CR 2006/39

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2006

Public sitting

held on Tuesday 2 May 2006, at 3 p.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 15 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
		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
Owada
Simma
Tomka
Abraham
Keith
Sepúlveda
Bennouna
Skotnikov, juges
MM. Mahiou,
Kreća, juges *ad hoc*

M. Couvreur, greffier

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Mr. Ermin Sarajlija, LL.M,

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Ms Amra Mehmedić, LL.M,

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comme assistants.

The PRESIDENT: Please be seated. Judge Parra-Aranguren, for reasons explained to me, is not able to sit with us this afternoon. Mr. Brownlie, you have the floor.

Mr. BROWNLIE: Thank you, Madam President. I have one correction to make. Before the short adjournment I dealt with a conversation between Karadzic and Dogo and I am fairly certain I described Dogo as a political friend of Karadzic. I now have instructions on that point. They were friends but they were both *poetical* friends, in case that is of interest to the Court. They were not *political* friends but they were friends because they were both *poets*.

(d) ***Karadzic speech, Bosnian Assembly,14 October 1991***

101. I move now to another speech — a speech, not a conversation — by Karadzic, which is a further example of text without context and it is provided by the quotation used by our opponents from the speech of Karadzic in the Bosnian Assembly on 14 October 1991. And this is the passage as quoted by counsel for Bosnia in the first round:

> "This is what Karadzic said when he addressed for the last time the Bosnian Parliament on 14 October 1991 — and he talked to the Bosniacs, he talked expressly to Mr. Izetbegovic, who was President [and then Karadzic is quoted]:
>
> > 'You want to take Bosnia and Herzegovina down the same highway of hell and suffering that Slovenia and Croatia are travelling. Be careful. Do nothing that will lead Bosnia to hell and do nothing that may lead the Muslim people to their annihilation, because the Muslims cannot defend themselves if there is war. How will you prevent everyone from being killed in Bosnia?'" (CR 2006/2, p. 37.)

102. Madam President, these words were used by Karadzic in the last session of the former Bosnia and Herzegovina Assembly on 14 October 1991. The session included MPs from the three major national parties in Bosnia and Herzegovina: the SDA, that is the Bosniaks; the HDZ, the Croats; and the SDS, the Serbs. The main issue in the debate was the question of holding a referendum on the independence of Bosnia and Herzegovina.

103. The position of the Serb group was that the future of Bosnia and Herzegovina could not be determined simply on the basis of a referendum of citizens, but on the basis of a separate referendum for each constituent national group: Serbs, Muslims and Croats. At one stage in the

heated debate Karadzic tried to explain the opposition of the Serbs to a referendum and the possible disastrous consequences. What Karadzic actually said was this:

> "I beg you once again, I'm not threatening you, I'm begging you, to understand seriously political will of the Serbian people which Serbian Democratic Party and Serbian Renew Movement, and by my opinion and Serb MPs from other parties represent. [This is as it is recorded.] I beg you to understand seriously it is not good what you are doing. [And having said all that, he then says] *You want to take Bosnia and Herzegovina down the same highway of hell and suffering that Slovenia and Croatia are travelling. Be careful. Do nothing that will lead Bosnia to hell and do nothing that may lead the Muslim people to their annihilation, because the Muslims cannot defend themselves if there is war. How will you prevent everyone from being killed in Bosnia?*" (ICTY, *Prosecutor* v. *Mladic and Karadzic*, Exhibit 29, Clip 1.)

104. So, it is not quite the same tone as we were given to understand. And the truncated version of this quotation was repeated in the second round opening speech by Mr. van den Biesen (CR 2006/30, pp. 37 and 39).

(e) ***Conversation between Milosević and Karadzić on 24 October 1991***

105. My learned opponents have also relied upon a conversation between Milosević and Karadzić on 24 October 1991. Thus, in the first round, Ms Karagiannakis quoted an edited version of a series of statements made by Karadzić in response to a general question from Milosević.

106. In her speech Ms Karagiannakis stated that:

> "25. Karadzić was advising the President of Serbia about what he and the Bosnian Serbs were doing through the SDS party. In one important conversation held on 24 October 1991, the day that the Separate Bosnian Serb Assembly was founded, Milosević asked Karadzić as to how the work was going. Karadzić replied that it was 'going slowly'. He went on to make a number of statements to Milosević during the conversation."

We then have what is in fact a structure, a construction of small quotes put together, and I am reading them. This is what is quoted by Ms Karagiannakis:

> "We will establish Yugoslavia in all the areas where we live . . . Yes, yes, President, we hold power in 37 municipalities and have a relative majority in . . . about ten municipalities . . . tell him [that is Izetbegović] that Karadzić and the others will not give up on establishing an assembly and parallel organs of authority, . . . We will establish full authority over the Serbian territories in Bosnia and Herzegovina and none of his lawyers will be . . . able to show his nose there.
>
> He will not be able to exercise power. He will not have control over 65 per cent of his territory. This is our goal.
>
> Our steps are calculated and we have to establish authority and control over our territories, so that he doesn't get his sovereign Bosnia." (CR 2006/4, p. 16, para. 25.)

That is the end of the quotation from the Karadzic part of the conversation as reported by counsel for Bosnia.

107. As introduced in the pleading of Ms Karagiannakis this conversation has an almost constitutive effect. But, if the intercept is read as a whole, this is clearly not the case. And, in any event, at this stage of the crisis it would have been difficult to know what options were actually available. The context was the progress of political contacts between Izetbegović and Milosević. Far from indicating any unilateral Serb plan, Milosević and others were engaged in trying to solve the crisis relating to certain very recent events. In the first place, on 14 October 1991, in the absence of the Serbian members, the Parliament of Bosnia and Herzegovina had decided in favour of a referendum for independence. This move provoked the Serbian members to leave the Parliament. On 24 October 1991, ten days later, the first Serb Parliament of Bosnia and Herzegovina was held.

108. These facts constitute the elements necessary for an understanding of this telephone conversation. Milosević was requesting Karadzić to meet Izetbegović in order to deal with the crisis presented by the plan for a referendum. Moreover, the general attitude of Milosević involved a preference for the maintenance of a Yugoslav style of political structure, which would include Muslims.

109. The conversation indicates that Milosević hopes that Izetbegović would withdraw the referendum, and Milosević is concerned with suggestions that the Serbs should take illegal initiatives. The conversation militates against the view that the Serbian leadership were looking for excuses to engineer a fragmentation of Bosnia and Herzegovina.

110. Madam President, I will now present the conversational exchanges as they actually took place. Ms Karagiannakis has used two forms of abbreviation. In the first place, as she makes clear, the quotations are only of statements by Karadzić. The responses of Milosević are not included. And in the second place, the statements made by Karadzić have, in some cases, been abbreviated.

111. The record will contain the precise form of the exchanges based upon the collage of fragments provided in the speech of Ms Karagiannakis. The intercept in relevant parts is as follows:

"Radovan Karadžić: They think they're doing it legally, but we will respond with all means possible. *We will establish Yugoslavia in all the areas where we live*. We have a Constitution, if they abolish their Bosnia and Herzegovina Constitution, we'll rely . . . [unknown term], and I mean the Federal Constitution.

Slobodan Milošević: Yes, yes, but they're not foolish enough to continue in that direction.

. . . . . .

Radovan Karadžić: Yes, yes, President, *we hold power in 37 municipalities and have a relative majority in several others, in about ten municipalities* and we refuse to implement any of their decisions, they are, they are very slowly, but surely, leading us, because of the fact that we adhere to legality, they are leading us into secession and out of Yugoslavia.

Slobodan Milošević: They're not taking you anywhere, it's just that I would hold back a little on that, that definition of the assembly, I wouldn't define the assembly that way because it will be just as illegal as their, as their session these two . . .

. . . . . .

Radovan Karadžić: You can talk to him, *tell him that Karadžić and the others will not give up on establishing an Assembly and parallel organs of authority*, we, we will recognise this government as the federal Bosnia and Herzegovina government, but we have, we will go on to organise our own authorities, wherever the existing legal one is, where this one is legal, except that it will primarily respect the Federal Constitution, and the Bosnian, I mean the Serbian Assembly, will decide on what is to be respected and what is not.

Slobodan Milošević: I wouldn't, I wouldn't call, it's just that I wouldn't call the assembly that. I just wouldn't call it that.

. . . . . .

Radovan Karadžić: You tell him that the Serbs are moving on, that you can't, that you can't exert influence over us to mellow things down. We are moving on. *We will establish full authority over the Serbian territories in Bosnia and Herzegovina and none of his lawyers will, will be able to show his nose there. He will not be able to exercise power. He will not have control over 65% of his territory. That is our goal.*

Slobodan Milošević: It would be better if you said it, if you told him, about the illegality of his decisions, and that they are not being adhered to since they are illegal, that the Constitution of Yugoslavia is being adhered to. Not to make it into something institutional.

. . . . . .

Radovan Karadžić: No we're not excited at all. *Our steps are calculated and we have to establish authority and control over our territories, so that he doesn't get/his/sovereign Bosnia*. Croatia doesn't have control over 30% of its territory, and Bosnia will not have control over 60% of its territory!

> Slobodan Milošević: Look, we'll talk later, after I have talked with him, and then we'll see how things are going . . ."

Madam President, the references throughout to the third party, to him, are to Mr. Izetbegović.

112. The words in the Karadzić sentences which appear in the composite quotation of fragments produced by counsel have been emphasized.

113. Madam President, it is, of course, desirable that the conversation be read in its original form. The context is the possibility of a political settlement with Izetbegović, who is the third party referred to by the pronoun. The main theme is the implementation of a plan to maintain some version of Yugoslavia, which would include Bosnia and Herzegovina, and would therefore include Muslim communities. The theme of the exchanges bears no relation of any kind to the topic of discussion as indicated by Ms Karagiannakis at the beginning of her speech. The topic of discussion was alleged to be preparation for violence and the achievement of a Greater Serbia. The true topic of discussion was the preferred mode of responding to the policies adopted by Mr. Izetbegović.

C. Other items of evidence relied upon by the applicant State

(a) *Instructions for the organization and activity of organs of the Serbian people in Bosnia and Herzegovina in extraordinary circumstances (19 December 1991)*

114. These instructions were issued by the Serbian Democratic Party of Bosnia and Herzegovina, based in Sarajevo, and dated 19 December 1991. Their purpose is clear enough but counsel for Bosnia suggests that they were part of the preparations for ethnic cleansing (see CR 2006/4, pp. 16-17, paras. 27-29 (Karagiannakis)). As the chronology of events, as reported by counsel for Bosnia, makes clear, the instructions formed a part of the reaction of the Bosnian Serbs to political developments in the Assembly of Bosnia and Herzegovina.

115. If the text is studied, it is clear that the measures are reactive to events. The overall purpose is to protect the Serbian communities in Bosnia in a time of crisis. The document contains no reference to a Greater Serbia.

(b) ***The strategic goals for the Serbian people (Assembly of the Republika Srpska) (decision of 12 May 1992)***

116. Counsel for Bosnia and Herzegovina have sought to give significance to the decision of the Republika Srpska on 12 May 1992 concerning the Strategic Goals of the Serbian People in Bosnia and Herzegovina. The formal decision appears in the *Official Gazette* as follows:

> **"DECISION ON THE STRATEGIC GOALS OF THE SERBIAN PEOPLE IN BOSNIA AND HERZEGOVINA**
>
> The Strategic Goals, i.e., the priorities, of the Serbian people in Bosnia and Herzegovina are:
>
> 1. Separation as a state from the other two ethnic communities.
>
> 2. A corridor between Semberija and Krajina.
>
> 3. The establishment of a corridor in the Drina River valley, i.e., the elimination of the border between Serbian states.
>
> 4. The establishment of a border on the Una and Neretva rivers.
>
> 5. The division of the city of Sarajevo into a Serbian part and a Muslim part, and the establishment of effective state authorities within each part.
>
> 6. An outlet to the sea for the Republika Srpska."

117. The Strategic Goals are treated as evidence of preparation for ethnic cleansing by our opponents (see CR 2006/4, pp. 18-19, paras. 36-37 (Karagiannakis)).

118. As in other cases, so here, the materials proffered by our opponents are presented without any context, without any attempt to establish the causal sequence of events. The Bosnian Serb leader explains the background of the Strategic Goals in his speech on 12 May 1992. In his words:

> "We did everything to avoid war, and when it did break out, for it to stop and for peace to be established, which would make a political solution possible. The cease-fire, or truce, has each time been violated first and foremost by Muslim forces in Sarajevo and Croatian forces in Posavina, where the war has never stopped, as well as in the Neretva valley, where we believe that the Croatian goal is the conquest of territory and establishment of the situation on the ground and the borders, which will, in their opinion, sooner or later be recognized, while the Muslims actually violate the truce in order to suspend, or sabotage, the Conference on Bosnia and Herzegovina, where they are losing, their concept is losing, the unjust concept which implies domination of the Serbs. We announced last night, and today, that if this Assembly so decides, we shall announce a unilateral cease-fire for a certain period, and we shall not respond except in cases of the utmost necessity, that is, utmost jeopardy, in order to show the world and Europe, although Europe knows very well the whole truth about these events, that we are not belligerent and that we are not instigating the war or violating the cease-fire. Of course, a unilateral cease-fire can only last until the

> moment when we are actually threatened and must defend ourselves. We believe that we are on the right path. It would be much better to solve this situation by political means. It would be best if a truce could be established right away and the borders set up, even if we lose something, in a manner the European Community proposes and finds in conjunction with the three national communities." (Minutes.)

119. This does not sound like a speech of a man who had a genocidal intent. It is against this background that Karadzić discusses the Strategic Goals presented to the Assembly. His comments on the first four goals are of particular significance. He said:

> "The Serbian side in Bosnia and Herzegovina, the Presidency, the Government, the Council for National Security which we have set up have formulated strategic priorities, that is to say, the strategic goals for the Serbian people. The first such goal is separation from the other two national communities — separation of states.
>
> Separation from those who are our enemies and who have used every opportunity, especially in this century, to attack us, and who would continue with such practices if we were to continue to stay together in the same state.
>
> The second strategic goal, it seems to me, is a corridor between Semberija and Krajina. That is something for which we may be forced to sacrifice something here and there, but it is of the utmost strategic importance for the Serbian people, because it integrates the Serbian lands, not only of Serbian Bosnia and Herzegovina, but/it integrates/Serbian Bosnia and Herzegovina with Serbian Krajina and Serbian Krajina with Serbian Bosnia and Herzegovina and Serbia. So, that is a strategic goal which has been placed high on the priority list, which we have to achieve because Krajina, Bosnian Krajina, Serbian Krajina, or the alliance of Serbian states is not feasible if we fail to secure that corridor, which will integrate us, which will provide us unimpeded flow from one part of our state to another.
>
> The third strategic goal is to establish a corridor in the Drina Valley, that is, elimination of the Drina as the border between two worlds. We and our strategic interest and our living space are both sides of the Drina. We now see a possibility for some Muslim municipalities to be set up along the Drina as enclaves, in order for them to achieve their rights, but it must basically belong to Serbian Bosnia and Herzegovina, that belt along the Drina which, as much as it is strategically useful for us in a positive way, helps us by damaging the interests of our enemy to achieve their goal of gaining a corridor which would connect them to the Muslim International and render this area permanently unstable.
>
> The fourth strategic goal is establishment of the border on the Una and Neretva rivers. On their working maps proposed at the last session, the European Community recognised the border on the Una. They marked the Una as our war-time border, and painted blue everything east of it." (Minutes.)

120. The Strategic Goals, and the problems to which they relate, involve the public response of the Serbs in Bosnia to the crisis as it was early in 1992. The Strategic Goals were home-grown and their content reflects the issues which were the subject of international diplomacy at the time and which remained in issue until the Dayton conference. These goals will be further discussed by my colleagues Mr. de Roux and Ms Fauveau-Ivanovic.

(c) ***Analysis of the combat readiness and activities of the army of Republika Srpska in 1992***

121. This document was included in the documents submitted by the applicant State on 16 January this year and it also formed part of the contingent of documents presented in connection with the testimony of General Dannatt. This item forms Exhibit P2419 in the *Brdjanin* case.

122. The document consists of a report produced by the Main Staff of the army of the Republika Srpska, is dated April 1993, and is 164 pages in length. The Analysis is regarded as of particular significance by the applicant State. Thus, in his opening presentation, Mr. van den Biesen made the following assertions:

> "66. Earlier, two years before, in April 1993, Mladić presented the so-called 'Analysis of the Combat Readiness Report of the VRS in 1992' to the Republika Srpska Assembly. In this report the level of so-called support given to the VRS in 1992 is discussed in more detail. It is a peculiar document and we will come back to that later. This is what Mladić stipulates in the introduction to his report on the year 1992: 'We have carried out individual and concerted battle operations according to a single design and plan.'
>
> 67. Indeed, Madam President, everything went according to a single plan. The pattern described earlier was, indeed, continued throughout 1992 and after 1993, for that matter. The 'plan' that Mladić refers to, was most certainly not a plan which the leaders of the self-proclaimed Republika Srpska at the time designed on the day that they proclaimed the 'independent Republic', and it was not a plan that the Republika Srpska leadership only began to draft on 20 May 1992, the day after the so-called 'withdrawal' of the JNA. This plan simply refers to something which formed the guideline for Belgrade's policies already for quite some time, which policies were from May and June 1992 onwards very much implemented by the Pale leadership. This guideline fits the Greater Serbia plan and the strategies to be employed in order to achieve the goal thereof."

123. This document was also given prominence in the examination of General Dannatt (CR 2006/23, pp. 24-27).

124. Madam President, the text of the Analysis does not provide any support to Mr. van den Biesen's intimations. In the first place his short quotation from page 7 of the document is truncated. He quotes the sentence in the form: "We have carried out individual and concerted battle operations according to a single design and plan." In fact the sentence does not finish at that point.

125. Madam President, it would be appropriate if I can quote the context more fully. The Analysis, the document, at this point reads as follows:

> "We have carried out individual and concerted battle operations according to a single design and plan, *entrusting subordinate commands with detailed or overall missions, as appropriate*. The temporary grouping of forces of the Army of Republika

> Srpska into operational groups, tactical groups and combat groups, is widely applied in our theatre of war, but the main orientation has always been to carry out operations according to an overall plan. In so doing we grouped various combat arms together over a period of time in the pursuit of a single goal.
>
> During the past year, the Army of Republika Srpska has been under a single control and command structure, despite the fact that initially we had a large number of different armies and paramilitary formations. This unity has been attained by following well-known principles, such as: unity, continuity, flexibility, efficiency, operationability and security, with subordination and a single command having a crucial bearing on relations in the control and command process.
>
> By applying scientific analytical methods, the Main Staff of the Army of Republika Srpska has drawn lessons from previous operations, battles and engagements, and sought to eliminate weaknesses while incorporating positive experiences into new directives, commands and orders. We assess that we adequately grouped our forces in carrying out all our combat operations, while seeking to ensure a favourable ratio of forces along individual lines of action, irrespective of whether offensive or defensive actions were in question. Forces and resources were used efficiently and always with a clearly set objective, efficient command, maximum measures for protection of the unit, sound co-ordination of action among units and co-operation with the authorities, the SDS/Serbian Democratic Party/, the Serbian Orthodox Church and, given the prevailing circumstances, a very efficient rear support."

It is clearly an analysis of the relevance of military matters and that is what the single design and plan is about. There is no reference to any other plan of the kind suggested.

126. It is obvious that the Analysis is concerned then exclusively with military matters. In response to Ms Korner, General Dannatt stated on 20 March, according to the transcript:

> "General Dannatt: Yes, Madam President, I have read this complete document and I find this, as a professional working person, an absolutely fascinating document.
>
> It is a very honest appraisal by the senior command of the army of Republika Srpska about his own capabilities and particularly about its shortfalls and why it chose to make some of those shortfalls from." (CR 2006/23, p. 24.)

127. The lengthy document makes no reference to the concept of a Greater Serbia. Indeed the section headed "Concluding remarks" does make reference to genocide in relation to the objective of protecting the Serb people against genocide (see page 152 of the document, at paragraphs 1 and 3).

D. The evidence of attribution is both insubstantial and unreliable

128. Madam President, what this lengthy analysis reveals is that the evidence which is given prominence in the case for the applicant State is both insubstantial and unreliable. It is more

specifically insubstantial for the purpose of proving the issues of attribution as presented in the applicable law.

129. The categories of material invoked by my opponents do not produce even a prima facie case of attribution. The main categories can be weighed up as follows:

130. *Category one:* this consists of inferences from activities and events on the ground, which were given prominence in the opening speeches on behalf of the Applicant. This is presumably a reference to the use of descriptive evidence, graphics and videos, to indicate that atrocities had taken place. But such material, without more, cannot constitute evidence of attribution.

131. *Category two:* consists of the alleged plan or plans to commit genocide. No evidence of such a plan has emerged in the pleadings and the original version of the alleged plan, as in the Reply, that is to say the RAM plan, has not featured in the oral argument in the first round, although it was mentioned once more in the second round. In short, the pleadings disclose no reasonable ground for the allegations of a plan to commit genocide on the part of the Government of the FRY.

132. *Category three:* consists of activities alleged to constitute modes of preparation for genocide. As the Court will recall, the alleged modes were the reorganization of the Federal Army of Yugoslavia, the distribution of arms to Serbian communities, and the creation of parallel institutions. In my submission these activities do not constitute even prima facie evidence of preparation to commit genocide; and this because:

— First, such activities were reasonable in the circumstances prevailing in 1991 and 1992.

— Secondly, equivalent activities were undertaken by other ethnic groups.

— And, thirdly, there is a presumption of the legality of such activities and, of course, the applicant State has the burden of proof.

Furthermore: none of this material provides reliable evidence on the question of attribution in the context of the Genocide Convention.

133. *Category four:* of the Applicant's evidence consists of lawful forms of co-operation and mutual assistance, especially in the financial sphere. In this context also, in the conditions

prevailing at the material time, such co-operation and mutual assistance do not produce even prima facie evidence of preparation to commit genocide and this for the same reasons:

— First, such activities were reasonable and lawful.

— Secondly, equivalent activities were undertaken by other ethnic groups.

— And thirdly, there is the presumption of legality and the applicant State has the burden of proof.

And furthermore, none of this material provides reliable evidence on the question of attribution in the context of the Convention.

134. *Category five:* of the Applicant's evidence consists of inherently unreliable evidence resulting from plea-bargains.

135. *Category six:* of the evidence involves the use of problematical and selected segments of conversations and speeches of Serbian leaders, accompanied by highly coloured interpretations.

136. Madam President, in the result, my submission is that the applicant State has disclosed no reasonable grounds for the attribution of the breaches of the Genocide Convention, as alleged, to the respondent State.

137. In closing this argument, I must emphasize the role of causation in the assessment of the evidence proposed by the other side. The evidence of lawful activities could only constitute indirect evidence of attribution if there was some causal link between, for example, the arming of Serbian communities and the implementation of a plan to commit genocide. Moreover, the causal link must involve the Federal Republic of Yugoslavia and its successors.

138. But, Madam President, no such causal link has been proved. Indeed, the causal links which do exist establish that the measures taken reflected the reasonable fear of Bosnian Serbs that they were faced by threats of repetition of Ustasha's atrocities in the wake of the new secessionist war. The apprehensions of the Bosnian Serbs are evidenced clearly in the following documents:

139. The first item is a letter from the Association of Serbs in Bosnia and Herzegovina in Serbia to the Yugoslav Ministry of Defence in Belgrade dated 22 January 1992 (quoted in the transcript, CR 2006/17, pp. 18-19). The text in material part reads as follows:

> "*Reference: Placement of a military unit in the territory of municipality of Kupres [central Bosnia], . . . for the prevention of the genocide over the Serbs*
>
> 'Municipality of Kupres lies at the furthermost south of Bosankska Krajina [region in the northwest of Bosnia and Herzegovina] and is

> surrounded by the municipalities populated by Catholic and Muslim population: Gugojno, Duvno and Livno.
>
> In the 2nd World War neighbouring Muslim and Catholic population attempted to commit genocide over the Serbs, but, fortunately they succeeded only partly. By such attempt the number of Serb population was reduced, and after-war colonization in Vojvodina [north Yugoslavia] contributed to their reduced number as well.
>
> By the beginning of this century 70% of population of Kupres were Serbs, while today there are only 51% of them. *The overall population is some 11,000*.
>
> High percentage of the presence of Catholic and Muslims in the very municipality, its encirclement by such communities as well as close vicinity of Catholic West Herzegovina, speaks in favour of the necessity to protect the Serb population in the municipality of Kupres.
>
> By the protection of Kupres, the care of the periphery villages in the municipalities Livno, Duvno and Bugojno, populated by the Serbs would be provided for, because this population suffered a lot during the second world war.' (Letter to Chief of Staff, Major-General Blagoje Adzic, signed President Gojko Dogo, 22 January 1992; Reply, Ann. 124; emphasis added.)"

140. The second document, which I have already referred to, is the Instructions for the Organization and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances, dated 19 December 1991. This document makes express reference to the imminent threat of the secession of Bosnia and Herzegovina, "and thereby the Serbian people from Yugoslavia".

141. The third document is the publication of the army of Republika Srpska entitled "Analysis of the Combat Readiness and Activities of the Army of Republika Srpska in 1992". In the final section there are two significant references to the purpose of defending the Serbian people against genocide.

142. Madam President, the contemporary evidence provides strong indications that it was the Bosnian Serbs who foresaw episodes of domination, episodes which would involve Serb victims. In other words the elements of causation indicate the measures of self-protection called for in the extraordinary circumstances of the Serbian people in Bosnia and Herzegovina in late 1991.

143. Madam President, I have now concluded this part of my argument relating to the question of attribution. Three of my colleagues will address certain aspects of State responsibility. And then, subsequently, I shall deal further with the interpretation of the Genocide Convention, the

pertinent principles of State responsibility, and the specific matters of rebuttal called for in the second round.

Before leaving the podium, I wish to thank colleagues of the delegation of Serbia and Montenegro for their substantial assistance. And finally I would thank the Court for your patience and stamina.

Thank you very much. Would you please give the podium to my colleague Mr. Igor Olujić.

The PRESIDENT: Thank you, Mr. Brownlie. I call to the Bar Mr. Olujić.

Mr. OLUJIĆ: Thank you, Madam President.

THE JNA AND ITS ROLE IN BOSNIA AND HERZEGOVINA AT THE BEGINNING OF 1992

1. Madam President, distinguished Members of the Court, I am honoured to appear for the first time before the International Court of Justice. In my speech I will present to the Court the Respondent's position concerning the Yugoslav National Army at the beginning of the conflict in Bosnia and Herzegovina. Serbia and Montenegro will show that the evidence in this case strongly supports our position and completely contradicts the conclusions the Applicant hopes to impose on this Court.

2. Contrary to the Applicant's claims that the JNA acted according to a plan to establish a "Greater Serbia", when the facts are presented, there is only one simple conclusion. The only plan that the JNA carried out during the dissolution of the Socialist Federal Republic of Yugoslavia was a plan to preserve the country and to protect the citizens who supported it. To arrive at this simple conclusion, I will go through the facts as they relate to the conduct of the JNA before and during the armed conflict in Bosnia and Herzegovina.

The PRESIDENT: Mr. Olujić, could you kindly speak a little more slowly?

Mr. OLUJIĆ: I will do my best.

Moreover, I will provide information concerning the establishment of the Yugoslav Army and the army of the Republika Srpska.

Position of the JNA in SFRY

3. To better understand the position of the JNA during the conflict in the former Yugoslavia, it is necessary to briefly outline the JNA's position in the Socialist Federal Republic of Yugoslavia. As explained in the CIA book *Balkan Battlegrounds*: "the JNA formed a cornerstone of the SFRY, and it viewed itself as the protector and embodiment of the State, with the special role in safeguarding the Yugoslav state and identity. More than any other entity, the JNA actually sought to bring the slogan 'Bratstvo I Jedinstvo' (Brotherhood and Unity), into reality."[1] Despite the unequal ethnic balance, which the Applicant did not forget to mention[2], *Balkan Battlegrounds* concludes that, "the Army considered itself as a vital integrative factor in the Yugoslav state"[3].

4. The onset of nationalism in both Slovenia and Croatia caused the mustering of the JNA against Yugoslavia's own constituent republics. This course of events left the army's leadership aghast. Further events, such as: non-ethnic Serbian JNA officers turning against their own army, the defeat in Slovenia and the blockade of the army barracks in Croatia, caused even greater shocks for the army committed to the defence of its country against foreign enemies. The CIA concluded: "Despite the senior leadership's clinging belief in what remained of the 'Yugoslav' ideal, by the time full-scale war broke out in Croatia, the JNA really did not know what it was fighting for."[4]

5. Contrary to the CIA findings that the JNA was in many ways the heart of a dying State and its last organ to fail, the Applicant counsel Mr. Condorelli concluded that: "beginning of the genocide were, physically, carried out by the JNA"[5].

6. Madam President, distinguished Members of the Court, the Applicant's conclusion in this regard is absurd. The Applicant provides no compelling evidence to support its claims and relies instead on a so-called "lucid picture" of the JNA's role in Bosnia and Herzegovina[6]. The Respondent agrees that the picture that the Applicant tries to paint is lucid. However, there is nothing in the Applicant's argument to suggest that such a picture is accurate.

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[1]CIA, *Balkan Battlegrounds*, Vol. I, Chap. 2 "Brotherhood and Unity", The Yugoslav People's Army Within a Dying State, p. 46.

[2]CR 2006/34, p. 48, para. 13 (Dauban).

[3]CIA, *Balkan Battlegrounds*, Vol. I, Chap. 2 "Brotherhood and Unity", The Yugoslav People's Army Within a Dying State, p. 46.

[4]*Ibid.*

[5]CR 2006/9, p. 60, para. 21 (Condorelli).

[6]CR 2006/34, p. 46, para. 8 (Dauban).

7. During the first and second round of oral argument, the Applicant's representative drew a picture of the JNA's role in Bosnia and Herzegovina by using partial evidence and quotations while summarily denying any and all facts and any evidence that could harm the veracity of its theory. The Applicant's "lucid picture" includes the so-called three phases through which the JNA allegedly prepared to carry out the crime of genocide. "1. Disarmament of Territorial Defence forces; 2. "Serbianization" of Federal Army (which mean JNA); 3. The transfer of garrisons of Federal Army in Bosnia and Herzegovina."[7]

8. I will discuss all these three phases and the facts as they existed on the ground. Suffice it to say, when all the facts are presented, I am confident that this Court will see the Applicant's "lucid picture" for what it really is: a mirage.

Disarmament of territorial defence

9. To believe the Applicant's argument that the disarmament of the territorial defence in September 1990 was in preparation for the alleged genocide one must overlook the substantial lack of evidence proffered by the Applicant on this point. Other than the Applicant's conclusion that the disarmament was part of the alleged "plan" there is almost no evidence in either the Applicant's written pleadings or in the oral arguments to support it. Indeed, the "principal" evidence was provided by the Applicant during Ms Karagiannakis's presentation, when she paraphrased the ICTY judgment in the *Brdjanin* case, which I will quote for the Court: "The trial chamber found that, in September 1990, the JNA had ordered that weapons be removed from the depots under the control of the territorial defence and moved to its own armouries, thereby concentrating arms with the JNA in Bosnia."[8]

10. This is all well and good. However, Ms Karagiannakis fails to continue reading. One line down from that quote the *Brdjanin* judgment continues: "Therefore, when the ethnic tension between the ethnic groups increased, local community throughout Bosnia and Herzegovina did not have a significant number of weapons at their disposal, in late 1991 and 1992, all three national parties began arming themselves."[9]

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[7]CR 2006/9, p. 57, para. 17 (van den Biesen).

[8]CR 2006/4, p. 10, para. 12 (Karagiannakis).

[9]ICTY, *Prosecutor* v. *Brdjanin*, Judgement, 1 September 2004, para. 87.

11. Using the Applicant's same source, a clearer picture of the real intent behind the decision to withdraw arms from the Territorial Defence depot emerges. That it was the motivation of the political leadership to prevent the possibility that such arms would be misused.

12. Here, it must be understood that the JNA's decision was made on behalf of all the republics in the former Yugoslavia. In 1990 the political and army leaderships of the former Yugoslavia was still working in its full capacity, with the participation of all six republics, and it was absolutely impossible to expect that Slovenian, Croatian and even Bosnian members of the political and army leadership would act against the interest of their own republics[10].

. 13. Thus, the Applicant's claims concerning the disarmament of the Territorial Defence as the first phase of the genocidal plan is easily refuted by the quotation the Applicant used in its own written submission. I quote a military expert, Mr. Vego:

> "Order to hand over all arms under control of the Territorial Defence was given in all republics of the Former Yugoslavia, but with varying results . . . In Bosnia and Herzegovina, the order was carried out almost completely, with the exception of those areas in western Herzegovina with predominantly Croatian populations.[11]"

14. Now that we know the facts, the only conclusion is that the Applicant's allegations are false. First, the order to disarm was given during a period of inter-ethnic strife by a multi-ethnic military force. Second, the purpose of the order was to prevent an escalation towards inter-ethnic violence. Finally, the order was carried out with no discrimination within the whole territory of Bosnia and Herzegovina, not just in those areas with predominantly Muslim populations. Accordingly, there is no merit in the Applicant's allegation that this disarmament order was a part of the alleged genocidal plan or a plan to create "Greater Serbia".

Serbianization of the federal army

15. According to the Applicant, the so-called policy of "Serbianization" within the JNA ranks proves the existence of a "plan" on the part of the JNA. This argument simply ignores the facts. There was no policy of "Serbianization" within the JNA. The JNA did not seek an "all Serb

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[10]CR 2006/34, pp. 45-46, para. 5 (Dauban): "The Federal Presidency was, until the end of 1991, made up of a representative from each of the republics of Yugoslavia. The idea behind such representative federal control was to ensure that no one of the republics in Yugoslavia would have undue influence over the JNA . . ."

[11]Reply, Chap. 8, p. 471, para. 17, Dr. Milan Vego, "The Army of Bosnia and Herzegovina", *Jane's Intelligence Review*, February 1993, p. 63.

force". The reason why more ethnic Serbs donned the JNA uniform in Bosnia and Herzegovina was because the other ethnic groups living in former Yugoslavia enlisted at lower rates. Some refused to join, others deserted[12].

16. Of course, during this period the absence of Slovenian military personnel and conscripts within the JNA is understandable. At that time, after a short conflict with the JNA in July 1991, Slovenia had already achieved a factual independence from Yugoslavia. The same explanation can be applied to Croats within Croatia, a republic which, at that time, was in a direct armed conflict with the JNA. However, the situation in Bosnia was different. When explaining the reasons for the increase in the percentage of Serbs in the JNA, the Trial Chamber in the ICTY case against Dusko Tadic concluded, and I quote:

> "These increases were in large measure attributable to the departure from the federation of both Slovenia and Croatia and, in the case of Bosnia and Herzegovina, to the substantial failure of non-Serbs to perform their compulsory military service or respond to mobilization calls."[13]

17. Indeed, the public positions of both the Muslim and Croat political leadership in Bosnia and Herzegovina toward the JNA in late 1991 was documented in the ICTY Prosecutor expert's report submitted by Mr. Donia in the case *Prosecutor* v. *Momcilo Krajisnik*, and I quote again: "Bosnian Serb political leaders in Bosnia and Herzegovina supported the JNA mobilizations, while the Bosnian Croat and Muslim political leaders, at various times and different levels, either ignored or opposed them."[14] On this point, the ICTY Trial Chamber in the *Brdjanin* case and numerous witnesses testifying before the ICTY confirmed the findings of Mr. Donia[15].

18. The only possible explanation for the public postures of Croats and Muslims within Bosnia and Herzegovina during this time, when the JNA still represented the only legal armed forces in the territory, is the fact that both ethnic groups had already begun to establish their own paramilitary forces and were looking to weaken the strength of the JNA. For that reason, they

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[12]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, witness Asim Egrlic, 29 July 2004, T 4844.

[13]ICTY, *Prosecutor* v. *Dusko Tadic*, Judgement 7 May 1997, para. 109.

[14]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, IT-00-39 and 40, Public Record, pp. 5525-5569, Expert report of Mr. Robert Donia, "The origins of Republika Srpska 1990-1992 - Background report", p. 31.

[15]ICTY, *Prosecutor* v. *Milosevic*; witness Mustafa Candic, 11 November 2002, T 12761; witness Aleksandar Vasiljevic, 17 February 2003, T 16229.

sought both officers and conscripts to leave the JNA and enlist in the new ethnic paramilitary formations.

Movement of the soldiers in and out of Bosnia and Herzegovina

19. In addition to the Applicant's claims concerning the demilitarization of the Territorial Defence, and the so-called "Serbianization" of the federal army, the Applicant has attempted to spin the movement of the JNA solders in and out of Bosnia and Herzegovina as a further step towards the realization of the alleged genocidal plan. As, Mr. van den Biesen explained, and I quote: "At the same time, Bosnian Serb recruits serving in other Yugoslav republics were transferred to Bosnia and Herzegovina, while non-Serbian soldiers employed in Bosnia and Herzegovina were sent closer to their native home."[16] This was Mr. van den Biesen's interpretation of the existing situation within the JNA. In reality, it was decided that citizens of each Yugoslav republic at that time should serve in the military service in their republic. Contrary to Mr. van den Biesen's explanation, the conscripts and officers who were Bosnian citizens, regardless of their ethnic origin, were transferred to Bosnia and Herzegovina. At the same time, conscripts and officers, citizens of Serbia and Montenegro, again regardless of their ethnic origin, were transferred from Bosnia to their native republics.

20. From Mr. Dannatt's testimony before this Court, it can be concluded that he had complete trust in Mr. Borisav Jovic's diary, especially in the section dating from a period of 5 December 1991. Mr. Dannatt was in complete agreement with the following sentence that Ms Korner read to him: "Conversation with Slobodan Milosevic . . . feels that we must withdraw all citizens of Serbia and Montenegro from the JNA in Bosnia-Herzegovina in a timely fashion and transfer citizens of Bosnia and Herzegovina to the JNA there in order to avoid general military chaos."[17]

21. The text of this entry from Mr. Borisav Jovic's diary from 5 December shows that the main reason for the mentioned decision was the concern for the citizens of Serbia and Montenegro

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[16]CR 2006/2, p. 38, paras. 31 *et seq.* (van den Biesen).

[17]"Last days of the SFRY", Borisav Jovic, 5 December 1991, document No. 8 introduced during testimony of Mr. Dannatt (CR 2006/23, p. 18).

having in mind the growing inter-ethnic tensions in Bosnia and Herzegovina and the predicted possible conflict in that Republic.

Creation of the 2nd Military District

22. According to the Applicant, the last stage of the so-called plan occurred on 2 January 1992, when the new 2nd Military District was established.

23. However, contrary to the Applicant's explanation stand numerous well-known facts which completely rebut this supposition and are self-explanatory. The previous military districts covered the whole territory of the former Yugoslavia. With an independent Slovenia, and similar situation emerging within Croatia, there was a necessary need for establishing new lines for military districts. As stated by the Applicant's own witness, Mr. Dannatt, new 2nd Military District was established with the presumption of near independence of Bosnia and Herzegovina[18]. The Applicant simply avoids these known facts.

24. Yet, even if one were to take the Applicant's facts as they were presented, its conclusions would be rendered illogical. If the JNA had a plan to establish full control over the Serb dominated part of Bosnia and Herzegovina, it would be much easier to accomplish this goal with the previous, unaltered military districts. Before redistricting, the 1st Military District included the part of Bosnia and Herzegovina with an ethnic Serbian majority and had its headquarters in Belgrade. Several of the Prosecutor's witnesses who testified before the ICTY explained that the 1st Military District, which was recalled during the redistricting in January 1992, covered the whole territory of the supposed "Greater Serbia"[19]. It follows, thus, that both before and after the redistricting, two very different organizations of the military districts in the former Yugoslavia were both set to serve the purpose of "Greater Serbia". This is simply not logical.

25. Yet, the Applicant wants this Court to believe that the 2nd Military District was demarcated by the Belgrade leadership as part of a plan. This makes no sense. The headquarters of the new 2nd Military District were set in Sarajevo, essentially removing Belgrade's potential for control over the territory of Bosnia and Herzegovina. Why would anyone within the Belgrade

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[18]CR 2006/23, p. 17 (testimony of General Sir Richard Dannatt).

[19]ICTY, *Prosecutor* v. *Slobodan Milosevic*, witness B 1493, 9 April 2003, T 18964.

leadership, supposedly prompted by a plan to create "Greater Serbia", voluntarily remove oneself from control and establish, in predominantly Muslim Sarajevo, the headquarters of the 2nd Military District?

26. In addition to claiming that the creation of the 2nd Military District was part of a plan, the Applicant alleged that the federal army's garrisons were transferred to localities with Serbian majority in Bosnia and Herzegovina before the conflict erupted. This is just another groundless claim.

27. Moreover, in its written submissions, the Applicant presented evidence showing that the 2nd Military District had its units deployed in the whole of Bosnia and Herzegovina, regardless of the local ethnic structure[20].

28. Discussing this issue I recall the specific events that took place in May 1992. The decision of the army's leadership not to transfer the garrisons of the federal army to the "friendly" territory created an opportunity for the Muslim forces to attack and kill a large number of mainly young conscripts trying to peacefully retreat from Tuzla and Sarajevo. The outcome of these attacks resulted in the death of more than 100 soldiers[21].

Armament of Serbs in Bosnia and Herzegovina

29. I will move now to the question of armament. The Applicant is basing its claims concerning the arming of Serbs living in Bosnia and Herzegovina on different sources. Yet, the Applicant fails to mention the armament of Muslim and Croat paramilitaries within the territory. This can probably best be explained by Mr. van den Biesen's statement during the first round of oral argument, and I quote:

> "Back to 1991. President Izetbegović has received quite some criticism . . . from many people in Bosnia for being too naive about these developments. Indeed, Izetbegović did not seriously prepare for an armed confrontation, since he just did not think that was conceivable . . ."[22]

30. By lining up the facts, however, the overall picture looks quite different. As I already mentioned, the removal of arms from the Territorial Defence depots occurred within the whole of

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[20]Reply, Chap. 8, p. 560.

[21]Counter-Memorial, Chap. 2, 2.13.4. Tuzla, pp. 213, 216-218; "Peacekeeper: The Road to Sarajevo", Lewis MacKenzie, pp. 164-178, "The convoy incident".

[22]CR 2006/2, p. 37, para. 26 (van den Biesen).

the territory of Bosnia and Herzegovina, except for the part of Herzegovina with a predominant Croatian community[23]. That means that during 1991, Serbian and Muslim national parties were left without any weapons under their control. What happened after that?

31. Keeping in mind that in its written pleadings and during the oral arguments the Applicant did not miss a chance to quote every source on Serbian armament, I feel obligated at this time to quote some sources, which should assist the Court in concluding that all three ethnic groups in Bosnia and Herzegovina prepared themselves for a possible war. Permit me to begin with the findings of Mr. Robert Donia, expert before the ICTY, and I quote:

> "The formation and conduct of military and paramilitary organization in Bosnia and Herzegovina took place in the long shadow of the war in Croatia. By early 1992, each of the three nationalist parties in Bosnia and Herzegovina had taken measures to prepare military for war and were able to call upon paramilitary organizations to support their aims."[24]

32. Mr. Donia's findings were corroborated by the ICTY Trial Chamber in the *Stakic* and *Brdjanin* cases:

> "Therefore when the ethnic tension between the ethnic groups increased, local community throughout Bosnia and Herzegovina did not have a significant number of weapons at their disposal. However, in late 1991 and 1992, all three national parties began arming themselves."

And the judgment continues: "Muslims were also preparing for war and correspondingly arming themselves. In June 1991, SDA leaders formed the 'Council for National Defence of the Muslim Nation', with the Patriotic league as it paramilitary formation."[25]

33. Given the evidence to the contrary, how can the Applicant evoke these statements attributed to Mr. Izetbegovic? It cannot, and the Court should disregard this claim. For it is a known fact that the Serbs living within Bosnia and Herzegovina and their national party were not the only ones to organize paramilitary formations. This was the pattern followed by all nationalist parties in Bosnia and Herzegovina at the close of 1991 and at the beginning of 1992[26].

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[23]See para. 13.

[24]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, case No. IT-00-39&40, pp. 5525-5569, Expert report of Mr. Robert Donia, "The origins of Republika Srpska 1990-1992 — Background report", p. 30.

[25]ICTY, *Prosecutor* v. *Milomir Stakic*, Judgement, 31 July 2003, para. 33. ICTY, *Prosecutor* v. *Radoslav Brdjanin*, Judgement, 1 September 2004, para. 89.

[26]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, case No. IT 1409-1410, witness Patrick Treanor, 23 February.

JNA in Bosnia and Herzegovina from January 1992 until the beginning of the conflict

34. Now that the expectations and activities of all national parties within Bosnia and Herzegovina are clear on the record, I will continue with my discussion of the JNA, and its position.

35. When the JNA participation in the Croatian conflict ceased in late 1991, a large number of JNA units withdrew to Bosnia and Herzegovina. This withdrawal was a part of the peace plan for Croatia and was agreed with the representatives of the international community. Due to the pull-out of JNA troops from Croatia, the JNA deposited a large number of arms within the territory of Bosnia and Herzegovina. These facts were confirmed by the ICTY Trial Chamber in the case *Prosecutor* v. *Dusko Tadic*[27].

36. However, in early 1992, the situation in Bosnia and Herzegovina was tense even without the additional JNA troops coming from Croatia. During that time the last attempt for a peaceful settlement of political disputes between the national parties took place. ICTY Prosecutor expert Mr. Ewan Brown, in his report submitted in the case *Prosecutor* v. *Momcilo Krajisnik*, explained that, according to different JNA reports, growing instability in Bosnia and Herzegovina originated from divisions along ethnic and party lines, and the continuing threat from the Croat Government and their forces[28].

37. This same report further explained that the JNA believed that all national parties and groups were contributing to the instability. Ewan Brown cited the report of the 2nd Military District of 23 January 1992:

> "On the basis of available information, it can be concluded that the three leading national parties in Bosnia and Herzegovina (HDZ, SDA and SDS) have for all practical purposes created the necessary political, economic and military prerequisites to embark on armed conflict among themselves and for armed confrontation with the JNA."[29]

Furthermore, Mr. Brown established that a number of JNA documents from early months of 1992 reflected the JNA attempt to defuse tension between ethnic groups[30].

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[27]ICTY, *Prosecutor* v. *Dusko Tadic*, Judgement 7 May 1997, para. 125.

[28]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, case No. IT-00-39&40, pp. 5792-5986. Expert report of Mr. Ewan Brown, " Military development in Bosanska Krajina region 1990-1992", p. 12.

[29]*Ibid.*, p. 12, 2nd Military District Command report on the state of combat readiness for 1991, dated 23 January 1992.

[30]*Ibid.*, p. 16.

38. Surely, the Respondent does not deny that the JNA in Bosnia and Herzegovina had a close relation with the Serbian ethnic group. After all, ethnic Serbs comprised the great majority of the JNA personnel within Bosnia and Herzegovina. Mr. Richard Butler, another Prosecutor's expert before the ICTY, in the case of *Prosecutor* v. *Momcilo Krajisnik*, explained in his expert's report this relation by March 1992:

> "The JNA leadership in Bosnia felt that the SDS leadership, and the Serbs were the only group, which continued to protect and support the goals of the Army. More importantly, the SDS was the only one of the three political movements that continued to advocate Bosnia and Herzegovina as remaining part of Federal Yugoslavia . . ."[31]

39. Unfortunately, at the close of March 1992, the conflict in Bosnia broke out. Before I begin my analysis of the beginning of the conflict, and discuss the role of the JNA, allow me to quote the daily combat report of the 5th Corps dated 7 April 1992, while the war in Bosnia was ongoing:

> "Since the Serbian Republic of Bosnia and Herzegovina was proclaimed, speculation has started regarding the future of the Banja Luka Corps. We urgently need the position of the Supreme command regarding the place and the role of the JNA within the structure of current deployments in the Serbian Republic of Bosnia and Herzegovina."[32]

40. As to the Applicant's "lucid picture" of the JNA's preparation for a genocidal campaign in 1992, I would like to point out the following: is it possible that after two years of preparation, a large detachment of army within the heart of the most important territory for the future "Greater Serbia" — a territory that must be free from all non-Serb — is it possible that this unit would send a request to the Supreme Command for clarification of their current and future activities and goals? The only possible answer is no. Neither was the JNA involved in any alleged plan, nor such plan existed at all.

Conflict

41. Now I would like to discuss the conflict. In his report, the ICTY Prosecutor's expert, Mr. Ewan Brown, explained that, according to the JNA's report, at the beginning of 1992 a

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[31]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, case No. IT-00-39&40, pp. 5694-5719, Expert report of Mr. Richard Butler, "Military operation in selected Eastern Bosnia and Greater Sarajevo Municipality", p. 4, para. 3.2.

[32]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, IT-00-39&40, Public Record, pp. 5792-5986, Expert report of Mr. Ewan Brown, "Military development in Bosanska Krajina region 1990-1992", p. 21, 1st Krajina Corps regular combat report, 7 April 1992.

potential threat towards the JNA existed because, among other things, the Croatian Government intended to move the conflict into Bosnia and Herzegovina. According to Mr. Brown, this threat was very real. In March 1992, the Croat forces and the Bosnian Croats conducted a large-scale operation in northern Bosnia (Posavina region), and seized control of the Bosanski Brod and Derventa areas[33]. This action led to the blockade of "the corridor", which linked Banja Luka and Krajina with eastern Bosnia and, furthermore, with Serbia. As a result, a large number of the JNA units found themselves in a hostile surrounding in central and western Bosnia. On 26 March in the village of Sijekovac, also in the municipality of Bosanski Brod, Croatian armed forces executed nine Serb male civilians. A few days later, at the beginning of April, in the Kupres municipality in western Herzegovina, a completely different part of the country, joint Croat and Muslim forces attacked JNA units and killed at least 45 Serbian male and female civilians[34].

42. According to Mr. Donia's expert report, submitted by the ICTY Prosecutor in the case against Momcilo Krajisnik, these attacks and crimes, at the end of March and the beginning of April 1992, marked a turning point after which the JNA began to take a more active role in the Bosnian conflict on the side of the Bosnian Serbs[35]. The reason for this position of the JNA can be easily explained by the fact that the Bosnian Serbs were the only ones to support the JNA and, after all, they made up the great majority of its troops.

43. I will continue by describing two operations conducted by the JNA in the Posavina region at the beginning of April 1992. As I explained earlier, the JNA operations in Derventa and Bosanski Brod were performed after the Croatian military forces seized both towns. The JNA action was militarily justified because the JNA, as any other army would in such circumstances, try to secure main communication lines and main withdrawal points from Bosnia and Herzegovina[36]. A similar situation occurred in the municipality of Kupres where Croat armed forces attacked the JNA units and committed crimes at the beginning of April 1992.

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[33]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, IT-00-39&40, Public Record, pp. 5792-5986, Expert report of Mr. Ewan Brown, "Military development in Bosanska Krajina region 1990-1992", p. 13, para. 1.6.

[34]Counter-Memorial, Chaps. 7, 7.1.12.0 Bosanski Brod (Sijekovac), 7.1.13.0 Kupres.

[35]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, IT-00-39 and 40, Public Record, pp. 5525-5569, Expert report of Mr. Robert Donia, "The origins of Republika Srpska 1990-1992- Background report", p. 33.

[36]ICTY, *Prosecutor* v. *Dusko Tadic*, Judgement, 7 May 1997, para. 125.

44. Since the Applicant has never mentioned these three municipalities, it can be surmised that in these municipalities the JNA did not act in the explained pre-planned manner. And I want to point out, one more time, that these were the very first military operations in Bosnia and Herzegovina at the beginning of the armed conflict.

45. As to the situation in eastern Bosnia, the JNA's role was much of the same. Observing the events in eastern Bosnia, presented to the Court by Ms Laura Dauban[37], one could conclude that eastern Bosnia was at the beginning of the war cleansed of the non-Serbs by the JNA, paramilitaries from Belgrade, and local Bosnian Serb forces[38]. The facts were, however, not that simple.

46. The conflict in eastern Bosnia started in Bijeljina on 1 April 1992. To remind you, this happened just a few days after the events in Bosanski Brod, Derventa and Sijekovac took place. However, the JNA did not participate in fights in Bijeljina and it was not involved in the conflict that broke out between Muslim and Serbian armed groups. Ms Dauban overlooked this, as well as the fact that the JNA provided shelter to Muslims from Bijeljina in the JNA's armed barracks[39]! Does this evidence fit into the picture which Ms Dauban tried to present? No, but that is the fact. Were there any other actions of the JNA in the area of Bijeljina at the beginning of April? Yes, and the Applicant already presented to the Court evidence with respect to them. In its Reply, the Applicant submitted to the Court evidence that one of the JNA units was on 4 April stationed in the outskirts of the village Janje near Bijeljina[40]. Village Janje was a big village inhabited with 6,000 people, the great majority being Muslims. Was any crime committed against them? No. The JNA secured them and this village and its citizens stayed intact long after the JNA left Bosnia and Herzegovina.

47. Foca was the next town mentioned by Ms Dauban. The fights in Foca started on 8 April and lasted until 16 April 1992. The battle lasted for eight days and, as it was explained by

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[37]CR 2006/6, pp. 11-26 (Dauban).

[38]*Ibid.*, p. 26, para. 49 (Dauban).

[39]ICTY, *Prosecutor* v. *Slobodan Milosevic*, witness Sead Omeragic, 16 October 2003, T 27681; witness B1003, 7 April 2003, T 18675; documents submitted to the Court by the Respondent on 18 January, doc No. 1 "Battle and Operational Report" 2 April 1992, 1992 Order concerning the implementation of the Decision of the Presidency of Republic of Bosnia and Herzegovina", 29 April 1992.

[40]Reply, Ann. 128.

Ms Dauban, Serbian forces were composed of Bosnian Serb forces and paramilitary forces called "White Eagles"[41]. Again, Ms Douban did not present any evidence of direct involvement of the JNA units in these fights.

48. Then comes the conflict in Zvornik, on 9 April. Contrary to the claims of the Applicant's counsel concerning the JNA units' involvement, Mr. Richard Butler, the ICTY Prosecutor's expert in the case against Momcilo *Krajisnik*, wrote in his report that the reports of the local JNA units showed that the JNA was not involved in any plan to take over the town[42]. The JNA did get involved later, but only after its units were attacked in the vicinity of the town, and after between 100 and 300 Muslim soldiers were placed on the hill above Zvornik, in the old fortress called "Kula Grad". The fact that the attack on JNA units in Zvornik surroundings started at the beginning of April, and that until the end of that month between 100 and 300 Muslim fighters were present in Kula Grad, justified the later JNA involvement[43].

49. And then Visegrad, on 14 April. This time Ms Dauban claimed that the JNA units were directly involved — "whole Uzice corps unit", as she said[44]. Yet, counsel for the Applicant forgot to mention what happened before and after the JNA unit took control in Visegrad. On this, she tried to blur the picture as much as possible. Nevertheless, the ICTY judgment in the case *Prosecutor* v. *Mitar Vasiljevic* is related directly to the events in Visegrad, and this judgment gives a clearer picture of what really happened in Visegrad before and after 14 April:

> "both of the opposing groups raised barricades around Visegrad, which was followed by random acts of violence including shooting and shelling. In the course of one such incident, mortars were fired at Muslim neighbourhoods. As a result, many civilians fearing for their lives fled from their villages. In early April 1992, a Muslim citizen of Visegrad, Murat Sabanovic, took control of the local dam and threatened to release water. On about 13 April 1992, Sabanovic released some of the water, damaging properties downstream. The following day, the Uzice Corps of the Yugoslav National Army ('JNA') intervened, took over the dam and entered Visegrad."

And the Judgment continues:

> "Even though many Muslims left Visegrad fearing the arrival of the Uzice Corps of the JNA, the actual arrival of the Corps had, at first, a calming effect. After

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[41]CR 2006/6, p. 15, para. 16 (Dauban).

[42]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, IT-00-39&40, Public Record, pp. 5694-5719, Expert report Mr. Richard Butler, "Military operation in selected Eastern Bosnia and Greater Sarajevo Municipality", p. 7, para. 5.4.

[43]Ludwig Boltzmann Institut Report, p. 22; Reply Ann. 48; Counter-Memorial Chap. 7, 7.1.22.7, p. 508.

[44]CR 2006/6, p. 17, para. 23 (Dauban).

> securing the town, JNA officers and Muslim leaders jointly led a media campaign to encourage people to return to their homes. Many actually did so in the later part of April 1992. The JNA also set up negotiations between the two sides to try to defuse ethnic tension . . .”[45]

50. From the quoted ICTY judgment it must be concluded that the JNA action was provoked by the Muslim extremists, who tried to destroy a dam and jeopardize the lives of thousands of people, as well as that the JNA's action after taking control over Visegrad was, despite some repressive measures, understandable in war circumstances, conducted in a proper way. After all, all the crimes in Visegrad, described by Ms Dauban, occurred after the retreat of the JNA on 19 May.

51. Madam President, distinguished Members of the Court, after all the facts concerning these events are presented it becomes obvious that the JNA action at the beginning of the conflict in Bosnia and Herzegovina was not conducted in a preplanned manner, but was in reaction to local events.

Maybe it is a good moment to stop, if my watch is correct?

The PRESIDENT: If that is what would be helpful, the Court will now rise.

The Court adjourned from 4.20 to 4.40 p.m.

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

Mr. OLUJIĆ: Thank you, Madam President.

Relationship between the JNA and Crisis Staffs

52. Following the chronology of the events, we now reach a very important date for the position of the JNA in Bosnia and Herzegovina. On 15 April 1992 the National Security Council of the Serbian republic of Bosnia and Herzegovina declared the “imminent treat of war” and ordered full mobilization of the Territorial Defence forces.

53. On the following day, the Minister of Defence of the Serbian republic of Bosnia and Herzegovina issued an order to all Serb municipalities demanding that the Territorial Defence units would be the army of the Serbian republic of Bosnia and Herzegovina, and that it would be

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[45]ICTY, *Prosecutor* v. *Mitar Vasiljevic*, Judgement, 29 November 2002, paras. 42-43.

commanded and controlled by the personnel from the municipal, district, regional and republic levels of the Serbian republic of Bosnia and Herzegovina[46].

54. As the ICTY Prosecutor's expert, Mr. Richard Butler, concluded in one of his reports, from this moment the JNA units collaborated closely with the authorities, forces, and representatives of the Serbian republic of Bosnia and Herzegovina[47]. Keeping in mind the uncertain future status of the JNA in Bosnia and Herzegovina, the recognition of that republic as an independent State at the beginning of April 1992, and the fact that the former Yugoslavia was in its final stage of dissolution, and that 90 per cent of the soldiers and officers in the JNA at that moment were Serbs from Bosnia and Herzegovina, this order of 16 April 1992 must be considered as the moment at which Republika Srpska, as a self-proclaimed State, began to exercise some kind of control over some parts of the JNA in Bosnia and Herzegovina.

55. After explaining the order of 16 April 1992, we can see how this order was implemented in the field, following the presentation of Ms Dauban and Ms Karagiannakis, who both discussed the takeover of the municipalities and towns in Bosnia and Herzegovina[48]. Only after the aforementioned order was passed was there some co-ordination between the Territorial Defence units of the Bosnian Serbs and some JNA units, or parts of these units, in the takeover of the municipalities of Bosanski Samac, Bratunac, Vlasenica, Sanski Most, Prijedor and Brcko.

56. However, although the Applicant tried to create an impression that after 16 April the JNA units, local Serb paramilitaries, and Territorial Defence units acted in complete co-ordination, the reality was much more complex.

57. For example, in the ICTY judgment in the case *Prosecutor* v. *Blagoje Simic*, it was established that local Bosnian Serbs, organized by local Crisis Staff, together with some paramilitary groups, took over control in Bosanski Samac on 17 April 1992[49]. Although some JNA units were deployed to Bosanski Samac due to the threat of attack by the regular Croat army on the

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[46]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, case Nos. IT-00-39 and 40, Public Record, pp. 5694-5719, Expert report of Mr. Richard Butler, "Military operation in selected Eastern Bosnia and Greater Sarajevo Municipality", p. 5, para. 3.6.

[47]*Ibid.,* para. 3.7.

[48]CR 2006/5, pp. 22-41 (Karagiannakis); CR 2006/6, pp. 11-25 (Dauban).

[49]ICTY, *Prosecutor* v. *Blagoje Simic*, Judgement, 17 October 2003, para. 442.

town, the Trial Chamber established that they did not participate in the takeover and were only informed of the takeover after the fact[50].

58. Despite the fact that from 17 April a convergence existed between some isolated JNA units or parts of these units, on one side, and local Serb Crisis Staffs and Territorial Defence units on the other, the ICTY experts, who examined the conduct and operations performed by the JNA until its retreat on 19 May, have never established the existence of systematic co-operation. For example, Mr. Richard Butler wrote: "Prior to May 1992, the relationship of the Crisis Staffs with the JNA varied significantly by municipalities."[51] Ms Dorothea Hanson, another ICTY Prosecutor expert in the *Momcilo Krajisnik* case, concluded the following: "Prior to the establishment of the Army of Republika Srpska, the relationship of the Crisis Staffs to the regular army, that is, the JNA, was not consistent, varying by municipality and over time."[52]

59. As an example of this "varying relationship" I would like to mention that on 22 April 1992, in the Sarajevo area, the JNA units were despatched to separate Serb and Muslim Croat paramilitary "warring factions"[53], for example from Banja Luka where, on 27 April, the Serbian paramilitary formation — named the Serbian Defence Forces — mounted a blockade to halt the withdrawal of the JNA units from this area[54].

Crimes committed during the JNA presence

60. Before I move on to the question of the JNA's withdrawal from Bosnia and Herzegovina I would like to mention another very important issue. There is no doubt that some serious crimes were committed during the JNA presence in Bosnia and Herzegovina. The Respondent does not neglect this fact, but it is necessary to establish the facts surrounding every alleged crime, including when it happened and who was responsible.

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[50]ICTY, *Prosecutor* v. *Blagoje Simic*, Judgement, 17 October 2003, paras. 446-448.

[51]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, case Nos. IT-00-39 and 40, Public Record, pp. 5653-5693, Expert report of Mr. Richard Butler, "1992 Bosnian Serb Command & Control (JNA to VRS)", p. 17, para. 6.3.

[52]*Ibid.*, Public Record,, pp. 5754-5791, Expert report of Ms Dorothea Hanson, "Bosnian Serb Crisis Staffs", p. 25, para. 52.

[53]ICTY, *Prosecutor* v. *Momcilo Krajisnik*, case Nos. IT-00-39 and 40, Public Record, pp. 5653-5693, Expert report of Mr. Richard Butler "1992 Bosnian Serb Command & Control (JNA to VRS)", p. 12, para. 3.4.

[54]*Ibid*., Public Record, pp. 5792-5986, Expert report of Mr. Ewan Brown, "Military development in Bosanska Krajina region 1990-1992", p. 22, para. 1.34.

61. Drawing "the lucid" picture of the events in Bosnia and Herzegovina during the period 1992 to 1995, the Applicant never tried to draw a line between the events and crimes that occurred both before and after 19 May 1992. Furthermore, for the period before 19 May, the Applicant does not make a distinction between the actions of the local Serb units and paramilitaries on the one side, and the JNA units on the other.

62. It is our submission that before 19 May, that is during the JNA presence in Bosnia and Herzegovina, no systematic crimes against the non-Serb population occurred, for which the JNA can be held responsible. This is confirmed by the action of the ICTY Prosecutor, who has never indicted any JNA or VJ officers for crimes committed before 19 May 1992.

Withdrawal of the JNA from Bosnia and Herzegovina

63. Now I would like to move to the final episode of the JNA presence in Bosnia and Herzegovina — its withdrawal. The position of Serbia and Montenegro with regard to the withdrawal of the soldiers of Yugoslav citizenship from the territory of Bosnia and Herzegovina was already elaborated in detail in our written submissions[55]. For that reason I will just briefly present the chronology of the events related to this withdrawal.

64. On 27 April 1992 a new State, the Federal Republic of Yugoslavia, was created. In accordance with the Constitution the FRY consisted of two republics — Serbia and Montenegro. The new Constitution established the territory of the FRY as the territory of these two republics, and also founded the Yugoslav army, which was comprised of Yugoslav citizens[56].

65. On the same day a joint session of the Serbian and Montenegrin Parliament was held, at the end of which the following declaration was adopted, and I quote a part of this declaration:

> "Federal Republic of Yugoslavia has no territorial aspirations towards any of its neighbors. Respecting the objectives and principles of the United Nations Charter and CSCE documents, it remains strictly committed to the principle of non-use of force in settling any outstanding issues."[57]

66. On the day when the new Constitution was adopted, the Presidency of Yugoslavia issued an order for the transformation of the JNA, and I quote again: "This plan should envisage

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[55]See Counter-Memorial, Chap. 3.

[56]Arts. 133 and 134 of the Constitution of Federal Republic of Yugoslavia.

[57]Declaration adopted on 27 April 1992 at the joint session of the Assembly of SFR of Yugoslavia, the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro, Counter-Memorial, Ann. 310.

transformation of the Yugoslav People's Army into the Army of the Federal Republic of Yugoslavia and reduce its powers to the territory and citizens of the Federal Republic of Yugoslavia."[58]

67. Discussing that issue again, on 4 May, the Yugoslav Presidency decided that "all the remaining citizens of the Federal Republic of Yugoslavia — in employ with the JNA in Bosnia-Herzegovina — should quickly return to the territory of Yugoslavia, within 15 days at the latest"[59].

68. This decision is of great importance for this case. It clearly states that, in accordance with the Constitution of the Federal Republic of Yugoslavia, there are no grounds on which the Presidency of the FRY or any other Yugoslav organ could decide on a military issue in Bosnia and Herzegovina. It is even more important that citizens without Serbian or Montenegrin citizenship remained out of the competence of the FRY.

69. In its written pleadings and oral arguments the Applicant expresses its disagreement with these facts, presenting the FRY's conduct as unlawful. Yet, the Applicant never presented its opinion on the real issue: what was the FRY supposed to do at that time?

70. If the Applicant expected that the FRY would order the withdrawal of all 110,000 soldiers and officers of the former JNA from Bosnia and Herzegovina, then this expectation is completely absurd. First, it was out of the competence of the FRY, as it was explained above, since 90 per cent of the soldiers were citizens of Bosnia and Herzegovina. Even if we assume, for just one moment, that the FRY organs had the authority to issue such an order, it is completely unreasonable to expect that Serbs from Bosnia and Herzegovina would obey it. Their withdrawal from Bosnia and Herzegovina would, in the war circumstances that existed at that time, without any doubt lead to the complete exodus of the Serbian people from Bosnia and Herzegovina.

71. If the Applicant expected that the Respondent was supposed to order that all JNA units surrender their weapons to the Bosnian Government, it was equally an unrealistic expectation. The facts presented in this case, including the Applicant's acknowledgment that there was a civil war in

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[58]Minutes of Yugoslav Presidency 195th session held on 27 April 1992; Counter-Memorial, Ann. 290.

[59]*Ibid.*, 197th session held on 4 May 1992; Counter-Memorial, Ann. 292.

Bosnia and Herzegovina, make it clear that Bosnian Serbs would never put such an order into effect.

72. From the above conclusion it is clear that the steps taken by the FRY organs were the only possible steps that could have been taken at that time.

73. During its oral arguments, the Applicant never mentioned the details concerning the withdrawal of the JNA units in May 1992. Many times the Applicant just simplified the facts and stated that the JNA left all its arms and weapons in Serbian hands. The facts are not as simple as the Applicant tried to present. In accordance with decisions and orders of the newly established organs of the Federal Republic of Yugoslavia, those JNA units which were comprised of the citizens of the FRY tried to withdraw from Bosnia and Herzegovina, but their withdrawal was obstructed by the warring parties, which tried to obtained as much arms as possible.

74. It is clear from the presented evidence that such an intent on the part of the Muslim armed forces existed at that time. On 29 April 1992 the Minister of Internal Affairs, Alija Delimustafic, ordered the following:

> "1. Road blocks to be placed on a massive scale on all traffic arteries in the territory of the Republic of Bosnia and Herzegovina, along which the units of the former JNA have started to pull out technical equipment and material . . .
>
> 2. Blockade to be carried out in a broader area where military facilities are located . . .
>
> 3. Unannounced columns of the units of the former JNA unaccompanied by the Minister of Interior forces must be prevented from leaving the barracks and from communicating in the territory of the Republic of Bosnia and Herzegovina . . .
>
> 4. Combat operation to be rapidly planned and started in the entire territory of the Republic of Bosnia and Herzegovina."[60]

75. The position of the Bosnian Serbs toward the JNA was pretty much the same as the position of the Bosnian Government. In his book "Peacekeeper: The Road to Sarajevo", General Lewis McKenzie, a former commander of the United Nations forces in Bosnia and Herzegovina, wrote about the 11 May 1992 event:

> "Radovan Karadzic was becoming more and more independent of the JNA. There were even reports of Bosnian Serbs attacking any JNA unit that tried to turn its

[60]Documents submitted to the Court by the Respondent on 18 January, doc No. 3 "Order concerning the implementation of the Decision of the Presidency of Republic of Bosnia and Herzegovina", 29 April 1992.

> weapons, ammunition and military equipment over to the Territorial Defence Forces in exchange for safe passage out of Bosnia."[61]

76. More than that, the "Analysis of Combat Readiness of Army of Republika Srpska for 1992" clearly explains the situation that existed in May 1992, and I quote part of this analysis:

> "Thanks to the vigorous opposition of the Commander and the entire Main Staff of the VRS to the decision of the competent authorities of the FRY Army to withdraw combat hardware, the pullout of most of the combat hardware together with the personnel — the FRY nationals — was prevented."[62]

77. To put all of the evidence in context, I believe that it will be very useful to recall one more time the findings of the United Nations Secretary-General from his report of 30 May 1992. In this report, the Secretary-General established:

> "The bulk of the JNA personnel who were deployed in Bosnia and Herzegovina were citizens of that Republic and were not therefore covered by the Belgrade authorities' decision of 4 May to withdraw JNA from Bosnia and Herzegovina. Most of them appear to have joined the army of the so-called 'Serbian Republic of Bosnia and Herzegovina'. Others have joined the Territorial Defence of Bosnia and Herzegovina, which is under the political control of the Presidency of that Republic. Others may have joined various irregular forces operating there. Those who are not citizens of Bosnia and Herzegovina are said by the Belgrade authorities to number barely 20 per cent of the total. Most of these are believed to have withdrawn already into Serbia or Montenegro, some of them having been subjected to attack during their withdrawal."[63]

Establishment of the army of Republika Srpska

78. Finally, we come to 12 May 1992. On that day, the army of the Serbian Republic of Bosnia and Herzegovina was established by the decision of the 16th Assembly of the Serbian Republic of Bosnia and Herzegovina. In the presence of 49 deputies, the decision of establishment of the Serbian Republic of Bosnia and Herzegovina army was adopted. By it, existing territorial defence units will be renamed into units of the army. The same decision appointed General Lieutenant Ratko Mladic as the Commander of the Main Staff of the Serbian Republic of Bosnia and Herzegovina Army[64].

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[61]"Peacekeeper: The Road to Sarajevo", General Lewis McKenzie, Douglas & McIntyre ,Vancouver/Toronto, p. 182.

[62]ICTY, *Prosecutor* v *Radoslav Brdjanin*, Exhibit P58, "Analysis of Combat Readiness of Army of Republic of Srpska for 1992", p. 69.

[63]Report of the Secretary-General pursuant to paragraph 4 of Security Council resolution 752 (1992), 30 May 1992, Counter-Memorial, Ann. 291.

[64]ICTY, *Prosecutor* v. *Radoslav Brdjanin*, Exhibit P50: Minutes, 16th Assembly of Serbian Republic of Bosnia and Herzegovina, 12 May 1992, p. 60.

79. On 1 June 1992, the National Assembly of the Serbian Republic of Bosnia and Herzegovina adopted a new military law. Article 1 of this law states: "The Army of the Serbian Republic of Bosnia and Herzegovina is a military force established to defend sovereignty, territory, independence and constitutional order of the Serbian Republic of Bosnia and Herzegovina." On the same day, the defence law was adopted and Article 7 of this law provides: "The President of the Serbian Republic of Bosnia and Herzegovina has the power over the Army during peace, as well as in time of war."[65]

80. Honourable judges, these are the facts. The army of the Republika Srpska was, as its name implies, the army of the Republika Srpska. In 1992 this army comprised approximately 220,000 soldiers, 99 per cent of them were citizens of Bosnia and Herzegovina. Ninety-nine per cent of its command staff was from Bosnia and Herzegovina[66]. The President of the Republika Srpska had political control over the army. All these facts were confirmed, among other evidence, by the statement of the former President of the Government of the Republika Srpska, Mr. Vladan Lukic: "Republika Srpska (also) had its army and police with a complete system of command and logistical support to those structures."[67]

81. The Applicant did not deny this statement of Mr. Lukic. What the Applicant tried to do instead, was to finish its "lucid" presentation of the events at the beginning of the conflict in Bosnia and Herzegovina, by using a part of the Mr. Jovic's diary, saying that the appointment of General Mladic was agreed in Belgrade. If, for the sake of legal argument, we accept that this appointment was agreed upon, we still need to establish what this agreement was about. The Bosnian Serb representatives requested Ratko Mladic to be the commander of their armed forces due to his previous experience[68] and the Yugoslav leadership did not oppose their request because Ratko Mladic was a citizen of Bosnia and Herzegovina. This proposal was later submitted to the highest political body of the Bosnian Serbs, their Assembly, and the Assembly accepted that

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[65] *Official Gazette* of the Serbian Republic of Bosnia and Herzegovina, No. 7, 1 June 1992.

[66] ICTY, *Prosecutor* v. *Radoslav Brdjanin*, Exhibit P58, "Analysis of Combat Readiness of Army of Republic of Srpska for 1992", p. 11.

[67] CR 2006/24, p. 12 (testimony of Mr. Vladimir Lukic).

[68] ICTY, *Prosecutor* v. *Momcilo Krajisnik*, case No. IT-00-39 and 40, pp. 5653-5693, Expert report Mr. Richard Butler "1992 Bosnian Serb Command and Control (JNA TO VRS), p. 23, para. 7.9; ICTY, case No. IT-02-54-T, *Prosecutor* v *Slododan Milosevic*, "Tape Recording of the 50th Assembly Session held on 15 and 16 April 1995 in Sanski Most", pp. 16471-16543.

proposal on 12 May 1992. From that date forward, General Mladic ceased to act as a member of the VJ and started to act as the Commander of the army of Republika Srpska, which he did until the end of the war in Bosnia and Herzegovina.

82. For that reason, the Applicant did not present to the Court any document or any other evidence that could lead to the conclusion that after 12 May 1992 Ratko Mladic, or any other member of the army of Republika Srpska, received any order from the political or military organs of the Federal Republic of Yugoslavia. Contrary to the Applicant's assertions, the United Nations Secretary-General, in his report from 30 May 1992, only a few days after the establishment of the army of the Republika Srpska, established:

> "A senior JNA representative from Belgrade, General Nedeljko Boskovic, has conducted discussions with the Bosnia and Herzegovina Presidency, but it has become clear that his word is not binding on the commander of the army of the 'Serbian Republic of Bosnia and Herzegovina, General Mladic'."[69]

83. Considering the facts presented, the following conclusions are submitted to the Court:

— Developments of 1991 and the beginning of 1992, concerning the JNA, including the disarmament of the Territorial Defence, changes in the ethnical composition of the army ranks and movement of the JNA personnel in and out of Bosnia and Herzegovina, were not a part of a premeditated plan to establish "Greater Serbia", as the Applicant tried to present. Such a plan did not exist and the JNA was certainly not a part of it.

— During the JNA's presence in Bosnia and Herzegovina, no systematic crimes against non-Serbs were committed, and in any case the members of the JNA committed no such crimes.

— The JNA ceased to exist on 28 April 1992, when the army of the Federal Republic of Yugoslavia was established. The great majority of the former JNA members who were citizens of the Federal Republic Yugoslavia left Bosnia and Herzegovina by 19 May 1992. The great majority of the Serbs, former JNA members, who were citizens of Bosnia and Herzegovina, joined the newly formed army of Republika Srpska on the date of its establishment — 12 May.

84. This short conclusion ends my pleading, Madam President. I respectfully ask you to give the floor to my colleague Sasa Obradović.

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[69]Report of the Secretary-General pursuant to paragraph 4 of Security Council resolution 752 (1992), 30 May 1992, Counter-Memorial, Ann. 291.

The PRESIDENT: Thank you, Mr. Olujić. I now call upon Mr. Obradović to address the Court.

Mr. OBRADOVIĆ: Thank you.

THE RELATIONSHIP BETWEEN THE YUGOSLAV ARMY AND THE ARMY OF REPUBLIKA SRPSKA

Introduction

1. Madam President, distinguished Members of the Court, as my colleague Mr. Olujić has just convincingly demonstrated, the presence of the Yugoslav People's Army (JNA) in the territory of Bosnia and Herzegovina ended on 19 May 1992. The events led to the founding of two new, separate armies — the Yugoslav army (VJ) in the Federal Republic of Yugoslavia, and the army of Republika Srpska (VRS) of course in Republika Srpska.

2. In the course of my presentation, I will discuss the relationship that existed between these two armies, which is the foundation of the Applicant's attempt to establish the responsibility of Serbia and Montenegro for the alleged crimes committed in the territory of Bosnia and Herzegovina. The purpose of this pleading is to refute the Applicant's unsupported claims that:

(1) the VRS was an organ of the Respondent[70]; and

(2) the VRS and the VJ were not two separate armies[71].

3. At the same time, the following evidence will demonstrate to the honourable Court that:

(1) the VRS was not under the effective control of any organ of Serbia and Montenegro; and,

(2) the assistance given to the VRS by the Federal Republic of Yugoslavia was not sufficient for the attribution of acts committed by the VRS to the respondent State, as it was explained by our counsel, Mr. Brownlie, in the first round of our oral arguments[72].

The status of the army of Republika Srpska

4. A key question concerning attribution in this case revolves around this one issue — whether the army of Republika Srpska operated under the effective control of the respondent State or not.

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[70]CR 2006/10, p. 26, para. 35 (Condorelli).

[71]CR 2006/8, p. 45, para. 23 (van den Biesen).

[72]CR 2006/17, para. 223 (Brownlie).

5. Based on the evidence and arguments that both Parties have presented during the first round of oral pleadings, the Court could have concluded how complex the relationship between these two armies indeed was. Thus, it is reasonable to raise the following question — could the relationship between these two armies in the given circumstances rationally, from the legal and historical standpoint, be compared with the relationship between the armies of Great Britain and France, as was quaintly suggested by General Sir Richard Dannatt[73]?

6. Despite the complex relationship that existed between the Yugoslav army and the army of Republika Srpska, the following evidence clearly shows that the Bosnian Serb army was independent from the Yugoslav army, or from any other organ of the Federal Republic of Yugoslavia. Madam President, in my presentation I will discuss the following evidence which convincingly supports this conclusion:

I. ICTY Office of the Prosecutor's expert report "1992 Bosnian Serb Command & Control (JNA-TO-VRS)" produced in the case *Prosecutor* v. *Momcilo Krajisnik and Biljana Plavsic* by Mr. Richard Butler.

II. The letter of Mr. Momcilo Krajisnik to the United Nations, dated 28 May 1992.

III. The statement of expert Sir Richard Dannatt.

IV. The statement of witness Sir Michael Rose.

V. Testimony of Mr. Zoran Lilic before the International Criminal Tribunal for the former Yugoslavia.

I. ICTY Office of the Prosecutor's expert report "1992 Bosnian Serb Command & Control (JNA-TO-VRS)" produced in the case *Prosecutor* v. *Momcilo Krajisnik and Biljana Plavsic* by Mr. Richard Butler[74]

7. I will first turn to the ICTY Office of the Prosecutor's expert report produced by Mr. Richard Butler. In the preamble of this report, it was noted that the report had been prepared while the author was employed full time as a military analyst during the ongoing trial of *Prosecutor* v. *Stanislav Galic* and in the preparation of expert military reports in the cases of *Prosecutor* v. *Dragan Obrenovic, Vidoje Blagojevic, Dragan Jokic* and *Momir Nikolic*. There is no

[73]CR 2006/23, p. 22 (General Sir Richard Dannatt).

[74]ICTY, case No. IT-00-39&40, *Prosecutor* v. *Momcilo Krajisnik and Biljana Plavsic*, pp. 5653-5693.

doubt that Mr. Butler, as an expert of the ICTY Prosecutor Office, had all of the available and relevant documents at his disposal. Chapter 10 of his report, called "The VRS Chain-of-Command", was fully devoted to the question of who controlled the army of Bosnian Serbs. He arrived at the following conclusions:

> "10.1 After 20 May 1992, the VRS was the primary military organ of the Bosnian Serbs, tasked with achieving the six strategic objectives of the Serbian People. From the outset, the VRS was under the effective command and control of the Bosnian Serb leadership, as expressed through the formal institution of the Presidency (that included Plavsic and Krajisnik). This constituted Supreme Command of the Army, command and control of which was exercised through an operational chain-of-command commencing with the Commander of the VRS and its Main Staff, General Ratko Mladic.
>
> . . . . . .
>
> 10.3 Along with the establishment of the 'Army of the Serbian Republic of Bosnia and Herzegovina' on 12 May 1992, the National Assembly also amended the Constitution to provide, amongst other measures, that the President was to *(a)* command the newly established Army in war and peace and *(b)* appoint, promote and dismiss the Army's officers. On 1 June 1992, the Presidency adopted the Defence Act to further expand the powers of the President to include the following:
>
> (1) command and control of the Army in peace and in war . . ."[75]

8. The Butler report is very clear and leaves no room for reasonable doubt regarding its interpretation. The VRS was under the effective command and control of the Bosnian Serb leadership. It is hard to imagine that the ICTY Prosecutor's expert would have ignored the role of the Federal Republic of Yugoslavia in controlling the Republika Srpska army, if such control had really existed.

II. The letter of Mr. Momcilo Krajisnik to the United Nations, dated 28 May 1992

9. I will now turn to the letter of Mr. Momcilo Krajisnik to the United Nations, dated 28 May 1992. In this letter Mr. Krajisnik stated that as of 18 May 1992 "*members of the Supreme Command* of the Serbian Army were appointed, all armed forces are under *our* full control"[76].

10. Madam President, this was stated by the President of the Assembly of the Serbian People in Bosnia and Herzegovina. His letter was tendered in the ICTY case against him by the Prosecution Office on 19 April 2005 during the testimony of the protected witness KRAJ 084, and

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[75] *Ibid.*, p. 5657 of the Public Record (p. 37 of the expert report), paras. 10.1 and 10.3 (footnotes omitted).

[76] Judges' folder submitted by Serbia and Montenegro in the second round of oral arguments, doc. No. 6.

admitted by the Trial Chamber Oral Decision on 24 May 2005 as a public document[77]. The full text of this letter you can find in the judges' folder. It is document No. 6.

III. The statement of General Sir Richard Dannatt

11. The Applicant's claim that the VRS was under alleged control of the government authorities of the Federal Republic of Yugoslavia was not directly confirmed even by the Applicant's expert, General Sir Richard Dannatt. In response to your direct question, Madam President, General Dannatt stated:

> "The degree to which the VRS acted in an independent way, I think I would say that in part it did, but its actions were framed by the overall intent and that therefore the operations that the VRS carried out were, if you like, as an agent of the overall purpose. So I think day-to-day operational control was exercised by General Mladic and the Main Staff of the VRS, but the overall purpose was a purpose initially framed in Belgrade . . ."[78]

12. Answering the question whether he was aware of any orders given by the government authorities of the Federal Republic of Yugoslavia, or those of Serbia, to the commanders of the army of Republika Srpska, posed by Judge Tomka, General Dannatt testified: "And then your second question, I believe Madam President, was whether I have any evidence of orders being issued directly. No I do not. But I would not expect to see such orders."[79]

13. On the basis of the statements of General Dannatt, the Respondent respectfully submits the following conclusions:

(1) General Dannatt did not present to the Court any evidence that would confirm that the VRS was under the control of the Federal Republic of Yugoslavia on the tactical, operational or military strategic command level.

(2) General Dannatt gave his statement as an expert who was previously engaged by the ICTY Prosecutor, and had examined an enormous number of documents. He said:

> "I looked at a large number of documents that I asked to see, or I was shown, or from my knowledge of operations in the Balkans over the last ten or 12 years. I have looked at an extensive number of documents . . . People such as General Sir Michael Rose, General Sir Rupert Smith, Mr. Richard Holbrook, all have

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[77]ICTY, case No. IT-00-39&40, *Prosecutor* v. *Momcilo Krajisnik*, Exhibit No. P-620.

[78]CR 2006/23, p. 44 (General Sir Richard Dannatt).

[79]*Ibid.,* p. 46.

> committed their near contemporaneous records into book form. I certainly have all those books and others."[80]

(3) General Dannatt left open the possibility that some influence existed at the grand strategic level, on which the activity is "mainly characterized by politicians determining their ambition, determining their intentions"[81].

14. Obviously, General Dannatt very prudently avoided committing himself on this issue. He said: "The grand strategic level would be activity in Belgrade**,** *or* activity in Pale, Banja Luka, wherever the seat of government at the time was as far as the Bosnian Serb Republic is concerned . . ."[82]

15. The respondent State considers that the testimony of General Dannatt in part dealing with his understanding of political goals pursued during the Bosnian war should not be taken as relevant, let alone conclusive. General Dannatt was simply a military expert, he was not a witness of political events. And, I think that he faithfully expressed his position in that regard. He said: "I think it begs the question 'what was the substance of the discussions at times between Mladic and Milosevic'? I do not know, I was not there."[83] And he also said: "I have to speculate; I wonder what they talked about."[84] For these reasons, the speculation of General Dannatt about the alleged "overall intent" or the "overall purpose" framed in Belgrade cannot be accepted as relevant in this case.

IV. The statement of witness Sir Michael Rose

16. The next piece of evidence that I wish to discuss is the statement of witness Sir Michael Rose, who, with regard to the same topic, said as follows:

> "The burden of responsibility for those war crimes undoubtedly goes through the civil authority, and notably *to the top*, in the case of Mr. Tudjman; in the case of Republika Srpska, Mr. Karadžić; and in the case of Bosnia-Herzegovina, Mr. Izetbegović. All three share responsibility for the war crimes and atrocities.
>
> As a result of the work undertaken by the United Nations, I was often required to travel to Pale, where Republika Srpska had its military and political headquarters,

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[80]CR 2006/23, p. 15 (General Sir Richard Dannatt).

[81]*Ibid.*, p. 13.

[82]*Ibid.*, p. 14; emphasis added.

[83]*Ibid.*, p. 22; emphasis added.

[84]*Ibid.*, p. 31.

> and I was able to gain some impression as to how closely the political and military operations of Republika Srpska were being either directly controlled or influenced by Belgrade. And my impression was that it was not, on the military side, a formal military command arrangement."[85]

17. Furthermore, Sir Michael Rose added:

> "I think it would certainly be true to say that Mladić had his own agenda and that the régime in Belgrade may have been morally supporting it and materially supporting it, but they were not controlling it in a military sense. He had his own agenda."[86]

18. Answering the question of Judge Owada concerning the source of his information regarding the relationship between the two armies, Sir Michael Rose said:

> "There was no concrete evidence one way or the other, but having lived in the military for the whole of my career, I have an understanding of formal military command relationships and my view was that they did not exist between those two organizations."[87]

19. The factual conclusions that can be drawn from this testimony are very clear:

(1) The top level authorities responsible for the atrocities committed in Bosnia and Herzegovina were Tudjman, Karadzic and Izetbegovic.

(2) Sir Michael Rose as an United Nations peacekeeper in Bosnia and Herzegovina and an officer with considerable military experience considers that there is no evidence that the Belgrade authorities controlled the army of Bosnian Serbs.

V. Testimony of Mr. Zoran Lilic before the ICTY

20. The former President of the Federal Republic of Yugoslavia Mr. Zoran Lilic was called as a witness in the *Milosevic* case, by the ICTY Prosecutor. Madam President, allow me to cite a relevant part of his testimony.

21. The question was: "Did the general staff of the Army of Yugoslavia in any way have a command role in relation to the staff of the Army of Republika Srpska or over the main staff of the Serbian Army of Srpska Krajina?"[88] Mr. Lilic answered:

> "That is simply impossible. If all our normative and legal decisions were abided by, the general staff of the Army of Yugoslavia could not be placed in such a

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[85] CR 2006/26, pp.11-12 (Sir Michael Rose); emphasis added.

[86] *Ibid.*, p. 27.

[87] *Ibid.*, p. 33.

[88] ICTY, *Prosecutor* v. *Slobodan Milosevic*, case No. IT-02-54-T, Transcripts, 18 June 2003, p. 22757; http://www.un.org/icty/transe54/030618IT.htm

> decision, and by decision of the Supreme Defence Council that matter was never raised or discussed, so my answer is no."[89]

Madam President, the Applicant's counsel Ms Karagiannakis asked the Court not to take the Lilic statement in the ICTY *Milosevic* case as "objective and conclusive evidence", because he was a Milosevic's former associate[90]. With respect, she seems to have forgotten two points: first, Mr. Lilic, as a Prosecutor's witness, testified against Milosevic's interest in that case, and second, the Applicant's Deputy Agent had already presented the Lilic statement a couple of times as fully reliable evidence in this case[91]. The Respondent, of course, does not contest the credibility of the Lilic statement presented by the Applicant.

Conclusion

22. Members of the Court, the evidence that I have just presented clearly demonstrates that:

(1) the VRS and VJ were two separate armies;

(2) the VRS was not in any way an organ of the Federal Republic of Yugoslavia (now Serbia and Montenegro);

(3) the VRS was under effective control of the Republika Srpska Presidency.

The Yugoslav army's assistance to the army of Republika Srpska

23. Madam President, distinguished Members of the Court; it is not in dispute that the Yugoslav army was providing assistance to the army of Republika Srpska during the conflict in Bosnia and Herzegovina. According to the testimony provided by the expert, General Sir Richard Dannatt, this assistance was limited to "personnel support, logistic support, equipment and training"[92].

24. However, the Respondent would like now to emphasize that the liaisons between the VRS and VJ were changed frequently in accordance with the political situation, and consequently, the assistance that the VRS received by the VJ was not permanent.

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[89] *Ibid.*

[90] CR 2006/32, p. 65, para. 81 (Karagiannakis).

[91] CR 2006/8, p. 42, para. 13 (van den Biesen); see also CR 2006/34, p. 41, para. 41 (van den Biesen).

[92] CR 2006/23, pp. 23-24 (General Sir Richard Dannatt).

25. In 1992, it seemed very necessary to the Government of the Federal Republic of Yugoslavia that its country should assist a newly established army of Bosnian Serbs who found themselves suddenly citizens of another State.

26. Today, it is easy to say that Serbs in Bosnia and Herzegovina were not threatened because all nations in Bosnia and Herzegovina were minorities[93]. But then, the majority of Serbia and Montenegro's citizens believed that the Serbs in Bosnia and Herzegovina, without the assistance of the mother country, would likely be victims of atrocities and violation of human rights.

27. Assistance was given. Its purpose was not to contribute to the committing of any crime, particularly not the crime of genocide. Its purpose was to enable the establishment and survival of Republika Srpska, which, as an entity, was fully recognized by the Dayton-Paris Peace Agreement.

28. However, public opinion in Serbia and Montenegro, as well as the position of the Belgrade authorities, was significantly changed when the leadership of the Bosnian Serbs refused to accept the Vance-Owen Plan in the spring 1993. Instead of accepting peaceful settlement of the conflict, Bosnian Serbs continued to take part in the war, which had already taken a large number of casualties and in which all three warring sides committed numerous crimes. We have heard convincing statements of Messrs. Lukic and Popovic, witnesses from Republika Srpska, about the cessation of the assistance of the Yugoslav Government in those days.

29. Since the leadership of the Bosnian Serbs refused the plan of the Contact Group, the Belgrade leadership decided on 4 August 1994 to impose a blockade along the border with Bosnia and Herzegovina. As of September 1994, any assistance, except in food, clothes and medicine, was stopped, although it could be said that different types of trafficking still existed.

Armament issue

30. All of us today have every right to criticize Slobodan Milosevic's régime and its political role in the conflict in the former Yugoslavia. It is certain that Serbia and Montenegro traded arms with Republika Srpska and violated the arms embargo imposed by the United Nations Security

[93]CR 2006/30, p. 37, para. 20 (van den Biesen).

Council resolution No. 713 of 25 September 1991. Yet, was the Bosnian army not behaving in the same way?

31. The key evidence that the Applicant presented regarding the armament of the army of Republika Srpska by the Federal Republic of Yugoslavia was the speech of General Ratko Mladić addressed to the National Assembly of Republika Srpska at the 50th Session held on 15 and 16 April 1995 in Sanski Most[94]. The official summary from the session can be found in the public records in the ICTY *Milosevic* case[95].

32. However, the Applicant has avoided to present the facts in their full context, both with respect to the mentioned speech and the other speeches from the same session. The Applicant pulled out only the information regarding the amount of weapons and ammunition received from the beginning of the conflict until the end of 1994. The Respondent considers that some following observations would be useful for the deliberation of the Court.

33. *Firstly*, from the presented information it cannot be concluded to what extent the armament assistance was reduced or even ended from the moment of imposing a blockade on Drina River.

34. *Secondly*, General Mladić's speech was addressed in the dramatic circumstances when the assistance from the Federal Republic of Yugoslavia was stopped. The summary of the 50th Session can confirm this fact. General Mladić stated that "deterioration of relations between Republika Srpska and Yugoslavia is the worst thing that could happen to the Serbs in Bosnia"[96]. Furthermore, he added: "There have been difficulties with logistical support of the army, due to sanctions imposed on Yugoslavia by the UN Security Council and the blockade by Yugoslavia on Republika Srpska. There is an evident problem of ammunition supplies, fuel supplies, maintenance tools, clothes and medical supplies."[97] President Karadzic confirmed it and concluded: "Serbia has imposed a blockade; but Serbs have to fight with what they have."[98] At the same session, Deputy

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[94]CR 2006/2, p. 47, para. 65 (van den Biesen).

[95]ICTY, case No. IT-02-54-T, *Prosecutor* v. *Slobodan Milosevic*, "Tape Recording of the 50th National Assembly Session held on 15 and 16 April 1995 in Sanski Most", Public Records, pp. 16471-16543.

[96]*Ibid.*, p. 16533.

[97]*Ibid.*, p. 16526.

[98]*Ibid.*, p. 16510.

Milanovic stated that "the problem in connection with the officers' salaries were the sanctions introduced by Serbia against Republika Srpska, which meant that they have not received any money for six months"[99].

35. *Thirdly*, the Applicant has completely ignored the fact that the total amount of the weapons and ammunition received from the VJ was almost the same as one that stayed in Republika Srpska after the JNA's withdrawal[100]. This fact does not make any difference for the Applicant. Following the Applicant's logic, the only reason why the JNA left weapons and ammunition in the possession of the Bosnian Serbs was to enable them to commit the crime of genocide against the non-Serb population. On the other hand, the former JNA weapons captured by the Bosnian army were used only for defence from the Serbian aggression. I hope that the honourable Court will understand the paradox of the Applicant's argumentation.

The 30th Personnel Centre saga

36. The Yugoslav army also gave an administrative assistance to the VRS. However, the existence of the 30th Personnel Centre has been turned by the Applicant into a saga, according to which this Court should conclude that the VRS officers who were registered in the 30th Personnel Centre and through it settled their personal matters were in fact members of the VJ. Such a thesis should lead the Court to the conclusion that the VRS and VJ, actually, were not two separate armies and that VRS was *de jure* organ of the Federal Republic of Yugoslavia.

37. Members of the Court, this argument is just another Applicant's exaggeration.

38. At the end of 1993, Serbia and Montenegro was facing the highest hyperinflation in history. The situation of the families of the officers of the Republika Srpska army was very difficult, because most of them were refugees in the Republic of Serbia. It is not in dispute that, pursuant to the order of the President of the Federal Republic of Yugoslavia, Mr. Zoran Lilic, dated 10 November 1993, the Yugoslav army Chief of General Staff, Mr. Momcilo Perisic, issued the order on 15 November 1993 establishing the 30th Personnel Centre of the Yugoslav army. According to Mr. Torkildsen, it was the administrative centre in charge of taking care of and

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[99] *Ibid.*, p. 16490.

[100] *Ibid.*, p. 16525.

administering the needs of the officers and other personnel serving in the VRS[101]. Let me quote the following explanation for the establishment of this administrative centre, given by President Lilic in his testimony before the ICTY.

> "The basic reason why the 30th Personal Centre was established [was] primarily to resolve the existential status of these people who formerly belonged to the JNA and who were outside the territory of the FRY and who were citizens of the Republic of Bosnia-Herzegovina. The Centre was established precisely with that aim in mind, in order to have the documents taken care properly, to take care of their own needs, to take care of the needs of their families primarily, because most of them were refugees in the territory of the Federal Republic of Yugoslavia."[102]

Payments issue

39. Madam President, it is not in dispute that the VJ through the 30th Personnel Centre paid salaries to the officers of the VRS who were former members of the JNA. Nevertheless, the Respondent would like to emphasize a few facts that the Applicant suppressed.

40. *Firstly*, the payments of the VRS officers — which in some periods were in the form of salaries, while in another in the form of public welfare — generally were very low during the time of hyperinflation.

41. *Secondly*, the payments of the VRS officers by the VJ were not constant as the Applicant has tried to present. The evidence for this claim is following:

(1) The report named the "Analysis of Combat Readiness and Activities of the Bosnian Serb Army in 1992", according to which the Applicant's counsel, Mr. Torkildsen, could not seriously confirm that there was any evidence that the officers of the VRS had received their salaries from the Federal Republic of Yugoslavia since 30 June 1992 till November 1993, when the 30th Personnel Centre was established[103]. That part of his presentation was discussed today in detail by our counsel, Mr. Brownlie.

(2) Second, the summary from the 50th Session of the National Assembly of Republika Srpska held on 15 and 16 April 1995 in Sanski Most contained the statement of the deputy

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[101]CR 2006/9, p. 26, para. 10 (Torkildsen).

[102]ICTY, case No. IT-02-54-T, *Prosecutor* v. *Slobodan Milosevic*, transcripts, 18 June 2003, p. 22592; http://www.un.org/icty/transe54/030618IT.htm.

[103]CR 2006/9, p. 26, para. 9 (Torkildsen).

Mr. Milanovic, that I have already quoted. According to his statement, the VRS officers have received no money for six months[104].

(3) The statement of President Lilic at the Milosevic trial, which relevant part I will quote:

> "After the sanctions were introduced against Republika Srpska, we took a decision that the minimal part, that is the social welfare part, should be given to the families of the 30th Personal Centre to continue their children's education, and I think that part of it was continued. That's what I had in mind. But they were not the entire amounts, they were just amounts that were salaries guaranteed in the Federal Republic at that time, the guaranteed wages in fact."[105]

(4) The statement of the Prosecutor's protected witness B-1804 in the ICTY *Milosevic* case, who also confirmed the payment-break[106]. For the convenience of the Court, we included the relevant part of his statement in the judges' folder. It is document No. 7.

42. *Finally*, the Yugoslav Army did not pay all officers of the Republika Srpska Army. According to the Applicant's Deputy Agent, 1,800 Bosnian Serb officers were registered in the 30th Personnel Centre[107]. But, Madam President, the VRS numbered "222,727 persons of whom 14,541 [were] officers, [and] 12,032 non-commissioned officers", according to the "Analysis of the Combat Readiness and Activities of the Bosnian Serb Army in 1992"[108]. This document has been so often invoked by the Applicant in this case, and I think, its accuracy is not in dispute.

43. Consequently, the Applicant's argument that "the man who pays the cheque is usually the man who is in command" is seriously being damaged. In spite of the facts that (1) only a small part of the VRS officers were paid by the VJ; (2) even that group of the VRS officers were not paid regularly and continuously, and (3) their salaries were very low — the VRS Army continued to exist and fight.

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[104]ICTY, case No. IT-02-54-T, *Prosecutor* v. *Slobodan Milosevic*, "Tape Recording of the 50th National Assembly Session held on 15 and 16 April 1995 in Sanski Most", Public Records, p. 16490.

[105]ICTY, case No. IT-02-54-T, *Prosecutor* v. *Slobodan Milosevic*, Transcripts, 18 June 2003, p. 22677.

[106]ICTY, case No. IT-02-54-T, *Prosecutor* v. *Slobodan Milosevic*, Transcripts, 11 February 2004, pp. 31868-31871 (judges' folder submitted by the Respondent in the second round of oral arguments, doc. No. 7).

[107]CR 2006/8, p. 45, para. 24 (van den Biesen).

[108] ICTY, case No. IT-99-36, *Prosecutor* v. *Radoslav Brdjanin*, "Analysis of the Combat Readiness of the Army of Republika Srpska in 1992", Exhibit P2419, p. 11.

"Promotions" issue

44. I would like now to turn to another issue and to demonstrate that the Applicant's allegation that the Supreme Defence Council and VJ promoted the VRS officers[109] is not entirely correct.

45. The evidence for my assertion is the following:

(1) According to the Amendments to the Constitution of the Serbian Republic of Bosnia and Herzegovina that I have already mentioned, the President of Republika Srpska was to appoint, promote and dismiss the army's officers[110].

(2) The relevant part of the ICTY Prosecutor's expert report produced by Mr. Richard Butler in the *Krajisnik and Plavsic* case reads as follows:

> "This core membership of the VRS Main Staff . . . remained remarkably consistent throughout the Bosnian conflict, with all but one of the original Assistant Commanders appointed by Mladic remaining in their posts throughout the conflict and *each promoted, by Radovan Karadzic on 24 June 1994, to the next higher rank while serving in their Main Staff position. Mladic himself was also promoted from Lieutenant Colonel General to Colonel General on this same date in 1994.*"[111]

Distinguished Members of the Court, according to this ICTY Prosecutor's expert report, it seems clear that the Applicant's allegation that Ratko Mladic was promoted to the rank of Colonel General on 24 June 1994, the same date actually, by the Yugoslav Supreme Defence Council[112] is not correct. It must be a direct consequence of the Applicant's approach to the sources of evidence in this case — instead of quoting the available expert report, the Applicant quoted the allegation from the ICTY *Perisic* Indictment, which is still at the pre-trial stage.

(3) In the official summary from the 50th Republika Srpska National Assembly Session held on 15 and 16 April 1995, from which the Applicant quoted only the Mladic report concerning the ammunition supply, the Court can find the following statement of the deputy, Mr. Kupresanin, who criticized the highest organs of Republika Srpska for promoting too many officers. He said:

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[109]CR 2006/34, p. 53, para. 23 (Dauban).

[110]See ICTY Office of the Prosecutor's Expert Report "1992 Bosnian Serb Command & Control (JNA-TO-VRS)" by Mr. Richard Butler, produced in the case *Prosecutor* v. *Momcilo Krajisnik and Biljana Plavsic*, IT-00-39&4-PT, Public Records, p. 5657, para. 10.3.

[111]*Ibid.*, p. 5662, para. 8.4; emphasis added.

[112]CR 2006/8, p. 47, para. 29 *(b)* (van den Biesen).

> "The Parliament and the President of the country were too generous in promoting too many officers into higher ranks and there are too many generals. The Parliament did not evaluate each promotion as it is usually required. The President produced more generals in RS than there are in America. One day the Parliament will take over that duty because it should be the highest institution in RS."[113]

46. If we take into consideration that the original words of this deputy were noted accurately — and I think that there is no reason for such a doubt — as well as that Mr. Butler, as the Prosecutor's experienced expert, had the obligation to present the facts in accordance with his best knowledge and sincere belief, the question remains how then do the same documents concerning the promotions of the VRS officers by the VJ still exist.

47. Although paradoxical, the answer is simple. The VJ organs did not only register the Republika Srpska promotions of the VRS officers into the 30th Personnel Centre, but also *verified* them by their decisions. That procedure was necessary throughout the period when the VRS officers received the salaries from the VJ. Namely, a colonel's salary was naturally higher than a salary of a lieutenant colonel. Without the verification of promotion made in Republika Srpska, a colonel would continue to receive the VJ salary of the lower rank, i.e. the lieutenant colonel's salary. The contests of the Document No. 50 — Confidential Document of the VRS called "Forming and Delivering the Working Lists" of 15 May 1995[114], as well as the Document No. 62 — the VRS Confidential Order, dated 1 June 1995[115], both submitted by the Applicant on 20 January 2006, fully confirmed this assertion that the VJ only verified promotions that had previously been made in Republika Srpska.

Conclusion

48. Madam President, distinguished Members of the Court, allow me to finish this brief presentation of facts in relation to the assistance issue with the following conclusions:

— The 30th Personnel Centre of the Yugoslav army was an administrative organ, through which the administrative assistance in personnel matters was given to the Republika Srpska army.

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[113]ICTY, case No. IT-02-54-T, *Prosecutor* v. *Slobodan Milosevic*, "Tape Recording of the 50th National Assembly Session held on 15 and 16 April 1995 in Sanski Most", Public Records, p.16498.

[114]VRS, Command of Drina Corps, Confidential Doc. No. 05/2-174, 15 May 1995, "Forming and Delivering the Working Lists", para. 2. Doc. No. 50 submitted by Bosnia and Herzegovina, 20 January 2006.

[115]VRS, Confidential Order No. 09/30/11-619/4, dated 1 June 1995 (document No. 62 submitted by Bosnia and Herzegovina on 20 January 2006).

— There is no evidence that the officers of the Republika Srpska army who were registered in the 30th Personnel Centre were, at the same time, the officers of the Yugoslav army.

— The Applicant has failed to present any evidence that any of these officers acted under the command or under the particular orders of the Yugoslav army.

The assistance given to the VRS by the VJ is not sufficient to establish the State responsibility, as it has already been explained by our counsel, Mr. Brownlie.

Thank you for your kind attention. Madam President, I think that we still have enough time to start with a new speaker, my colleague, Mr. Cvetković. Please call him to have the floor.

The PRESIDENT: Thank you, Mr. Obradović. I call Mr. Cvetković to begin his presentation.

Mr. CVETKOVIĆ: Thank you, Madam President. As you can see, we are a little bit behind our schedule for today so, before I start, I would just like to ask for your permission to go maybe five to ten minutes over 6 o'clock, if that is acceptable?

The PRESIDENT: Yes.

Mr. CVETKOVIĆ: Thank you.

PARAMILITARIES

1. Madam President, distinguished Members of the Court, the war in Bosnia and Herzegovina involved a significant number of paramilitary formations, operating on all sides of the conflict. Some of these units became notorious during the war and some of them became known recently. Here I refer in particular to "Scorpions", whose gruesome crime, recorded on video, we saw in this courtroom.

2. The Applicant seeks to link all the paramilitary units fighting on the Serbian side with the Belgrade authorities. Furthermore, with respect to some of the units, the Applicant claims that they were actually not paramilitary units, but regular units belonging to the Serbian Ministry of the Interior.

3. The Applicant's approach to this issue is consistent with their approach in the entire case. The lack of credible evidence is compensated for by selective use and occasional misrepresentation of existing ICTY materials and other sources. The ultimate purpose of this approach is to present every action of the Serbs as unlawful and as a part of a genocidal plan that is supposed to have had its origin in Belgrade. The evidence, however, does not support this approach.

4. In this intentionally created confusion, it is rather difficult to determine what the Applicant actually claims to have happened. Nevertheless, I will try to proceed with my examination on the basis of the following assumptions made by the Applicant:

(a) Paramilitary units were allegedly organized by the Respondent.

(b) These units were allegedly acting under the control of the Respondent during the entire conflict in Bosnia and Herzegovina.

(c) Some of the units were supposedly only pretending to be paramilitaries, while in fact they were regular units of the Serbian Ministry of the Interior.

(d) Paramilitary units allegedly committed genocide in Bosnia and Herzegovina.

These assumptions can be found throughout the Applicant's written pleadings and oral arguments, and in particular in the speeches of Ms Karagiannakis in the first round (CR 2006/9, pp. 10-22) and Ms Dauban in the second round (CR 2006/34, pp. 44-62 and CR 2006/35, pp. 20-36).

The origin of the paramilitaries

5. The Applicant referred to several regulations adopted in 1991 in either the Socialist Federal Republic of Yugoslavia or the Socialist Republic of Serbia[116]. According to the Applicant, these regulations should prove that the Respondent established and had control over paramilitary forces operating in Bosnia and Herzegovina.

6. The existence of the regulations is not disputed by the Respondent. However, the conclusions that the Applicant tried to draw are erroneous. Furthermore, in some cases, the context in which the Applicant refers to these regulations is a clear example of a selective and incorrect use of evidence.

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[116]See CR 2006/9, pp. 10-11, paras. 2-5 (Karagiannakis).

7. All the regulations that the Applicant listed were passed in 1991, after the war in Croatia escalated. They were passed precisely to enable the State to deal with the new circumstances that war had created. After Slovenia and Croatia proclaimed their secession from the SFRY, the Federal State and its army — the JNA — found themselves in an unexpected position. Due to the desertion of the Croatian and Slovenian officers and soldiers, the ranks of the army were decimated, but its leadership was still committed to preserve the common State, which was the only internationally recognized State at that time.

8. The army thus ordered a mobilization, but the mobilization failed. This was explained in more detail by our Agent, Professor Stojanović, in his speech in the first round[117]. However, in contrast to the majority of the people who did not respond to the mobilization, there was a small number of people who were not called to arms but still wanted to fight. These men are known as volunteers and some of them later became known as paramilitaries.

9. The reasons why these men volunteered varied. Some of them were probably patriots who wanted to protect Yugoslavia or just to protect Serbian people in Croatia. On the other hand, some of the volunteers were undoubtedly criminals and probably the best description for them would be an infamous term "dogs of war". But, whatever the case was, the JNA did not greet the volunteers with open arms and many in the army were very reluctant to accept them.

10. The solution had to be found and it was found in the adoption of the regulations that the Applicant referred to. These regulations were absolutely lawful and their purpose was to put the volunteers under the control of the JNA and to make them abide by the rules of armed conflict. Therefore, the JNA and the State organs, which passed the regulations, were not acting on some premeditated plan. On the contrary, they were reacting to the situation on the ground, trying to bring some order in the already very complicated conditions. Unfortunately, they were not very successful in doing that. Most of the volunteer units were only formally incorporated in the army, while they remained as compact independent units, with their own commanders, and they stayed *de facto* out of the control of the JNA.

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[117]See CR 2006/15, pp. 15-17, paras. 131-141 (Stojanović).

The onset of conflict in Bosnia and Herzegovina — the status of paramilitaries

11. Whatever the extent of the control that the JNA exercised over the paramilitary units under the regulations that the Applicant referred to, these regulations had very limited effect and have nothing to do with the present case. The regulations were adopted in 1991, during the war in Croatia, and when the war in Bosnia and Herzegovina started, these regulations were no longer applied. This is best confirmed by one of the documents that the Applicant tendered through the expert, General Sir Richard Dannatt. This is document No. 16, the transcript of the conversation between Mr. Unković from the Sarajevo Crisis Staff and Ratko Mladić of 13 May 1992. The relevant part, underlined by the Applicant, reads:

> "Unković: One more question.
>
> Mladić: Yes?
>
> Unković: We have some Arkan's men here.
>
> Mladić: Yes?
>
> Unković: Are they under our command?
>
> Mladić: All are. All under arms are under my command, if they want to stay alive.
>
> Unković: Excellent! Excellent!
>
> Mladić: So, all shall be under our command. No one shall do things on their own and the five-day cease-fire must be observed!"

12. In her pleading to this Court, Ms Karagiannakis read only one sentence spoken by Mladić: "All under arms are under my command."[118] If that were the only sentence, then the Applicant's claims might have had some grounds. However, the Applicant was kind enough to provide the whole intercept and the remainder of the conversation between Mladić and Mr. Unković sheds a different light on the relationship between General Mladić and the army he commanded, on the one hand, and the paramilitaries on the other hand. If Mladić had command, why would he then threaten Arkan's men with their lives if they do not obey the ceasefire? And, above all, why would an issue of command be discussed in the first place if the regulations that the Applicant referred to were still applied? In addition, we should not forget that the army discussed here was the army of Republika Srpska, which was created on 12 May 1992.

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[118]CR 2006/9, p. 20, para. 35 (Karagiannakis).

13. On this point, misusing the evidence relating to 1991 and the war in Croatia, counsel for the Applicant tried to create the impression that the army General Mladić referred to was the JNA. To do so, Ms Karagiannakis first referred to four points of evidence which indeed suggested that Arkan's and Šešelj's troops acted together with the JNA in fighting in Croatia in 1991[119] and only then did she invoke the already mentioned sentence of General Mladić from 1992, which was obviously taken out of context.

14. The further example of the misrepresentation of the evidence relating to 1991 is contained in the following two paragraphs of Ms Karagiannakis's pleading:

> "10. The Trial Chamber in the *Milošević* case has found, in its Decision on the Motion for Judgement on Acquittal, that President Milošević had both *de jure* and *de facto* control over the Serbian MUP and its arm of the State Security Service, the Serbian DB.
>
> 11. International diplomats confirmed this control. According to Ambassador Okun, during meetings and negotiations with members of the international community, President Milošević was understood to represent all of the forces operating in *Bosnia and Herzegovina*, including paramilitary forces."[120]

15. The first paragraph is probably accurate, but there is absolutely nothing strange in the fact that a president of a State had control over that State's police, including the State security forces.

16. The second paragraph is, however, more problematic. Ms Karagiannakis declared that international diplomats, and in particular Ambassador Okun, confirmed the control that Milošević supposedly had over *paramilitary forces* operating in *Bosnia and Herzegovina*.

17. Ambassador Herbert Okun, who served as Special Adviser and the Deputy to the Personal Envoy of the United Nations Secretary-General between 1991 and 1997, testified in the Milošević trial before the ICTY. The relevant part of his statement, in which he indeed said that Milošević had been understood to represent paramilitary units, related merely to the signing of the Cessation of Hostilities Agreement, or Geneva Accord, signed on 23 November 1991 by Slobodan Milošević, Franjo Tudjman and Cyrus Vance[121]. This Agreement had been signed five

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[119] See CR 2006/9, p. 19, paras. 32-34 (Karagiannakis).

[120] *Ibid*, pp. 12-13, para. 10-11 (Karagiannakis); emphasis added.

[121] ICTY, *Prosecutor* v. *Milošević*, Decision on Motion for Judgement of Acquittal, 16 June 2004, para. 275 and footnotes 712 and 713.

months before the conflict in Bosnia and Herzegovina began and it related exclusively to cessation of hostilities in Croatia. It is completely inexplicable how Mr. Milošević's signature on an agreement concerning another conflict, and another earlier period of time, can be used as evidence of his control of paramilitaries operating in Bosnia and Herzegovina. This is not what Ambassador Okun said and this is not what the ICTY Trial Chamber in the *Milošević* case concluded.

18. Madam President, it would be useful at this point to say that it is our submission that, while wars in Croatia and in Bosnia and Herzegovina were undoubtedly connected to a certain extent and some comparative analysis is inevitable, these two wars cannot be portrayed as one and, in particular, conclusions in this case cannot be drawn by simple analogy with what happened in Croatia at one point in time. Especially if that point in time dates back to 1991, before the conflict in Bosnia and Herzegovina even began.

19. If we accept, however, that in 1991 paramilitary forces were indeed formally incorporated in the JNA in Croatia — although not always successfully — in 1992 they were neither incorporated in the JNA, nor did they act under the control of the JNA or the Respondent. As of 6 April 1992, when Bosnia and Herzegovina had been formally recognized by the European States and the United States of America, the JNA was in withdrawal from the territory of the Applicant. The withdrawal began after the negotiations to keep the JNA in Bosnia and Herzegovina for a transition period had failed and it had ended on 19 May 1992, three days before the Applicant was admitted to the United Nations. During this period, the Respondent was not in control of events. On 7 April 1992, the Assembly of Serbian People in Bosnia and Herzegovina declared in Banja Luka the independence of the Serbian republic of Bosnia and Herzegovina, which later became Republika Srpska. As my colleague Igor Olujić explained, on 15 April 1992 the Presidency of the Serbian republic of Bosnia and Herzegovina adopted a decision announcing an imminent threat of war and the mobilization of the Territorial Defence in the entire territory of the Serbian republic of Bosnia and Herzegovina[122]. Thus, it was this new entity, a self-proclaimed State to be, that was now trying to take control. The JNA was falling apart; the Muslims and

[122]Decision of the Serbian republic of Bosnia and Herzegovina of 15 April 1992, quoted in ICTY, *Prosecutor* v. *Brdjanin*, Military Developments in the Bosanska Krajina — 1992, A Background Study, Expert Report by Ewan Brown, para. 1.77.

Croats were leaving its ranks and Serbs — 90 per cent of them being from Bosnia and Herzegovina — rather listened to orders coming from Pale than to those coming from Belgrade.

20. It is in these circumstances that the paramilitary groups were formed and the vast majority of them were made up of Serbs from Bosnia and Herzegovina. The absence of any control of the army over these units, and the army's negative attitude towards them, is best seen from the document of 12 May 1992, which Serbia and Montenegro submitted on 18 January this year[123]. Mr. van den Biesen already read this document in his opening speech in the second round, so I do not have to read it again. In a later report on paramilitary formations, prepared by the Main Staff of the army of Republika Srpska, the paramilitaries were portrayed as "mostly composed of individuals of low moral quality, and in many cases of persons previously prosecuted for crimes and offences"[124]. Among their ranks there was a "lack of cohesive unity, which renders them almost worthless in combat terms" and where "the law of the jungle" ruled[125]. All these quotations are from the report of the Main Staff, which is a document in the ICTY materials. The Trial Chamber in the *Brdjanin* case before the ICTY gave a description of one such unit: the unit which Ms Karagiannakis claimed was under the control of the Respondent[126]:

> "On 3 April 1992, the Serbian Defence Forces ('SOS'), an armed formation composed of disgruntled soldiers returning from the front in Croatia as well as local thugs and criminals, surrounded the municipal building of Banja Luka and set up barricades in town. An announcement was made through the media, introducing the SOS as a 'group of Serbian patriots, JNA members, reservists, volunteers and citizens of Banja Luka' who were taking action 'because of the false peacemaking of the SDA, the HDZ and opposition parties, which have besmirched the memories of the dead citizens of Banja Luka and Krajina'."[127]

21. It is also in these circumstances that some paramilitary groups from Serbia and Montenegro arrived. Upon their arrival they acted either independently or under the orders of the local Bosnian Serbs. However, the volunteers or paramilitaries who came from Serbia did not join only Serbian ranks. General Phillipe Morillon testified before the ICTY that several hundred

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[123]Information Strictly Confidential No. 1614-585 of 12 May 1992, Unpublic documents submitted by Serbia and Montenegro on 18 January 2006, doc. No. 3.

[124]Report on Paramilitary Formations in the Territory of the Serbian Republic of BiH of 28 July 1992, quoted in ICTY, *Prosecutor* v. *Brdjanin*, Military Developments in the Bosanska Krajina — 1992, A Background Study, Expert Report by Ewan Brown, para. 2.59.

[125]*Loc. cit.*

[126]See CR 2006/9, pp. 20-21, paras. 36-40 (Karagiannakis).

[127]ICTY, *Prosecutor* v. *Brdjanin*, Judgement of 1 September 2004, para. 98.

Muslims from Sandzak, which is in Serbia and Montenegro, fought on the side of the government forces in Bosnia and Herzegovina[128].

22. In some cases, paramilitaries from Serbia were invited by leaders of Republika Srpska. For example, a source much referred to by the Applicant, Arkan's former secretary, B-129, testified in the Milošević trial that Arkan himself had said that he had gone to Bijeljina at the invitation of Biljana Plavšić[129].

23. Of course, the Applicant did not omit to quote another statement of B-129, when the witness said that her former boss "would always say that without orders from the state security, the Tigers were not deployed anywhere"[130]. The Applicant, however, omitted to quote a later exchange between B-129 and the accused Milošević, when the witness corrected her previous statement:

> "Q: I see. He [meaning Arkan] spoke with pride of the fact that Biljana Plavšić had called him to fight there. Well, then was he sent there by the Serbian state security, or upon the invitation of Biljana Plavšić?
>
> A: Are you talking about Bijeljina?
>
> Q: Yes, I'm talking about Bijeljina.
>
> A: She invited him, yes.
>
> Q: So it wasn't the state — the Serbian state security that sent him there.
>
> A: I was only speaking about the Serbian state security during the period that I was employed at the headquarters."[131]

24. As the Court would appreciate, the testimony of B-129 is obviously full of controversial statements, almost entirely circumstantial and of very limited evidential value. I will come back to this issue later.

25. For now, Madam President, we will stay with the events from 1992 and look at another source much used by the Applicant: the sentencing judgment in the ICTY case of *Prosecutor* v. *Miroslav Deronjić*, the statement of facts on which the judgment was based, as well as Mr. Deronjić's witness statement in his own case.

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[128]ICTY, *Prosecutor* v. *Milošević*, Testimony of General Phillipe Morillon, 12 February 2004, p. 32012.

[129]*Ibid*., testimony of B-129, 16 and 17 April 2003, pp. 19424-19425, 19532-19535.

[130]*Ibid*, pp. 19425-19426, quotation in CR 2006/6, p. 13, para. 10 (Dauban).

[131]*Ibid.*, testimony of B-129, 17 April 2003, p. 19533.

26. Miroslav Deronjić was the President of the Bratunac Crisis Staff from the end of April 1992. He pleaded guilty before the ICTY in connection with crimes committed in the village of Glogova, a village located in the Bratunac municipality. In accordance with the plea agreement, he was found guilty of the crime of persecution, incorporating the killing of 64 Bosnian Muslim civilians in Glogova[132]. For his crimes, he was sentenced to ten years of imprisonment.

27. In his dissenting opinion in relation to the sentencing judgment, Judge Wolfgang Schomburg, the presiding judge in the *Deronjić* case, regretted the sentence as not proportional to the crimes it was based on. According to Judge Schomburg, the accused deserved a sentence of no less than 20 years of imprisonment[133].

28. Judge Schomburg was very unsatisfied with the guilty plea that the accused had concluded with the prosecution, including that the guilty plea was not combined with a warning that the accused had to tell the truth, when called as a witness before the Tribunal[134]. Judge Schomburg was equally critical of the concessions made by the prosecution to Mr. Deronjić. One that deserves special attention is Mr. Deronjić's role in the Srebrenica massacre. On this matter the judge wrote:

> "14.
>
> . . . . . .
>
> *(d)* Finally, having carefully read all the Accused's statements and testimonies, it remains extremely questionable to me, why Miroslav Deronijc was not indicted as a co-perpetrator in the joint criminal enterprise leading to the horrific massacre at Srebrenica in 1995. It transpires on a *prima facie* basis that there should be enough reason to indict Miroslav Deronjić for his participation in that massacre, based only on his own confession, and leave it finally to a Trial Chamber to decide whether a criminal responsibility can be established beyond reasonable doubt. Apparently Miroslav Deronijc was not afraid that this could happen, as he stated himself [and the judge quotes Mr. Deronijc]:
>
> > 'I was told after all the investigations were completed, that indictments in relation to Srebrenica were being dropped against me . . . [T]he Prosecution stated that . . . they have no intention of prosecuting me further for the events in Srebrenica.'"[135]

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[132]ICTY, *Prosecutor* v. *Miroslav Deronjić*, Sentencing Judgement, 30 March 2004.

[133]*Ibid*., dissenting opinion of Judge Schomburg, paras. 1-2.

[134]*Ibid*, paras. 10-12.

[135]*Ibid*, para. 14 *(d)*.

29. Finally, it is of particular interest to this Court what is the evidential value of Mr. Deronjić's plea agreement and his various testimonies before different trial chambers of the ICTY. This is how Judge Schomburg saw it, and I quote him again:

> "15. The forensic value of his statements and testimonies is extremely limited, until the Accused is prepared to clarify which details are true and which are not. The Accused himself admitted: 'So I did not give an entirely truthful statement . . . But I do not agree that those statements are completely untrue. They are partially untrue . . .' I can not attach any mitigating weight to such an unsound mixture of truth and lies, creating more confusion than assistance in the Tribunal's search for the truth."[136]

30. Madam President, it was this Miroslav Deronjić, a man who escaped prosecution for the massacre in Srebrenica through the guilty plea he concluded with the ICTY and a man who was obviously found to have lied before different trial chambers of the ICTY, it was this Miroslav Deronjić whom the Applicant referred to no less than *39 times* in their oral pleadings.

31. On the question of paramilitaries, their arrival in the municipality of Bratunac and their connections with the Respondent, the statement of facts in Mr. Deronjić's case, drafted by the ICTY Prosecution, indeed reads that "volunteers from the SFRY crossed the Drina River with the co-operation of the SFRY authorities and entered Bratunac on 17 April 1992"[137]. According to the same statement, "a second group of volunteers from Serbia arrived later" (on an unspecified date) and "the commander of this group of volunteers was an individual nicknamed 'Peki'"[138]. The statement of facts goes on to assert: "the arrival of the volunteers from Serbia was agreed upon by the top leadership of the Republika Srpska and the SFRY"[139]. These passages from Mr. Deronjić's statement of facts were later included in the sentencing judgment[140] and most of them were referred to by Ms Dauban[141] and then referred back by Ms Karagiannakis[142].

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[136] *Ibid*, para. 15.

[137] ICTY, *Prosecutor* v. *Miroslav Deronjić*, Factual basis for guilty plea, 30 September 2003, paras. 14-15.

[138] *Ibid*, para. 23.

[139] *Ibid*, para. 24.

[140] ICTY, *Prosecutor* v. *Deronjić*, Sentencing Judgement, 30 March 2004, paras. 69, 70, 80 and 81.

[141] See CR 2006/6, pp. 21-23, paras. 33-39 (Dauban).

[142] See CR 2006/9, p. 11, para. 5 (Karagiannakis).

32. A careful examination of Mr. Deronjić's statement of facts, the sentencing judgment and his various testimonies before different trial chambers[143] reveals that the statement of facts has a number of serious defects:

(a) first of all, Mr. Deronjić has never offered any credible explanation on how and when was the arrival of volunteers to Republika Srpska and the Bratunac municipality "agreed upon by the top leadership of the Republika Srpska and the SFRY" — in his own words. In fact, during his testimonies Mr. Deronjić contradicted himself by saying that volunteers were brought to Bratunac by a Bosnian Serb named Goran Zekić, a member of the Main Board of the Serbian Democratic Party in Bosnia and Herzegovina and one of the main political figures in Bratunac[144],

(b) Mr. Deronjić has further never offered any explanation on how these volunteers "crossed the Drina River with the co-operation of the SFRY authorities",

(c) finally, he has never named any unit of volunteers that had participated in the attack on village of Glogova, or any volunteer unit present in the municipality of Bratunac. The only thing Mr. Deronjić could recollect was that one unit had been commanded by an individual named "Peki".

33. It seems that the Applicant tried to remedy at least this last defect of Mr. Deronjić's account of the events in Bratunac. Thus, Ms Dauban declared: "These 'volunteers' are more paramilitary formations including units of Arkan's Tigers, the White Eagles and Šešelj's men."[145] To prove this claim, Ms Dauban referred to paragraph 74 of the sentencing judgment. I sincerely hope that this reference was done by mistake, since paragraph 74 of the sentencing judgment neither mentions any of the named paramilitary units, nor deals with paramilitary units in the first place. (The full text of this paragraph is given in the footnote with my pleading[146], and the Court

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[143]Other than in his own case, Mr. Deronjić so far also testified in cases against Milošević, Krajišnik, Krstić and Blagojević.

[144]See ICTY, *Prosecutor* v. *Deronjić*, Sentencing Judgement, 30 March 2004, para. 70, and also testimony of Mr. Deronjić in his own case, 27 January 2004, p. 140.

[145]CR 2006/6, p. 23, para. 37 (Dauban).

[146]The paragraph quoted by Ms Dauban reads:

may see that there is no mention of the paramilitaries.) As I have explained, Mr. Deronjić has never named any of the volunteer units that were present in Bratunac, so it seems after all that the Applicant again wrongly presented the evidence.

34. The third source referred to extensively by the Applicant is the ICTY indictment against two former State security officials of the Serbian Ministry of Interior, Jovica Stanišić and Franko Simatović. This indictment cannot be used as evidence as such, since it only lists accusations, without referring to particular evidence to prove those accusations. Later on, tomorrow, I will show on a particular example why this indictment cannot be used as reliable evidence before this Court.

35. In conclusion, the evidence presented by the Applicant that relates to events in the spring of 1992 failed to meet the required standard of proof and in any case failed to prove the responsibility of the Respondent for paramilitary actions. This is for the following reasons:

(a) the regulations concerning the engagement of the paramilitaries in the JNA relate to Croatia and the year 1991. The Applicant wrongly presented them to be applicable also in 1992 in Bosnia and Herzegovina. All the conclusions that the Applicant tried to draw from these regulations, even if considered accurate, could only be relevant for the war in Croatia in 1991. In spite of that, the Applicant constantly misrepresented the evidence from 1991 to make wrong conclusions in this case;

(b) the other evidence used by the Applicant is of a highly dubious character. The two main sources are: testimony of Arkan's former secretary B-129 and various statements of Miroslav Deronjić. Both of them are either entirely circumstantial or packed with serious flaws and inconsistencies. In addition, both sources are occasionally misrepresented by the Applicant;

"On or about 25 April 1992, armoured personnel carriers (APCs), military trucks and police cars arrived in Glogova. Soldiers who were part of that convoy declared themselves to be members of the Novi Sad Corps from Serbia, who had arrived in order to gather weapons. Najdan Mladenovic of the TO was present with the group, as well as the following Bratunac policemen: Milutin Milošević, Chief of the Bratunac police forces (also known as the Secretariat of Internal Affairs, hereinafter 'SUP'), Miladin Jokic, Vidoje Radovic, Dragan Ilic, Dragan Vasiljevic, Sredoje Stevic, Vukovic, and Tesic. This group looked for weapons in Glogova and issued an ultimatum to the villagers that the weapons were to be handed in two days later." (ICTY, *Prosecutor* v. *Deronjić*, Sentencing Judgement, 30 March 2004, para. 74.)

(c) the Applicant has failed to prove that any of the paramilitary units active in Bosnia and Herzegovina in 1992 were under the control of the Respondent. If these units were under any control, they were under the control of the new self-proclaimed State of the Bosnian Serbs. However, the Applicant has failed to prove even that, and all the evidence only points to the absence of any control over the paramilitary units.

Madam President, I believe this is a good point where I could stop, and I will continue tomorrow with my presentation.

The PRESIDENT: Yes, that is very helpful. Thank you, Mr. Cvetković. The Court will now rise until tomorrow morning.

The Court rose at 6.10 p.m.