 3.

The Federal Republic of Yugoslavia provided the financial resources to the army of the Republika Srpska and the army of the Republika Srpska Krajina both directly and indirectly: directly, by paying the salaries for the officers in these armies; indirectly, through the provision of primary issues from Belgrade to the other two Serb entities to cover the budget deficits of the Republika Srpska and the Republika Srpska Krajina in 1992 and 1993.

In order to streamline all of this, the economies of the Federal Republic of Yugoslavia, Republika Srpska and Republika Srpska Krajina were organized into a structure that can best be described as a single economic and monetary entity.

The government institutions of the Federal Republic of Yugoslavia controlled, implemented and organized this entity.

Madam President, this ends my pleading on financial issues. I would like to ask the Court to give the floor to Professor Condorelli.

The PRESIDENT: Thank you very much, Mr. Torkildsen. When the *compte rendu* is being prepared of your presentation it will be necessary to indicate, when you do intermittently refer to the "bundle of documents", exactly which page of those documents is being referred to, at what juncture and for this to be given a number in the judges' folder. Thank you.

I call on Professor Condorelli.

M. CONDORELLI :

LE GENOCIDE EST ATTRIBUABLE AU DEFENDEUR — CONCLUSIONS JURIDIQUES

(Première partie)

1. Introduction (rappel)

L'attribution au défendeur des comportements, interdits par la convention de 1948, de ses organes *de jure* ou *de facto*, ainsi que des comportements des personnes ou groupes de personnes ayant agi sur les instructions ou les directives ou sous le contrôle du défendeur

1. Madame le président, Messieurs les juges, c'est un grand honneur pour moi d'apparaître encore une fois devant votre Cour et je suis très reconnaissant au Gouvernement de la Bosnie-Herzégovine de la confiance qu'il m'a accordée en me demandant de plaider en sa faveur. Ma mission, dans cette première intervention, est de vous présenter les arguments juridiques

permettant d'établir que le génocide perpétré contre les non-Serbes de Bosnie-Herzégovine engage bien la responsabilité internationale du défendeur, du fait que les comportements constitutifs du génocide lui sont attribuables. Après moi, le professeur Pellet viendra compléter l'exposé relatif à l'attribution au défendeur d'autres conduites (conduites «ancillaires») qui sont couvertes aussi et interdites par la convention de 1948. Par la suite encore, je vous demanderai la permission de revenir encore à la barre pour compléter l'analyse, en discutant d'abord des effets juridiques produits par la reconnaissance à posteriori par le défendeur de son implication dans le génocide, et puis, demain matin je pense, de l'attribution au défendeur des manquements à l'obligation de prévention et de répression du génocide.

2. Nous allons baser nos exposés sur l'ensemble des données, tant de caractère factuel que juridique, qui ont été illustrées dans les pièces écrites du demandeur et par ses conseils qui ont pris la parole avant moi. Il vous a été démontré en premier lieu ce qui, en réalité, n'avait nul besoin d'être démontré, tellement c'est un événement notoire, auquel nous avons tous assisté dans l'horreur : un effroyable génocide, correspondant parfaitement à la définition prévue par la convention de 1948, a bien été commis contre les populations non serbes de Bosnie-Herzégovine. Déjà au cours de cette démonstration il a été possible de relever un nombre impressionnant de facteurs, d'indices, de preuves montrant du doigt combien ce génocide met directement en cause le défendeur, et combien il a d'ailleurs été perçu par la communauté internationale comme le mettant en cause. Il suffit de rappeler la teneur nette des résolutions pertinentes des divers organes des Nations Unies des années 1992 et suivantes que le professeur Franck a citées la semaine dernière. Ces facteurs, indices et preuves ont été ensuite étayés systématiquement au travers d'une présentation analytique des faits pertinents : des faits dont la véracité est établie, pour la majorité d'entre eux, grâce à des vérifications judiciaires approfondies et impartiales, résultant de procédures contentieuses garantissant pleinement les droits de la défense, comme c'est indiscutablement le cas pour le Tribunal pénal international pour l'ex-Yougoslavie. Ai-je besoin de rappeler l'enseignement de votre Cour, lorsqu'elle — tout récemment — a mis en évidence, dans votre arrêt du 19 décembre dernier, ce qui suit :

> «une attention particulière mérite d'être prêtée aux éléments de preuve obtenus par l'audition d'individus directement concernés et soumis à un contre-interrogatoire par

des juges rompus à l'examen et à l'appréciation de grandes quantités d'informations factuelles, parfois de nature technique»[124].

3. Ces examens des faits ont permis — pour ainsi dire — de disséquer la machine génocidaire : sa conception, les pièces maîtresses de son agencement, son fonctionnement tout entier révèlent, si l'on y regarde de près, la main de l'appareil gouvernemental de l'époque du défendeur. En somme, il est déjà apparu que le génocide a eu lieu grâce à ses décisions et à son action, qu'il a été exécuté à son instigation, sous sa direction et en appliquant ses directives. La responsabilité du défendeur est donc engagée non seulement au plan moral et politique, mais juridique aussi, en application des principes établis du droit international en vigueur. Les principes que je suis en train maintenant d'évoquer, et dont la Bosnie-Herzégovine demande à votre Cour de faire application, sont bien entendu ceux relatifs à l'attribution des faits à l'Etat, dont le contenu et la portée ont été explicités vendredi dernier par le professeur Pellet.

4. Permettez-moi de rappeler maintenant, pour mémoire, quels sont les critères d'attribution apparaissant en principe davantage pertinents aux fins de mon exposé. Le premier est celui d'après lequel l'Etat se voit attribuer tous les comportements de tous ses organes, et ce même au cas où ceux-ci auraient agi en outrepassant leur compétence ou en contrevenant aux instructions reçues : c'est ce que proclament les articles 4 et 7 des articles sur la responsabilité des Etats mis au point par la Commission du droit international. Le second principe est celui, codifié à l'article 8 de ce texte, prévoyant que le comportement d'une personne ou d'un groupe de personnes ne revêtant pas le statut d'organe de l'Etat peut toutefois être considéré comme un fait de l'Etat, d'après le droit international, si cette personne ou ce groupe de personnes, en adoptant ce comportement, «agit en fait sur les instructions ou les directives ou sous le contrôle de cet Etat».

5. Il me semble essentiel, à titre liminaire, Madame le président, d'attirer votre attention sur des points importants, relatifs à l'interprétation qu'il convient de donner de chacun de ces deux principes : des points que le professeur Pellet a par ailleurs déjà discutés en profondeur.

6. Concernant le second principe évoqué, il convient d'insister sur un aspect. L'imputation à l'Etat des comportements d'individus ne faisant pas partie de son appareil organique ne peut intervenir que lorsqu'il est prouvé que l'individu en question, tout en ne revêtant pas la qualité

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[124] Affaire des *Activités armées sur le territoire du Congo (Congo c. Ouganda)*, arrêt du 19 décembre 2005, par. 61.

d'organe de l'Etat, a agi effectivement «pour son compte» : telle était la formulation, «pour son compte», retenue par la Commission du droit international en première lecture du projet sur la responsabilité internationale des Etats. On sait qu'en deuxième lecture, puis dans la version finalisée du texte des articles, la formulation du principe a été sensiblement retouchée par souci de clarté et de précision : la Commission a voulu mieux spécifier ce que «pour le compte» veut dire, en distillant la pratique internationale qui s'est épaissie considérablement ces derniers temps. Le libellé finalement retenu met en exergue qu'un comportement donné d'un individu ou d'un groupe d'individus doit être considéré comme effectué «pour le compte» d'un Etat (et donc attribué à celui-ci), dans trois cas de figure : *primo*, quand l'Etat a donné aux individus en question les «instructions» afin qu'ils agissent de la sorte; *secundo*, quand lesdits individus se sont conformés aux «directives» de l'Etat; *tertio*, s'ils ont agi «sous le contrôle» de cet Etat. A maintes reprises la Commission du droit international a insisté sur le fait qu'il s'agit de *conditions alternatives*[125] : le professeur Pellet a déjà cité le rapport de la Commission à l'Assemblée de 2001, où il est bien souligné que «dans le texte de l'article 8 les trois termes «instructions», «directives» et «contrôle» sont disjoints; il suffit d'établir la réalité de l'un d'entre eux»[126]. En somme, si par exemple l'Etat a donné des «orientations précises» (c'est un terme qu'utilise la Commission)[127], il n'y aura pas besoin de prouver de surcroît qu'il a directement contrôlé les actions des individus s'étant conformés à ses «directives» pour que ces actions lui soient imputées.

7. J'en viens maintenant au premier principe évoqué, le plus central de tous : celui d'après lequel sont attribuables à l'Etat tous les actes et toutes les omissions de ses organes. Le seul point que j'entends souligner à nouveau à titre liminaire touche à la notion même d'organe de l'Etat; il s'agit de la question de savoir quel est l'ordre juridique auquel il faut avoir recours afin de déterminer si, oui ou non, une personne ou un groupe de personnes revêt le statut d'organe de l'Etat. La réponse à cette question ne fait aucun doute en règle générale : il va de soi que chaque

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[125] L'idée selon laquelle les conditions de l'article 8 sont alternatives est ainsi exprimée, lors de la finalisation de l'article 8, par le président du comité de rédaction, le juge Simma : «Il y a lieu de noter qu'il s'agit-là de critères qui peuvent se substituer l'un à l'autre : le comité de rédaction a estimé qu'il ne faut pas restreindre la portée de l'article 8 en exigeant le cumul des deux critères [par exemple, direction et contrôle]», 2562e séance, 13 août 1998, *in Annuaire de la Commission du droit international*, 1998, vol. I, p. 306, par. 79.

[126] Rapport de la Commission du droit international, cinquante-troisième session, 2001, A/56/10, p. 114, par. 7.

[127] *Ibid.*

Etat jouit du droit souverain de s'organiser à sa façon et que partant c'est à son droit interne qu'il revient d'établir qui sont ses organes. Il s'ensuit que, lorsque l'ordre juridique interne de l'Etat accorde le statut d'organe, l'existence de ce statut est incontestable sur le plan international : tous les agissements de tous ceux qu'un Etat qualifie, au moyen de son droit interne, comme ses organes sont des faits de l'Etat en droit international.

8. Mais la primauté absolue du droit interne pour ce qui est de l'identification des organes de l'Etat ne peut signifier «exclusivité absolue». En effet, il y a des cas dans lesquels le droit international a son mot à dire dans ce domaine, notamment lorsqu'un Etat, seul maître de son droit interne, tenterait d'utiliser ce droit de manière dolosive afin d'échapper à sa responsabilité internationale et dans ce but éviterait d'octroyer le statut d'organe à des personnes ou des groupes de personnes dont il se sert effectivement en tant qu'organes. Or, «il n'est pas … contestable qu'un Etat ne peut invoquer son droit interne pour se soustraire à sa responsabilité», alors que «on peut invoquer le droit interne d'un Etat pour établir sa responsabilité internationale» (c'est le professeur Bennouna qui l'avait observé dans les débats de la Commission)[128]. Par conséquent, il fallait, comme le dit le rapporteur spécial James Crawford, répondre de façon appropriée «au souci très net de plusieurs gouvernements d'éviter que la qualification par le droit interne de l'entité considérée ne soit utilisée pour échapper à une responsabilité qui serait normalement attribuée à l'Etat»[129].

9. On sait bien comment la Commission s'y est finalement prise pour régler cette question. Le texte final des articles, après avoir consacré au premier alinéa de l'article 4 le principe suivant lequel est un fait de l'Etat, d'après le droit international, «le comportement de tout organe de l'Etat», précise dans son deuxième alinéa que «Un organe *comprend* toute personne ou entité qui a ce statut d'après le droit interne de l'Etat.» Et le commentaire d'expliquer, par des mots méritant d'être mis en exergue à nouveau après le professeur Pellet :

> «un Etat ne saurait, pour se soustraire à sa responsabilité du fait d'une entité qui agit véritablement en tant qu'un de ses organes, se contenter de dénier ce statut à l'entité en question en invoquant son droit interne. C'est cette idée que rend le mot «comprend» employé au paragraphe 2.»[130]

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[128] Comptes rendus analytiques des séances de la cinquantième session, 2555e séance, 4 août 1998, *in Annuaire de la Commission du droit international*, 1998, vol. I, p. 258, par. 10.

[129] *Ibid.*, p. 261, par. 34.

[130] Rapport de la Commission du droit international, note 3 ci-dessus, p. 95, par. 11.

10. On notera combien cette explication correspond à l'une des indications données par le président du comité de rédaction de l'époque à la Commission, le juge Simma, lorsqu'il avait annoncé. (Je cite en anglais parce que, dans l'*Annuaire*, cette phrase n'est pas citée intégralement, alors qu'on la trouve citée dans une autre publication que j'ai citée dans ma note.)

> «The commentary … will explain the supplementary role of international law in situations in which internal law does not provide any classification or provides an incorrect classification of a person or an entity which in fact operates as a State organ within the organic structure of the State.»[131]

11. C'est, on le comprend bien, une conception saine, parfaitement en harmonie avec les caractéristiques d'un système privilégiant l'effectivité, comme c'est le cas de l'ordre juridique international. Mais il convient surtout de remarquer que tout récemment votre Cour s'est exprimée favorablement à son sujet, de façon certes rapide, mais, me semble-t-il, extrêmement claire. Dans l'arrêt du 19 décembre 2005 en l'affaire des *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, vous avez réglé par la négative la question de savoir si les actions d'une milice paramilitaire, le Mouvement pour la libération du Congo (MLC), devaient être vues comme attribuables à l'Ouganda[132]. Vous êtes parvenus à cette conclusion négative parce que vous avez considéré que la partie intéressée n'avait pas fourni de preuves suffisantes pour vous convaincre que le comportement du MLC était celui d'un «organe» de l'Ouganda au sens de l'article 4 du projet d'articles de la Commission, voire d'une entité exerçant des prérogatives de puissance publique pour son compte (art. 5). Donc, votre Cour admet *de plano* la possibilité qu'une entité — en l'espèce, une formation paramilitaire — soit qualifiée, le cas échéant, d'organe d'un Etat au niveau de l'effectivité, alors que le droit interne de l'Etat concerné n'accorde pas ce statut : il faudra pour cela administrer la preuve que, même à défaut de statut formel d'organe, l'entité en question «in fact operates as a State organ within the organic structure of the State»[133], pour répéter cette formule efficace. C'est seulement après avoir exclu — faute de preuves appropriées — une telle hypothèse, que vous avez cherché à déterminer (à la lumière du

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[131] Déclaration du président, note 2 ci-dessus, p. 6. Cependant, le passage cité ne figure pas dans son intégralité dans l'*Annuaire* : le dernier membre de phrase a disparu, alors qu'on le retrouve cité au complet par le juge Simma, «The Work of the International Law Commission at Its Fiftieth Session (1998)», *Nordic Journal of International Law*, vol. 67, 1998, p. 452.

[132] Affaire des *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, note 1 ci-dessus, par. 160.

[133] Note 8 ci-dessus.

principe consacré à l'article 8 du texte de la Commission) si le MLC avait agi sur les instructions ou les directives ou sous le contrôle de l'Ouganda, et avez estimé ne pas disposer, ici non plus, d'éléments probants que tel était le cas.

12. Reste, bien sûr, à déterminer quelles sont les conditions permettant d'affirmer qu'une entité donnée, tout en n'ayant pas le statut d'organe d'après le droit interne de l'Etat, doit tout de même être assimilée à un organe sur le plan de l'effectivité. Il y a vingt ans, votre Cour avait donné, en passant, une indication fort suggestive à ce sujet, qui n'est cependant pas reprise dans la suite du jugement auquel je suis en train de faire allusion. Au paragraphe 110 de l'arrêt de 1986 en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*, la Cour avait dit que les preuves fournies à l'époque par le demandeur, concernant les *contras*, ne suffisaient pas «à démontrer leur totale dépendance par rapport à l'aide des Etats-Unis»[134]. Or quelques lignes plus tôt, au paragraphe 109, la Cour avait préfiguré quelles auraient été, en matière d'attribution, les implications d'une pareille «totale dépendance». Le passage pertinent est le suivant :

> «La Cour doit déterminer si les liens entre les *contras* et le Gouvernement des Etats-Unis étaient à un tel point marqués par la dépendance d'une part et l'autorité de l'autre qu'il serait juridiquement fondé d'assimiler les *contras* à un organe du Gouvernement des Etats-Unis ou de les considérer comme agissant au nom de ce gouvernement.»[135]

En somme, déjà en 1986, votre Cour avait envisagé la possibilité qu'une entité apparemment détachée d'un Etat soit tout de même qualifiée d'organe de cet Etat au cas où sa «totale dépendance» serait établie. Mais la Cour n'avait pas été plus loin : elle n'avait pas approfondi sa réflexion sur l'organisation de l'Etat, puisqu'elle avait décidé de se tourner vers la question de savoir quelles sont les conditions permettant d'établir qu'une personne ne faisant pas partie de la structure organique de l'Etat a pourtant agi au nom de celui-ci.

13. Ces concepts et suggestions importants doivent être gardés, à mon sens, à l'esprit tout au long de l'analyse qui va suivre. Comme il faut garder à l'esprit que l'attribution à l'Etat des comportements de ses organes (qu'ils soient ou non qualifiés comme tels par le droit interne

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[134] *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique), fond, arrêt, C.I.J. Recueil 1986*, p. 62, par. 110.

[135] *Ibid.*, par. 109.

concerné) joue *de jure* de manière générale et n'est soumise à aucune condition; en particulier, aux fins de l'attribution, il n'y a nullement à apporter la preuve que chacun des comportements des organes en question a fait l'objet d'instructions ou de directives spécifiques de l'Etat, voire qu'il a été effectué spécifiquement sous son contrôle. Enfin, je rappellerai encore un concept important, que tout le monde s'accorde à considérer comme indiscutable : l'attribution à l'Etat de tous les comportements de ses organes intervient même si ceux-ci ont agi *ultra vires*, c'est-à-dire en outrepassant leurs compétences ou en violant les instructions reçues par des organes supérieurs. C'est, on le sait, ce que souligne l'article 7 du texte de la Commission.

14. Madame le président, Messieurs les juges, je clos ces propos introductifs en vous annonçant déjà quelle va être la conclusion de ma plaidoirie. La Bosnie-Herzégovine est convaincue que l'hypothèse que dans votre arrêt du 19 décembre dernier vous aviez jugée juridiquement admissible, mais non prouvée en l'espèce, peut être en revanche pleinement prouvée dans le cas présent. Le défendeur porte la responsabilité internationale du génocide parce que celui-ci a été perpétré par des personnes et des entités qui sont toutes à considérer comme ses organes : certains parce que qualifiés comme organes par le droit interne concerné, d'autres parce qu'ils agissaient en fait en tant qu'organes «within the organic structure of the State».

2. Les actes des organes *de jure* de la Serbie-et-Monténégro

Le génocide a été conçu, préparé et organisé par des organes *de jure* du défendeur

15. Madame le président, les pièces écrites déposées par la Bosnie-Herzégovine et les plaidoiries que vous avez écoutées jusqu'à présent vous ont présenté toute une série de faits précédant la perpétration du génocide, des faits qui montrent que l'appareil gouvernemental yougoslave, confronté à un processus de dislocation de l'Etat, a d'abord conçu puis préparé le «nettoyage ethnique» de la partie du territoire de la Bosnie-Herzégovine ayant été jugée comme devant revenir aux Serbes sur la base de critères divers, relatifs, d'une part, à la majorité serbe de la population habitant les diverses circonscriptions territoriales et, d'autre part, à cause de prétendus «titres historiques». Au sommet de la pyramide des responsabilités, concernant tant la conception et la préparation du génocide que sa mise en oeuvre, il y a, on le sait, la hiérarchie suprême de la République fédérale de Yougoslavie, avec à sa tête le président de la Serbie, Slobodan Milošević,

sub judice en ce moment à quelques pas d'ici pour — entre autres choses — crime de génocide. Il va de soi que tous ces faits préparant le génocide, et mettant en place les instruments par lesquels il serait réalisé, sont des faits d'organes de l'Etat, voire d'entités habilitées par le droit de cet Etat à exercer des prérogatives de puissance publique, donc indiscutablement des faits attribuables à l'Etat. L'attribution joue — il ne faut pas l'oublier — tant pour ce qui est des comportements des organes du gouvernement central que pour ceux des collectivités territoriales, ainsi que le souligne l'article 4, premier alinéa, du texte auquel je suis en train de me référer de la Commission du droit international. Ceci signifie que toutes les décisions et actions ayant contribué à la préparation du génocide qui ont été adoptées par les autorités publiques de la République fédérale de Yougoslavie, y compris celles de la Bosnie-Herzégovine aussi longtemps que celle-ci continuait à constituer une composante de l'Etat fédéral yougoslave, sont à considérer comme des comportements *de jure* de cet Etat, donc attribuables à celui-ci. Une telle attribution ne joue cependant pas — il faut bien sûr l'admettre — pour les conduites des organes des collectivités territoriales ayant pris dans les faits une posture sécessionniste, ainsi qu'il ressort d'ailleurs des principes sous-jacents à l'article 10 du texte de la Commission, relatif au «comportement d'un mouvement insurrectionnel ou autre».

16. Concernant ce que j'ai appelé la mise en place, par l'appareil gouvernemental yougoslave, des instruments par lesquels le génocide serait réalisé, la Bosnie-Herzégovine a déjà attiré l'attention de la Cour sur les grands axes des mesures adoptées. Il s'est agi de la réorganisation progressive des structures militaires en Bosnie-Herzégovine de manière à concentrer dans toute la mesure du possible en mains serbes les ressources humaines et matérielles pertinentes.

17. Pour obtenir ce résultat, des dispositions ont été prises, des ordres donnés et exécutés pour :

1. désarmer les forces de la défense territoriale, qui dépendaient des Républiques fédérées et étaient recrutées et financées par celles-ci, en plaçant leur armement dans les mains de l'armée fédérale; puis en distribuant largement ces armes à la défense territoriale des zones à majorité serbe ou à forte présence serbe, ainsi que, plus généralement, aux Serbes de Bosnie-Herzégovine, de façon à pouvoir compter sur la coopération de milices locales et de forces militaires irrégulières loyales envers Belgrade;

2. «serbianiser» l'armée fédérale et réorganiser la composition de sa présence en Bosnie-Herzégovine par des roulements d'hommes, de manière à concentrer en Bosnie-Herzégovine du personnel (notamment des officiers) d'ethnie serbe originaire de la Bosnie-Herzégovine, alors que les non-Serbes étaient transférés vers d'autres régions du pays;
3. déplacer les garnisons de l'armée fédérale en Bosnie-Herzégovine vers des emplacements à majorité serbe ou à forte présence serbe, en en augmentant en même temps très considérablement la consistance.

18. Ce dispositif, Madame le président, sera enfin parachevé par la nomination du général Mladić, d'abord (en avril 1992) en tant que vice-commandant du 2e district militaire de la JNA (couvrant le territoire de la Bosnie-Herzégovine), puis comme commandant : il assumera cette fonction le 10 mai 1992, juste avant le retrait (fictif bien sûr) de la JNA. Cela met en évidence que la République fédérale de Yougoslavie destinait le général Mladić au commandement général des forces armées serbes de la Bosnie-Herzégovine (la future armée da la Republika Srpska), ainsi qu'il se produisit effectivement. Autrement dit, le choix de placer le général Mladić au commandement de l'armée serbo-bosniaque fut fait à Belgrade : l'agent adjoint de la Bosnie-Herzégovine, Phon van den Biesen, a déjà parlé à la Cour de la réunion du leadership politique et militaire serbe du 30 avril 1992, tenue à Belgrade sous la présidence de Slobodan Milošević, au cours de laquelle cette décision fut prise[136].

19. C'est grâce à l'adoption de cet ensemble de mesures que le génocide allait pouvoir être exécuté. Dans la suite de la présente plaidoirie je vais justement discuter de l'attribution à l'Etat yougoslave des actes criminels rentrant dans la définition de génocide, dont la liste est dressée à l'article II de la convention (tels, par exemple, le meurtre de membres du groupe, les atteintes graves à leur intégrité physique ou mentale, etc.). Les actes préparatoires que je viens d'évoquer, tout en ayant rendu possible le génocide, ne s'identifient pas avec celui-ci. Leur indiscutable attribution à l'Etat doit donc être évaluée — ainsi que l'illustrera aujourd'hui même le professeur Pellet — surtout dans le cadre de l'analyse concernant les crimes dits «ancillaires» auxquels se réfère l'article III de la convention, à savoir l'entente en vue de commettre le génocide,

[136] CR 2006/4, p.26, par.18.

l'incitation au génocide ou la complicité dans le génocide. Mais, du fait de leur cohérence, de leurs conséquences et de leur enchaînement direct avec tous les événements qu'ils ont contribué à produire, ces actes préparatoires restent à eux seuls des indicateurs très significatifs d'une responsabilité du défendeur pour le génocide allant bien au-delà de la simple incitation ou de la complicité.

Des organes *de jure* du défendeur ont participé activement à la perpétration du génocide

20. Madame le président, Messieurs les juges, dès qu'on se tourne vers le moment de l'explosion du conflit en Bosnie-Herzégovine, en mars 1992, on assiste à l'entrée en fonctionnement du dispositif militaire mis en place, dont je viens de rappeler les caractéristiques principales. Son efficacité redoutable est attestée par le fait qu'en moins de deux mois la majeure partie du territoire de la Bosnie-Herzégovine ayant été préalablement identifiée comme devant revenir aux Serbes était conquise et placée sous contrôle serbe. Dans ces zones le «nettoyage ethnique» allait procéder à plein régime : au moment du retrait officiel de la JNA, le 12 mai 1992, un grand nombre de non-Serbes avaient déjà été tués ou avaient été terrorisés de manière à être induits à s'enfuir. Tous ces faits vous sont parfaitement connus, comme il est connu qu'ils sont l'œuvre de l'armée fédérale yougoslave : les écritures et les plaidoiries de la Bosnie-Herzégovine vous l'ont prouvé en détail, et la jurisprudence désormais très riche du TPIY, dont les constats judiciaires font pleinement foi, en offre d'éclatantes confirmations. Permettez-moi une citation : celle d'un passage de l'arrêt *Tadić* du 7 mai 1997, où le Tribunal met en exergue la technique utilisée par la JNA et note :

> «125. Entre mars et mai 1992, plusieurs attaques se produisirent … et les zones constituant d'importants points d'accès en Bosnie ou bordant les grandes lignes logistiques ou voies de communication furent investies par la JNA … (liste des lieux)…
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> 126. En général, la prise militaire d'une ville était marquée par l'intervention de l'artillerie et de tireurs embusqués et par le regroupement des non-Serbes de la zone, tactique qui entraînait souvent la mort des civils et l'exode des non-Serbes. Les non-Serbes demeurés sur place étaient contraints de converger vers des points de rassemblement dans la localité et étaient expulsés. Nombre de non-Serbes furent emprisonnés, frappés et forcés de chanter des chants tchetniks. Cela fut accompagné

> de la confiscation des objets de valeur et de la destruction fréquente des biens mobiliers et immobiliers.»[137]

21. Voilà, Madame le président, résumé en peu de mots et de manière fort efficace l'horreur du «nettoyage ethnique» qui commence, le début du génocide. Ce début du génocide est matériellement — constatons-le — l'œuvre de la JNA, c'est-à-dire d'organes *de jure* de la République fédérale de Yougoslavie : on ne saurait mettre en doute qu'on est confronté ici à une série de comportements constituant, en droit international, des faits de l'Etat. Quant à la contribution importante des milices locales et des formations paramilitaires venant de Serbie et du Monténégro, j'aurai l'occasion d'y revenir plus tard, cet après-midi, à l'occasion d'un examen spécifique sous l'angle de l'attribution de leurs activités à la RFY. Qu'il me soit cependant permis de rappeler tout de suite ce que la Bosnie-Herzégovine a d'ailleurs déjà prouvé à la Cour, ce matin notamment, confortée en particulier par les constats du Tribunal pénal international pour l'ex-Yougoslavie qui se réfèrent justement à l'époque dont nous sommes en train de discuter : ces formations

> «opéraient en conjonction avec la JNA et servaient de troupes d'infanterie de choc, comme substitut à l'armée régulière devenue plus pauvre en hommes… La JNA, en particulier l'armée de l'air, aidèrent ces unités paramilitaires en 1991 et 1992, … les assistant dans leurs opérations militaires et les ravitaillant généreusement en armes et en équipements.»[138]

22. Ces passages très pertinents d'un arrêt du Tribunal pénal international pour l'ex-Yougoslavie comportant une analyse des faits extrêmement approfondie et fiable méritent d'être cités, ceci d'autant plus que dans sa duplique le défendeur reproche à la Bosnie-Herzégovine d'avoir utilisé l'arrêt en question de manière sélective et de ne pas avoir fait référence aux — à ce qu'il appelle — «key determinations of the Trial Chamber in the *Tadić* case»[139]. Voilà un étonnant reproche ! Tant sur le sujet que je suis maintenant en train d'examiner que sur le suivant, comme on le verra, les déterminations du TPIY dans l'affaire *Tadić* concernant les faits sont et restent parmi les bases de l'argumentation de la Bosnie-Herzégovine. C'est justement sur ces faits, notamment ceux qui ont été soigneusement vérifiés «par des juges rompus à l'examen et à

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[137] TPIY, *Le procureur c. Tadić*, affaire n° IT-94-1-T, Chambre de première instance, jugement, 7 mai 1997, par. 125-126.

[138] *Ibid.*, par. 110.

[139] Duplique, p. 579, par.3.2.3.11, et p. 582, par. 3.2.3.13.

l'appréciation de grandes quantités d'informations factuelles» (c'est le *dictum* de votre Cour que j'ai cité il y a quelques minutes), c'est donc sur cette base que le demandeur vous prie de baser vos propres conclusions en droit. Je noterai au passage, à propos de l'affaire *Tadić*, que s'il y a eu notoirement désaccord entre la Chambre de première instance et la Chambre d'appel du TPIY concernant la qualification juridique des faits, et si des opinions différentes sur le sujet se sont manifestées entre les juges composant chacune des Chambres, il y a eu par contre parfaite unanimité de vues entre tous les juges des deux Chambres concernant les faits, que tout le monde a considérés comme pleinement établis : en particulier ceux mettant en évidence le rôle actif très important joué par la JNA dans les événements de Bosnie-Herzégovine tant avant qu'après mai 1992. C'est justement à cet établissement unanime des faits par le TPIY que votre Cour voudra sans aucun doute accorder une valeur probatoire décisive, alors qu'elle tirera ses propres conclusions en pleine autonomie s'agissant d'en évaluer la portée juridique pour ce qui est de l'attribution.

23. Permettez-moi maintenant de me pencher justement sur les événements survenus après les premiers mois du conflit, quand la JNA se retirera formellement du territoire de la Bosnie-Herzégovine (le 19 mai 1992), en réponse à la résolution 752 (1992) du Conseil de sécurité demandant la cessation de toute interférence de la part de l'armée yougoslave et exigeant justement son retrait, voire sa soumission aux autorités de la République de Bosnie-Herzégovine. L'armée serbo-bosniaque va alors être formée par les moyens et méthodes qui vous ont été amplement illustrés, et la Republika Srpska (d'abord sous le nom de République serbe de Bosnie-Herzégovine) va être proclamée. Dans la suite de ma plaidoirie, cet après-midi, je m'emploierai à démontrer le bien-fondé de la conviction du demandeur d'après laquelle les comportements tant de la Republika Srpska que de l'armée de la Republika Srpska qui rentrent dans la définition de génocide sont à attribuer à la RFY, et ce même si ni l'une ni l'autre ne peuvent être qualifiées d'organes *de jure* de l'Etat en question.

24. Mais il n'y a pas à attendre cette démonstration pour affirmer que restent en tout cas indiscutablement attribuables à la République fédérale de Yougoslavie les activités de l'armée yougoslave effectuées dans le territoire de la Bosnie-Herzégovine au-delà du 19 mai 1992. Les preuves de cette très large participation directe et indirecte après son prétendu retrait, apportées par

la Bosnie-Herzégovine, sont nombreuses et concluantes, ainsi que votre Cour a pu le constater. L'Assemblée générale ne s'y était donc pas trompée ! Qu'il me soit permis de citer à nouveau, après le professeur Franck, seulement trois de ses résolutions de l'année 1993 attestant la continuation de la présence des forces armées yougoslaves en Bosnie-Herzégovine après mai 1992. Le 7 avril 1993, l'Assemblée dénonçait «l'appui direct et indirect de l'armée populaire yougoslave» aux actes agressifs en Bosnie-Herzégovine des «forces irrégulières serbes et monténégrines» et condamnait ensuite que ces «actes agressifs de la Serbie, du Monténégro et des forces serbes présentes en Bosnie-Herzégovine», exigeant d'eux qu'ils cessent immédiatement et que les éléments de l'armée populaire yougoslave présents en Bosnie-Herzégovine soient effectivement retirés ou placés sous l'autorité du gouvernement de la Bosnie-Herzégovine[140]. Puis, le 26 avril 1993, l'Assemblée revenait à la charge, faisant valoir la «responsabilité principale» (*principale*, entre autres) de la JNA et des «dirigeants politiques de la Serbie» pour la pratique du nettoyage ethnique en Bosnie-Herzégovine[141]. Puis encore, le 29 décembre 1993, l'Assemblée condamnait énergiquement, en particulier, les violations des droits de l'homme et du droit international humanitaire aux dépens ensuite de la population bosniaque «commises systématiquement, de façon particulièrement flagrante et massive, par la Serbie et Monténégro»[142].

25. L'Assemblée générale est, on le constate, fort bien renseignée de ce qui se passe sur le terrain, quoique en termes généraux. Votre Cour aussi qui, dans ses ordonnances du 8 avril 1993 et du 13 septembre 1993 en la présente affaire, s'adressa nommément à la République fédérale de Yougoslavie pour lui demander de prendre les mesures en son pouvoir afin de prévenir la commission du crime de génocide et faire cesser les grandes souffrances affligeant la population de Bosnie-Herzégovine[143]. Par la suite, les constatations judiciaires du TPIY viendront confirmer dans le détail tout cela. Ces constatations détaillées sont incontestables. Tellement incontestables que le défendeur ne peut qu'en admettre la véracité dans sa duplique[144]. Ce qui, que cela soit dit en passant, signifie en tout cas admettre que la République fédérale de Yougoslavie violait de manière

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[140] A/RES/47/121.

[141] A/RES/47/147.

[142] A/RES/48/88.

[143] Réplique, p. 4 et suiv.

[144] Duplique, p. 576 et suiv., par. 3.2.2.7.

flagrante toutes les résolutions de l'Assemblée générale et du Conseil de sécurité (à commencer par la résolution 752 (1992) du Conseil), résolutions qui exigeaient le retrait complet de la JNA du territoire de la Bosnie-Herzégovine, ainsi que bien entendu les ordonnances de votre Cour. Mais le défendeur s'évertue, comment dirai-je, de neutraliser les conséquences évidentes de cette admission pour ce qui est de l'attribution, en avançant un argument absolument extraordinaire : après le 19 mai 1992, les forces armées de la RFY auraient œuvré en Bosnie-Herzégovine sous le commandement des autorités militaires de la Republika Srpska. Chacun comprend que c'est une allégation vraiment intenable, puisqu'elle va à l'encontre de ce qui relève de l'évidence même : l'évidence d'une Republika Srpska, vous l'avez entendu, et d'une armée de la Republika Srpska qui dépendait totalement et à tous égards de la RFY.

26. Je pense, Madame le président, que je ne vais pas entamer un nouveau sujet; je vous demande donc s'il faut que je m'arrête là pour continuer dans l'après-midi. Merci.

The PRESIDENT: Thank you, Professor Condorelli. The Court will now rise and we shall resume at 3 o'clock this afternoon when you will again have the floor.

The Court rose at 12.50 p.m.