CR 2006/38

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2006

Public sitting

held on Tuesday 2 May 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 mardi 2 mai 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*	Mahiou
		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. Mahiou,
Kreća, juges *ad hoc*

M. Couvreur, greffier

The Government of Bosnia and Herzegovina is represented by:

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

as Deputy Agent;

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

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

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

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

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

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

Ms Laura Dauban, LL.B (Hons),

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

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

as Expert Counsel and Advocate;

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

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

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

Mr. Ermin Sarajlija, LL.M,

Mr. Amir Bajrić, LL.M,

Ms Amra Mehmedić, LL.M,

Le Gouvernement de la Bosnie-Herzégovine est représenté par :

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

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

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

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

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

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Mme Dina Dobrkovic, LL.B.,

comme assistants.

The PRESIDENT: Please be seated.

The Court meets today to begin the second round of oral argument of Serbia and Montenegro. In the same way as Bosnia and Herzegovina, Serbia and Montenegro will dispose, for this purpose, of eight sessions. I now give the floor to the Agent of Serbia and Montenegro, Professor Stojanović.

M. STOJANOVIĆ : Thank you, Madame le président.

INTRODUCTION : THÈSES FONDAMENTALES AVANCÉES DANS NOTRE PLAIDOIRIE CONTRE LA REQUÊTE DÉPOSÉE PAR LA BOSNIE-HERZÉGOVINE

1. La naissance de la Yougoslavie fut le couronnement de soixante-dix ans d'aspirations communes des Slaves du Sud envers la création d'un Etat commun. L'unification des Serbes, des Croates et des Slovènes a été proclamée le 1er décembre 1918, et la conférence de paix à Versailles a vérifié cet acte en reconnaissant le Royaume des Serbes, des Croates et des Slovènes.

2. Ce royaume qui, à partir de 1929 s'appelait «le Royaume de Yougoslavie», était un Etat multiethnique mais il n'est jamais devenu une véritable communauté politique et sociale de «citoyens yougoslaves». Cet Etat continuait à exister comme un regroupement de communautés ethno-nationales et les valeurs sociales ont continué à se développer à l'intérieur de ces communautés. Il est effectivement regrettable que ce processus ne fût pas accompagné de la promotion de valeurs communes à tous les citoyens de l'Etat yougoslave.

3. Ainsi, dès le début de la création de l'Etat yougoslave, les valeurs des différentes communautés ethno-nationales se sont développées indépendamment les unes des autres et au détriment de valeurs communes, lesquelles auraient pourtant été indispensables au maintien d'une Yougoslavie multiethnique en tant qu'Etat représentant l'ensemble de ses citoyens. Périodiquement, certaines communautés ethno-nationales s'alliaient contre d'autres communautés, ce qui provoquait des tensions internes et des conflits politiques de lutte de pouvoir tout au long de la période menant à la seconde guerre mondiale. Sur le plan constitutionnel, l'élite politique serbe — avec le soutien de certaines communautés ethno-nationales (notamment des Musulmans bosniaques et des Slovènes) — a su imposer sa volonté : au lieu d'être constituée comme un Etat fédéral, la Yougoslavie multiethnique a été constituée comme un Etat unitaire. Pourtant, le

système fédéral aurait probablement pu contribuer au développement graduel d'une «identité nationale yougoslave» ressentie par tous les citoyens de cet Etat. L'Etat unitaire ne fut pas accepté, notamment par les Croates, et les relations entre les deux plus grandes nations au sein du Royaume yougoslave, à savoir les Serbes et les Croates, furent tendues dès le début de la création de cet Etat. Ces tensions provoquaient des conflits politiques, alternés par de courtes périodes de coopération.

4. Comme indiqué ci-dessus, soixante-dix ans d'efforts communs ont précédé la naissance de la Yougoslavie. Environ autant d'années furent nécessaires pour œuvrer à sa mort.

5. Les causes de la désintégration de la Yougoslavie ont été les suivantes : au moment de la crise économique et politique des années quatre-vingt, les valeurs spécifiques des différentes communautés ethno-nationales, qui constituaient le fondement de leurs identités, sont devenues prépondérantes. Ces valeurs furent le produit d'un processus de développement historique et culturel. Elles furent aussi marquées par l'appartenance religieuse, laquelle a joué un rôle considérable dans la formation des identités respectives des différentes communautés ethno-nationales. Bien que les différences religieuses n'exerçassent normalement pas une influence décisive sur les rapports politiques, dans un climat de tension permanent, ces différences ont été utilisées comme justification supplémentaire pour la séparation des groupements sociaux déjà confrontés sur le plan politique. Il faut toutefois rappeler qu'en dehors des tensions et des conflits politiques, les différents groupements sociaux connaissaient aussi des périodes de coopération. Par conséquent, les conflits armés n'ont éclaté qu'au commencement de la seconde guerre mondiale. Nous avons analysé ce processus d'une manière détaillée lors de notre premier tour de plaidoiries.

6. Dans les années quatre-vingt, lorsque la crise économique s'instaure, les différences dans le niveau de développement économique entre les différentes communautés ethno-nationales renforcent leurs divergences politiques concernant les moyens de sortir de cette crise.

7. La Slovénie et la Croatie, qui étaient les entités fédérales les plus développées, ont opté pour la sécession de la Yougoslavie, considérant, entre autres, que cette séparation les aiderait à sortir plus rapidement de la crise. Ceci a engendré une tendance générale vers la création d'«Etats-nations», puisque toutes les entités fédérales, sauf la Bosnie-Herzégovine, avaient été constituées et s'étaient développées sur une base ethno-nationale. L'essence même du

nationalisme en tant qu'idéologie, pris sous son aspect positif, est de vouloir regrouper tous ceux qui ont le sentiment d'une appartenance commune dans le but de la création d'un Etat-nation. Toutefois, le nationalisme constitue aussi un grand danger, car il entraîne l'exclusion de tous ceux qui ont une identité différente, et crée ainsi la base pour la discrimination et l'intolérance sociale, voire pour les conflits ouverts entre les différentes communautés établies sur le territoire où on veut constituer un Etat-nation. Ces tensions se reflètent tant sur le plan interhumain et sur le plan familial, que sur le plan professionnel. La méfiance et la peur s'instauraient et provoquaient l'hostilité entre les membres des différentes communautés. On finit par pratiquer la politique de l'exclusion «des autres» communautés de la «nôtre», laquelle doit devenir le fondement du futur Etat indépendant. «Its (nationalism) key characteristic is its definition of a political community, its principles of membership, its cultural and territorial boundaries and also, therefore its enemies.» (S. L. Woodward, *Balkan Tragedy*, The Brookings Institution, Washington D.C., 1995, p. 223.)

8. Par sa composition multiethnique, la Bosnie-Herzégovine pouvait être considérée comme une véritable «petite Yougoslavie». Mais à la différence de la Slovénie, de la Croatie et de la Macédoine, une délimitation territoriale de la Bosnie-Herzégovine n'était pas possible, car les communautés ethno-nationales y étaient complètement mélangées, surtout dans les villes. Suite à un processus d'urbanisation accru dans la période entre 1945 et 1991, aucune ville (sauf quelques rares exceptions, comme la ville de Drvar par exemple) n'était dominée par une communauté ethno-nationale. Dans les villages, la situation fut différente : les petites exploitations agricoles tendaient à la séparation des maisons, des familles et des individus selon le critère ethno-national. L'appartenance religieuse fut aussi un critère de séparation. C'est ainsi que l'idéologie nationaliste, qui s'est substituée à l'idéologie communiste, a réussi à séparer les voisins d'autrefois. Les premiers conflits armés ont effectivement éclaté entre les villages et dans les villages. Ces conflits initiaux et sporadiques ont engendré la formation d'unités militaires sur une base ethno-nationale, et se sont graduellement transformés en un conflit armé généralisé (S. L. Woodward, *op. cit.*, p. 237).

Les questions de compétence

9. Lors de notre premier tour de plaidoiries, le professeur Tibor Varady a démontré que jusqu'au 1er novembre 2000 la République fédérale de Yougoslavie (RFY) (aujourd'hui Serbie-et-Monténégro) ne pouvait pas avoir accès à la Cour, car elle n'était pas membre de l'Organisation des Nations Unies (ONU). Par conséquent, elle ne pouvait pas être un Etat défendeur en vertu de la convention pour la prévention et la répression du crime de génocide (dénommée ci-après «la convention sur le génocide»). Dans son arrêt, la Cour s'est basée sur le fait que la Serbie-et-Monténégro n'était pas membre de l'ONU avant le 1er novembre 2000. Avant cette date la Serbie-et-Monténégro n'a, en effet, pas pu être membre de l'ONU puisqu'elle ne possédait pas de continuité avec l'ex-Yougoslavie. Comme vous le savez, tous les nouveaux Etats créés après la désintégration de l'ex-Yougoslavie ont été admis à l'ONU en tant que nouveaux Membres de cette organisation.

10. Dans notre second tour de plaidoiries nous nous emploierons à prouver encore une fois que l'Etat de Serbie-et-Monténégro n'était pas lié et n'est pas lié par l'article IX de la convention sur le génocide. En 1996, lorsque la Cour a rendu son arrêt sur les exceptions préliminaires, la Cour s'est basée sur la présomption que la Serbie-et-Monténégro était liée à la convention en vertu de la continuité étatique qu'elle pouvait avoir maintenu par rapport à l'ex-Yougoslavie. Lorsqu'il a été décidé que la Serbie-et-Monténégro ne possédait ni de continuité subjective ni de statut contractuel de l'ex-Yougoslavie, cette présomption a perdu son fondement.

11. Nous allons aussi démontrer que la Serbie-et-Monténégro n'est pas liée par l'article IX, car elle n'a jamais déposé de notification indiquant son intention d'être le successeur de l'ex-Yougoslavie en ce qui concerne la convention sur le génocide. La proclamation de la création de la République fédérale de Yougoslavie qui a eu lieu le 27 avril 1992, ne pouvait pas être interprétée comme étant l'acte de succession des traités. Comme vous le savez, une succession entre Etats n'est jamais automatique. Et même si l'automatisme existait, il ne pourrait pas s'appliquer à l'article IX de la convention sur le génocide vu le fait que cet article constitue la base pour la juridiction de la Cour pour les différends entre les parties contractantes à la convention sur le génocide.

12. Nous allons également démontrer que la Serbie-et-Monténégro ne pouvait pas avoir qualité pour être partie contractante à la convention sur le génocide avant de devenir Etat Membre de l'ONU. En tant qu'Etat non membre de l'ONU, la Serbie-et-Monténégro n'a pu adhérer à la convention sur le génocide qu'après y avoir été spécialement invitée en application de l'article XI, c'est-à-dire par le biais d'une invitation formelle de la part de l'Assemblée générale de l'ONU. Comme vous le savez, la Serbie-et-Monténégro n'a jamais reçu une telle invitation. Ce n'est qu'après être devenu Etat Membre de l'ONU que la Serbie-et-Monténégro a accédé à la convention sur le génocide tout en formulant une réserve relative à l'article IX. Le statut contractuel de la Serbie-et-Monténégro est confirmé dans le rapport du Secrétaire général de l'ONU, en sa qualité de dépositaire de la convention sur le génocide. Sur la base de ce rapport, il ne peut y avoir de doute sur le fait que la Serbie-et-Monténégro n'a adhéré à la convention sur le génocide qu'en 2001, tout en formulant une réserve relative à l'article IX.

13. Puisque la Serbie-et-Monténégro n'a pas eu accès à la Cour dans la période visée par la présente requête et puisque la Serbie-et-Monténégro n'était pas liée par l'article IX de la convention, nous prions cette honorable Cour de réexaminer les questions de sa compétence et de se déclarer non compétente pour statuer sur la présente affaire.

14. Lors de notre second tour de plaidoiries, la Serbie-et-Monténégro continuera à plaider, aussi sur la base d'autres arguments, en faveur de la non-compétence de la Cour dans la présente affaire.

Je veux souligner encore une fois, au début du deuxième tour de nos plaidoiries, que cette haute Cour n'a pas de compétence pour connaître de la présente affaire et que la Serbie-et-Monténégro n'avait pas accès à la Cour au moment pertinent. Nous avons démontré cette assertion et nos arguments n'ont pas été réfutés d'une manière convaincante par le demandeur.

Mais nous ne voulons laisser sans réponse aucun grief et, par conséquent, nous allons écarter tous les arguments du demandeur. Nous allons démontrer encore une fois que le défendeur n'avait pas accès à la Cour au moment pertinent et que cette Cour n'est pas compétente dans l'affaire en présence. Nous allons présenter nos arguments dans la même succession que celle employée par le demandeur et donc nous traiterons de la question de l'accès et de la compétence lors des audiences des 8 et 9 mai.

ANALYSE DE LA BASE FACTUELLE ET APPLICATION DE LA NOTION DU GÉNOCIDE SUR LES FAITS

15. Le 20 mars 1993, la Bosnie-Herzégovine a déposé devant cette honorable Cour une requête introductive d'instance contre la République fédérale de Yougoslavie (RFY) invoquant comme base de compétence de la Cour l'article IX de la convention pour la prévention et la répression du crime de génocide (ci-après dénommée «la convention sur le génocide»). Cette requête, qui se réfère à la guerre menée en Bosnie-Herzégovine entre 1992 et 1995 (Application de la convention pour la prévention et la répression du crime de génocide, requête), prétend que la Serbie-et-Monténégro est responsable d'avoir commis le génocide prétendu en Bosnie-Herzégovine pendant la guerre mentionnée ci-dessus.

16. Le nombre des victimes des crimes *(actus reus)* que le requérant a décrit dans ses arguments écrits ainsi que lors de son premier tour de plaidoiries devant cette honorable Cour dans la période du 27 février au 7 mars de cette année est considérablement exagéré, ce que nous avons cherché à prouver dans notre premier tour de plaidoiries, notamment lors de l'exposé fait par M. Sasa Obradovic, coagent de la délégation de Serbie-et-Monténégro, et dans l'exposé du témoin-expert, M. Jean-Paul Sardon, qui a présenté devant cette honorable Cour son analyse des faits concernant le nombre des victimes de la guerre qui a eu lieu en Bosnie-Herzégovine entre 1992 et 1995. Nous avons aussi présenté les informations fournies par le Centre de documentation basé à Sarajevo et dirigé par M. Mirsad Tokaca. Sur un plan théorique, on peut défendre la thèse que le nombre des victimes n'a pas d'importance pour établir l'existence du crime de génocide. En pratique, la jurisprudence du Tribunal pénal international pour l'ex-Yougoslavie (TPIY) introduit aussi le «critère quantitatif» : le nombre des victimes a ainsi été jugé important pour déterminer l'*actus reus* dans les affaires *Sikirica* (n° IT-95-10-T) et *Jelisic* (n° IT-95-10-T). On doit toutefois admettre que le crime de génocide diffère des autres crimes contre l'humanité par son élément subjectif et son intension dolosive *(mens rea)* car ce crime exige un «dol spécial» *(dolus specialis)* de commettre le génocide. (Voir Williams Schabas, *Genocide in International Law. The Crime of Crimes*, Cambridge University Press 2000, p. 213-228.) La convention sur le génocide contient la définition de l'intention d'exterminer en totalité ou partiellement un groupe

ethnique, national, racial ou religieux. Cette intention doit revêtir la forme d'une intention directe *(dolus specialis)*.

17. Nous estimons que pendant les premier et second tours de plaidoiries le requérant n'a jamais réussi à prouver l'existence du *dolus specialis*. Au lieu d'apporter les preuves directes du *dolus specialis*, le requérant a essayé d'apporter les preuves indirectes qui concernent l'*actus reu*s et cela sur la base de faits inexacts, comme il a été mentionné ci-dessus. Ceci a été clairement démontré par M[e] Xavier de Roux.

18. Au second tour de plaidoiries qui s'est tenu du 18 au 24 avril, le requérant s'est de nouveau employé à prouver l'existence de l'intention *(mens rea)* par le biais des preuves qui concernent l'*actus reus*. La Partie de la Bosnie-Herzégovine a ainsi exposé des faits concernant les crimes commis (meurtres, déportations, viols et l'existence de «camps de concentration»). Nous sommes d'avis que ces crimes ne peuvent pas être qualifiés de crimes de génocide dès lors que le *dolus specialis*, à savoir l'intention d'exterminer un groupe en totalité ou partiellement, telle que définie par la convention sur le génocide, n'est pas prouvé.

19. Tous les représentants de la Partie de la Bosnie-Herzégovine se sont employés à prouver l'intention de commettre le génocide en évoquant le dessein politique de la «création de la Grande Serbie», à savoir l'objectif politique de créer un Etat commun pour tous les Serbes. Or, il est important de rappeler que cet objectif politique fut déjà réalisé lors de la constitution de la Yougoslavie, ce qui a permis tant au peuple serbe qu'aux autres peuples de regrouper la plupart de leurs ressortissants au sein d'un même Etat. En évoquant le dessein politique de la «création de la Grande Serbie» et la poursuite de l'objectif politique «tous les Serbes dans un Etat», le requérant a voulu inciter cette honorable Cour à admettre l'existence de l'intention d'exterminer tout groupe qui s'opposerait à la réalisation de ces objectifs politiques. Notre Partie s'est dès lors employée à démontrer que le dessein politique visant la création de la «Grande Serbie» ne comprenait point d'intention de détruire d'autres peuples vivant sur le territoire visé par ce dessein politique. La Partie de la Bosnie-Herzégovine s'est employée, tant dans ses arguments écrits que lors de ses plaidoiries, d'apporter des preuves historiques sur l'existence du dessein politique de la création de la «Grande Serbie» en remontant à la première moitié du XIX[e] siècle. Nous pensons avoir réussi à rejeter cette thèse lors de notre premier tour de plaidoiries devant cette honorable Cour.

20. Parmi les preuves que nous avons apportées pour dénoncer l'existence du dessein politique de la création de la «Grande Serbie» — aussi bien dans le passé que pendant la période en question (entre 1992 et 1995) —, nous avons mis en exergue plusieurs propositions élaborées par les Serbes de Bosnie-Herzégovine visant une solution pacifique du conflit : ces propositions tendaient à la constitution de la Bosnie-Herzégovine comme une fédération ou une confédération (voir par. 116 de notre premier tour de plaidoiries), tandis que la Partie de la Bosnie-Herzégovine insistait sur le système constitutionnel unitaire du futur Etat souverain et indépendant de Bosnie-Herzégovine. Il faut en outre rappeler que les Serbes de Bosnie-Herzégovine avaient accepté le «plan de José Cutiliero» datant du 18 mars 1992 qui préconisait la mise en place d'un système cantonal en Bosnie-Herzégovine. Comme vous le savez, ce «plan» avait été d'abord accepté par les Musulmans bosniaques après les négociations diplomatiques qui ont eu lieu à Lisbonne le 18 mars 1992. Quelques jours plus tard, au moment même de la signature de cet accord à Sarajevo, les Musulmans bosniaques ont changé leur position et ont rejeté le «plan Cutiliero».

LA GUERRE EN BOSNIE-HERZÉGOVINE (1992-1995)

21. Il est utile d'évoquer brièvement le contexte de guerre, les causes et les conséquences du conflit armé y compris les causes et conséquences des conflits passés, et notamment de la seconde guerre mondiale. Dans ce contexte, il est important de garder à l'esprit que tout état de guerre est un état criminogène. Toutefois, les actes criminels commis au cours d'un état de guerre ne peuvent pas être considérés comme actes génocidaires s'ils ne comportent pas des éléments du crime de génocide.

22. La Bosnie-Herzégovine a été reconnue par l'Union européenne le 6 avril 1992, comme un Etat indépendant avec un système constitutionnel unitaire, à la suite du référendum par lequel les Musulmans et les Croates de Bosnie-Herzégovine ont ensemble assuré la majorité nécessaire pour assurer la validité de ce référendum.

23. Pourtant, une large majorité des Serbes de Bosnie-Herzégovine qui ont été qualifiés d'une minorité nationale par la décision de la commission Badinter de 1992 ont boycotté le référendum et ceci était aussi contraire à la Constitution en vigueur de Bosnie-Herzégovine qui

exigeait que la majorité de chacun des «trois peuples constitutifs» s'exprime en faveur du résultat d'un référendum. Les Serbes de Bosnie-Herzégovine ont donc refusé d'accepter les résultats du référendum et sont entrés en conflit armé vu le fait que toutes les trois parties en présence en Bosnie-Herzégovine avaient déjà formé leurs unités militaires. Les Serbes de Bosnie-Herzégovine souhaitaient acquérir un territoire où les Serbes ne seraient pas considérés comme une minorité nationale. Il existait plusieurs solutions possibles concernant le statut d'un territoire serbe, comme nous l'avons démontré au premier tour de ma plaidoirie.

24. Nous pensons que la reconnaissance internationale de la Bosnie-Herzégovine a été prématurée car ses peuples constitutifs étaient visiblement divisés et le Gouvernement de Bosnie-Herzégovine n'exerçait pas de contrôle effectif sur l'ensemble du territoire de l'Etat qui a été reconnu par la communauté internationale. Vous avez ce témoignage de M. Micunovic, j'ai donné au dossier de la Cour son interview donnée au *Baltimore Times* aux Etats-Unis en ce temps-là.

25. Une autre preuve du caractère prématuré de la reconnaissance internationale de la Bosnie-Herzégovine était le fait de l'existence d'une armée qui comptait environ cent dix mille hommes et qui relevait toujours du commandement direct de son état-major, lequel se trouvait dans une autre unité fédérale, à Belgrade. Comme il fut expliqué lors de notre premier tour de plaidoiries, outre l'armée nationale yougoslave (la JNA) en Bosnie-Herzégovine opéraient à cette époque deux autres formations militaires : «la ligue patriotique» en tant que formation militaire des Musulmans bosniaques, ainsi que la formation militaire croate y compris l'armée régulière de Croatie (HV). Face à l'existence de ces formations militaires dans un climat de profond conflit politique tout observateur pouvait déduire que le conflit armé était devenu possible, voire inévitable, surtout parce que les dirigeants de ces formations n'étaient pas disposés à rechercher un compromis.

26. Il est utile de rappeler que la reconnaissance internationale de la Slovénie et de la Croatie n'a eu lieu qu'après le retrait de la JNA de ces unités fédérales (le retrait par exemple de la JNA de la Croatie eu lieu 29 novembre 1991). Cependant, la reconnaissance de la Bosnie-Herzégovine a eu lieu le 6 avril 1992 et le 7 avril 1992 respectivement par l'Union européenne et par les Etats-Unis. Seulement cinq jours après la reconnaissance de la Bosnie-Herzégovine (le

11 avril 1992), l'Union européenne a demandé à la République fédérale de Yougoslavie de procéder au retrait de la JNA de la Bosnie-Herzégovine. Le 15 mai 1992, presque dix jours après la reconnaissance, le Conseil de sécurité de l'ONU a adopté sa résolution 752 stipulant que «JNA or Croatian army units in Bosnia and Herzegovina be withdrawn or subject to Bosnia-Herzegovina government authority or disarmed and disbanded with weapons under international supervisions» (S. L. Woodward, *op. cit.*, p. 258). En raison de l'inexécution de cette résolution, le Conseil de sécurité a adopté une nouvelle résolution 757 qui a imposé une longue série de sanctions contre l'Etat nouvellement créé — c'est-à-dire la République fédérale de Yougoslavie. Il est important d'attirer l'attention de cette honorable Cour que sur un nombre total de cent quarante mille soldats de la JNA, quatre-vingt-dix mille soldats (68 %) ont été stationnés en Bosnie-Herzégovine (S. L. Woodward, *op. cit.*, p. 259). Si on tient compte du fait qu'à cette époque l'industrie militaire comptait pour 50 % de l'ensemble de l'activité industrielle en Bosnie-Herzégovine, et que cette industrie employait quarante mille personnes, en réalité la JNA luttait en Bosnie-Herzégovine pour sa propre survie. Ceci semblait être possible seulement si elle avait pu compter sur «son propre Etat», c'est une situation politique déjà reconnue. Dans notre premier tour de plaidoiries, nous avons expliqué les problèmes que le retrait de la JNA aurait entraînés pour la JNA en raison du fait que les officiers et les soldats des unités de la JNA stationnées en Bosnie-Herzégovine étaient originaires, de par leur naissance, de la Bosnie-Herzégovine. Il est nécessaire de rappeler que chaque citoyen de l'ex-Yougoslavie avait la «double nationalité» : la nationalité de l'unité fédérale de sa naissance et celle de la Yougoslavie.

27. Suite à la création de l'armée yougoslave (VJ) le 8 mai 1992, le ministère de la défense de la République fédérale de Yougoslavie a décidé de retirer tous les soldats de la JNA stationnés en Bosnie-Herzégovine qui étaient originaires de la Serbie ou du Monténégro. Le retrait de ces troupes fut entamé le 19 mai 1992. Environ quatre-vingt mille ou quatre-vingt-dix mille soldats d'origine et de nationalité bosniaques sont restés en Bosnie-Herzégovine. Lors de notre premier tour de plaidoiries, nous avons expliqué pourquoi le retrait de ces troupes-ci de la JNA dans la République fédérale de Yougoslavie n'était pas possible.

28. Madame le président et Messieurs les juges, lors de notre second tour de plaidoiries nous nous emploierons à prouver que les crimes énoncés par le requérant tant dans ses arguments écrits

que dans son premier tour de plaidoiries ne peuvent être juridiquement qualifiés que comme des crimes de guerre ou des crimes contre l'humanité.

29. Le statut de la Cour pénale internationale (CPI) fait une claire distinction entre trois types de crimes : le crime de génocide, défini de la même manière comme dans la convention sur le génocide (statut de la CPI, art. 6), le crime contre l'humanité (statut de la CPI, art. 7) et le crime de guerre (statut de la CPI, art. 8).

30. Lors de notre second tour de plaidoiries, nous nous emploierons à démontrer que le requérant n'a pas prouvé l'existence de l'intention de détruire un groupe entier. Les trois peuples constitutifs, à savoir les trois différentes communautés ethniques, nationales et religieuses cohabitent toujours sur le territoire de la Bosnie-Herzégovine et aucune d'elles n'est en danger et n'a jamais été en danger d'extermination.

31. Aux termes de la convention sur le génocide, la destruction d'une partie d'un groupe suffit pour constituer le crime de génocide seulement si tous les autres éléments constitutifs de ce crime sont réunis. Il est largement admis que «l'intention de détruire» doit viser au moins une partie substantielle d'un groupe. Le Tribunal pénal international pour le Rwanda (TPIR) semble aller plus loin encore, en exigeant que les accusés aient eu l'intention de détruire un nombre «considérable» des individus qui sont membres d'un groupe.

32. Dans sa plaidoirie du 18 avril 2006 ouvrant le deuxième tour d'audiences, M. Sakib Softić, l'agent du demandeur, a affirmé : «Judgment for génocide would accelerate democratisation of the society and help abandon the ideology of conflicting with neighbours…»

33. Madame le président, permettez-moi de dire qu'une conclusion sur la responsabilité d'un Etat pour génocide ne peut et ne doit pas être tirée des spéculations relatives au fait qu'une telle conclusion contribue ou pas au processus de démocratisation. Et je pense que mes collègues représentants de l'Etat demandeur en sont d'accord. Toutefois, une telle affirmation a été faite et, par conséquent, je vais en traiter brièvement, car elle démontre une perception totalement erronée des réalités sociales — et de la conscience sociale, en tant que partie de ces réalités.

34. Madame le président, Messieurs les juges, une partie de notre réalité et conscience sociale est représentée par les souvenirs de la décennie dernière, entachée par tant de tragédies et de souffrances. Je peux accepter le fait que, pendant cette dernière décennie, les grandes souffrances

du peuple bosniaque aient été les plus graves. Une autre partie de notre conscience sociale est représentée également par les conflits du siècle passé, où le peuple serbe a été, à plusieurs reprises, celui à subir les tragédies les plus graves et les pertes les plus importantes.

35. Des gestes visant à la réconciliation ont été faits et nous sommes prêts à continuer de les faire. Mais il est vrai aussi que l'extrémisme national est encore présent en Serbie, comme ailleurs. Ce sont des faits qui doivent également être pris en considération. Un jugement sur le génocide aura, sans doute, un impact sur notre structure sociale et politique.

36. Mais je ne vois pas comment on peut considérer qu'un jugement condamnant la Serbie-et-Monténégro pour génocide — un jugement rendant la Serbie le seul Etat responsable pour génocide pendant le XX^{e} siècle — pourrait «accélérer la démocratisation de la société». Est-ce qu'on peut réellement croire qu'un tel jugement ait comme effet l'allègement des sentiments nationalistes et des rivalités nationales, et non pas, par contre, que leur exacerbation ?

37. Madame le président, Messieurs les juges, permettez-moi d'ajouter aussi qu'un tel jugement que le demandeur pense pouvoir accélérer la démocratisation et aider à surmonter les conflits aurait en réalité pour effet de placer la Republika Srpska du côté de la prétendue victime et le Kosovo du côté du prétendu auteur.

38. Madame le président, je réitère ma conviction que les spéculations relatives à l'impact d'un jugement sur le génocide vis-à-vis du processus de démocratisation ne doivent et ne peuvent avoir aucune pertinence. Elles ne peuvent pas justifier une décision en faveur du demandeur et — il faut le dire — en faveur du défendeur non plus. Tant les questions procédurales que les questions matérielles faisant l'objet de cette affaire relèvent du droit et des faits et non pas de la politique.

39. La Partie de la Serbie-et-Monténégro prouvera au second tour de plaidoiries que les preuves du requérant mentionnées dans ses arguments écrits et dans ses plaidoiries ne sont pas valables. Ceci, Madame le président et Messieurs les juges de la Cour, sera développé par notre avocat, M^{e} Nataša Fauveau-Ivanović. Je dois informer la Cour que notre maître, M. Xavier de Roux, a subi une opération sérieuse à Paris, il y a trois semaines, sur son cœur et c'est pour ça que Nataša Fauveau-Ivanović va présenter son discours devant la Cour. Merci.

ELÉMENTS DE PREUVE CONFIRMANT LA NON-IMPLICATION DU GOUVERNEMENT DE BELGRADE

40. Le nombre total (environ 200 000) de soldats de l'armée de la Republika Srpska (VRS) et de la police et des unités de défense territoriale de la Republika Srpska. Un petit nombre de volontaires de Serbie-et-Monténégro n'était pas sous le contrôle de Serbie-et-Monténégro, ne pouvait donc pas constituer un élément important dans la conduite des opérations militaires. Il ne pouvait en outre exercer un contrôle effectif ni de la force armée de la Republika Srpska, ni de son commandement suprême présidé par M. Radovan Karadzic, ni de son état-major dont le commandant était le général Ratko Mladic. Cette conclusion découle de la logique des rapports de pouvoir et de lutte de pouvoir selon laquelle celui qui possède une plus grande force détient aussi le pouvoir dans le processus de la prise de décisions au sein des organes politiques et militaires.

41. L'examen de la question du critère de la preuve nous amène naturellement à nos conclusions sur la question du contrôle. Compte tenu de tous les éléments de preuve disponibles, il apparaît qu'il n'existe aucune preuve claire et convaincante du contrôle exercé sur la Republika Srpska par le gouvernement de Belgrade.

42. Par contre, il existe des éléments de preuve abondants qui confirment que le gouvernement de Belgrade n'a pas participé aux actes de la Republika Srpska. Nous vous avons présenté ces éléments lors de notre premier tour de plaidoiries.

43. Comme déjà cité lors de notre premier tour de plaidoiries devant cette honorable Cour, avant le 6 avril 1992, la JNA était une force armée légitime en Bosnie-Herzégovine et en tant que telle — «from January through April 1992, JNA in Bosnia had two priorities. The first was to work with and support a peaceful settlement of the political differences among three ethnic groups. The second, and more important, was to see that the Bosnian Serbs and their position in the republic was secure.» (CIA, *op. cit.*, VI, p. 128.)

44. A cette époque-là, les forces de la JNA pouvaient donc être déployées, en toute légalité, en Bosnie-Herzégovine afin de protéger les communautés serbes qui étaient établies de longue date sur son territoire. Finalement, le fait que le gouvernement de Belgrade ait fourni une assistance aux Serbes de Bosnie-Herzégovine ne permet pas pour autant d'établir l'existence d'un contrôle exercé par ce gouvernement.

45. Le climat dans lequel vivaient les Serbes en Bosnie-Herzégovine et en Croatie provoquait chez eux la peur de la répétition possible des crimes que les Oustachis avaient commis lors de la deuxième guerre mondiale. Nous avons évoqué ceci lors de notre premier tour de plaidoiries sans pour autant avoir l'intention d'exposer l'ensemble des crimes commis par les Oustachis contre les Juifs, les Serbes et les Tziganes. Le souvenir de ces crimes est resté gravé dans la mémoire des Serbes qui se sont enfuis ou ont été expulsés en dehors de la Croatie ou de la Bosnie-Herzégovine. Madame le président et Messieurs les juges de la Cour, nous n'avons pas l'intention de nous étendre plus longuement sur ce sujet mais nous tenons toutefois à attirer l'attention de cette honorable Cour sur l'existence réelle de cette peur chez les Serbes et de son amplification permanente en raison de l'accroissement de la propagande nationaliste-oustachie dans les médias, surtout en Croatie, dans la période précédant la guerre en Bosnie-Herzégovine. Beaucoup de livres ont traité de ce sujet. (Nous n'avons toutefois pas l'intention d'accuser devant cette honorable Cour. Bien au contraire, nous souhaitons démontrer notre volonté d'entamer le processus indispensable de la réconciliation nationale.)

46. Les circonstances exposées ci-dessus, Madame le président, peuvent expliquer pourquoi le gouvernement de Belgrade n'était pas en position d'exercer son contrôle sur la Republika Srpska car ces circonstances n'existaient pas en Serbie. Nous pouvons prouver cette affirmation par le soutien que le gouvernement de Belgrade a apporté au «plan Vance-Owen» et au «plan du groupe de contact» ainsi que par d'autres tentatives du gouvernement de Belgrade allant dans le sens d'éviter le commencement de la guerre ou d'arrêter son déroulement.

47. Personne ne conteste le fait que la Serbie-et-Monténégro apportait à la Republika Srpska une aide en armes, nourriture et autres matériels sans lesquels la survie de la Republika Srpska et de son armée n'était pas possible. Cependant, de nombreuses preuves démontrent que les Musulmans bosniaques étaient aussi aidés en armes et en matériels par d'autres pays.

48. La situation militaire et politique qui régnait dans la région sous contrôle des Musulmans bosniaques était complexe, en grande partie due à l'assistance que le Gouvernement de la Croatie apportait aux Musulmans bosniaques dirigés par M. Alija Izetbegovic. Cette assistance passait notamment par l'utilisation de l'aéroport de Zagreb pour le transport de matériel militaire en provenance d'Etats tiers amis et destiné aux forces armées des Musulmans bosniaques.

49. Le rapport élaboré par l'Institut néerlandais pour la documentation de guerre (NIOD)[1] évoque aussi un accord conclu directement par M. Alija Izetbegovic avec le gouvernement de Téhéran en octobre 1992. En effet, au début de l'année 1993, l'Iran et la Turquie livraient l'un et l'autre des armes à la Bosnie via la Croatie.

50. Aux yeux des autorités de Belgrade, il était clair que les importantes livraisons d'armes dont bénéficiaient les Musulmans bosniaques au début du processus de la dissolution de la Yougoslavie risquaient de modifier sérieusement le rapport de forces militaires. Une assistance aux Serbes de Bosnie-Herzégovine dès lors s'imposait. Dans son livre *Stratégie astucieuse*[2], l'auteur Sefer Halilovic (un des commandants de l'armée musulmane) affirme que «l'armée de la Bosnie-Herzégovine a atteint, déjà en janvier 1993, le chiffre de deux cent soixante et un mille cinq cents soldats». D'après la même source, l'armée de Bosnie-Herzégovine, dès février 1992, avait cent vingt mille soldats[3]. Ceci se trouve aussi dans le dossier de la Cour. La copie du livre traduit le titre seulement et le passage que j'ai cité ici. Je vous remercie, Madame le président. Je termine l'élément de ma plaidoirie avec une petite conclusion.

51. Rappelons enfin que le gouvernement de Belgrade a introduit l'embargo pour les exportations d'armes à la Republika Srpska après que celle-ci a refusé d'accepter deux plans de paix, à savoir le «plan Vance-Owen» en 1993 et le «plan du groupe de contact» en 1994. L'embargo a été supervisé par les observateurs désignés par les organisations internationales. Le gouvernement de Belgrade a continué d'envoyer l'aide humanitaire à la Republika Srpska.

Je vous prie, Madame le président, de donner la parole à M. Brownlie, Q.C. Merci.

The PRESIDENT: Thank you, Professor Stojanović. I now give the floor to Mr. Brownlie.

Mr. BROWNLIE: Thank you, Madam President.

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[1] www.srebrenica.nl/en/a_index.htm.

[2] Ed. Matica, Sarajevo, 1998, p. 152.

[3] *Ibid.*, p. 222.

THE EVIDENCE OF THE ATTRIBUTION ALLEGED IS INSUBSTANTIAL AND UNRELIABLE

1. Madam President, distinguished Members of the Court, the purpose of this presentation is to analyse the evidence of attribution offered by the applicant State. The general approach of our opponents will be examined and then the main body of the speech will be devoted to a systematic examination of the evidence advanced by the Applicant which purports to establish the attribution of acts, which if committed by a State would constitute genocide, to the Government of the Federal Republic of Yugoslavia and its successors.

THE GENERAL APPROACH OF THE APPLICANT STATE TO EVIDENCE

2. As I move into my subject, it is useful to dispose of some preliminary matters. In his first speech in these proceedings Professor Franck complained of the absence of full access to relevant documents concerning the alleged attribution of acts in Bosnia to the authorities in Belgrade: references will appear in the transcript to the various speeches I cite (CR 2006/3, p. 25, para. 16). The logic of this complaint is not easy to see. The applicant State has deployed enormous numbers of documents in these proceedings and has had access to the archives of the ICTY. Captured documents have been produced and resort has been had to numerous intercepts of telephone calls of political leaders. It is a matter of public knowledge that the prosecution office and the apparatus of the ICTY as a whole are well founded.

3. In any event, in the light of all the evidence available, and especially the numerous intercepts of telephone conversations, an important logical inference would be the absence, the absence, of evidence of attribution. Moreover, intercepts of telephone conversations in fact constitute a form of reliable evidence, at least when they are presented in their actual context.

4. One further preliminary point. Earlier in these proceedings, Mr. van den Biesen stated that the Respondent "has not been forthcoming with any defence" and that "saving any defence for the second round of these oral hearings would almost certainly lead to a violation of the principle of fair trial" (see CR 2006/2, p. 21, paras. 12-14). But Mr. van den Biesen offers no proof that the provisions of the Rules of Court have been contravened. The Rules do not include provisions for the filing of a defence as such. In any event, as Professor Pellet has pointed out, there is no defence

to the commission of genocide. But of course this assumes that the commission of genocide has been proved.

5. In the result, it is not easy to follow Mr. van den Biesen's legal logic. This is not a criminal trial, in part because this Court does not exercise a criminal jurisdiction. The position of the respondent State is straightforward. If the Court decides that it has jurisdiction, there is on the facts no breach of the Genocide Convention which is attributable to the Respondent.

6. These are all preliminary issues. I now come to the central problem in these proceedings, which is the eccentric and unhelpful approach to evidence adopted by the applicant State.

7. This approach has several strands but the main elements are the assumption that actual proof is not necessary, together with a general tendency to avoid presenting evidence, especially documentary evidence, in a mode which is in accordance with acceptable standards.

8. The principal contention of the applicant State is that the facts are more or less undeniable. This is the policy declared in the first round speech of Professor Franck, when he said:

> "14. In the present case we will mostly present direct evidence, whenever it is available. Nevertheless, for reasons of economy, we will ask the Court to consider some facts as 'notorious' because of the frequency and regularity with which they have entered the public domain: mostly through reports of reliable observers.
>
> 15. But we will also ask the Court to draw inferences from patterns — patterns of facts to conclusions that are logically or experientially inescapable, even if they cannot be proven with direct evidence. For example, where an intent must be demonstrated, we ask the Court to consider direct evidence of what was said and done, with what frequency and to whom, and how, as indirect evidence of the perpetrators' intent." (CR 2006/3, pp. 23-25.)

9. These paragraphs summarize the simplistic approach of the applicant State. Everything is supposedly clear and notorious. Direct evidence is to be supplanted by inferences from activities and events on the ground. In the next passage of his speech Professor Franck sets forth the evidential modalities as seen by his delegation in respect of attribution. This, it is asserted, can also be dealt with on the basis of inference "from activities and events on the ground in Bosnia and Herzegovina" (*ibid.*, p. 25, para. 16).

10. Madam President, this approach to evidence cannot be applied appropriately to the issue of attribution. Counsel for Bosnia invokes Srebrenica as an example of activities and events on the ground. In my first presentation in these hearings I discussed the historical background of the

killings in Srebrenica. The purpose was to show the elements of causation involved and to indicate to the Court the historical circumstances which had characterized the conflict in and around the enclave.

11. In any case, when counsel for Bosnia refer to the activities and events on the ground as providing the basis for inference, what does this mean? In the absence of evidence of the context the facts cannot be notorious. They have to be understood.

12. This is especially true of the issue of attribution. The facts on the ground beg the important question. Moreover, the first question is, in any event: what were the facts on the ground. To take the case of Srebrenica: the sequence of events began in December 1992. There are some significant sources available and yet the version of the facts offered to the Court on behalf of Bosnia was grossly inadequate.

13. The local origins of the feud and the background of armed conflict constitute major elements in the picture. Such a context undermines the credibility of assertions of external involvement and the existence of a long-standing plan to commit genocide.

14. The inability to refer to the easily available sources relating to Srebrenica is very odd. The counsel for Bosnia complain of deprivation of sources of material and yet prior to the second round have shown no interest in the substantial CIA study published in 2002, or the Dutch Government Report, which is massive, or the relevant passage of the judgments of the Trial Chamber in the *Krstic* case. The concepts of notoriety of facts, of inference, of a pattern of events relied upon by the applicant State, have no legal weight in the absence of substantial evidence including evidence of context and elements of causation.

15. The evidential assumptions of the Bosnian delegation involve a number of contradictions. At certain stages of the pleadings, counsel for Bosnia come close to saying that there is no need for proof by means of direct evidence (CR 2006/2, pp. 20-21, para. 12 (van den Biesen)).

16. At other junctures counsel for Bosnia appear to recognize that their stock of evidence is limited and unreliable. In the first round Professor Franck accepts in terms that Bosnia does not possess first-hand documentary evidence to establish the link of State responsibility between events in Bosnia and the government in Belgrade (CR 2006/3, p. 26, para. 19). Now, of course, this

complaint is exaggerated. Both in the Reply, and since the close of the written pleadings, the applicant State has deployed a large number of documents. But the nub of the matter is the fact that the numerous documents available fail to establish attribution.

AN ANALYSIS OF THE EVIDENCE RELIED UPON BY THE APPLICANT STATE

17. I now propose to analyse one by one the specific forms of evidence relied upon by the applicant State in relation to proving attribution. The categories employed are intended to reflect the presentation adopted by the other Party.

18. The principal categories to be discussed are as follows:

A. First, alleged modes of preparation for genocide, such as the distribution of arms or the creation of parallel institutions.

B. Second, resort to inherently flawed types of evidence, including the product of plea bargains and the use of seriously curtailed quotations.

C. And lastly, other individual items of evidence given prominence by the applicant State.

19. When this agenda of material is reviewed it will be seen to provide no substantial or reliable support to the submissions of Bosnia on the issue of attribution.

A. Alleged modes of preparation for genocide

Reorganization of the federal army of Yugoslavia

20. And so, the first of the alleged modes of preparation for genocide is reorganization of the federal army of Yugoslavia. When the disintegration of the Socialist Federal Republic of Yugoslavia was taking place, the different communities reacted in essentially similar ways. The Croats, the Bosnian Muslims, and the different Serbian communities made dispositions which appeared necessary to preserve their security and interests.

21. The position of Bosnia and Herzegovina in these proceedings has been to allege that any such protective measures constituted a preparation for genocide. Counsel for Bosnia have supported this extravagant thesis (CR 2006/2, pp. 32-34 (van den Biesen); CR 2006/4, pp. 10-21 (Karagiannakis); CR 2006/8, pp. 40-50 (van den Biesen).

22. On 3 March Mr. van den Biesen addressed the Court on a variety of topics assembled under the rubric "The Respondent's continued presence". This presentation was introduced as a

"general overview of the facts which will be relevant for the actual establishment of State responsibility" (CR 2006/8, pp. 39-61).

23. As I pointed out in the first round, the arming and redeployment of Serbian forces after the political and military disintegration of the federal State, is regarded as unacceptable and sinister. The judicial finding relied upon by Mr. van den Biesen, in the *Brdjanin* case, reads, in part, as follows:

> "As President of the Republic of Serbia, Slobodan Milošević made arrangements to ensure that Bosnian Serb forces could retain personnel and arms by ordering, on 5 December 1991, that soldiers who were native of Bosnia and Herzegovina be transferred to Bosnia and that those in Bosnia who were native of other republics be moved out. On 25 December 1991, a JNA commander reported to Milošević that these transfers were 90 per cent complete. According to the diary notes of Borislav Jović (President of the SFRY Presidency), Milošević anticipated that several Yugoslav republics would soon be recognized as independent States, and the Serbian President wanted to be sure that the JNA in Bosnia and Herzegovina could qualify as an indigenous Bosnian fighting force. Throughout 1991 and 1992, the Bosnian Serb leadership communicated with the SFRY leadership on strategic policy in the event that Bosnia and Herzegovina would become independent." (CR 2006/8, p. 41, para. 11.)

24. As I submitted in the first round, these reactions of the Serbs are *entirely to be expected in the prevailing circumstances*.

25. And it must be noted that there is no evidence available to link these measures of redeployment with any plan to commit genocide or to establish any motive to commit genocide.

The distribution of arms

26. And then the second of the alleged modes of preparation for genocide is the distribution of arms. Counsel for Bosnia give prominence to the distribution of weapons by the Yugoslav authorities in the period of disintegration and transition. This is the account given by Ms Karagiannakis on 28 February:

> "10. The JNA and the Serbian Ministry of the Interior and the SFRY Ministry of the Interior armed the Bosnian Serbs of the Serbian Democratic Party — the SDS —, Serbian paramilitaries and Bosnian Serb territorial defence units, otherwise referred to as the TO. This point has been demonstrated in our Reply and the materials that have come to light subsequently have only served to reinforce this.
>
> . . . . . .
>
> 12. The Trial Chamber (that is in the *Brdjanin* case) found that, in September 1990, the JNA had ordered that weapons be removed from the depots under the

> control of the territorial defence units and moved to its own armouries, thereby concentrating arms with the JNA in Bosnia. The Serbian Democratic Party received substantial support from the JNA. It systematically supplied light arms to SDS committees in Bosnian Serb claimed areas, as well as to Serbian paramilitary groups. Serbian paramilitary groups in this context means local Serb paramilitaries and paramilitary groups coming from outside of Bosnia. Distribution to Bosnian Serb civilians was carried out by the local communes and was supervised by the SDS, with the support of the JNA and the local police. The arming of the Bosnian Serb villagers was well organized and involved the use of trucks and occasionally even helicopters. The JNA also engaged in redistributing weapons to the Serbian TO units in predominantly Bosnian Serb populated areas.
>
> 13. Obviously, this arming did not go unnoticed. Muslims and Croats in Bosnian Krajina also sought to obtain arms. However, the non-Serb efforts were nowhere near as successful as those of the Bosnian Serbs, both in terms of numbers and quality. This was because they mainly procured their weapons on an individual basis. These individual efforts fell far short of the efficient, well-organized and large-scale arming efforts of the Serbs." (CR 2006/4, pp. 12-13.)

27. Madam President, this account of the facts can be accepted for the sake of argument. Counsel does not seek to link these facts with a plan to commit genocide on the part of the Serbian authorities. There is no suggestion that in the circumstances the distribution of arms was illegal and it was pursued also by other groups. Moreover, with a touch of realism, counsel for Bosnia and Herzegovina recognizes that the Muslims and Croats "also sought to obtain arms".

Madam President, if you wish, that would be a good place to break.

The PRESIDENT: Thank you, Mr. Brownlie. The Court will now rise for fifteen minutes.

The Court adjourned from 11.20 to 11.35 a.m.

The PRESIDENT: Please be seated. Mr. Brownlie, you have the floor.

Mr. BROWNLIE: Thank you, Madam President.

The creation of parallel institutions

28. As the process of disintegration of the Yugoslav federation advanced, the Serb leadership and political organizations in Bosnia began setting up parallel institutions. Ms Karagiannakis gives the following helpful account:

> "26. The Bosnian Serbs set up parallel institutions at their so-called republic level, at the regional level and, critically, at the municipal level. The steps that were taken in this regard have been set out most recently in the *Brdjanin* judgment of the ICTY. They are also explained in detail in the expert reports and testimony on the

> Bosnian Serb leadership and the Bosnian Serb Crisis Staffs, which have been admitted into evidence in the *Krajisnik* case.
>
> 27. A ground-breaking step in the creation of the Bosnian Serb parallel structures was the creation of a Serbian Assembly of Bosnia and Herzegovina. The inaugural session was held on 24 October 1991 after the SDS delegates walked out of the Assembly of the Socialist Republic of Bosnia and Herzegovina. Between its establishment and the founding of the Bosnian Serb Republic on 9 January 1992, the Assembly legislatively prepared the means and conditions for the establishment of entirely separate structures for the Serbian people of Bosnia. In a speech given in November 1991, Radovan Karadžić instructed SDS members to impose complete authority in their respective municipalities, regions and local communities. On 11 December 1991, the Bosnian Serb Assembly voted to recommend the establishment of Serbian municipalities, the aim of which was to break up the existing municipalities where Serbs were not in the majority." (CR 2006/4, pp. 16-17.)

29. This process of political adjustment took place in other regions affected by the disintegration of the Federation. However, in relation to the Bosnian Serbs counsel for the applicant State insists that the creation of new local institutions was solely a means to an end, that is to say, preparation for ethnic cleansing and for a genocidal conflict (see CR 2006/4, p. 10, para. 3, and p. 12, para. 9). The reality was otherwise. In the light of the initiatives taken by those pursuing a secessionist programme, the Bosnian Serbs had little or no choice in facing up to the crisis.

30. In any event this type of evidence cannot be regarded as logically related to issues of attribution, because the creation of new local institutions was based upon practical needs and was politically neutral.

Lawful forms of co-operation and mutual assistance alleged to be preparations for genocide

31. The tendency of the applicant State to conceptualize all forms of reasonable and lawful activity as preparation for genocide has been extended to various categories of mutual assistance and international co-operation, including co-operation in the banking sphere. These aspects of the Bosnian argument will now be examined.

The question of financial relations

32. The question of financial interdependency was the subject of the presentation by Mr. Torkildsen on 6 March (CR 2006/9, pp. 22-49). The subject was also touched on by Ms Karagiannakis on 28 February (CR 2006/4, pp. 20-21). The purpose of Mr. Torkildsen's discourse was to assert:

> "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 provisions of primary issues from Belgrade to the other two Serb entities to cover the budget deficits of 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." (CR 2006/9, p. 49.)

33. I would like to present a more objective picture of the financial relationship between the Federal Republic of Yugoslavia and Republika Srpska during the war in Bosnia and Herzegovina. I would also like to emphasize the Applicant's incorrect assertions in relation to the banking system. It is obvious that the Applicant does not have sufficient evidence and for that reason, resort is had to incomplete citations and illogical assumptions.

34. The National Bank of Republika Srpska was founded by its decision No. 02-113 on 12 May 1992. From that time until the establishment of the National Bank of Bosnia and Herzegovina, it was an independent central bank. Soon after the National Bank of Republika Srpska was established, the Law of the National Bank was adopted and the Governor, and the members of the Board, were appointed. The documents supporting these facts may be found in the Annual Report of the National Bank of Republika Srpska and it appears also in the documents of the *Milosevic* case (February 1993 — ICTY, *Prosecutor* v. *Slobodan Milosevic*, case No. IT-02-54-T, C4219, p. 1).

35. Co-operation between the National Bank of Yugoslavia (NBY), the National Bank of Republika Srpska (NBRS) and the National Bank of the Republika Srpska Krajina (NBRSK) was based primarily on the intentions of the National Bank of Yugoslavia to help newly founded banking institutions to more easily overcome the initial difficulties that usually exist in this process. By the Law of National Bank of Yugoslavia (25 June 1993) the NBY controlled solvency and the legality of operations by commercial banks and other financial institutions. The National Bank of Yugoslavia controlled neither the National Bank of Republika Srpska nor the commercial banks operating in Republika Srpska. That could be seen from the information from the meeting of the Bank Association of 18 May 1994 (ICTY, *Prosecutor* v. *Slobodan Milosevic*, case No. IT-02-54-T,

C4154). It seems that the "Information from the meeting of Bank Association concerning the statements contained in the finding of the Republika Srpska financial police" is the best proof to the contrary of the claims of the Applicant. As stated in the information "the control of the National Bank and of commercial banks has been carried out by persons who are neither competent nor have the required skills for controlling the banking system". Control of the banks and the National Bank of Republika Srpska may be carried out only by the National Bank of Yugoslavia on the basis of the "Protocol regulating the single monetary policy for the territories of the FRY, Republika Srpska and Republika Srpska Krajina". It is clear that such control never took place. Moreover, as it was established in the cited information, it was not applied in practice.

36. The NBRS and the NBRSK adopted the legal regulations of the National Bank of Yugoslavia. The reason for that was their incapacity to implement regulations during the war period. The Law and Regulations of the National Bank of Yugoslavia were based on the law of regulations of the National Bank of the former SFRY. Similarly, the Central Bank of Croatia and Slovenia, countries that obviously emerged from the former Yugoslavia, adopted their legal regulations using the same starting points.

37. The conclusions presented in the "Annual Report of the National Bank of the Republic of Srpska" indicate that the economic sanctions imposed by the international community against the FRY also affected the RS (Republic of Srpska) since all transfers of goods from the RS went through the FRY. Considering that the RS was engaged in war at the time when this report was drawn up and was not in the position to ensure the transit of goods via territories affected by heavy fighting, the question was being posed as to which other routes could have been used for these transits. It goes without saying that the sanctions against the FRY, the sole trading partner and neighbour of the RS, would have affected the RS itself.

38. Moreover, the sanctions imposed against the FRY caused damage to the other neighbours of the FRY (Bulgaria, Macedonia and Romania). It is logical to conclude that the RS and RSK were affected by the sanctions imposed against the FRY, which was their principal trading and business partner. It is a fact that the FRY helped the Serbian populations in these territories and there is nothing objectionable in this respect. Even ten years after the Dayton Accords, Serbia is still the most important trading partner of the Republic of Srpska.

39. It is most important to emphasize, in order to point out the absence of the "financing" of the RS and RSK (i.e., their central banks and particularly their military structures by the FRY and FRY's central banks) is as follows: the NBY printed currency (dinars) on request of the NBRS and NBRSK. The currency issued by NBY had to be backed by foreign currency and deposited in the NBY. This information can be found in the "Note on the possibilities of mobilizing foreign exchange reserves for the purposes of budget deficit financing", of 3 March 1993 (ICTY, *Prosecutor* v. *Slobodan Milosevic*, case No. IT-02-54-T, C4133, p. 1) which says that the "mentioned Protocol clearly provides that the amount of new dinars printed for the territory of the RS should be covered by the foreign currency deposited with the NBY". Thus, it is quite clear that there was no financing of the RS or the Bosnian Serb army for that matter.

40. Mr. Torkildsen constantly repeated in his presentation that financing of RS from Belgrade was carried out in secrecy. This assertion is without any basis. Indeed, Mr. Torkildsen even cited Slobodan Milosevic who stated that the Republic of Srpska spent substantial amounts of money on Serbs outside of Serbia. As Mr. Milosevic declared to the Yugoslav News Agency Tanjug on 11 May 1993:

> "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 and Herzegovina."

41. The allocations to the Yugoslav army and army of Bosnian Serbs from their budgets are also interesting. It should be recalled that the RS was engaged in a war at the time and that the war was on the border with the FRY. Even in time of peace, the largest share of the national budgets of all countries involved was dedicated to their respective armies. Naturally, when there is a threat of war, budget allocations for the military are large. The reason why the National Bank of Yugoslavia printed money for the JNA and why there were insufficient amounts of money in the budget, relates partly to the suspension of financing by the former Republics of Slovenia and Croatia.

1. Printing money in the National Bank of Yugoslavia

42. It is to be recalled that on 1 July 1992, the Republic of Srpska introduced new currency and the SFRY currency (that was legal up to that point) was replaced and withdrawn from

circulation — I refer to the document "An analysis of the combat readiness and activities of Army of RS in 1992". As I have already indicated, Republic of Srpska, the RS, and the Republic of Serbian Krajina in 1992 and 1993 had their own separate central banks and printed their own currency. The currency of the Republic of Srpska was issued by the Central Bank of the Republic of Srpska and the currency of the Republic of Serbian Krajina was issued by the Central Bank of the Republic of Serbian Krajina. These currencies were printed at the Topcider mint in Belgrade, the printing facility of the National Bank of Yugoslavia.

43. The Respondent has submitted a currency note of Republika Srpska during the period of 1992-1993 into the judges' folder. As you can clearly see and conclude, Republika Srpska, as well as the FRY, suffered substantial hyperinflation, which was the consequence of several factors.

44. Currencies of the RS and the RSK, were set at parity with the Yugoslav dinar, meaning that one RSK dinar was equal to one FRY dinar and also one RS dinar was equal to one FRY dinar. The printing location has only a technical significance. The question of the money issuance by both central banks is more important. Sometimes the currencies, the banknotes of one country will be printed in another country because it is an issue of a purely commercial value, a commercial deal, and a service done by another country. Currencies were issued by the Central Banks of the RS and the RSK. They were printed in the FRY because RS and RSK did not have their own mints.

45. In that period there was a banknote replacement — old dinars were converted into the new dinars. The old banknotes were delivered to the treasury of the National Bank of Yugoslavia in order to be replaced by an appropriate amount of valid banknotes. For example, if someone had German marks and lived in France, German marks had to be replaced by euros. They had to be exchanged in some bank for euros because German marks were not valid after a certain period of time. So why is that operation different from the previous one? It was a technical operation and it was limited to the area of the RSK, the RS, and the FRY.

2. Hyperinflation and monetary integration

46. In the spring of 1992, sanctions were in force against the Federal Republic of Yugoslavia and in May 1993, after the Vance-Owen Plan was rejected, the most rigorous sanctions were

introduced which closed the territory of the Federal Republic of Yugoslavia. These severe sanctions completely shut off the Federal Republic of Yugoslavia, the Republic of Srpska and the Republic of Serbian Krajina, from the rest of the world and caused immense financial damage to their respective economies. In the second half of 1993, the sanctions caused hyperinflation.

47. It is necessary to outline the realities and effects of the hyperinflation that occurred in Yugoslavia during 1992 to 1993. Hyperinflation is defined as monthly growth in prices or values above 50 per cent. The hyperinflation in the Republic of Serbia will be easier to comprehend through a review of the numbers.

48. During January 1994, daily growth of prices in the FRY exceeded 60 per cent. To put this into perspective, prices in the FRY during that 31-day period rose 2 per cent per hour. It was at this time that the FRY issued the 5,000 million dinar note. Indeed, during this period of hyperinflation new bills were issued every month. This period of hyperinflation lasted 24 months: and a copy of the 5,000 million dinar bill is in the judges' folder.

49. *The average income of the FRY citizens in December 1993 was 21 Deutschmarks*: and it is still questionable how the citizens survived during that time. For a comparison, I would like to point out that in October 1993 one kilo of apples cost 3,000 dinars, while in January 1994 the same kilo was priced at an unbelievable four billion dinars. I am afraid in my book a billion is a million million — there are debates on how this can be properly done. On the basis of this information it is easy to understand the enormous figures that were mentioned in Mr. Torkildsen's quotations regarding budgets and rebalances of the budgets of the FRY and the RS.

50. The isolated environments and the living conditions created serious difficulties, not only for the people within Serbia proper, but also for the people living in the RS and the RSK. The international sanctions were imposed exclusively against the then Federal Republic of Yugoslavia and not against the RS and the RSK. However, since the RS and the RSK were isolated, the only country that they could financially co-operate with was Serbia and that was the reason for the monetary integration. One should keep in mind that the economic environment was so narrowed down that some 12 million people were struggling for their survival. Trade had been restricted under the sanctions to the extent that eventually barely any trade actually existed. Co-operation was necessary to help the struggling people under quite impossible conditions.

51. In former Yugoslavia there was a federation based upon the development of the underdeveloped regions and the whole of Bosnia and Herzegovina was considered to be an insufficiently developed region of the SFRY, along with some other regions. As a result it was the recipient of aid and assistance, and additional assistance for its development. The fund of the federation for support to the insufficiently developed regions of the SFRY was first set up by Serbia and it was financed to the extent of 50 per cent by the resources and income of Serbia.

3. Credits and "budget financing" of the RS

52. Mr. Torkildsen constantly repeated in his speech that Serbia and Montenegro gave credits to rebalance the budget of the RS. The issue of "budget financing" in Republika Srpska by the FRY is elaborated in Mr. Torkildsen's report in a very interesting way. During the cross-examination of Mr. Vladimir Lukic, Ms Korner, following the example of Mr. Torkildsen, attempted to impress upon the Court that the FRY financed both the budget and the budget deficits associated with Republika Srpska. There is simply no credible evidence to support this claim.

53. First of all, there is an allegation regarding the budget of the RS that this budget consisted of no other income than the income received from the credits. From the *Official Gazette* of Republika Srpska dated 25 August 1993, it could be seen that the income was coming from the profits of the companies, trade taxes, property taxes, tariffs, fees, and so forth.

54. Another unfounded claim of Mr. Torkildsen related to an almost complete financing of the rebalance of the budget of the RS from the loans received from the FRY. In the *Official Gazette* of Republika Srpska, dated 30 March 1994, it was stated that the origin of income for rebalancing the budget of the RS came from credit funds. However, the document does not mention that the FRY provided those loans. Thus, the construction of Mr. Torkildsen is not based on the documentary evidence.

55. I would like to emphasize, once more, the importance of the document entitled "Note on the possibilities of mobilising foreign exchange reserves for the purposes of budget deficit financing" adopted by the National Bank of Republika Srpska. This document proves that no financing from the FRY could have existed. The Note was adopted in Banja Luka on 3 March 1993 and discusses the problem of financing the budget deficits. The problem was

ultimately resolved in the following way — for each amount of new dinars, issued for the territory of Republika Srpska, there was to be an equivalent amount of foreign currency deposited in the National Bank of Yugoslavia. This document also discusses how this process was applied in practice and explains that the Government of the RS, for the purpose of providing 15 million new dinars, used a portion of its available foreign exchange to cover the issuance of new dinars.

56. Furthermore, from the same document it can be observed that the "decision on mobilising foreign currency reserves" has been submitted to the National Bank for their realization.

57. The only possible conclusion is that all the indications of Mr. Torkildsen are completely untrue and that there was no financing of the budget deficit in Republika Srpska by the FRY.

58. However, even if the FRY did give credits to the RS, what was wrong with that? Credits should be repaid. It is common logic that the granting of credits cannot be the same as financing. Since Yugoslavia was isolated, some kind of co-operation and assistance had to be established. How is that different from the situation when the International Monetary Fund, for example, decides to grant a credit under favourable conditions to maintain the recipient country's economic stability?

59. And then there is the question of who controlled these funds? If the credit was given to the Republic of Srpska Krajina or to Republika Srpska to cover the deficit in their respective budgets, surely the recipient of the loan — or whoever made budget decisions — controlled those funds. The motive of the FRY was to help the people who lived there.

4. Report of Mr. Milivoje Miletic

60. One of the documents that the Applicant relies upon to prove its point is the report made by the representative of the NBY, Mr. Milivoje Miletic. Mr. Miletic paid an official visit to the NBRS in the period 4 to 8 April 1994. The Applicant alleges that Mr. Miletic visited the NBRS in order to observe how it was operating. I emphasize this because the Applicant referred to this visit as "the control carried out by the NBY in relation to the NBRS". Mr. Torkildsen constantly repeated that Mr. Milivoje Miletic was acting as the *Director* of the NBY. Now, it is true that Mr. Miletic had a title of a director, but I think it would be useful to explain his precise position. According to the Law on the NBY of 1993, the NBY had the Council — which had seven

members —, the Governor of the National Bank, the Deputy Governor, the Vice-Governors and directors. There were five different departments. When Mr. Torkildsen said "the Director of the National Bank", one might think that this was someone who *manages* the National Bank. Mr. Miletic was not the Governor or the Deputy Governor or the Vice-Governor. He was not even the director of a department. He was merely a director of one of the units within one of the five departments. The co-operation and assistance that existed was on a professional expert level. Such co-operation among national banks is completely normal and the visit of Mr. Miletic to the National Bank of the Republic of Srpska was organized in that manner and primarily focused on that goal.

61. The activities of the NBRS are clearly defined in the report as activities of the Central Bank. Mr. Torkildsen stated in his speech:

> "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 Republika Srpska for 1992. Here we read: 'In the beginning the National Bank of Republika Srpska was given special support by the National Bank of Yugoslavia.'"

Mr. Torkildsen added that "special support" took the form of "work methodology, printing of money" (CR 2006/9, para. 45).

62. It is clear that the relationship between national banks was based on co-operation, support and assistance to the National Bank of the RS from the National Bank of the FRY.

63. It is even mentioned by the Applicant that "during this phase there was a close *co-operation* between national banks". *It is logical to ask, how is it possible to talk about the creation of the national banks' systems on the basis of co-operation and expert assistance when that is normal in the relationship between central banks.* The report also states that the co-operation between the banks included the assistance that the NBY rendered to the NBRS, at that time in the process of creation. The NBRS Annual Report of May 1993 stated that the NBRS received special support from the NBY in the initial phase of its work and that "despite different monetary area" the NBY provided expert assistance, assistance in the methodology of functioning and banknote printing. This information obviously reinforces the claims that there was a working relationship between these two central banks and that the NBY provided expertise and assistance to the newly created NBRS, and did so legally.

64. Mr. Torkildsen stated at the end of his presentation on the 6 March 2006 that:

> "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."

He says:

> "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." (CR 2006/9, para. 59.)

65. The only problem for Mr. Torkildsen and the Applicant concerning this Official Note is that this "document" was never signed and officially recognized. Under the Law of the National Bank of Yugoslavia of 25 June 1993, the Governor must adopt general and special decisions. General decisions adopted by the Governor during that period were required to be published in the *Official Gazette* of the FRY. The so-called Official Note that Mr. Torkildsen referred to was never published. Consequently, this document has never been adopted.

66. The same law specified that the National Bank of Yugoslavia had the main republic branches in Belgrade and Podgorica and branches in Novi Sad and Pristina. It follows that there are no main branches in the Republic of Srpska and the Republic of Srpska Krajina, contrary to the assertions of Mr. Torkildsen.

5. Assistance to the army of Republika Srpska

67. A part of Mr. Torkildsen's speech was devoted to the issue of the assistance to the army of the RS. In the document "Analysis of the combat readiness and activities of the army of RS in 1992" —dated 1993, issued by the Main Staff of the army of Republika Srpska —, the chapter entitled "Planning of the development and financing of the VRS army" enables us to see the three stages of VRS army financing. Mr. Torkildsen mentioned this Analysis in part 9 of the transcripts and stated that "in the first stage, lasting from 20 May 1992 until June 1992 finances were provided mainly from the resources at the disposal of the JNA units". However, Mr. Torkildsen "forgets" to continue the reading of the document he quotes, which states: "These resources had remained in the territory of Republika Srpska", and "this period is characterized by the virtual disintegration of the former system of financing, a general shortage of financial resources, and personal status

issues" (ICTY, *Prosecutor* v. *Slobodan Milošević*, case No. IT-02-54-T, C4712, p. 127). Mr. Torkildsen continued with this conclusion: "The fact is that the total financing of the VRS from Belgrade continued, but this financing was executed in a more discreet manner." And he again "forgets" to read the next chapter of the Analysis: "In the second stage, the Ministry of Defence, that is, the Government of Republika Srpska, took over the entire financing burden" and also "[i]t is important to mention that on 1 July 1992 the currency of Republika Srpska was introduced, and the SFRY currency was replaced and withdrawn from circulation" (p. 127).

68. Paragraph 31 of the transcripts of Mr. Torkildsen (CR 2006/9) is the best proof of his inconsistency and that the conclusions he made are totally unsupported by evidence. Mr. Torkildsen cited the confidential internal letter of the Krajina Corps of the Bosnian Serb army dated 11 September 1992: "I am asking you to settle this matter with the GS (General Staff) of the Army of FRY, who should, and in our opinion has a duty to, help us financially for the purpose of successful combat actions." Mr. Torkildsen concluded: "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."

69. It is difficult to understand this conclusion. Where is the evidence that the FRY army *resolved* that financial problem? And after the Dayton Accords in 1995, there were absolutely no conflicts, not even individual incidents anywhere in Bosnia-Herzegovina or Croatia. Until 2002, Yugoslavia extended material aid to the officers, that is, the army of Republika Srpska. Is this not sufficient to justify the conclusion that that aid was not for purposes of war but to support the maintenance of the army within the scope and conditions of the Dayton Accords? No one was waging war after the signing of the Dayton Accords and material aid continued for the next seven years.

70. Madam President, this segment of the Bosnian argument provides yet another example of the habit of our opponents to construe every normal action of Serbia and Montenegro as evidence of culpability.

71. At this stage in the argument, some recapitulation is called for. In my review of the evidence adduced by Bosnia, three types of completely normal actions and policies have been reviewed:

First: the reorganization of the Federal Army of Yugoslavia when the disintegration of the Socialist Federal Republic of Yugoslavia was taking place.

Second: the distribution of weapons by the Yugoslav authorities in the period of disintegration and transition.

Third: various categories of mutual assistance and co-operation, including co-operation in the banking sphere.

I shall now move on to certain

B. Inherently flawed types of evidence relied upon by the applicant State: and first, the evidence resulting from plea bargains

72. In the search for evidence the applicant State chooses to rely upon types of evidence which, in our submission, are inherently flawed. The reliance on plea bargains is one such type of evidence. In this context the plea agreement of Ms Plavšić is invoked frequently — I would say *very* frequently.

Biljana Plavšić

73. Reference should be made in the first round to the speeches of

(a) Mr. van den Biesen (CR 2006/2, pp. 33 and 48);

(b) Ms Karagiannakis (CR 2006/3, p. 49);

(c) Professor Franck (CR 2006/6, p. 29);

(d) Professor Pellet (CR 2006/10, pp. 55-56).

And then, in the second round:

(e) Professor Franck (CR 2006/32, p. 11);

(f) Professor Franck (CR 2006/33, pp. 41-42).

74. This evidence is reported on the basis that Ms Plavšić *had made a statement*. Thus Mr. van den Biesen used the locution: "She declared . . ." In fact the so-called statement of facts was part of the plea bargain and it is well known that it was prepared in the Office of the Prosecutor

of the ICTY. The style and content of the drafting reflects the provenance of the statement. If I can quote paragraph 14 as an example:

> "14. Certain members of the Bosnian Serb leadership collaborated closely with Slobodan Milosevic in the conception and execution of the objective of ethnic separation by force. The two principal leaders of the Bosnian Serbs, Radovan Karadzic and Momcilo Krajisnik frequently came to Belgrade to consult with, take guidance from or arrange for support from Milosevic in achieving this end. The army of Republika Srpska (VRS) was financed and logistically supported by the political and military leadership in Belgrade, with whom it collaborated and cooperated in order to execute the objective of ethnic separation by force."

This particular paragraph was referred to by Professor Pellet (see CR 2006/10, pp. 55-56).

75. This is an example of the content of the factual basis for a plea of guilty, as agreed by the defence counsel. The plea agreement includes the following paragraphs:

> "*Penalty*
>
> 6. Biljana Plavšić understands that the maximum sentence that could be imposed by the Trial Chamber for a guilty plea to Count 3 of the Indictment is a term of imprisonment for a term up to and including the remainder of the convicted person's life as described in Rule 101 *(A)*. In determining the sentence, the Trial Chamber shall, pursuant to Article 24 (2) of the Statute, take into consideration such factors as the gravity of the offence and the individual circumstances of the convicted person as well as those factors described in Rule 101 *(B)*.
>
> 7. In respect of the length of sentence to be imposed, the Prosecutor has made no promises to Biljana Plavšić in order to induce her to change her plea to Count 3 from not guilty to guilty.
>
> *Factual Basis*
>
> 8. A written factual basis establishing the crime described in Count 3 of the Indictment and Biljana Plavšić's participation in it has been prepared and filed with the Trial Chamber. Biljana Plavšić has reviewed with her attorneys the factual basis and agrees with the assertions set forth therein.
>
> *Consideration by the Prosecutor*
>
> 9. In exchange for Biljana Plavšić's plea of guilty to Count 3 of the Indictment, the Prosecutor agrees to the following:
>
> *(a)* Following Biljana Plavšić's plea of guilty to Count 3 of Indictment, and at the time of sentencing, the Prosecutor will move to dismiss with prejudice the remaining counts of the Indictment.
>
> *(b)* Following Biljana Plavšić's plea of guilty, a public sentencing hearing will occur at which hearing the Prosecutor and the Defence may submit any relevant evidence that may assist the Trial Chamber in determining an appropriate sentence.

(c) No other promises or representations — [*no other promises or representations*] — have been made by the Prosecutor to induce Biljana Plavšić to enter this Agreement."

76. Madam President, from these provisions it is clear that the acceptance of the factual statement by Ms Plavšić was an essential element of the agreement so far as the Prosecution was concerned. Given the possible sentence of life imprisonment, the acceptance of the statement drafted by the Office of the Prosecutor was obviously made by the accused under constraint.

77. Madam President, on 12 March 2005 Ms Plavsic gave an interview to a Banja Luka TV station, in which she offered some explanation concerning her plea agreement. The interview was reported by a Belgrade daily *Glas Javnosti* and a news agency known as B92. The copies of both articles are in the judges' folder. From one of those articles we can read:

> "The former President of the Republika Srpska, who serves 11 years of imprisonment for war crimes in the Hinsberg Prison in Sweden, does not contest that the Serbian side committed crimes during the war in Bosnia and Herzegovina. Nevertheless, she claims that she was in no way involved in war issues, but that, as a member of the Presidency of the Republika Srpska, she was engaged in solving the humanitarian situation.
>
> Biljana Plavsic says that she decided to plead guilty in order to stop the agony in which she found herself since, as she claims, she could not bring witnesses to document in The Hague that she had not been involved in crimes. 'And then, when I understood how things are being done in The Hague Tribunal, then I said I should at least do something for myself. At least I didn't have to sit there and listen to false witnesses.'" (Article available in Serbian on www.b92.net/info/vesti/index.php?yyyy =2005&mm=03&dd=12&nav_id=164146&version=print.)

78. Going back to paragraph 14 of the statement of facts in her case, which I have just quoted, it is worth recalling that Ms Plavsic refused to testify in the *Milosevic* case. On this she gave the following explanation (I am still quoting from the interview):

> "Plavsic said that it was true that the Prosecution had invited her to testify against Slobodan Milosevic and that she had refused that. 'I told them I didn't want to testify, because I had never seen that man during the war. I told them that I would say that in the courtroom and asked if that is what they wanted to happen', she said." (Article available in Serbian on http://arhiva.glas-javnosti.co.yu/arhiva/ 2005/03/13/srpski/P05031203.shtml.)

79. Madam President, in my submission, the presentation of such material before this Court is an indication of the poverty of the evidence which is being deployed on behalf of the applicant State. Moreover, as Mr. Obradovic pointed out in the first round, the Plavšić document has not been used as evidence in any trial before the ICTY (CR 2006/12, pp. 42-43, para. 82).

My second example is the plea agreement of *Miroslav Deronjic*.

80. In this case reference should be made to the speeches of:

(1) Ms Karagiannakis (CR 2006/3, p. 49);

(2) Ms Karagiannakis (CR 2006/4, p. 5, para. 24, *ibid*., p. 17, para. 30);

(3) Ms Dauban (CR 2006/5, pp. 16, 21-22);

(4) Professor Pellet (CR 2006/10, p. 45);

(5) Mr. van den Biesen (CR 2006/30, p. 50);

(6) Professor Stern (CR 2006/32, p. 42);

(7) Ms Dauban (CR 2006/34, p. 49);

(8) Ms Dauban (CR 2006/35, pp. 23, 25-27, 32).

81. Mr. Deronjic, like Ms Plavšić, had entered into a plea-bargain. The plea agreement included the following provisions:

> "*Penalty and Sentencing*
>
> 6. Miroslav Deronjic understands that the maximum sentence that can be imposed by the Trial Chamber for a guilty plea to the charge of Persecutions contained in the Second Amended Indictment is a term of imprisonment for a term up to and including the remainder of the convicted person's life as described in Rule 101 *(A)*.
>
> 7. Miroslav Deronjic understands that the Trial Chamber shall not be bound by any agreement specified in Rule 62 *ter* (A) of the Tribunal's Rules of Procedure and Evidence.
>
> 8. In determining the sentence, the Trial Chamber shall, pursuant to Article 24 (2) of the Statute, take into consideration such factors as the gravity of the offence and the individual circumstances of the convicted person as well as those factors described in Rule 101 *(B)*: any aggravating circumstances; any mitigating circumstances including the substantial co-operation with the Prosecution before or after conviction; and the general practice regarding prison sentences in the courts of the former Yugoslavia.
>
> 9. Based on all of the factors and considerations mentioned in the preceding paragraph, the Defence will recommend to the Trial Chamber that it impose a term of imprisonment of no more than six years."

82. The factual statement which formed a part of the plea agreement indicates the strategy of the Prosecutor's Office, as in paragraphs 10 and 11:

> "10. At a meeting convened in Sarajevo on or about the 19th of December 1991, presided over by Radovan Karadzic and attended by, among others, deputies of the Bosnian Serb Assembly and by presidents of the municipal boards, including Miroslav Deronjic, 'strictly confidential' written instructions were disseminated by the attendees relating to the establishment of Bosnian Serb municipal government bodies in divers municipalities in Bosnia and Herzegovina. The instructions, entitled

> 'Instructions for the organisation and activities of the organs of the Serb people in Bosnia and Herzegovina in a state of emergency' and dated 19 December 1991, were directed to municipalities where Bosnian Serbs comprised either a majority of the population (Variant A) or a minority of the population (Variant B). The contents of these instructions were explained to the participants of the meeting by Radovan Karadzic. The instructions identified precise steps to be taken within the respective municipalities in order to establish Bosnian Serb control. The instructions described two distinct phases of action.
>
> 11. Bratunac Municipality was a Variant B municipality. The steps described in the instructions for Variant B municipalities included the formation of Crisis Staffs and the formation of Serb Assemblies. Upon receiving these confidential written instructions, Miroslav Deronjic returned to the Bratunac Municipality where, under his leadership and direction, the Municipal Board immediately adopted and implemented the instructions. An SDS Crisis Staff was formed and Miroslav Deronjic was elected president. A Serb Assembly was established and Ljubisav Simic was elected president of that organ."

83. The accused was sentenced to ten years of imprisonment, sentencing judgment on 30 March 2004, and this was affirmed in the sentencing appeal on 20 July 2005. It is worth recalling that the first ground of appeal on sentencing involved questions relating to the status of the factual basis in the context of the plea agreement package. The text of the sentencing judgment makes clear that it may be necessary for a trial chamber to look beyond the plea agreement package to other evidence as "independent indicia" in order to satisfy itself that "there was a sufficient legal basis for the guilty plea" (Judgement on Sentencing Appeal, para. 16). These considerations must serve to emphasize the problematical nature of the material offered to the Court which emanates from such plea agreement packages. In any event, the validity of evidence of Mr. Deronjic will be further discussed by my colleagues, who will demonstrate that Mr. Deronjic cannot be taken as a reliable witness.

Inherently flawed types of evidence relied upon by the applicant State: the problematic and ambiguous segments of conversations and speeches

84. Madam President, I can now move on to examine the problematic and ambiguous segments of conversations and speeches. These materials will be dealt with in chronological order.

(a) ***The conversation involving Babic, Milosevic and Karadzic in July 1991***

85. In July 1991 Babic, Karadzic and Milosevic had a conversation which has been accorded considerable significance by the Bosnian delegation in the context of attribution. In the first place Professor Franck, in his first-round speech, introduced the subject as follows:

> "In July 1991 Babić, a leader of the Serb-breakaway Republika Srpska Krajina, had a conversation with Milosević and Karadzić in which the Bosnian Serb leader develops his plans to bring about their grand design of Greater Serbia, and Milosević warns Babic not to get in Karadzić's way. He meant: let Karadzić do his dirty work without hindrance. By his own words you will appreciate the total involvement of Milosević and his cohorts in Belgrade's massacre of non-Serbs in Bosnia." (CR 2006/3, p. 36.)

86. Subsequently, Ms Karagiannakis offered a similar interpretation of the conversation as follows:

> "5. The meeting in question took place in July 1991, in Milosevic's office in Belgrade. Karadzić and Babić attended. At that meeting, Karadzić explained what was in store for the Bosnian Muslims. Karadzić said that the Muslims would be expelled or crammed into river valleys and that he would link up all Serb territories in Bosnia and Herzegovina. Milosević responded to this explanation by warning Mr. Babić not to 'stand in Radovan's way'.
>
> 6. So what Milosević did was to tell Babić not to obstruct Karadzić in what was the implementation of the Greater Serbian plan in Bosnia through ethnic cleansing. At the conclusion of the meeting, President Milosević asked both Babić and Karadzić where they wanted the army — meaning the JNA — to be deployed. Both responded with their requests about where Milosević was to deploy the JNA. Karadzić responded, 'on the borders with Croatia'. Milosević said, 'fine'." (CR 2006/4, p. 11, paras. 5-6.)

87. In addition Professor Pellet makes a brief reference to the meeting (CR 2006/10, p. 56, para. 46).

88. None of these speakers report the words actually forming part of the conversation beyond the fact that Milosević told Babić not to "stand in Radovan's way". The assertion in each case is that the participants were planning the creation of a Greater Serbia.

89. This interpretation of the words apparently used by Mr. Milosević is extravagant. The assertion is based, in terms of citation, upon a highly compressed quotation from the *Milosević* Decision on Motion for Judgement of Acquittal, 16 June 2004, paragraph 253. This reads as follows:

> "In July 1991, Mr. Babić, Radovan Karadzić, and the Accused had a conversation during which Radovan Karadzić stated that he would chase the Muslims into the river valleys in order to link up all Serb territories in Bosnia and Herzegovina. The Accused warned Mr. Babić not to 'stand in Radovan's way'."

90. As I pointed out in the first round, there is no justification in the transcript for the language reported by Professor Franck or for the inferences he draws. The transcript is in fact helpful in providing an account of the actual sequence of the conversation.

91. During the exchanges between Milosević and Babić in the ICTY, Milosević described Babić as an extremist. Milosević and Karadzić were strongly opposed to the plan sponsored by Babić which involved the uniting of SAO Krajina — that is the Serbian Autonomous Region of Krajina — and another Autonomous Region of the same Krajina (Bosnian Krajina). The relevant exchanges appear in the transcript at pages 13808-13813. The key passages are as follows:

"Mr. Milosević: [Interpretation]

(question addressed to Mr. Babic)

> Q. Do you remember, since you're saying that the decision was not implemented, that I opposed it because it was crazy, that Radovan Karadzić was against it because he also thought it was crazy — do you remember
>
> **Page 13811**
>
> that in my presence, Radovan Karadzić told you that the Serbs and Muslims have excellent relationships, that your adventure was undermining the trust between the Serbs and Muslims and that it was inflicting enormous damage to harmony achieved in Bosnia-Herzegovina? Because after the multiparty elections they had very good co-operation. When I say "they" I'm referring to both Croats, Muslims, and Serbs in Bosnia-Herzegovina. Do you remember at what length he spoke about the disastrous effect of this initiative of yours on the mutual trust between Serbs and Muslims which he wanted to preserve?
>
> A. You called me to come to Belgrade for him to tell me that there was a different plan for Bosnia and that now was not the time for the unification of the two Krajinas, but that we should wait for Alija Izetbegovic to make a wrong political move, and then he would settle accounts with him in the way he said. He said that he had Alija Izetbegovic in his little pocket and that he could deal with him whenever he wanted but that now was not the time. It was better to wait for him to make a wrong political move, and then he would settle accounts by chasing the Muslims into the river valleys and uniting all Serb territories in Bosnia-Herzegovina and annexing SAO Krajina to that territory. That was the plan. That's what he presented to me in your presence. And then you said, 'Don't be stubborn', addressed to me, and, 'Don't stand in Radovan's way.' So you called me for him to announce this plan to me, which I assume you had designed together. [That is Babić's answer.]

Then there is a question from Mr. Milosević.

> Q. So that was going to be my next question. I was going to ask you: Was this in my presence? Did he say this in my presence? That's not true.

Babić then answers:

> A. But that is why you called me, for him to say that in your presence.
>
> Mr. Milosević:
>
> Q. Both he and I, Mr. Milan Babić, were endeavouring to persuade you to give up that idiotic plan which was upsetting the whole of Yugoslavia, because questions

had to be resolved by political means and not in such an arbitrary and unilateral manner. And never did he say in my presence that he had Izetbegovic in his little pocket and that he would force them into river valleys, and other such nonsense. These are all things that you added later on and made up. It appears you have an extraordinary ability to use half-truths. Half-truths . . .

Judge May [intervening]: I'm stopping this. I'm stopping this speech. Now, what's said is that you've made this up. Can you deal very briefly with it, please, witness Milan Babić.

[Babić is being asked by the judge to say whether Milosević is correct in alleging that Babić had made this conversation up.]

Mr. Babić:

A. It is not true that I've made it up. What is true is that Slobodan Milosević invited me to Belgrade for Radovan Karadzić to tell me, in his presence, about a plan that he agreed with, and that plan was that what we were doing in Bosnia and Grahovo could not be implemented just then and that there was another plan for Bosnia-Herzegovina, what I've already said that Radovan said. And Milosević, after Radovan Karadzić told me this, told me not to be stubborn, not to continue insisting on my plan on the unification of the two Krajinas and not to stand in Karadzić's way. And after that he asked me to settle that with the leadership of SDS in Bosnian Krajina. Radoslav Brdjanin organised the meeting in Celinac with people from Bosnian Krajina

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for Radovan to tell them this in my presence."

And that is the end of Babić's answer and that is the end of the sequence of question and answer.

92. In the second round Mr. van den Biesen was critical of my reference to the transcript in the *Milosevic* case (CR 2006/30, pp. 42-43). My purpose was to find out what the context was, that is, the context in which Milosevic asked Babic not to stand in the way of Karadzic. The transcript shows that Milosevic disputed the Babic version of the conversation. The true context was the opposition of Milosevic to the project of Babic for the unification of the two Krajinas. Why is counsel for Bosnia so annoyed by the introduction of the transcript and my reference to the full context?

93. Madam President, Ms Karagiannakis said that Mr. Babic was "to the nationalist Serbs in Croatian Krajina what Karadzic was to the nationalist Serbs in Bosnia. Their political leader." (CR 2006/4, p. 11, para. 4.) We do not have any reason to dispute this characterization of Mr. Babic.

94. However, the witness, Milan Babic, who was obviously a person whom one would expect to be a part of the purported overall plan to create a "Greater Serbia", testified for 11 full

days in the Milosevic trial and the only sentence from his 11-day-long testimony that the Applicant referred to is this one sentence, which is strongly disputed by Milosevic.

95. The validity of Mr. Babic's testimony is further exposed if we take a look at conversations between other Serb politicians, conversations which were not conducted in Mr. Babic's presence and for that reason would be expected to be more revealing. One such conversation took place between Milosevic and Karadzic on 9 January 1992 (ICTY, *Prosecutor* v. *Milosevic*, Exhibit P613.158a):

> "Slobodan Milošević: It's an act of courage to bring blue helmet there and secure a peace in a way, now that's . . . now it's not an act of bravery to push the people into misery by shouting war cries.
>
> Radovan Karadžić: That was all said this way, but there is no need to support you because you are not . . . attacked.
>
> Slobodan Milošević: I wasn't . . . no, I didn't mean . . . I didn't mean . . . protection or anything like that. But simply to make it clear that this is your opinion too.
>
> Radovan Karadžić: Well, one can tell from the text, from what . . . you /just/ read, not to mention . . .
>
> Slobodan Milošević: Well, Radovan, one can tell, one can tell that we have no clue what we're doing and that we should be united, and these are commonplaces . . . I'm very sorry about this, I have to tell you. For I expected you would say one sentence at least, I mean . . . you didn't have to give me support, you could have said: 'I think Babić should accept this peace plan . . . Vance, because this peace plan is good, it secures, you put it in a couple of statements which are general in nature. You didn't even have to mention me in it.'
>
> Radovan Karadžić: Yes. Well, we have to see . . . I'm sure other papers will have more/on it/, because I said exactly that, that I understand the fears, by that the UN is the guarantee and that it has never failed anyone so far, and that those fears shouldn't . . . (?) impact.
>
> Slobodan Milošević: Yes, yes, I understand that, but as I said, I've read that, so I don't . . . I don't need support for me, but for the resolution of this problem there, to solve it in a humane way, in a good way.
>
> Radovan Karadžić: OK, but one should calm this conflict, now what he . . . if he replied in an ugly way, that would contribute to the divisions. He can reply in an ugly way and then he would be going towards the opposition and this whole thing would get kind of personal, a kind of personal disagreement, /and/ that is not good. That is not good.
>
> Slobodan Milošević: Radovan, I think that everyone who cares about the Serb people in Krajina should support the arrival of the UN peace-keeping forces and thing . . . [doesn't make sense] you too said you thought the plan was good and that

> you don't understand why he keeps on rejecting, um . . . not mentioning me, my letter, or anything else, it would be very useful."

96. The conversation, Madam President, was about the Vance Peace Plan, as proposed for the Republic of Serbian Krajina. The transcript reveals the following:

(a) First, despite Milosevic's effort to influence him, Milan Babic refused to accept the Plan. Milosevic is complaining because he expected more support from Karadzic. Now, more support in what? This is in his dealings with Izetbegovic.

(b) Secondly, Milosevic and Babic were not on good terms and it was Milosevic who was pushing for the peaceful solution, while Babic opposed it.

(c) Lastly, Milosevic was clearly not able to control either Babic or Karadzic.

(b) ***Conversation between Karadzić and Dogo on 12 October 1991***

97. I will now return to the evidence presented by the Applicant. In his speech in the first round Professor Franck quotes from a conversation between Karadzić and Dogo on 12 October 1991. Dogo was a political friend of Karadzić. In Professor Franck's words:

> "In an intercepted telephone conversation of 12 October 1991, speaking of the Muslim population, Karadzić said, 'they will disappear, that people will disappear from the face of the earth . . . They do not understand that there would be bloodshed and that the Muslim people would be exterminated.'" (CR 2006/3, p. 35, para. 39.)

98. The quotation, as is common in these proceedings, lacks any useful context. Moreover, in the transcript of the intercept, the first sentence appears on the second page, while the second sentence is to be found only on the eighth page. The relevant sector of the transcript reads as follows:

> "Radovan Karadžić: Here I returned. I was at the negotiations and now I have returned to have a little rest.
>
> Gojko Dogo: What negotiations, now? I hear you were brilliant last night, if I may say. Was it last night?
>
> Radovan Karadžić: Yes.
>
> Gojko Dogo: They say, well done! Later, they . . ./three words illegible/, but they say that you . . . was it at the Assembly, or what?
>
> Radovan Karadžić: At the Assembly, at the Assembly. Alija Izetbegović spoke two or three times and I had to reply to him, you know.
>
> Gojko Dogo: Brilliant! They say that you told them: Gentlemen, we do not, and now you can do whatever you want.

Radovan Karadžić: We let them, however, they are preparing for a war. They will try to wage a war here.

Gojko Dogo: They?

Radovan Karadžić: Probably next week, already.

Gojko Dogo: Come on . . . them to wage war?

Radovan Karadžić: Well, he's mad. They are completely mad, you know.

Gojko Dogo: Where does he . . . where does he mean to start a war, [he of course is Izetbegović] in Sarajevo? Is he a madman?

Radovan Karadžić: He is. I think that they should be beaten if they start the war. They will . . . they will . . . well, they will disappear, that is . . .

Gojko Dogo: There will be a lot of blood, but . . .

Radovan Karadžić: They will disappear, that people will disappear from the face of the Earth if they, if they insist now. Their only chance was to accept what we have offered them. It was too much, we did offer them too much. But this . . .

Gojko Dogo: You offered them what I would never offer.

Radovan Karadžić: Well. It was offered more than the Serbs should have ever offered. However, they did not want even that, and the only thing that we have now, we may say — those who want to leave Yugoslavia, let them utter their wish."

Later on in this conversation (page 12 of the intercept transcript), we can find the following:

"Radovan Karadžić: Yes, yes. Here, here we have Muslims in the Army, and even the reservists and those who really fight well . . .

Gojko Dogo: Aha.

Radovan Karadžić: And this is important, that . . . they will manage to save this Muslim majority, who are the losers in all this, from the position of the ill fated.

Gojko Dogo: Yes.

Radovan Karadžić: They are . . . because you still can't know, you can't, you can't say that there isn't . . . there really are common people and all that is, and I think they have to be offered both hands. However, as far as the leadership is concerned, there should be no hesitation. They must know that if they want to secede, they will have to start a war against us, and to hit us, to beat us and then they will have the response, and that is clear."

99. Madam President, the transcript reveals the following sequence:

(a) First, Karadzic was reporting on what had happened in the Assembly of Bosnia and Herzegovina.

(b) Second, Karadzic, on the basis of hearing the interventions of Izetbegovic, states that the Bosnian Muslims are preparing for a war.

(c) Third, Dogo asks where Izetbegovic means to start a war, in Sarajevo? Is he a madman?

(d) Fourth, Karadzic answers: "I think that they will be beaten if they start the war. They will . . . they, will . . . well, they will disappear, that is . . ."

Dogo says: "There will be a lot of blood, but . . ."

(e) Next, Karadzic says: "They will disappear, that people will disappear from the face of the Earth if they, if they insist now. Their only chance was to accept what we have offered them . . ."

(f) And last, later on, Karadzic says that common Muslim people have to be offered both hands, but if the leadership wants to secede they will have to start a war and then they will have the response.

100. In the result, the context reveals that Karadzic is not announcing a programme of extermination but is forecasting the consequences *if a war is started by Mr. Izetbegovic*.

Madam President, it would be quite helpful if I could stop there. Thank you.

The PRESIDENT: Yes, Mr. Brownlie. If you are confident that you can get through all that has to be done this afternoon, we will rise now.

Mr. BROWNLIE: Thank you very much.

The Court rose at 1 p.m.