INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

(Bosnia and Herzegovina v. Federal Republic of Yugoslavia)

REPLY
OF
BOSNIA AND HERZEGOVINA

23 April 1998

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LIST OF BOOKS AND DOCUMENTS

DEPOSITED AT THE REGISTRY

a. Beverly Allen, *Rape Warfare - The Hidden Genocide in Bosnia-Herzegovina and Croatia*, Minneapolis 1996
b. Norman Cigar, *Genocide in Bosnia: The policy of "Ethnic Cleansing"*, Texas 1995
c. Misha Glenny, *The Fall of Yugoslavia - The Third Balkan War*, London 1992, updated edition 1996
d. Roy Gutman, *A Witness to Genocide - The First Inside Account of the Horrors of 'Ethnic Cleansing' in Bosnia*, Shaftesbury 1993
e. Florence Hartmann, "Chronologie d'une négligence criminelle: le génocide de Srebenica", *L'ex-Yougoslavie en Europe - De la faillite des démocraties au processus de paix*, Paris 1997
f. Jan Willem Honig and Norbert Both, *Srebrenica - Record of a War Crime*, London 1996
g. Tim Judah, *The Serbs - History, Myth & the Destruction of Yugoslavia*, New Haven 1997
h. Peter Maass, *Love Thy Neighbor - A Story of War*, New York 1996
i. Noel Malcolm, *Bosnia - A Short History*, London 1994, updated edition 1996
j. David Owen, *Balkan Odyssey*, 1995-1996, London Indigo
k. David Rieff, *Slaughterhouse - Bosnia and the Failure of the West*, New York 1995
l. David Rohde, *Endgame - The Betrayal and Fall of Srebrenica: Europe's Worst Massacre since World War II*, New York 1997
m. Michael A. Sells, *The Bridge Betrayed: Religion and Genocide in Bosnia*, Berkeley 1996
n. Laura Silber and Allan Little, *The Death of Yugoslavia*, London 1995, revisited
o. Leo Tindemans, Lloyd Cutler, Bronislaw Geremek, John Roper, Theo Sommer, Simone Veil, David Anderson, *Unfinished Peace - Report of the International Commission on the Balkans*, Washington D.C. 1996
p. Paul Williams and Norman Cigar, *War Crimes and Individual Responsibility: A Prima Facie Case for the Indictment of Slobodan Milošević*, New London 1996
q. Warren Zimmerman, *Origins of a Catastrophe, Yugoslavia and its Destroyers - America's Last Ambassador tells what happened and why*, New York 1996
r. Oberlandesgericht Düsseldorf, *Urteil in der Strafsache gegen Nikola Jorgić*, Case IV, 26/96, 2StE 8/96, 5 January 1998

ANNEXES

Whenever the Applicant refers to the same source in more than one Chapter, this Annex is listed under the Chapter in which the reference is made first. In the text of the Reply this Annex keeps the same number in subsequent Chapters.

1. US Department of State, *Country Reports on Human Rights Practices for 1992*, Feb. 1993, p. 726.
2. Shahabuddeen, *Precedents in the World Court*, 1996, p. 100.
3. Tanjug 1939 gmt 15 Jan. 1991, *BBC Summary of World Broadcasts*, EE/0972 B/13, [21], 17 Jan. 1991.
4. Steven Erlanger, "Albright Warns Serbs on Kosovo Violence", *New York Times*, 13 Mar. 1998.
5. Tony Barber, *The Independent*, European News Page 13, 22 Oct. 1993.
6. Tony Barber, *The Independent*, European News Page 9, 19 April 1994.
7. Misha Glenny, *The Fall of Yugoslavia - The Third Balkan War*, London 1992, updated edition 1996, pp. 34-35.
8. Tim Judah, *The Serbs - History, Myth & the Destruction of Yugoslavia*, New Haven 1997, pp. 164-165, 170-171, 230-231.
9. Belgrade home service 1711 gmt 11 Mar. 1991, *BBC Summary of World Broadcasts*, EE/1019 B/12 [31], 13 Mar. 1991.
10. Tanjug 1637 gmt 16 Mar. 1991, *BBC Summary of World Broadcasts*, EE/1023 B/14 [30], 18 Mar. 1991.
11. S. Milošević, "Bogami cemo da se tucemo" (By God, We will Fight), *NIN*, 12 Apr. 1991, p. 40; from the Stenographic Record of the Serbian Parliament.
12. Radio Belgrade 1400 gmt 10 Dec. 1991, *BBC Summary of World Broadcasts*, EE/1253 C1/1 [1], 12 Dec. 1991.
13. Tanjug 1022 gmt 21 Feb. 1992, *BBC Summary of World Broadcasts*, EE/1312 C1/9 [20], 23 Feb. 1992.
14. Tanjug 1921 gmt 9 April 1992, *BBC Summary of World Broadcasts*, EE/1351 C1/3.
15. Borislav Jović, *Borislav Jović's Diary: Final Days of the SFRY*, English translation, Belgrade 1995, pp. 131-132.
16. Noel Malcolm, *Bosnia - A Short History*, London 1994, updated edition 1996, pp. 226-230, 240-243.
17. ICTFY, Trial Chamber, Cases No. IT-95-5-R61 & IT-95-18-R61, Review of Indictment Pursuant to Rule 61, *Transcript testimony Ruez*, 3 July 1996, pp. 18-50, 54-55.

18. United States Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 40, Number 30, 26 July 1993, pp. 537-548.
19. United States Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 4, No. 16, 19 April 1993, p. 258-264, 268-269.
20. David Rieff, *Slaughterhouse - Bosnia and the Failure of the West*, New York 1995, p. 113.
21. Laura Silber and Allan Little, *Death of Yugoslavia*, London 1995, revised ed., p. 244-245, 204-207, 222-251.
22. Leo Tindemans, Lloyd Cutler, Bronislaw Geremek, John Roper, Theo Sommer, Simone Veil, David Anderson, *Unfinished Peace - Report of the International Commission on the Balkans*, Washington D.C. 1996, p. 40.
23. "Bosnia-Hercegovina: 'Ethnic Cleansing' Continues in Northern Bosnia", *Human Rights Watch/Helsinki*, Nov. 1994, Vol. 6, No. 16, p. 35.
24. ICRC, List of patients of psychiatric hospital Sokolac.
25. US Department of State, Bureau of Public Affairs, *Dispatch*, 12 Apr. 1993, Vol 4, No. 15, p. 244.
26. US Department of State, Bureau of Public Affairs, *Dispatch*, 2 Nov. 1992, Vol 3, No. 44, p. 803.
27. US Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 3, No 52, p. 918.
28. "War crimes in Bosnia-Hercegovina: Bosanski Šamac", *Human Rights Watch/Helsinki*, Apr. 1994, Vol. 6, No. 5, pp. 2, 7, 12.
29. US Department of State, Bureau of Public Affairs, *Dispatch*, 28 Sep. 1992, Vol. 3, Nr. 39, pp. 733-734.
30. US Department of State, Bureau of Public Affairs, *Dispatch*, 2 Nov. 1992, Vol. 3, No. 44, p. 804.
31. "War Crimes in Bosnia and Herzegovina: UN Cease-fire Won't Help Banja Luka", *Human Rights Watch/Helsinki*, June 1994, Vol. 6, Issue 8, pp. 1-2.
32. "Bosnia-Herzegovina: Living for the Day - Forced Expulsions from Bijeljina and Janja", *Amnesty International*, AI Index: EUR 63/22/94, Dec. 1994, p. 2.
33. Hearing Before the Commission on Security and Co-operation in Europe, 4 April 1995, "*Genocide in Bosnia-Herzegovina*"; testimony by Andràs Riedlmayer, Harvard University, p. 51.
34. Council of Europe, Parliamentary Assembly, *Sixth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 7133, p. 11.
35. ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Ralston*, Case No. IT-95-18-R61 and IT-95-5-R61, p. 73.
36. Joint Hearing Before the Select Committee on Intelligence of the United States Senate and Committee on Foreign Relations of the United States Senate. One

Hundred Fourth Congress First Session. Wednesday, 9 Aug. 1995, "*War Crimes in the Balkans*", pp. 9-17.

37. Council of Europe, Parliamentary Assembly, *Fourth Information Report on War damage to the cultural heritage in Croatia and Bosnia-Herzegovina*, Doc. 6999., p. 36.
38. Council of Europe, Parliamentary Assembly, *Second Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 6869, pp. 10-12.
39. Council of Europe, Parliamentary Assembly, *Ninth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 7464, 18 Jan. 1996, p. 18.
40. Michael A. Sells, *The Bridge Betrayed: Religion and Genocide in Bosnia*, Berkeley 1996, p. 4; Note 6, pp. 4-5, 134-135, 166-167.
41. "War Crimes in Bosnia-Herzegovina: UN Cease-Fire Won't Help Banja Luka", *Human Rights Watch/Helsinki Watch*, June 1994, Vol. 6, No. 8, pp. 1-2.
42. Patrick Bishop, *The Daily Telegraph*, 20 May 1993.
43. Council of Europe, Parliamentary Assembly, *Eight Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 7341, 28 June 1995, p. 11.
44. Council of Europe, Parliamentary Assembly, *Eight Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 7464, 28 June 1995, p. 11.
45. "War Crimes in Bosnia Herzegovina, UN Cease-Fire Won't Help Banja Luka", *Human Rights Watch/Helsinki*, June 1994, Vol. 6, No. 8, p. 16.
46. US Department of State, Bureau of Public Affairs, *Dispatch*, 12 April 1993, Vol. 4, No. 15, pp. 244-245, 248.
47. US Department of State, Bureau of Public Affairs, *Dispatch*, 8 Feb. 1993, Vol. 4, No. 6, p. 75.
48. Hannes Tretter e.a., *'Ethnic Cleansing Operations' in the Northeast-Bosnian City of Zvornik from April through June 1992*, Ludwig Boltzmann Institute of Human Rights (1994).
49. Jan Willem Honig and Norbert Both, *Srebrenica - Record of a War Crime*, London 1996, pp. 72-73, 177.
50. Roy Gutman, *A Witness to Genocide - The First Inside Account of the Horrors of 'Ethnic Cleansing' in Bosnia*, Shaftesbury 1993, pp. 40-41, 80-81.
51. *The Death of Yugoslavia*, BBC-series by Laura Silber, Vol. 4: The Gates of Hell.
52. Support-action; request for action of the light combat air force, request from Command Post of the 17th Corps addressed to the 2nd Military District Command, 10 April 1992.

53. ICTFY, Trial Chamber, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Karremans*, 4 July 1996, pp. 4-6.
54. "War Crimes in Bosnia-Herzegovina", *Human Rights Watch/Helsinki*, Vol. II, pp. 2, 286-287.
55. "The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, pp. 9-11, 19-21, 30-31, 35, 42-44.
56. ICTFY, Trial Chamber, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Erdemović*, 5 July 1996, p. 42.
57. ICTFY, Trial Chamber, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Groenewegen*, 4 July, p. 64.
58. ICTFY, Trial Chamber, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Witness A*, 5 July 1996, p. 11.
59. "The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, p. 44.
60. David Rhode, *Endgame. The Betrayal and Fall of Srebrenica: Europe's Worst Massacre Since World War II* (1997), pp. 28-29, 58-59, 342-343, 346-349.
61. Misha Glenny, *The Fall of Yugoslavia - The Third Balkan War*, London 1992, updated edition 1996, pp. 148-149, 166-167, 187.
62. European Parliament Resolution B-3-0034, 0036, 0101/93, 21 Jan. 1993, *Official Journal of the European Communities*, No. C 42/172, 15 Feb. 1993.
63. Noel Malcolm, *Bosnia - A Short History*, London 1994, updated edition, p. 251.
64. Norman Cigar, *Genocide in Bosnia: The Policy of "Ethnic Cleansing"*, College Station, 1995, pp. 3-4, 54-55.
65. "Bosnia-Herzegovina: 'You have no place here-Abuses in Bosnian Serb-controlled areas", *Amnesty International*, AI Index EUR 63/11/94, June 1994, pp. 1,5.
66. Document Population Structure.
67. Criminal Code of the Federal Republic of Yugoslavia, Chapter 16: Criminal Act Against Humanity and International Law; Genocide, Article 141.
68. US Department of State, Bureau of Public Affairs, *Dispatch*, Dec. 28 1992, Vol. 3, Vol. 52, p. 920.
69. "German Court sentences Serb to life for genocide in Bosnia", *New York Times*, 27 Sep. 1997, p. A5.
70. Case IV, 26/96, 2 StE 8/96, Generalbundesanwalt, Oberlandesgericht Düsseldorf, *Strafsache gegen Nikola Jorgić*, p. 160-162.
71. Cherif Bassiouni, *Sexual Violence,* Occasional Paper No. 1, IHRLI, DePaul University College of Law, 1996, pp. 2, 10-11, 24-25, 32-33, 38-39.
72. Ms. Patricia Viseur-Sellers, the Legal Officer on gender issues of the ICTFY, *ICTFY Bulletin*, No. 7, 21 June 1996, p. 5.

73. Cherif Bassiouni, *Investigating Violations of International Humanitarian Law in the Former Yugoslavia*, Occasional Paper No. 2, IHRLI, DePaul University College of Law, 1996, pp. 36-39, 56-57.
74. Ivy L. Schwartz, "Sexual Violence against Women: Prevalence, Consequences, Societal Factors, and Prevention", *American Journal of Preventive Medicine*, 7[6], p. 364.
75. S. Swiss and J.E. Gilles, "Rape as a Crime of War. A Medical Perspective", *JAMA*, Aug. 4, 1993, vol. 270, pp. 612-613.
76. ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Oosterman*, 2 July 1996, pp. 28, 31.
77. "Bosnia and Herzegovina: Rape and Sexual Abuse by Armed Forces", *Amnesty International Report*, AI Index: EUR/63/01/93, Jan. 1993, pp. 1-2, 4, 5, 7, 11, 12.
78. Dragica Kozaric-Kovacic and others, "Rape, Torture and Traumatization of Bosnian and Croatian Women: Psychological Sequelae, *Amer. J. Orthopsychiat.*, 65(3), July 1995, pp. 428-429, 431-33.
79. ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Cleiren*, 2 July 1996, pp. 11, 14-17, 19.
80. ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61, and IT-95-18-R61, *Testimony Ralston*, from the ICTFY, 28 June 1996, pp. 62 and 76.
81. Médecins du monde, Boulanger *et al.*, *L'enfer Yougoslave*, Paris, Belfond, 1994, p. 353.
82. Alexandra Stigelmayer, *Stern*, 49/92 (68).
83. Ted Meron, "Rape as a Crime Under International Humanitarian Law", *AJIL*, 1993, Vol. 87, No. 3, p. 426.
84. *Axis Rule in Occupied Europe*, Washington, 1944, pp. 79-86.
85. Agathe Logaert, "Bosnie: Témoignages sur la pratique des viols dans les villages autour de Sarajevo. Le trop fameux Café Sonja", *Le Monde,* 5 Feb. 1993, p. 3.
86. "Amnesty International dénonce les viols qui se poursuivent en Bosnie", *Le Monde*, 23 Jan. 1993, p. 3.
87. "Purifier le lien de filiation. Les viols systématiques en ex-Yougoslavie, 1991-1995", *Esprit*, Dec. 1996, p. 155.
88. Ivy L. Schwartz, "Sexual Violence against Women: Prevalence, Consequences, Societal Factors, and Prevention", *American Journal of Preventive Medicine*, 1991, 7[6], p. 365.
89. "Un aspect particulier du nettoyage ethnique", Louise Lambrichs, *Le Monde*, 30 May 1996, p. 24
90. A. Köller, U. Maier and H. Pflüger, "Das Hodentrauma und seine Bedeutung für die Fertilität des Mannes" ("Testicular Trauma and its significance for Male Fertility"), *Z. Urol. Nephrol.*, 78 (1985), pp. 430-431

91. "A Pattern of Rape", *Newsweek*, 11 Jan. 1993, p. 26
92. Beverly Allen, "Rape Warfare in Bosnia-Herzegovina: The Policy and the Law", *The Brown Journal of World Affairs*, 1996, Vol. III, Issue 1, p. 314-315.
93. Beverly Allen, *Rape Warfare*, Minnesota, 1996, p. 87.
94. "Bosnie: Le jeu des assassins", *Le Monde*, 13 Jan. 1993, p. 2.
95. *ICTFY Bulletin*, No. 15/16, 10 Mar. 1997, p. 4.
96. US Department of State, Bureau of Public Affairs, *Dispatch*, 16 Nov. 1992, Vol. 3, No. 46, p. 831
97. Roy Gutman, *Newsday*, Queens Edition, 8 Aug. 1995, p. 4, para. 1
98. "War Crimes in Bosnia-Herzegovina", *Helsinki Watch*, Apr. 1993, Vol. II, p. 181.
99. Courrier du Monde, "L'humiliation programmée", *Le Monde*, 2 Jan. 1993, p. 2.
100. David Rieff, *Slaughterhouse - Bosnia and the Failure of the West*, New York 1995, p. 121.
101. Dr. Milan Vego, The Army of Bosnia and Herzegovina, *Jane's Intelligence Review*, February 1993, pp. 63, 446-449.
102. Veljko Kadijević, *My View of the Break-Up*, Belgrade, 1993, pp. 97-99, 160.
103. Transcript of telephone conversation between Slobodan Milošević and Radovan Karadžić, 29 May 1991.
104. *Srpska Rec*, 24 May 1993, p. 8.
105. Petar Janković, *Diary*, 24 July 1991.
106. James Gow, The remains of the Yugoslav People's Army, *Jane's Intelligence Review*, Aug. 1992, pp. 359-362.
107. Bosanski Petrovac Municipal Headquarters of Territorial Defence, Request addressed to Military Post 1754, signed Captain Obrad Vrzina, 13 Dec. 1991.
108. Command of 530th Rear Base, letter to 5th Military District HQ, signed Colonel Milan Skondrić, 3 Jan. 1992.
109. 2nd Military District Headquarters, letter to 530th Rear Base, signed Colonel Gradimir Petrovac, 8 Jan. 1992.
110. Public Safety Station Bosanski Petrovac, request addressed to Military Post 1754, signed Ljubomir Kerkez, 6 Feb. 1992.
111. 530th Rear Base, letter addressed to 2nd Military District, signed colonel Milan Skondrić, 17 Feb. 1992.
112. 2nd Military District, letter addressed to Federal Ministry of the National Defence, signed Colonel Gradimir Petrovic, 3 Mar. 1992.
113. Territorial Defence Bosanski Novi, request addressed to Military Post 1754, signed Milan Damjanović, 16 Mar. 1992.
114. 530th Logistics Base, letter addressed to 2nd Military District, signed Milan Skondic, 19 Mar. 1992.
115. Military Post 4022 Banja Luka, request addressed to Military Post 5027 Sarajevo, signed Vaso Tepsić, 26 Mar. 1992.

116. Military Post 5027 Sarajevo, order given to Military Post 5290 Banja Luka, signed Colonel Gradimir Petrović, 30 Mar. 1992
117. 2nd Military District, letter to the Federal Ministry of Defence, signed General Milutin Kukanjac, 24 Apr. 1994
118. Serb Autonomous Region of Romanija, letter to Assistent of Federal Secretary for People's Defence for Logistics, signed Milan Tupajić, 10 Feb. 1992.
119. 2nd Military District, accompanying letter addressed to JNA General Staff, signed Milutin Kukanjac, 20 Mar. 1992
120. Conclusions based on the assessment of the situation in the territory of Bosnia and Herzegovina with the zone of responsibility of the 2nd Military District, signed Lieutenant-General Milutin Kukanjac, Mar. 1992.
121. *Bulletin of the European Community*, No. 4-1992, p. 84, para. 1.5.14.
122. *Bulletin of the European Communities*, No. 5-1992, p. 104, para. 1.3.5..
123. Warren Zimmerman, *Origins of a Catastrophe, Yugoslavia and its Destroyers - America's Last Ambassador tells what happened and why*, New York 1996, pp. 184-187, 191.
124. Association of the Serbs from Bosnia and Herzegovina, letter to Chief of Staff, Major-General Blagoje Adžić, signed President Gojko Djogo, 22 Jan. 1992
125. Serb Assembly of Municipality of Foča, letter to the General Staff of the JNA, signed Josif Miličić, 17 Mar. 1992.
126. Federal Secretariat for National Defence, letter to the Command of the 1st Military District, signed General Blagoje Adžić, 12 Jan. 1992.
127. 1st Military District signed Lieutenant-General Nikola Mandarić, 4 Apr. 1992
128. Command of the 2nd Military District, letter to the General HQ of the SRFY Armed Forces, signed Dobrasin Prascević, 5 Apr. 1992.
129. Dessa Trevisan and Tim Judah, "Serbs split Bosnian republic", *The Times*, 28 Mar. 1992.
130. Command of the 17th Corps, Decision for carrying out the combat activities, signed Major-General Milan Nedeljkopvic, 26 Apr. 1992
131. Command of the 2nd Military District , telegram to General Staff of the Armed Forces of the SRFY, signed Colonel Zekanović Milutin, 7 Apr. 1992.
132. Command Post of the 17th Corps, Request for action of the light combat air force, to the 2nd Military District, signed Brigadier-General Savo Janković, 10 Apr. 1992
133. Command of the 2nd Military District, Combat and operational report to General Headquarters of the JNA, signed Colonel Kazul Stevan, 26 Apr. 1992. . . . . .
134. 2nd Military District, Extraordinary Report to the Operational Centre of the General Staff, signed Colonel Nikola Šego, 17 April 1992,
135. "Twee Serviërs geven zich aan", *De Volkskrant*, 16 Feb. 1998.
136. Reserve Command Post, Operational Report to the 2nd Military District, signed Bganko Filipović, 6 Apr. 1992. . . . . .

137. "Bosnia-Herzegovina: Sarajevo", *Human Rights Watch/Helsinki*, Vol. 6. No. 15, Oct. 1994, pp. 4-20. . . . . .
138. Bosnian Serb Television, Pale, Interview with Lieutenant-General Milutin Kukanjac, 12 July 1994, pp. 6-7.
139. Ian Traynor, *The Guardian*, 30 Apr. 1993. . . . . .
140. Statement of General Djordje Djukić, 4 Feb. 1996.
141. Serb Republic of Bosnia and Herzegovina, Request for providing personnel to the 2nd Military District, 27 Apr. 1992, signed Colonel Bogdan Subotić.
142. Minutes from the meeting with presidents of municipalities in the responsibility zone of the division, signed Dmitrović Momčilo, 14 May 1992.
143. Biljana Sacic, *Vesti*, 12 May 1993, p. 9. . . . . .
144. Ian Traynor, *The Guardian*, 25 April 1992, p. 8. . . . . .
145. Zagreb Radio Croatia Network, FBIS-EEU-97-114, 24 Apr. 1997. . . . . .
146. Gregor Mayer, *Profil*, 10 Aug. 1992, p. 40. . . . . .
147. H. Guirchon, *Le Nouvel Observateur*, 29 Oct. 1992. . . . . .
148. Patrick Bishop, "Besieging Serbs reject UN chiefs evacuation plea", *The Telegraph*, 12 Mar. 1993. . . . . .
149. *Srpska Rec*, 10 May 1993, p. 23.
150. Laura Silber, "Belgrade's army fights in Bosnia", *Financial Times*, 8 Jan 1994.
151. John Kifner and Ian Traynor, *The Guardian*, 28 Jan. 1994, p. 8 . . . . . p.
152. Order of the Command of the SRK, addressed to command of all brigades, 15 Dec. 1993
153. Florence Hartmann, *Le Monde*, 2 Mar. 1994 . . . . . .
154. Roger Cohen, *New York Times*, 9 Dec. 1994 . . . . . .
155. *Jane's Sentinel*, 1996, Bosnia Herzegovina, pp.27,28 . . . . . .
156. John Pomfret, *The Washington Post*, 4 July 1995, p. A1 . . . . . .
157. Karlo Jeger, *Globus*, 15 April 1994 . . . . . .
158. Stephen Engelberg and Eric Schmitt, *International Herald Tribune*, 12 June 1995, p. 9.
159. Karsten Prager, *Time International*, 17 July 1995. . . . . .
160. Cabell Bruce, "Belgrade Blamed-Accused of directing attacks on save haven", *Newsday*, 12 Aug. 1995, p. A07.
161. *Jane's Sentinel*, 1997 Edition, Yugoslavia, para. 10.7.1
162. Tom Shanker, *The New York Review of Books*, 9 May 1996, p. 14
163. Andreas Zumach, *Basic Reports*, No.47, 16 Oct. 1995, p. 1
164. Djuro Kozar, *Ljubljana Oslobodjenje* (Europe Edition), 20-23 July 1995, FBIS-EEU-95-142 . . . . . .
165. *Jane's Sentinel*, 1997 Edition, Yugoslavia, para. 10.14.2.
166. Helsinki Committee for Human Rights in Serbia, Report on the state of Human Rights in Serbia in 1995, pp. 3, 23, 26.

167. 2nd Military Districts, Request addressed to the Federal Secretariat for People's Defence, str. conf. 31/103-41, 24 April 1992
168. *Tribunal*, A Publication of the Institute for War and Peace Reporting, No. 7, Feb./Mar. 1997, Srdja Popović, p. 1.
169. C. Milivojevic cekam hapsenje" ("I Await Imprisonment"), *Spona*, Frankfurt, Germany, 18 Dec. 1993, p. 15.
170. Julian Borger, *The Guardian*, Feb. 1997, Section 2, p. 2.
171. Telegram from Detached Command Post-Trnovo to Police HQ - Pale, 30 June 1995.
172. Telegram from Detached Command Post - Trnovo to MUP, 1 July 1995.
173. Telegram from Police Force HQ - Pale to Centre of Public Safety - CJB Sarajevo, 6 July 1995.
174. Telegram from Detached Command Post - Trnovo to Ministry of Interior of Republic of Srpska, 24 July 1995.
175. *Jane's Intelligence Review*, Europe, Nov. 1995, p. 484.
176. Dejan Anastasijevic, *Vreme International*, 26 June 1995, pp. 13-15.
177. Public Security Centre Prijedor, telex to various police stations, 24 June 1995, signed Stanković.
178. Ministry of Interior Affairs of RS, letter to the Ministry of Interior Affairs of the Republic of Serbia, 25 June 1994, signed Goran Mačar.
179. Radmilo Bogdanovic, interviewed by Nedad Stefanovic, "Logistika sluzbe za volju naroda" (The logistics of service for the People's Will), *Duga*, 7-20 Jan. 1995.
180. *CNN/Time Impact*, aired June 2 1997, 9:00 p.m. ET.
181. *Politika*, 9 Oct. 1995.
182. Umeret v Yugoslavii (To die in Yugoslavia), *Izvestiya*, 25 Nov. 1992, p. 3.
183. Jane's Information Group, *Jane's Sentinel Edition 1997*, Yugoslavia, para. 10.14.4.
184. Sonja Biserko, "Warlords in Civvy Street", *Tribunal*, No. 8, April/May 1997, p. 8.
185. Robert Block, *The Independent*, 17 May 1993.
186. Jane's Information Group, *Jane's Sentinel Edition 1997*, Yugoslavia, para. 10.14.4.
187. *Corriera Della Sera*, FBIS-EEU-96-101, 23 May 1996, p. 8. . . . . .
188. Roy Gutman, *Newsday Inc.*, Washington Bureau, 30 Oct. 1995.
189. James Gow, Europe, Belgrade and Bosnia, "An Assessment of the Yugoslav Military". *Jane's Intelligence Review*, June 1993, p. 244.
190. "Iz kabineta ministra vojnoga" (From the Defence Ministers Cabinet), *NIN*, part 2, 24 April 1992, pp. 26, 27. . . . . .
191. Srdja Popović, *Tribunal*, A Publication of the Institute for War and Peace Reporting, No.7, Feb./Mar. 1997, p. 1
192. Julian Borger, *The Guardian*, Inside Story, 3 February 1997.
193. Serbian Volunteer Guard, Calendar, 1992.
194. ICTFY, Trial Chamber, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Transcript of the oral testimony of Colonel Selak, 960605.DOC, 5 June 1996, p. 1246.

195. Article 19, *Forging War: The Media in Serbia, Croatia and Bosnia- Herzegovina*, Avon 1994, p. 64 and pp. 64-71.
196. Obituaries published in *Politika*, 1992-1995.
197. Ministry of Interior Affairs of Republika Srpska, Telex addressed to Ministry of Interior Affairs of the Republic of Serbia, num. 02/2-2640/93, 9 July 1993, signed Goran Mačar.
198. *Yugoslavia Belgrade Vreme*, FBIS-EEU-95-204, 16 Oct. 1995, p. 11.
199. Roy Gutman, *Newsday Inc.*, Washington Bureau, 30 Oct. 1995. . . . . .
200. Dr. Milan Vego, *Jane's Intelligence Review*, Oct. 1992, p. 446.
201. HQ of the 30th Light Infantry Division, Order addressed to the Command of the 1st Light Infantry Brigade, class 86-76, signed Colonel Jovo Blazanovic, 6 Mar. 1993.
202. Command HQ of the 2nd Krajina Corps, order addressed to Military Post 7542, class no. 23/35-273/1, signed Commander Major-General Guijo Boric, 26 Mar. 1993.
203. Command of the 2nd Krajina Corps, Order addressedto Military Post 7542, no. 23/35-301, signed Commander Major-General Guijo Borić, 5 April 1993.
204. Republic of Bosnia and Herzegovina, Ministry of Interiors, Security Service Centre, Sarajevo, Zivota Samardzić, Statement, no.1943, 21 May 1996, pp. 1, 2.
205. *Evropske Novosti*, 29 June 1995.
206. Command of the 1st Krajina Corps, Clarification addressed to all units under its command, class no. 12/1-291, signed Colonel Miroslav Ranković, 30 May 1992.
207. Letter from the Command of the 2nd Krajina Corps addressed to Command posts of units of 2nd Krajina Corps, class. no. 13/1-2, signed Maj. Gen. Grujo Borić, 13 Feb. 1994.
208. Letter of Command of 15th Bpbr., addressed to Command of the 2nd Krajina Corps, class no. 159-2, signed Lieutenant-Colonel Ratko Skrbić, 14 Feb. 1994.
209. Letter of Command of 15th Bpbr., addressed to Command of the 2nd Krajina Corps, class no. 183-2, signed Lieutenant-Colonel Ratko Skrbić, 5 Mar. 1994.
210. Identification documents found with General Djordje Djukić at his arrest.
211. Order for unification of transport by air, from Command of the 30th Partisan Division to Command 1st Partisan Brigade, strictly class no. 955-2, signed Colonel Stanislav Galić, 2 June 1992.
212. Order Command of the 2nd Krajina Corps, class no. 21-70/1, addressed to all units, signed General-Major Gruijo Boric, 31 May 1993.
213. Karsten Prager, *Time International*, 17 July 1995, pp. 20, 21. . . . . .
214. Report on Assumption of Duty, Nikola Kajtez, signed Nikola Kajtez, 7 Dec. 1992.
215. Disposition Nikola Kajtez, Army post 7421, class no. 1778-2/20, signed Nikola Kajtez, 13 december 1993. . . . . .
216. Decision Starcevic Jovo Gojko, military Post 3001 Belgrade, NO.6/8-59-12, signed Grujo Boric, 15 July 1994. . . . . .

217. Regulation of double lengthof service for professional troops, Command of the 2nd Krajina Corps, addressed to Command 15th pbr. class no. 6/8-73, signed Colonel Krsic Radivoje, 6 Aug. 1994.
218. David Owen, *Balkan Odyssey*, 1995-1996, London Indigo, p. 348. . . . . .
219. Disposition, from General Staff of the Yugoslav Army to Army Post 7421, class no. 14-2649/162, signed Ljubomir Lalić, 30 Aug. 1994. . . . . .
220. Extract Order no.5-41, Chief of General Staff of Yugoslav Army, 11 Feb. 1994.
221. Command 1st Krajina Corps, letter to the Command of the 6th Sana Brigade in Sanski Most, signed Lieutenant-Colonel RadomirLazić, 19 Sept. 1993 . . . . . .
222. Military Post 7421, letter to Command of 1st Krajina Corps, signed Nikola Kajtez, 7 Oktober 1993.
223. Obituaries published in *Politika*, 1992-1995. . . . . .
224. Report to the National Bank of Yugoslavia written by Milivoje Miletic, pp. 1-8.
225. The National Bank of Republika Srpska, 1992 Annual Report.
226. Official Notice from the meeting of Governors of the National Bank of Yugoslavia, Republika Srpska and Republika Srpska Krajina, 5 Dec. 1994.
227. Agreement between the Federal Republic of Yugoslavia and the Republika Srpska on "special and parallel relations".
228. Reaction of the Banker's Association of the Republika Srpska to a Report of the Financial Police, May 1994, pp. 4-7.
229. Note on the possibilities of mobilizing foreign exchange reserves for the purpose of budget deficit financing, 3 March 1993.
230. Information note of the Banker's Association of the Republika Srpska, 3 Mar. 1993, p. 4.
231. Minutes of a meeting of the Council of Governors of the National Bank of Yugoslavia, pp. 3-4.
232. Zinvoj, Association of Arms and Military Equipment Industries, Initiative for creation of pre-requisites for functioning in the Republic of Srpska, addressed to the Government of the Republic of Srpska, 25 Jan. 1993, p. 1.
233. Order No. 02-99, issued by the Head of Government, Branko Djerić, Pale, 20 Aug. 1992.
234. Record of firing results, Proving Ground Nikinci, 17 Aug. 1993, signed Lt. Col. Srnic Radovan.
235. Order - Bill of lading no. 779/93, Pretis Factories Sarajevo-Vogošća, 22 Aug. 1993.
236. Telex from Holding Pretis Vogošća, addressed to General Staff of the Army of the Srpska Republika, Strictly Confidential No. 419/94, 20 Dec. 1994.
237. Payment Order, from Pretis - Vogošća to Ei 'Birac' Zvornik, 4 April 1995, signed: Milorad Motika.

238. Ordnance supply by Yugoslav Army; Information, from General Staff of the Army of the Srpska Republika, to Ministry of Defense of the Srpska Republika, confidential 2/10-22, 28 Jan. 1994, signed: general-major Djordje Djukić.
239. Contract between Technical Maintenance Institute Kragujevac and Unis Holding Pretis - Vogošća, concluded on 20 July 1995.
240. Letter strictly confidential 17, from Pretis to Chief of Staff of the Army of the Srpska Republika, 19 Feb. 1994, signed Ecimović Radomir.
241. Fax Message No. 122/94, from Unis Pretis to General Staff of the Army of the Srpska Republika, General Mladić, 10 May 1994, signed Motika Milorad.
242. Contract between Technical Maintenance Institute Kragujevac and Unis Holding Pretis - Vogošća, concluded on 20 July 1995.
243. Information, str. class. no. 88/94, from Pretis Holding to General Staff of the Army of the Srpska Republika, 04 April 1994, signed Radomir Ecimović.
244. Compensational Contract between Unis Holding Pretis - Vogošća and Technical Maintenance Institute Kragujevac, Ref. 819-1, concluded 24 July 1995.
245. Letter from Unis Pretis Holding to 35th Rear Base - Bijeljina, 07 July 1995, signed Ećimović Radomir.
246. Fax from Pretis Holding Co. - Vogošća to the Ministry of Defense of the Srpska Republika, 11 Aug. 1995, signed by Motika Milorad.
247. Ministry of Defence, Telex, Transport of goods across the border, addressed to companies for special production, signed Colonel Orasanin Spasoje, 22 May 1995.
248. Yugoslav Chamber of Commerce and Industry, Invitation for 18th Session addressed to Unis Pretis, No. 0210/18, 14 April 1994.
249. Michael Montgomery & Adrian Brown, "Time running out to avoid a new conflict, Serb leaders tell UN", *The Telegraph*, 9 Feb. 1993.
250. Yigal Chazan, "Krajina rebels draft refugees", *The Guardian*, 17 Feb. 1993.
251. Ian Traynor & Ian Black, "Bosnian war set to intensity as Muslims hold out", *The Guardian*, 2 Feb. 1994, p. 22.
252. Petar Cosic, "Do you know that the fatherland is calling again?", *Srpska Rec*, 31 Jan. 1994.
253. Drogomir Olujic, "They defend themselves by means of the public opinion", *NIN*, 28 July 1995, pp. 5-6.
254. Dejan Anastasijević, "Continuation of a hunt on the unwanted Serbs", *Vreme International*, 26 June 1995, pp. 13-15.
255. Filip Svarm & Milos Vasić, "The Danaean gift: forced mobilisation - background", *Vreme International*, 3 July 1995, pp. 14-16.
256. Bojan Aleksov, "Report on new mobilization in Serbia since 11th of June 1995", *Women in Black*, Belgrade, 28 June 1995.
257. Ministry of Interior, Belgrade, Summons of Nemanja Crnogorac, 29 June 1995.
258. Passport, Crnogorac Nemanja, 14 Jan. 1995.

259. "The horror of the letter 'T'", NIN, 7 July 1995, pp. 26-27.
260. "Serbia liable to pay compensation for sending them to war", *Vesti*, 28 Feb. 1998.
261. Ian Traynor, *The Guardian*, 15 April 1992, p. 22.
262. Ian Traynor, *The Guardian*, 16 April 1992, p. 24.
263. Transcript of Belgrade TV News, April/May 1992.
264. ICRC, Information requests for persons unaccounted for in Bosnia and Herzegovina.

265. Fahrudin Cengić, letter published in *Vreme*, May 1994.
266. General Secretariat of the President of the Republic of Montenegro, letter to Fahrudin Cengić, signed Ljiljana Ivanović, 14 April 1993.
267. General Secretariat of the President of the Republic of Montenegro, letter to Cardaklija Suada, signed Ljiljana Ivanovic, 5 July 1993. . . . . .
268. Report of the State Commission for search of missing persons, number 06/5-43/96, 9 April 1996.
269. ICRC, Information request for person unaccounted for on the territory of Bosnia and Herzegovina, BAZ-106681/01, 31 Aug. 1996. . . . . .
270. "Human Rights Abuses of Non-Serbs in Kosovo, Sandzak and Vojvodina", *Human Rights Watch/Helsinki*, Vol.6, Issue 6, May 1994, pp. 1-2, 8-11. . . . . .
271. Veljko Kadijević, *My View of the Break-up, An Army Without a State,* Belgrade, 1993, pp. 97-99, 121, 159-160.
272. ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Transcripts, 7th May 1996, pp. 14-18.
273. Florence Hartmann, "Chronologie d'une négligence criminelle", in *L'ex-Yougoslavie en Europe*, Paris 1997, p 117.
274. Proclamation of the "Assembly of the Serbian People in Bosnia and Herzegovina", 11 Dec. 1991.
275. ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, Transcript, Testimony Garde, 28 June 1996, p. 18.
276. Ed Vulliamy, *The Guardian*, 1 Mar. 1996.
277. Bulletin of the European Community, Vol. 7/8, 1992, page 82, para 1.4.17.
278. Bulletin of the European Community, Vol. 10, 1992, Annex II, p. 10, para 1.9.
279. *Spotlight Report*, No. 20, Oct. 1995, p. 14.
280. "Harassment of Moslems in Serbia and Montenegro", *Spotlight Report*, No. 4, 10 May 1993.
281. "War crimes in the Former Yugoslavia", *Human Rights Watch/Helsinki*, Vol. 7, No. 10, June 1995, p. 38, 40, 43.
282. Patrick Bishop, *The Telegraph*, 27 Feb. 1993.
283. Jane Perlez, *New York Times*, 3 Aug. 1997, pp. 2-3.

284. *Le Monde*, 19 Dec. 1997.
285. New York, *Documents d'Actualité Internationale,* 1997, No. 22, p. 802.
286. Sarajevo, 2100 gmt, 14 Oct. 1991, *BBC Summary of World Broadcasts*, EE/1205 B/9, 17 Oct. 1991, [29], excerpt from report (EE/1204 B/10).
287. *Oslobodenje*, 9 Jan. 1994.
288. Proclamation of the Government of Bosnia and Herzegovina, published in *Oslobodenje*, 6 April 1992.
289. Official Gazette, number 8, 2 July 1992.
290. *Oslobodenje*, 1 March 1994.
291. R. Karadzic, quoted by Tony Barber, *The Independent*, European News Page 13, 22 Oct. 1993.
292. New York Times, 9 Mar. 1995.
293. US Department of State, Bureau of Public Affairs, *Dispatch*, Sep. 1992, Vol. 3, Supp. No. 7, p. 1 and 20.
294. *With no Peace to keep...*, London, 1995, Noel Malcolm, Impartiality & Ignorance, p. 120-121.
295. Justice Goldstone, Letter to Bosnian Secretary for Foreign Affairs, 10 Oct. 1994.
296. ICTFY, Press Release CC/PIO/087-E, 13 June 1996.
297. Justice Goldstone, Letter to Judge Vidović, Bosnia's Liaison Officer to the Tribunal, 5 May 1996.
298. Justice Goldstone, Letter to the Bosnian Prime Minister, 7 May 1996.
299. Justice Arbour, Letter to President Izetbegović.
300. Chapter Sixteen: Criminal acts against humanity and international law
301. *Oslobodenje*, 2 Oct. 1991.
302. Selim Beslagic, *The Town and People*, Tuzla, 1997, p. 38 and 39.
303. High Court in Sarajevo, *Kubat Zijo a.o. ("Kazani")*, Case number K 87/96, 26 September 1996(1).
304. District Military Court in Tuzla, July 15, 1994.
305. *Oslobodenje*, 13 February 1994.

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PART I

INTRODUCTION

CHAPTER 1

IMPORTANCE AND OVERVIEW OF THE CASE

1. Importance of the case in perspective

1. In a truly civilised world, wars, barbarism, ethnically-motivated rape, torture and mass slaughter, religious oriented vandalism, ethnic purification and the like will be entirely and effectively abolished. The abominable behaviour of the Respondent, which forms the centre-piece of the Applicant's case, shows that civilisation has come nowhere near reaching this 'truly civilised' stage. The second best alternative to that 'truly civilised' stage is a world in which this behaviour is judged by an independent court of great, widely accepted, authority, a court which will define the behaviour in legal terms and will condemn the powers responsible for it.
For this case, this means that the International Court of Justice is asked to conclude that the indescribable atrocities committed against the non-Serb population in Bosnia and Herzegovina squarely fall within the terms of the Genocide Convention.

2. Numerous Resolutions of the United Nations Security Council acknowledged and confirmed the decisive role which the Federal Republic of Yugoslavia (the Respondent) played and continued to play in the armed conflict which raged for almost four years across the territory of Bosnia and Herzegovina. Many Statements of the President of the Security Council did the same. An identical analysis was reflected in Resolutions of the United Nations General Assembly, the United Nations Human Rights Commission, the United Nations Human Rights Committee, the European Parliament, Statements of the European Commission, etc.

3. As public declarations of this sort are usually the result of precise, detailed and balanced examinations, they should be judged as well-considered, substantiated findings based on a balanced analysis of the relevant facts. As such, these

declarations form an authoritative source for the Judgment the Applicant requests from the International Court of Justice in this case. However, these findings cannot replace such a Judgment nor can their existence render such a Judgment superfluous.

4. A Judgment of the International Court of Justice in this case, like any judgment of any independent court, is first and foremost aimed at setting the record between the parties straight. This can, in general, only be done in a definitive and authoritative manner by Judges who base their opinion on an independent, legal appreciation of the relevant issues of fact and law. The very fact that on the one hand, the Applicant bases its claim on the Genocide Convention and that on the other hand, both parties in this case have accepted the jurisdiction of this Court on conflicts relating to the interpretation, application or fulfilment of this Convention, situates the importance of this Court in this very case far beyond the importance of every possible alternative of conflict-resolution.
   This Court, indeed, is the only instance which can definitively decide the issues at stake in this case.

5. This case is submitted to set the record straight on two issues which are of paramount importance to the Applicant:
   - the atrocities committed between April 1992 (the beginning of the Serb assault) and December 1995 (Dayton Accords) against the non-Serb population, more specifically against the Muslim population, of Bosnia and Herzegovina were indeed of a genocidal nature and as such, constitute extensive violations of the Genocide Convention;
   - the Federal Republic of Yugoslavia (Respondent) bears responsibility for these and related violations of the Genocide Convention.

6. The Applicant is of the opinion that clarifying these issues will not only serve historical purposes (which is, given the enormity of the atrocities committed, in and of itself a more than sufficient reason to justify these proceedings), but will also be indispensable in the reconciliation process, which is slowly developing in the region. If the Court establishes, and legally defines, the relevant facts and settles the question of State responsibility, then the fight over these issues can stop, thus enabling the peoples involved to take such a Judgment as a firm basis on which to build and rebuild their mutual relations.

7. Apart from this important aspect, this case is also before this Court for monetary reasons. The genocidal assault in Bosnia and Herzegovina has caused enormous

material and immaterial damages; it destroyed the better part of the country, and with it, the economy of the country. The Respondent, bearing responsibility for this, needs to compensate for these damages. This is not just a matter of fairness and justice, but also a matter of necessity. The substantial economic aid which Bosnia and Herzegovina by now receives from various friendly States and from the international community as a whole is nowhere near sufficient in making up for all the damages suffered. Therefore, the compensation requested in this case constitutes, albeit not the principal issue, an indissoluble part of the Applicant's Submissions.

8. Superseding the importance this case has for the future relationship of the two Parties involved, is its importance for the world community as a whole. This is the first time the International Court of Justice is asked to apply the Genocide Convention in a dispute between two Parties. In this case the Court is requested to make this Convention work. This is not only in the interest of Bosnia and Herzegovina in its capacity as victim of a genocidal armed conflict, but also in the interest of Bosnia and Herzegovina as a Party to the Convention, just as it is to all State-parties to the Convention, and in effect, to mankind as a whole. The State-parties to this Convention have a legal interest in knowing if and to what extent in present day conditions this Convention actually provides for remedies against atrocities of the category committed in the Second World War, the very *impetus* for the creation of the Convention. Clarifying the normative value of the law is always an important feature of the judicial process. It is even more important if this, as in the present case, could be helpful in the prevention of and therefore in the eradication of the most profound and perverse human rights violation: genocidal warfare.

2. Prior phases of the litigation

Application and Memorial

9. On 20 March 1993, the Republic of Bosnia and Herzegovina filed its Application instituting these proceedings before the International Court of Justice. This Application constituted the basis for this case and for Bosnia and Herzegovina's Submissions, which have been expanded and refined in Bosnia's Memorial, submitted to the Court on 15 April 1994.

Orders regarding interim measures

10. Also on 20 March 1993, the Republic of Bosnia and Herzegovina requested the Court to indicate Provisional Measures, which the Court did in its Order of 8 April 1993.
The Court ordered the Respondent, in short, to do everything within its power to prevent the commission of genocide and ordered the Respondent to *ensure* that people under its control, direction or influence would not commit any genocidal acts against the Muslim population of Bosnia and Herzegovina or against any national, ethnical, racial or religious group.

In the same decision, the Court ordered both parties not to aggravate their legal dispute or make it more difficult to find a solution:

> "The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution." [para. 52. sub B.].

11. On 27 July 1993 Bosnia and Herzegovina again requested the Court to indicate Provisional Measures; the Respondent did the same on 9 August 1993. In its Order of 13 September 1993, the Court denied the Respondent's request to order Bosnia and Herzegovina to "take all measures within its power to prevent commission of the crime of genocide against the Serb ethnic group". The Court considered:

> "whereas the Court does not find that the circumstances, as they now present themselves to the Court, are such as to require a more specific indication of measures addressed to Bosnia-Herzegovina so as to recall to it both its undoubted obligations under the Genocide Convention, and the need to refrain from action of the kind contemplated by paragraph 52 B of the Court's Order of 8 April 1993;" [para. 46].

In the same Order the Court considered:

> "51. Whereas, as the Court recorded in its Order of 8 April 1993, the crime of genocide "shocks the conscience of mankind, results in great losses to humanity... and is contrary to moral law and to the spirit and aims of the United Nations", in the words of General Assembly resolution 96 (I) of 11 December 1946 on "The crime of Genocide";
>
> 52. Whereas, since the Order of 8 April 1993 was made, and despite that Order, and despite many resolutions of the Security Council of the United Nations, great suffering and loss of life has been sustained by the population of Bosnia-Herzegovina in circumstances which shock the

conscience of mankind and flagrantly conflict with moral law and the spirit and aims of the United Nations:

53. Whereas, since the Order of 8 April 1993 was made, the grave risk which the Court then apprehended of action being taken which may aggravate or extend the existing dispute over the prevention and punishment of the crime of genocide, or render it more difficult of solution, has been deepened by the persistence of conflicts on the territory of Bosnia-Herzegovina and the commission of heinous acts in the course of those conflicts;

54. Whereas the Security Council of the United Nations in resolution 819 (1993) of 16 April 1993 took note of the Court's Order of 8 April 1993 in which the Court indicated that the Federal Republic of Yugoslavia (Serbia and Montenegro) should take all measures within its power to prevent the commission of the crime of genocide, and whereas the Security Council in that resolution reaffirmed its condemnation of all violations of international humanitarian law, in particular the practice of "ethnic cleansing";

55. Whereas the Security Council of the United Nations in resolution 859 (1993) of 24 August 1993 which, *inter alia,* affirmed the continuing membership of Bosnia-Herzegovina in the United Nations, reaffirmed the principle of the unacceptability of the acquisition of territory by force and recalled that of individual responsibility for the perpetration of war crimes and other violations of international humanitarian law."

The Court concluded by reaffirming its Order of 8 April 1993, adding that this Order "should be immediately and effectively implemented" [para. 61].

12. Thus, the Court clearly accepted the view that the Respondent should be told to refrain from violating the Genocide Convention and specifically ordered the Respondent to take the necessary steps to that end. On the other hand, the Court refused to give this sort of Order to Bosnia and Herzegovina and made the latter only the *addressee* of a general call on both parties to refrain from actions which could aggravate the conflict.

Judgment on preliminary objections

13. In June 1995, the Respondent raised Preliminary Objections regarding the jurisdiction of the Court and the admissibility of Bosnia and Herzegovina's Submissions. In its Judgment of 11 July 1996 the Court rejected all of these Preliminary Objections. The Court found that it has jurisdiction to adjudicate upon the dispute on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide and it found the Application filed by Bosnia and Herzegovina admissible. In its Judgment, the Court considered that the applicability of the Genocide Convention is not

> "subject to the condition that the acts contemplated by it should have been committed within the framework of a particular type of conflict.
> In other words, irrespective of the nature of the conflict forming the background to such acts, the obligations of prevention and punishment which are incumbent upon the States parties to the Convention remain identical. (...) It follows that the rights and obligations enshrined by the Convention are rights and obligations *erga omnes*. The Court notes that the obligation each State does have to prevent and to punish the crime of genocide is not territorially limited by the Convention." [para. 31].

The Court also observed "that the reference in Article IX to 'the responsibility of a State for genocide or for any of the other acts enumerated in Article III', does not exclude any form of State responsibility." [para. 32].

Order regarding counter-claims

14. In its Counter-Memorial of 23 July 1997, the Respondent included counter-claims, alleging that it was the Applicant who violated the Genocide Convention. Bosnia and Herzegovina objected to the inclusion of these counter-claims in its case, choosing to do so given the preposterous nature of the counter-claims, which are clearly meant to make a mockery of these extremely serious proceedings. Moreover, making these counter-claims part of these proceedings would cause a considerable delay. Bosnia and Herzegovina based its objections on Article 80 of the Rules of Court.

15. In its Order of 17 December 1997, the Court rejected the Applicant's objections considering

> "(...) that the counter-claims submitted by Yugoslavia are directly connected with the subject-matter of Bosnia and Herzegovina's claims; and whereas, as counter-claims, they are therefore admissible and form part of the present proceedings;" [para. 37].

Thus the Court,

> "*Finds* that the counter-claims submitted by Yugoslavia in its Counter-Memorial are admissible as such and form part of the current proceedings;" [para. 43].

16. It goes without saying that Bosnia and Herzegovina is not happy with this Order. This Reply will show why, since it will demonstrate how entirely different both cases, now before the Court, actually are. However, it also goes without saying that Bosnia and Herzegovina fully respects this Order. The Applicant will deal with the counter-claims in this Reply, wherever it deems necessary to do so, specifically in Parts V.

Bosnia reserves its rights regarding a possible additional pleading as meant by the Court in para. 42 of its Order.

Order delaying time-limits

17. Although Bosnia and Herzegovina had expected to be able to submit its Reply by the time-limit set by the Court, 23 January 1998, this eventually, and much to the Applicant's regret, turned out not to be feasible. One of the reasons for this is obviously the factual complexity of this case. Another reason is that most of the translation capacity available in Sarajevo had to give priority to urgent requests for translation of documents on behalf of the ongoing criminal proceedings before the ICTFY, especially with regard to the Čelebići case [*Prosecutor vs. Delalić and others*, ICTFY, Case No. IT-96-21] in which three Bosnian Muslims and one Bosnian Croat are currently being tried.

18. In his Order of 22 January 1998, the President of the Court extended the time-limit for the submission of this Reply to 23 April 1998.
As a consequence thereof, the time-limit for the submission of the Rejoinder of the Respondent was extended to 22 January 1999.

3. The Counter-Memorial

Part One

19. Since the Respondent failed to comply with this Court's Orders of 8 April 1993 and 13 September 1993, the on-going state of war in Bosnia and Herzegovina made it impossible for the Applicant to produce its Memorial within the time-limit set by the Court. Therefore, the Applicant had to request an extension, which the Court allowed by its Order of 7 October 1993.
The time-limit, initially set for 15 October 1993, was extended to 15 April 1994. Although limited by the restrictions posed upon it by the on-going state of war, the Applicant succeeded in submitting its Memorial to the Court on 14 April 1994.

20. The Respondent was to submit its Counter-Memorial on 15 April 1995, but obtained an extension of this time-limit to 30 June 1995. Then, the Respondent did not produce a Counter-Memorial, but raised Preliminary Objections. The delay caused by these proceedings led to a new Court Order dated 23 July 1996, according to which

the Respondent was allowed until 23 July 1997 to submit its Counter-Memorial, which is more than three years since Bosnia submitted its Memorial.

21. Since the Respondent had been in possession of the Applicant's Memorial since 15 April 1994, one would have expected that the Counter-Memorial would, indeed, have been a response to the issues of fact and law which have been brought forward by the Applicant.
However, like the Preliminary Objections of 26 June 1995, this Counter-Memorial spends many more pages on what can only be judged as political propaganda, rather than on issues which could be helpful for the Court to reach its decision in this case.

22. The Applicant must admit that the mode of proceeding applied by the Respondent is to a certain extent effective: it makes it difficult for the Applicant to respond, since the Applicant prefers to avoid being drawn into a debate over the erroneous presentation which the Respondent produces of "facts" and/or even of "historical facts", which in the view of the Respondent would be relevant for a proper judgment of this case.
Therefore, the Applicant will try and restrict itself to matters of fact and law which could serve as a further clarification of this case and of the Submissions put forward by the Applicant.

23. The Counter-Memorial contains 1085 pages of text and is divided into two Parts. Part One is to be considered the response to the Memorial, while Part Two contains counter-claims. Of the entire text, 348 pages are devoted to the response, while more than twice as much, 730 pages, are spent on the counter-claims.
Out of these 348 pages only 127 can be considered a response to the facts on which Bosnia and Herzegovina has based its Submissions in its Application and Memorial [see Counter-Memorial, pp. 3-79, 98-110 and 245-274].
The Respondent further spends 18 pages in trying to demonstrate to the Court that Resolutions, Statements and/or Reports of independent bodies like the United Nations, the European Community, the Conference on Security and Cooperation in Europe and related sources are not credible and/or relevant to a proper judgment of the Applicant's Submissions [see Counter-Memorial, pp. 80-98] Another 132 pages are spent by the Respondent in providing the Court with its view on events that took place in the former Yugoslavia between 1990 and 1997, including extensive references to events that occurred in World War II [see Counter-Memorial, pp. 111-244]. However, in doing so, the Respondent does not provide the Court with an explanation as to why this view on these events, if true, could serve as a justification

for the extreme atrocities committed against the non-Serb population of Bosnia and Herzegovina, let alone as a justification for genocide (for which, in any case, there is never any justification).
Needless to say, the Applicant does not share this particular view on these particular events at all, so the Applicant will only respond to these sections of the Counter-Memorial insofar as this may be relevant for its Submissions.
Finally, the Respondent spends, out of 348 pages, some 50 pages on law [see Counter-Memorial, pp. 297-348].
Thus, only around half of the 348 pages of Part One of the Counter-Memorial bear some relevance to this case.

24. However, the Respondent, in its Counter-Memorial, is never very specific in its denial of facts and circumstances presented by the Applicant in the Memorial. The approach usually seems to be: "not true", i.e. "the source is not independent", i.e. "in any case not genocide", i.e. "in any case not attributable to Yugoslavia". A randomly picked example for this approach reads like this:

> "Even if the statement were true, and the Applicant has not proved that it is true and the Respondent denies it, it is evident that the intent with which the alleged act was committed was the expulsion of Muslims, and that excludes genocide. Besides, even if these acts were indeed committed, they cannot be attributed to the Respondent and it is not responsible for them." [Counter-Memorial para. 1.2.1.19.].

This language comes back in many different forms throughout the Counter-Memorial.
It is the view of Bosnia and Herzegovina that a mere denial, unsupported by any independent sources, of atrocities of the kind involved in this case and/or of responsibility thereof, cannot be considered to form a proper defense in a genocide case. If not respect for the Applicant, then at least respect for the Court should have brought the Respondent to take this case more seriously.
Apart from this, the Applicant will show in this Reply that for legal reasons as well, the approach taken by the Respondent regarding the burden of proof is legally unsound.

25. Although, in some parts of its Counter-Memorial, the Respondent seems to defend the position that the independent sources to which the Applicant has referred in order to further support its Submissions are not in fact independent, not credible and not relevant to the case, the Respondent adopts quite the opposite position in other parts

of its Counter-Memorial, unconditionally quoting the same sort of independent sources. The Applicant is convinced that, in court proceedings as well, one cannot have it both ways. Therefore, since the Respondent also refers to the United Nations, EC, citizens' organisations and other independent sources (among which are Western media sources such as the New York Times, Der Spiegel, etc.) the Applicant will not further discuss, let alone defend, the quality and independence of the sources to which Bosnia and Herzegovina has referred earlier in these proceedings.
Of course, any reference to or any quotation of any independent source may be countered by the other side by providing the Court with evidence which shows that a specific quotation of and/or a specific reference to a particular source is not useful, since it would be clear that the particular source at this particular point was not well informed. That is, however, precisely what the Respondent is *not* doing in its Counter-Memorial. If the Respondent uses any supportive sources for its blunt denials at all, these sources are usually not considered to be independent. In many of the cases, the Respondent just relies on anonymous witness statements or on articles published in the Government-controlled Belgrade newspaper *Politika*. It is clear that reliance on this sort of "evidence" cannot help the Respondent in its continuous denial of facts that have been established by the authoritative sources referred to by the Applicant in support of its Submissions.

26. Given the fact that the international community, and more specifically the UN and EU, have, over a period of around 5 years, consequently held the Respondent responsible for the atrocities committed against the non-Serb population of Bosnia and Herzegovina (which is, among other things, clear by just having a look at the series of Resolutions passed by the Security Council, many of which imposed and confirmed sanctions against the Federal Republic of Yougoslavia) the Respondent should have at least offered a detailed explanation to this Court, based on a detailed factual and scholarly analysis, clarifying why, in its view, the international community has been completely wrong over such a long span of time.
The Counter-Memorial does not contain anything which could be considered to be even the beginning of such an explanation, while the 15 Volumes of Annexes are, as a consequence, but also on the basis of their own merits, no more supportive of the position the Respondent wishes to defend.

27. In this Reply, the Applicant will respond to the contents of the Counter-Memorial, while elaborating its case as it has been presented to the Court during the earlier phase of the proceedings.

In doing so, the Applicant will expand the factual basis for its submissions, one reason for this being that since the fighting has ended, the Applicant is now in a much better position to properly prepare and present its case. The other reason is that since the submission of its Memorial on 15 April 1994, many more genocidal acts have been committed in Bosnia and Herzegovina against the non-Serb population, including the massacre in and around Srebrenica in July 1995.

Part Two

28. If anything at all, the counter-claims, as presented by the Respondent in its Counter-Memorial, demonstrate the entirely asymmetrical nature of the two cases now before the Court. While in its Memorial and in this Reply Bosnia demonstrates that the campaign of ethnic purification was not only very well prepared, but also carried out according to recognisable patterns, while Bosnia demonstrates that there existed a horrible logic to the genocidal acts committed against its non-Serb population, while it shows how strongly interlinked the efforts of the Respondent's and "Republika Srpska"'s authorities have been all along, the Respondent in its Counter-Memorial merely sums up many (if true) indeed terrible incidents, without providing any contextual, let alone direct, evidence which could bring these incidents within the range of the Genocide Convention; nor does the Respondent demonstrate any responsibility on the part of the government of Bosnia and Herzegovina for any genocidal acts.

29. The explanation for this asymmetry is clear: there is no basis, either in fact or in law, to support the idea that the events related by the Respondent could be perceived as a mirror-image of the systematic, ethnically inspired atrocities suffered by the non-Serb population of Bosnia and Herzegovina.

30. This asymmetry has been confirmed time and again by the Security Council, which in its numerous Resolutions regarding the conflict repeatedly called upon "the Serb side", "the neighbours of Bosnia and Herzegovina" and "the Federal Republic of Yugoslavia" to refrain from violating international humanitarian law, to respect the territorial integrity of Bosnia and Herzegovina, to refrain from providing the Bosnian Serbs with military supplies and to stop the abhorrent policy of "ethnic cleansing".

31. This asymmetry is also reflected in this Court's Orders of 8 April 1993 and 13 September 1993. In both Orders, the Court called upon *both* parties not to aggravate,

extend or complicate the dispute. However, the Court told, only *one* party, namely the Respondent, to take all necessary measures to prevent genocide from being committed (this part of the Order of 8 April 1993 was given unanimously), and the Court told the same *one* party to ensure that no acts of genocide (including conspiracy, incitement and complicity) would be committed by any military, paramilitary or armed units, directed or supported by the Respondent, nor by organizations and persons which may be subject to Respondent's control, direction or influence (this part of the Order of 8 April 1993 was given by 13 votes to 1).

32. Although this asymmetry itself effectively responds to the counter-claims and clarifies why they lack a relevant basis for this case, Bosnia and Herzegovina will in this Reply respond extensively to the Respondent's counter-claims.
The 730 pages spent on the counter-claims mostly contain long lists of names of people allegedly having been killed and/or wounded. Most of these allegations are not supported by independent sources; none of the allegations are backed up by independent evidence which could support, let alone prove, an allegation that genocide was committed.
According to the wording of the Counter-Memorial, most of the evidence allegedly available is to be found in Belgrade. The Respondent deemed it useful to add a footnote by way of explanation of this peculiar way of proceeding on page 352 of the Counter-Memorial stating:

> "The time limit fixed by the Order of the Court of 23 July 1996 restricted the Respondent's possibility of submitting all the relevant evidence. However, it is deposited, under the number indicated in the Counter-Memorial, with the Committee for Compiling Information on Crimes against Humanity and International Law and is available to the Court and the Applicant.".

Since the Respondent fails to submit its alleged evidence, it is impossible for Bosnia and Herzegovina to assess this evidence or its existence thereof. Bosnia and Herzegovina does not have to explain to this Court that this is an entirely improper way of proceeding. This approach would be unacceptable in any sort of litigation before any court. It is entirely unacceptable in a case in which the allegations are as extremely serious as violations of the Genocide Convention. Moreover, this way of proceeding is in direct violation of Article 43 of the Statute of the Court, in combination with Article 50 of the Rules of Court. There is no doubt that both State-parties involved in these proceedings agree about this, since the Respondent already took this position early in these proceedings with regard to additional Annexes, which in its view, should have been included with the Bosnian Memorial of April 1994.

33. Bosnia and Herzegovina would like to draw the attention of the Court to the correspondence sent to the Court by the Respondent regarding these issues (Memorandum of 9 May 1994, handed to the Registrar on 18 May 1994, and follow-up letter of 6 June 1994). In this correspondence, the Respondent complained about the fact that the Applicant had not annexed copies of public and readily available documents (mostly U.N. documents) to its Memorial.
Somewhat to Bosnia and Herzegovina's surprise, the Court then instructed the Applicant by suggesting that "... you would thus do well to make good this deficiency as rapidly as possible" [letter of the Registrar to the Applicant, 30 June 1994]. In spite of the fact that by this instruction the Court deviated from the regular practice in ICJ proceedings according to which readily available documents, let alone U.N. documents, never need to be annexed (either in full or in extract form) to written pleadings, Bosnia and Herzegovina followed the instruction and submitted the additional Annexes as rapidly as possible under the circumstances.

34. It goes without saying that the need for annexing evidence to which a Party refers in a written pleading is especially pronounced if this evidence is only in this Party's possession. The Respondent has failed to meet this procedural obligation. There is no excuse whatsoever for this failure, especially since the Respondent has had an extensive time-limit (one year) for the preparation of its Counter-Memorial, while it was in a position to start preparing for this Counter-Memorial as early as April 1994, when the Memorial was submitted to the Court.

35. Bosnia and Herzegovina denies the truth of each and every allegation contained in the Counter-Memorial which is not supported by evidence annexed in one of the two languages of the Court. It states that the Court needs to consider as unproven all of the Respondent's allegations based on unsubmitted and not readily available, so-called, evidence.
As far as the rest of the allegations are concerned, the Applicant further notes that the Respondent has failed to provide for even the beginning of proof for Bosnian responsibility for the alleged crimes that form the basis of its counter-claims, let alone that the Respondent has proven any sort of genocidal intent on the part of the Applicant State.
In Part V of this Reply, Bosnia and Herzegovina will further deal with the counter-claims.

4. General scheme of this Reply

36. This Reply is divided into six Parts. The general introduction to the Reply is to be found in Part I, while Part II and Part III concentrate on facts and questions of law pertaining to the main issues of this case: the commission of genocide and Respondent's responsibility. In Part IV, the Applicant elaborates on the remedies requested. Part V responds to the counter-claims submitted by the Respondent. Part VI contains Bosnia and Herzegovina's conclusions.

37. Wherever the Applicant deems it necessary, a response will be provided to the allegations put forth in the Counter-Memorial. The mere fact that the Applicant does not respond to each and every section of the Counter-Memorial may in no way be construed as an acceptance of the truth and/or relevance of these sections on the part of Bosnia and Herzegovina.

38. While producing this Reply, the Applicant was aware of the Court's disinclination toward the enclosure of numerous and extensive Annexes to written pleadings. Therefore, the Applicant has only annexed copies of documents which may not be readily available to the Respondent and the Court. The Applicant has also deposited two sets of books in the Registry, one set being for the Respondent, the other for the Court. Whenever, in this Reply, the Applicant refers to the contents of one of these books, the relevant page is annexed, while it is indicated that the whole document is deposited.

39. In order to assist the Court in obtaining a clearer picture of events referred to in this Reply, maps are included in its text. The basis for these maps is to be found in the UNHCR map of 1 March 1994, which was reproduced earlier by the Applicant [Memorial, page 16].

39. This Reply, except for the separately relevant Part V regarding the counter-claims, needs to be taken as one integrated statement, which means that all of its Parts and Chapters are closely connected and that positions elaborated in one Chapter also serve to amplify the other Chapters.

CHAPTER 2

FEDERAL REPUBLIC OF YUGOSLAVIA'S REPLY TO THE APPLICANT'S MEMORIAL IS INADEQUATE AND ERRONEOUS

1. A "Balance of Guilt" test is inapplicable to genocidal acts

1. The Federal Republic of Yugoslavia's Counter-Memorial devotes more than three-fifths of its pages (Part II) to asserting a "counter-claim" to the effect that Applicant is responsible for genocide against the Serb population of Bosnia and Herzegovina. Respondent specifies that Applicant is responsible for "acts of direct and public incitement to commit genocide" and cites the "Islamic Declaration" and (numerous times) a verse published in a newspaper in October, 1991 [Counter-Memorial, 23 July 1997, p. 349, paras. 7.0.1.0-7.0.1.2.; see also *ibid.*, p. 1084, para. 8.21.].

2. If the Respondent really believed that Bosnia and Herzegovina was guilty of genocide, Respondent would have been able to bring an action against Applicant at the time the alleged events occurred: that is, in 1992-93. Indeed, its written observations submitted to the Court on 1 April 1993, after Bosnia and Herzegovina's first request for provisional measures, requests this Court to take measures for the protection of the Serb population

> "since the genocide of Serbs living in the Republic of Bosnia and Herzegovina is being carried out by the commission of very serious war crimes which are in violation of the obligation not to infringe upon the essential human rights." [*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993*, ICJ Reports 1993, p. 325 at 331, para. 4].

3. Since that assertion, however, the Federal Republic of Yugoslavia has been silent on the matter of genocide. This is a strange strategy, given the seriousness of such an allegation. At the least, it raises questions regarding the good faith with which the allegation is now, more than five years after the occurrence of many of the acts alleged, being resurrected as a "counter-claim."

4. In reality, what Respondent is advancing is only superficially a counter-claim, but actually a strategy that asks the Court to consider that two purported wrongs can

make a right. Respondent seeks to justify its own genocide as a sort of permissible counter-measure to a genocide allegedly committed by Applicant.

5. This is evident from the fact that Respondent took more than four years since the initiation of Bosnia and Herzegovina's application, on 20 March 1993, to bring forward to this Court a substantial claim that it had been a victim of genocide by the Complainant. It is also significant that in making this belated assertion of victimization, Respondent, more than four years after mooting a charge of genocide against Bosnia and Herzegovina without any evidence whatsoever, still offers neither the Applicant nor the Court access to real evidence to support its claim or to explain why it has only so recently been advanced as a counter-claim, rather than as an action brought against Bosnia and Herzegovina simultaneously with this case. Moreover, the huge number of unsupported allegations indicate that Respondent cannot be serious even now in its allegations of genocide, for the specific claims certainly do not qualify as acts in violation of Articles I, II and III of the Convention and are never accompanied by evidence of the necessary "intent to destroy in whole or in part" the group to which the alleged victims belong.

6. What is most disturbing, however, is that Respondent, in effect, asks this Court to decide that one genocide is justifiable in law by another. Respondent seems to believe that if this Court were persuaded to establish, on the facts, that there was a "balance of guilt" between the parties, this "balance" or "equivalence" would, so to speak, wipe the slate clean. Or that it would lead this Court to effect a "quantum meruit" weighing and assessing of the parties' comparative guilt. Were this not Respondent's intent, its Counter-Memorial would have sought to meet Applicant's specific allegations. Instead, its Counter-Memorial concentrates, in Part I, on rearguing matters of law that, for the most part, have already been resolved by this Court in its judgment of 11 July 1996 and then, in Part II, on pressing a so-called "counter-claim." The discussions regarding the various elections in Bosnia and Herzegovina, for example [Counter-Memorial, pp. 242-43, paras. 2.20.1.1 - 2.20.1.4], indicate Respondent's inability or unwillingness to understand this Court's insistence that, Bosnia and Herzegovina being properly a party to the Genocide Convention, its domestic legitimacy cannot be placed in question [ICJ, *Judgment* of 11 July 1996, p. 18, paras. 18-19]. For Applicant to reiterate at this stage of the proceedings its arguments in support of the legitimacy of its domestic political process would be to give credence to Respondent's totally irrelevant and diversionary tactics: tactics meant to disguise its lack of a substantive reply to the allegations

advanced in Applicant's Memorial, citing numerous independent and respected authorities to support its claim.

7. Applicant denies emphatically the unproven aspersions in Respondent's Counter-Memorial that try to suggest equivalence of guilt as between the parties. It even more emphatically urges the Court not to be drawn into what, in effect, approximates not so much a counter-claim as a bogus and inadmissible defence. Applicant strongly urges the Court to reject the Respondent's implicit theories of comparative guilt and of exoneration by mutuality of fault. Any state's violations of Articles I, II and III of the Genocide Convention are directly actionable at the instance of any other State Party under Article IX and such violation can never be exonerated or even mitigated by any other violations alleged to have been committed by the complaining party: not even if such were to be proven by credible evidence. Genocide can never be a remedy of self-help nor an instrument of lawful reprisal or retortion. This Court, in its *Order* of 17 December 1997, perhaps too optimistically, concluded that "the Parties rightly recognize that in no case could one breach of the Convention serve as an excuse for another (...)" [*ICJ Order of December 17, 1997*, para. 35]. Applicant certainly agrees with this proposition of law and hopes, despite the evidence to the contrary in its Counter-Memorial, that the Court has correctly assessed the acceptance of this proposition by the Respondent.

8. The defensive strategy of "innocence by mutuality of guilt" has other malevolent legal implications. It emerges with terrifying clarity from the Respondent's Counter-Memorial that the Federal Republic of Yugoslavia believes that the obligation imposed upon states by the Genocide Convention should be interpreted by this Court as amenable to exoneration or mitigation if:

   (a) the government of those persons against whom genocide is committed were in some sense illegitimate [Counter-Memorial, paras. 2.2.1.1-2.3.1.21.]. What other rationale would explain the Respondent's repetitive insistence on reciting its long, wholly inaccurate, and, ultimately, irrelevant political history of the "break-up" of Bosnia-Herzegovina?

   (b) the genocide is a preemptive response to alleged verbal incitement by some public or private persons within the group subjected to genocide. What other rationale would explain Respondent's repeated recitation of allegations which, even if true, would at most amount to verbal incitement

by individuals, not to policies actually carried out by officials? [Counter-Memorial, paras. 2.8.1.1-2.12.1.42.].

9. The Applicant rejects as entirely untrue almost all the facts, and, in particular, the motives ascribed to its leaders in these parts of the Counter-Memorial. The response of Bosnia and Herzegovina to these allegations is set out in detail in Chapter 13 (*below*). Here, however, it is necessary to draw the Court's attention to the fact that Respondent sets forth no credible evidence to support a charge that Applicant committed genocide. While the whole of Part Two of the Federal Republic of Yugoslavia's Counter-Memorial consists of essentially unsubstantiated allegations that genocide was committed against the Serb population of Bosnia and Herzegovina, the preponderance of the evidence to support these fanciful allegations is not made available to Applicant, nor is it presented to the Court. It is not in the Memorial or its annexes, nor is it in one of the languages of this Court. It does not, moreover, derive from sources of any probative weight, such as the kinds of findings of fact made by internationally-authorized bodies. The Court should note the contrast between the principal sources of fact-finding adduced by Applicant and those produced by Respondent.

10. Applicant wants no part of giving any semblance of credibility to a manoeuvre by Respondent that appears to revive the legality of reprisals in general and as an excuse for genocide in particular. Reprisal is prohibited against civilians under the 1981 *United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects* [A/Conf. 95/15 of 27 October 1980, Protocol II, Art. 3(2)]. International law has exorcised the right of reprisal against civilians [I. Brownlie, *International Law and the Use of Force by States*, 1963, pp. 219-23]. Thus, it surely also cannot be lawful when directed against innocent people with the savagery of genocide.

11. In sum: even if Applicant had engaged in a large number of deliberate acts of killing Serbs, *of which there is no credible evidence*, and even if Applicant actually had harboured an intent to commit genocide - *of which there is also no credible evidence* - this would in no way alter the Respondent's responsibility and liability for its violations of Articles I, II and III of the Convention.

12. This Court, in assessing the evidence relied upon in Part II of Respondent's Counter-Memorial should also keep in mind the U.S. Government's warning against

> "the practice of the SDS [Serb authorities] of issuing through the Serbian News Agency (SRNA) a flood of unfounded charges of crimes by Bosnian government forces (...). . . ." As an example, the U.S. Government cites the following: 'SRNA reported in September [1992], for example, that 150 Serbs had been killed in Bihac. . . .An investigation by the UNPROFOR in Bihac failed to produce any evidence of such killings.'" [US Department of State, *Country Reports on Human Rights Practices for 1992*, Feb. 1993, p. 726, Annex 1].

Not only were these reports of Applicant's misdeeds found to be false but the U.S. authorities noted, to the contrary, that Bosnian Government officials had intervened to save Bosnian Serbs unjustly detained and had punished those guilty of harassing them [*ibid.*, p. 725].

13. These evaluations of the respective credibility and humanity of the parties is echoed in the report of the Special Rapporteur of the United Nations Human Rights Commission, Tadeusz Mazowiecki, which specifically denies that the parties to the conflict share equivalent guilt, and warns that

> "one cannot lose sight of the fact that the main responsibility lies with the Serbian forces (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, transmitted by the Secretary-General to the General Assembly and the Security Council*, A/47/666; S/24809, 17 Nov. 1992, p. 16, para. 42].

Mazowiecki, the United Nations Human Rights Commission's Special Rapporteur, also reports that, while in "Bosnia and Herzegovina ethnic cleansing is practised systematically by Serbs (...) through the most cruel and merciless methods imaginable" [*ibid.*, p. 10, paras. 19, 20] in Muslim-controlled regions, while some Serbs have left, they did so "not because of any ill-treatment on the part of the Muslim or Croat forces, but because they had been involved in the fighting, or because of the hardships of living in besieged cities." [*ibid.*, p. 10, para. 21]. Ethnic cleansing, as practised by the Serb authorities, equals genocide because, in violation of the Convention, it was a policy intended to destroy a community. In sharp contrast, the flight of Serbs as an unintended consequence of fighting, the hardships of war, or feelings of guilt engendered by the conduct of some Serb leaders does not remotely satisfy the legal test for genocide.

14. All Respondent's effort to establish equivalence between the parties, and to parlay that untruth into a defence to the charge of genocide, is thus confounded by the law, the facts, and by those best positioned to evaluate events as they occurred.

2. Genocide can be directed to more than one group at a time

15. Respondent asks this Court to dismiss Applicant's charge of genocide on the ground that the acts complained of were directed at members of more than one group. It thus argues that

> "Acts directed at a group composed of members of a number of different protected groups do not constitute acts of genocide." [Counter-Memorial, p. 307, para. 4.9.1.3.].

16. By this reasoning, the drafters of the Genocide Convention must be taken to have intended to exempt Hitler's holocaust, because its systematic killings and related activities were directed at destroying not only the Jews but also the Gypsies, homosexuals, and others deemed *Untermenschen* by the Nazis' ideology. The argument advanced by Respondent is so repellant as to warrant but the briefest examination.

17. The pattern of destruction initiated and directed by Belgrade and visited by the Serbs upon non-Serb Bosnians did, indeed, affect Croats, with the genocidal intent to create a Croat-free Greater Serbia. The sieges and debauchment of Bosnian towns and villages by regular and irregular Serbian and Serb forces also led to the death of some Serbs, especially some who were unsympathetic to the policy of ethnic cleansing. Some Serbs, who continued against great odds to support a multiracial Bosnia perhaps were deliberately targeted in order to stifle the more humane opposition within Serb ranks. But, while such speculation as to why Serbs killed Serbs may be of historical importance, a confirmation of the Federal Republic of Yugoslavia's evidence that this occurred can only confirm the wrong-headedness of the Respondent's use of such evidence as exculpation. For example, the Respondent actually claims that

> "Acts committed against a group composed of members of a number of protected groups do not constitute genocide if the perpetrator of the act cannot direct its effects against the members of one group only. Thus, the bombing of settlements inhabited by members of different ethnic and religious groups or the holding of such settlements under siege do not constitute genocide." [*ibid.*, p. 307, para. 4.9.1.4].

At the very least, such argumentation demonstrates a deficit in Respondent's capacity to grasp the content of the law regarding genocide.

18. By Respondent's reasoning there would be no responsibility for genocide if death, harm, injury, or other acts enumerated by Article II of the Convention, were

simultaneously inflicted on more than one group of victims. It would be difficult to imagine a more draconian attempt at the Convention's evisceration than this proposition. Of course, there is not a scintilla of evidence offered by Respondent -- either from the Convention's text or *travaux* -- to compel, or even permit, such a perverse reading of it.

3. "Inclusio unius est exclusio alterius", is inapplicable to the Genocide Convention

That an act is a violation of humanitarian law does not exclude that it is also genocide. Respondent's Counter-Memorial, however, routinely uses the argument that because certain actions are one form of international wrong, they cannot also be characterized as another (as in the maxim: "inclusio unius est exclusio alterius"). Thus, the Counter-Memorial [p. 306, para. 4.8.1.2] states of ethnic cleansing: "Such acts are certainly not allowed and are grave breaches of humanitarian law, but they do not constitute genocide." It goes on to explain that "Only the intent to destroy a group invests the acts with a genocidal character." Omitted from this quotation from Article II of the Genocide Convention is the key phrase "in whole or in part," as well as Article III's offence of "attempt to commit genocide." The acts Respondent admits are "grave breaches of humanitarian law" [Counter-Memorial, p. 306, para. 4.8.1.2] clearly are also acts intended to destroy that large "part" of the Bosnian Muslim community that had the misfortune to live in those areas Respondent deemed part of a future Greater Serbia; and "ethnic cleansing" is also genocide. Thus, it is surely not at all, as Respondent claims, "unacceptable" [Counter-Memorial, p. 306, para. 4.8.1.2] to cite evidence of an overwhelming pattern of concerted ethnic cleansing as evidence of a violation of Articles II and III of the Genocide Convention, and such an allegation is not met by an attempt to classify such acts exclusively under the heading of violations of humanitarian law. The same wrongful acts may fall under *both* categories of wrong, neither one excluding the other. The wrongful death of a child, or example, may be evidence both of a violation of the laws of war and also of intended genocide.

19. This rather elementary point has been placed beyond dispute by the ICTFY's confirmed indictment of Radovan Karadžić and Ratko Mladić [ICTFY, Indictment, *Prosecutor v. Karadžić & Mladić ("Srebrenica")*, Case No. IT-95-18-I, 16 Nov. 1995] which notes that the defendants are charged with "Genocide, Crimes against humanity and Violations of the laws and customs of war." [*ibid.*, pp. 10-11, paras. 47-52]. These charges are based on the commission of the *same* acts, such as the

summary mass execution of Bosnian Muslim refugees at Potočari in July 1995, and are separate prosecutorial counts (counts 1-3) in which essentially the same facts are used to prosecute for the three separate - but certainly not mutually exclusionary - offenses. In confirming these indictments, Judge Fouad Riad was clear that "the facts of the case disclose, above all, the commission of genocide." [*ibid.*, p. 4]. He was equally clear, however, that "the evidence also discloses, *prima facie*, the commission of crimes against humanity, and violations of the laws or customs of war." [*ibid.*].

20. Along the same lines, it must be understood that Respondent is entirely wrong in law when asserting that the Genocide Convention's requirement of intentionality excludes the possibility of finding state responsibility for genocide. Respondent asserts that the "concept of objective responsibility of the State" excludes legal responsibility for genocide because "it would be necessary to establish the existence of appropriate intent," which is inconsistent with objective responsibility [Counter-Memorial, *ibid.*, para. 4.10.1.11]. The nub of this argument is that (1) intent is ordinarily irrelevant to state responsibility; (2) genocide can only be found to have been committed if there is demonstrable intent; (3) therefore genocide cannot be a wrong for which states may be held accountable. Respondent in effect asks the Court to agree that any wrongful act, for the commission of which an element of intent is a necessary component, cannot also entail state responsibility: another example of *exclusio alterius* reasoning. There is no evidence either from the text or the *travaux* to support this potentially disastrous proposition. On the contrary, Applicant's Memorial offers irrefutable evidence that Article IX of the Convention was introduced precisely to ensure that state responsibility *would* ensue from violations by states of the Convention's prohibitions [Memorial, 15 Apr. 1994, pp. 200-204, paras. 5.2.2.1-5.2.2.9]. The preamble of General Assembly Resolution 180(II) makes clear the drafter's instructions to ensure "international responsibility on the part of individuals *and states*" [emphasis added] for genocide. To Belgium, as a sponsor of Article IX of the Convention, the purpose was to bring *states* to account before the ICJ, an objective shared both by Britain and France [GAOR, 6th Cttee, *Summary Records*, 21 Sept. - 10 Dec. 1948, at pp. 146, 338, 339 and 444]. While it is true that genocide can only be established by evidence of intent, there is no reason why state responsibility for genocide is excluded in an international instrument that specifies state responsibility for actions as to which an element of intent is also specified. Indeed, the ICJ has already upheld this proposition. It stated in its ruling of 11 July 1996 that "Article IX. . .does not exclude any form of State responsibility." [ICJ, *Judgment*, 11 July 1996, p. 23, para. 32].

21. Perhaps the most bizarre example of Respondent's dialectical reasoning is the argument that, ethnic cleansing, if proven, *excludes* - rather than *demonstrates* - the allegation of genocide. The point appears to be that, when a state drives a population out of its territory of historic habitation, even if by killing, torturing and raping, this signifies not an attempt to destroy that people in whole or in part, but a concern to prevent their destruction (by getting them out of harm's way, presumably). Respondent urges the Court to agree that

> "ethnic cleansing. . .if the goal of that policy is to repulse by force, including killings and torture, members of an ethnic or religious group from a certain territory. . .excludes 'the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'." [Counter-Memorial, *ibid.*, pp. 7-8, para. 1.1.3.5.].

Such reasoning must tell the Court more than Respondent may have intended about the state of mind of genocide's perpetrators.

22. It is not at all inconsistent or unusual for parties embarking on genocide to combine a policy of harassment, torture, and killing with one of driving out the remnants of a hated group. There is nothing in the Genocide Convention that requires those responsible for genocide or attempted genocide to pursue their objectives by only one means. Yet that is what Respondent asks this Court to accept: that ethnic cleansing, *per se*, excludes a finding of responsibility for genocide or its attempt. Again, the effect of Respondent's effort to escape responsibility urges on the Court a definition of the Genocide Convention such as would mock its framers' original intent and render it nugatory in practice. As will be again demonstrated in Chapters 6-8, the object of Respondent's policies was ethnic cleansing and genocide was the means for, and obvious consequence of, realizing that goal. In the specific instance of Bosnia's case, ethnic cleansing and genocide became synonymous.

23. Adhering to its "*exclusio alterius*" legal strategy, Respondent's Counter-Memorial dismisses out of hand *Submission to the United Nations by the Government of Austria* [United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General*, S/25377, 6 Mar. 1993. presented by the Applicant as Annex 2 to Part 2 of its Memorial]. This document cites a witness to the effect that: "Once they [the Serbs] shot 20 people who had tried to flee. (...) They wanted to demonstrate that it was useless to flee. (...)" [Counter-Memorial, *ibid.*, p. 8, para. 1.1.3.8.]. To this the

Federal Republic of Yugoslavia replies: "If this was true, it is evident that the execution was not carried out with a genocidal intent." [*ibid.*] *Evident*? The Court, in other words, is being asked by the Federal Republic of Yugoslavia's Government to accept that the executing of persons in flight is a defense against an allegation of genocide, because these persons were being killed not for who they were, but for what they were doing (that is, fleeing for their lives). Applicant asks the Court to come to a far more probable conclusion: that civilian flight was caused by the genocidal policies of ethnic cleansing.

24. In sum: Respondent argues that when the Serb forces caused persons to flee they demonstrated their innocence because to cause the group to flee is to promote its survival. And to execute those fleeing further demonstrates innocence because the intent must only have been to deter flight, not to attempt a destruction of the group. It would be difficult to think of a more disingenuous theory for the abnegation of responsibility.

25. Likewise, Respondent argues that the pattern of systematic killing of Bosnian Muslim leaders and persons of means not only does not demonstrate intent to commit genocide, but, on the contrary, "proves that there was no genocidal intent. If the killings did indeed take place, they were motivated by the struggle against political adversaries and not an intention of killing members of an ethnic or religious group." [Counter-Memorial, *ibid.*, p. 8, para. 1.1.3.7.]. To the Respondent, the fact that persons were political adversaries insulates their methodical killing from being classified as genocide. This Court will surely not wish to accept so heinous a crippling of the concept of responsibility for genocide. It is difficult to believe that the leadership in Belgrade would be startled to discover that this Court, and all decent public opinion, considers the methodical killing of persons in flight, or of the leadership of a community, to *be genocide* itself, and not a defense to the allegation of genocide.

4. States are responsible for committing genocide and other acts violative of the Genocide Convention

26. In paragraph 4.4.1.9. of the Counter-Memorial, Respondent asserts that the Genocide Convention "does not envisage a state as the perpetrator of genocide." From this Respondent deduces that the ICJ, under Article 9, cannot hold a state responsible under Article IX unless it can first "establish that a crime of genocide has been committed," apparently by some person or entity other than a state.

27. This contention entirely misconstrues the intent, purpose and effect of Article IX of the Convention. Applicant has asked this Court, applying Article IX, to determine that Respondent has violated Articles I, II and III of the Convention. The *travaux* for Article IX made clear that it was adopted precisely because it was envisaged that *states* are the most likely entities to commit, conspire to, incite to, attempt, or engage in complicity to commit genocide, or fail to prevent or punish genocide.

28. It was clearly envisaged that states in particular could commit these acts. Article IX was adopted to preempt what, given the historic context of the Convention, was far more a likelihood than a remote possibility: that a *state* might violate the obligations of the Convention. This Court has already determined that "Article IX (...) does not exclude any form of State responsibility." [*Case Concerning Application of the Convention on the Prevention and Punishment of Genocide*, Judgment (Admissibility and Jurisdiction) of 11 July 1996, p. 23, para. 32]. It has likewise determined that the Convention does not exclude "the responsibility of a State for acts of its organs (...)." [*ibid.*].

29. The Respondent, being obdurately wrong in continuing to assert that states cannot commit genocide, then goes on to draw a wrong conclusion about the law applicable to an action against a state under Article IX. Article IX was adopted precisely with the understanding that, if acts prohibited by the Convention were committed by a state, no tribunal of that state could be expected to afford the necessary redress. To close any such loophole, the drafters designed Article IX to empower any state party to bring an action before the ICJ alleging the failure of another state party to interpret the Convention diligently and correctly, to apply it vigorously, and otherwise to fulfil its obligations. Article IX authorizes the ICJ to determine "the responsibility of a State for genocide or for any of the other acts enumerated in Art. III." The language is as unambiguous as its intent is clear. It holds states responsible for violations not only of Article II of the Convention but also for violations of Article III.

30. Respondent nevertheless argues that Article IV of the Convention "envisages that only physical persons are subject to punishment for the commission of genocide or another punishable act enumerated in article III." Article IV does not say anything of the kind. It is Respondent who has gratuitously added the word "only" to Article IV's requirement that "persons" committing these acts "shall be punished (...)" Article IV in no way rescinds Article IX, which provides an entirely different

remedy "relating to the responsibility of a State for genocide or for any other acts enumerated in article III (...)" as determined by this Court. While it is true that Article IX envisages a civil remedy, that remedy is available for any violation of any of the Convention's obligations by any state party.

31. In paragraphs 4.10.1.5.-4.10.1.9., the Respondent drastically misrepresents the *travaux*, making it appear that the effort of the United Kingdom's representative in the drafting Ad Hoc Committee on Genocide (Sir Gerald Fitzmaurice) failed in his efforts to secure a legal recognition of states' responsibility for genocide. Respondent summarizes that "it can be concluded that the position of the Ad Hoc Committee on Genocide as well as the Sixth Committee was that a state could not commit the crime of genocide or any other punishable act specified in Article III." This is so blatantly a misrepresentation as to put in question the good faith of its author. For example, it cites and quotes a British amendment which, at one stage of drafting, narrowly failed to extend jurisdiction over disputes to the ICJ [Counter-Memorial, *ibid.*, p. 310, para. 4.10.1.6.] without so much as mentioning to the Court that the Belgian-British amendment, to essentially the same effect, was later adopted by the drafting committee by 23 votes to 13 with 8 abstentions [GAOR, 6th Cttee, *Summary Records*, 21 Sept. - 10 Dec. 1948, p. 447].

32. As has been made evident in Applicant's Memorial, Sir Gerald Fitzmaurice and other like-minded representatives were entirely *successful* in establishing not only state responsibility for genocide but in empowering the ICJ to hear complaints of such alleged violations of the Convention brought by State Parties. That success took the deliberated form of Article IX. Actions under Article IX were clearly intended to be brought precisely by one state party against another state party, with this Court authorized to determine state responsibility if a violation of the Convention were found to have occurred. In the words of Fitzmaurice,

> "When it became clear that genocide was being committed, any party to the convention could refer the matter to the International Court of Justice (...) [T]he inclusion of the idea of international responsibility of States or Governments, was necessary to the establishment of an effective convention on Genocide." [*ibid.*, p. 444].

33. Respondent's summary is accurate only in that it reports that "criminal" prosecution of states were not envisaged when Article IX was adopted. This Court has never been charged with determining criminal responsibility, but it most certainly was intended to determine the responsibility of a state for violations of Articles I, II and

III. In giving the impression that the effort to establish such litigable state responsibility had failed, the Respondent egregiously misleads the Court.

34. That the Belgian-British amendment which became Article IX of the Convention *succeeded* in the Sixth Committee is beyond dispute, except by the Respondent. The adoption of Article IX created a competence which, in the words of the Belgian sponsor, "could not, of course, be extended to the penal sphere (...)." [Memorial, para. 5.3.2.3.]. The majority who voted for Article IX's concept of "responsibility of a state" did so in the keen and unchallenged understanding expressed by M. Chaumont, the French representative, that France supported "the principle of the international responsibility of States as long as it was a matter of civil, and not criminal, responsibility." [*ibid.*]. Sir Gerald Fitzmaurice stated with equal clarity that

> "the responsibility envisaged by the joint Belgian and United Kingdom amendment was the international responsibility of States following a violation of the Convention. That was civil responsibility, not criminal responsibility." [*ibid.*].

35. All this has already been clearly stated in Applicant's Memorial [pp. 210-211, paras. 5.3.2.2-5.3.2.4]. For the Federal Republic of Yugoslavia in its Counter-Memorial to pretend it is producing new evidence to a contrary effect is egregious. For Respondent to represent this evidence as demonstrating the drafters' intent to absolve states of legal responsibility for genocide, and for Article III violations, is to state precisely the opposite of what is unmistakably clear on the face of both the *travaux* and the text of Article IX. By inserting the term "criminal" into their effort to be absolved of responsibility as a state, Respondent makes a point which is technically true but utterly irrelevant and uncontested - that Article IX does not envisage criminal trials of states before the ICJ.

36. What matters is that Respondent's conduct entails legal responsibility and its consequences, not whether the conduct is "criminal," a concept of murky significance when applied to states. As is stated in *Oppenheim*:

> "The legal consequences of state conduct being categorized as criminal in international law and giving rise to a special regime of international responsibility different from that applying to other situations involving state responsibility, and in particular the nature of the sanctions which may be taken against such conduct, are not clear. There is no tribunal with appropriate international criminal jurisdiction over states." [*Oppenheim's International Law*, ninth ed., vol. I, pt. 1, Sir R. Jennings and Sir A. Watts eds., p. 535].

However, although the legal consequences of characterizing some state responsibility as criminal is, perhaps, "not clear" the purpose of Respondent in trying to do so are perfectly clear. Respondent seeks to convince this Court that where there is an agreement on criminalizing certain conduct by individuals, there can have been no intent to impose other kinds of responsibility on states. Indeed, Respondent would have this Court believe that the imposition of criminal responsibility on individuals - or, more accurately, of a treaty imposing obligation on states to criminalize enumerated kinds of conduct - vitiates even an expressed intent to make states responsible for failing to carry out all the obligations enumerated in the Convention. To accept this specious *exclusio alterius* argument would profoundly undermine the law both of state and of individual responsibility.

37. Contrary to Respondent's argument that individual responsibility vitiates state responsibility, it is easy to demonstrate that many internationally-cognizable wrongs can be committed both by individuals and by states; and that whether responsibility attaches to persons only, or to states only, or to both persons and states is determined by reference to the text and, where necessary, the *travaux* of each relevant international instrument codifying and defining the delict. There are instruments which envisage only the responsibility of persons and characterize that responsibility as criminal and others which envisage the responsibility of states. The Genocide Convention does both. Its text imposes responsibility on states to criminalize the acts of persons under its control or authority and also imposes "civil" responsibility on states to carry out the obligations established by the Convention in Articles I, II and III.

5. The onus of proving intent to commit genocide does not invariably rest with the Applicant

38. Respondent seeks to "freeze" the list of the prohibited acts of genocide enumerated in Articles II and III of the Convention. It asks this Court to limit the definition of genocide to acts perpetrated by means actually in the contemplation of the drafting State Parties in 1948-49. Respondent states that it "denies any progressive development of the definition of genocide" [Counter-Memorial, p. 298, para. 4.2.1.1.] and reminds the Court that it "is obliged to adhere exclusively to the provisions contained in the (...) Convention." [*ibid.*].

39. Applicant has no difference with Respondent's assertion that the terms of the Convention govern this case. It disagrees, however, that these terms are unamendable

to interpretation in subsequent litigation or in construction placed on its terms by subsequent international instruments or institutions created for implementing the Convention. This point is developed in Applicant's *Memorial*, Section 5.5.1, pages 235ff. Applicant disagrees, for example, with Respondent's insistence that the

> "displacement of members of a group by force is not included in the acts prohibited under the Genocide Convention." [*ibid.*, p. 306, para. 4.8.1.4.].

40. It is true that the Convention does not in so many words specifically prohibit intentional racial or ethnic purification of a land by the systematic driving out of hundreds of thousands of victims whose continued presence is deemed undesirable by the perpetrators. From this, Respondent argues that driving people from their homes

> "is not an element of the definition of genocide." [*ibid.*, p. 306, para. 4.8.1.3.].

But the Convention's failure to recite every possible means for destroying a people does not immunize those means not specifically enumerated. Articles II and III also fail to list rape, and the systematic destruction of places of worship, history and culture, as also many other innovative ways in which a plan of genocide can be carried out. This does not preclude such innovative diabolicisms from being prohibited means to a clearly proscribed end. As the Genocide Convention is applied by duly authorized instrumentalities of international law to grizzly new emanations of the fiendish imagination, its "progressive development," alas, is inevitable. Oddly, Respondent seems to understand this, for the Counter-Memorial contains extensive sections purporting to adduce evidence of Applicant's committing "ethnic cleansing" [Counter-Memorial, pp. 993-1034, paras. 7.3.1.0.-7.3.25.0.] and "destruction of places of worship" [*ibid.*, pp. 1035-1078, Section 7.4.] as acts of genocide.

41. The plain meaning of Article II is that the listed acts constitute genocide. The plain meaning of Article III is that the listed acts constitute elements ancillary to genocide. Together, these describe the effects which states and persons may not seek to accomplish. Neither Article, however, attempts an exhaustive list of the *means* by which persons may be killed, caused serious bodily or mental harm, or subject to conditions of life calculated to destroy the group. For example, "killing members of the group" may be accomplished by shooting, torture, humiliation, starving or neglect of other basic needs. Inflicting "bodily or mental harm" may take the form of rape,

torture or other humiliation. The "conditions of life calculated to bring about the groups physical destruction" may take the form of machine-gunning refugees or of destroying the group's cultural and religious institutions and scattering its members all over a reluctant Europe where their communal life vanishes. The Convention properly leaves flexible the definition of means, subject to interpretation by courts responding to the evil of each time and place. This does not violate or amend, but puts into practice the agreed commitments assumed by states under the Convention.

42. There is no ambiguity in the text. If the intent and effect of acts or omissions is to destroy "in whole or in part" an identifiable national, ethnical, racial or religious group, then genocide is committed. Unfortunately, each instance of genocide will deploy its own nefarious means to achieve its aim. Fortunately, the Convention's language is not preclusive, so that it is capable of embracing within its general prohibition whatever means inhumanity is capable of devising. For a renegade political-military movement to despoil a nation, kill its civilians, pillage its religious and cultural institutions, imprison its people, and rape its women, all in a concerted, planned effort to end forever the vibrant presence and life of an old, established group defined by ethnicity and religion in its midst cannot be licensed by this Court on the spurious ground that the Convention did not foresee this precise, horrendous confluence of means to achieve the very ends it so specifically prohibits. In fact, "ethnic cleansing" *was* foreseen as a means of genocide by at least one of the drafters of the Genocide Convention, the one representing Yugoslavia. Mr. Bartos put it thus: "Genocide could be committed by forcing members of a group to abandon their homes." [3 UN GAOR, Pt. 1 (Sixth Cttee) at pp. 184-185 (82nd Mtg., 23 Oct. 1948)]. His views were shaped by the deliberate wartime policy of Germany, dispersing the Slav majority from certain areas to facilitate the establishing of new, German demographic "facts." These new "facts" were accomplished by violence and terror in which a part of the victimized group was killed, maimed, tortured and raped in order to effect the intended transfer of populations.

43. The *flexible* response of treaty instruments intended for the ages has been promoted by decisions of this Court. In the *Namibia (Legal Consequences)* Advisory Opinion [ICJ Reports 1971, p. 31] it concluded that a treaties

> "interpretation cannot remain unaffected by the subsequent development of the law. (...) Moreover, an international instrument has to be interpreted and applied within the entire legal system prevailing at the time of the interpretation."

44. In any event, the Applicant does not seek a novel construction of the terms of the Genocide Convention but, rather, their strict application to new ways diabolically devised to achieve the categories of acts specified in Articles II and III of the Convention. Thus, for example, the meaning of Article II(c) -- "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" -- must be understood to include the practice of Respondent in systematically driving a million Bosnians from their homes, many to distant exiles where their survival as a group is impossible. It must also be taken to include systematic destruction of a group's houses of worship and its cultural institutions. Similarly, while systematic rape may not have been in the minds of the drafters as the probabilistic means for achieving "measures intended to prevent births within the group" [Genocide Convention, art. II(d)], it would certainly qualify as a form of genocide once shown to have been practised systematically as a matter of deliberate policy.

45. As the ICJ pointed out in the *Aegean Sea Continental Shelf Case* [ICJ Reports 1978, p. 3], the meaning of an expression in a treaty is presumed to be

> "intended to follow the evolution of the law and to correspond with the meaning attached to the expression by the law in force at any given time." [*ibid.*, p. 32, para. 77].

An example cited by this Court is the evolution of a term such as "domestic jurisdiction" employed by instruments, including the United Nations Charter [*ibid.*]. Other tribunals have similarly concluded that terms in international agreements must be given the meaning they have at the time a dispute has arisen. Thus, in *Husserl v. Swiss Air Transport Co. Ltd.* [(1972) ILR 60, pp. 442, 447] the term "accident" in a 1929 treaty was held to cover the modern phenomenon of hijacking [see also *The Netherlands (PTT) and the Post Office (London) v. Nedlloyd* (1977), ILR 74, p. 212].

46. In his dissenting opinion in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment* [ICJ Reports 1995, p. 6 at 25], Judge Schwebel points out - citing Sir Hersch Lauterpacht, Lord McNair and Sir Humphrey Waldock (as Special Rapporteur of the International Law Commission's Third Report on the Law of Treaties) - that the "paramount" or primary object in treaty interpretation is to give effect to the intent of the parties. The intent of the parties in concluding the Genocide Convention was to prevent for

all time the destruction "in whole or in part of a national, ethnical, racial or religious group, as such (...)" [Genocide Convention, Art. II], not merely to prohibit the means (such as gas chambers, massive deportations, sterilizations) which had been employed at that specific time by the Third Reich. The parties' intent was to preempt whatever novel diabolical means a new demonic political force might in the future conceive, to pursue the same ends in a different temporal and political context. Such "progressive development" does not alter but, rather, implements the original intent of the drafters of the Convention and the ratifying parties.

47. That this Court accepts its role in carrying out such an intent is evident from its definition, in 1950, of genocide as a denial of a group's right to exist, "a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations." [*Reservations to the Convention on Genocide*, ICJ Reports 1951, p. 23]. This formulation was employed again, almost verbatim, in this Court's Order of 13 September 1993, page 348, paragraph 52, demonstrating the organic way in which the precise but commodious terms of a treaty achieve greater precision from precedent to precedent.

6. The obligations imposed on States by the Genocide Convention are not limited to those defined in Article II

48. Respondent asserts in its Counter-Memorial that the

> "prohibited acts are set forth in Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The enumeration of the prohibited acts is exhaustive in Article II of the Convention (...)." [*ibid.*, p. 299, para. 4.3.1.1.].

This statement of law is demonstrably false.

49. Respondent, in this context - although later contradicting itself [see Counter-Memorial, p. 304, para. 4.6.1.1.] - conveniently ignores the other prohibited acts enumerated in Articles I, III and IV. These include, in addition to genocide:

- Failure to prevent and to punish genocide;
- Conspiracy to commit genocide;
- Direct and public incitement to commit genocide;
- Attempt to commit genocide;
- Complicity in genocide.

50. Bosnia and Herzegovina bases its claim against the Federal Republic of Yugoslavia on each and all of these. The wrongs enumerated in Articles I, III and IV are just as actionable under Article IX as are allegations arising under Article II. Each provides a separate and sufficient basis for the claims made by Applicant.

51. This Court has already decided, in its disposition of the jurisdiction and admissibility phase of this case, that state responsibility for genocide includes responsibility for the acts enumerated in Article III [*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, 11 July 1996 (Judgment), p. 23, para. 32]. Article III thus constitutes as much a basis of the Court's jurisdiction in the determination of Respondent's responsibility as does Article II. Each part of both Articles stands on an equal footing as, at the *Merits* phase, this Court examines evidence of state responsibility for violations of the state responsibilities established by those provisions.

52. Respondent devotes an entire section [Counter-Memorial, p. 305, Section 4.7.] to the erroneous proposition that acts preparatory to genocide are not genocide. This assertion, in turn, rests on the previously noted erroneous proposition: that Article III of the Convention, much of which deals with such preparatory acts as "conspiracy," "incitement," and "complicity," is not a basis for establishing state responsibility. As demonstrated above and in Chapter 9 of this Reply, these Article III prohibitions clearly were intended to, and do, give rise to obligations in law. When acts in violation of these are committed by persons, they are "punishable" under the expressed terms of Article III. When committed by states they give rise to an action based on failure of "fulfilment of the present Convention, including (...) genocide *or any of the other acts enumerated in Article III* (...)" [Genocide Convention, Art. IX, emphasis added].

53. In addition, Applicant has invoked Article I, which obligates parties "to prevent and to punish" criminal violations of the prohibitions against genocide, and Article IV. The obligation of Respondent "to prevent and to punish" the commission of genocide constitutes another, third, treaty-based cause of action. Applicant has charged Respondent with failure to carry out its responsibility under Articles I and IV in preventing persons from engaging in acts enumerated under Article II and in punishing those who have committed such acts. This charge is further developed in Chapter 9 of this Reply.

54. These obligations to prevent and punish are not limited to nationals of the Federal Republic of Yugoslavia but, rather, are "not territorially limited by the Convention." [Judgment, 11 July 1996, p. 23, para. 31].

55. Applicant's claim, the factual bases of which are set out in the Memorial and in Parts II and III of this Reply, invokes Respondent's failures, both malfeasances and non-feasances -- in carrying out responsibilities under Articles I, II, III and IV of the Convention, and in failing to do so not only in the territory over which it exercises lawful jurisdiction but wherever it was in a position to exercise influence over those violating the Convention.

CHAPTER 3

EVIDENCE

1. The onus of proof

1. Respondent is correct in stating that intent to destroy a group is an essential element in the commission of genocide as defined by Article II of the Convention. Respondent is wrong, however, in the conclusions it draws from this.

2. While the action brought by a state party against another under Article IX does require the Court to make a finding of intent, the intent required to be proven is the intent to destroy in whole or in part a national, ethnical, racial or religious group as such. Such intent to destroy a group must be demonstrated on the balance of the evidence presented by the parties, both inculpating and exculpating -- the appropriate standard for any action based on treaty violation -- and not, as in a criminal trial, beyond a reasonable doubt.

3. Such legal concepts as "proof beyond a reasonable doubt" or the preclusion of reasonable inferences, have no part in these proceedings. This is not a criminal trial. The ICJ is not a criminal court. The actual, usual law of evidence pertinent to actions in this forum applies: not a hypothesized law of evidence applicable in some other court to a hypothetical criminal indictment. As Sir Gerald Fitzmaurice explained in proposing what became Article IX of the Convention, "the responsibility envisaged (...) was civil responsibility, not criminal responsibility" [6th Cttee, *op. cit.*, p. 440.]. The International Law Commission's *Fifth Report on State*

Responsibility (Ago, Rapporteur) takes this point, reiterating that the standard for fulfilling the duty of states to punish individuals who have committed various internationally-designated crimes is not to be extrapolated to "the 'special form' of international responsibility applicable to states" since "it would not be justifiable in any case to refer to a 'criminal' responsibility of a state" in instances where the feasances or non-feasances of the state are at issue [ILC, Fifth Report on State Responsibility, Doc. A/CN.4/291 and Add. 1 and 2, *Yearbook of the International Law Commission*, 1976, Vol. II, Pt. 1 (1977), p. 3, and p. 33, para. 101, and n. 154].

4. It is self-evident that states cannot be indicted, arrested, and sentenced to prison. A state, however, can be enjoined from acting unlawfully and can be ordered to make suitable restitution, pay damages, and other remedies applicable to a suit for breach of treaty or other violation of international responsibility that give rise to state liability.

5. That it was the latter remedies that were intended by the insertion of what became Article IX of the Convention is fully supported by the *travaux*. These make clear that an action under Article IX was not to be construed as a criminal action.

6. From this it follows as a matter of law that while Applicant must prove its case, it must do so in accordance with the usual rules of this Court. The Court is not barred from making reasonable deductions from the facts or requiring that explanations of demonstrated facts be provided by whichever party is best positioned to do so.

7. This does not mean that intent need not be proven. It does mean, however, that inferences as to intent may properly be drawn by this Court from patterns of facts and acts attributable to Respondent that can be said reasonably to raise a rebuttable presumption of deliberate intent. It does mean that such inferences, if drawn, in effect may shift the onus of proof, requiring the Respondent to provide a reasonable alternative theory that discharges that onus.

8. It is incorrect to deduce from the requirement that Applicant demonstrate Respondent's intent to violate the Convention that, in the words of the Counter-Memorial, "the existence of intent cannot be presumed, nor can the burden of proving that there was no genocidal intent be shifted to the defendant". [Counter-Memorial, p. 303, para. 4.4.1.9.]. Indeed, Respondent itself has stated, in its Counter-Memorial, that it is perfectly possible in law and practice "to prove that [intent] (...) existed on the part of the perpetrators of alleged acts" by reference "to objective

circumstances which would reveal the existence of the genocidal intent." [Counter-Memorial, p. 7, para. 1.1.3.3.]. We agree. The existence of genocidal intent may be deduced by this Court from "objective circumstances," of which it has been apprised. Proof of the destruction, torture and "cleansing" of a large number of persons of the same ethnic and religious group -- an "objective circumstance" -- is sufficient, especially when replicated on a national scale and over a protracted period, to permit an inference as to the *intentionality* informing these "circumstances". Once the objective factuality of such evidence has been adduced to the satisfaction of this Court, it is up to the Respondent to demonstrate that what appears to be a deliberate pattern directed at a specific people is not what it seems. As Judge Sir Cecil Hurst noted in his dissent in the Oscar Chinn case, "direct proof of intention is not usually forthcoming: the proof must in most cases consist of deductions from admitted or established facts. (...)" [*The Oscar Chinn Case*, P.C.I.J. Series A/B, No. 63 1934, p. 116.] The ICTFY has likewise taken the position that "intent can be inferred from circumstances". [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No IT 94-1-T, 7 May 1997, p. 262, para. 676].

9. Moreover, as Applicant demonstrates in Chapter 3 of this *Reply*, it is perfectly plausible that Respondent, at the time of the commission of demonstrated genocidal acts, may have had multiple intentions: the intent, for example, to visit revenge on non-Serbs for purported historical wrongs, the intent to clear territories of non-Serbs to facilitate the aim of a Greater Serbia, and the intent to destroy in whole or in part the Bosnian Muslim (and Croat) populations that had not been driven out of those areas. Thus, the intention to commit war crimes, or offenses against humanitarian law, in no way can be proof that the acts were not committed with genocidal intent. As long as the acts were committed deliberately, this Court may infer that their precise consequences in law were intended in the absence of convincing evidence to the contrary.

10. The Respondent's brief deals with questions of proof by requiring that Applicant demonstrate all elements of the case. This is incorrect. Whichever party seeks to rely on a fact is the one which bears the burden of proving it [*Nicaragua v. United States*, ICJ Reports 1984, p. 437, para. 101.]. Applicant has fully accepted its share of this burden, both in its *Memorial* and in this *Reply*. However, this does not help a Respondent which has utterly failed to answer the evidence adduced by Applicant. Applicant has presented the Court with information, statements and findings by various respected and impartial observers. The Respondent far from disproving these evidences of "objective circumstances", simply dismisses all the impartial observers

as unreliable. Among those thus deemed unreliable are the Security Council [Counter-Memorial, pp. 80-82, paras. 1.3.7.2 - 1.3.7.5.], the ICTFY [*ibid.* paras. 6.3.1 - 6.3.1.3.], the United Nations Commission on Human Rights and its Rapporteur [*ibid.* pp. 91-95, paras. 1.3.9.1 - 1.3.10.6.], the United Nations General Assembly [*ibid.* pp. 90-91, para. 1.3.8.1.], the Human Rights Committee [*ibid.* pp 96-97, paras. 1.3.12.1 - 1.3.12.2.] and the Committee on the Elimination of Racial Discrimination [*ibid.* p. 97, para. 1.3.12.2.].

11. While the facts determined by these respected international organs, institutions and investigators may, indeed, be fallible, they are an excellent source of evidence due to their access to sources, resources, experience, expertness and neutrality. When the independent determinations of key facts by all these reputable sources are largely congruent and synergistic - such as, for example, their unanimous conclusion regarding the continuing role of the Federal Republic of Yugoslavia in the activities of forces of the "Republika Srpska" after May 19, 1992 - the weight of this evidence cannot be neutralized by the Respondent simply questioning the veracity of the sources. Respondent must put on the scales something of equal or greater weight. This it has utterly failed to do.

12. In an international litigation, the onus of proof normally resting on the Applicant is further subject to sensible rules regarding access to evidence. Respondent, in relying upon the Court's statement in the *Nicaragua* case that "it is the litigant seeking to establish a fact who bears the burden of proving it (...)" [quoted and cited in Counter-Memorial, p. 346, para. 6.2.1.14.], fails to note that this remark was accompanied by an important caveat, one deleted in Respondent's quotation, that "the Court has in the past recognized and made allowance" for a "situation (...) in which evidence of fact may be difficult to come by (...)" [*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 1984, p. 392 at 437]. To this end, the ICJ in *Nicaragua* cites the *Corfu Channel* and *Teheran Hostages* cases. Also relevant is the *Temple of Preah Vihear* case, in which the ICJ held that, as regards various claims put forward by the parties, the "burden of proof in respect of these will of course lie on the party asserting or putting them forward". [*Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, ICJ Reports 1962, p. 16]. The *Corfu* and *Hostages* cases, too, are important instances of judicial reasoning concerning the balance of convenience in the production of evidence, yet Respondent dismisses *Corfu* as "completely inapplicable (...)". This inapplicability, Respondent

claims, accrues from the fact that the alleged genocidal acts in the present case "were not committed in the territory of Yugoslavia, or in a territory controlled by Yugoslavia in any way whatsoever". [Counter-Memorial, p. 346, para. 6.2.1.15.].

13. It will be for this Court to decide whether the territory, within which were committed the acts alleged by Applicant, was "in a territory controlled by Yugoslavia in any way whatsoever". If the acts were ones that occurred in territory over or in which Yugoslav authorities exercised a measure of *de facto* control, then - even the Federal Republic of Yugoslavia would seem to have conceded - the relevant aspect of the law of evidence set out in the *Corfu Channel* case would apply; and it would be for the Republic of Yugoslavia to produce evidence because its access to such evidence (whether inculpating or exculpating) would have been much greater than that of the Applicant.

14. It is important, in this connection, to bear in mind that the *Nicaragua* case's formulation regarding burden of proof to situations "in which evidence of facts may be difficult to come by (...)." [*Nicaragua*, *ibid.* p. 437, para. 101] did not limit itself to situations of actual adverse territorial possession. The activities of United States of America-trained *Contras* in Nicaragua, certainly, did not arise - to use the Respondent's formulation - "in the territory of the U.S. or in a territory controlled by the U.S. in any way whatsoever." [Counter-Memorial, p. 346, para. 6.2.1.15.]. Obviously, what the Court meant was that it construed that part of the *Corfu* decision pertaining to "evidence of facts (...) difficult to come by" as generally applicable to any case in which, for any reason whatsoever, one party is in a better position than the other to provide relevant evidence. In any such circumstance it is that party which must assume responsibility for aiding the Court to receive and weigh such evidence.

15. In this connection it is once again important to bear in mind that Applicant is not prosecuting a case involving individual criminal responsibility, and that the usual rules of evidence applicable to litigation between states apply here [a point fully developed in the Applicant's Memorial, Chapter 5.3, at pp. 208ff]. Thus, the applicable rule pertaining to burden of proof is the one correctly summarized by Sandifer:

> "The broad basic rule of burden of proof adopted, in general, by international tribunals resembles the civil law rule and may be simply stated: that the burden of proof rests upon him who asserts the affirmative of a proposition that if not substantiated will result in a decision adverse to his contention. This burden may rest on the defendant, if there be a defendant, equally with the

> plaintiff, as the former may incur the burden of substantiating any proposition he asserts in answer to the allegations of the plaintiff." [Durward Sandifer, *Evidence Before International Tribunals*, rev. ed., 1975, p. 127].

16. Thus, for example, the Court of Arbitration in the *Lighthouse Arbitration (France and Greece)* held that the burden of proof rested with the defendant Government insofar as the relevant information was particularly within its control. [Claim No. 6, 24 July 1956, 23 Int'l L. Reports 1956, pp. 677-78. *See also* 22 Int'l L. Reports 1955, pp. 966, 972.]. As the International Law Commission's *Yearbook* notes,

> "Proof (...) constitutes a burden non-compliance with which may be automatically penalized by the loss of the suit. The adage *actori incumbit probatio* means that the burden of proof rests not only on the claimant but also on the party adducing a fact of any kind. The burden is distributed between the two parties." [Scelle, *Report on Arbitral Procedure*, 2 Y.B. Int'l L. Comm. 1958, p. 133; UN Doc. A/CN.4/18, at 51].

17. It would also apply where incontrovertible facts "speak for themselves" (*res ipsa loquitur*). In such circumstances, the party *against* whose interest the facts "speak" must take the initiative, if possible, to contradict that which is plainly spoken by those facts: for example, by producing evidence clearly contradicting the demonstrated facts or by presenting them "in a new light". Thus, Applicant contends that it is not necessary for it to prove the state of mind or animus of persons committing rape or sexual assault when such acts constitute instances of a widespread and visible pattern. In such instances, the existence of a genocidal intent can be inferred from the circumstances. Absent such logical inferences, genocide could be demonstrated in law only in the most exceptional circumstances. It must be remembered, however, that the effect of such an inference is not to *prove* that which is logically inferable but to do so only where those committing rape have no explanation capable of rebutting the inferences drawn from the prevalence of raping, the pattern of commission, and the ethnic homogeneity of the perpetrators on the one hand and of the victims on the other.

18. The Applicant wants to make it clear that motives are very different from intent, and that whatever the motives behind the intent, what is important in order to prove genocide is the existence of the intent to destroy the group in whole or in part. The two being quite distinct, it is irrelevant, in the Applicant's view, to try to "prove" as does the Respondent, that there has been no intent to destroy the group, because the motive of the acts of destruction committed is "revenge". In fact, if one reads with attention the Counter-Memorial, the true signification of this position of the

Yugoslav Government comes to light. The idea underlying the defense of the Respondent could be summarized in the following manner: there is no intent to destroy the group, because there is an intention to inflict revenge for former acts of violence suffered by the Serb group, either from the Ustašas or, further back in history, from the "Turks".

19. In Respondent's Counter-Memorial, the word "revenge" is extensively used. [Counter-Memorial, p. 8, paras. 1.1.3.6 and 1.1.3.9.]. The Respondent denies any intent to destroy the Muslim group, suggesting instead that the real intent was "only" a desire to get revenge for acts committed during World War I or World War II, by the Ustašas. For example, the Respondent states in refutation of the charge of genocide at Srebenica that "The genocide committed in the Commune of Srebenica in World War One halved the Serb population. The same crime was repeated in World War Two". [Counter-Memorial, 23 July 1997, p. 44, para. 1.3.2.26.]. In another place, Prijedor, the same type of reasoning seems to be suggested. According to the Respondent,

> "At the beginning of April 1992, the Muslims seized power in the commune administration and other important departments in Prijedor. The president of the commune was the son of a member of the District Ustasha Committee, who in 1941 ordered an horrendous massacre of over 3000 Serbs." [Counter-Memorial, 23 July 1997, p. 51, para. 1.3.2.48.].

Why is this "heritage" mentioned? To suggest that the Serbs' motive was revenge, not an intent to destroy the Muslim group.

20. Revenge as an exclusive motive is also explained by reference to the Turkish occupation. No doubt there is validity in the position summarized in the Opinion and Judgment of the Tadić case: "For Serbs the heroic but unsuccessful resistance of the Serb nation to Turkish invasion, culminating in their defeat in the battle of Kosovo, remains an emotional event". [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 21, para. 57]. But revenge as a motive, whatever the triggering mechanism, does not negate a presumption that systematic rape, killing and torture constitute *prima facie* evidence of an intent to commit genocide. It is no less genocide when these acts are fueled by a desire for revenge that emboldens ordinary people to seek to destroy, in whole or in part, an entire community with which, for centuries, those persons have communicated, cohabited, traded and even intermarried. As Judge Fuad has decided in his confirmation of the indictments of Karadžić and Mladić,

> "the policy of ethnic cleansing (...) presents in its ultimate manifestations, genocidal characteristics. Furthermore, in this case, the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, which is specific to genocide, may clearly be inferred from the gravity of the 'ethnic cleansing' practiced (...)" [ICTFY, Trial Chamber, Review of indictment, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-18-I, 16 Nov. 1995, p. 4].

In that decision, the Court was explicit in deciding that other motives than genocide, like the violation of other international laws besides that prohibiting genocide, can be found to arise out of the same facts and acts of commission or omission [*Ibid*].

21. The Applicant submits that there is no way this case can disentangle so-called "autonomous intent" from "retributive intent" nor is there any reason to do so. A desire for revenge does not exclude genocide. On the contrary, as acts of revenge are aimed at persons because of their membership in a group, the intent to maim, kill or rape ceases to be individual and becomes genocidal.

22. In sum: the Applicant accepts the onus of proving its case and has done so both in its *Memorial* and its *Reply*: by extensive production of documented and accessible fact. It insists however, that, once it has satisfied the onus of placing before the Court evidence, thus establishing breaches of Articles I, II, III and IV of the Convention and of the Respondent's direct and indirect involvement in those breaches, it may well be for the Respondent, depending on the circumstances, to adduce exculpatory evidence demonstrating that (1) the facts are untrue, or (2) that the breaches were not *intended* to have their natural and actual effect, which is to say the destruction or attempted destruction, "in whole or in part" of "a national, ethnically racial or religious group as such (...)". Any other rule of evidence would render the Genocide Convention useless except against the improbable offender who preserves a clear record of the intent with which was undertaken the destruction, or attempted destruction, of a population.

2. Sources, probity and weight of presented evidence

23. The Court, in weighing the welter of evidence laid before it, needs to contrast the probity and weight of the sources cited by Applicant to those cited by the Respondent. Applicant, in its *Memorial* of 15 April 1994, has presented to this Court findings of fact that demonstrate, or mandate inferences, of genocide committed in Bosnia and Herzegovina. These findings of fact have not been made by Applicant

but, rather, by the responsible agencies of the international system. The Court will surely wish to give these the full weight to which they are entitled: based, as they are, on sober evaluation of the evidence by the representative of states in the General Assembly of the United Nations, the Security Council, the United Nations Commission on Human Rights and its Subcommission, as well as by independent and informed sources such as the United Nations Secretary-General, the Special Rapporteur on Human Rights in the Former Yugoslavia, the United Nations Commission of Experts established by the Security Council, the expert Committees on Human Rights and on the Elimination of Racial Discrimination.

24. Overwhelmingly, these bodies and persons, responsible for findings of fact and of mixed fact and law, have accepted as proven the allegation that acts were committed in Bosnia and Herzegovina that were intended to destroy in whole or in part the Muslim population in the areas occupied by Serb forces. In several instances these acts were explicitly categorized as genocide. In others, that categorization was left, inescapably, to be deduced from the evidence accepted and reported by these authorized fact-finding organs, bodies and individuals. These findings are detailed in Applicant's Memorial [Secs. 3.3.2 - 3.3.8, pp. 111-125] and in this Reply [especially chapters 5, 6, 7, 8 and 11].

25. In addition, the ICTFY has had occasion to assess the facts and the perpetrators' motives in the context of adversarial proceedings in which the evidentiary standards were extremely high, as befits a criminal trial. The ICTFY has accepted, as true, facts and motives that are also the factual elements demonstrating violations of the Genocide Convention. This is so even when the facts and motives are used to establish the commission of "crimes against humanity" for the purposes of the ICTFY. For example, Judge Riad in his Review of the Indictment of Karadzic and Mladic [ICTFY, Trial Chamber, Review of the indictment, *The Prosecutor v. Radovan Karadžic & Ratko Mladić*, Case No. IT-95-18-I, 16 Nov. 1995] found that, *prima facie*, the facts presented in the indictment, disclose "above all, the commission of genocide" but "also discloses, *prima facie*, the commission of crimes against humanity, and violations of the laws or customs of war" [*Ibid.* p. 4].

26. Great weight should be accorded by this Court to such eminent sources' determinations of fact, of motive or intent, and of mixed law-and-fact. In the *Corfu Channel* case, the Court said of the report of experts sent to determine certain facts: "The Court cannot fail to give great weight to the opinion of the Experts who

examined the locality in a manner giving every guarantee of correct and impartial information" [ICJ Reports, 1949, p. 4, at p. 21].

27. The methodology used to prepare the Reports of the Human Rights Commission's Special Rapporteur (Mazowiecki) and those of the Security Council's Commission of Experts (Bassiouni) are fully documented in these Reports and deserve this Court's respect. Great care was taken to weigh incriminatory, exculpatory and indecisive evidence. Where the facts were incapable of being clearly established, the experts' Reports say so. For example, in United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. III), Annex VI, "Study of the Battle and Siege of Sarajevo", p. 824 n. 57, it is stated:

> "A UN investigation of the market shelling [Sarajevo] was inconclusive. A five-member investigative team found that (...) [t]he precise location of the weapon that fired the round could not be established."

28. Where, however, the experts, using evidence obtained by them, deem a matter to have been established, or where judges of the ICTFY so deem, such conclusions carry substantial weight. At the least, it is for a party seeking to deny the veracity of such findings to demonstrate their inaccuracy by adducing credible contradictory evidence.

29. This pertains not only to facts, but also to evidence leading to conclusions pertaining to intent and to mixed fact/law findings. Where these have been established by the Special Rapporteur (Mazowiecki), the Security Council's Commission of Experts, or the ICTFY, this Court is obligated in law to treat such findings as evidence to be accorded the greatest possible *gravitas*.

30. The ICTFY operates under rules of evidence that place the burden of proof on the prosecution and give to each defendant a presumption of innocence. [Statute of the ICTFY, UN Doc. S/25704, Art. 21(3); and SC RES. 827 (1993) of 25 May 1993]. Its procedures include presentation and cross-examination of witnesses. Both prosecuting and defending attorneys have been able to deploy investigators in the field. The Tribunal's findings of fact and law are thus subject to the most rigorous tests, and warrant, at least a presumption of validity.

31. The ICTFY operates under a mandate of the Security Council acting under Chapter VII of the United Nations Charter which makes its decisions binding on all State parties, subject only to the Tribunal's own appellate jurisdiction and procedures. [S/RES/808 (1993), 22 Feb. 1993 and S/RES/827 (1993), 25 May 1993]. It would thus be unthinkable to regard the ICTFY's determinations of fact, of motive or intent and of mixed fact and law with anything but the utmost gravity, thus placing a very heavy burden on any party challenging such determinations. As Judge Mohamed Shahabuddeen has observed, it

> "has to be remembered that the reference to 'judicial decisions' in Article 38, paragraph 1(d) [of the ICJ's Statute establishing the sources of its law], includes decisions of tribunals other than the International Court of Justice." [M. Shahabuddeen, *Precedents in the World Court*, 1996, p. 100, Annex 2].

As to determinations of law, of course, this Court is not, strictly speaking, bound by the decisions of any other international tribunal, let alone of experts appointed by the United Nations system; yet as Judge Shahabuddeen notes [*see especially ibid.* pp. 35-39], it would be within the juristic tradition of the ICJ to accord significant evidentiary status to such determinations.

32. The evidence adduced by the processes of the ICTFY may originate in various stages of its deliberations. It may assist this Court to indicate the most important of these stages. Thus, evidence may be adduced that derives from one or more of the following phases of a prosecution.

a. Prosecutor's indictments
[*Stat.* Art. 18; *Rules* 47A]

b. Review and confirmation of indictment (one Judge)
[*Stat.* Art. 19; *Rules* 470]

c. Chamber endorsement of indictment and issuance of arrest warrant (3 Judges) ("Rule 61 Hearings")
[*Stat.* Art. 29; *Rules* 61]

d. Chamber decisions on preliminary motions, such as protective measures, jurisdiction and teleconferencing (3 Judges)
[*Rules* 72, 73)

e. Interlocutory appeals (5 member Appeals Chamber)
[*Rules* 108]

f. Chamber decisions pertaining to evidence; e.g., order to investigate false or insufficient evidence
[*Rules* 91B, 98]

g. Chamber judgment on merits (3 judges)
[*Rules* 88]

h. Appeal of judgment to Appellate Chamber
[*Stat.* Art. 25; *Rules* 107-118]

i. Sentencing
[*Stat.* Art. 23; *Rules* 99-104]

j. Amicus Briefs
[*Rules* 74].

33. Each of these procedural phases of the Tribunal's prosecutorial process carries its own probative weight, to be determined by this Court for purposes of the case brought by Applicant. The Applicant can best serve this Court by clearly indicating the stage of ICTFY proceedings from which it derives the various items of evidence it presents for the ICJ's consideration.

34. Generally speaking, evidence derived from the proceedings before the ICTFY pertain to questions of fact: evidence that genocide was committed; that there are ascertainable patterns of selective persecution directed to the Muslim population of Bosnia and Herzegovina; that there was an intent to destroy all or part of the Muslim population; that the JNA, and later the VJ, played a significant role in the wrongs committed in Bosnia and Herzegovina and the Federal Republic of Yugoslavia against its Muslim population; that paramilitary troops and special police forces deployed from the Federal Republic of Yugoslavia committed atrocities in conjunction with the JNA and VJ.

35. In respect of these and other questions of fact, or mixed fact and law, this Court will wish to give the most significant weight to determinations made by a Chamber or an

Appellate Chamber, supported by the judges' reasoning and evaluation of evidence presented, rebutted and weighed in open adversarial process.

36. Careful consideration should also be given to other stages of ICTFY proceedings, in particular to the prosecutor's indictments when confirmed by a judge of the Tribunal, the review of indictments, when reasons are set out by the confirming judge, and to Rule 61 decisions by a Chamber.

37. *Indictments* are relevant as evidence, as they contain the allegations of fact that the Prosecutor has determined to be of sufficient probity to warrant an arrest and which the Prosecutor believes can be proven beyond a reasonable doubt at a subsequent criminal trial. While an indictment is not by itself final proof of that which is alleged, it is evidence of what the Prosecutor, a senior official of the Court and impartial procurer of evidence, believes is capable of being demonstrated. When confirmed by a judge of the Tribunal it becomes, in effect prima facie evidence: a statement of the case against the defendant [see, para. 39, *below*].

38. This Court is asked to note that the ICTFY indictments, taken together, establish an evidentiary pattern, typically asserting that in

> "each paragraph charging crimes against humanity (...) the alleged acts or omissions were part of a widespread or large-scale or systematic attack against a civilian population, specifically the Muslim and Croat population (...)" [ICTFY, Indictment 3, *Tadić and Borovnica*, 1 Sept. 1995, para. 3.7].

Indictment 12 [ICTFY, Indictment 12, *Karadžić and Mladić* ("Srebrenica"), 16 Nov. 1995, para. 14] is also significant because it asserts the commission of genocide and the supporting role of the JNA. [*Ibid.* para. 39]. That the indictment was confirmed by a judge of the Tribunal is evident from its publication [See para. 39, *below*].

39. *Review and confirmation of an indictment*, is a decision made by a single Judge of the ICTFY to establish that there is "*prima facie*" evidence to support the indictment. This may be directly relevant to Applicant's case. Thus, in confirming one indictment [ICTFY, Trial Chamber, Review of the indictment, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-18-I, 16 Nov. 1995], Judge Fouad Riad confirmed "that the facts of the case disclose, above all, the commission of genocide" and, moreover, "that not only Bosnian Serb soldiers, but also soldiers from the Federal Republic of Yugoslavia (Serbia-Montenegro) were present during the take-over of Srebrenica." [*Ibid.* at 3-4.]. Such a determination by a Judge of the

Tribunal regarding a mixed question of law and fact and a key issue of fact directly relevant to Applicant's case is of significant probative value in demonstrating an identical issue raised in the present case.

40. *Rule 61 decisions* are made by a 3-Judge Chamber of the ICTFY, on presentation of further evidence and after hearings in cases where the indicted defendant has not been surrendered by the state to which the first indictment is directed. This second confirmation of the indictment by such a Chamber leads to the issuance of an international arrest warrant. The procedure has considerable similarity to a trial. It involves a full examination, before the Judges, of the prosecution's case. Findings thus made are of substantial evidentiary significance, for they demonstrate that the Tribunal is convinced "that there are reasonable grounds for believing that the accused has committed the crimes" alleged by the prosecution [Rule 61], a determination supported by extensive findings of fact. To reach such a conclusion, the Tribunal conducts its proceedings in open court and witnesses may be called. Once the conclusion is reached, it assumes great solemnity in the international system. And any state's failure to carry out the ensuing global arrest warrant carries the potential for Security Council enforcement [Rule 61C]. These findings of the Tribunal are of evidentiary significance for Applicant's case and are presented as evidence of fact to which significant weight should be accorded by this Court. For example, in the *Nikolic* Rule 61 decision [ICTFY, Trial Chamber, Review of indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, Case. No. IT-94-2-R61, 20 Oct. 1995], the Chamber found that there was evidence of the deliberate singling out of persons for persecution on religious grounds [*ibid.* paras. 21, 27], a finding corroborative of violation of the Genocide Convention. The Chamber also accepted the probity of evidence of the involvement of the JNA and Belgrade [*ibid.* paras. 27, 30] a finding corroborating other evidence of responsibility of the Federal Republic of Yugoslavia for acts constituting violations of the Genocide Convention. There are also factual findings concerning rape [*ibid.* para. 33], ethnic cleansing and genocide [*ibid.* para. 34] in this Rule 61 decision that are highly relevant to Applicant's case.

41. *The decisions on the merits by an ICTFY Chamber* may include findings that bear directly on Applicant's case. It is again important to recall that the findings are those of a tribunal specifically authorized to make such determinations under the Chapter 7 mandatory authority of the Security Council [Res. 808 of 22 Feb. 1993 and Res. 827 of 25 May 1993], and that its decisions are reached by an adversarial process

requiring proof beyond a reasonable doubt. The *Tadić* judgment thus affords evidence of the highest level of probity [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, 7 May 1997, Case No. IT-94-I-T.]. This decision deals extensively with the question of involvement of the Federal Republic of Yugoslavia and its JNA. [*Ibid.* paras. 84, 90, 92, 101, 103, 104-128, 137, 592-593, 600-601, 602]. Although the *Tadić* case deals with crimes against humanity, it makes findings both of fact and of fact-and-law that are directly relevant to the determination of genocide in the present case. This, the Tribunal examines and makes highly relevant determinations pertaining to the "intent to destroy in whole or in part" the Muslim and other groups in parts of Bosnia and Herzegovina occupied by Serb forces. [*Ibid.* paras 143-153, 155, 178.]. Its factual determinations regarding the prevalence and context of rape also bear directly on the present case. [*Ibid.* paras. 165, 175]. Each of these findings by the ICTFY bear directly on elements of the present genocide case. When cited by Applicant as findings of fact and of mixed fact and law, they are entitled to the status, if not of *res judicata*, then certainly of evidence demonstrating that which has been regarded as proven by the proceedings in that Tribunal.

42. That genocide was committed in Bosnia may also be determined by other, national, tribunals, before which an individual may be brought to stand trial under national, as well as international law. In chapter 6 of this *Reply* a German Court's decision is quoted and cited for a series of important decisions pertaining to the exact relationship between ethnic cleansing as practiced in Bosnia and genocide, as also for other matters. The ICJ will wish to give due weight, as usual, to such relevant national jurisprudence.

43. Applicant has also had recourse to other sources of evidence, but relies on these only as being of secondary or supporting probity. Included in this secondary category of evidence are reports by print, visual and audio media, reports of non-governmental organizations, and statements by witnesses taken and transmitted to United Nations organs or agencies by governments, media, and non-governmental organizations. In this category, as well, are sundry writings in books by individuals. This evidence is cited and analyzed throughout this Reply. Applicant has used caution in presenting this sort of evidence, emphasizing not the probity of any one source, but the cumulative weight of so much that is mutually corroborative. It is the frequency and commonality that marks reporting of key facts by such subsidiary sources, as well as the objectivity for which many of these sources are known, that gives to the facts they assert their probative weight. This is especially true when such secondary

sources also corroborate the findings of such primary sources of evidence as United Nations Experts, United Nations Rapporteur, and the ICTFY. Regarding the effect of such multiple and mutually-corroborative reports by media, the ICJ decision in *United States Diplomatic and Consular Staff in Teheran* is enlightening. It makes clear that the Court may take note of facts which "are, for the most part, matters of public knowledge which have received extensive coverage in the world press and in radio and television broadcasts (...)" [ICJ Reports 1980, p. 9, para. 12].

44. This Court has expressed itself as to such secondary sources in the *Nicaragua* case. Thus, "reports in press articles and (...) extracts from books" quite rightly must be treated "with great caution; even if they seem to meet high standards of objectivity (...)". Indeed, "the Court regards them not as evidence capable of proving facts, but as material which can nevertheless contribute, in some circumstances, to corroborating the existence of a fact, i.e. as illustrative material additional to other sources of evidence." [*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, p. 14 at 40, para. 62. Hereafter: *Nicaragua* case]. It is in this supporting role that such other evidence is presented by Applicant: to support findings made by authorized, official finders of fact and law in the United Nations system. It is understood that the Court must weigh, item by item, the probity of such evidence and the extent, if any, of the self-interestedness of each source [*Nicaragua, ibid.* p. 41, para. 65. *See also* Judge Schwebel's cautionary critique of the application, in that case, of these evidentiary principles. *Ibid.* pp. 324-327, paras. 138-145].

45. Precisely for this reason, for example, Applicant has relied on witness-statement evidence originating with national governments that are not party to this dispute and which reported not in self-interest but in carrying out their responsibility to the Security Council. [The request of the Security Council to States to supply such information is found in RES. 771 of 13 Aug. 1992 and RES. 780 of 6 Oct. 1992. The Resolution (para. 5) "Calls upon States and, as appropriate, international humanitarian organizations to collate *substantiated* information in their possession or submitted to them relating to the violations of humanitarian law (...)" (Emphasis added)]. To the extent findings have been presented from newspapers and other media, Applicant has relied primarily on reports of media outside the jurisdiction of either party to the dispute, media known for their objectivity.

46. Such evidence may be useful not only to corroborate primary sources such as those authorized by the Security Council and other United Nations bodies, but may also demonstrate the extraordinary degree of consensus among informed and disinterested observers, experts and witnesses of various kinds as to certain facts and events that were so widely noted as to constitute a form of what, in the *Nicaragua* case, this Court has described as "public knowledge of a fact." [*Nicaragua*, *ibid.* p. 40, para. 63]. This Court has been sensitive to such public "notoriety". In the *Norwegian Fisheries* case, it accepted that, in some circumstances, it may rely on such "notoriety" of the facts [ICJ Reports 1951, pp. 138-39.] even without requiring other evidence. Bosnia and Herzegovina is surely one such circumstance, its images cruelly etched in everyone's mind. So blatant was the genocide and related acts there carried out that their "notoriety" can be attested by almost everyone within reach of a television or newspaper.

47. The evidence and sources presented by Respondent are entirely different from those presented by Applicant, both as to their credibility and gravamen. Much of Respondent's Counter-Memorial, in Part I and Part II, makes no serious effort to respond to Applicant's rendering of the facts. It instead, contends that this evidence does not demonstrate a violation of the Genocide Convention. This line of argument, far from denying the accuracy of Applicant's evidence, moves, *sub silencio*, to examine the legal consequences to be attributed to their validity. For example, at various points in its pleadings, Respondent makes the argument that its acts of "ethnic cleansing" should be seen as efforts that lead to a conclusion that there was no intent to commit genocide: i.e. that the purpose of the acts constituting ethnic cleansing were intended not to destroy a people but to remove persons from harm's way. "Even if these allegations [of killings, etc.] are true" Respondent argues, "that proves that there was no genocidal intent". [Counter-Memorial, 23 July 1997, p. 8, para. 1.1.3.7.]. This defense, in one form or another is repeated on pp. 7-11, paras. 1.1.3.1 - 1.1.3.17.

48. The Court in time will no doubt rule on this argument's legal validity. However, it also has evidentiary aspects, ones examined by this Court in the *Nicaragua* case. There, the United States had invoked a justification of "collective self-defence". [*Nicaragua* case, *ibid.* pp. 44-45, para. 74]. The Court observed "that the normal purpose of an invocation of self-defence is to justify conduct, which would otherwise be wrongful. If advanced as a justification in itself, not coupled with a denial of the conduct alleged, it may well imply both an admission of that conduct, and of the wrongfulness of that conduct in the absence of the justification of self-defence".

[*Ibid*]. In the present case, the plea that ethnic cleansing does not constitute genocide, when not accompanied by the effective denial of the conduct alleged, "may well imply both an admission of that conduct, and the wrongfulness of that conduct" in the absence of a finding by this Court that ethnic cleansing, far from intending to destroy a people in whole or in part, is indeed justified, as Respondent proposes, as a humane way of getting persons out of harm's way.

49. The Court, in reading Respondent's Counter-Memorial, must also be struck not only by the extraordinary disparity of the facts alleged by the parties but, even more, by the disparity in the weight of the sources for the evidence adduced by each party. Respondent relies almost entirely on exculpatory evidence that is precisely of the kind this Court has stated must be approached with "great caution". Almost none of Respondent's sources are the officials or Commissions authorized by the United Nations specifically for the purpose of finding and reporting some of the very facts relevant to Applicant's claim.

50. When recourse is had by Respondent to the primary or principal sources, these are deployed as evidence in a way that can only be dismissed as ludicrous, but perhaps frighteningly indicative of Respondent's continuing state of mind. For example, in a rare reference to the Mazowiecki Report of the United Nations Special Rapporteur [UN Doc. A/47/666; S/24809 of 17 Nov. 1992], the Respondent cites its evidence of the execution of Muslim prisoners and the Rapporteur's observation that these murders may have been a reprisal for the death in combat of a local Serb combatant. But Respondent uses this evidence only to make the observation that: "If the execution was indeed carried out, it is obvious that it was motivated by a reprisal and not by being a member of an ethnic or religious group." [Counter-Memorial, p. 9, para. 1.1.3.10.]. *Obvious*? The Court will note that the Respondent, in every way best positioned to present evidence demonstrating that the executions reported by the Special Rapporteur never occurred, pointedly does not do so. Instead, Respondent argues that *if they occurred* they are evidence not of an intent to destroy in whole or in part the Muslim people of Bosnia and Herzegovina, but, rather, to avenge the death in combat of a Serb. Such an explanation, implying demented, anti-humane and grossly unlawful conduct by the Serb executioners, might be exculpatory of genocide if the authorities were able to demonstrate that the act was an isolated one and had led to immediate action by the authorities to punish or confine to psychiatric care the persons guilty of these acts. Unfortunately, the acts in question are not an isolated instance of persons run amok but, rather, as we have demonstrated [Parts II

and III of this *Reply*], part of a concerted, orchestrated pattern of conduct. Moreover, Respondent has produced not even a modicum of evidence to show that the perpetrators of these acts were arrested, punished or treated.

51. For purposes of discussing the probative weight of the evidence produced by Respondent's Counter-Memorial it is surely unnecessary to proceed item by tawdry item. Citing the Third and Fourth Reports on War Crimes in the Former Yugoslavia produced by the United States of America Government, Respondent quotes evidence produced by the United States of America Department of State of the killing of 50 Muslim men, women and children "allegedly in retaliation for the death of 12 Četniks who had been killed on the front". The Respondent does not deny this incident but, instead, dismisses it as follows: "Even if this allegation were true, it would exclude genocide because there was no genocidal intent." [Counter-Memorial, p. 9, para. 1.1.3.13.]. Respondent appears to believe that reprisal killings of civilians exclude the possibility of genocidal intent because the killers are "solely" engaged in random revenge murders. It does not appear to occur to Respondent that authorities not themselves engaged in genocide would have taken action to prevent or stop such acts, particularly as they became common practice, notoriously evident, throughout a region. Instead, Respondent asks the Court to accept that the mere formula used in the United States of America Report that the murders were perpetrated "allegedly in retaliation for the death of 12 Četniks who had been killed at the front" [*ibid.*] constitutes all the exculpation this Court needs or deserves.

52. Another United States of America Government's Report that the "Serbs machine-gunned to death about 200 newly arrived prisoners" in an incident at Keraterm concentration camp is dismissed by the Counter-Memorial with the remark that: "Even if this statement of the witness were true, it cannot prove the existence of an act of genocide because it is obvious that reprisal was in question." [Counter-Memorial, p. 10, para. 1.1.3.16.]. Reprisal for what? For "heavy casualties" sustained in fighting, it seems. But this is no answer at all to a charge of genocide. It may be the reason mad persons embark on genocide. It may establish why demented persons engage in genocide. It may confirm the intent to destroy in whole or in part an innocent population. It may be all of these, but it is not exculpatory evidence. On the contrary, it is an admission against Respondent's interest.

53. This and much more makes evident several propositions regarding the exculpatory evidence offered by the Respondent:

"(a) None of it is of primary weight, that is there is no exculpatory evidence to support Respondent's case in any Report by the United Nations Special Rapporteur, the Security Council's Commission of Experts, or the ICTFY's findings. On the contrary, there are mounds upon mounds of evidence of culpability.

(b) Respondent does not even now seem to understand what constitutes evidence of genocide. Evidence of the wanton killing of Muslim non-combatants, for example, is embraced, however conditionally, by the Counter-Memorial, with the caveat that such murderous, irrational, inhumane and unlawful killing sprees against a discrete group (Muslims) cannot be categorized as genocide so long as the killers label it "retaliation," "reprisal" or "revenge"." [*Counter-Memorial*, para. 1.1.3.21.].

54. The actual weight of exculpatory evidence produced by the Respondent in the *Counter-Memorial* of 23 July 1997 is altogether minuscule. Respondent has had recourse to only a few sources of minimal probity as to which "great caution" is surely warranted, the more so in view of the vast amount of evidence of more probative value to the contrary.

55. In Chapter I, Respondent's *Counter-Memorial* cites and annexes 9 evidentiary items that are self-serving statements by the Federal Republic of Yugoslavia Government or related instrumentalities [Counter-Memorial, Annexes 5, 41, 46, 49, 54, 55, 59, 62 and 70.] and 11 by the "Republika Srpska" or related instrumentalities [Counter-Memorial, Annexes 22, 23, 24, 25, 34, 40, 47, 52, 53, 53a, 69.], as well as 7 unsupported statements by interested witnesses. [Counter-Memorial, Annexes 21, 23, 42, 43, 44, 45, 91.]. The same Chapter I contains 13 items of evidence from various self-serving Serb media and sources. [Counter-Memorial, Annexes 11, 33, 35, 47a, 48, 57, 60, 65, 68, 76, 81, 84, 92.]. All of this evidence, offered not in support of serious, independent sources but as an alternative to sources of serious probity, should be treated "with great caution".

56. Chapter II deals with matters irrelevant to this litigation or already decided at the jurisdiction phase. Much effort is expended in trying to demonstrate that the "Republika Srpska" is in some sense recognized by the Applicant and by the international community as a "state". Not surprisingly, this chapter features more than sixty items, annexed as evidence, from Serb newspapers alone [Counter-Memorial, Annexes 99-104, 106-118, 120-123, 126, 142-144, 155, 157, 166, 167, 168, 169, 172, 211, 220-230, 232-235, 237-241, 243-244, 254-255, 265, 272, 277-279, 281.], as well as 20 otherwise unsupported statements by Serb (Federal Republic of Yugoslavia and "Republika Srpska") experts, judges and witnesses. [Counter-Memorial, Annexes 236, 246, 247, 248, 249, 250, 251, 251a, 251b, 251c,

251d, 251e, 252, 256, 257, 258, 260, 261, 266, 267.]. None of this evidence serves to confirm or elucidate evidence of greater probity; it stands alone, is self-serving, and must be treated with "great caution".

57. Chapter III of the Counter-Memorial deals with matters of great importance to this litigation, which, as to its substance, will be addressed in Part III of this Reply. In this Chapter, Respondent seeks to demonstrate that the Federal Republic of Yugoslavia was not involved in the acts of genocide, complicity or other violations alleged by Applicant. To support its exculpation, Respondent relies on 11 unilateral statements, decisions, reports and declarations by the Federal Republic of Yugoslavia Government or its instrumentalities [Counter-Memorial, Annexes 288, 290, 292, 310, 315, 316, 320, 321, 323, 325, 326.], 6 statements of witnesses and decisions reported by Federal Republic of Yugoslavia courts [Counter-Memorial, Annexes 298-300, 305, 329, 331.], and 17 items gleaned from Respondent's newspaper *Politika*. [Counter-Memorial, Annexes 289, 293-297, 303-304, 311-314, 319, 322a-b, 327]. In each instance the evidence is not corroborative of independent sources of greater probity, but is unsupported, self-serving and thus to be regarded with "great caution". This evidence, in sum, is essentially valueless in demonstrating the Respondent's crucial assertion that it was not involved in the activities constituting genocide.

58. Against such meager evidence must be weighed the evidence of culpability marshalled by Applicant throughout its Memorial and this Reply by recourse primarily to such sources as the United Nations Special Rapporteur, the Security Council's Commission of Experts, the ICTFY and supporting lesser sources of unimpeachable independence as well as of substantial probity. Although, in Part V of this *Reply*, Applicant will demonstrate the objective falsehood of certain of Respondent's allegations of fact, this Court should be alert to the Respondent's practice of seeking to establish facts and intent by recourse to nothing more than self-serving evidence produced by Respondent's own media or institutions of government or those of the "Republika Srpska"; evidence, moreover, that for the most part is not reproduced in a form this Court (or Applicant) can examine for the purpose of refutation.

CHAPTER 4

INTRODUCTION TO THE FACTS PRESENTED IN THIS REPLY

1. The context of the war

1. In its Memorial of 15 April 1994 Bosnia and Herzegovina endeavoured to provide the Court with factual information which would help to clarify the context of the central issue of this case, genocide committed against the non-Serb population of Bosnia and Herzegovina [Memorial, Chapter 2.3]. In this Reply Bosnia and Herzegovina will elaborate upon this factual information and, if necessary, the Applicant will address Respondent's response as submitted in its Counter-Memorial.

2. For the purposes of this Reply, the Applicant uses "Serb" whenever this is meant to refer to ethnicity; this does not have a geographic connotation. Whenever "Serbian" is used by the Applicant, this refers to Serbia proper. It should be noted that neither the Respondent, nor the Serb/Serbian leadership makes this distinction; they use these terms indiscriminately.

3. The Applicant has pointed out that the Greater Serbian ideology had been in the minds of many, even learned, Serbs for many years, and has demonstrated how these particular sentiments were used and exploited by the leadership in Belgrade. The Applicant has also shown the Court that the rhetoric of the Bosnian Serb leadership, i.e. Radovan Karadžić, went hand in hand with that of the Serbian leadership, i.e. President Milošević. "All Serbs in one State" was the theme on which numerous variations were produced.

4. The Respondent's reply to this seems to be that *"There is nothing criminal in this programme"* [Counter-Memorial para. 1.3.18.1.]. Of course, a political programme proposing one nation for one ethnic group cannot in and of itself be considered incitement to genocide, but such a political programme can easily be used as part of a political propaganda campaign supporting the idea of an ethnically pure State. This is exactly what happened in this case. The Respondent further acknowledges that, indeed, Slobodan Milošević defended the position that the Serb people wanted to live

in one State, but adds that this one State would be the former Yugoslavia [Counter-Memorial para. 1.3.18.5.]. However, this is not what Milošević said:

> "(...) we hold that each nation has the equal right to decide freely about its destiny. Such a right can be constrained solely by the same, equal right of other nations. As far as the Serb people are concerned, it wants to live in one State. Hence, division into several States which would separate the Serb people and force it to live in different sovereign States is, from our point of view, unacceptable, that is -let me specify- out of the question. The Serbian *nation* will live in one state and every nation wanting to live with the Serbian people in the same state on an equal basis is welcome. For us, confederation is not a state.
> Under the existing conditions, in our view, the only true solution is a modern, democratic federation. We, of course, agree that we should discuss the functions of such a state, i.e. such a federation. But, as far as the Serbian *nation* is concerned, a solution according to which it would be separated into several states, cannot be discussed." [Tanjug 1939 gmt 15 January 1991, BBC Summary of World Broadcasts, EE/0972 B/13, [21], 17 January 1991, emphasis added, Annex 3; partly quoted in Memorial, para. 2.3.1.4 and in Counter-Memorial, *ibid.*].

This statement is clear in its conditionality: if others want to live in a separate State, then they have the right to do so, provided that the Serbs will effectively obtain the same equal right; anything other than that is "out of the question". This statement can only be interpreted as threatening that any proclamation of independence by any of the (then still existing) Republics of the former Yugoslavia would be answered by a claim for a Serb state for *the* Serb people. In this very same statement, Milošević first clarified that there is a distinct difference between the *republics* of the (now, former) Socialist Federal Republic of Yugoslavia (SFRY) and the Yugoslav *nations*:

> "(...) only Yugoslav *nations* can decide about the future of Yugoslavia, because Yugoslavia was created only by Yugoslavs and not by *republics*, which did not exist in either 1918 or 1943. *Administrative republican borders* cannot be simply proclaimed *state borders*, and they do not represent boundaries within which Yugoslav *nations* live." [Tanjug, *ibidem*, emphasis added].

Whenever, in this type of statement, mention is made of the Serb/Serbian *nation*, this refers to the Serb *people* in the former Yugoslavia (regardless of the republic in which they are living), not to the Serbian republic/state, i.e. not to Serbia proper. The Respondent also relies on the use of this particular language in the current proceedings: for example, in the counter-claim section of the Counter-Memorial, the Respondent accuses the Applicant of the deliberate killing of persons of "Serb *nationality*" [Counter-Memorial para. 7.1.].

5. Of course, the Memorandum of the Serbian Academy, which was mentioned in the Memorial [Section 2.3.1, paras. 2.3.1.3-2.3.1.4] and to which the Respondent refers

in its Counter-Memorial [pp. 105-108, para. 1.3.18.2.-1.3.18.8.] does not call directly for a genocidal war against non-Serbs in the former Yugoslavia. The Memorandum does something different. At the outset it seems to be a general and serious criticism of the (then) current political situation in the former Yugoslavia. But as it proceeds it turns into a long range of complaints about the misfortune that has come over the Serb people and about the extreme unfairness with which they have been treated throughout history, as well as under the (then) present Constitution:

> "The flaws which from the very beginning were present in this model have become increasingly evident. Not all the national groups were equal: *the Serbian nation, for instance, was not given the right to have its own state.*" [Memorandum, page 118 in Annex 92 to Counter-Memorial, emphasis added],

and

> "The attitude taken to Serbia's economic stagnation shows that the vindictive policy towards this republic has not lost any of its edge with the passing of time. On the contrary, encouraged by its own success, it has grown ever stronger, to the point of genocide." [Memorandum, page 125 in Annex 92 to Counter-Memorial],

and

> "The physical, political, legal and cultural genocide of the Serbian population in Kosovo and Metohija is a worse defeat than any experienced in the liberation wars waged by Serbia from the First Serbian Uprising in 1804 to the uprising of 1941." [Memorandum, page 128 in Annex 92 to Counter-Memorial],

and, about the Serbian population in Croatia,

> "(...) the Serbian population in Croatia is not just culturally cut off from their conationals in Serbia; ...The integrity of the Serbian nation and its culture throughout Yugoslavia presents itself as the most crucial question of its survival and progress." [Memorandum, page 131 in Annex 92 to Counter-Memorial],

and

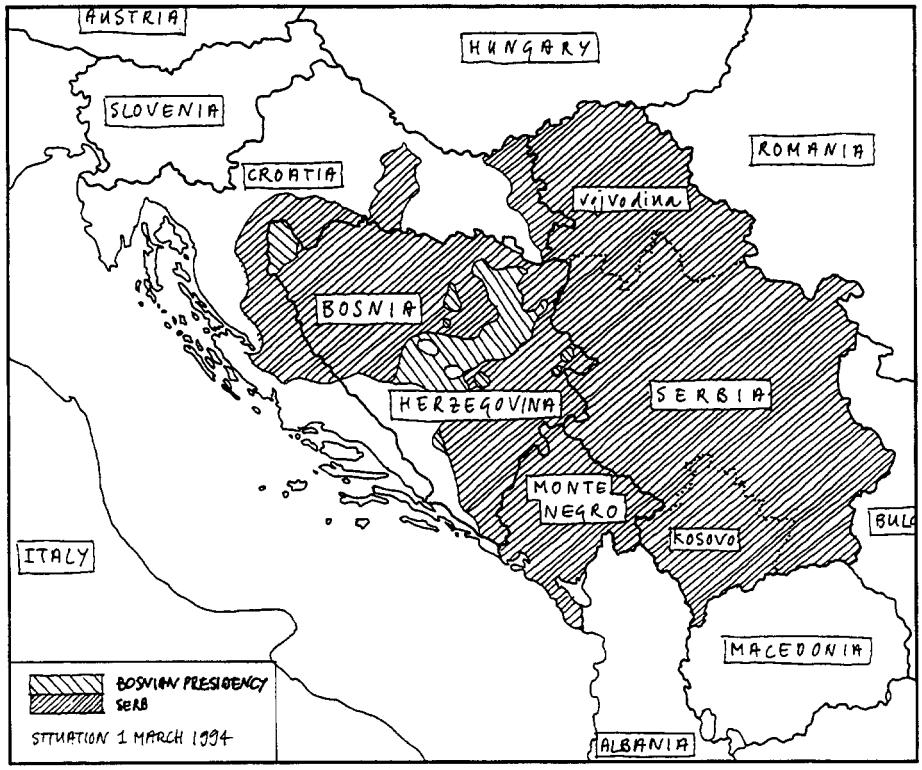
> "Except for the time under the Independent State of Croatia, the Serbs in Croatia have never before been as jeopardized as they are today. Solution of their national status is a question of overriding political importance. If solutions are not found, the consequences might well be disastrous, not only for Croatia, but for the whole of Yugoslavia" [Memorandum, page 133 in Annex 92 to Counter-Memorial],

and, about the two autonomous provinces within the borders of Serbia, Kosovo and Vojvodina,

> "The formally proclaimed equality of all the republics in the Constitution of the SFRY has been negated by the fact that the Republic of Serbia has been forced to hand over a large portion of its rights and prerogatives to the autonomous provinces, whose status has been regulated in detail by the federal constitution. Serbia must state openly that this arrangement was forced upon it, especially as regards the status of the provinces, in effect raised to that of republics, which regard themselves much more as a constituent unit of the federation than a part of the Republic of Serbia. On top of its failure to provide for a state for the Serbian nation, the Constitution of the SFRY also put insurmountable difficulties in the way of constituting such a state. It is imperative that this constitution be amended so as to satisfy Serbia's legitimate interests. The autonomous provinces should become genuinely integral parts of the Republic of Serbia, while receiving that degree of autonomy which does not disrupt the integrity of the Republic and which will be able to satisfy the general interests of the community at large." [Memorandum, page 139 in Annex 92 to Counter-Memorial].

6. The Memorandum thus appears to have given guidance and support to the Serb political leadership, which in the years following its publication did what the Memorandum called for. The first testing ground being the issue of the two autonomous provinces: in 1990 Serbia managed to effectively incorporate Kosovo and Vojvodina into its state structures [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 30, para. 84]. Serbia did so, by changing its Constitution in September 1990. This change was at the same time a breach of the Constitution of the SFRY. However, the Constitutional Court of Yugoslavia was unable to adjudicate this issue by lack of a *quorum* to do so: the Serbian Judges refused to take part in the sessions on this issue. Incidentally, the Applicant wishes to remark that precisely as this Reply is being drafted in March 1998, the non-Serb population of Kosovo is being oppressed by the Serbian leadership in Belgrade in ways similar, albeit on a much smaller scale, to those used to victimize the non-Serb population of Bosnia and Herzegovina. This similarity led the U.S. Secretary of State, Madeleine Albright to observe:

> "We are not going to stand by and watch the Serbian authorities do in Kosovo what they can no longer get away with doing in Bosnia." [Steven Erlanger, "Albright Warns Serbs on Kosovo Violence", *New York Times*, 13 March 1998, Annex 4].



7. Soon after this incorporation of Kosovo and Vojvodina had been accomplished, the other appeal of the Memorandum got the full attention of the Serbian leadership:

> "The establishment of the Serbian people's complete national and cultural integrity, regardless of which republic or province they might be living in, is their historical and democratic right." [Memorandum, page 138 in Annex 92 to Counter-Memorial].

There can be no reasonable doubt that the message of the Memorandum is 'All Serbs in one State", nor can there be any doubt that the Serb political leadership used this very language in the pursuit of an ethnically pure Serb State. The events on the territory of Bosnia and Herzegovina provide dramatic proof of this agenda. Radovan Karadžić himself confirmed the centrality of this ideology when he stated on 22 October 1993, in the middle of the war, that:

> "Our objective is to unite in one state to have one capital - Belgrade - one assembly, one government and one President. We are not interested in any princedoms. I think that we the Serbs, will unite even before we expect. It seems that a global solution must lead to the creation and

> recognition of a large Serb state. (...) This war will be brought to an end either at the conference table, like all other wars are, or in a long, silent process of bleeding, in which the Serbs will have to use weapons to fortify the borders they are currently holding." [Tony Barber, The Independent, European News Page 13, 22 October 1993, Annex 5].

The same sort of language was used by General Mladić, quoted in April 1994 as saying:

> "The Serbian borders are where Serbian blood has been shed, the blood of each and every Serbian soldier and officer, not just in this war but in previous ones. This war will be over when the Muslems hand over their weapons to me." [Tony Barber, The Independent, European News Page 9, 19 April 1994, Annex 6].

8. These statements made by Karadžić and Mladić are entirely in line with a propaganda campaign which seems to have started on 28 June 1989 at the battlefield site of Gazimestan, outside the capital of Kosovo, during the celebration of the 600th anniversary of the battle of Kosovo [see also below para. 88 of the Tadić Judgment]. There, President Milošević of Serbia made a public speech in front of several hundred thousand Serbs in which he declared:

> "Six centuries, we are again engaged in battles and quarrels. They are not armed battles, but this cannot be excluded yet." [M. Glenny, *The Fall of Yugoslavia*, p. 35, Annex 7; T. Judah, *The Serbs*, p. 164, Annex 8].

On 11 March 1991, during a speech before the Serbian Assembly which was quoted by Belgrade home service, Milošević warned of the threats to the Serbs:

> "Serbia and the Serbian people are confronted with one of the worst evils in their history - the provocation of disunity and mutual conflicts. This evil -which has so many times in the past caused damage, victims, and suffering to our people as well as weakened their strength and broken their unity- benefited only those people who wanted to take our freedom and dignity away from us, to subjugate us and subordinate us to their interests." [Belgrade home service 1711 gmt 11 March 1991, BBC Summary of Worldbroadcasts, EE/1019 B/12 [31], 13 March 1991, Annex 9].

A few days later, again in a speech before the Serbian Assembly, he repeated the presumed necessity for a defence strategy, linking it to the Greater Serbia rhetoric:

> "I have asked the Serbian government to carry out all preparations for the formation of additional forces whose volume and strength would guarantee the protection of the interest of Serbia and the Serbian people (...). The citizens of Serbia can be sure that the Republic of Serbia is capable of ensuring the protection of its own interests and those of all its citizens and the entire Serbian people. The Republic of Serbia, the citizens of Serbia and the Serbian people will resist any act of

> dismantling our homeland." [Tanjug 1637 gmt 16 March 1991, BBC Summary of Worldbroadcasts, EE/1023 B/14 [30], 18 March 1991, Annex 10].

In April 1991, again before the Assembly, Milosević said that the reserve police were mobilised in order to

> "(...) enable us in every case to be secure, and to be able to defend the interests of our Republic, and, by God, the interests of the Serbian people outside Serbia." [S. Milosević, "Bogami cemo da se tucemo" (By God, We will Fight), NIN, 12 April 1991, p. 40; from the Stenographic Record of the Serbian Parliament, Annex 11].

In December 1991 he made a speech which was reported on Belgrade Radio, in which he referred to:

> "(...) a struggle with the forces that are destroying both Serbia and Yugoslavia, forces that are reviving a world that died a long time ago. These forces are dark (...)." [Radio Belgrade 1400 gmt 10 Dec. 1991, BBC Summary of Worldbroadcasts, EE/1253 C1/1 [1], 12 December 1991, Annex 12].

9. This same message was repeated frequently by high ranking officers of the JNA [see, for example, the Tadić Judgment quoted below, para. 90]. On 21 February 1992, Lt-Gen Negovanovic of the JNA is reported as having said that the JNA would not withdraw from Bosnia and would not allow the Serbian people to have an "Islamic state" forced upon them [Tanjug 1022 gmt 21 February 1992, BBC Summary of Worldbroadcasts, EE/1312 C1/9 [20], 23 February 1992, Annex 13]. And on 9 April 1992, the Acting Chief of the General Staff of the SFRY, General Života Panić told a meeting of reserve JNA officers in Belgrade that the task of the JNA was "to prevent genocide against any nation, particularly the Serbs, because they are the most threatened.". He continued to say that in Bosnia and Herzegovina "we are closer to war than to peace" and added that it was an irrefutable fact that "there is a Croatian-Muslim plot and a coalition against the Serbs." [Tanjug 1921 gmt 7 Apr. 1992, *BBC Summary of World Broadcasts*, EE/1351 C1/3 [5], 9 April 1992, Annex 14].

10. These types of statements began to be delivered in 1989 (if not earlier) and continued throughout 1991 and the beginning of 1992, at a time when there was no armed conflict in Bosnia and Herzegovina. At that point, the Bosnian Army did not

exist. On the contrary, in 1991 the Territorial Defence of Bosnia and Herzegovina complied with a JNA order to hand over all weapons to the, then, national army, i.e. the JNA [see below Chapter 8, Section 2].

11. In truth, while delivering these statements, the Serbian leadership in Belgrade was getting prepared for war. The Vice-President of the former SFRY, Borisav Jović, reports in his diary, published in 1995 in Belgrade, on a meeting of the so-called "coordination" group of the Republic of Serbia, which, according to his report, took place on 26 March 1990:

> "Our assessment is that a process of dissolution of Yugoslavia, resembling the one of the SKJ (Yugoslav Communist Party) is underway. It seems to us as irrepressible. Serbia will conduct an honest policy of maintaining the federal Yugoslavia, but it will also get prepared to live without Yugoslavia. In case of possible dissolution of the country, we count on unity with Montenegro. We will not beg Macedonia. Should they appeal, they will first have to apologise for the sins against the victims of the First World War (whom they consider aggressors). Our aim is to avoid bloodshed, to establish such a border inside of which there will be no war. Outside the border war is inevitable, because Bosnia and Herzegovina will not be able to survive as a state, and it is hard to imagine a fight over that territory without blood.
> Serbia will not accept the confederation. (...)
> Anyhow, we assess that Yugoslavia will probably be dissolved by a presumable technology: republics one by one (starting with Slovenia) will pass new constitutions, which will be contrary to the existing constitution of Yugoslavia, and it will be impossible to reach an agreement on a new constitution of Yugoslavia. Thus, Yugoslavia will disappear, and the issue of confederation, which will never come to existence, will be raised, bringing about a conflict because the Serb people in Croatia and B-H will disagree with such national position (*separation from their homeland* and transformation into a national minority).
> Serbia decided to approach forthwith the elaboration of its new constitution which will be able to "cover" a new, independent Serb state. Fortunately, through constitutional amendments to the constitution of the SR Serbia of 28.02.1989, a new state competence of the SR Serbia over its entire territory was established. Serbia has to be prepared for the forthcoming developments imposed on it, without its will." [Borislav Jović, *Final Days of the SFRY: the Daily Diary of the period May 15, 1989 to July, 8 1992*, English translation, Belgrade 1995, p. 131-132, Annex 15].

It should be noted that this meeting of the Serbian leadership took place in March 1990 and that the events from 1991 onward unfolded just as described at this 1990 meeting.

12. The Serbian public statements, quoted above, must therefore be appreciated within the context of the Serbian assessment of the future of Yugoslavia. Apparently, at least from this March 1990 meeting onward, the Serbian leadership was working on a plan for this new Serb State. As the historian Noel Malcolm observes in his widely acclaimed book:

"The steps taken by Karadžić and his party - 'Autonomous Regions', the arming of the Serb population, minor local incidents, non-stop propaganda, the request for federal army 'protection', the Serb 'parliament' - matched exactly what had been done in Croatia. Few observers could doubt that a single plan was in operation. Any lingering uncertainties about the nature of the plan were dispelled at the congress of Milosević's Serbian Socialist Party at Pec on 9 October 1991. The vice-president of the party, the former dissident philosopher Mihailo Markovic, described very clearly in his speech to the congress the nature of the carve-up which he and his master were planning:

> 'In the new Yugoslav state there will be at least three federal units: Serbia, Montenegro and a united Bosnian and Knin region [i.e. a territory consisting of some of the Bosnian 'Serb Autonomous Regions' and the main Croatian one]. If the Bosnian Muslims wish to remain in the new Yugoslav state, they will be allowed to do so. If they try to secede, they must know that . . . the Bosnian Muslims' state will be encircled by Serbian territory.'

Commenting on this speech at the time [19 October 1991], I wrote: 'Mr Milosević's plan, then, is for a country which would be Yugoslavia in name, but greater Serbia in reality, with the option of a sort of enfeebled Muslim Bophutatswana in the middle.'" [Noel Malcolm, *Bosnia a Short History*, 1996, new updated edition, pp. 228-229, Annex 16].

13. Thus, while developing their plans for a Greater Serbia, the Serbian leadership prepared its population with the types of statements President Milošević frequently delivered, as demonstrated above. These statements constituted a pure hate campaign by senior officials of the SFRY government, targeted at the non-Serb population, i.e. the Croat and Muslim population, of the former Yugoslavia. Thus, the psychological groundwork was laid for an armed conflict which turned out to be the most atrocious war Europe has witnessed since World War II.
While this ongoing propaganda was being dispersed, military preparations were simultaneously being made, as will be shown elsewhere in this Reply [Chapter 8, Section 2]. In close concert with the propaganda and with this military planning, the Serb side prepared for a substantial change of civil and political structures.

14. Noel Malcolm was not alone in finding, as quoted above, that the forming of so-called "Autonomous Regions" was a crucial factor in this change of the civil and political structures; the ICTFY came to the same conclusion:

"97. The Greater Serbia theory was put into practice after the 1990 elections and before the beginning of the war. In April 1991 several communities joined a Serbian association of municipalities. These structures were formed in areas predominantly inhabited by Bosnian Serbs, generally by vote of the predominantly Bosnian Serb Local Assemblies. At first, this association was a form of economic and cultural cooperation without administrative power. However, separate police forces and separate Assemblies rapidly developed. In September 1991 it was announced that several Serb Autonomous Regions in Bosnia and Herzegovina had been proclaimed, including Krajina, Romanjija [sic] and Stara Herzegovina, with the aim of separating from the Republican government agencies in Sarajevo and creating a Greater Serbia.

98.Bosanski [sic] Krajina, as the Serb Autonomous Region of Krajina was initially called, consisted of the Banja Luka region and surrounding municipalities where the Serbs constituted a clear majority. Several of the municipalities that the SDS leadership had planned on joining the autonomous region, including Prijedor, did not in fact join it in 1991. This left Prijedor virtually isolated, surrounded by other municipalities which had joined the association.

99.In November 1991 the SDS sponsored, organized and conducted a plebiscite primarily for the Bosnian Serb population. Voters were given different ballots depending upon whether they were Serb or non-Serb. The difference between the two ballots was significant: for Bosnian Serbs, the ballot asked: "Are you in favour of the decision reached by the Assembly of the Serbian People in Bosnia and Herzegovina on 24 October 1991 whereby the Serbian people shall remain in the common State of Yugoslavia which would include Serbia, Montenegro, Serb Autonomous Region Krajina, Serb Autonomous Region Slavonija, Baranja, Western Srem along with all others willing to remain in such a State?" while the question for non-Serbs was: "Are you in favour of Bosnia and Herzegovina remaining a republic with equal status in a common State of Yugoslavia with all the other republics which also declare themselves willing to do so?" (Prosecution Exhibit 97). The great majority who did vote were Serbs; those Serbs who did not being branded as traitors. Most non-Serbs regarded the plebiscite as directed only to Serbs.

100.The outcome of the plebiscite purported to be 100 percent in favour. The SDS leadership used this outcome as a basis on which to develop the separate Serb political structure. The plebiscite was cited as justification for all subsequent moves such as the ultimate walk-out of the SDS representatives from the Bosnia and Herzegovina Assembly, the various negotiations conducted at the federal and international levels and the proclamation, on 9 January 1992, of the Republic of the Serbian People of Bosnia and Herzegovina. It was "used as a pretext, as an excuse, explanation, for everything that they did".

101.Also on the basis of the plebiscite, the SDS and military forces in each region including the JNA, paramilitary organizations, local TO units, and special police units, began to establish physical and political control over certain municipalities where it had not already gained control by virtue of the elections. In these regions, which included opština Prijedor, the SDS representatives in public office in some cases established parallel municipal governments and separate police forces. Physical control was asserted by positioning military units, tanks and heavy artillery around the municipalities and setting up checkpoints to control the movement of non-Serbs.

102.In March 1992 the Assembly of Serbian People of Bosnia and Herzegovina promulgated the Constitution of the Serb Republic of Bosnia and Herzegovina and proclaimed itself a distinct republic. This Assembly session was transmitted live on television, as were the final declarations. In the course of the session, Radoslav Brdanin, a member of the Serb Republic parliament, said: "At long last I have lived to see Bosnian Krajina become western Serbia"; and Radislav Vukic, President of the Municipal Committee of the SDS in Banja Luka, declared: "Now the Turks will shake with fear from us", being a derogatory reference to Bosnian Muslims." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 35-36, paras. 97-102].

The methods and the language used make it clear that from the very outset the Serbian aspirations were interlaced in territorial, political and ethnical terms, though all with a view toward achieving a single result.

15. After the military and political structures were lined up, an executive branch was formed under the name "Crisis Staffs". The ICTFY established how and why this was done:

> "103. Crisis Staffs were formed in the Serb Autonomous Regions to assume government functions and carry out general municipal management. Members of the Crisis Staffs included SDS leaders, the JNA Commander for the area, Serb police officials, and the Serb TO Commander. For example, Lieutenant-General Momir Talić, Commander of the 5th Corps (which became the 1st Krajina Corps), was a member of the Crisis Staff in Banja Luka ("ARK Crisis Staff"), thus demonstrating the relationship between the political and military branches of the Bosnian-Serb-run government. The ARK Crisis Staff, which had jurisdiction over opština Prijedor, was established in April or May 1992 as an organ of the Autonomous Region of Krajina, the statute of which provided for the creation of Crisis Staffs in the case of war or immediate danger of war. In early May, after the official decision on its establishment was taken by the Executive Council of Krajina, the ARK Crisis Staff took over all powers of the government and other agencies. It was the highest-level decision-maker in the Autonomous Region of Krajina and its decisions had to be implemented throughout the Autonomous Region of Krajina by means of municipal Crisis Staffs. The municipal Crisis Staffs had to report to the ARK Crisis Staff daily regarding the steps taken to implement the decisions of the Main Board located in Banja Luka." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 37, para. 103].

Thus the military, political, civil and executive structures were all put in place to serve the establishment of Greater Serbia.

16. In its Counter-Memorial, the Respondent rightly notes that not only the Applicant in this case, but also the Prosecutor before the ICTFY in the Tadić case, had pointed to the "Memorandum" as a relevant source for the Greater Serbia ideology. However, the Respondent then goes on to produce quotations from a witness statement delivered during the course of the Tadić criminal proceedings to, presumably, show that the Prosecutor's (and the Applicant's) assumption was not correct [Counter-Memorial para. 1.3.18.7-9.].
In doing so, the Respondent completely ignores the fact that on 7 May 1997 the Tadić Judgment was delivered and that the Trial Chamber in that Judgment accepted the Prosecutor's view on this issue in its entirety. Because of the apparent evidentiary value of this Judgment [see Chapter 3 of this Reply], the relevant section of the Judgment is reproduced here:

> "85. The concept of a Greater Serbia has a long history. It emerged at the forefront of political consciousness in close to its modern-day form as early as 150 years ago and gained momentum between the two World Wars. Kept in check during the years of Marshal Tito's rule, it became very active after his death. Greater Serbia involved two distinct aspects: first, the incorporation of the two autonomous provinces of Vojvodina and Kosovo into Serbia, already referred to; and

secondly, the extension of the enlarged Serbia, together with Montenegro, into those portions of Croatia and Bosnia and Herzegovina containing substantial Serb populations.

86.Associated with the first of these aspects was the Serbian opposition to the equal representation federally of each of the Republics, regardless of population size. This, together with the existence of the two autonomous provinces, was the subject of much agitation and received strong support in the second half of the 1980's from the Serbian Academy of Arts and Sciences in its widely distributed but not officially published memorandum urging major constitutional change. As mentioned above, the two provinces were effectively incorporated into Serbia in 1990 but the move to achieve federal representation by population rather than by Republics, with a resulting increased power for Serbia, was not achieved before the breakup of the federation.

87.The second aspect of a Greater Serbia was strongly pursued in the late 1980's and on into the 1990's, much encouraged by nationalist writings of earlier days, some of which advocated a Serbian state extending throughout Bosnia and Herzegovina and including the Dalmatian coast and parts of Croatia north of the river Sava. It was promoted actively by Serb propaganda, a key element of the campaign; by recalling the atrocities of the Croat Ustaša in the Second World War its proponents sought to arouse the fears of Serbs everywhere and in the end have them seek protection within a Greater Serbia.

88.The propaganda campaign that accompanied this movement began as early as 1989, with the celebration of the 600th anniversary of the Battle of Kosovo. During this celebration, the Serb-controlled media declared that Serbs had been let down by others in the area when the Ottoman Turks invaded. Through public speeches and the media, Serbian political leaders emphasised a glorious past, and informed their audiences that if Serbs did not join together they would be again subject to attack by 'Ustaša', a term used to inspire fear in Serbs. The danger of a 'fundamentalist, politicised' Muslim community was also represented as a threat. After the disintegration of the former Yugoslavia began, the theme of the Serb-dominated media was that 'if for any one reason Serbs would become a minority population . . . their whole existence could be very perilous and endangered . . . [and therefore] they had no choice but a full-scale war against everyone else, or to be subjected to the old type concentration camp, the symbol being Jasenovac'.

89.In the early 1990's there were rallies that advocated and promoted the idea, with Serbian leaders in attendance. In 1992 Radoslav Brdanin, President of the Crisis Staff of the Serb Autonomous Region of the Banja Luka area, declared that 2 percent was the upper tolerable limit on the presence of all non-Serbs in this region. Radoslav Brdanin advocated three stages of ridding the area of non-Serbs: (1) creating impossible conditions that would have the effect of encouraging them to leave of their own accord, involving pressure and terror tactics; (2) deportation and banishment; and (3) liquidating those remaining who would not fit into his concept for the region.

90.The propaganda continued throughout the war in Croatia and Slovenia, which was fought primarily by the JNA on the one side and those seeking independence on the other. Colonel Vukelic, the Assistant for Ethics of the Commander of the 5th Corps of the 1st Military District of the JNA in 1991 and 1992, a Bosnian Serb responsible for moral and ethical preparation of military units and for maintaining relations with the media, political bodies and socio-political organizations, made many declarations against Muslim and Croat populations. He characterized Croats and Muslims as the enemies of Serbs and proclaimed that the Serbs in Bosnia and Herzegovina were in danger and needed to be protected, a need which should inspire Serb members of the JNA to join the struggle to save the Serbs from genocide.

91.Over time, the propaganda escalated in intensity and began repeatedly to accuse non-Serbs of being extremists plotting genocide against the Serbs. Periodicals from Belgrade featured stories on the remote history of Serbs intended to inspire nationalistic feelings. Slobodan Kuruzovic, Commander of the Territorial Defence ("TO") of Prijedor, who became the head of the local newspaper *Kozarski Vjesnik* and the commander of the Trnopolje camp, stated that the 'interests of

Serbian people in Republika Srpska will be the main guidelines for my editorial policies'. In articles, announcements, television programmes and public proclamations, Serbs were told that they needed to protect themselves from a fundamentalist Muslim threat and must arm themselves and that the Croats and Muslims were preparing a plan of genocide against them. Broadcasts from Belgrade caused fear among non-Serbs because only the Serb nation was presented positively, and it was represented that the JNA supported the Serbs. The theme that, for the Serbs, the Second World War had not ended was expressed on television and radio by Vojislav Šešelj, Željko Ražnjatović, otherwise known as "Arkan", and other Serb politicians and leaders.

92.By the spring of 1992 only Serb-controlled television channels and programmes were available in many parts of Bosnia and Herzegovina. This was achieved by the take-over of television transmitters throughout the Serb-controlled areas, including the transmitter on Kozara Mountain which was taken over by the Wolves, a paramilitary unit acting in full cooperation with both military and political leaders. In consequence, by the spring of 1992 residents in Prijedor and elsewhere in eastern Bosnia and Herzegovina were no longer able to receive television from Sarajevo or from Zagreb but only from Belgrade or Novi Sad in Serbia, and Pale or Banja Luka in Bosnia and Herzegovina, all of which broadcast anti-Muslim and anti-Croat propaganda.

93.In opština Prijedor, during the days following the take-over of the town of Prijedor by JNA forces on 30 April 1992, as discussed below, Serb nationalist propaganda intensified. The 'need for the awakening of the Serb people' was stressed and derogatory remarks against non-Serbs increased. Muslim leaders who attempted to speak on the radio were barred while SDS leaders had free access to it. Even more open propaganda against Muslims and Croats began in earnest after an incident in the Hambarine region on 22 May 1992, discussed below. Examples include statements that a Croat doctor castrated newborn Serb boys and was performing sterilization surgery on Serb women and that a Muslim doctor intentionally administered the wrong drug in an attempt to kill his Serb colleague.

94.This propaganda campaign continued on into 1993. For example, on 6 August 1993 an article in *Kozarski Vjesnik*, under the headline "Preventing a Repetition of the Serbian massacre of 1941", extensively quoted Simo Mišković, the SDS chairman, as saying:

> 'The Serbian people had instinctively sensed the danger posed by the SDA and HDZ and have formed Republika Srpska in time . . .Two years ago the Serbian people sensed instinctively that once again they were faced with the danger of the same villains who in 1941 started the extermination process of the Serbian people and therefore formed their own party. On 2nd August 1991 we in the District of Prijedor have formed the SDS . . .Prior to that we tried hard to reach an agreement with the Muslim and Croatian party regarding our continued coexistence. Although they agreed to it in words they continued to arm themselves in order to destroy us. The SDS leadership saw what they were planning and started to arm their own people in order to prevent the tragedy of 1941 . . . . Quickly we formed our army and our police forces and on 30 April 1992 without a single shot being fired and without a single casualty, we established our authority in Prijedor which we were able to maintain [until] now and we have to consolidate it through a democratic process.' (Prosecution Exhibit 100.)

The article also stated that Simo Mišković then mentioned a woman who had to watch her children 'being slaughtered by the Ustaša butchers' and continued in editorial fashion:

> 'There were thousands of such and similar cases in the Bosanska Krajina and this must never be allowed to happen again. SDS had prevented this happening in Prijedor in May last year when SDA and HDZ hatched a devilish plan of retribution against the Serbs in Prijedor.'

95.Another article quoted Milomir Stakić, chair of the Serbian Municipal Assembly of Prijedor, who claimed that questioning conducted at the camps where Muslims who had been rounded up

> were imprisoned showed that the Muslims were determined to carry out a detailed plan for the liquidation of the Serbian population of Prijedor. Similarly, Simo Drljaca, the Chief of Police of Prijedor, stated that he had proof that 1,500 Muslims and Croats participated in the genocide of the Serb people and that 'instead of receiving their just punishment, the white world mighty men forced us to release them all from Manjaca [a Serb prison camp].' (Prosecution Exhibit 92.)
>
> 96.The witness Edward Vulliamy summed up the propaganda campaign, stating that the message from the government in Belgrade was relentless and was very 'cogent and potent. It was a message of urgency, a threat to your people, to your nation, a call to arms, and, yes, a sort of an instruction to go to war for your people. . . . It pushed and pushed. It was rather like a sort of hammer bashing on peoples' heads I suppose.' Edward Vulliamy, a journalist for the Guardian Newspaper, London, travelled to the areas in conflict in Bosnia and Herzegovina during 1992. Although Roy Gutman, author of the Pulitzer Prize book entitled *A Witness to Genocide*, was the first to discover the Omarska camp through interviews with people who had been detained there, Edward Vulliamy was with the first group of outside journalists actually to enter the camp. The media attention generated by Roy Gutman, Edward Vulliamy and others regarding Omarska ultimately led to the closure of the camp." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 30-35, paras. 85-96].

17. The ICTFY was correct in combining the Greater Serbia rhetoric with the imminent-threat-to-the-Serbs rhetoric, because these are two sides of the same coin. The right of the Serbian nation to a Serb state was, according to this rhetoric, supported by the need for the Serb people to defend themselves against the outside (non-Serb) world, which, also according to this rhetoric, as usual threatened to commit genocide against the Serbs. This was the key message of the Serb propaganda campaign. It was designed to recall memories of atrocities committed against Serbs in order to arouse fears in Serbs everywhere and prompt them to seek protection within a Greater Serbia.

18. This rhetoric also served to set the tone for the Serb agenda within the context of a disintegrating Socialist Federal Republic of Yugoslavia. The facts clearly reveal that the Serb leadership in Belgrade was indeed engaged in an effort to unite the Serb nation in one Serb State. That this was not just some political programme but, rather, a particular course of conduct aimed to achieve a specific result, became clear as soon as the Serb leadership actually left the stage of rhetoric and entered the stage of armed conflict.

2. The facts reveal a clear pattern of violations of the Genocide Convention

19. In its Memorial of 15 April 1994, the Applicant provided the Court with an overview of the facts relevant to its case [Memorial, Part 2]. Due to circumstances at the time, the Applicant was rather restricted in its ability to provide a complete picture. In addition to this, at the relevant point in time, the Applicant was not even aware of the overwhelming mass of atrocities committed against the non-Serbs of

Bosnia and Herzegovina. Moreover, many of these atrocities had not even taken place by the date on which the Memorial was submitted. The genocidal campaign continued long after that date and included the massacre in Srebrenica in 1995.

20. Shortly after Bosnia and Herzegovina submitted its Memorial, the Commission of Experts submitted its Final Report to the Human Rights Commission in Geneva. Also after this date, the Special Rapporteur Tadeusz Mazowiecki continued his reporting on the situation in Bosnia and Herzegovina, a task taken over by Elizabeth Rehn after Mazowiecki resigned in August 1995. Furthermore, after 15 April 1994, many additional citizens' organisations' (or NGO) reports were produced, as well as numerous books and articles which focus on the war in Bosnia and Herzegovina. Finally, and by no means less importantly, after April 1994 the International Criminal Tribunal for the former Yugoslavia (ICTFY) became effective, resulting in a continuing flow of well-substantiated legal documents. For all of these reasons, the Applicant is now in a much better position to present its case than it was in April 1994.
The facts, as have been documented by independent sources, provide a gruesome account of events, which, unfortunately, easily fit the terms of the Genocide Convention.

21. Part II of this Reply deals with the facts pertaining to genocide and the legal assessment thereof. Therefore, Part II focuses on Article II of the Genocide Convention, which reads as follows:

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

Chapter 5 will demonstrate that sections (a), (b) and (c) of this Article have been violated by the Serb side throughout the armed conflict in Bosnia and Herzegovina. Chapter 7 will do the same, while focusing on "rape and sexual assault", which were committed on a particularly extensive scale. This chapter will also demonstrate that sections (d) and (e) were violated as part of the rape campaign.

22. Both Chapters 5 and 7 make it perfectly clear that killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction, imposing measures intended to prevent births and forcibly transferring children were continuously an integral part of the way in which the Serb side conducted the armed conflict. These acts were not simply committed in the context of a war of conquest aimed at seizing power in certain territories; they formed part of a campaign to establish an ethnically homogeneous, i.e. Serb, State on, but not limited to, the territory of Bosnia and Herzegovina. The fact that the Serb population of the thus conquered areas was expressly not targeted during the armed take-over of towns, villages and regions and stayed there to continue their lives after the non-Serb population of the same areas was killed, tortured, raped, detained or otherwise forced to leave, clearly illustrates the ethnically motivated selectivity of the process. This is especially clear if one realizes that the Serbs in these areas usually formed the minority before the Serb take-over. The fact that the destruction of non-Serb cultural and religious property at all relevant times was part of this pattern further supports the fact that this was not "merely" warfare in violation of international humanitarian law, which it without any doubt also consituted, but that the methods used were specifically meant to destroy, in whole or in part the non-Serb population of Bosnia and Herzegovina.

23. The pattern was usually the same all over the territory of Bosnia and Herzegovina and throughout the armed conflict: when the Serb forces would take over a village, town or region, on many occasions the Serb inhabitants were warned in advance and would leave just before the take-over would begin; then the shelling would start, apparently aimed at killing as many people as possible; following this, the remaining inhabitants would be detained, the men usually being separated from women and children; during the course of the detention process, and sometimes just before it, the social elite would be singled out, usually on the basis of lists which were apparently prepared in advance; the singled-out elite would be killed immediately or tortured in the worst possible ways; many of the detained women would be randomly and repeatedly raped and would, on some occasions, for these very purposes be held in special detention centres; the camps were not restricted to merely detaining people, but turned out to be torture and killing centres; then either after some time spent in the detention centres or immediately after the take-over, the remaining inhabitants would be forced to flee their homes and property; the homes and property would be either destroyed or distributed to Serbs who would begin using them as if they were their own; sometimes during, but on many more occasions after the armed take-over,

cultural and religious property and buildings would be entirely destroyed, apparently to make sure that no trace of non-Serb civilisation would remain.

24. All of this would take place in a clearly organised way: the detention centres were apparently selected beforehand, the lists of elite were prepared beforehand and on many occasions, buses and trucks came in immediately after the take-over to transport the remaining non-Serb inhabitants either to detention centres or to places outside the Serb occupied territory. For the latter purpose, on some occasions travel documents were prepared in advance in order to make sure that the non-Serbs would be able to cross the border of Bosnia and Herzegovina and to, forcibly, leave their country altogether. Also, on many occasions non-Serb houses were marked for destruction beforehand.

25. Usually at least several of these elements, sometimes all of these elements, were present throughout the armed conflict, demonstrating the organised nature of the campaign. Sometimes Muslims and Croats were even forced to wear identification marks to distinguish them from the Serb population.

26. What became known as "ethnic cleansing" began with the call to unite "all Serbs in one State." It continued for many years in a practice of ethnically based massacring and it found its horrific climax with the killings in Srebrenica. As General Mladić clearly articulated upon entering the fallen enclave on 11 July 1995:

> "Here we are in Srebrenica on 11th July 1995. On the eve of yet another great Serbian holiday we present this city to the Serbian people as a gift. Finally, after the rebellion against the Dahijas, the time has come to take revenge on the Turks in this region." [cited and translated in ICTFY, Trial Chamber, Cases No. IT-95-5-R61 & IT-95-18-R61, *Review of Indictment Pursuant to Rule 61*, Transcript testimony Ruez, 3 July 1996, p. 11, Annex 17; "the rebellion against the Dahijas" presumably referred to an uprising in 1804 in the Ottoman Empire at which Serb officers had been killed].

27. The facts presented in Chapter 5 and Chapter 7 will not only reveal a clear and detailed pattern, they will also reveal that the pattern reflected the destruction, in whole or in part, of the non-Serb population of Bosnia and Herzegovina.

3. The facts reveal that the Federal Republic of Yugoslavia bears responsibility for the acts committed

28. Part III of this Reply deals with the Respondent's responsibility for the genocidal campaign in Bosnia and Herzegovina. In Chapter 8 of Part III, Bosnia and Herzegovina will present the factual basis for its conclusion that the Respondent bears full responsibility for the genocidal acts which have led the Applicant to submit this case to the International Court of Justice; this conclusion will be substantiated in Chapter 9 and, more specifically in Chapter 10. In Chapter 8 the Applicant will not explicitly address the facts which pertain to the Respondent's responsibility regarding its obligations "to prevent" and "to punish" (including to extradite), since the Respondent's related violations of the Genocide Convention are largely similar to those establishing its responsibility under Article III of the Convention. Therefore, specific facts relating to the failure to punish and prevent will be included in Chapter 11, which addresses these violations of the Convention.

29. As stated above [Chapter 1, Section 3] the Respondent is never very specific in its Counter-Memorial in its denial of facts and circumstances presented by the Applicant in the Memorial. Apart from this, the Respondent takes the position that whatever atrocities or facts, be they genocidal or not, may have occurred, these cannot be attributed to the Respondent. This approach is, of course, untenable *per se* when the obligations "to prevent" and "to punish" are at stake, since the allegations involved immediately touch upon the Respondent's responsibility. But, as will clearly appear from the facts presented in Chapter 8, this approach is equally untenable for all of the Applicant's other submissions pertaining to FRY's responsibility.

30. Chapter 8 will demonstrate that in the relevant period of time (1991-1996) there has not been one single instance in which the Respondent did *not* play a crucial role.

31. The preparations for the genocidal campaign, among which were the provision of arms to the Serb militia in Bosnia and Herzegovina, the transferral of military equipment to Bosnian Serb areas of Bosnia and Herzegovina, the reconstruction of military warehouses in the same areas, the training and equipping of Serb paramilitary units in Bosnia and Herzegovina as well as in Serbia proper, the relocation and reorganization of the Yugoslav army (JNA), all of these were entirely conducted by the Belgrade authorities.

32. The same role was played by the Respondent authorities when the armed conflict actually broke out. The JNA played, mostly in carefully concerted cooperation with Serb paramilitary forces and the Serbian Democratic Party (SDS) of Bosnia, the key role in the Serb take-over of about seventy percent of the territory of Bosnia and Herzegovina, in the destruction of non-Serb cultural, religious, public and private property, in the organized indiscriminate killing of the non-Serb population of Bosnia and Herzegovina and in the setting-up of detention camps. A substantial part of these actions took place before 19 May 1992, on which date, according to the Respondent, the JNA officially "withdrew" from the territory of Bosnia and Herzegovina. The JNA was also indispensable to the creation and organization of the "Republika Srpska" Army (VRS), which in practice was nothing other than a cosmetic operation giving a face-lift to the 2nd Military District of the JNA.

33. Furthermore, Belgrade kept the JNA officers on the Yugoslav pay-list, while lending them to what became known as the "Republika Srpska" Army. In addition to their payment, these officers were for all practical purposes treated as officers of the Yugoslav Army (VY). In addition to this support in the form of officers, the communication infrastructure of the former JNA remained entirely in place at the disposal of the "Republika Srpska" Army, which thus was able to benefit from its radar and other facilities throughout the armed conflict. Furthermore, the Yugoslav Army kept sending troops across the border into Bosnia and Herzegovina whenever the Bosnian Serbs would need additional fighting capacity; this was the case with all major military operations after the so-called "withdrawal" on 19 May 1992 and went on until the very end of the armed conflict. Without this continued military involvement, the Bosnian Serbs would not have been able to carry on the armed conflict for so many years; without this support, the armed conflict would have come to an end long before the massacre at Srebrenica could have taken place.

34. The Ministries of the Interior of the Federal Republic of Yugoslavia and of Serbia played as crucial a role as the Yugoslav Army. Before the war, the distribution of arms to the Bosnian Serbs was coordinated through these state organs. During the armed conflict, they directed the killing campaigns of the Serbian paramilitary units. Throughout the war, they initiated and executed military actions in Bosnia and Herzegovina through their armed police units. This Ministry also saw to it that the "Republika Srpska" Army retained its strength, for which purpose the Yugoslav police would forcefully apprehend young men on the territory of the Respondent and hand them over to the Bosnian Serb military.

35. Belgrade saw to it that its economy and the "Republika Srpska"'s economy were entirely integrated. Among other things, the National Bank of "Republika Srpska" operated as a subordinate branch of the National Bank of the FRY. From this perspective, it is only logical that trade between the two entities was uninterrupted, while, in particular, the trade relations between Bosnian Serbs and the weapons industry in Serbia proper were intense and ongoing throughout the armed conflict. In fact, in violation of the Dayton Accords, to this very day the economies of the two entities are still completely integrated.

36. All of this shows that there is no basis in fact for the Respondent's repeated denial of its involvement in the genocide committed against the non-Serb population of Bosnia and Herzegovina. If all of this does not lead to the conclusion of State responsibility, then what *is* required to establish such a conclusion? In the Counter-Memorial, especially in Chapter III, the Respondent obviously tries to turn things upside down by complaining that the JNA was a victim of Muslim and Croat attacks and by promoting itself as a State which called for peace throughout the armed conflict. Support for this totally unrealistic approach is allegedly to be found in the sources referred to by the Respondent in this Chapter. More than half of these sources turn out to be newspaper clippings from *Politika*, the Government-controlled daily published in Belgrade. Many of the UN sources referred to merely contain statements and letters from the FRY authorities, reproduced for UN purposes. None of the sources referred to by the Respondent in fact contain any evidence directly supporting the position that, indeed, the Respondent would not have been directly involved in the atrocities committed in Bosnia and Herzegovina against its non-Serb population; let alone do any of these sources provide evidence that the Respondent does not bear any responsibility whatsoever, as is being argued in Chapter III of the Counter-Memorial.

37. In its denial of any and all responsibility, the Respondent extensively quotes its own statements regarding the Vance-Owen Plan [Counter-Memorial, Section 3.5.]. At the time of the Vance-Owen Plan, the FRY, according to its public statements, wanted the "Republika Srpska" to accept this peace plan, since this acceptance would lead to the lifting of the Security Council sanctions against it (to the Security Council it was apparently clear that the behaviour by the "Republika Srpska" authorities was to be attributed to Belgrade and *vice versa*). However, "Republika Srpska" leadership apparently judged this peace plan as not being in the Serb interest and rejected it. Whatever the relevance of the statements reproduced in this section of the Counter-

Memorial may be for this case, at least they contain a clear, albeit understated, acknowledgment by the Respondent of its role in the armed conflict:

> "The citizens of Yugoslavia, Serbia and Montenegro, have demonstrated the highest degree of solidarity with you, going even beyond their means." [Counter-Memorial, p. 285, para. 3.5.1.1.].

This statement of 26 April 1993 was elaborated upon in a subsequent statement of the Government of Serbia, issued on 6 May 1993:

> "Since the conditions for peace have been met, the Government also agreed, that any further supply of aid to the Republic of Srpska should be limited to food and medicines in such quantities as the competent ministries will determine. The Government of the Republic of Serbia also believes that, as the conditions for establishing peace have been met, any further aid in funds, fuel, raw materials etc. provided until now with great sacrifices by the Republic of Serbia itself, is no longer justified." [Counter-Memorial, p. 288, para. 3.6.1.1.].

Chapter 8 of this Reply explains that at this point the Respondent is in actuality misquoting itself in a not so Freudian manner by replacing the word "space" with the word "peace" [Reply, Chapter 8, Section 10]. The same Chapter will also demonstrate the true extent of this "solidarity" and of these "sacrifices" that Yugoslavia has made.

38. That the quoted statements were false and that the "further aid" was not stopped at all, is demonstrated by the Respondent itself, where it relates that on 30 June 1994, more than one year later, there was apparently the need for a similar statement to be issued by its government. This time the "Republika Srpska" leaders had rejected the peace plan of the Contact Group, which led Belgrade to decide:

> "- to break off political and economic relations with the Republic of Srpska,
> - to ban the members of the leadership of the Republic of Srpska (the Assembly, the Presidency, the Government) from staying in the territory of the FR Yugoslavia;
> - The border of the FR Yugoslavia shall as of today be shut to all transports destined for the Republic of Srpska with the exception of food, clothing and medicines." [Counter-Memorial, p. 289, para. 3.6.1.4.].

Apart from the fact that none of these three decisions have been executed in practice (on the contrary, they have been blatantly disregarded, as will be demonstrated in Chapter 8), the Respondent fails to explain the need for this statement in light of the earlier ones issued in 1993.

39. At best, these statements can be seen as a sign of disagreement between the leadership in Belgrade and in the "Republika Srpska" on some issues. The fact that the ties between these two entities were never cut to any extent whatsoever shows that this disagreement is nothing more than that which sometimes occurs within the ranks of any government, political party or political movement. The facts presented in Chapter 8 will show the continued, structured and substantial involvement of the FRY authorities in the armed conflict in Bosnia and Herzegovina, an involvement which did not cease even after the signing of the Dayton Accords.

PART II

FACTS CONSTITUTING GENOCIDE

CHAPTER 5

THE BASIS IN FACT FOR FINDING THAT GENOCIDE WAS COMMITTED

1. Introduction

1. The armed conflict in Bosnia and Herzegovina is arguably the most extensively televised conflict in history, especially as far as the media in Europe and North America are concerned. However, no television image is able to convey the true extent of the atrocities committed against the non-Serbs in Bosnia and Herzegovina. Neither are television pictures able to demonstrate the pattern and the level of organisation of the cruelties committed.

2. All non-Serb citizens of Bosnia and Herzegovina have their own story to tell about this armed conflict. Very few have escaped victimisation in the Serb assault on their people. Almost each and everyone of them suffered losses among their family members, relatives, neighbours and friends. All of these individual stories, taken together, would without any doubt paint a horrific picture of the armed conflict and also demonstrate the true intent and extent of the Serb assault.

3. In this Reply, the Applicant will not try and rely on television images, nor on individual witness statements. The Applicant will focus on the accounts of independent observers who reported, in a systemised manner, on the atrocities committed against the non-Serb population of Bosnia and Herzegovina.

4. The framework for the presentation of the evidence is, for obvious reasons, largely based on the Genocide Convention. In this Chapter the presentation will focus on Article II and follow its order. However, as a rule, the facts related are not strictly

confined to a specific category of Article II. In a sense, it is even somewhat arbitrary to define certain behaviour as, for instance, "causing serious bodily or mental harm" or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction". The Applicant has organised the materials in this Chapter under those provisions of the Convention to which the presented facts are most closely related. This, however, may not be interpreted as a rule of exclusion; in other words, if the Applicant in this Chapter relates certain facts under, for example, the heading of "causing serious bodily or mental harm", this does not mean that these very same facts are not relevant as supportive evidence to violations of other categories of the Genocide Convention. The facts should be interpreted on their own merits and also as part of the overall pattern.

5. This Chapter will, first of all, establish violations of the first three categories of Article II:

> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

The succeeding two categories of Article II:

> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group;

are dealt with in Chapter 7 of this Reply.

6. Chapter 7 is in its entirety dedicated to "Rape and sexual assault as specific means of committing genocide". The Applicant has decided to devote a separate Chapter to these issues because of the enormity of the atrocities involved and because of its wish to further develop the legal significance of rape under the Genocide Convention. The consequence of this approach is that the first three categories of Article II are examined both in this Chapter [Sections 2, 3 and 4] and in Chapter 7. The succeeding two categories of the mentioned Article are by themselves more closely related to issues of rape and sexual assault. They, therefore, are only considered in Chapter 7.

7. After examining the facts in the context of the three separate categories of Article II, the Applicant will, in this Chapter, turn to a more thematic approach by separately addressing the nature, the scale and the pattern of atrocities committed by the Serbs

in the camps and in the other detention facilities [Section 5]. The camps, in many ways, constitute the culmination of the campaign of ethnic purification. The cruelties committed there continuously violated every single category of Article II. The genocidal intent of the Serbs becomes particularly clear in the description of camp practices, due to their striking similarity all over the territory of Bosnia and Herzegovina. This similarity can, among other things, be inferred from the process of selecting people to be detained (the only criterion for detention being ethnicity), from the fact that the detention facilities formed an indispensable link for detention in the process of ethnic cleansing, from the fact that many of the camps were manifestly operated as part of a destruction policy and from the fact that, as a rule, the cruelties against the non-Serbs detained in the camps were committed in a discriminatory key, based on ethnicity. The Applicant is convinced that the history of the camps by itself would suffice to demonstrate that, indeed, the Genocide Convention has been violated continuously and on a very extensive scale. As will be related in Section 5 the Trial Chamber of the ICTFY came to the same conclusion in its confirmation of the Karadžić and Mladić Indictments for genocide, in which confirmation the Trial Chamber found that the highest political and military leaders actively participated in these crimes of genocide [see below, Section 5].

8. Although the Section on Camps reads as the ultimate horror story, the story of the suffering of the non-Serbs of Bosnia and Herzegovina is by far not restricted to the acts committed in the camps. Each village, town or region touched by the Serb assailants is in itself proof of the extensive violation of the Genocide Convention. The Applicant will not endeavour to begin to tell all of these stories, but will devote three Sections on three areas which are relevant for various reasons: Zvornik [Section 6], since it was taken over by the JNA in the early months of the armed assault; Prijedor [Section 7], because it so clearly provides the pattern of the atrocities, which was repeated wherever the Serbs would take over towns or villages in Bosnia and Herzegovina; Srebrenica [Section 8] because it forms, towards the end of the armed conflict, an indisputed model of genocide and at the same time the most horrible climax of the Serb campaign against the non-Serbs of Bosnia and Herzegovina. In all of these three regions all categories of Article II have been violated systematically and on a large scale.

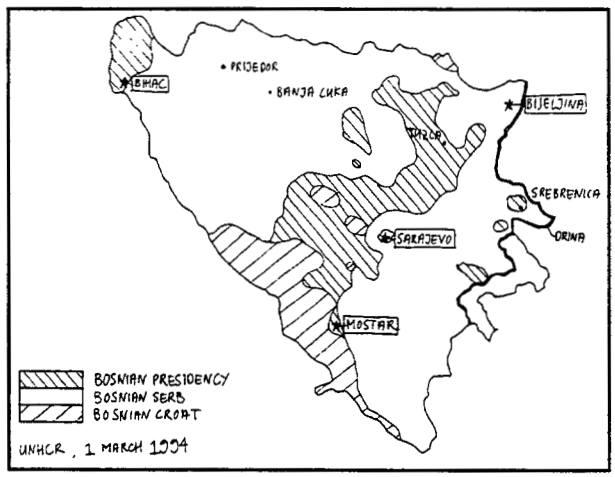
9. This Chapter will end by focusing on "ethnic purification", with which concept the armed conflict in Bosnia and Herzegovina is widely associated [Section 9].
In all, this Chapter will demonstrate that, whatever angle one chooses to analyze the acts committed, every imaginable approach to the facts inevitably leads to the

conclusion, that these atrocities have been committed with the intent to destroy, in whole or in part, the non-Serb population of Bosnia and Herzegovina.

2. Killing members of the group

Introduction

10. The evidence provided below demonstrates that during the war in Bosnia and Herzegovina large numbers of non-Serbs were killed. The killings of non-Serbs were not confined to any one time period during the war or any one area of Bosnia and Herzegovina. The evidence demonstrates that thousands of non-Serbs were killed from 1992 to 1995 - showing a consistent pattern over four years. The evidence also demonstrates that many non-Serbs were killed throughout the territory of Bosnia and Herzegovina. Killings were a consistent pattern in all parts of Bosnia and Herzegovina where Serbs mounted their attacks - from the north-western town of Bihać to the north-eastern town of Bijeljina, throughout the Drina river valley in eastern Bosnia, to Sarajevo in the centre and Mostar in the south. The patterns of killings were consistent throughout the war and throughout the territory of Bosnia and Herzegovina.



11. The killings of non-Serbs, as evidenced in this Section, demonstrate that it was not merely the policy of the Respondent to arrest non-Serbs, to detain them or to deport them with a view to creating a homogenous space for Serbs. Rather, one can infer from the facts that killing was a policy, executed in a consistent way, to eliminate part of the non-Serb population in Bosnia and Herzegovina.

12. In its Memorial, the Applicant has provided evidence, based on the then available information, of the pattern of killings of non-Serbs during the war in Bosnia and Herzegovina [Memorial, Section 2.2.2, pp. 30-37]. That evidence showed that killings were an integral part of the policy to remove non-Serbs from what was designated to become Greater Serbia. Since the Memorial, additional evidence has become available of killings that occurred before the finalization of the Memorial (April 1994). Moreover, after the Memorial was filed, the killing of non-Serbs did not stop. After April 1994, Serb forces continued to kill non-Serbs in large numbers, culminating in the dramatic events in Srebrenica in July 1995, where thousands of Muslims were killed. Both the additional evidence relating to the killings before April 1994 and the evidence demonstrating killings after April 1994 are produced below.

13. In the Counter-Memorial, the Respondent suggests that the killings in Bosnia and Herzegovina were limited in number and merely collateral to a policy of expulsion. The Respondent states that the events that transpired in Bosnia and Herzegovina can not be qualified as genocide because the Serbs in fact only tried to "rid certain Bosnian areas of Muslims" and to have members of ethnic groups "expelled from specific territories", and that, while these aims were accompanied by "sporadic acts of murder", there would have been no attempt to exterminate members of the ethnic groups [Counter-Memorial, p. 12, para. 1.1.3.23]. The legal flaws in this argument are dealt with in Chapter 2 of this Reply. The evidence presented below demonstrates that this argument can neither be sustained on factual grounds. The evidence demonstrates that the acts of killing were not "sporadic acts of murder" as some sort of collateral effect os the expulsion of non-Serbs. Rather, it can be inferred from the facts that large numbers of non-Serbs were killed by acts that followed consistent patterns, that the killings aimed to eradicate, and did so successfully, part of the non-Serb population in Bosnia and Herzegovina.

14. The Respondent also argues that the destruction of Muslim lives "cannot be an element of the military and ethnocentric strategy of the Bosnian Serb forces because the loss of life is a consequence of the civil war" [Counter-Memorial, p. 39, para. 1.3.2.8.]. In what appears to be a similar argument, the Respondent states that shooting and shelling "often occurred in response to actions from abused non-military" [*ibid.*, para. 1.3.2.1]. These arguments seem to suggest that non-Serbs were killed in a military context and that therefore, there would exist some sort of military explanation or even justification for the killings. Again, the disputable legal merits of this proposition are discussed in Chapter 2 of this Reply. But these propositions are

also flawed on factual grounds. There is simply no evidence that could demonstrate that large numbers of men were killed in combat or were killed because they posed a military threat to the Serbs. In any case, the abundantly available evidence of mass executions and killings in camps, detailed below, cannot possibly be explained in terms of a military threat. Referring to the killing of men in camps [see Section 5 of this Chapter], the United Nations Commission of Experts stated that while it received many reports showing that scores of men were detained and subsequently killed,

> "rarely did reports include any information to suggest that those considered capable of fighting had ever actually committed hostile acts or had organized to do so. In fact, many Muslim villagers simply surrendered the weapons they had upon an initial demand by the Serb forces in the region. After that surrender, the villagers were in many cases detained." [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 12-13, para. 35].

The Respondent does not provide any credible evidence to suggest that the Commission of Experts was misinformed on this point. The lack of such evidence further strengthens the conclusion that the killings aimed to eradicate, and succeeded in eradicating, part of the non-Serb population in Bosnia and Herzegovina.

15. The remainder of the part of the Counter-Memorial dealing with "Alleged killing" [Counter-Memorial, p. 38, para. 1.3.2] contains an array of propositions to the effect that the evidence of killings is unreliable or simply untrue. Some of the specific assertions of the Respondent are dealt with below in connection with particular incidents of killing [see paras. 16 and 17]. Others are reviewed and rebutted in Sections 6 and 8 of this Chapter, dealing with the killings in Zvornik and Srebrenica, respectively. To remove any doubts that may exist as to the reliability and validity of the claim that patterns of killing of civilians existed, additional evidence will be provided below to support the existence of such patterns. This evidence has been reviewed and found reliable by distinguished authorities, as referred to below.

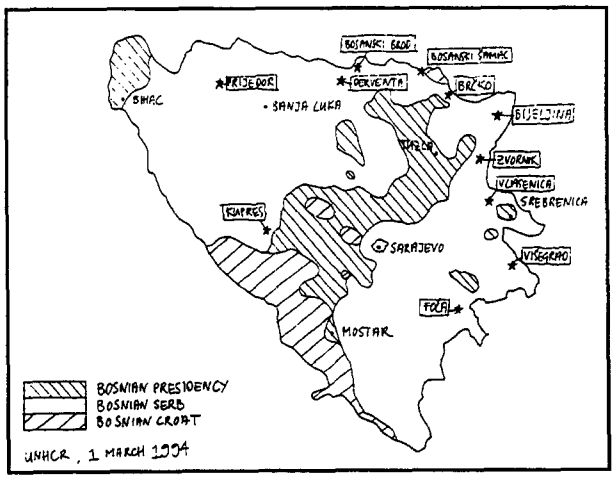
16. The killings of non-Serbs in Bosnia and Herzogevina showed certain consistent patterns. The evidence presented here will be structured around three such patterns: the killing of civilians, the killing of men, and the killing of elite. While these categories to some extent overlap, they constitute distinct patterns in the killings of non-Serbs in Bosnia and Herzegovina.

Killing of civilians

17. The killing of civilians occurred in most if not all places that were targeted and eventually taken over by Serb forces. The United Nations Commission of Experts describes the common pattern as follows:

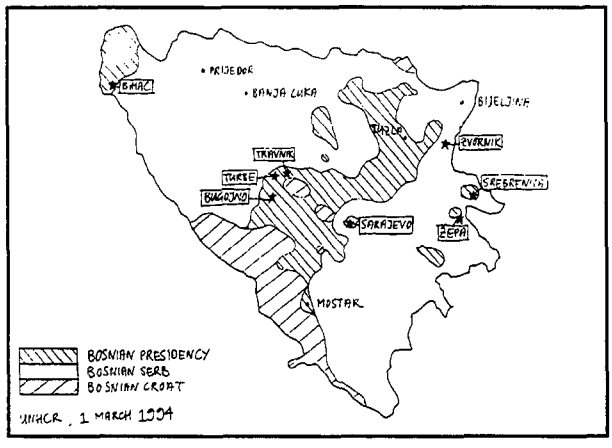
> "First, Bosnian Serb paramilitary forces, often with the assistance of the JNA, seize control of the area. In many cases, Serbian residents are told to leave the area before the violence begins. The homes of non-Serb residents are targeted for destruction and cultural and religious monuments, especially churches and mosques, are destroyed. Second, the area falls under the control of paramilitary forces who terrorize the non-Serb residents with *random killings*, rapes and looting. Third, the seized area is administered by local Serb authorities, often in conjunction with paramilitary groups. During this phase, non-Serb residents are detained, beaten and sometimes transferred to prison camps where further abuse, including *mass killings*, have occurred (...)" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994, Annex IV, p. 9, para. 28, emphasis added].

The indiscriminate killing of civilians lasted throughout the war. The Trial Chamber in the Tadić case found evidence of such killings in early 1992. Between March and May 1992, before the announced withdrawal of the JNA on 19 May 1992, the JNA attacked and took over several areas that constituted main entry points into Bosnia or were situated on major logistics or communications lines, such as Bosanski Brod, Derventa, Bijeljina, Kupres, Foča, Zvornik, Višegrad, Bosanski Samac, Vlasenica, Brcko and Prijedor. The Trial Chamber found that in general, the military take-overs involved shelling, sniping and the rounding up of non-Serbs in the area. These tactics often resulted in civilian deaths [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 46, paras. 125-126].



18. The Trial Chamber in the case against *Karadžić and Mladić* found that more than three years later, the indiscriminate killing of non-Serb civilians had not stopped. Through shelling before the take-over of Srebrenica and through the acts committed during and after the take-over, thousands of non-Serbs were killed [ICTFY, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić,* Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, pp. 9-10, para. 25].

19. The killing of civilians would start in the first stage of the attack on a certain area or town: the shelling of regions or towns before they would be taken-over. It was a consistent pattern that before a particular area would fall under the control of paramilitary forces, it would be subjected to shelling. This shelling caused many deaths among civilians, throughout the territory of Bosnia and Herzegovina. The evidence demonstrates that shelling killed non-Serb civilians in areas such as Srebrenica, Žepa, and Zvornik in eastern Bosnia; in the capital Sarajevo; in the towns Travnik, Turbe and Bugojno in central Bosnia and Herzegovina; and in Bihać, in the northwestern part of Bosnia of Herzegovina. The pattern was thus consistent throughout the territory of Bosnia and Herzegovina. The pattern was also consistent in time, from 1992 through 1995.



20. This pattern was identified by the Trial Chamber of the ICTFY:

> "Throughout the conflict, the strategy of Bosnian Serb forces consisted in indiscriminately targeting civilians. Such was the case during the entire siege of Sarajevo, and at times in the safe areas of Srebrenica, Žepa, Goražde, Bihać and Tuzla. From July 1992 to July 1995, many civilian gatherings, particularly at stadiums or in public squares, were subject to shelling by Bosnian Serb military forces with the object of *killing*, terrorising and demoralising the civilian population." [ICTFY, Review of the Indictments Pursuant to Rule 61 of the Rules of

Procedure and Evidence, *Prosecutor v. Karadžić and Mladić,* Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, pp. 9-10, para. 18, emphasis added].

An overview of killings of civilians follows, showing the consistency in time and the consistency throughout the territory of Bosnia and Herzegovina.

21. Non-Serb civilians were indiscriminately killed in April 1992 in Foča County in south-eastern Bosnia and Herzegovina. For example, the Commission of Experts reports:

> "Between 15 April 1992 and 20 April 1992, nine people were killed in the village of Susješno by Arkan's men. The nine victims were elderly and did not want to leave their homes." [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add. 2, Vol. 1, Annex III.A, "Special Forces", 28 Dec. 1994, p. 145, para. 416].

22. In the early stage of the war, many civilians were also killed in the northern Prijedor area. In May 1992, the village of Hambarine was attacked with heavy artillery fire and tanks. Mazowiecki reports that probably as many as 1,000 people died in this attack [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, A/47/6661, S/24809, 17 Nov. 1992, p. 8, para. 17(c)].

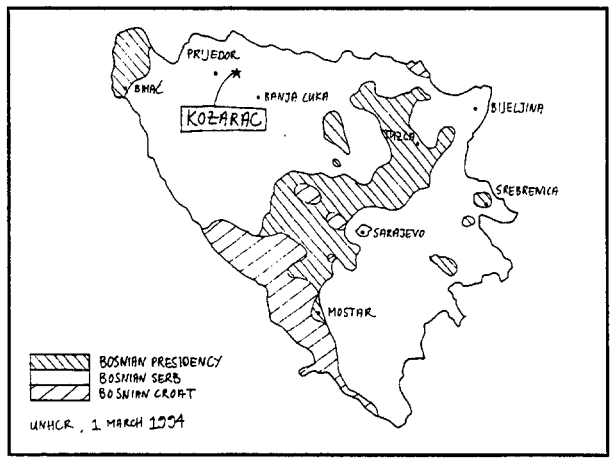
23. On 24 May 1992, Serb forces shelled the predominantly Muslim town of Kozarac, some ten kilometres east of Prijedor. This attack was also mentioned in the Applicant's Memorial [Memorial, p. 32, para. 2.2.2.11]. In its Counter-Memorial, the Respondent seeks to undermine the relevance of the events in Kozarac by stating that "the attack on Kozarac was part of the armed conflict" and that an earlier statement to the effect that 5,000 persons were killed could not be proven [Counter-Memorial, p. 50, para. 1.3.2.46]. Since the time of the filing of the Memorial, a number of sources have confirmed the shelling of Kozarac. The Commission of Experts reports:

> "On 24 May [1992], Serbian tanks, mortars and artillery barraged the village. This siege lasted for three days, and survivors calculate that 2,000 villagers were killed" [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 5), 28 Dec. 1994, Annex IX, p. 39, para. 173].

24. Since then, the Trial Chamber in the Tadić Case before the ICTFY, has made the same assertion:

> "on 24 May 1992, the predominantly Muslim town of Kozarac was attacked by Bosnian Serb forces, with an artillery bombardment which lasted until 26 May 1992 and extended to surrounding Muslim villages. As a result of this shelling many dwellings were destroyed, over 800 inhabitants were killed and the remainder, including those from surrounding Muslim villages, were expelled, the town and it vicinity then being occupied by Bosnian Serb forces." [ICTFY, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 204, para. 565].

25. The figure of 800 killed is likely to be a conservative estimate on the part of the Trial Chamber, as compared to the Commission of Experts' figure of 2,000 and the very early estimate of 5,000. However, whatever the exact number, the nature of the attack as an indiscriminate assault on the civilian population of Kozarac has been confirmed by each of these authoritative sources. That the killings took place in what the Respondent calls an "armed conflict" [Counter-Memorial, para. 2.2.2.11] obviously cannot be relevant to justify these killings, as it was the Respondent itself that initiated and effectuated an armed attack.

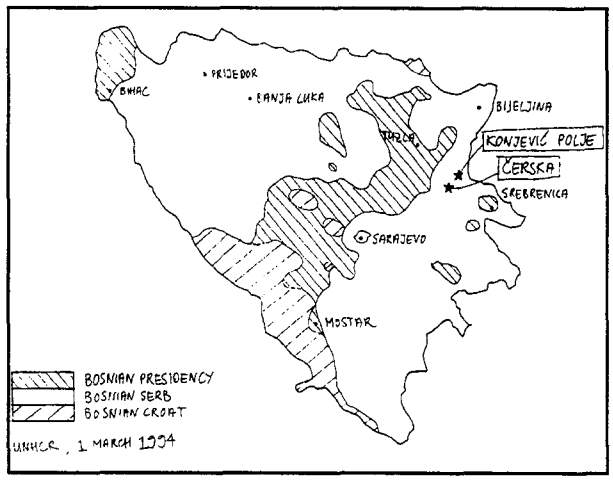


26. In June 1992, Serb forces shelled the village of Sivci, close to Prijedor. The Commission of Experts reports that between 45 and 120 people were killed during that attack [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 5), 28 Dec. 1994, Annex X, p. 36, para. 232].

27. In the same month, Kotor Varoš county, located in the north-central part of Bosnia and Herzegovina, 60 kilometre south-east of Prijedor, was besieged. On 12 June 1992, artillery destroyed the villages of Hrvačani and Bilice. The Commission of Experts reports that over 500 people were killed [United Nations, *Final report of the*

United Nations Commission of Experts, S/1994/674 (Vol. 5), 28 Dec. 1994, Annex X, p. 21, paras. 106-107].

28. The shelling and killing would continue in 1993, and indeed by then had become a consistent pattern. The United Nations team in the Cerska enclave reported that on 11 March 1993, in the village of Konjević Polje, at least 150 women and children were killed in the shelling of a group of people gathered around two UNPROFOR vehicles [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, pp. 5 and 7, paras. 12, 14 and 22].

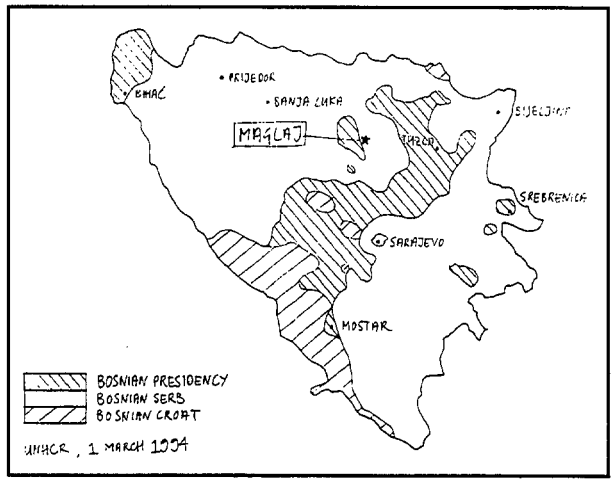


29. On April 12, 1993, artillery attacks killed 56 people and left 106 people wounded [*Situation of Human Rights in the Territory of the Former Yugoslavia*, Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 5 May 1993, E/CN.4/1994/3, p. 9, para. 38]. At least 15 children were killed [United States Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 40, Number 30, July 26 1993, p. 546, Annex 18].

30. In the meantime, the capital city of Sarajevo was continuously shelled by Serb forces. As just one example, on 9 and 10 November 1993, mortar attacks by Serbs killed 12 people in Sarajevo [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Fifth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 4, para. 14].

31. The pattern of shelling and killing of civilians would continue in 1994. On 23 January 1994, in the city of Tuzla in north-eastern Bosnia and Herzegovina, civilians, including four children, were killed in attacks with cluster bombs and anti-personnel rockets [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, A/49/641, S/1994/1252, 4 Nov. 1994, p. 10, para. 31].

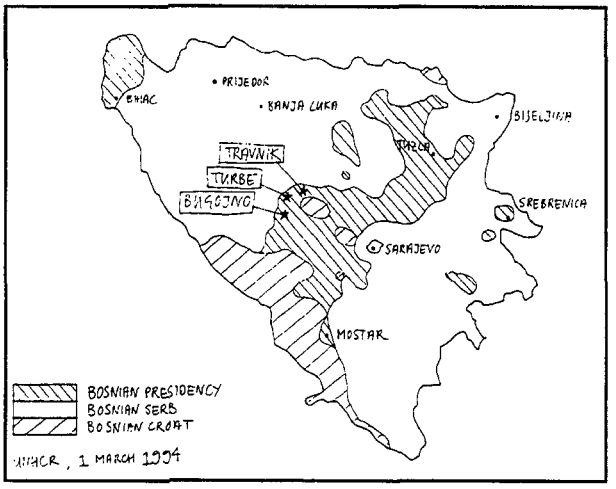
32. Two months later, shelling killed civilians in the town of Maglaj - located on the banks of the river Bosna some 50 kilometre west of Tuzla. In March 1994, some 1,300 shells landed in the town on a single day, killing, among others, five medical personnel at a health-centre. On 26 July, 1994, it was reported that eight people were killed in a mortar attack there [*ibid.*, p. 10, para. 30].



33. In June 1994, some 50 kilometre south-west of Maglaj, similar killings took place in Travnik, Turbe and Bugojno - located in central Bosnia and Herzegovina. Mazowiecki reported that Travnik had been subjected to:

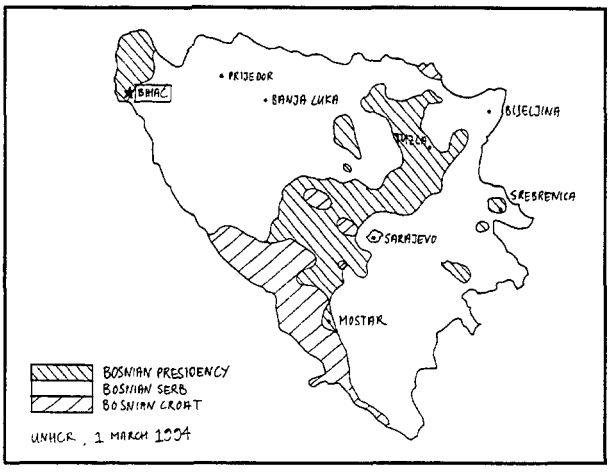
> "heavy shelling and other forms of attack during recent months. Shelling in the last week of June 1994 claimed at least nine lives. Among the targets was the hospital. Heavy shelling of civilian targets was again noted in August. During the week of 8-14 June 1994, it was reported that some 15 women and children in nearby Turbe were killed or injured in military attacks. In Bugojno, during the same period, some eight people, including a child, were killed in attacks by Bosnian Serb forces (...)." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special*

Rapporteur of the Commission on Human Rights, A/49/641, S/1994/1252, 4 Nov. 1994, p. 10, para. 31].



34. Similar deadly attacks which had been carried out in Bihać, more than 150 kilometer north-west of Travnik, in the northwestern corner of Bosnia and Herzegovina, were reported in November and December of that year. Mazowiecki states:

> "12. The intense attack concentrated on Bihać town is being perpetrated primarily by Bosnian Serb forces, with substantial tactical (including air) support provided by the forces of the so-called 'Republic of Serb Krajina'. The assault on Bihać town is being conducted with no obvious concern for the safety of civilians. The town has been pummelled by shells and other missiles causing considerable loss of life and injuries. During late November [1994] the battle front came to a halt within a few hundred metres of the town's only hospital and the safety of some 2,000 patients were endangered. On 13 December a mortar attack impacted near the HVO Brigade headquarters in the town, killing a four-year-old child and injuring two civilians. Shelling, at the rate of two to three attacks each day, has, since then, continued to claim the lives of civilians in the town centre." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1995/57, 16 January 1995, pp. 5-6, paras. 13-16].



35. In some places, shelling was accompanied by sniping. This was the cause of the killing of thousands of civilians in Sarajevo. The Trial Chamber of the ICTFY found that:

> "[F]rom 5 April 1992 to 31 May 1995, the city of Sarajevo was besieged by Bosnian Serb forces. During this period, the city was subjected to a systematic and deliberate sniping campaign, the outbreak of which allegedly occurred on 6 April 1992 from the headquarters of the Serbian Democratic Party (SDS) at the Holiday Inn. The snipers, who were members of the Bosnian Serb army, used very sophisticated weapons to shoot people while on their daily business. Casualties included women, children and the elderly." [ICTFY, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 10, para. 19].

36. In the first six months of 1995, a combination of shelling and sniping killed many civilians in Sarajevo. Mazowiecki reports that 2 young girls were killed on 23 March 1995; that in late April civilians were "killed or injured on an almost daily basis by shelling or sniping"; that on 7 May shelling by Serbs killed 9 people; that in the whole month of May 1995, 41 civilians had reportedly been killed; that on 18 June 1995, 7 people were killed "when a shell fired by the Serb forces landed in the western suburb of Dobrinja"; that between 18 and 23 June 1995, 22 civilians were killed by shelling; and that shelling by the Serbs during the weekend of 1-2 July 1995 killed 13 civilians. At the time Mazowiecki wrote his report, the targeting of civilian areas resulting in death and injury to the non-Serb population continued [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the*

Commission on Human Rights, E/CN.4/1996/6, 5 July 1995, pp. 14-15, paras. 66-70].

37. The above examples show a clear and consistent pattern of killing of civilians throughout the war and throughout the territory of Bosnia and Herzegovina. The above evidence might lead one to the interpretation that the shelling was only a means to gaining control over certain areas, towns or villages, and that the killings by shelling were merely collateral to the Serb strategy of taking over parts of Bosnia and Herzegovina. This interpretation would be incorrect. Killing of civilians was an objective independent of the objective to control certain areas. This became fully evident when the Serbs actually did gain control over a region, town or village. For at that moment, the next stage in the pattern of killings would start. During and immediately following the take-over of towns or cities, Serbs would randomly kill large numbers of civilians. Many others, in particular men, were killed in camps where they were brought after the take-over. The United Nations Commission of Experts describes that once an area would fall under the control of paramilitary forces, these forces would:

> "terrorize the non-Serb residents with *random killings*, rapes and looting (...) the seized area is administered by local Serb authorities, often in conjunction with paramilitary groups." [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994, Annex IV, p. 9, para. 28, emphasis added].

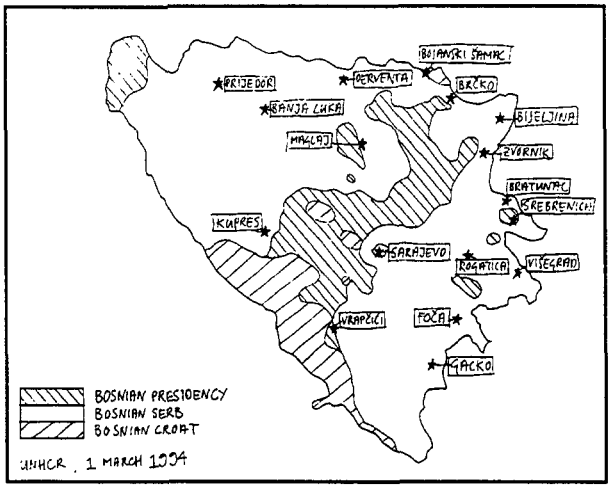
38. Specifically with regard to the activities of paramilitary groups, the Commission of Experts found the following pattern:

> "Upon entering a village, sometimes under the cover of shelling, particularly in those counties where they were operating simultaneously with the JNA, Šešelj's and Arkan's troops would begin their reign of terror. In an overwhelming majority of the counties in which Šešelj's and Arkan's troops were operating, there are allegations of killing of civilians, rape, looting, destruction of private or cultural property, and prison camps." [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994, Annex III.A, p. 27, para. 105].

39. An illustrative and dramatic example of what happened once a town had fallen, is the attack on Kozarac. The attack and resulting killings have been described in paras. 15 and 16 of this Section. When the Serbian forces entered the village at the end of May 1992, it became clear that these killings were not collateral to the attempt to gain control over the town. Many people were shot in their homes. Those who surrendered were taken to the soccer stadium. Some men were randomly shot. Upon

their arrival at the stadium, the women and men were separated and delivered to camps. Many were killed in the process. In the camps many more would be killed [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994, Annex III, pp. 154-155, paras. 484-485].

40. Similar events took place in many different parts of Bosnia and Herzegovina. Like the killing by shelling, the killing of civilians once an area was taken over by Serbs existed throughout the territory of Bosnia and Herzegovina. This can be visualized by reports of killings by Šešelj's and Arkan's troops. These troops killed in Prijedor, in the north of Bosnia and Herzegovina. They also killed in counties of towns that in a clock-wise movement cover most of the territory of Bosnia and Herzegovina: from Prijedor, east to Banja Luka, Derventa, Maglaj, Bosanski Šamac, Brčko and to Bijeljina, more then 200 kilometre east of Prijedor, in the far north-eastern corner of Bosnia and Herzegovina. From Bijeljina to the south to Zvornik, Bratunac, Srebrenica, Rogatica, Višegrad, Foča and Gacko in the south-east of Bosnia and Herzegovina. From there, to the north and north-west of Gacko to Vrapčići, Kupres and Sarajevo [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994, Annex III.A, p. 196, Note 161]. In all of these places, the killing appeared random, but it was the random killing of civilians itself that was a consistent pattern. Specific details of killings include the following:



41. In April 1992, Serbs took the eastern town of Zvornik. Paramilitary groups committed random executions after entering Zvornik [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994,

Annex IV, pp. 10-11, para. 41]. After the town was taken, paramilitary troops conducted a house-to-house search for Muslim men. A witness reported to Amnesty International that Arkan's men rounded up a group of residents on 10 April:

> "They were taken out into the orchard and forced to lie down. There were 15 captives in total, nine women and six men. The men were killed, and the women were locked in the cellar of a house. After three days, people from a nearby village discovered the women." [United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), *Final Report*, S/1994/674/Add.2 (Vol. I), Annex III.A, para. 578].

The Commission of Experts states that "2,500 men were killed on 9 and 10 April [1992]" [United Nations, Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), *Final Report*, S/1994/674/Add.2 (Vol. I), Annex X, para. 387]. These killings are further detailed in Section 6 of this Chapter.

42. The next month, 25 kilometres south of Zvornik, civilians were executed when the village of Zaklopaca (near the town of Vlasenica) was taken. Mazowiecki reports that the village had a mainly Muslim population of about 150 prior to the conflict:

> "on 16 May 1992, at least 83 Muslim men, women and children were arbitrarily executed by Serb forces there." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 10, para. 37].

43. In the same month of May 1992, towns in the north-western Prijedor area were taken and civilians killed. Trnopolje was attacked on 23 May 1992. The Commission of Experts reports:

> "The local villagers were ordered to turn over their weapons, and the Serbs began a campaign of harassment against the population. They fired shots at Muslim houses, and the wealthy and intellectuals disappeared. Many villagers were killed in their homes." [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. V), 28 Dec. 1994, Annex X, pp. 34-35, para. 215].

44. In other villages in the Prijedor area similar random killings occurred. The Commission of Experts reports:

> "483. On 24 May 1992, the villages of Kozaruša and Kozarac in Prijedor county were surrounded by a Serbian force, which included units of the Serbian Army, Bosnian Serb irregulars, White Eagles, and Seselj's men. The forces equipped with tanks and armoured personnel carriers,

> bombarded the villages for approximately two hours with artillery and rocket fire before entering the village of Kozarusa. Upon entering the village, local Serbs began identifying Muslims who were then shot in the street. Muslim homes were set afire after Serbian forces tossed grenades into them." [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994, Annex III, pp. 154-155, para. 484].

45. A week later, on 1 June 1992, 53 people were killed by Serb paramilitary forces in Prhovo, a village about 7 kilometres north-east of Ključ and about 50 kilometres south-east of Prijedor. The village consisted of 45 houses and had more than 150 inhabitants. The Serb paramilitaries had entered the village on May 30, 1992. Some residents had fled into the surrounding woods. On June 1 the following occurred:

> "At about 6pm on June 1, the soldiers returned and ... used megaphones to call people in from the forest. They also went from house to house, pulling people out on the streets. The male residents were beaten severely. At about 7 pm, the soldiers began murdering the residents with automatic weapons. They fired single shots, then long bursts of automatic gunfire.
> After the shooting stopped the soldiers had departed, the witness, who had fled to the woods when the shooting started, returned to the village. The murdered men, women and children lay in the streets. Houses where burning, and their roofs were collapsing." [United States Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 4, No. 16, 19 April 1993, p. 260, Annex 19].

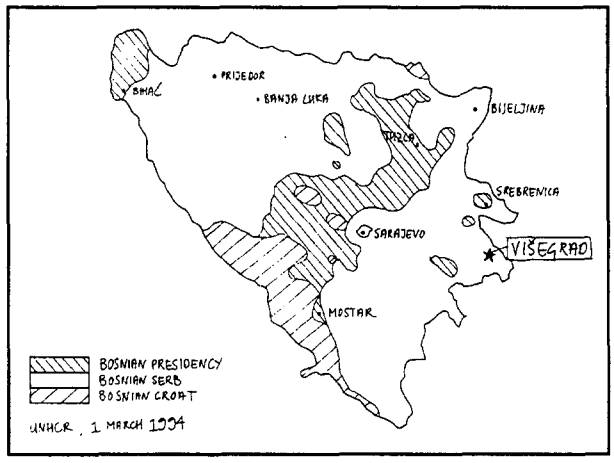
The United States published a list of the 53 people killed in this massacre [*ibid.*].

46. On 12 June 1992, civilians were killed in the village of Vrapčići, some 150 kilometres south of Prhovo. Eighty-eight Muslim and Croat civilians were rounded up by Serb forces, taken to the stadium and then killed [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994, Annex III.A, p. 151, para. 460].

47. In July 1992, killings continued in Prijedor county. Civilians were indiscriminately killed in the area of Briševo. The Commission of Experts reports that after the Serbs had shelled the village with mortars, they started to move through the various villages, killing the inhabitants indiscriminately. According to the report, seventy bodies were buried [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 5), 28 Dec. 1994, Annex X, p. 42, para. 265].

48. Three months later, Serb paramilitary groups killed civilians near Višegrad, more than 200 kilometres east of Brisevo, close to the border with Serbia. The Commission of Experts reports:

"551. On 22 October 1992, Milan Lukic and his men allegedly abducted 16 Sandzak Muslims from the village of Sjeverin. According to Amnesty International, eight armed and masked men boarded the bus that the Muslims were travelling on as it entered BiH at the Višegrad municipality. The men, identified as Milan Lukic's, then ordered the passengers off the bus and onto an army truck. The truck, which had no license plates, headed towards the town of Višegrad. At this time, the passengers were told that they would be exchanged for Serbs who were captured the previous night. According to the Belgrade newspaper Borba, which cites military sources in Serbia, these Muslim hostages were killed near Višegrad that same day." [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), Annex III, 27 May 1994, p. 164, para. 551].



49. Patterns of random killing continued in the following year, 1993. Mazowiecki reports that:

"in the mainly Muslim village of Cela near Prijedor, 10 villagers have been shot and killed in their homes in the last few months. Random shootings, bombings and house burnings are reliably reported to be the norm here." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 8, para. 27].

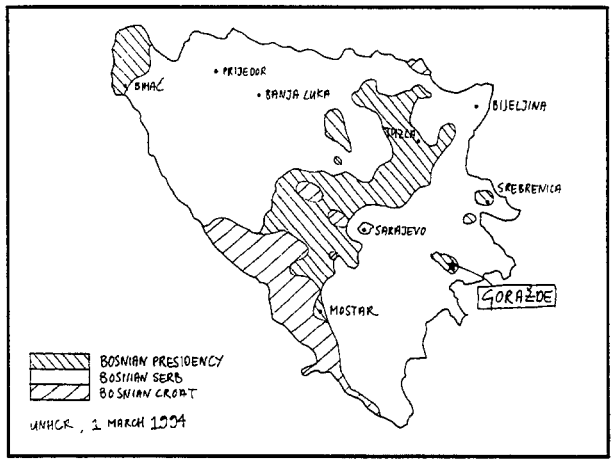
50. While most non-Serbs had been removed from Prijedor in 1992, non-Serbs that had continued to live there continued to be the targets of killings. The Commission of Experts reports that in the last days of March, 22 identified non-Serbs were killed and three went missing:

"(a) On 25 March 1994: three identified non-Serbs from Prijedor went missing.
(b) On 27 March 1994: two identified non-Serbs from Prijedor were killed on working obligations for the Serbs.

> (c) During the three days 29, 30 and 31 March 1994, 19 identified non-Serbs from Prijedor were killed. Most of the people killed were couples and other immediate family members.
> (d) The next day, on April 1 1994: also an identified non-Serb, a 25-year old young man, died from the injuries he sustained the previous day when his parents were killed." [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 28 Dec. 1994, Annex V, p. 120, para. 638].

51. Civilians were also killed during attacks by Serb forces on the enclave of Goražde in eastern Bosnia and Hezegovina in March and April 1994. Mazowiecki described as follows what he considered an indicative practice:

> "The attacks on the villages of Stanici and Kordici are indicative of practices of the advancing troops. In these villages, a number of residents were summarily executed including elderly women and a handicapped man. Bodies of the dead were subsequently mutilated and decapitated. The Special Rapporteur has received information that tank rounds were fired directly into homes." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, seventh periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1995/4, 10 June 1994, p. 2, para. 7].



52. The pattern of killing of civilians culminated in the dramatic events in Srebrenica in July 1995. When Srebrenica was taken, hundreds of Muslims had fled to Potoćari, where they were killed. Thousands of Muslim civilians, mainly men, were rounded up at Potoćari or were captured during their flight to Muslim-held territory, brought to execution sites and executed. The evidence for these killings is detailed in Section 8 of this Chapter.

53. As already indicated above, after the shelling and random killing during and immediately following the take-over of towns or cities, a third stage in the process of

killings of civilians would start. Many non-Serb civilians were arrested and brought to camps. Many civilians, in particular men, were killed in those camps. The United Nations Commission of Experts describes the third phase of this pattern as follows:

> "terrorize the non-Serb residents with *random killings*, rapes and looting. Third, the seized area is administered by local Serb authorities, often in conjunction with paramilitary groups. During this phase, non-Serb residents are detained, beaten and sometimes transferred to prison camps where further abuse, including *mass killings*, have occurred (...)" [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. 1), 27 May 1994, Annex IV, p. 9, para. 28, emphasis added].

54. As most of the evidence relating to camps concerns killing of men, that evidence will be discussed below. However, killing of civilians was not confined to men. A full account of the acts of killing in camps is provided in Section 5 of this Chapter.

Killing of men

55. Amidst the pattern of killing of civilians, a second pattern emerged during the war in Bosnia and Herzegovina: killings targeted male non-Serbs. The killing of men - sometimes including boys and old men - was part and parcel to the organized campaign to destroy in whole or in part the non-Serb population of Bosnia and Herzegovina.

56. Men were not "simply" killed as a proportional part of the non-Serb population that was killed. This can be demonstrated on the basis of quantitative data. In January 1997, Professor Manfred Nowak, Expert Member of the Working Group on Enforced or Involuntary Disappearances, reported on the basis of all available evidence that of the more than 20,000 persons missing in Bosnia and Herzegovina, more than 90 per cent are men. Between 80 per cent and 90 per cent of those men are Bosnian Muslims [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1995/55, 15 Jan. 1997, p. 28, para. 97]. This means that between 14,400 and 16,200 Bosnian Muslim men are still missing in Bosnia and Herzegovina. The large majority of these men must now, in March 1998, be presumed dead. That 90 per cent of the missing persons are men shows that men were specifically targeted, singled out and killed.

57. That men were not "simply" killed as a proportional part of the non-Serb population can also be demonstrated on the basis of credible reports of particular instances of

killing. These show that men were separated from women and specifically singled out for killing. Similar to the killing of civilians, the singling out and killing of men showed consistent patterns throughout the time of the conflict in Bosnia and Herzegovina and throughout the territory of Bosnia and Herzegovina.

58. What was said in the introduction of this Section regarding the ulterior motive behind the killing of non-Serbs applied even more forcefully in the context of the killing of men. The non-Serb men were not simply victims of arrest, detention or deportation - acts that might be "explained" by the objective of Serbs to remove non-Serbs from certain areas. Non-Serb men were also not victims of accidental killings accompanying a process of expulsion. Rather, the evidence demonstrates that many men were killed, rather than being arrested and deported. The evidence also demonstrates that thousands of men that were arrested and detained were not detained as a prelude to deportation but as a prelude to their death.

59. The evidence cited below further demonstrates that this was not the case of just a few men being killed and that this did not happen at just a few places in Bosnia and Herzegovina. Thousands of men were killed between 1992 and 1995 and were killed in all places in Bosnia and Herzegovina where Serbs mounted their attacks on the non-Serb population.

60. In many of the reports of the killing of men, mention is made of the fact that the men singled out and killed were of military age. This fact should not be taken to mean that there was some kind of military objective or even necessity involved in the separation and killing of men. The Commission of Experts, having received and reviewed the available evidence, concludes that:

> "35.[I]t was often reported that men between the ages of 18 and 60 were separated from women, children, and elderly men. Apparently, men between the ages of 18 (or younger) and 60 were considered to be of fighting age, constituting a class of quasi-prisoners of war or perhaps legitimate internees because of their potential for hostility. *However, rarely did reports include any information to suggest that those considered capable of fighting had ever actually committed hostile acts or had organized to do so. In fact, many Muslim villagers simply surrendered the weapons they had upon an initial demand by the Serb forces in the region. After that surrender, the villagers were in many cases detained.* The reports indicate that in many instances, men between the ages of 18 and 60, were ultimately transferred to heavily guarded larger camps where killings or torture were prevalent.
> (...)
> 49. Several Bosnian Serb controlled camps served as places of mass and continuous killing and execution by various means (...)
> 50. At the larger camps, prisoners were reported to have been killed on a daily basis (...)."
> [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2

(Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 11-14, emphasis added].

61. It hardly needs mentioning that the large-scale killings of non-Serb men had a devastating effect on non-Serb communities as a whole. This was well-stated by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights:

> "The fate of the menfolk is a cause of great anguish for their relatives and friends. The disappearance of such a huge number of men poses particular practical problems in a male-dominated society where the women are almost wholly dependent on men for their livelihoods." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, final periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 August 1995, p. 11, para. 49].

62. Without a doubt, the most dramatic killings of male non-Serbs transpired in the town of Srebrenica. When Srebrenica was taken, hundreds of Muslims had fled to Potoćari where they were killed [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, para. 35]. Thousands of Muslim civilians, also mainly men, who were rounded up at Potoćari or were captured during their flight to Muslim-held territory, were brought to execution sites and were executed at, among other places, Kravica, Branjevo, Nova Kasaba, and Pilica [*id.*, para. 16]. These events will be detailed in Section 8 of this Chapter. But this pattern was not confined to Srebrenica. What happened in Srebrenica was a copy of patterns that had occurred at many other times and places.

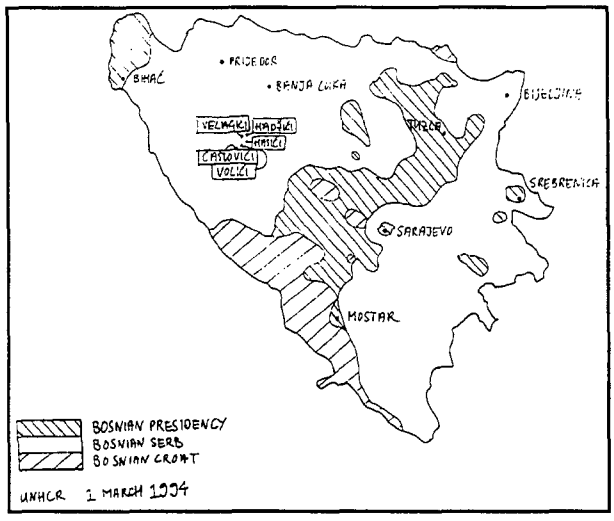
63. More than three years before the separation and killing of men in Srebrenica, similar events took place near the town of Foča, some 80 kilometre south-east of Srebrenica. In March 1992, many of the villages around Foča, in south-east Bosnia and Herzegovina, "suffered large-scale summary executions by Serb forces". Tadeusz Mazowiecki reports that:

> "A witness from the village of Jelec reports that all the men were rounded up and shot with machine-guns. She reportedly lost her husband, her five brothers and their four sons. The woman and children had reportedly escaped to the mountains and returned to the village four days later to bury the men." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 February 1993, p. 9, para. 33].

64. The following month, Zvornik, more than 100 kilometre north of Foča, was attacked. The Commission of Experts states that in Zvornik "2,500 men were killed on 9 and 10 April [1992]" [United Nations, Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), *Final Report*, S/1994/674/Add.2 (Vol. I), Annex X, para. 387]. Specific instances of separation of men from women and killing of men are detailed in Section 6 of this Chapter.

65. The next month, May 1992, similar events took place in Grbavci, north of Srebrenica. The Commission of Experts reports:

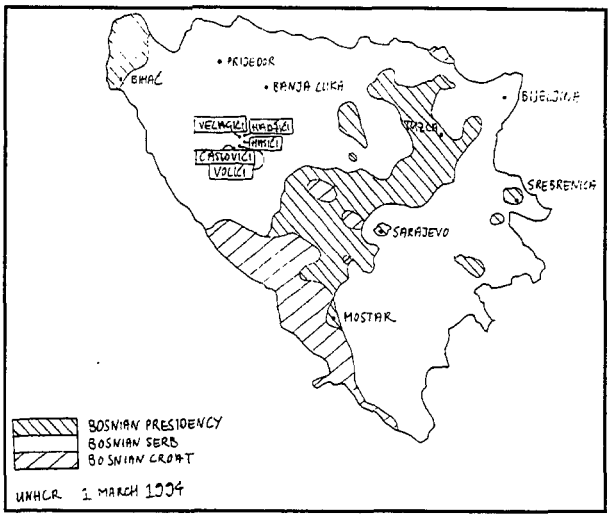
> "On 18 May 1992, Serb militiamen surrounded the village and began shooting. Residents began to flee. Many of the male villagers were rounded up, put into a line, and upon a order to 'kill the Ustaša', where shot at with automatic weapons. At least 56 men were killed." [United Nations, Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), *Final Report*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex X, p. 59, para. 396].



66. Similar patterns of singling-out and killing of men emerged throughout the territory of Bosnia and Herzegovina. Between 29 May 1992 and 3 June 1992, Serbian forces attacked the villages of Hasići, Nezići, Volići, Hadžici and Častovići, close to Velagići, more than 200 kilometre west of Grbavci. The Commission of Experts reports that:

> "male Muslims from the villages of Hasići, Nezići, Volići, Hadžici and Častovići were taken to Velagići and temporarily housed in the local school. About 250 of these individuals were killed." [United Nations, Commission of Experts Established Pursuant to Security

Council Resolution 780 (1992), *Final Report*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex X, p. 20, para. 100].



67. In June 1992, a mass killing of Muslim men took place near Velagići. The Commission of Experts reports that:

> "In June 1992, several men reportedly organized, oversaw, and executed a mass killing, in which 282 Muslim men were killed in front of a school near Velagići and then buried in a mass grave... On the day of the killing, Serbian soldiers dug a large hole ... Muslims were ordered to line up along the edge of the hole facing the school, while the women and children were brought in to watch. Then, the person in charge ordered the execution of all of the men. Though most of them were shot to death, some were stabbed with knives." [United Nations, Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), *Final Report*, S/1994/674/Add.2 (Vol. I), Annex X, p. 19, para. 96].

68. In the same month of June 1992, men were singled out and killed some 150 kilometre south of Velagići in Mostar County in southern Bosnia and Herzegovina. The Commission reports the killing of men near Sutine landfill, located on the northern edge of Mostar:

> "129. On 13 June, about 200 Bosnian Muslim and Croatian men, women and children from Mostar were rounded up by Bosnian Serb forces and taken to Zalik. The males were separated from the women and children and taken to the Sjeverni Logor casern nearby. The men were registered on a roster and placed on trucks, which later departed for Sutine, several kilometres north of Zalik.
> 130. Upon arriving at Sutine, the prisoners were taken to a building which belonged to a cemetery and which was near Sutine landfill.... Prisoners were taken, one by one, for their interrogations and beatings, and afterwards, were taken outside and killed by either a pistol shot to

> the head or by automatic rifle fire." [United Nations, Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), *Final Report*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex X, p. 23, paras. 128-130].

69. The United States reported on these same events as follows:

> "One by one, the prisoners were led to one of the interrogation rooms, where they were beaten and tortured by an inspector and two or three guards. After being indiscriminately beaten and tortured, the prisoners were taken outside and executed by either the inspector, with a pistol shot to the head, or by the guards, with a burst from their automatic rifles." [United States Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 4, No. 16, 19 April 1993, p. 259, Annex 19].

70. The Trial Chamber of the ICTFY in the Tadić decision made the following factual finding of the killing of men in the village of Jaskići on 14 June 1992:

> "348.(...) Serb soldiers arrived at Jaskići and ordered men out of their homes and onto the village street, their hands clasped behind their heads; there they were made to lie down and were severely beaten. The village houses were searched to make sure that all men were accounted for. Then the men, other than three older men, were marched off in the direction of Kozarac and their families have never seen or heard of them again. When they had left, the women found the bodies of five men who had been shot, their corpses left to lie where they fell (...).
> (...)
> 373. This Trial Chamber is satisfied beyond reasonable doubt that the accused was a member of the group of armed men that entered the village of Jaskići, searched it for men, seized them, beat them, and then departed with them and that after their departure the five dead men (...) were found lying in the village (...)." [ICTFY, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 125 and 132].

71. A middle-aged Muslim woman also described an attack on the village of Trosan, near Foča, on 3 July 1992. The captured villagers were separated by sex and the men were then summarily executed, their families standing about twenty meters away [United Nations, *Letter Dated 12 April 1993 from the Permanent Representative of the United States of America addressed to the Secretary-General*, S/25586, 13 Apr. 1993, p. 5].

72. The killing of men from the Prijedor area continued throughout the summer. Mazowiecki reports that:

> "During the second half of August [1992], two convoys of Muslims wishing to leave Prijedor were organized. The first, consisting of some 500 persons loaded into trucks, headed off towards Travnik, in central Bosnia. It was joined en route by a second convoy containing a similar number of persons from the towns of Kluj and Sanki Most. At some point during the journey, the men in the convoy, some 20 in number, were separated from the women and children and executed

> forthwith, in the presence of their wives and children." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission of Human Rights*, A/47/666, S/24809, 17 Nov. 1992, p. 9, para. 17(h)].

The killing of men in Prijedor is further detailed in Section 7 of this Chapter.

73. As indicated above, the consistency of the pattern of singling out and killing men can be seen from the fact that almost three years later, similar events, yet resulting in even larger numbers of men killed, took place in Srebrenica, further detailed in Section 8 of this Chapter.

74. The evidence cited above demonstrates that during or immediately following the take-over of towns or cities, men were singled out and killed. Large numbers of men suffered a different fate, however; they were arrested and brought to camps. For instance, Manfred Nowak reports that in eastern Bosnia, during the first months of 1992, between 2,500 and 3,000 persons disappeared. Most of these were middle-aged men who were brought to camps in the region [*Special process on missing persons in the territory of the former Yugoslavia*, Report submitted to Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, 15 January 1997, E/CN.4/1997/55, para. 100].

75. More detailed information on the camps in Bosnia and Herzegovina is provided in Section 5 of this Chapter. Here it will be demonstrated that the camps were used to effectuate the policy of separating and killing non-Serb men.

76. The pattern of deportation of non-Serb men to camps was summarized by the Commission of Experts as follows:

> "230. (i) Men between the ages of 16 (or younger) and 60, who are considered to be of military age, are usually separated from older men, women and children. These men are transferred to heavily guarded larger camps where killings and brutal torture are prevalent." [United Nations, *Final Report of the Commission of Experts*, S/1994/674 (Vol. I), 28 Dec. 1994, p. 54, para. 230].

77. This pattern took place on a massive scale in the Prijedor area - analyzed in greater detail in Section 7 of this Chapter. The Commission of Experts reports that after the villages in the Prijedor area and Prijedor town were taken, the non-Serb survivors were divided:

> "168. Females, boys under the age of sixteen (sometimes the age limit may have been lower) and elderly men (older than 60 or 65) made up one group, while the other men comprised the second group.
> 169. The second group - the men - were taken to hastily opened concentration camps in a ceramic tile factory, Keraterm, next to Prijedor town and on the premises of the iron ore mine and processing plant at Omarska." [United Nations, *Final Report of the Commission of Experts*, S/1994/674 (Vol. I), 28 Dec. 1994, p. 40, paras. 168-169].

78. The Commission of Experts concluded from a review of the evidence that "more than 6,000 adult males" were taken to the Omarska and Keraterm camps [United Nations, *Final Report of the Commission of Experts*, S/1994/674 (Vol. I), 28 Dec. 1994, p. 41, para. 170]. The Commission of Experts also concluded that from the "more than 6,000 adult males" who were taken to Omarska and Keraterm, few survived:

> "Since only 1,503 were moved to Manjača camp ..., a limited number transferred to the Trnopolje camp and almost none released, it may be assumed that the death toll was extremely high." [United Nations, *Final Report of the Commission of Experts*, S/1994/674 (Vol. I), 28 Dec. 1994, p. 41, para. 170].

79. The evidence that large numbers of male prisoners were killed in the Omarska and Keraterm camps was corroborated by the Trial Chamber of the ICTFY. In the Judgment in the Tadić case, the Trial Chamber found that the Omarska camp held as many as 3,000 Muslim and Croat prisoners at one time, of which only 36 to 38 were women. The Chamber found:

> "157. (...) By all accounts, the conditions at the camp were horrendous; killings and torture were frequent.
> (...)
> 166. (...) Many died as a result of these repeated assaults on them (...) Dead bodies of prisoners, lying in heaps on the grass near the white house, were a not infrequent sight (...)." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 59, 60 and 62].

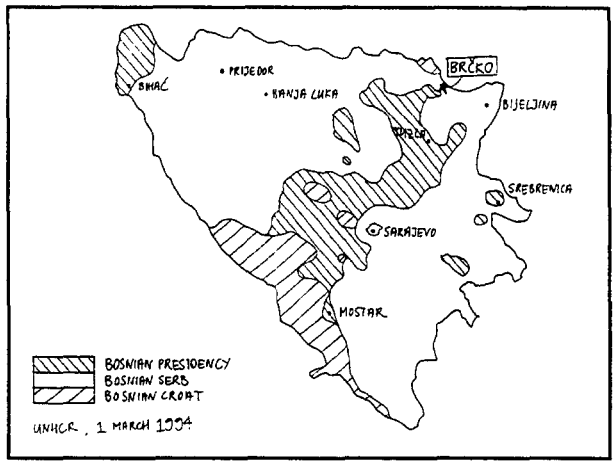
80. In the Keraterm camp, similar patterns of killing of men occurred. The prisoners of Keraterm were mostly male and number between 1,000 and 3,500 [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol. 4), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 225, paras. 1818, 1820]. Evidence for killing of men in Keraterm camp was, *inter alia*, found in the Indictment against Sikirica & others. The Prosecutor found evidence for 168 killings committed in Keraterm camp by the accused. He found that these killings were committed with the intent to destroy, in whole or in part, the Bosnian Muslim and Bosnian Croat people as

national, ethnic or religious groups, and charged the accused with genocide [ICTFY, Indictment, *Prosecutor v. Duško Sikirica & others*, Case No. IT-95-8-I, 18 June 1996, p. 4].

81. Further evidence of the killing of men in the camps in the Prijedor region is provided in Section 5 of this Chapter ("Camps") and Section 7 of this Chapter ("Prijedor").

82. The pattern of killing of men in camps in the northern Prijedor region is not unlike that which occurred in the Luka camp in the Brcko area in north-eastern Bosnia and Herzegovina. Scores of men who had been captured when the Serbs took the town and municipality of Brčko were held in the Luka camp. The ICTFY Indictment of Goran Jelisic, a.k.a. "Adolf", who had been the commander of Luka at one point, states:

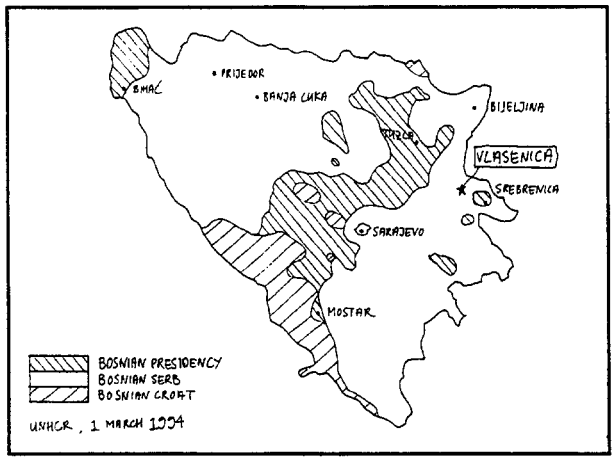
> "2. From about 7 May 1992 until early July 1992, Serb forces confined hundreds of Muslim and Croat men, and a few women, at Luka camp in inhumane conditions and under armed guard. From about 7 May 1992 until about 21 May 1992, detainees were systematically killed at Luka. Almost every other day during that time, the accused, often assisted by camp guards, entered Luka's main hangar where most detainees were kept, selected detainees for interrogation, beat them and then often shot and killed them.
> 3. The accused, often assisted by guards, usually shot detainees at close range in the head or back... The accused and guards then ordered other detainees to move the bodies to one or two disposal areas where the bodies were piled until they were later loaded on trucks and taken to mass graves outside the town of Brčko or disposed of in other ways." [ICTFY, Indictment, *Prosecutor v. Jelisić and Češić*, Case No. IT-95-10-I, 30 June 1995, p. 1, paras. 2-3].



83. The Prosecutor of the ICTFY, like the Applicant, views these killings as part of a campaign of genocide. He found evidence that the defendant intended to destroy a substantial or significant part of the Bosnian Muslim people as a national, ethnical, or religious group and, in effect, systematically killed Muslim detainees in the Luka camp in Brčko. By these actions, the Prosecutor found, the defendant instigated, ordered, committed or aided and abetted genocide [ICTFY, Indictment, *Prosecutor v. Jelisić and Češić*, Case No. IT-95-10-I, 30 June 1995, p. 3, para. 17].

84. The pattern of killing of men in camps in the northern Prijedor region and in the north-eastern Luka camps can also be traced to the Sušica camp near Vlasenica in eastern Bosnia and Herzegovina. While the camp held both men and women, there are numerous reports that men were singled out and killed:

> "2775. According to witnesses, executions took place regularly at Sušica Camp. Usually, about eight men were taken away from the warehouse at a time. Shortly afterward, people inside the building would hear shooting. The men would never return.
> (...)
> 2788. An ex-guard reports that the small-scale executions took place on the camp grounds. Male prisoners were generally lined up against an electricity pylon just outside the barracks and shot. The larger ones were carried out at a nearby ravine called Han Ploča on the road south toward Han Pijesak. Men were loaded into the back of a truck, taken up to the edge of the ravine about five miles away, and then shot as they got out of the vehicle... The bodies fell into the ravine and bulldozers were later used to cover them up." [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 332-336, paras. 2775, 2778].



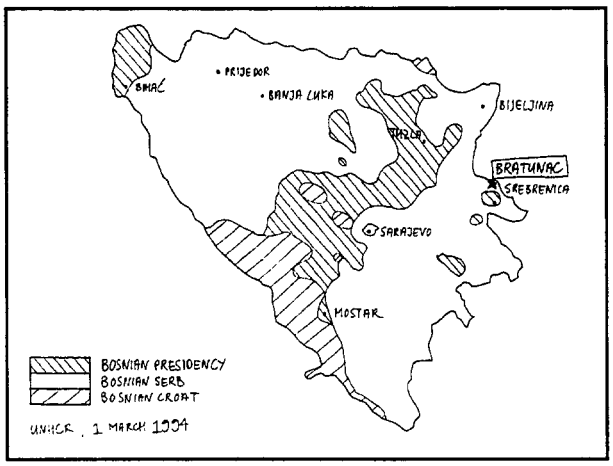
85. Some of the events that occurred in the Sušica camp were reviewed by the Trial Chamber of the ICTFY in the Review of the Indictment Pursuant to Rule 61 in the case against Dragan Nikolić. Nikolić was the commander of Sušica camp during

1992. The Prosecutor charged Nikolić *inter alia* with the killing of eight men. The Trial Chamber determined that there were reasonable grounds for believing that Dragan Nikolić committed these eight killings [ICTFY, Decision of Trial Chamber 1, Review of Indictment Pursuant to Rule 61, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, p. 23]. The events in this camp are a clear example of the killing of people based on a double selection criterion: ethnicity and gender. The Trial Chamber also noted that these killings were part of a policy of discrimination implemented at Vlasenica that "was specifically aimed at 'cleansing' the region of its Muslim population". The Chamber continued to state that:

> "the constitutive element of the crime of genocide may be inferred from the very gravity of those discriminatory acts." [*ibid.*, p. 20, para. 34].

86. Another place in eastern Bosnia and Herzegovina where men were detained and killed was Bratunac. The Final Report of the Commission of Experts reported that after the town of Bratunac and surrounding villages had been taken by paramilitary groups:

> "382. On 10 May, Serbian troops placed 4,000 to 5,000 civilians in a newly established concentration camp at the FC "Bratstvo" stadium. Others were taken to the playground. Civilians were separated by gender and the male Muslims transported to the elementary school Vuk Karadzic, where a number of men were beaten. One report states that between 600 to 700 male Muslims were moved to Vuk Karadžić Primary School Sports Centre (...) Most were killed by gunfire, but in one day it is alleged that up to 150 people were killed from beatings. Reportedly, individual perpetrators were responsible for the deaths of 20 or more people. The corpses were eventually thrown into the Drina River.
> 383. Eventually the remaining Muslims were brought to the playground, where Arkan and Šešelj's men stripped them of all personal property. They were then separated by gender and the women were taken to Kladanj by bus, while the men were returned to the elementary school to be beaten and tortured. Between 30 and 50 of the men were killed." [United Nations, *Final Report of the Commission of Experts*, S/1994/674 (Vol. I), 28 Dec. 1994, Annex III.A, pp. 140-141 paras. 381-383].



87. The evidence cited above shows a consistent pattern of singling out and killing men, both in the towns and cities that were taken-over by Serbs and in camps where men who survived the attack were detained. The pattern is consistent in that it happened in many different places throughout the territory of Bosnia and Herzegovina. The pattern is also consistent in that it occurred in the period from 1992 to 1995. From the examples mentioned above, it is clear that the overwhelming majority of men who were killed were non-combatants; they did not present an immediate threat to anyone.

Killing of elite

88. In addition to the killing of civilians and the killing of men, a third pattern emerged during the killing of non-Serbs in Bosnia and Herzegovina: throughout the war, political and religious leaders, businessmen, intellectuals a generally, persons of prominence in the community were singled out for the purpose of killing. The evidence detailed below demonstrates that these people (hereafter referred to as "leaders" or "elite") were not victims of random acts of killing, nor were their deaths the result of military necessity. Rather, the evidence demonstrates consistent patterns of deliberate killing of the non-Serb elite throughout the war and in all areas in Bosnia and Herzegovina which were attacked by the Serbs.

89. There can be no doubt as to the aim of the singling out and killing of the non-Serb elite. The objective was to remove the leaders who could govern the non-Serb communities and who could lead an opposition to the process of ethnic cleansing. This objective is well stated by the journalist David Rieff in his book *Slaughterhouse*

- *Bosnia and the Failure of the West* with respect to ethnic cleansing in the Bosanka Krajina:

> "By ordering the deaths of as many educated Muslims as possible, they [the Serbs] wanted to ensure that, whatever else happened, any future Bosnian Muslim state would be as bereft as possible of people who could make it work efficiently. The success of this campaign - of what the British journalist Michael Nicholson called "elitocide" - can be inferred from the fact that apart from a few thousand middle-class refugees who made their way to Zagreb, and the small number who got to Bosnian government-controlled areas, the Muslim professional classes of the Bosanska Krajina all but disappeared." [David Rieff, *Slaughterhouse: Bosnia and the failure of the west*, 1995, p. 113, Annex 20].

90. Laura Silber and Alan Little, two journalists who extensively covered the events in Bosnia and Herzegovina in their widely acclaimed book, *The Death of Yugoslavia* also drew the conclusion that the process of singling out the non-Serb elite could have had no other objective than the destruction of the non-Serb community:

> "A common characteristic of the cleansing operation was this systematic elimination of community leaders - prominent people, intellectuals, members of the SDA, the wealthy. The existence of such lists of names was in itself an instrument of cleansing. The terror it instilled in neighbouring communities, once news of the atrocities spread, encouraged many of those who feared they might be targeted to flee even before they were attacked. *It was the conscious elimination of an articulate opposition, and of political moderation. It was also the destruction of a community from the top down.*" [Laura Silber and Alan Little, *Death of Yugoslavia*, revised edition 1996, p. 244-245, emphasis added, Annex 21].

91. In response to the Applicant's earlier submissions that the victims of killing were carefully selected on the basis of their social status, the Respondent attempts to put forward a different motive. The Respondent simply states that "[i]f the killings did indeed take place, they were motivated by the struggle against political adversaries and not by an intention of killing members of an ethnic or religious group." [Counter-Memorial, p. 8, para. 1.1.3.7]. That this approach is untenable from a legal perspective is already explained above [Chapter 2 of this Reply]. Apart from that, the Respondent fails to demonstrate why "a struggle against political adversaries" could ever serve as an explanation for the singling out and consequent killing of the elite of an ethnically defined group. Moreover, the evidence available does not support this 'explanation' of the Respondent. As will be shown in this Section, the selection process was based on ethnicity, on the one hand, and on social status, on the other. This is certainly not the same as the criterion, "political adversaries", applied by the Respondent. Rather, the social and ethnic criteria served to decapitate the ethnically

defined group - as part of the overall campaign to destroy in whole or in part the non-Serb population of Bosnia and Herzegovina.

92. Distinguished and authoritative persons and institutions who reviewed the facts which occurred during the war have confirmed that the elite of the non-Serb population was singled out for killings. In its decision in the Review of the Indictment Pursuant to Rule 61 in the case against Karadžić and Mladić, the Trial Chamber of the ICTFY made the following factual finding:

> "17. Bosnian Serb military and police personnel persecuted leaders and members of the non-Serbian political parties, especially the mainly Muslim Party of Democratic Action (SDA) and the Croatian Democratic Union (HDZ), the main Croatian political party, in the towns of Prijedor, Vlasenica, Bosanski Šamac, Brčko, and Foča. Based on the lists drawn up by the Serbian Democratic Party, the leaders were arrested, interned, subjected to physical abuse and, in many cases, executed." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 9, para. 17].

93. The United Nations Commission of Experts also confirmed that people were singled out for the purpose of killing based on their social status. The Commission described in the following words the singling out of the non-Serb elite in camps that for the most part held Bosnian Muslims, but also Bosnian Croats:

> "(e) After a village, town or city is conquered, the local population is rounded up *en masse* and interned in different locations. During the rounding-up process, members of the population are frequently tortured, raped and killed. Local religious, political, civic, professional, business leaders and prominent personalities are singled out for the worst abuses.
> (...)
> (k) Prisoners who are targeted for torture or death at the larger camps include prominent members of the community who are wealthy, educated or politically influential persons in the community. Guards usually have information identifying which prisoners fall into these categories. They obtain that information from their own local population, through coercion and violence from other prisoners or from other detention facilities that are used solely to interrogate displaced populations." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, pp. 53-54, para. 230(k) and (e)].

94. This "singling-out policy" was further confirmed by the International Commission for the Balkans, a citizens' organization established in 1995 to provide an independent perspective on the events in the former Yugoslavia. The authoritative members of the Commission include Leo Tindemans, Lloyd Cutler, Bronislaw Geremek, John Roper, Theo Sommer, Simone Veil and David Anders. Describing events in the first half of 1992, the Commission stated that:

> "Local Muslim and Croat leaders were rounded up and often killed." [Leo Tindemans a.o, *Unfinished Peace*, 1996, Aspen Institute, Berlin and Carnegie Endowment for International Peace, p. 40, Annex 22].

95. These general conclusions concerning the singling out of the non-Serb elite for killing and accompanying acts of torture and other mistreatment are corroborated by the following examples of *specific* instances of killing.

96. Strong evidence is available that the non-Serb elite was singled out and killed during and following the attack on Prijedor [see Section 7 of this Chapter]. Mazowiecki reports that when Prijedor was taken over by Serb forces, the elite was specifically targeted and detained. He reports that in late May, 1992:

> "many leaders of the Muslim community, such as teachers, physicians and religious leaders had their homes searched and were detained." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, transmitted by the Secretary General to the General Assembly, A/47/666, S/24809, 17 Nov. 1992, p. 8, para. 17(a)].

97. During the attack on Prijedor, numerous non-Serb leaders were immediately killed. The Commission of Experts reports that:

> "Numerous leading Muslim and Croatian citizens had notably been immediately targeted for extermination when still in their homes, towns and villages." [United Nations" *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), Annex V, p. 67, para. 342].

98. With respect to the attack on Trnopolje on 23 May 1992, the Commission of Experts reports that:

> "The local villagers were ordered to turn over their weapons, and the Serbs began a campaign of harassment against the population. They fired shots at Muslim houses, and the wealthy and intellectuals disappeared. Many villagers were killed in their homes." [United Nations, *Final report of the United Nations Commission of Experts*, S/1994/674 (Vol. V), 28 Dec. 1994, Annex X, pp. 34-35, para. 215].

99. The Omarska and Keraterm camps were used to detain the non-Serb leadership from the Prijedor region. The Commission of Experts writes that "the entire non-Serbian

leadership who survived the military attacks was brought for detention in Omarska or, alternatively, in Keraterm." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 81, para. 427].

100. The ICTFY also confirmed the fact that when Serb forces had rounded up non-Serbs around Prijedor, many of Prijedor's non-Serb intellectuals, professionals and political leaders who had survived the attack were brought to the Omarska camp [see also Reply, Chapter 5, Section 5].

101. The Commission of Experts also reports that the Omarska camp was used to detain the non-Serb elite. This elite was subsequently subjected to beating, torture and killings. The Commission of Experts concluded that the main objective of the Omarska camp was indeed to eliminate the non-Serb leadership:

> "Despite the absence of a real non-Serbian threat, the main objective of the concentration camps, especially Omarska but also Keraterm, seems to have been to eliminate the non-Serbian leadership. Political leaders, officials from the courts and administration, academics and other intellectuals, religious leaders, key business people and artists - the backbone of the Muslim and Croatian communities - were removed, apparently with the intention that the removal be permanent." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 11, para. 27].

102. The Commission of Experts found specific evidence to support this conclusion, most importantly that there was:

> "widespread killing at the camp and that political and religious leaders and professionals were particularly singled out for execution." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, p. 213, para. 1724].

103. Mazowiecki reports that a number of witnesses "interviewed by different agencies on different occasions" agreed that many prisoners were executed at this camp and that

> "political and religious leaders and professionals were particularly singled out for execution." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, transmitted by the Secretary General to the General Assembly, A/47/666, S/24809, 17 Nov. 1992, p. 13-14, para. 31].

104. A survivor from the Omarska camp described the pattern by which prisoners were abused, taken away and killed:

> "'after about 10-15 days, we understood their logic, and then one could more or less guess who would disappear from the Omarska camp. The logic was like this: first, the people who had been accused of having fought with arms against the Serb government would disappear. So the first ones they finished off were those who had weapons. When they no longer existed at Omarska, the intellectuals began to disappear. Among the intellectuals, no doctor has survived to my knowledge. After that, renowned citizens disappeared. By that I mean above all, rich people with enviable possessions. When they too had disappeared, they started to kill at random.'" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 214, para. 1730].

105. Very similar events occurred in the Keraterm camp. Like Omarska, in the Keraterm camp non-Serb leaders were singled out for abuse and killings. The Commission of Experts reports as follows:

> "It was widely reported that mostly wealthy and educated prisoners were singled out for abuse at the camp. One subject reported that after arriving at the camp in early July, 1992, there was an initial systematic removal and killing of all educated individuals and those who had held any sort of civic or leadership role in their communities. The camp guards reportedly used registration lists initially obtained in May 1992 to identify individuals to be killed." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 236, para. 1913].

106. The Commission had, as already cited above, expressly stated that the main objective of the Keraterm camp was

> "to eliminate the non-Serbian leadership. Political leaders, officials from the courts and administration, academics and other intellectuals, religious leaders, key business people and artists - the backbone of the Muslim and Croatian communities - were removed, apparently with the intention that the removal be permanent." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 11, para. 27].

107. One person cited by the Commission of Experts stated that guards would ask prisoners to give their professions. He reported that:

> "if they found someone with a high position or a higher educational degree, they would execute them. I think the intelligentsia of Prijedor has just disappeared." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 236, para. 1913].

108. Another camp for which the evidence demonstrates that leaders were singled out for killings is the Luka camp [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 92-102, paras. 747-820]. The Serbs detained prisoners in this camp between 8 May 1992 and late July or August 1992 [*ibid.*, p. 92, para. 747]. During this period, the Serbs specifically targeted the non-Serb elite in the camp:

> "During his first days at the camp, the captors called out names of prisoners from electoral rolls. All those who were members of the SDA (a Bosnian, primarily Muslim, political party) or who had held positions of leadership in business or industry were killed. Shootings often occurred at 4:00 a.m. The witness estimates that during his first week at Luka more than 2,000 men were killed and thrown into the Sava River." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 93-94, para. 755].

109. This account is consistent with information provided by the United States to the United Nations Secretary-General:

> "Upon arrival [in the Luka-Brčko camp, May-June 1992], all internees were questioned by one of the three inspectors who decided their fate. For example if a person was a member of the Party of Democratic Action or the Croatian Democratic Community political parties, he was executed at the camp." [United Nations, *Letter Dated 5 November 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary General*, S/24791, 10 Nov. 1992, p. 7].

110. A 55 year-old Bosnian Muslim from Brčko described how, after he had spent seven days in the camp, "all prisoners known to have been politically active had already been killed" [United Nations, *Letter Dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary General*, S/25586, 13 Apr. 1993, p. 6].

111. All over Bosnia and Herzegovina the picture was the same. When Kozarac was overrun by Serb forces during the spring of 1992, here, as everywhere else, the killing process was intended to eliminate the elite. The organization *Medicins Sans Frontiers* (Doctors without Borders) interviewed sixty residents from the Kozarac region who had been held in the Omarska and Keraterm prison camps. The study, cited by the Commission of Experts, found that:

> "Prominent and well-educated citizins were targeted to be killed - many were doctors, teachers and political leaders." [United Nations, *Final Report of the United Nations Commission*

of Experts, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 29, para. 152].

112. The Commission of Experts further reports on the events that transpired after Kozarac was taken by Serbs in May, 1992:

> "172. (...) Serbs reportedly gave the people 10 minutes to reach the town's soccer stadium. Some were reportedly immediately executed. At the stadium, men and women were separated and taken to separate camps. Allegedly, rich Muslims were a particular target, along with political leaders and police officers." [United Nations, *Final Report of the United Nations Commission of Experts* S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", pp. 38-39, paras. 172-173].

113. One 42 year-old witness gave a first hand account and stated:

> "'They were pulling out private entrepreneurs and educated people, anyone who could ever organize any Muslim life in Kozarac again'" [United Nations, *Letter Dated 5 November 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary General*, S/24791, 10 Nov. 1992, p. 10].

114. Similar events took place in Bosanski Šamac. The Commission of Experts reports:

> "378. On 17 April 1992, regular Serbian soldiers and Šešelj's men occupied Bosanski Šamac and imprisoned wealthy and politically involved Muslims. The prisoners were beaten with wooden sticks, truncheons, and shovels. At least seven died and seven others are still missing." [United Nations, *Final Report of the United Nations Commission of Experts* S/1994/674/Add.2 (Vol. V), 27 May 1994, Vol. I. Annex III.A., p. 140, para. 378].

115. At Bratunac in eastern Bosnia and Herzegovina, on 9 May 1992, non-Serbs were detained in an elementary school. Mazowiecki reported:

> "65.(...) after the mass arrest of about 2,000 Muslims by Serb police in Bratunac in eastern Bosnia and Herzegovina on 9 May 1992, 500 to 600 men were detained in the hall of an elementary school there. Those who could not fit inside were reportedly shot with automatic weapons in front of the hall. *Beatings were reportedly carried out according to lists naming those most influential in the community.* Between 30 and 50 people reportedly died from their injuries the first night while nine others suffocated in the crush as the 500-600 detainees struggled to escape the beatings. An imam was allegedly beaten and stabbed to death in front of the 500-600 prisoners after refusing to take the Christian faith and raise the three fingers in the Serb manner." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission*

on Human Rights, E/CN.4/1993/50, 10 Feb. 1993, p. 15, para. 65, emphasis added].

116. The pattern was widespread and consistent. Human Rights Watch/Helsinki reported for the whole of Bosanska Krajina that:

> "Most Muslim and Croatian community and political leaders were killed or detained in detention camps and later fled the area in 1992, so that much of the Muslim and Croatian intelligentsia in Bosanska Krajina were eliminated during the early stages of the war." ["Bosnia-Hercegovina: 'Ethnic Cleansing' Continues in Northern Bosnia", *Human Rights Watch/Helsinki*, Nov. Vol. 6, No. 16, p. 35, Annex 23].

117. The evidence cited above indicates that the non-Serb elite was singled out for killings. There is abundant other evidence that leaders were singled out for detention. For instance, Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances, reported on the situation in Foča, Zvornik and Vlasenica:

> "100. (...) The first disappearances were reported in late March and April in Foča and Zvornik and until the end of the year, on a regular basis, in municipalities such as Vlasenica. Most of the persons who disappeared were middle-aged men (members of the political party SDA, intellectuals and businessmen) who were taken to concentration camps, such as the company "Novi izvor", and cultural centres "Čelopek" or "Drinjača" in Zvornik, the elementary school "Vuk Karadžic", in Bratunac or the notorious camp, "Sušica" in Vlasenica." [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1995/55, 15 Jan. 1997, p. 29, para. 100].

118. While not in all cases, for some, information is available as to what happened to the leaders who were detained, the detention practice in and of itself being further evidence of the pattern of removal of the elite of the non-Serb population as part of the campaign to destroy in whole or in part the non-Serb population in Bosnia and Herzegovina.

119. The evidence demonstrates that the singling out of the elite was not done without prior preparation. Serbs possessed and used lists to identify and select the non-Serb elite. These lists were compiled on the basis of various sources, including electoral lists and information provided by local Serbs. The existence and use of these lists is, of course, evidence showing that the killing of the elite was planned and that the killing campaign was executed in a deliberate manner.

120. The existence and use of lists was confirmed by the Trial Chamber of the ICTFY. The Chamber concluded that leaders and members of the non-Serbian political parties, especially the mainly Muslim Party of Democratic Action (SDA) were persecuted in the towns of Prijedor, Vlasenica, Bosanski Šamac, Brčko and Foča on the basis of lists containing names of the elite. The Trial Chamber concluded:

> "17.(...) Based on the lists drawn up by the Serbian Democratic Party, the leaders were arrested, interned, subjected to physical abuse and, in many cases, executed." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 9].

121. Such lists were also used in the Luka camp:

> "During his first days at the camp, the captors called out names of prisoners from electoral rolls. All those who were members of the SDA (a Bosnian, primarily Muslim, political party) or who had held positions of leadership in business or industry were killed." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 93-94, paras. 755].

122. Similarly, during the operation of the concentration camps Omarska and Trnopolje from April to August 1992, lists were used to single out wealthy non-Serbs and non-Serb intellectuals from the Prijedor district for particularly harsh torture and interrogation. The use of lists for killings and mistreatment appears in the following report:

> "During the frequent questionings, detainees were beaten with rubber and iron sticks, rifle butts and clenched fists. It is notable that many of the former detainees report having been questioned about wealthy Muslims. Many of the witnesses draw the conclusion that wealthy, but also intellectual Muslims were the main target of persecution, torture and killings. In this context, a 40-year-old witness states: 'The soldiers often came with a list of names. Those whom they read out had to go with them. They never came back. Most of the people on these lists were in good positions before the war, like managers, owners of restaurants etc.'
> (...)
> A 29-year-old refugee who was detained in Omarska as from 30 May 1992 describes: 'It often happened that the Serbs called persons by name and brought them away. During the 73 day[s] I stayed in the camp, I saw 1200 to 1400 dead bodies. Every morning, there were 15 to 20 dead bodies in the fields of the camp. Most of the Muslims were only killed because of the ethnic cleansing. A great part of the victims was rich or educated'." [United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary General*, S/25377, 6 Mar. 1993, pp. 18-20].

123. In the Trnopolje camp as well, non-Serbs were singled out on the basis of lists:

> "Witnesses report that people - mostly intellectuals and wealthy persons - were singled out on the basis of lists of names and maltreated. According to these testimonies a number of those persons died of their injuries. Another witness, who was detained in Trnopolje from 26 May to 1 October, reports that every day, on the basis of a list, rich and educated people were singled out and brought to the camp of Omarska." [United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary General*, S/25377, 6 Mar. 1993, p. 37].

It was noted above that once in the Omarska camp, the non-Serb elite was singled out for killings.

124. The Commission of Experts reported that lists were also used for the attack on Zvornik:

> "At a party held in April in the Tezeko Hotel in Zvornik, Šešelj read the names of local Muslim intellectuals from a list to an audience partly comprised of members of Arkanovici, Šešeljovci, and White Eagles. The people on the list were to be killed." [United Nations, *Final Report of the Commission of Experts*, S/1994/674 (Vol. I), 27 December 1994, Annex III.A, "Special Forces" p. 166, para. 567].

125. The Commission of Experts also found that lists were used in Višegrad:

> "543. On 13 April 1992, the city of Višegrad was occupied by the Užice Corps. This group consisted of JNA soldiers, reservists, Užice territorial defence forces, and White Eagles. (...) Upon the corps' siege, the civilian population fled the city and was fired upon. The corps then broadcast a message instructing the residents to return to Višegrad and assuring their safety. When they returned, the village was in shambles, with many homes burned. The JNA then blocked all roads leading out of Višegrad with help from the White eagles and Užice Corps. *Soldiers at the roadblocks would take away Muslims, whose names appeared on a master list.*" [United Nations, *Final Report of the United Nations Commission of Experts* S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex III.A, "Special Forces", p. 163, para. 543, emphasis added].

126. Reference was made above to the singling out and killing of the non-Serb elite in Bratunac in eastern Bosnia and Herzegovina in May 1992. Mazowiecki reported that there was evidence of a planned operation here as well:

> "65.(...) Beatings were reportedly carried out according to lists naming those most influential in the community." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 15, para. 65].

127. The same holds for the events in Kozarac. When Kozarac was taken over on 25 May 1992, the prominent non-Serb men were assembled on the basis of a list. They were either immediately killed or taken to concentrations camps at Omarska and Keraterm:

> "253. When the first Serbian soldiers entered Kozarac town, they brought with them lists of names of people who were called forward and killed. These people were the politicians, influential people, police officers. and reserve police officers. Other intellectuals and prominent people from the Kozarac area were incarcerated in Logor Omarska and Logor Keraterm. Dušan Tadić, who was a local of Kozarac, was among those who allegedly had produced such death lists." [United Nations, *Final Report of the United Nations Commission of Experts* S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 52, para. 253].

128. The above examples demonstrate that the non-Serb elite was not targeted and killed at random or pursuant to isolated initiatives on the part of individual Serbs. The above shows a consistent, coordinated pattern of singling out leaders of the non-Serb communities for the purpose of killing. The killing of the elite broke the backbone of the non-Serb community, undermining and destroying its capability to organize itself and function effectively. The pattern of killing of elite was uniform throughout the territory of Bosnia and Hergovina. The consistent and planned nature of the targeting of the elite is also demonstrated by the use of lists to carry out the screening process. These factors all point to a deliberate policy intended to achieve one objective: to destroy the non-Serb Bosnian group from the top down.

3. Causing serious bodily or mental harm to members of the group

Introduction

129. The systematic nature of the serious harm that was caused to the non-Serb population of Bosnia and Herzegovina in the period relevant to this case will become evident hereafter. There emerges a clear pattern of facts, repeated in brutal similarity over time and all major localities under Serb control. Similarly, it is clear that this campaign was directly and specifically targeted at the non-Serb populations under Serb control, especially the Muslim population, further strengthening indications of intent as to a coordinated campaign of practice directed at groups protected by the Genocide Convention.

130. The assertion, repeatedly made in the Counter-Memorial, that the acts alleged were only directed against men of military age will also be unmasked as being both

irrelevant and untrue. It is irrelevant, inasmuch as the extermination, mutilation and torture of men of any age can in itself amount to genocide. It is untrue, inasmuch as the pattern of practice was in fact directed at all segments of the non-Serb, mainly Muslim population, including women, children and the elderly. In fact, the use of rape as an instrument of torture, often, although not exclusively directed against women, was so widespread, that it will be addressed in a separate chapter below [Chapter 7]. Such a broad spectrum of atrocities can only have been aimed at destroying, in whole or in part, the group as such.

131. The suffering inflicted on the innocent on the basis of their appurtenance to an ethnic group, hundreds of thousands of times over, was unbelievably shocking in each of these individual instances. But the suffering of the individual served an even more gruesome purpose. Individual torture, mutilation and abuse, often resulting in death, was part of a construct of terror. In the ultimate act of denying the victims their humanity, their individual fates were intertwined in a consistent and constant patter - a pattern so gruesome as to inflict widespread horror and terror among the non-Serb civilian population as a whole. This overall goal of ethnic purification was the desired consequence of the individual acts of genocide. This careful creation of an infrastructure of destruction in itself confirms the intent that lay behind these acts, evidencing the intent to achieve the destruction, in whole or in part, of the designated groups. It was envisaged that the individual atrocities, taken together, would facilitate the accomplishment of the actual destruction of a large part of the group and the permanent displacement of the remaining individuals.

132. It should also be noted that the facts which follow will establish that there existed a veritable infrastructure for causing serious bodily harm (and often death) of non-Serbs throughout Serb held-territories. These organized practices were no accidents, no instances of rogue troops going rampant. These were instances of the application of a machinery of maiming and destruction, of dehumanizing individuals and then discarding them in the most brutal ways, spanning all areas held by the Serbs. The existence of such an organized network of "permanent" factories for torture and killings in detention facilities and other installations will be established elsewhere in this Chapter [Section 5]. This present section will evidence the systematic pattern of causing unimaginable serious bodily and mental harm to non-Serbs, systematically, continuously, every day and night, throughout the Serb-held territories, in facilities created for this purpose, and outside of them.

Purported defences offered by the Respondent

133. The Respondent answers the detailed evidence of fact offered by the Applicant in Section 2.2.3 of the Memorial in a callous and almost surreal manner in section 1.3.3 of the Counter-Memorial. Ignoring the testimony of a Muslim man, reported to by the Government of Canada [Memorial, p. 38, para. 2.2.3.2.], whose skull was pierced and who was mercilessly beaten, the Respondent instead turns to testimony assembled by the United States Government of the beating with iron bars of Muslim men and the execution of 100 women through shooting in the back [para. 2.2.3.3], at 38). The Respondent argues that this would have been impossible, since the UN Special Rapporteur on Human Rights in the Former Yugoslavia had attested to the fact that a significant number of Muslims had already been systematically eliminated in that region by the invading Serb forces [Counter-Memorial, p. 55, para. 1.3.3.3.]. The Respondent concludes that:

> "it was not possible for the Serb troops to round up, kill and maltreat men above 15 years of age and 100 of the most respectable women in the village of Biscani on 20 July 1992 (paras. 2.2.3.3. and 2.2.3.4 of the Memorial). Where did these men fit for military service and respectable women come from after the alleged massacre in the month of May? This allegation runs counter to the import of the statement of the United Nations Special Rapporteur referred to in para. 2.2.4 of the Memorial in which it is said that there "used to be six mountain villages here." As the obvious implication of this part of the statement is that these villages, including the village of Biscani, were totally destroyed in May 1992, it is hard to imagine that people would come to life in them in substantial numbers under these circumstances all over again." [*ibid.*]

134. It is difficult to comprehend the cynicism of this response. The Respondent seems to rely on the total "success" of its campaign of ethnic purification, and on its absolute conclusion within a short period of time, in its defence against the allegation of genocide. It appears to be incredible to the Respondent that, after the first wave of the genocide it committed in the region, there remained a number of men and 100 women in the village of Biscani who could be subjected to further atrocities. The Applicant does not dispute that there were prolonged and repeated acts of genocide in this region. This, of course, is the essence of the allegation that has been put. The answer provided by the Respondent does not undermine the validity of the evidence that has been produced. It adds to the evidence of genocidal intent.

135. Similarly, rather than assisting its case, the Respondent, implicitly, admits to its campaign of genocide in this section, by confirming in para. 1.3.3.7 that Serb forces did indeed open fire at the village of Hambarine, a place filled with civilians which suffered horribly in consequence. The Respondent, then, bluntly states "this is an

armed conflict between military units" without offering even a beginning of proof for this statement.

136. In answer to charges that non-Serbs were kept in inhumane circumstances likely to endanger their lives and cause harm, the Respondent focuses on calculating how many people would fit in a small room without addressing the fact that non-Serbs were incarcerated in impossible conditions which has been reliably attested to, and which forms the essence of the allegation of genocidal acts in this respect [Counter-Memorial, p. 58, para. 1.3.3.14.].

137. Furthermore, the Respondent quotes figures of the number of Muslims and Croats treated in Serbian hospitals, in particular a psychiatric hospital in Sokolac, to show that they bore no ill-will towards these non-Serbs [Counter-Memorial, p. 58, para. 1.3.3.13.]. However, a recent ICRC report shows that of the Bosnian civilians treated in this particular hospital during the war, seven are reported as missing persons, namely: Ališehović Murat, Ćatović Atif, Dugalić Edin, Husić Kada, Jusić Sejfo, Muftić Mesud, Muslić Ejub. This once again confirms the Respondent's true intentions behind its facade [ICRC, List of patients of psychiatric hospital Sokolac, Annex 24].

138. In general terms, the Respondent also claims that there exists no physical evidence of serious bodily or mental harm [Counter-Memorial, p. 59, para. 1.3.3.18.]. Infliction of pain does not necessarily involve permanent scarring or destruction of tissue, and where it does, injury is not always permanent [*e.g.* European Commission on Human Rights in *Denmark et al v. Greece*: "(...) physical traces of torture or ill-treatment may with lapse of time become unrecognisable, even by medical experts, particularly where the form of torture itself leaves little external marks.", 3321-3/67; 3344/65, Report of 25 Jan. 1976]. Serious mental harm, long-lasting and destructive in its consequences though it tends to be, will also only rarely assume concrete physical manifestations [Counter-Memorial, p. 59, para. 1.3.3.18.]. And, of course, there are vast amounts of reliably documented instances of injury with permanent physical consequences which were caused systematically to non-Serbs, some of which will be reviewed below. Besides that, the Respondent merely bases its proposition on the opinion of its own, certainly not very independent, "experts".

139. In as far as the Respondent states that Bosnia and Herzegovina had, in its Memorial, not submitted enough evidence, the Respondent is wrong, especially when taking into account that the Memorial was submitted in the midst of a war during which

Respondent was responsible for the blockade of the Applicant's capital. As mentioned earlier in this Reply the Applicant is now able to elaborate its position, and will do so while, as in other sections, relying on objective, international sources of the highest authority.

Causing serious bodily harm

140. The infliction of pain and the administration of torture were routine, throughout the conflict. The campaign to terrorize non-Serb populations would commence as soon as Serb forces assumed control over a given area, specifically with the intent to facilitate ethnic purification. "Killings, rape and torture were carried out in a manner that was designed to frighten the non-Serbian population into leaving and never returning to the area." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 31, para. 161].

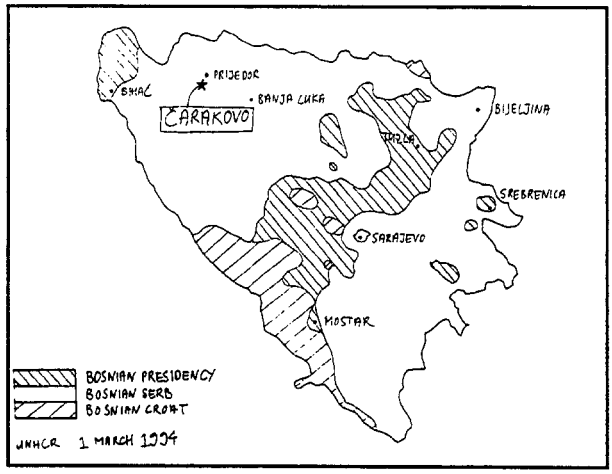
141. Elsewhere in this Chapter the Applicant focuses on certain geographic areas [Zvornik, Section 6; Prijedor, Section 7, Srebrenica, Section 8] and on a returning phenomenon [Camps, Section 5], all of which provide gruesome and well-documented examples of "causing serious bodily harm" in the sense of the Genocide Convention. These sections speak for themselves.

142. The practice of terrorising the non-Serb population through mistreatment of individuals is also widely attested to in other instances. At Bratunac, in East Bosnia, an Imam was beaten and stabbed to death in front of 500-600 prisoners after refusing to take the Christian faith and raise three fingers in the nationalist Serb manner [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the UN Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 16, para. 65]. At Sukovac, Serb forces beat and interrogated the inhabitants, until they were ready to be convoyed out of Bosnia [United Nations, *Letter dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Secretary-General, (Seventh Submission)*, S/25586, 13 April 1993, p. 17]. At Bileca, individuals were subjected to random beatings and were forced to eat from the same cans in which they relieved themselves [US Department of State, Bureau of Public Affairs, *Dispatch*, 12 Apr. 1993, Vol 4, No. 15, p. 244, Annex 25]. In Zvornik, Serb soldiers invaded the hospitals and brutally maltreated and massacred children [United Nations, *Letter dated 13 April 1993 from the Permanent Representative of Austria to*

the United Nations Addressed to the Secretary-General, S/25613, 19 Apr. 1994, pp. 9-10]. At Biscani, all men were called out of their houses and forced to lie down in the center of town on the asphalt where they were beaten with iron bars and forced to sing patriotic Serbian songs [US Department of State, Bureau of Public Affairs, *Dispatch*, 2 Nov. 1992, Vol 3, No. 44, p. 803, Annex 26]. Similar practices, coupled with killings occurred in Rizvanovici. [US Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 3, No 52, p. 918, Annex 27].

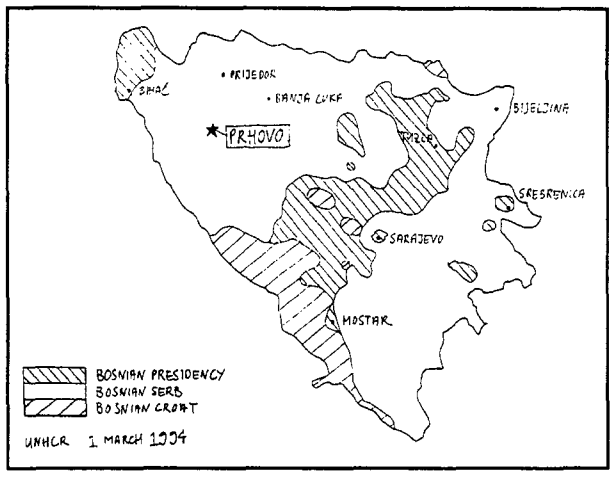
143. The gruesome nature of this practice, intended to inflict excruciating pain, to humiliate within the context of ethnic purification, and to shock the civilian population is made evident in the following incident of June 1992, in the region of Čarakovo:

> "An estimated 40 Serb soldiers wearing JNA uniforms marched the men along the road to a spot called 'Poljski Put' near the Sidro Kavana (Anchor Café), where they ordered the men to sit on the ground. The Serb soldiers then threw two pictures of Tito onto the ground in front of the men and told some of them to tear up the pictures and eat them. After this, the Serbs began to take the men one by one off to the side to beat them. The witness saw them carve orthodox crosses into the chests of some of the men." [United Nations, *Letter dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Secretary-General, (Seventh Submission)*, S/25586, 13 April 1993, p. 3].



144. This practice of administering repeated beatings against civilian populations so as to make life untenable and secure ethnically "clean" territories is illustrated once again by the fate of the small village of Prhovo, which used to be inhabited by some 150 people:

"Meanwhile, the soldiers attempted to coax back into the village those residents who had run into the woods when the soldiers arrived. The soldiers announced through megaphones that the residents would not be harmed if they returned. When these people returned, the soldiers beat them severely; about 10 were beaten into unconsciousness. (...) at about 6.00 p.m. on June 1, the soldiers returned and again used megaphones to call people in from the forest. They also went from house to house, pulling people out to the streets. The male residents were beaten severely." [United Nations, *Letter dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Secretary-General, (Seventh Submission)*, S/25586, 13 April 1993, p. 9. In fact, many were killed after this treatment, *ibid.*].



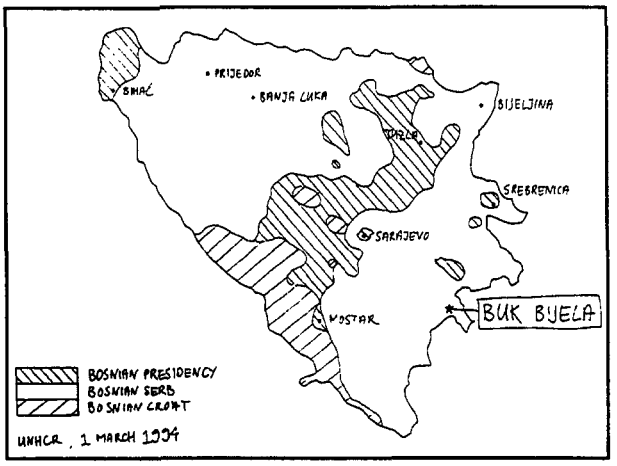
145. The campaign of terror and torture was also institutionalized in the places that were subjected to ethnic purification. Non-Serbs were collected and brought to local police stations or other facilities. [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 91, para. 736]. For example, in the ICTFY Indictment against Slobodan Miljković & others, the following was confirmed:

"25. On several different occasions between 17 April 1992 and 30 June 1992, at or near the Bosanski Šamac police headquarters (hereafter SUP) and TO buildings, Slobodan MILJKOVIĆ beat Croat and Muslim detainees who were confined there, including Muhamed Bičić, Esad Dagović, Dragan Lukač, Father Jozo Puškaric, Sulejman Tihić, and Grgo Zubak by kicking them and hitting them with many different implements, including a police baton, a large metal wrench, an automobile shock absorber, and an automobile jack.
26. On about 8 June 1992, Slobodan MILJKOVIĆ took Father Jozo Puškarić, a Roman Catholic priest, from the SUP building where Father Puškarić was being detained to a nearby building housing a radio transmitter, where Slobodan MILJKOVIĆ beat Father Puškarić and broke a bone in his face by striking him with a hard object.
27. On an occasion sometime between about 1 June and 30 June 1992, in the hallway of the gymnasium of the Bosanski Šamac primary school, Milan SIMIĆ and several others kicked Muhamed Bičić and beat him repeatedly with iron bars and chair legs.(...)

> 29. On about 29 July 1992, in the hallway of the SUP building in Bosanski Šamac, Stevan TODOROVIĆ and others repeatedly beat and kicked Enver Ibralić, Hasan Jašarević, Omer Nalić, and Father Jozo Puškarić with police batons and heavy boots, thereby causing the victims physical injury."
> 30. On about 15 July 1992, in the gymnasium of the Bosanski Šamac primary school, Stevan TODOROVIĆ and others repeatedly beat Silvestar Antunović with a large wooden club. As a result of the beating, Silvestar Antunović suffered partial paralysis and other serious physical injury."
> [ICTFY, Indictments, *Prosecutor v. Miljković & others*, Case No. IT-95-9-I, 21 July 1995, paras. 25-30, adding at para. 17 that all such acts were "part of a widespread, systematic or large-scale attack against the Croat and Muslim residents of the municipality of Bosanski Šamac"].

In other instances, transit facilities were created in or very near the places to be ethnically purified. For example, Buk Bijela was used as a temporary detention and interrogation facility for civilian women, children and the elderly who were captured in various villages in the municipality of Foča in July 1992 [ICTFY, Indictments, *The Prosecutor v. Gagovič & others*, Case No. 96-IT-23-I, 26 June 1996, para. 5.2].

146. While detained at Buk Bijela for several hours, all the Muslim civilians were lined up along the river Drina and guarded by armed soldiers. They were threatened with being either killed or raped and were otherwise humiliated. The soldiers approached each detained civilian, and took him or her to the above mentioned accused for questioning. The soldiers separated the women from their children. Many women suffered permanent gynaecological harm due to the sexual assaults [ICTFY, Indictments, *Prosecutor v. Gagović & others*, Case No. 96-IT-23-I, 26 June 1996, pp. 7-14, paras. 5, 7].



147. After having been arrested and penned up in provisional holding centres, individuals were usually expelled or transported to more permanent detention camps or other facilities. However, their mistreatment would already commence before their arrival at these dark places of destruction. It is reported that detainees who had been arrested by Serb soldiers as Bosanski Novi were held in railway wagons without water and food for three days. They were transported to Doboj, but then returned to Bosanski Novi, where they "were ordered to eat grass." [United Nations, *Letter dated 13 April 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General*, S/25613, 19 Apr. 1994, pp. 18-19; see also, United Nations, *Letter dated 9 March 1993 from the Deputy Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25393, 10 Mar. 1993, pp. 11, 13].

148. The final stage of the transport, the arrival at detention facilities, was similarly horrific. The ICTFY confirmed in its Order and Judgment in the Tadić case the following practice:

> "158. When prisoners arrived by bus at Omarska, they were usually searched, their belongings taken from them, and then beaten and kicked as they stood, legs apart and arms upstretched, against the eastern wall of the administration building. The new arrivals were then sent either to stay outside on the pista or to rooms in the hangar or in the small garages in the office blocks or, if so selected, to the white house." [ICTFY, *Prosecutor v. Duško Tadić*, Opinion and Judgment, Case No. IT-94-1-T, 7 May 1997, p. 60, para. 158].

149. On occasion, detainees were transferred from one place of detention to another. In the process, further ill treatment was meted out. While being prepared for transport, in Pale, for example, some 500 prisoners were tied in groups of 10 and had to pass a line of soldiers who beat them with cables, clubs and iron batons [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 16].

150. In reviewing the Indictment against Dragan Nikolić, the commander of the Sušica camp in Vlasenica, the ICTFY endorsed the following allegation of conduct:

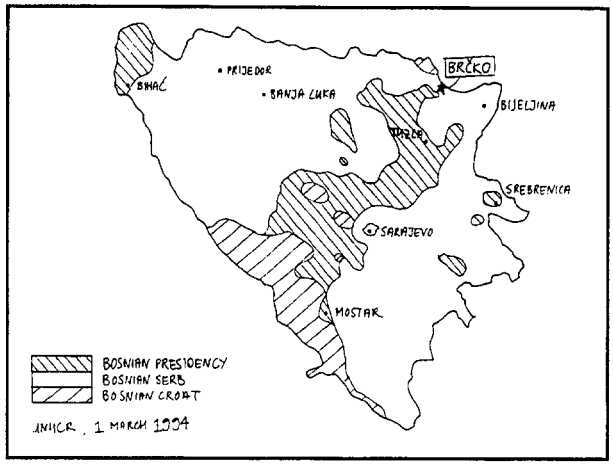
> "Fikret 'Čiče' Arnaut [was forced] to put his hands behind his back and kneel on the floor, spreading his knees open. Dragan Nikolić kicked Fikret 'Čiče' Arnaut in the stomach and lower back. Dragan Nikolić forced Fikret 'Čiče' Arnaut to tilt his head back and he put a bayonet into his mouth. Witnesses saw blood on Dragan Nikolić's bayonet. Later, Fikret 'Čiče' Arnaut was spitting and vomiting blood." [ICTFY, Trial Chamber, Review of the Indictment Pursuant

to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, 20 Oct. 1995, Case No. IT-94-2-R61, p. 8, para. 17].

151. Other techniques of medieval cruelty included slashing victims and pouring dangerous liquids or hot water over them and their fresh wounds, or the discharge of the contents of a fire extinguisher into the mouth of a victim [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, 7 May 1997, Case No. IT-94-1-T, p. 74, paras. 203-204, 316, and *ibid.*, Indictment (Amended), 14 Dec. 1995, Case IT-94-1-T p. 7, para. 9]. In another instance, a man was forced to sit on a one litre Coca Cola bottle, forcing it into his anus and leading to severe bleeding [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2, 28 Dec. 1994 (Vol V), Annex IX "Rape and Sexual Assault, p. 41, para. 183]. Detainees were "forced to urinate in one another's mouth, and eat feces." ["War crimes in Bosnia-Hercegovina: Bosanski Šamac", *Human Rights Watch/Helsinki*, Apr. 1994, vol. 6, No. 5, p. 12, Annex 28].

152. At other concentration or detention and extermination camps, there were also prepared specific rooms for torturing non-Serbs, including one near Brčko in a former slaughter house where the equipment for dismantling animal carcasses was used on prisoners [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), Annex VIII, "Prison Camps", p. 91, para. 738].

153. As some of the above cases already indicate, interrogations of detainees, whether or not they had participated in hostilities, routinely involved beatings, and often subsequent killings [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, 28 Dec. 1994, Annex X, "Mass Graves", p. 23, paras. 128-129; US Department of State, Bureau of Public Affairs, *Dispatch*, 19 Apr. 1993, Vol. 4, no. 16, p. 259, Annex 19; United Nations, Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General Assembly and the Security Council, A/47/666, S/24809, p. 14, para. 32]. In fact, the systematic practice of causing bodily and mental harm was closely linked to the attempt to destruction the individuals, which was often achieved.



154. In several instances, civilian prisoners were forced to torture and/or exterminate one another [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 14, para. 48]. For example, at the Luka camp:

> "(...) 500 additional civilians were taken to the garrison that housed Arkan's and Šešelj's formations. Of these civilians, 474 were reportedly forced to beat each other to death. A major, identified by name, cut off the ear of one prisoner and forced another to lick the blood. In all, the prisoners were tortured for two days, which included placing a pistol in prisoners' mouths and using a bloodied comb to comb their hair. At the end of the two days, only 26 Muslims survived, and they were taken to Bijeljina and the Luka camp." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 143, para. 400].

155. Another account from a direct witness from the Luka camp indicates:

> "Two prisoners were required to slap each other. The one who didn't slap as hard was killed. One time, I saw them cut off the ears of the weak slapper, then cut off his nose and then kill him by cutting his throat." [US Department of State, Bureau of Public Affairs, *Dispatch*, 28 Sep. 1992, Vol. 3, Nr. 39, p. 733, Annex 29].

156. The example of Stara Rijeka, in Prijedor county, indicates that such torture, as part of the process of slow and gruesome killing, was by no means restricted to the organized and efficient atmosphere of the concentration camps. There, nine members of the same family were found dead, their throats slit. The backs of their knees had been cut, all body hair burned off. One victim had been scalped and his eyes had been gauged out [United Nations, *Final Report of the United Nations Commission of*

Experts, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex X, "Mass Graves", p. 41, paras. 260-261].

157. The beatings were by no means exclusively directed at the infliction of pain, the aim of permanent mutilation was frequently apparent:

> "In many cases, ears, fingers, jaws or noses, and at times even breasts, were cut off." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 176, para. 2335, p. 9, para. 2567].

> "Thighs were stabbed with knives to immobilise individuals." [United Nations, *Letter dated 5 December 1994 from the Permanent Representative of Liechtenstein to the United Nations Addressed to the Secretary-General*, S/1994/1387, 7 Dec. 1994, p. 13].

158. The link of these practices of mutilation to the ethnic appurtenance of the victims is also recorded in relation to instances where "JNA soldiers cut off two fingers (the little finger and the ring finger) of each man's hand 'so they could make the sign of the cross.' They then cut off the men's noses and ears, and finally cut their throats." [United Nations, *Letter dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Secretary-General, (Seventh Submission)*, S/25586, 13 Apr. 1993, p. 4; see also, United Nations, *Letter dated 22 October 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24705, 23 Oct. 1992, p. 10].

159. There exists a very consistent pattern of genital mutilation mostly administered in relation to Muslim men [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 75, para. 206; United Nations, *Letter dated 16 June 1993 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25969, 18 June 1993, p. 16; United Nations, *Letter dated 29 June 1993 from the Charge d'Affaires a.i. of the Permanent Mission of Canada to the United Nations addressed to the Secretary-General*, S/26016, 30 June 1993, p. 15; United Nations, *Letter dated 5 November 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24791, 10 Nov. 1992, p. 7]. Men were forced to "kneel down and bite off the penises" of other prisoners [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and sexual assault", p.

40, para. 179], or to "castrate men with their bare hands" or, in an even gruesome scene which occurred at Omarska, with wire tied to a motorcycle which sped off [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and sexual assault", p. 40, para. 179; A similar such case is reported in, United Nations, *Letter dated 22 October 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24705, 23 Oct. 1992, p. 13; see also United Nations, *Letter dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General*, S/25377, 6 Mar. 1993, pp. 27]. In one instance, in a camp at Čelopek, guards cut off a man's penis with a knife and made him eat it [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and sexual assault", p. 54, para. 265; United Nations, *Letter dated 29 June 1993 from the Charge d'Affaires a.i. of the Permanent Mission of Canada to the United Nations Addressed to the Secretary-General*, S/26016, 30 June 1993, p. 15]. Often corpses would be found, with genitals or other body parts missing [United Nations, Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the UN Commission on Human Rights, E/CN.4/1993/50, 10 Feb. 1993, p. 15, para. 63; US Department of State, Bureau of Public Affairs, *Dispatch*, 19 Apr. 1993, Vol. 4, No. 16, p. 259, Annex 19].

Causing serious mental harm

160. The non-Serb citizens of Bosnia and Herzegovina were, soon after the beginning of the armed conflict in April 1992, well aware that each and everyone of them formed possible targets for the deadly campaign of the Serbs. They were aware that they were possible targets regardless of their age and gender. They were aware that the only criterion that mattered to the Serbs was: ethnicity. This, in itself, caused tremendous mental harm to the non-Serbs in Bosnia and Herzegovina, because of the utter irrationality of the threat, because of the deeply insulting nature of such a threat and because of the fact that it is impossible to defend oneself against such a threat. The mental harm thus caused increased with every day that more details on the atrocities and killings became known within Bosnia and Herzegovina.

161. Next to this general mental harm inflicted upon all of the non-Serbs of Bosnia and Herzegovina, mental harm was also deliberately caused through specific instances. These practices were especially, although not exclusively, conducted in camps and

other detention facilities. The Sections on the Camps [Section 5] and on Prijedor [Section 7] provide exclusive and horrific descriptions of the relevant facts. These practices included forcing prisoners to sing songs in praise of Serbs while being tortured, the slashing of crosses across prisoners' backs, the forcible involvement of prisoners in unspeakable acts of sexual assault and mutilation, the creation of an atmosphere of terror by killing, abusing and threatening detainees, thereby subjecting them to extreme psychological trauma, degradation and fear of bodily injury and death.

162. One particular way of inflicting lasting psychological damage consisted of forcing prisoners to commit such acts against one another [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 346, para. 2884]. Non-Serbs were forced to observe the killing, rape or torture of their friends and loved ones or fellow inmates or captives. In one instance, where a father was forced to observe the rape of his 12 year-old daughter [United Nations, *Letter dated 7 December 1992 From the Deputy Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24918, 8 Dec. 1992, p. 10]. In another instance:

> "A key witness was detained with his family in Kula Butmir, Sarajevo. He was forced to watch while groups of guards raped and sadistically tortured his wife and two daughters (aged 8 and 13 years old). This occurred daily until on the fourth day the younger daughter's throat was cut in front of him. The witness was chained at the legs and guards beat him to force him to watch, breaking both his legs. On the sixth day his elder daughter's throat was cut. His wife survived until the 13th day, when her throat was cut. The man committed suicide by hanging himself on 7 April 1994." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX.A, "Sexual assault investigation", p. 20, para. 115; another such instance recounted at *ibid.*, 45, para. 210].

163. The U.S. Department of State reported an incident, that occurred in the soccer-stadium at Bratunac:

> "Iman Mustafa Mojkanovic was tortured before thousands of Muslim women, children and the elderly at the towns soccer stadium. His mouth was stuffed with sawdust and his throat was cut." [US Department of State, Bureau of Public Affairs, *Dispatch*, 2 Nov. 1992, Vol. 3, No. 44, p. 804, Annex 30].

164. The most dramatic form of mental torture and of causing permanent trauma is related by Members of the Commission of Experts. "Children ranging from babies to five year olds, were thrown into ovens by the guards (...) those mothers who resisted

giving up their children were killed on the spot." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 260, para. 2190].

Systematic and widespread practice directed against non-Serbs

165. The torture, mutilations and other means of causing serious bodily and mental harm have been recognized as part of the consistent campaign of ethnic cleansing and genocide by authoritative international bodies. In Resolution 47/147 of 18 December 1992, the General Assembly condemned the specific violations caused by "ethnic cleansing", including "killings, torture, beatings, rape, etc.", and recognized that the Serbian leadership in territories under their control in Bosnia and Herzegovina, the Yugoslav Army and the political leadership of the Republic of Serbia bear primary responsibility for this reprehensible practice [United Nations, *General Assembly Resolution 47/147*, 18 Dec. 1992, para. 3-4]. Similar findings were adopted in subsequent years, with the specific addition of the conclusion that such practices constitute "a form of genocide." [United Nations, *General Assembly Resolution 48/153*; *ibid.*, *Resolution 49/196*, 5 Mar. 1995; *ibid.*, *Resolution 50/193*, 11 Mar. 1996]. The Commission on Human Rights similarly condemned such "atrocities against civilians and detainees, including torture, mutilation and rape", within the context of "the abhorrent policy of ethnic cleansing [which is] a form of genocide", noting that these "continuing massive and systematic violations of human rights" were occurring particularly in the areas under Serbian control and that the vast majority of victims are "the Muslim population, virtually threatened by extermination." [United Nations, Commission on Human Rights, *Resolution 1993/7*, 23 Feb. 1993, para. 52-53]. Again, this finding was restated by the Commission, emphasising clearly that this practice was systematic, directed against civilians, and attributable to the Serb campaign of ethnic cleansing [*ibid., Resolution 1994/72*, par. 203-204; *ibid., Resolution 1995/89*, par. 262-263].

166. The UN Commission of Experts concluded in its final report that violations, including torture, occur "on a large scale", often in camps which "are mostly in Bosnia and Herzegovina and hold Bosnian Muslims for the most part, but also Bosnian Croats" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 53, para. 229]. A special report by the Experts confirms:

> "The method by which the campaign of 'ethnic cleansing' was carried out ensured that, comparatively, the most brutal and inhumane treatment of those detained occurred within the geographic arc following the Sava and Drina rivers of the former Yugoslavia. (...) for, it is within this region of BiH that the Serbs required absolute control in order to establish a separate nation with contiguous borders and an uncompromised geographic link with Serbia and Montenegro. That control required subjugation, if not the disappearance of the non-Serb population of the area." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 12, para. 32].

167. These systematic acts were found by the ICTFY Prosecutor to constitute "mistreatment and other physical and mental harm calculated to bring about their physical destruction." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 6-7, para. 13; ICTFY, Indictments, *Prosecutor v. Željko Meakić & others*, Case No. IT-95-4-I, 14 Feb. 1995, p. 5; *ibid.*, *Prosecutor v. Sikirica & others*, IT-95-8-I, 21 July 1995, p. 4]. The Trial Chamber has confirmed the "widespread basis and (...) systematic fashion pursuant to a policy and they were committed in the context of, and related to, armed conflict." [ICTFY, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 254-255, para. 660].

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

Introduction

168. This Section provides evidence demonstrating that, indeed, deliberately conditions of life were inflicted on the non-Serbs of Bosnia and Herzegovina calculated to bring about their physical destruction in whole or in part.
It is evident that in any armed conflict the population's conditions of life, temporarily, deteriorate. This usually, though sadly, is the collateral effect of warfare. However, in this Section the Applicant will show that in Bosnia and Herzegovina non-Serb civilians were continuously and expressly targeted, with the aim of making their lives altogether and literally impossible.

169. All atrocities committed in this armed conflict against the non-Serb population of Bosnia and Herzegovina could, effectively, be categorised under the heading of this Section, since all these atrocities are part of this one and overall pattern, usually referred to as "ethnic purification". This Section will, however, focus on certain

specific features of this campaign. At the same time, in doing so, this Section will further demonstrate and clarify the existence of the mentioned pattern.

170. The Serb war policy entailed the encirclement of concentrations of non-Serb civilians in villages, towns or entire regions. There are numerous examples of the kind, the siege of Sarajevo being the best-known, but not *per se* the most poignant illustration. While the encirclement prevented the population from escaping, they would be continuously shelled or shot at, causing thousands of victims. At the same time life-lines would be cut off as effectively as possible, resulting in, again, many more victims. In this Section detailed evidence of this policy will be provided.

171. The policy of encirclement and consequent shelling and starvation was only practised if a yet further reaching goal was not realised: the deportation and total expulsion of non-Serbs from the occupied territory. That this particular goal was central to the Serb armed campaign is shown throughout this Reply. In this Section, the Applicant will deal with this policy of deportation and expulsion at greater length, thus highlighting this particular method used to sustain the mentioned policy of ethnic purification.

172. After having killed, starved out, deported and expelled thousands of non-Serb civilians, the campaign of ethnic cleansing would be finalised through the eradication of all traces of non-Serb culture. The Serbs would take to destroy historical, religious and cultural property, including hundreds of mosques and Catholic churches, which destruction as a rule took place after a region was taken over and after the fighting (if there had been any at all) had stopped. This destruction was in no way collateral and cannot be explained in military terms. It, on the contrary, further illustrates how the intent of the Serbs was focused on the destruction, in whole or in part, of an ethnically defined part of the population of Bosnia and Herzegovina.

Encirclement, shelling, starvation

173. The campaign of ethnic purification can also be traced through the encirclement, shelling and starvation of concentrations of civilians. These were inhabitants in regions which had been principally overrun by Serb armed forces. They would be cut off from the outside world and from essential services necessary for their survival. They would be deprived even of United Nations sponsored humanitarian

assistance, and subjected to armed attack, either through sniper action, or through shelling. In all cases, the populations of these places had been swelled by non-Serbs who had been "cleansed" from outlying areas, rendering the enclaves unsustainable.

174. By April 1993, the suffering in these areas was so immense that the United Nations Security Council declared several, although by no means all, of these enclaves so-called "safe areas" (Sarajevo, Tuzla, Žepa, Goražde, Bihać and Srebrenica). According to the relevant Resolutions, adopted under Chapter VII of the Charter, "safe areas" were to be spared from armed attack and from constant military menace, and they were to be fully accessible to humanitarian aid [United Nations, *Security Council Resolution 819*, S/RES/819, 16 April 1993; *Security Council Resolution 824*, S/RES/824, 6 May 1993; *Security Council Resolution 836* S/RES/836, 4 June 1993]. However, even the international demand for mercy for the abandoned people in these regions was ignored by the Serb forces, who continued their campaign of encirclement, starvation and direct military attack unencumbered, culminating in the taking of Srebrenica and Žepa in the summer of 1995.

175. This policy of the deliberate creation of conditions of life calculated to bring about the physical destruction in whole or in part of a group through encirclement, shelling and starvation of population centres has been addressed in section 2.2.6 of the Memorial. In the Counter-Memorial, the Respondent appears to deny the existence of evidence to that effect [Counter-Memorial, p. 73, Section 1.3.6.]. Instead of actually engaging the evidence produced, the Respondent, throughout this Section, tries to turn things upside down and embarks on various accusations of the Bosnian Government authorities. The accusations regarding incitement [Counter-Memorial, p. 73, paras. 1.3.6.2.-1.3.6.6.] return in almost the same wording as part of the counter-claims submitted by the Respondent. These allegations are dealt with in Part V of this Reply [Chapter 16, Section 2].

176. The Respondent goes so far as to suggest that the Bosnian Government authorities were directly responsible for many atrocities committed by Serbs. This assertion includes the killing of mentally handicapped children and the attacking of the civilian population of Sarajevo. The Respondent offers as evidence for its worst allegations materials, reports, and statements produced in Belgrade. The Applicant does not deem it useful to go into detail regarding this "evidence", but will provide the Court with some additional factual information in the following pages of this Section. The Respondent goes so far as to claim that the suffering of Sarajevo and its inhabitants "has actually been imposed on it by actions of the Sarajevo government", even

claiming that "no seasoned observer in Sarajevo doubts for a moment that Muslim forces have found it in their interest to shell friendly targets" to "drive up the price for black-market goods" and that it was the government of Bosnia and Herzegovina which interrupted the water supply to the city [Counter-Memorial, pp. 76-77, para. 1.3.6.19.].

177. As will be further discussed below, the Commission of Experts has produced an extensive report on the siege of Sarajevo, which leaves no doubt about the truth of this matter [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. III), 28 Dec. 1994, Annex VI, "Part 1, Study of the Battle and siege of Sarajevo"; *ibid.*, Annex VI, "Part 2, Study of the Battle and Siege of Sarajevo"; *ibid.*, Annex VI.A "Incident Study report regarding mortar shelling Dobrinja, Sarajevo on 1 June 1993: Investigation; *ibid.*, Annex VI.B, "The Battle of Sarajevo and the law of armed conflict"]. The report shows that the siege of Sarajevo was, from a military point of view, very well prepared by the Respondent's army (JNA). It also shows how the entire city has been kept locked-in by the Serb military and how the population was terrorized, if not wounded and killed, by Serb snipers throughout the war.

178. Actually, but a few life-lines connected Sarajevo to the outside world: satellite, telephones, TV and radio transmitters and receivers, United Nations personnel, United Nations transports and the tunnel underneath the airport of Sarajevo. Many people were killed by Serb forces while trying to get into or out of the city. Many people were also killed in accidents on the narrow road on Mount Igman which was the only road giving access to the city, since it was connected to the tunnel underneath the airport. It is preposterous to use the mere fact that many Sarajevans managed to survive the siege (10,000 of them were killed by Serb snipers and Serb military) as some sort of "proof", that there was no siege of the capital at all. The Applicant will elaborate on the situation in Sarajevo below.

179. In view of the Respondent's manifestly absurd, and, in any event, entirely unsupported assertions, it is necessary to review once again, however briefly, the ethnic purification campaign through encirclement, shelling and strangulation inflicted upon civilian concentrations by the Serb authorities and their armed forces. As throughout this presentation of the evidence, this will be done exclusively through the review of duly attested findings of the ICTFY and its prosecutorial office, the

United Nations Commission on Human Rights Special Rapporteur on the Situation in the Former Yugoslavia, the UN Commission of Experts, the UN Secretary-General and the most respected citizens' organizations and publicists.

180. With regard to Sarajevo the Applicant wishes to draw attention to the following. The ICTFY Trial Chamber has found that:

> "during the whole siege of Sarajevo, the civilian population was subjected to shelling which concentrated on civilian gatherings and to selective sniping at individual victims. Further, the minimum conditions for subsistence imposed on the inhabitants seem to have contributed to the demoralisation and gradual weakening of the population (...) ." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 33, para. 63].

Similarly, in the Djukić indictment, it was confirmed that from "about May 1992 to about December 1995, in Sarajevo, Bosnian Serb military forces, on a widespread and systematic basis, deliberately or indiscriminately fired on civilian targets that were of no military significance in order to kill, injure, terrorise and demoralise the civilian population of Sarajevo." [ICTFY, Indictments, *The Prosecutor v. Djordje Djukić*, Case No. IT-96-20-I, 29 Feb. 1996, p. 2, para. 7].

181. The attacks on the city of Sarajevo were directed toward residential areas. This was no coincidence, as is illustrated by the following incident that took place on 27 May 1992. It was reported by the Commission of Experts:

> "The BiH Government allegedly taped a conversation between a JNA general and two Serbian colonels over Serbian radio frequencies. It was reported that General Ratko Mladić instructed two Serbian colonels (identified only by the Muslim code names 'Mustafa' and 'Zijo') to attack residential areas of Sarajevo with heavy artillery. The report stated that Mladić was probably speaking from the Lukavica military barracks, in the south-west suburbs of Sarajevo, to 'Zijo' in Vraca, a hilly suburb to the south of Sarajevo, and to 'Mustafa' on Borje Mountain to the north-east of the city. Specifically, it is alleged that in the recording Colonel 'Zijo' argued that artillery attacks should be directed towards areas with fewer Serbian residents. Mladić allegedly disregarded the colonel's comment and ordered his troops to bomb the Velešići and Pofalići residential areas of Sarajevo. With regard to Velešići, Mladić ordered his troops to 'burn it all'. Mladić also ordered his troops to attack civilian targets with the heaviest shells in the Serbian forces' armory, namely 155 millimetre howitzer shells instead of the lighter 82-millimetre and 120 millimetre shells." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. II), 28 Dec. 1994, Annex VI, "Part 1, Study of the Battle and Siege of Sarajevo", p. 193, para. 283].

The siege of Sarajevo had no military justification at all. The purpose of the siege was to "burn it all", preferably those areas with "fewer Serbian residents".

182. The encirclement and strangulation of Sarajevo has been chronicled by the United Nations Special Rapporteur in his successive reports. Already in August 1992, he reported:

> "17. The siege, including the shelling of population centres and the cutting off of supplies of food and other essential goods, is another tactic used to force Muslims and ethnic Croatians to flee. The most dramatic and well-known case is Sarajevo (...) The city is shelled on a regular basis, in what appears to be a deliberate attempt to spread terror among the population. Snipers shoot innocent civilians. The mission visited the hospital itself, which has been deliberately shelled on several occasions, despite the proper display of the internationally recognized Red Cross symbol. Cultural centres have also been targeted, leading some observers to the belief that the attacking forces are determined to "kill" the city itself, and the tradition of tolerance and inter-ethnic harmony which it represents.
>
> 18. The civilian population lives in a constant state of anxiety, leaving their homes or shelters only when necessary. Any movement out of doors is hazardous, and many persons and families spend long periods in isolation. The public systems for distribution of electrical power and water no longer function. Food and other basic necessities are scarce, and depend on the airlift organized by UNHCR and protected by UNPROFOR." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN4.1992/S-1/9, 28 Aug. 1992, p. 4, para. 17-18].

183. Two months later, describing Sarajevo as a dying city, he reiterated:

> "The population is desperate. Cases of people dying in the streets from hunger and exhaustion have been reported. (...) the constant shelling of the city is terrorizing the population. The delivery of humanitarian aid is extremely difficult." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN4.1992/S-1/10, 27 Oct. 1992, p. 5, para. 17].

184. Soon afterwards, the Special Rapporteur had to note that:

> "Supplies of electricity, water and gas to Sarajevo have all but stopped (...) a significant proportion of the damage caused to the lines has been deliberate (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, third periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/6, 26 Aug. 1993, p. 2, para. 6].

Aid, including medical aid was still being blocked and the shelling continued unabated Civilians were terrorised by a campaign of sniping [*ibid.*, pp. 4-7, paras. 16, 25-26, 36-37].

185. In reply to the absurd assertion that it was the Government of Bosnia and Herzegovina which inflicted these tortures upon its own people by destroying the infrastructure necessary for their survival. In August 1993 the Special Rapporteur actually visited the city. With reference to the Serb practices, he indicated that:

> "this trip had provided him with first-hand evidence (...) [of] the starvation of a besieged population as a method of warfare; The use of the civilian population as military targets and their deliberate killing and wounding; The denial and destruction of electricity, water and gas supplies, of foodstuffs and of medical supplies which are essential to the survival of the civilian population; the repeated shelling of hospitals; The detention of civilians as hostages." [*ibid.*, p. 8, para. 44].

186. This campaign lasted throughout the year, constraining the Special Rapporteur to find early in 1994 that:

> "Sarajevo remains subject to indiscriminate attack and to sniping, directed from territory held by the Bosnian Serbs. By early January 1994 there were an average of 1000 shell or rocket impacts per day. Many civilians have lost their lives." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN./1994/110, 21 Feb. 1994, p. 11, para. 59].

187. Rather than abating, this campaign gained in vigour and viciousness throughout 1994:

> "The extent of heavy weapons attacks has also increased, especially since mid-August. Attacks occur in both the city centre and the suburbs and have been directed at residences, pedestrians on the street and moving vehicles, such as trams packed with people. (...) Attacks by Bosnian Serb forces on the civilians of Sarajevo also manifest themselves by means of blocking of services essential for city life. Primary among such actions are the interference with humanitarian aid." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/49/641, S/1994/1252, 4 Nov. 1994, pp. 9-10, paras. 27-28].

188. In November and December 1994, he found there was a further intensification of attacks on Sarajevo:

"In one attack on 8 November 1994 three children and one adult civilian woman were killed by sniper fire and mortars." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, tenth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1995/57, 16 Jan. 1995, p. 6, para. 13].

189. In late April 1995, the Special Rapporteur had to report that the level of firing incidents increased even further:

"and civilians were reported to have been killed or injured on an almost daily basis by shelling or sniping. On 25 April 1995, one civilian was killed and five others reported injured when small arms fire was opened against two buses in Sedrenik, a suburb of Sarajevo under the control of the government of Bosnia and Herzegovina. (...) the first major assault took place on 7 May 1995 when the Bosnian Serb forces shelled the Sarajevo suburb of Butmir, killing 9 people and wounding 50 others, with virtually all the victims being civilians. On 16 May 1995, some of the heaviest fighting in more than a year was reported resulting in 3 dead and 26 wounded. Civilian lives were heedlessly endangered as mortar shells were fired by the Bosnian Serb forces into densely populated areas. (...) In an incident on 18 June 1995, 7 people were killed and 12 injured when a shell fired by the Bosnian Serb forces landed in the western suburb of Dobrinja. These civilians were killed in a queue at a water supply point, having been compelled to leave their homes by the cutting of the water supply by the Bosnian Serb forces." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/6, 5 July 1995, pp. 14-15, paras. 67-70].

190. The United Nations Commission of Experts also analysed the campaign of terror against Sarajevo. The Serb forces have "concentrated their efforts on weakening the city through constant bombardment from the surrounding hillsides", using up to 1,100 artillery pieces, not including tanks and other weapons. There were from 200 to 300 impacts on a quiet day to 800 to 1,000 shell impacts on an active day. [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 44, paras. 186-187]. They continued:

"189. An examination of the range of destruction in Sarajevo reveals a pattern of specific targeting. The following targets were documented in the chronology as being among the most frequently targeted sites in the city: the Kosevo Hospital; the Sarajevo radio and television stations; the Oslobodenje Newspaper building, which is still in operation; the public transportation system; the Presidency and Parliament buildings; the main city brewery; the flour mill; the main bakery; the Olympic complex; the industrial area of Alipasin Most near the railway station and main television tower; the Jewish cemetery; the Lion Cemetery; the city airport; the tobacco factory; the Dobrinja apartment complex; the central district; Bascarsija (the old quarter of mosques); the Stari Grad Section; New Sarajevo; the main thoroughfare on Marshal Tito Street; and the shopping district at Vase Miskina.

> 190. The chronology confirms that certain areas of the city have also been systematically shelled throughout the course of the siege, particularly cultural and religious structures and public utilities. The city centre, the airport and southwestern suburbs had consistently been the most often targeted areas. The historic old town area had also been heavily shelled.
>
> 191. A review of the incidents in the chronology also indicates a random process of shelling throughout the civilian areas of the city. The shelling, which occurs at different times of the day without any apparent pattern or specific target, has a terror-inspiring effect on the civilian population. It is particularly telling that deaths, injuries and destruction have occurred in various parts of the city and in such well-known non-military settings as schools, open streets, public parks, football and athletic fields, cemeteries, hospitals, and even bread, water and relief lines in the city.
> (...)
> 194. The cumulative effect of the number of civilian casualties, the destruction of non-military structures, attacks upon and destruction of protected targets, such as hospitals, cultural property and other impermissible targets, evidence a consistent and repeated pattern of grave breaches of the Geneva Conventions and other violations of international humanitarian law. The length of time over which these violations took place and their recurrence clearly establish that, in at least a large number of incidents, those ordering and carrying out these actions committed such violations." [*Ibid.*, pp. 45-46].

191. A special team from the Commission of Experts addressed the campaign of shelling and sniping in even greater detail, especially in light of earlier Serb allegations that some of the attacks had, in fact, been mounted by the government of Bosnia and Herzegovina. It found clearly that there was a deliberate tactic of using heavy artillery "as a weapon of terror" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. III), 28 Dec. 1994, Annex VI.B, "The Battle of Sarajevo and the Law of Armed Conflict", p. 13, para. 45]. Moreover, the Experts concluded:

> "The weapons systems being used by BSA forces in the siege of Sarajevo, predominantly direct-fire weapons, and artillery at point blank, frequently direct-fire range, are systems which can be used with a high degree of accuracy. A sniper rifle is normally aimed at a particular person in view of the sniper. Mortars and guns used at short range normally fire projectiles which land quite close to where they are aimed. These are not inherently indiscriminate weapons, particularly in the case of sniper fire. If non-combatants are being killed or wounded, this occurs because the sniper intends to kill or wound them." [*Ibid.*, p. 28, para. 82].

192. The Respondent apparently chose to just ignore these independent findings and in its Counter-Memorial bluntly repeats allegations which have been refuted long ago. It should be noted once again that for most of the period of the siege, Sarajevo was an official United Nations "safe area", which should have remained free from any attacks whatsoever. In addition, humanitarian access should have been granted, but was repeatedly denied, for example by "obstruction of the normal operation of Sarajevo airport, including the suspension of the humanitarian airlift, caused by Bosnian Serb threats against United Nations aircraft and relief flights"

[S/PRST/1995/25, 3 May 1995]. The UN Secretary-General had to note that "snipers targeted UNPROFOR personnel on a number of occasions, and repeated violations of the demands of the UN Security Council to respect the "safe area" eventually triggered a United Nations military response." [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 982 (1995) and 987 (1995)*, S/1995/444, 30 May 1995, paras. 8, 12]. The "safe area" status proved no protection for the city, just as it offered no salvation to other so-called "safe areas", especially Goražde, Žepa and Srebrenica.

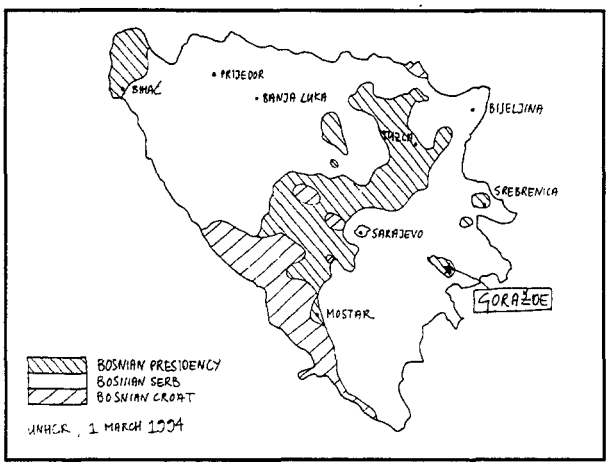
193. Unfortunately, Sarajevo is not the only telling example of how the Serb side deliberately inflicted conditions of life upon the non-Serbs of Bosnia and Herzegovina calculated to bring about their physical destruction through encirclement, shelling and starvation. Another well-known example is, of course *Srebrenica.* A special Security Council Mission concluded that "Srebrenica is today the equivalent of an open jail, in which its people can wander around but are controlled and terrorized by the increasing presence of Serb tanks and other heavy weapons in its immediate surroundings." [United Nations, *Report of the Security Council Mission Pursuant to Security Council Resolution 819 (1993)*, S/25700, 30 Apr. 1993, p. 6, para. 18].

194. Because of the exemplary nature of the siege of Srebrenica, which culminated in the horrific massacre of eight to ten thousand Muslims in July 1995, a specific Section of this Chapter will be devoted to the atrocities committed by the Serbs in Srebrenica [Reply, Chapter 5, Section 8]. There is no doubt that Srebrenica revealed exactly what the intent of the Serbs had been.

195. The picture in Goražde was very similar to that which prevailed in Srebrenica. The town had a pre-war population of 40,000. However, by February 1993, the enclave accommodated 70,000, including the outlying villages and those displaced from surrounding areas. At that time, the United Nations Special Rapporteur indicated that the enclave was being shelled and that the encircling Serb forces denied the passage of convoys of humanitarian aid for two months. Instead, food was being air-dropped, but at insufficient levels to ensure the survival of the population:

> "It is reported that every night up until mid-April, between 600 and 1,000 people would make the 42-km journey from Goražde to Grabac village to eat and to find supplies to carry back to their families. This route is reportedly now cut." [United Nations, *Situation of Human Rights*

in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, E/CN.4/1994/3, 5 May 1993, p. 10, para. 42].



196. In Spring 1994, Goražde was subjected to a military onslaught which triggered widespread international condemnation for its viciousness in targeting a concentration of the displaced [see also Reply, Chapter 8, Section 5]. The campaign has been described by the Special Rapporteur:

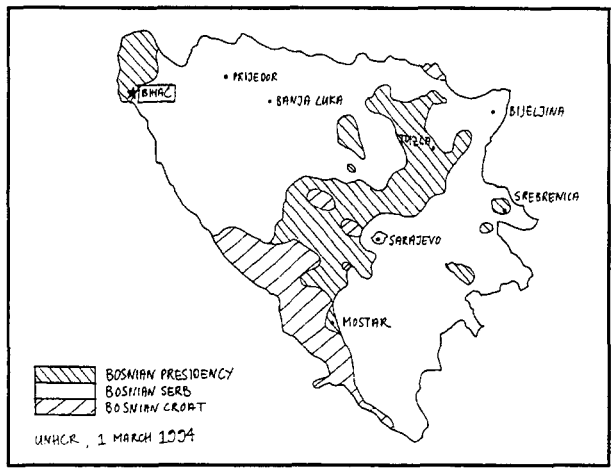
> "The early stages of the offensive were marked by the overrunning of a number of villages (...) The assaults on the villages involved widespread terrorization of the residents, eviction from and the destruction of their homes, and the killing of livestock. Eye-witnesses have also attested to the commission of rape by groups of soldiers. The attacks on the villages of Stanici and Kordici are indicative of practices of the advancing troops. In these villages, a number of residents were summarily executed including elderly women and handicapped men. Bodies of the dead were subsequently mutilated and decapitated. The Special Rapporteur has received information that tank rounds were fired directly into homes. At all stages of the offensive, villagers fled in fear of their lives, leaving behind homes, land and possessions. The people subsequently made their way to the town of Goražde where there were no resources to meet even the most basic of their needs for shelter and food. The military attacks on the town of Goražde (...) included the deliberate targeting of civilian and highly sensitive targets like hospitals and interference with attempts to bring care to those who were wounded. Most fatalities were caused by direct mortar and missile fire and shrapnel. Later in the offensive the number of sniper casualties rose. The hospital was deliberately targeted on many occasions, causing heavy loss of life and wounding. (...) During the fighting the city lost its electricity supply and the water supply was halted by Bosnian Serbs who gained control of the area surrounding the water station at Usanovic. They subsequently destroyed this facility. Lack of running water obliged people to line up for water at wells, where they were exposed to sniper fire, and many were killed. The water shortage also presented a grave risk to health. (...) It may be noted that the attack on the town of Goražde involved the use of weapons of great destructive force. These included 'aerosol bombs' and wire-guided missiles. An attack on the Vitkovici chemical plant resulted in risks of damage to the health of people and livestock and environmental damage following the piercing of containers of ammonium nitrate." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia,*

seventh periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, E/CN.4/1995/4, 10 June 1994, pp. 2-3, paras. 7-12].

197. The UN Security Council stated that it strongly condemns the shelling and infantry and artillery attacks by the besieging Bosnian Serb forces against the "safe areas" of Goražde in which many civilians have lost their lives and several hundreds have been wounded." [United Nations, *Security Council Resolution 400 (1994)*, S/1994/400, 6 Apr. 1994, and *Security Council Resolution 913 (1994)*, S/1994/913, 21 Apr. 1994. Also, among many, the Statement of Governments concerning the situation in the Republic of Bosnia and Herzegovina, United Nations Document, S/PV.3367, 21 Apr. 1994]. The United Nations High Commissioner for Refugees reported that the "on-going heavy shelling is causing increasing panic among the population of 65,000 people, two-thirds of them displaced (...) the situation has become critical. Countless howitzer rounds are falling all around the city centre and into the south suburbs." ["Update", *UNHCR*, 10 Apr. 1994]. Despite the active involvement of the international community in this situation, and in defiance of the demands of the Security Council, it was subsequently reported that "the situation in Goražde remains very tense (...) local civilians and United Nations personnel have been targeted repeatedly. Attacks intensified during July and August 1994, when the use of weaponry such as anti-aircraft guns and mortars resulted in a daily toll of dead and injured civilians." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/49/641, S/1994/1252, 4 Nov. 1994, p. 9, para. 25].

198. Even after NATO threatened air-strikes to protect the enclave, its situation did not improve markedly, humanitarian convoys continuing to be harassed or turned back [United Nations, *Report of the Secretary-General Pursuant to Resolution 913 (1994)*, S/1994/600, 19 May 1994, para. 17]. In fact, the encirclement and attacks lasted well into 1995 [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/6, 5 July 1995, p. 17, para. 83].

199. Again, a similar pattern recurred in Bihać. In August 1992, the United Nations Special Rapporteur had to note that "The city and region of Bihać (...) is also besieged by ethnic Serbian forces. Shelling occurs daily. There are no significant military targets in the city, and the main reason for the shelling appears to be that of terrorizing the civilian population." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1992/S-1/9, 28 Aug. 1992, p. 6, para. 20].



200. Despite the fact that Bihać was one of the so-called "safe-areas", this situation continued unabeted. In 1994 the United Nations Security Council noted with alarm the escalation in Bihać and the flow of refugees and displaced persons resulting from it [S/PRST/1994/66, 10 Nov. 1994]. The United Nations Special Rapporteur noted:

> "The intense attack concentrated on Bihać town is being perpetrated primarily by Bosnian Serb forces, with substantial tactical (including air) support provided by the forces of the so-called 'Republic of Serb Krajina'. The assault on Bihać town is being conducted with no obvious concern for the safety of civilians. The town has been pummelled by shells and other missiles, causing considerable loss of life and injuries. (...) Well-attested reports indicate that the Bosnian Serb troops were destroying villages which they encountered in the course of their progress into the Bihać pocket" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, tenth periodic report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1995/57, 16 Jan. 1995, pp. 5-6, para. 12].

201. The Security Council was constrained to condemn the further escalation of attacks, including by aircraft "which involved the dropping of napalm and cluster bombs in southwest Bihać, in clear violation of Bihać's status as a safe area."

[S/PRDT/1994/69, 18 Nov. 1994; see also, United Nations, *Security Council Resolution 959 (1994)*, S/RES/959, 19 Nov. 1994]. "Throughout this period, access to the Bihać pocket has remained extremely difficult for UNPROFOR and almost impossible for humanitarian convoys", the UN Secretary-General had to note, as only twelve out of 144 planned convoys had reached the city over the year. Even air drops were not possible, given the security threats [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 959 (1994)*, S/1994/1389, 1 Dec. 1994, para. 17]. Well into 1995, "the people of Bihać [were] on the verge of disaster (...) the lives of many men, women and children are at risk. If a tragedy is to be avoided, regular and safe humanitarian access must resume." ["Update", *UNHCR*, 16 Feb. 1995].

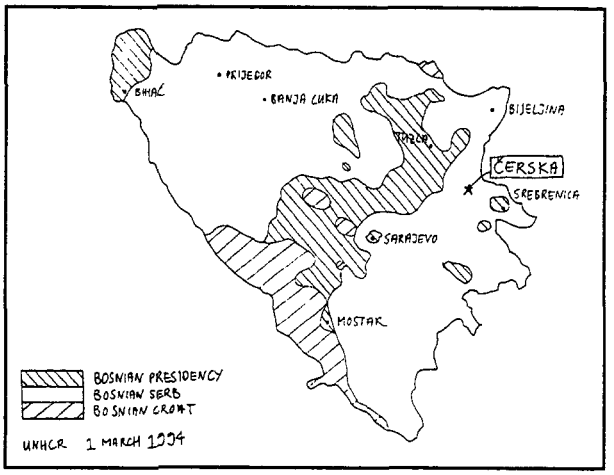
202. By 1994, it was estimated that approximately 800,000 people lived in the greater Tuzla region, 240,000 of them being displaced. The "entire population [is] dependent on humanitarian assistance for its survival" the UN Secretary-General noted, when he reported with equal relief and surprise that an immediate humanitarian disaster over the winter had been avoided [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 844 (1993), 836 (1993) and 776 (1992)*, S/1994/333, 24 Mar. 1994, paras. 2, 4].

203. The area remained encircled, and the use of its airport for humanitarian flights was constantly denied by the surrounding Serb forces. Tuzla was once more shelled on 25 May 1995 by the Bosnian Serb forces, which:

> "will be remembered as one of the worst atrocities of the three-year war. The attack took place on a late spring day in a cafe area frequented by the youth of the town, and resulted in the death of 71 persons and the wounding of 151 others, 33 critically. (...) The barbarity of this attack was highlighted by the youth and vulnerability of these particular victims. Eyewitness reports gave harrowing accounts of limbs and other parts of bodies being found strewn across the area." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/6, 5 July 1996, p. 17, para. 82].

204. If this is what happened in areas which were not formally designated "safe areas", it is not surprising that a similar pattern was to be found in towns and areas which were encircled as well, but had not been given this special status.

205. The situation in Cerska was typical of many other besieged places which eventually fell to sustained bombardment and encirclement.



Mazowiecki reported:

"9. In May/June 1992 Serb forces surrounded the area of Cerska using heavy artillery, tanks and aeroplanes (which were reportedly in use until August). A confrontation line was thereby established which remained virtually unchanged for seven months until December/January 1993. Infantry and heavy artillery attacks on these hamlets are reported to have been virtually non-stop after June 1992.

10. Accounts of life in the Cerska enclave during these seven months relate how villagers would try to work their fields at night in an attempt to avoid the shelling and snipers. Supply of food was thus reported to be one of the biggest problems in Cerska prior to its fall and there are many accounts of children dying of hunger. People reportedly ate horsefodder, leaves and the bark of trees. Shelling was constant, and people sought shelter from the winter in the corners of ruined houses or basements, in very overcrowded conditions. Some villagers lived in the woods during the summer and winter of 1992, returning to their homes only for an hour or two when the winter cold became unbearable at night. All the enclaves contained a large number of displaced people who had fled ethnic cleansing in their home areas.

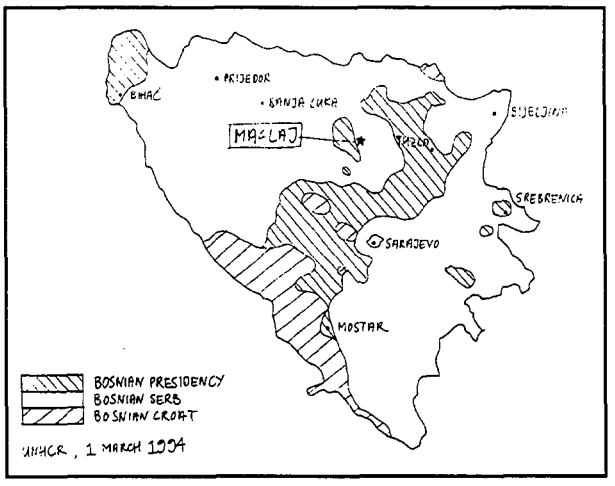
11. There are reports of there being many wounded. Medical conditions were medieval, with little or no drugs or anaesthetics. Amputations were carried out without anaesthesia. Bandages, when available, were used and reused without detergent or disinfectant. People died of the simplest injuries because of the lack of medical treatment while skin diseases, lice, gastroenteritis and hepatitis affected much of the population.

12. One eye-witness alleges that around early February, there were 300 displaced people from Vlasenica in the primary school in Cerska when it was shelled. About 10 of those inside were killed immediately and 50 injured. Those who tried to run to shelter nearby were allegedly shelled again. A male nurse in Cerska reportedly had to use hacksaws to amputate the destroyed arms or legs of the wounded. There was nothing to clean the wounds with except home-made brandy, nappies and bedsheets. It is not known how many of the wounded survived.

13. The pattern of the previous seven months was changed when Serb forces reportedly went on the offensive against the Cerska enclave from 15 January 1993 until the last village, Konjevic Polje, fell on or around 10 March 1993. One hamlet was taken at a time. Every day there were thousands of shells from the tanks in the surrounding hills. In hamlets such as Gobelje it is alleged that each house was individually targeted and people moved from house to house as the shelling progressed. Government forces would reportedly fall back to the next village, moving civilians back as they did so until that village was about to fall, too. Many of the witnesses had fled their homes with Serb forces right behind them. People who were unable to move, such as old people, invalids and the wounded, reportedly remained in the villages to be taken.

14. There are reports that some villages which had been very close to the front line, such as Velici, Grbici and Hodzici, fell so quickly that people were jumping out of the second-storey windows of their homes to escape Serb forces entering the villages. It was reportedly particularly difficult for women with small children to escape and it is alleged that, as a result, 50 to 100 people were killed by Serb forces in the villages of Velici and Muskici." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, pp. 4-6, paras. 8-17].

206. Maglaj furnishes yet another example of the long-term encirclement and gradual destruction of a local population and the displaced.



"Serb and Croatian forces have largely destroyed the town of Maglaj and have both prevented the delivery of humanitarian aid and killed civilians to retrieve air-dropped parcels, the United Nations Special Rapporteur noted." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, fifth periodic report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN./1994/47, 17 Nov. 1993, p. 13, para. 93].

Earlier Mazowiecki reported:

> "Bosnian Serb forces have sporadically, but with deadly effect, targeted civilians in Maglaj. Thus, on just one day in March 1994, some 13000 shells landed in the town, hitting, inter alia, a health-care centre and killing five medial personnel. On 26 July it was reported that eight people were killed in a mortar attack. (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/49/641, S/1994/1252, 4 Nov. 1994, p. 10, para. 30].

In view of the gravity of the situation, the United Nations High Commissioner for Refugees denounced the blocking of humanitarian aid by the Serb sides over several months ["Update", *UNHCR*, 10 March 1994].

207. Travnik was also encircled and shelled. In 1994, the United Nations Special Rapporteur had to note that:

> "Travnik has been subjected to heavy shelling and other forms of attack during recent months. Shelling in the last week of June 1994 claimed at least nine lives. Among the targets was the hospital. Heavy shelling of civilian targets was again noted in August. During the week of 8-14 June 1994, it was reported that some 15 women and children in nearby Turbe were killed or injured in military attacks. (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/49/641, S/1994/1252, 4 Nov. 1994, p. 10, para. 31].

208. Mazowiecki has reported on many other similar locations [see, *e.g.* United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, pp. 10-12, paras. 41-51; A/49/641, S/1994/1252, 4 Nov. 1994, pp. 10-11, para. 33]. In the early phases of the conflict, shelling and other means of attack against civilians were used to speed the capture of towns and the expulsion of residents and the displaced. For example, on about 23 May 1992, approximately three weeks after the Bosnian Serbs forcibly took control of governmental authority in the municipality of Prijedor, a coordinated attack was executed by Serbian forces, including JNA units, territorial defence (TO) units, paramilitary units, and police units, combining intensive artillery and tank shelling followed by infantry assaults on Bosnian Muslim and Bosnian Croat areas in the municipality of Prijedor, the Prosecutor for the ICTFY found.

> "Between April and July 1992, attacks following the same pattern were being conducted by Serbian forces across Bosnia-Herzegovina (...). The final large scale military attack conducted by the Serb and Bosnian Serb forces in the municipality occurred on about 20 July 1992 against the predominantly Muslim villages in the hilly region known as the 'Brdo' on the west side of the Sana river." [ICTFY, Indictment, *The Prosecutor v. Simo Drljača and Milan Kovačević*, Case No. IT-97-24-I, 13 Mar. 1997, no paragraph numbering in the original].

209. In several instances, it was in the interest of the Serb forces to keep large numbers of the displaced in such conditions until they were dead, until it was convenient to arrange for their deportation, or until Serb forces judged the time had come for the completion of ethnic purification by finally overrunning the remaining enclaves where desperate non-Serbs had gathered. The deliberate policy of creating unsanitary conditions through the "destruction of installations indispensable to the survival of the civilian population, such as water treatment plants" was condemned by the International Committee of the Red Cross [ICRC Press Release No 93/14, 8 June 1993].

210. Again, as demonstrated above, areas where civilians would need to come out into the open, such as market places, water supply and food distribution centres were particularly targetted.

> "From July 1992 to July 1995, many civilian gatherings, particularly at stadiums or in public squares, were subject to shelling by Bosnian Serb military forces with the object of killing, terrorising and demoralising the civilian population." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-5-R-61 & IT-95-18-R61, 11 July 1996, pp. 9-10, para. 18].

These types of civilian gathering places were not only shelled on a regular basis, they were also very frequently targeted by Serb snipers. The Respondent is, of course, entirely informed about this. Therefore, it is even more outrageous that the Respondent, without any reservation, acknowledges this and at the same time, by reproducing the following quotation, suggests that it is the Bosnian Government that is to blame for this:

> "(...) And, of course, the sight of Sarajevans lining up at water distribution points *sometimes under mortar and sniper fire*, was a poignant image." [Counter-Memorial, p. 77, para. 1.3.6.19., emphasis added].

211. Food itself was used as a target, stores and transports being subjected to attack, and as a weapon, by denying it to the needy. The United Nations Special Rapporteur noted:

> "The purpose of the 'safe areas' was to provide people with food and medicines they needed in places where their security was guaranteed. Relentless military action by Bosnian Serb forces, however, has turned them into areas under siege. In Srebrenica and Tuzla in particular, supplies of food, water and fuel have been the prime objects of attack." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, fifth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 4, para. 14].

212. Food deliveries, even to the so-called "safe areas" were frequently interrupted, and where they were possible, they required protracted negotiations. Even where agreements were finally procured (often through Belgrade), this did not ensure humanitarian access. On occasion, "the Serbian authorities in Pale, *Belgrade* and Banja Luka" withdrew their assent and required food convoys to turn back, others were stopped at roadblocks or attacked [United Nations, *Report of the Secretary General Pursuant to Security Council Resolution 752 (1992)*, S/24000, 26 May 1992, paras. 8-9, emphasis added]. And, although "the population is heavily dependent of food relief, yet flights and convoys bringing relief supplies continue to be attacked, despite agreements ensuing their safety." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/47/666, S/24809, 17 Nov. 1992, p. 16, para. 41]. Furthermore, the Commission reported, that "[h]umanitarian convoys have been and still are being attacked, harassed and prevented from reaching those in need;" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 24, para. 108; see also, United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, seventh periodic report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1995/4, 10 June 1994, p. 3, para. 16]. This practice has been subject to constant condemnation by the United Nations Security Council, the General Assembly and the United Nation Commission on Human Rights [see below].

213. Other means of disrupting the flow of aid included deliberate and direct military attacks against humanitarian aid workers and the United Nations Protection Force

[United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr Tadeusz Mazowiecki*, E/CN4.1992/S-1/9, 28 Aug. 1992, pp. 10-11, para. 48-49; *Situation of Human Rights in the territory of the former Yugoslavia, second periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*; *ibid., sixth periodic report*, E/CN.4/1994/110, 21 Feb. 1994, pp. 12-13, paras. 67-70; *ibid., final periodic report*, E/CN.4/1996/6, 5 July 1995, pp. 15-16, paras. 71-77]. In fact:

> "a noteworthy feature of the Bosnian Serb offensive was the deliberate targeting of international personnel present in the town [Goražde] and elsewhere in the enclave. It would appear that the building housing UNHCR personnel and United Nations military observers were deliberately targeted, such as on 18 April. Also clearly marked vehicles were targeted as were readily identifiable United Nations personnel in the course of their activities." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, seventh periodic report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/743, 23 June 1994, para. 13].

214. In Tuzla, Sarajevo and other locations, humanitarian flights were interdicted by firing upon them. For example, "ICRC flights have been suspended since 11 March 1995 when a readily identifiable ICRC aircraft was hit while landing at Sarajevo airport" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/6, 14 July 1995, p. 16, para. 78].

215. Hence, overall, the Special Rapporteur had to conclude:

> "some of the worst situations of aid deprivation and associated suffering occur in areas where access is controlled by the Bosnian Serbs. In this respect, areas such as Goražde, Tuzla, Zenica, Olovo, Tesanj and Maglaj are among the most deprived in Bosnia and Herzegovina. (...) During January 1994 UNHCR delivered just 40 per cent of the targeted aid. The figure for December 1993 was 29 per cent. Lack of fuel and medicines have resulted in deaths in the local hospital. (...) Deliveries of fuel, medicines and surgical equipment to the hospitals in Sarajevo have been so limited as to severely compromise their ability to function effectively. *The authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) have also been responsible for interference with aid destined for Bosnia and Herzegovina.* The Bosnian Serb authorities also hinder the international humanitarian efforts by interfering with the medial work of ICRC and the medical evacuation programme." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, pp. 12-13, paras. 67-70, emphasis added; see also his *tenth periodic report*, E/CN.4/1995/57, 26 Jan. 1995, pp. 10-11, para. 42].

And

> "Another method of indiscriminately attacking civilians which has been used in this conflict is through threatened environmental disasters due to military action. (...) the large chemical plant in Tuzla has been shelled many times by Serb forces, threatening the lives of the civilian population for miles around as well as an environmental disaster." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 24, para. 107].

216. The facts presented above leave no doubt as to the systematic, wide-spread and pre-planned nature of this campaign of encirclement, attack and strangulation. The evidence also leaves no doubt that this campaign was targeted specifically and exclusively at non-Serbs. In fact, the ICTFY has expressly found in its Opinions and Judgments and Rule 61 Hearings, that the discriminatory targeting of non-Serbs lay at the heart of this campaign.

217. Hence, the United Nations General Assembly repeatedly identified and condemned this campaign of terror and destruction against civilian concentrations in all its aspects, expressing its grave concern at the situation throughout Bosnia and Herzegovina and the rapidly deteriorating situation in the "safe areas" of Sarajevo, Tuzla, Goražde, Žepa and Srebrenica, and in particular the flagrant and blatant violations of the "safe areas" of Bihać, which has been subject to continued attack and condemning

> "the attacks on the safe areas of Srebrenica and Žepa by Bosnian Serb forces, which led to gross abuses of human rights and grave breaches of international humanitarian law and the disappearance of thousands of persons (..) the indiscriminate shelling of civilians in the safe areas of Sarajevo, Tuzla, Bihać and Goražde and the use of cluster bombs on civilian targets by Bosnian Serb and Croatian Serb forces." [United Nations, *General Assembly Resolution 50/193 (1995)*, 22 Dec. 1995].

The Assembly also condemned "all deliberate obstruction of the delivery of food and medical and other supplies essential for the civilian population" and all attacks on the United Nations Peace Forces and on personnel working with the Office of the United Nations High Commissioner for Refugees and other humanitarian organizations by parties to the conflict.

218. Also, the Trial Chamber of the ICTFY confirmed that the sieges were specifically designed and carried through "in the context of the policy of 'ethnic cleansing'", having all the features of an instrument aimed at making Sarajevo and other towns "an ethnically homogeneous territory" [ICTFY, Trial Chamber, Review of the

Indictment Pursuant to Rule 61 of the Rules of Procedure an Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 33, para. 63].

Deportation and expulsion

219. This Section will focus on a number of specific instances which illustrate how the Serb side deliberately inflicted conditions of life on the non-Serbs in Bosnia and Herzegovina, calculated to bring about its physical destruction by organising their expulsion and deportation. In section 1.8.5 of the Counter-Memorial the Respondent suggests it is responding to these issues. However, this section only contains the Respondent's usual propaganda. Therefore, the Applicant will not go into the Respondent's allegations, but will, instead, elaborate on its own position.

220. The Trial Chamber of the ICTFY has authoritatively confirmed that:

> "thousands of civilians were unlawfully expelled or deported to other places inside and outside the Republic of Bosnia and Herzegovina. (...) The result of these expulsions was the partial or total elimination of Muslims and Bosnian Croats in some of Bosnian Serb-held regions of Bosnia and Herzegovina. In the municipalities of Prijedor, Foča, Vlasenica, Brčko and Bosanski Šamac, to name but a few, the once non-Serbian majority was systematically exterminated or expelled by force or intimidation." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 9, para. 16].

The ICTFY noted that this policy resulted in a radical change in the make-up of the population:

> "The Municipality of Foča had 40,513 inhabitants, of whom 51,6 per cent were Muslim Bosnians. According to the Serbian authorities, there were only nine Muslims in the city in August 1993. Bosanski Šamac had 32,835 inhabitants, of whom 45 per cent were Croats, 41 per cent Serbs and 7 per cent Muslims. According to the Prosecutors Office, ten Croats and 250 Muslims were still present in the municipality in March 1995. In the Prijedor Municipality, 88 per cent of the Muslim population of about 49,000 population was killed or deported. (...) in July 1994, about 750.000 non-Serbs were displaced from northern and eastern Bosnia, the population of the Republic of Bosnia and Herzegovina in 1991 being 4.4 million. (...) At Srebrenica, the take-over of the enclave in July 1995 entailed the execution or deportation of its 40,000 inhabitants." [*ibid.*, pp. 31-32, para. 60].

221. In the following pages the Applicant will review some examples of cases in which the intent to expel and deport can be demonstrated easily. The Applicant does not endeavour to exhaustively list all the incidents.

222. The systematic nature of this ever repeating pattern of expulsion and deportation is clearly shown in Prijedor. Since the events in this area are so exemplary to the way the Serb side acted throughout the entire armed conflict, a specific Section will be devoted to Prijedor [Reply, Chapter 5, Section 7].

223. The campaign of ethnic purification was particularly sustained over time in Banja Luka. By August 1992, the United Nations High Commissioner for Refugees noted a "pattern of brutality against people" in towns north of the city:

> "People fleeing the area say gangs of irregulars race through the streets at night shooting and report random killings. Before signing the petitions to be "voluntarily" evacuated residents are forced to sign over their land, homes and cars to the local administration" ["Update", *UNHCR*, 13 Aug. 1992].

In June 1993, for example, the International Committee of the Red Cross had to intervene on behalf of 2,000 displaced people from that city "still trapped in no-man's land" between the lines [ICRC Press Release, 10 June 1993]. In June 1994, Helsinki Watch prepared a forty page report on this city, concluding that over two years, "non-Serbs have been cleansed through systematic persecution that includes torture, murder, rape, beatings, harassment, de jure discrimination, intimidation, expulsion from homes, confiscation of property, bombing of businesses (...)." Helsinki Watch noted that there was no fighting in the area which was fully under Serb control "indeed, the sweeping institutional nature of the "cleansing" would not be possible without such control." ["War Crimes in Bosnia and Herzegovina: UN Cease-fire Won't Help Banja Luka", *Human Rights Watch/Helsinki*, June 1994, Vol. 6, Issue 8, pp. 1-2, Annex 31].

224. After the initial wave, an escalation in the rate of "ethnic cleansing" was observed in Banja Luka from November 1993 on. Indeed, "it has been reported that a form of housing agency has been established in the municipality, which chooses accommodation for incoming Serb displaced persons, evicts Muslim or Croat residents (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN./1994/110, 21 Feb. 1994, p. 5, para. 8].

225. In March 1994, the United Nations Special Rapporteur had to report that

> "the pattern of terrorization in Banja Luka has not changed (...) There have been repeated reports during recent months of the bombing and destruction by fire of the homes of Muslims and other non-Serbs in the Banja Luka area. Within the city of Banja Luka (...) the building housing the Mufti of Banja Luka, the Iman and a family of refugees was bombed on 15 July 1994. The remains of the mosques destroyed in 1993 are in the process of being cleared away by the city authorities. Thus, in July 1994, the sites of the Mehdi Begova, Sefer Begova and Hadzi Kurtova mosques were levelled and all the remaining tombstones destroyed. (...) The displacements are often very well organised, involving the busing of people." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/49/641, S/1994/1252, 4 Nov. 1994, pp. 6-8, paras. 11, 14, 23; see also *ibid., Tenth Periodic Report*, E/CN.4/1995/57, 16 Jan. 1995].

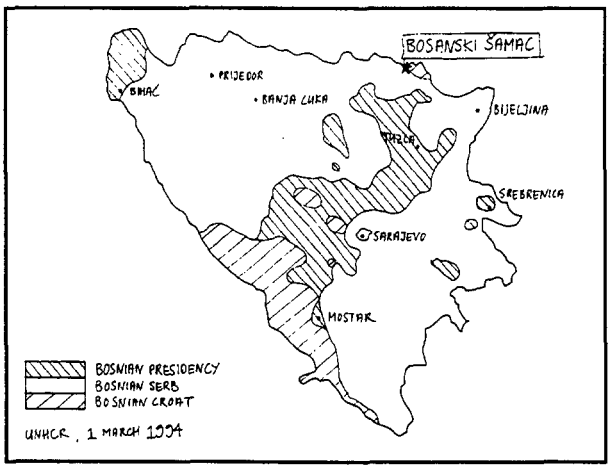
226. The United Nations Security Council strongly condemned "this practice of 'ethnic cleansing'" in Banja Luka, in Resolution 941 [United Nations, *Security Council Resolution 941 (1994)*, S/RES/941, 23 Sep. 1994], as did the United Nations General Assembly [United Nations, *General Assembly Resolution A/49/10 (1994)*, 8 November 1994]. Nevertheless, as late as April 1995, the United Nations Special Rapporteur was constrained to devote a separate report to the campaign "taking place in the Banja Luka region of Bosnia and Herzegovina, which threatens to force from the territory virtually the entire remaining non-Serb population." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/3, 21 Apr. 1995, p. 1, para. 3]. The persecution of non-Serbs in and around Banja Luka reached a critical point in February 1995, he indicated, when certain towns suffered sustained campaigns of violence directed principally against the Muslim inhabitants, and also, increasingly, against Bosnian Croats. There were systematic, house-to-house sweeps, plunderings and beatings, including of women and the elderly. Intimidation was rife in towns, and those in outlying villages were cut off from communications and subjected to attacks [*ibid.*, pp. 2-4, paras. 8-18].

227. The imposition of forced labour obligations as well as the "virulence of the ongoing campaign of violence" had resulted in the authorities "being very close to attaining their apparent aim of achieving 'ethnic purity' in territory under their control". Non-Serbs have been subjected to unrelenting terrorisation and discrimination, and it

appears that virtually none wish to remain in northern Bosnia and Herzegovina. [*ibid.*, pp. 5-6, paras. 24, 29]. The campaign, it was found, continued to be organised centrally, including the administration of the exodus through official agencies charging fees for forcible expulsion from the victims and including the requiring of the relinquishing "in writing their claim to their homes, without reimbursement" [*ibid*, pp. 6-7, paras. 26, 31].

228. The comprehensive nature of this practice is also displayed in the evidence, determined to be strong enough for conviction by the ICTFY Prosecution in the Miljković Indictment, relating to the area of Bosanski Šamac. The Prosecutors of the Tribunal found that there had existed for a period of some six months a planned and well prepared campaign for

> "the unlawful deportation and forcible transfer of hundreds of Bosnian Croat and Muslim residents, including women, children and the elderly, from their homes in the Bosanski Šamac municipality to other countries or to other parts of the Republic of Bosnia and Herzegovina not controlled by Serb forces." [ICTFY, Indictments, *The Prosecutor v. Slobodan Miljković & others*, Case No. IT-95-9-I, 21 July 1995, p. 4, para. 20].



229. The Indictment describes the systematic nature of this campaign of ethnic purification as follows:

> "1. In 1991, almost 17,000 Bosnian Croats and Muslims, of a total population of about 33,000, lived in the municipality of Bosanski Šamac in the Republic of Bosnia and Herzegovina. By May 1995, fewer than 300 of the Bosnian Croat and Muslim residents remained.
> 2. On 17 April 1992, Serb military forces from Bosnia and elsewhere in the former Yugoslavia seized control of the town of Bosanski Šamac.

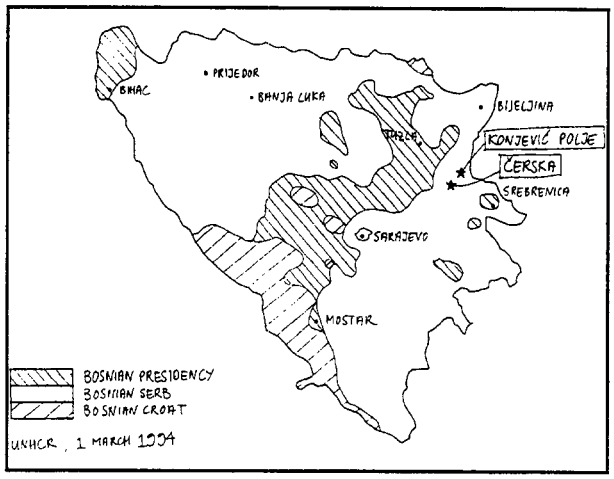
3. Because of its location at the northwestern edge of the "Posavina Corridor," control of Bosanski Šamac was important to Serb efforts to create a Serb-controlled land bridge between Serbia and the Krajina Serbs in Croatia and western Bosnia and Herzegovina.
4. After seizing control in the military takeover, Serb authorities undertook a campaign of terror designed to force most Bosnian Croat and Muslim residents to leave the area.
5. Beginning on 17 April 1992, Serb military and political authorities coordinated and carried out the following actions as part of that campaign of terror:

a) arrested and detained most of the Bosnian Croat and Muslim men in the municipality, particularly the political, economic, professional, academic, and civic leaders;
b) established and operated, primarily under the authority of the Serb police, detention camps where prisoners were killed, beaten, tortured, sexually assaulted, and otherwise mistreated;
c) permitted units of paramilitary soldiers from Serbia to enter the detention camps to kill and beat the prisoners;
d) forced Bosnian Croat and Muslim residents to leave their homes, and permitted Serb residents to move into the vacated homes;
e) expelled, through force or intimidation, Bosnian Croat and Muslim residents of the municipality to other countries and other parts of Bosnia and Herzegovina;
f) required Bosnian Croat and Muslim men, women, and children to work on forced labor projects, such as digging trenches and other work at military confrontation lines;
g) robbed Bosnian Croat and Muslim residents of their cars, cash and valuables, and looted their homes;
h) looted and dismantled equipment and inventories from Bosnian Croat and Muslim businesses;
i) issued orders prohibiting Bosnian Croats and Muslims from congregating in public and requiring Bosnian Croats and Muslims to wear white arm bands to identify themselves as non-Serbs;
j) confiscated the bank accounts of many Bosnian Croats and Muslims and blocked the funds in those accounts;
k) mobilised Bosnian Croat and Muslim men into the Bosnian Serb army and sent them to the front lines;
l) created such an atmosphere of fear and oppression among the non-Serb population that most Bosnian Croat and Muslim residents fled the area." [*ibid.*, pp. 1-2, paras. 1-5].

230. The Indictment also confirms that this sophisticated infrastructure for the ethnic purification of this region was intended to be permanent. One of the indictees, Miroslav Tadić, was in fact appointed Chairman of the Bosanski Šamac "Exchange Commission" [*ibid.*, p. 3, para. 9]. The function of that Commission in this, as in other areas, was to re-distribute formerly non-Serb property to Serbs who were to be brought in to colonize this part of the newly created Greater Serbia. Once again, in relation to this case, it should be noted that the ICTFY's officers found it reliably attested, by criminal law standards, that all acts and omissions charged as crimes against humanity were part of "a widespread, systematic or large-scale attack against the Croat and Muslim residents of the municipality of Bosanski Šamac" [*ibid.*, p. 3, para. 17].

231. A similar pattern was to be found at Bijeljina. Between mid-June and September 1994, some 4,700 non-Serbs were displaced into Government controlled territory from the Bijeljina and Janja regions. According to international sources, in August alone the expulsion figure was some 1,000. In the first week of September the displacement figure jumped to some 1,300. International sources say that there remained, as of 17 September 1994, some 1,300 out of a total Muslim population, as measured in December 1993, of 6,000. Many of the displaced people moved "voluntarily" having paid for the privilege of being involved in population exchanges. However, many of the displaced, whether forced or choosing to depart, were subject to harassment and theft by the Bosnian Serb forces orchestrating the displacement. There are many reports of physical abuse, including rape, committed by Bosnian Serbs supervising the displacement [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General Assembly and the Security Council*, A/49/641, S/1994/1252, 4 Nov. 1994, pp. 7-8, paras. 17, 20-21]. The "systematic program" of expulsion of "the remaining Muslims" has also been detailed in a report by Amnesty International ["Bosnia-Herzegovina: Living for the Day - Forced Expulsions from Bijeljina and Janja", *Amnesty International*, AI Index: EUR 63/22/94, Dec. 1994, p. 2, Annex 32]. The report details the rounding up of several hundred Muslims in the middle of the night, giving them a few minutes to pack. Those who failed to leave instantly were forcibly expelled. Similarly detailed accounts, based on the extensive analysis of witness statements, have been provided by Helsinki Watch. These measures were specifically condemned by the United Nations Security Council [United Nations, *Statement by the Council President*, S/1994/1023, 2 Sep. 1994; United Nations, *Security Council Resolution 941 (1994)*, S/RES/941, 23 Sep. 1994; see also, United Nations, *General Assembly Resolution A/49/10*, 8 Nov. 1994].

232. The so-called Čerska enclave consisted of a cluster of small hamlets dotted like satellites around the village of Čerska proper in a valley in eastern Bosnia and Herzegovina (the village of Čerska itself consists of upper, lower and middle Čerska), as well as the village of Konjević Polje [see immediately below] and surrounds.



233. The area was subjected to sustained and horrible shelling by artillery and even air attacks for a period of seven months. Then, just before most of the Čerska hamlets fell they were swollen with displaced people from places like Vlasenica, Sadić and Kamenica which had fallen to Serb forces by mid-February 1993. When the time came to leave the village of Čerska proper, a member of the local civil defence is reported to have visited each house and calmly told people that the lines could not be held and that everyone should leave that night. It is reported that almost everyone who remained in Čerska village left in a group of about 10,000 people on the night of 1 or 2 March, using the trail towards Konjević Polje along the river. As the Special Rapporteur noted, there appear to have been a small number of wounded and elderly people who could not be moved from Čerska village before it fell. The fate of those persons is unknown, including of those who were reportedly left in or near the primary school [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, pp. 4-6, paras. 8-17].

234. Even those who did manage to escape from the initial destruction were not safe, as the permanence of the displacement was supposed to be ensured by military attacks against the fleeing civilian population:

> "25. Many civilians are reported to have tried to escape the encirclement of the Cerska enclave, especially in the direction of Tuzla, since the beginning of the war. There are allegations that Serb forces ambushed civilians at Crni Vrh, Baljkovica, Debelo Brdo, Susica, Rogosija and Ilijino Brdo.

> 26. In the summer of 1992, a group of several thousand civilians are reported to have tried to leave the enclave of Cerska, walking slowly with wounded people and children, heading for Kalesijce. After two days and two nights of mountain trails and when only 20 minutes from their goal, the group was allegedly surrounded in the woods at Balcovici by Serb forces. Witnesses report being attacked by aeroplanes mounted with machine-guns, with "bullets flying everywhere." Some people were allegedly captured by Serb forces, while 150 are alleged to have died in the attack. The group scattered and up to 15 days later people were still arriving back in Cerska after wandering in the forest.
> 27. At the end of December, a group of about 2,000 civilians were allegedly attacked with machine-guns at the village of Baljkovica and when people started to run, they were followed into the woods by their attackers. Women with more than one small child reportedly had to leave the others behind in order to run. It is not known how many people died in this attack.
> 28. Using another route to try to reach central Bosnia, one witness left Cerska on 14 February 1993 with a group of 34 people. They had passed Vlasenica and come to Debelo Brdo when they were allegedly ambushed. Serb forces are said to have jumped out in front of the group and to have attacked them with automatic weapons. The witness' father, mother and sister were allegedly killed in the ambush. After a journey of five days and a second ambush at Kljestani, four of the original group are reported to have reached Kladanj.
> 29. There were apparently only two routes by which to reach Konjevic Polje from Cerska: one was through the village of Babici and over Udrc mountain (1042 m) and the other was around the other side of Cerska valley via Ilijino Brdo, where the trail through the woods on the side of the mountain was better and flatter. It is alleged that people from the Cerska hamlets closest to the front line, which fell first, tried to reach Konjevic Polje by this route in early February. It is reported that entire villages would try to leave this way and one testimony estimates that 2,000 or 3,000 people had tried to use this route before it became known as an ambush point towards the end of February. Survivors alleged that on the trail they saw about 100 bodies of people who had recently died of shelling and small arms fire, before being attacked themselves." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, pp. 7-8, paras. 25-29].

235. According to this account by the United Nations Special Rapporteur, the taking of Čerska by Serb forces, hamlet by hamlet, lasted from February to early March 1993. Women and children had fled Čerska in greater and greater numbers as the hamlets were taken. Around 5,000 people made it to Tuzla on foot during January/February but the majority left later and fled in the direction of Srebrenica, many stopping in Konjevic Polje [*ibid.*].

236. The shelling of Konjević Polje was conducted under the very eyes of the United Nations. It intensified on 6 March 1993:

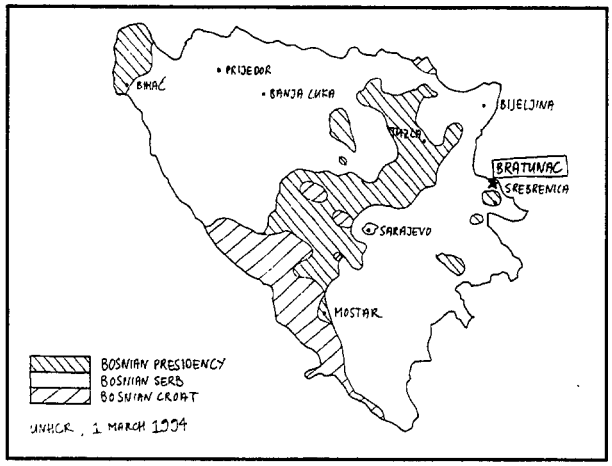
> "On 11 March 1993 a group of United Nations relief workers escorted by two armoured personnel carriers (APCs) from the British Battalion of UNPROFOR were allowed to enter Konjevic Polje. The aim was to evacuate those wounded persons who urgently required treatment and who had been identified on the earlier visit. However, Serb forces refused to allow UNHCR to bring in ambulances or trucks, (...)
> 22. The United Nations team reported finding thousands of people clamouring to be evacuated while preventing the British troops from leaving. A crowd of at least 2,000 civilians gathered

around the two UNPROFOR vehicles and both the crowd and the vehicles were deliberately shelled by Serb forces. One of the APCs was destroyed by an almost direct hit just moments after its occupants had moved to the other APC. According to eye-witnesses, at least 150 women and children, most of whom had fled intense shelling in Cerska in the previous days, were killed outright by this bombardment. Several children were decapitated. There is no accurate figure for the number of wounded who lost arms and legs.
23. After one day and one night the British were able to leave when a brief break in the shelling was negotiated to allow them to do so. The destroyed APC remained in the village. In the event, no-one was evacuated - neither those on the original list of urgent cases drawn up during General Morillon's earlier visit nor those freshly wounded from the latest bombardment.
24. Witnesses said that when people saw that there was no protection from the United Nations, they decided to leave Konjevic Polje. After the UNPROFOR vehicle left, people reportedly ran in all directions and couldn't help the wounded or bury the dead. They left with their children on foot over the mountains, heading towards Srebrenica, seeking safety. According to an eye-witness: 'The crowd was so huge that you couldn't see the end of the people. There was shelling from everywhere. It was incredible, a shell would fall behind you and members of the same family would leave their child on the road and take care of the other children once they were sure that the other child was dead'.
The field staff of the Special Rapporteur met a 77-year old woman in Tuzla who had been "left behind" in such a manner in Konjevic Polje with her husband and six other old people in a house. Serb forces came into Konjevic Polje the next morning and took them by lorry to a house at an unknown location. For about one month, the group was detained, interrogated and frequently told they should have been killed. The witness, her husband and another old woman were beaten. One morning, the group was told that they would be killed at midday. Instead, they were put on a lorry and delivered to the front line near Tuzla. At the time of the interview, the witness had bruises on her face and hands while her husband was in Tuzla hospital with severe head injuries as a result of the beatings." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, pp. 6-7, paras. 21-24].

237. The brutal expulsion campaign in Bratunac has been described by the Commission of Experts:

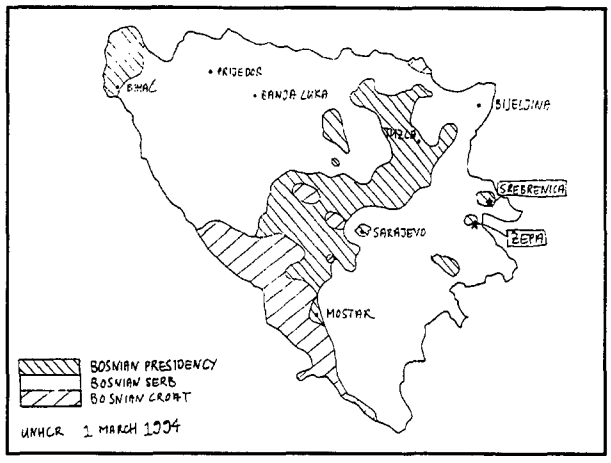
"On 5 May 1992, Arkan's and Šešelj's troops surrounded the entire village of Bratunac and upon their attack, 10000 Muslims reportedly fled small towns along the Drina River. The villages of Hrača, Glogovo, and Mihaljevići were burned. During the attacks, an estimated 500 Muslims houses were burned, and 50 people killed. The bodies of the villagers were found on the banks of the Drina. Two thousand Muslims were arrested on 9 May 1992. Some were taken to the police station, which was then allegedly under the control of Arkan and Šešelj, aided by the army. On 10 May, Serbian troops placed 4000 to 5000 civilians in a newly established concentration camp at the FC 'Bratstvo' stadium. Other were take to the playground. Civilians were separated by gender, and the male Muslims were transported to the elementary school Vuk Karadžić, where a number of men were beaten. One report states that between 600 and 700 male Muslims were moved to Vuk Karadžić Primary School Sports Centre. Arkan and Šešelj's military troops and local "Cetniks tortured and killed scores of them (...) the corpses were eventually thrown into the Drina River. Eventually the remaining Muslims were brought to the playground, where Arkan and Seselj's men stripped them of all personal property. They were then separated by gender and the women were taken to Kladanj by bus, while the men were returned to the elementary school to be beaten and

tortured. The surviving prisoners were then transported to Pale, where the prisoners were forced to watch the bodies of dead prisoners being burned." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", pp. 140-141, paras. 381-383].



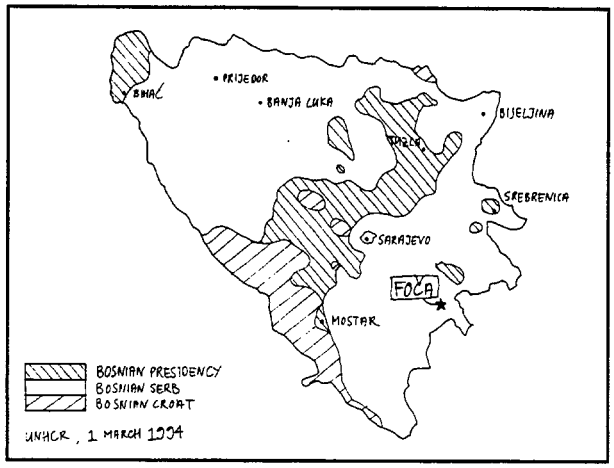
238. The United Nations Special Rapporteur confirms that after the mass arrest of about 2,000 Muslims by Serb police in Bratunac, 500 to 600 men were detained in the hall of the elementary school. Those who could not fit inside were reportedly shot with automatic weapons in front of the hall, he adds. Between 30 and 50 people reportedly died from their injuries the first night while nine others suffocated in the crush as the 500-600 detainees struggled to escape the beatings [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 15, para. 65].

239. The case of Srebrenica combines many of the horrible features displayed in the practices noted above. As in the other instances, the facts cannot be subject to dispute. Because of its exemplary nature, below a specific Section is devoted to Srebrenica [Reply, Chapter 5. Section 8].



240. The situation in Žepa was much similar to that of Srebrenica. Again, the enclave enjoyed the status of a so-called United Nations "safe area". It had been encircled, deprived of humanitarian aid and subjected to direct military attack. When the enclave, which had been fully disarmed, fell, there were between 6,600 and 6,700 people in the pocket before the evacuation. Of this number, 4,800 mostly women, children and elderly, were "evacuated". These women were deported in buses bearing licence plates of the Federal Republic of Yugoslavia, while the men were kept behind, many of them missing to this day [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by Mr. Manfred Nowak, Member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1996/36, 4 March 1996, p. 18, para. 66]. Most of the men were taken to camps in the territory of the FRY [see Reply, Chapter 8, Section 12].

241. The effectiveness of this strategy of ethnic purification is also well attested in relation to the area of Foča, again on the basis of evidence thought by the ICTFY Prosecutor strong enough to support a criminal indictment. The city and municipality of Foča are located south-east of Sarajevo, near the border with the Federal Republic of Yugoslavia.



242. According to the 1991 census, the population of Foča consisting of 40,513 persons was 51.6 % Muslim, 45.3 % Serbian and 3.1% others. The political and military take-over of the municipality of Foča started with the first military actions in the town of Foča on 7 April 1992. Regular military units from the JNA, together with paramilitary units from Serbia and Montenegro, supported by artillery and heavy weapons, proceeded to take over Foča, section by section. The occupation of Foča town was complete by 16 or 17 April 1992. The surrounding villages continued to be under siege until mid-July 1992. As soon as the Serb forces had taken over parts of Foča town, the Prosecutor found, military police accompanied by local and non-local soldiers started arresting Muslim and Croat inhabitants. This process was then expanded out from Foča town out to the outlying villages. Men and women were separated and confined by the thousands in various detention facilities, beaten, tortured, subjected to sexual assault, or killed [ICTFY, Indictments, *Prosecutor v. Dragan Gagović and others*, Case No. 96-IT-23-I, 26 June 1996, para. 1.1].

243. This process was administered with the orderliness of bureaucrats implementing a long-laid plan, being able to draw upon the resources of the armed forces and local, now purely Serb, administration. The Prosecutor explicitly found that "the acts or omissions were part of a widespread or large-scale or systematic attack against a civilian population, specifically the Muslim population of the municipality of Foča." [*ibid.*, para. 1.3-1.4 and 4.7].

244. The permanent "expulsion" of individuals from places surrounding Foča are also documented by other sources. For example, the village of Trosan had been encircled from April to July 1992. There, captured villages were directly fired upon, leading to several deaths.

> "The villagers were then separated — men in one group, women in another. When approximately 35 women and children were led away about 20 metres, the Serbs opened automatic weapons fire on the men. The women and children, who were not allowed to bury the dead or see who was killed, were led around Trosan through the woods and observed the burning of all 30 homes in the village." [United Nations, *Letter dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Secretary-General (Seventh Submission)*, S/25586, 13 April 1993, p. 5].

245. Before the conflict, 62 percent of the 11,000 inhabitants of Gacko, in the south-east of Bosnia and Herzegovina, were Serbs and 35 per cent Muslims. In June 1992, when Serb forces took the town, houses were burnt and Serb forces systematically combed through the area, searching for non-Serbs who had not yet fled into the woods [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 146, para. 423]. Local authorities issued certificates purporting to allow unhindered passage to Macedonia. A convoy of 100 cars was organized by those wishing to leave. Five or six kilometres outside the town, Serb forces were waiting. The men were reportedly dragged out of their cars and severely beaten about the head with iron rifle butts, jumped on by soldiers, forced to beat each other and set on fire with petrol. Women and children were watching from the cars. Others were bused to Skopje [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 22, para. 97, see also US Department of State, Bureau of Public Affairs, *Dispatch*, 26 July 1993, Vol 4, No. 30, at 540, Annex 18].

246. The town of Bileca, in the south-east of Bosnia and Herzegovina, had a population of over 13,000 prior to the conflict, of whom 80 per cent were Serb. There were reportedly three waves of detention of Muslims in the town: in June, October and December 1992. In the latest wave, women and children were detained and deported [United Nations, *Situation of Human Rights in the former Yugoslavia, Report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 14, para. 61]. Pressure on the local population was so serious that the International Committee of the Red Cross had to arrange for the deportation of over 100 civilians. [ICRC Press Release, No. 92, 28, 9 October 1992.]

247. The Applicant does not pretend to be exhaustive in the listing of these events in this Section. However, it is clear that all the examples given here further clarify the policy through which the Serbs deliberately inflicted conditions of life on the non-Serbs of Bosnia and Herzegovina calculated to bring about their physical destruction. Further evidence of this policy is to be found in the following pages and also in the Section, specifically devoted to "ethnic purification" [Reply, Chapter 5, Section 9].

Destruction of historical, religious and cultural property

248. One of the most telling aspects of the conflict in Bosnia and Herzegovina has been the deliberate destruction of its unique architectural, cultural and religious heritage. In this Section of the Reply, the Applicant will demonstrated that this odious vandalism was not accidental, collateral damage of armed conflict, but rather the result of an organised, systematic campaign by the Serb side, designed to eradicate the physical manifestations of the shared, multi-ethnic cultural and religious history of the people of Bosnia and Herzegovina. This operation was expressly directed against non-Serbs, mainly against the Muslim religious tradition of Bosnia and Herzegovina. By religious heritage, the Applicant refers to churches, mosques, graveyards, residences of religious leaders. Cultural heritage includes monuments, historic towns and districts, museums, libraries and archives.

249. The religious and cultural heritage of Bosnia and Herzegovina demonstrates its centuries-old tradition as a multi-ethnic, multi-confessional, pluralist society. It is marked most distinctively architecturally, by the three centuries of Ottoman rule from the fifteenth until the eighteenth century. The cities with their mosques, medresses, bazaars and residential mahalla districts had retained their character until modern times. Later, after Bosnia and Herzegovina was absorbed into the Austro-Hungarian empire, there were intensive building campaigns leaving their distinctive imprint on the architecture. The new rulers brought a Viennese taste for the eclectic to their efforts to modernise Bosnia's cities. Erecting schools, museums and civic institutions, they sought to bring their new territory into the modern age. The third stage of Bosnian architecture was the expansive building programme which begun after the end of the Second World War and the result of the policies of Tito, who encouraged the strengthening of the Bosnian Muslim identity, as testified by the construction of religious edifices during this time. Orthodox churches and Catholic heritage, especially in the form of Franciscan establishments, have been present from the 16th Century. In addition, there has been a Sephardic Jewish community in Bosnia and Herzegovina since the 15th century, when large numbers of Jews fleeing

Spain settled in Sarajevo and the surrounding region. The result is uniquely Bosnian in its blend of cultural influences. The history that the Serb forces have tried to erase, by targeting both its buildings and its vast archive of records, speaks eloquently of centuries of shared pluralism and tolerance in Bosnia and Herzegovina.

250. An instructive example of the religious tolerance of Bosnia and Herzegovina over the last centuries is the relative positions of the places of worship of the major faiths making up the population of Sarajevo. One of the expert witnesses called to testify before the Commission of Security and Co-operation in Europe (CSCE) on 4 April 1995 was András Riedlmayer, Bibliographer for Islamic Art and Architecture in the Fine Arts Library of Harvard University. In his testimony, he illustrated the multi-ethnic traditions of Bosnia and Herzegovina by reference to the capital of Sarajevo:

> "The history here is reflected in the buildings: Muslim, Christian and Jewish townspeople lived, worked and worshipped side by side. In the centre of Sarajevo, the Gazi Husrev Beg mosque (1531), the Sephardic synagogue (built in the 16th century to serve Jewish refugees fleeing Spain) the old Orthodox church (ca. 1539), and the more recent Roman Catholic cathedral all stand within an area of less than half a square kilometre. *The siting of architecture is an intentional, thoughtful, political act. People who cannot abide the site of each other will not build the houses and monuments of their religious life in the shadows of those of the others.*" [Hearing Before the Commission on Security and Co-operation in Europe, 4 April 1995, "*Genocide in Bosnia-Herzegovina*"; testimony by Andràs Riedlmayer, Harvard University, p. 51, emphasis added, Annex 33].

251. It has been this very tradition of shared respect for the diversity of the religious communities in Bosnia and Herzegovina that the forces under the control of the Respondent have attempted to destroy.

252. The tactics of the Serb forces have been brutally simple. In those areas under their control, the mosques and Catholic churches have been burned, dynamited or bulldozed. The purpose of this destruction has been to ethnically purify those regions under their control, not only of the living population but also of the physical manifestations of the historical legacy of non-Serbs living there. Those buildings of religious or cultural significance outside their control but within artillery range have also been deliberately targeted and shelled.

253. These tactics and the strategy that they manifest have been recognised and condemned by ICTFY, the General Assembly of the United Nations, The United

Nations Commission of Experts, The United Nations Special Rapporteur for Human Rights, the Council of Europe, citizens' organisations and those authors and journalists who were present at the site of the destruction during the conflict in Bosnia and Herzegovina.

254. In its Opinion and Judgment in the case of Dusko Tadić, the trial member of the ICTFY considered the treatment of non-Serbs in those areas which had been taken over by the Serb forces:

> "149. The difficulties suffered by the non-Serb population of the autonomous Regions of the Krajina have been well-documented. A report of the International Committee of the Red Cross ('ICRC') found that the minority civilian population of the Banja Luka area was repeatedly beaten, threatened and robbed. *Non-Serb cultural and religious symbols were targeted for destruction and, as an additional means for minimising the non-Serb population of the area, a state agency was created to facilitate the exchange of the non-Serb population for Serbs.*
> (...) *Throughout the opstina mosques and other religious institutions were targeted for destruction and the property of Muslims and Croats, worth billions of dinar, was taken.*" [ICTFY, Trial Chamber, Opinion and Judgment, Case No. IT-94-1-T, *Prosecutor v. Duško Tadić*, 7 May 1997, p. 57, paras. 149-150, emphasis added].

When reviewing the Indictments of Karadžic and Mladić, the Trial Chamber made a brief summary of these tactics:

> "Throughout the territory of Bosnia Herzegovina under the control of the Bosnian Serb forces they destroyed Muslim and Catholic heritage, in particular sacred sites. A total of 1,123 mosques, 504 Catholic churches and five synagogues were destroyed or damaged, for the most part, in the absence of military activity or after the cessation thereof. In the Banja Luka area, all of the mosques and Catholic churches were destroyed. The ruins and rubble were thrown in the public dumps in order to eliminate any vestige of Muslim presence. Other religious and cultural symbols like cemeteries and monasteries were the targets of attacks." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of the Procedure and Evidence, Prosecutor v. Radovan Karadžić & Ratko Mladić, Case No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p.8, para. 15].

255. In Resolution 47/147 of the General Assembly of the United Nations, the Preamble notes:

> "Alarmed that, although the conflict in Bosnia and Herzegovina is not a religious conflict, it has been characterised by the systematic destruction and profanation of mosques, churches and other places of worship, as well as other sites of cultural heritage, in particular in areas currently or previously under Serbian control or Bosnian Croat." [Resolution 47/147 GA Third Committee A/47/678/Add.2, 18 December 1992, Preamble].

256. The Final Report of the Commission of Experts, published in May 1994, contains an overview of the pattern by which destruction took place:

> "Although 'ethnic cleansing' occurred to some extent in the conflict in Croatia, it was in BiH that a distinct pattern of 'ethnic cleansing' could be discerned. First, Bosnian Serb paramilitary forces, often with the assistance of the JNA, seize control of the area. In many cases, Serbian residents are told to leave the area before the violence begins. *The homes of non-Serb residents are targeted for destruction and religious monuments especially churches and mosques are destroyed.*" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994 /674/Add.2, (Vol. I), 28 December 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 9, para. 28, emphasis added].

Furthermore, the Commission made it clear that the pattern of destruction showed that it was the product of a deliberate, clear policy by the forces under the control of the Respondent to eradicate cultural, social and religious traces that identify the ethnic and religious groups:

> "110. The vast majority of reports received by the Commission allege that Serbian forces have used means such as the mass killing of civilians, rape and sexual assault, torture, the bombardment of cities, *the destruction of mosques and churches*, the confiscation of private property, unlawful detention of civilians in harsh and sometimes inhuman conditions, and other unlawful practices designed to eliminate Muslim and Croat populations that lie within Serb-claimed territory. Unlike the violations committed by the other warring factions, *"ethnic cleansing" by the Serbs appears to be the result of a highly-developed policy that has been planned, co-ordinated, and financed by Serb officials with support from the FRY and the JNA which was, at times, directly involved in some of these operations.*" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994 /674/Add.2, (Vol. I), 28 December 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 21, para. 110, emphasis added].

257. Annex V of the Final Report of the Commission of Experts was prepared by Judge Hanna Sophie Greve and entitled "The Prijedor Report". She concludes that practically every Muslim religious building was damaged or destroyed in *opština* Prijedor, while no Orthodox buildings were damaged. The explanation postulated by Judge Greve for this destruction is as follows:

> "552. There is no real distinction in biological terms among the three main 'ethnic' groups - the Serbs, the Croats and the Muslims- in opština Prijedor the region and in BiH at large. Differences amongst the groups are primarily related to culture and religion. This is probably one reason why the various expressions of culture - religion included - became an explicit target for the Serbian military campaign.
> 553. The cultural heritage and the expression of a flourishing culture give people a strong sense of attachment also to a specific geographical area. *By erasing the cultural frame, the Serbs further estranged the non-Serbs from the district.*" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994 /674/Add.2, (Vol. I), 28 December

1994, Annex IV, "The Policy of Ethnic Cleansing", p. 105, paras. 552-553, emphasis added].

258. The campaign of cultural and religious destruction was also noted by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights in his report of 17 November 1992:

> "During the present conflict many mosques, churches and other religious sites, including cemeteries and monasteries have been destroyed or profaned. All faiths have suffered damage, including Muslims, Catholics, Orthodox Christians, Protestant denominations and the Jewish Community. *On his travels the Special Rapporteur was particularly distressed by the systematic destruction of those areas currently or previously under Serbian control. The systematic destruction of such holy sites suggests a deliberate effort not only to expel the Muslim and Catholic population, but also to erase the traces of their presence*. The Religious leader of the Muslims of Sarajevo indicated that the number of mosques destroyed was in the hundreds. In the diocese of Banja Luka alone Catholic sources provided the Special Rapporteur with a list of 12 churches which were completely destroyed adding that 25 other churches had been wantonly damaged." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/47/666, S/24809, 17 Nov. 1992, p. 12, para. 26, emphasis added].

259. A Committee established by the Parliamentary Assembly of the Council of Europe also investigated the destruction of cultural heritage in Bosnia and Herzegovina. It produced ten reports from March 1993 onwards, the latest available being on 24 January 1997. Whilst the reports acknowledge that information is incomplete due to the inaccessibility of some locations under Serb control, nevertheless, they clearly establish that mosques and Catholic churches were deliberately and systematically destroyed. In the Sixth Report dated 31 August 1994, Dr Colin Kaiser, the consultant to the Committee reported, *inter alia*, on destruction in Central Bosnia. He considered various localities and consistently found that mosques had been deliberately targeted by Serb forces:

> "Conclusions for towns and villages on BSA fronts
>
> The worst damage to Bosnian towns and villages has occurred to those places that are of strategic importance to BSA - Gradacac and the villages to the east, Konjic, Olovo and Maglaj. It is especially in the first two areas that cultural/sacral heritage has suffered the most (...).
> It would appear that the BSA resorts mainly to wasteful terror-shooting, with deliberate, if somewhat inconsistent targeting on mosques in order to send a political message to the Moslem population." [Council of Europe, Parliamentary Assembly, "*Sixth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*", Doc. 7133, 31 August 1994, p. 11, emphasis added, Annex 34].

On the previous page, the Report describes the destruction of the town of Olovo:

> "Consequently, like Gradacac, it is one of the worst damaged towns on the front with the BSA [Bosnian Serb Army], and is continuously undergoing bombardment; its eastern end, of which the consultant could get only a short glimpse, is genuinely reminiscent of Vukovar, but there is damage nearly everywhere else, with only *the district right beneath the Orthodox church being spared.*
>
> The consultant visited the mosque, upon which BSA had enjoyed direct visibility. Local people claimed that the mosque had been targeted on 1 February 1993; three powerful projectiles pierced the north facade, another pierced the southeast facade, and there were other hits in the roof (since partially repaired) and the brick minaret was damaged by shrapnel. *Given that the immediate surroundings were little damaged, it is a clear case of deliberate mosque shooting.*" [Council of Europe, Parliamentary Assembly, "*Sixth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 7133, 31 August 1997, p. 10, emphasis added, Annex 34].

260. Investigators of the ICTFY have done in-depth research into the background, the nature and the pattern of the armed conflict in Bosnia and Herzegovina. During the course of the Tadić case, one of the investigators, John Ralston, was extensively examined as an expert witness. He provided the Trial Chamber with a detailed exposée on the destruction of towns and villages, giving specific attention to the destruction of cultural and religious property:

> "Q. Mr. Ralston, let me turn now your attention to another feature in the patterns that the Prosecutor's investigations have revealed, and that is the destruction of Muslim villages. Can you please explain to the court what you mean by that and we will turn to some of the exhibits in a minute?
> A. Yes. In general as the Muslim population had been removed from villages, Bosnia Serb forces would come through and destroy their homes to prevent their return. In Vlasenica the attack started, as I said, on 22 April. Following the official departure of the JNA and their replacement by Bosnian Serb troops, Bosnian Serb army troops, Muslim villages continue to be destroyed. The attacks on these villages met with little or no resistance. In many cases people had handed in their weapons. In the Prijedor municipality the following villages suffered from bombardment or total or partial destruction by the Serbian military, paramilitary and police units: Hambarine and Ljubija on 22 May, Korazac, Alici, Brdjani, Donji Forici, Hrnici, Jakupovic, Kamicani, Kevljani, Kenjari, Kozarusa and others, and Prijedor, Tukovi and Stari Grad on 30th May. In a further wave of attacks on 20th July the following villages suffered wide-spread damage: Biscani, Karakovo, Rizvanovici, Sredice, Zidovci, Brisevo, Donji Ljubija, Gornija Ljubija, Raljas and Lisina.
> Q. Mr. Ralston, let me ask you to refer to Exhibits 53, 54 and 55, and please expand on your testimony using those exhibits, if you would. Before you start, we need to get on the video screen. Perhaps the lights could be dimmed as well. No they had better stay as bright as they can. Go ahead.
> A. I will refer you firstly to the colour coding on the map. The blue indicates populated areas, the yellow, destruction from shelling and the red destruction from fire or explosives. You will see in this area here there is also a heavy concentration of red showing large numbers of homes have been

destroyed. Our evidence shows that the majority of these houses which have been destroyed from either fires or explosives are in areas which were predominately Muslim.
If we move to the next exhibit, if I can show that more graphically in relation to this area here and to later this area here. Now this map is a portion of eastern and central Bosnia. The areas in green which are shown in the 1991 census have been a predominately Muslim population. You will see in those areas you have indicated by red again where the houses have been destroyed by either fires or explosives. You will see the concentration of destruction of houses by fire and explosives is extremely high and similar to that which occurred in the Prijedor area.
Q. For this we need the lights dimmed. Could we have them dimmed.
A. O.K. this map here is the area in north western Bosnia and it encompasses the Prijedor area which I have previously given evidence about, part of Banja Luka and Sanski Most. *What these concentrations show are what are called ethnically cleansed towns. The blue occurred from mid-April to mid-May. You will see here, here and Prijedor town. In May you see the concentration of villages outside of Prijedor I spoke about. From late May to early June you will see that these villages in this area here suffered from ethnic cleansing, and from late June you will see the concentrations in these areas here.*
Q. Mr. Ralston, in many of these villages there were Serbian people. Bosnian portions of the Muslim community were essentially obliterated and portions of the community that were Bosnian-Serb remained intact?
A. That is correct.
Q. In that regard, Mr. Ralston, I would like to show you, please, Exhibit 56A and B. I would ask you once it gets put on the elmo to explain what this is an example of.
A. OK. *This is an aerial photograph. What it shows you, and this is in the city of Foča which I have previously given testimony about, this area here is described as the Serb section of Foča. A short distance away you have a Muslim section. It is not quite so clear from this photograph, but I will show you in a moment. There is no destruction in this area whilst all buildings in this area have been destroyed. I have two further photographs which show, sorry, a further photograph which shows a focus on these two areas. So in this photograph shows their proximity. On this photograph you can see that the Muslim homes are totally destroyed and the mosque has been damaged. In the Serb section a short distance away you see the Orthodox Church totally intact and all the buildings totally intact.*
Q. Mr. Ralston would you now refer to Exhibit 56C. Your honours, we will be asking the usher to pass to your honours copies of these photographs which you do not have in your collection. That, your Honours, is 56C. Mr. Ralston would you explain what 56C represents?
A. Yes. This is a photograph of a village near Cerska. You will see in this photographs the signs of houses which have been destroyed. I am advised that these two houses were Muslim houses. Nestled in the middle of them here and here are two Serbian style homes which suffered no damage at all.
Q. *Mr. Ralston, I would now like to turn your attention to Exhibit No. 57, and to ask you to identify what Exhibit 57 is?*
A. Exhibit 57 depicts for us the fate of many of the Muslim mosques throughout the Serb controlled areas of Bosnia-Herzegovina. In Brcko in this site the early July 1992 we see a mosque.
Q. That is a graphic description of the mosque, is that correct?
A. That is correct, of the mosque and the accompanying minaret. By May 1994 that area had been levelled completely. Not only had the mosque been destroyed, but any of the remanents of the mosque had been totally removed. I think the next exhibit will show that a little more graphically. This is the same area as I was pointing to in the previous exhibit, and this is the area where the mosque had stood. All traces have been removed.
Q Mr. Ralston, was there a systematic destruction of religious sites in some of the locations that you have testified about?
A. Yes, there was.
Q. Let me refer your honours to Exhibit No. 58. We will display that on the elmo in just a minute. I will ask you, Mr. Ralston, to identify it and explain what it is once it comes up on the screen?
A. *This exhibit is a graphic representation of the Banja Luka area. It is significant in that Banja Luka was a Serbian majority population and, as such, there was no armed conflict in the area.*

Despite the fact that there was no armed conflict in the area, many of the Muslim mosques were destroyed. This graphic plots the Muslim mosque locations and showed the ones that had been destroyed by September 1993. There are 14 depicted here in total, and since that graphic was prepared I am told that three further mosques have been destroyed and I am also told that that means the sum total of mosques in the Banja Luka area have been destroyed." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Ralston*, Case No. IT-95-18-R61 and IT-95-5-R61, p. 73, emphasis added, Annex 35].

261. The systematic and deliberate nature of the destruction of mosques and homes was also noted at the "Joint Hearing before the Select Committee On Intelligence of the United States Senate and Committee on Foreign Relations of the United States Senate", in August 1995. Following a written testimony from Ted Holt, an Imagery Analyst expert witness, the exchange below between Holt and the Chairman of the Committee took place:

"Description of aerial photography showing evidence of ethic cleansing by Bosnian Serbs.
Besnjevo Vosnik, located near Sipovo in west-central Bosnia, is in Bosnian Serb-controlled territory. The houses were thoroughly destroyed by fire in an apparently systematic manner; only masonry walls and foundations remain. The extent to which the debris of the mosque is scattered indicates that powerful explosive charges were used to level it. According to the 1991 census, the town was 70 percent Muslim. This is one of well over 3,000 settlements in Bosnia destroyed in this manner.
The village of Gunjevici, near the town of Goradze in the southeastern Bosnia, was razed during the April 1994 offensive by the Bosnian Serb Army under the direct command of General Ratko Mladić. This town, along with 14 other Muslim settlements of Drina River Valley, was burned for no apparent military purpose as Bosnian Serb troops withdrew from the area.
The town of Trebinje, in southern Herzegovina, had a majority Serb population, according to the 1991 census. The destruction seen in this old Muslim cemetery is typical of that directed at non-Serb cultural sites and artifacts by Bosnian Serbs; the debris of the mausoleum indicates that it has been destroyed by explosives, and graves were likely damaged as well. Such destruction aims at eradicating signs of a Muslim presence and deterring Muslims who are forced out from returning to the area. This damage probably was prior to Spring 1993.
These mostly Muslim towns in the south-eastern Bosnian town of Gozarde are located on the left bank of the Drina River. That so many, but not all, of the houses were burned down to their masonry walls and foundations indicates a pattern of calculated destruction inconsistent indicated with that resulting from battle damage. The houses were destroyed during the 1992-1993 timeframe.
This settlement, near the city of Zvornik on the Drina river in eastern Bosnia, is one of several Muslim villages in the area destroyed by explosives in early 1993. Again, the extent to which debris is scattered indicates the use of powerful explosive charges.

Opening statement of TED HOLT, Imagery Analyst, National Photographic Interpretation Center.
Mr. HOLT. I have four graphics present. A map which depicts part of east central Bosnia, which director Gannon just referenced; Srebrenica and Zepa are in this area. This map depicts nearly a couple of thousand of, well over 3,000 settlements in Bosnia-Herzegovina which have been completely burned to the ground since 1992 and 1993 time frame. Most of the information I am presenting goes back to that time-frame.

Besnjevo, the graphic behind me, is typical of that large number of settlements which were destroyed by fire deliberately. The buildings are reduced to merely the masonry foundations. They were apparently set on fire deliberately. The mosque in the village, typical of all the mosques in the areas of this type, was apparently destroyed by explosives, from the debris pattern. There is an enlargement on the graphic that shows the downed minaret.

Chairman SPECTER. Mr. Holt, what is the basis for your conclusion that that this is ethnic cleansing and contrasted with simple war damage.?

Mr. HOLT. We can tell the difference between battle damage and deliberate destruction.

Charman SPECTER. In which way do you make that determination.

Mr. HOLT. There is a way to tell if the damage is from shelling. The damage pattern is completely different. You can tell-

Chairman SPECTER. What is the damage pattern here?

Mr. HOLT. Sir, this damage is completely by fire. Had there been battle damage, a lot of roofs would be present. You can actually see the damage from entry of shells into the building. That's from overhead as well as from ground level.

Chairman SPECTER. Please proceed.

Mr. HOLT. Thank you.

The last comment I have on Besnjevo Vosnik is, according to the 1991 census, the population was approximately 70 percent Muslim. Our maps depicts census information behind the red damage as well and you can see that most of the red portions do fall in areas which had ethnic Muslim majorities. The areas in the pink color are controlled by the Bosnian Serbs. Besnjevo Vosnik is in an area that is still controlled by the Bosnian Serb forces.

The village of Gunjevici is in southeastern Bosnia, not far from Goradze. This village is 1 of 15 which were burned after the combat action that occurred in the Spring of 1994, I believe, in March. This campaign was led personally by General Ratko Mladić. And after the period of the action, as the Serbs were withdrawing, typically that is the time in which the villages are destroyed. This graphic shows a before and after image of that village, 1 of 15.

Chairman SPECTER. What is your basis for the determination that this is ethnic cleansing as opposed to battle damage?

Mr. HOLT. This was a purely civilian location, sir. There was no combat actions in this particular area, and this was to prevent the residents of those villages from returning to homes.

Chairman SPECTER. Please proceed.

Mr. Holt. Thank you.

My final graphic depicts a cemetery in an area of southern Herzegovina near the city of Trebinje. There have been many ground reports of people in the country seeing things even more detailed than this graphic depicts. This graphic depicts a mausoleum that was also destroyed by explosives. We can determine that from the rubble pattern. We cannot tell exactly what the graveyard itself, but it is very likely has also been damaged in a similar fashion. Trbinje is-was then and is today a majority Bosnian Serb population.

Chairman SPECTER. Would you amplify the purpose of desecrating the Muslim graveyard as part of ethnic cleansing?

Mr. HOLT. Yes, sir.

This is a typical pattern, especially those that are conducted against mosques and Catholic churches in Croat populated areas in Bosnia, to cut cultural ties to the residents of that area so they will not have a reason to return to their original home, much-

Chairman SPECTER. So what you are saying is that it is a systematic part of an effort to drive these people out of their homeland and to eliminate the Bosnian Muslims from continuing to live there?

Mr. HOLT. Exactly, sir.

This is the pattern throughout all of the Bosnian Serb controlled territory. I know of only one mosque that remains standing in that area.

Chairman SPECTER. Out of how many mosques?

Mr. Holt. It is -the number- we don't have the resource or evidence to actually count, because it is hard to tell the difference between the rubble in some of the smaller mosques from that of houses. I can make a guess of it, if you wish. The number-

Chairman SPECTER. Give us an estimate of the total number of mosques.
Mr. HOLT. The numbers have reported at, I believe around-between 1,000 and 2,000-more like 1,600.
Chairman SPECTER. And only one remains.
Mr. HOLT. Only one that I am aware of.
Chairman SPECTER. Any speculation on why they left that one?
Mr. HOLT. It's on a high plateau, very difficult to reach. That's the only reason I know that it may remain.
Chairman SPECTER. Anything further to add?
Mr. HOLT. No, sir.
Chairman SPECTER. Thank you very much." ["*War Crimes in the Balkans*", Joint Hearing Before the Select Committee on Intelligence of the United States Senate and Committee on Foreign Relations of the United States Senate. One Hundred Fourth Congress, First Session, 9 August 1995, pp. 9-17, emphasis added, Annex 36].

262. The following paragraphs contain a demonstrative collection of some valuable examples of cultural and religious heritage which have been lost to the world through the actions of the Serb forces.

263. Sarajevo began to function as an urban entity in the middle of the fifteenth century. The new Ottoman settlement was established alongside the pre-existing medieval area as was the usual Ottoman practice. The first stage of Sarajevo's urban development was marked by the erection of a series of religious monuments to the memory of Gazi Isa-beg Ishanovic, which represent the earliest sacral monuments in Sarajevo, built in the Ottoman town style, and which influenced the further architectural development of the town. The entire town centre came into shape around the time of the building of the Emperor's mosque and included bridges, caravanserai, hamam baths, hans, shops, fountains and other constructions. The second stage of the development of the town was again marked by a campaign of sacral building from the endowment of Gazi Husref-beg erected during the third decade of the 16th century. In fact, most of the monumental structures in Sarajevo were erected before the end of the 16th century.

264. The trading and business core of the town formed its centre, and is the best preserved in the Balkans. Sacral buildings, as well as shops and warehouses were laid out within the market complex, and among them were those which were dedicated to all confessions - mosques, Serbian Orthodox and Catholic churches, and

synagogues. These were alongside a number of buildings dedicated to the community as a whole and its economic needs.

265. Sarajevo as a typical feudal town was to undergo crucial change at the end of the 19th century with the building of new structures in a pseudo-medieval, historicising style, and subsequently with the introduction of electricity and building in the style of Art-Nouveau. The Bascarsija is for all that, a unique example of the interweaving not only of a variety of architectural trends, but also the tastes of those representing varying civilisations, to be found in the town's population. For this reason, the Bascarsija was proposed to UNESCO in 1988 for registration on their list of world heritage sites [Council of Europe, Parliamentary Assembly, *Fourth Information Report on war damage to the cultural heritage in Croatia and Bosnia-Herzegovina*, Doc. 6999, 19 January 1994, p. 36, Annex 37].

266. It was precisely this historical architectural core of Sarajevo, set out in the very centre of the town, which was marked for devastation and annihilation. All the cultural monuments within this complex are damaged or were destroyed: the Emperor's Mosque, the Gazi Husref-beg Mosque, the Bascarsija and Ferhadija Mosques, the Old Serbian Orthodox Church, the Catholic Cathedral, the Synagogue, the Kursumli School, the Dervish House, the bridges, Morica Han, the Gazi Husref-Beg Bezistan, the old shops, the emporium "Magazin Daire", the Vrecina Library, the hotel "Evropa" and many public and domestic buildings of Austro-Hungarian date [Council of Europe, Parliamentary Assembly, *Second Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 6869, 17 June 1993, pp. 10-12, Annex 38].

267. Perhaps the most brutal example of this cultural devastation was the destruction of the building which housed the Parliament of Bosnia and Herzegovina until 1918, then the Sarajevo City Hall and. for the last fifty years, has been the National Library. In August 1993 it was shelled for three days by Serb artillery using incendiary grenades. The Library and its contents were reduced to ashes. This has been described by Andràs Riedlmayer of Harvard University:

> "The largest single act of book burning in modern history." [Hearing Before the Commission on Security and Co-operation in Europe, 4 April 1995 "Genocide in Bosnia-Herzegovina." Testimony presented by Andràs Riedlmayer (Harvard University), p. 51, Annex 33].

268. The Library held 1.5 million volumes, including 155,000 rare books and manuscripts, 100 years of Bosnian newspapers and periodicals, and the collection of the University of Sarajevo. While the Library was on fire, the citizens of Sarajevo formed human chains to pass books from the flames. The Serb snipers fired at them, killing one. Unfortunately, ninety percent of the Library's irreplaceable collection was destroyed.

269. One item which managed to be salvaged was an ancient Jewish prayer book used for the celebration of the seder or Passover feast. The Sarajevo *Haggadah* was created in fourteenth century Spain and features exquisite Hebrew calligraphy and coloured illustrations. Jewish refugees from the Inquisition brought it to Bosnia. During World War II the Sarajevo *Haggadah* had been preserved by a Muslim curator who hid it from the Nazi soldiers. In 1992 it was saved by the bravery of the workers of the National Museum, among them a Muslim, an Orthodox Serb and a Catholic. It has therefore survived three historic persecutions [Michael A. Sells, *The Bridge Betrayed: Religion and Genocide in Bosnia*, Berkeley 1996, pp. 1-5].

270. Another irreplaceable loss to Bosnian culture was the destruction of the Institute for Oriental Studies. The collection of the Institute contained 5,263 Arabic, Turkish, Persian, and Bosnian manuscripts (encyclopedias, works of history, geography, politics, theology, Islamic philosophy and Sufi works, works in natural sciences and and mathematics, law, dictionaries, collections of poetry by Bosnian and Ottoman poets) from the 11th to the beginning of the 20th Century. The archives contained 7,000 documents (16th to 19th century) comprising the sultan's orders (ferman) and edicts (berats), the chart (bujuruldy) of the governors, court and land certificates, accounts and financial reports. In addition, there were sixty series of Bosnian and Herzegovinian judges' (kadi) and judges assistants' (naib) reports. The archives of the Vilajet contained 200,000 different documents and certificates of land ownership for the entire territory of Bosnia and Herzegovina (second half of the 19th century). All of this was lost to future generations when the Institute was shelled and completely destroyed in May 1992 [Council of Europe, Parliamentary Assembly, *Second Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 6869, 17 June 1993, p. 11, Annex 38].

271. Another target of the Serb forces' artillery in Sarajevo was the Museum of the XIV Winter Olympic Games, which was the first cultural institution to be deliberately

targeted and destroyed. The museum was also the pre-war centre for contemporary art. It was hit by five direct grenade impacts on 28 April 1992 and was totally gutted. The director told the bizarre story of how, as the museum burned, officers of the JNA living nearby came out and shot at the building with their revolvers, such was their hatred of all it symbolised. In spite of the destruction of ten years of work, the museum held an exhibition in 1994 to celebrate the 10th anniversary of the Winter Olympics and its spirit of multi-culturalism [Council of Europe, Parliamentary Assembly, *Ninth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 7464, 18 Jan. 1996, p. 18, Annex 39].

272. Zvornik was known for its heritage of Bosnian poets, saints, rebels and mystics. Zvornik was also one of the first Bosnian towns to be captured by Serb forces [Reply, Chapter 5, Section 6]. From April through July 1992, the Serb military killed or expelled the entire Muslim population. After all the mosques in the primarily Muslim town were dynamited and ploughed over, the new Serb nationalist mayor declared: "There were never any mosques in Zvornik". Destroyed with those mosques was the evidence not only of the Muslim heritage of Zvornik, but also of five hundred years of shared living between Christians and Muslims. In 1993, to celebrate Zvornik's status as 100 percent ethnically pure, the mayor dedicated a new church, renamed a new local, formerly Muslim village "Saint Stephen" and kissed a crucifix [Michael A. Sells, *The Bridge Betrayed*, p. 4, Annex 40].

273. The destruction and elimination of the mosques and Catholic churches in Banja Luka shows that these were not isolated acts of vandalism. Clearly, given the scale, speed and pattern of the destruction of the places of worship and the elimination of traces of their existence, they were neither spontaneous nor incidental. Rather, they were an integral part of the sequence of events which were designed to have the effect of wiping out all traces of the non-Serb population. Indeed, Banja Luka is an example of how much of the destruction took place in areas which were not the scene of conflict, or occurred well after the territory had been occupied by Serb forces. *Opstina* Prijedor is another sad illustration [Reply, Chapter 5, Section 7]. As demonstrated at the beginning of this Section, in the Judgment of the Tadić trial, the Trial Chamber at ICTFY recognised this deliberate destruction of non-Serb cultural and religious symbols throughout this region.

274. The destruction of Banja Luka was also described by Human Rights Watch, the largest US-based human rights monitoring organisation, in 1994:

"(...) the scene of much of the most severe and systematic ethnic cleansing underway (...) for the past two years, non-Serbs have been "cleansed" through systematic persecution that includes torture, murder, rape, beatings, harassment, *de jure* discrimination, intimidation, expulsion from homes, confiscation of property, bombing of businesses, dismissal from work, outlawing of all scripts except the Cyrillic in public institutions, *and the destruction of cultural objects such as Mosques and Catholic churches.*" ["War Crimes in Bosnia-Herzegovina: UN Cease-Fire Won't Help Banja Luka", *Human Rights Watch/Helsinki Watch*, June 1994, Vol. 6, No. 8, pp. 1-2, emphasis added, Annex 41].

Later in the same Report, the terrible scale of destruction of religious sites is ascertained, stating that it was never the result of combat and occurred long after this territory had been occupied by the Serb forces:

"*Prior to the war, 202 mosques stood in the Banja Luka area; now only two remain. Between April and September 1993, six sixteenth century and seven seventeenth century mosques were destroyed in and around Banja Luka. Of the Roman Catholic churches and ecclesiastical buildings in the diocese of Banja Luka, over 50 per cent have been destroyed, 21 per cent have been heavily damaged and 25 per cent have been partially damaged. An increasing number of Catholic graveyards are also being plundered. When the remains of two mosques and two Muslim cemeteries were blown up and bulldozers were sent to desecrate and remove the debris*, several UNHCR staff persons were arrested and temporarily detained by the Bosnian Serb police for attempting to investigate and stop the desecration. The U.N. reported that Vitomir Popović, the 'vice-president' of the Banja Luka municipality, told a local newspaper that the mosques were cleared because it was the only way 'to teach minorities to respect Serb law.'" ["War Crimes in Bosnia-Herzegovina: UN Cease-Fire Won't Help Banja Luka", *Human Rights Watch/Helsinki Watch*, June 1994, Vol. 6, No. 8, pp. 15-16, emphasis added, Annex 41].

275. The date of destruction of the two oldest and most celebrated mosques in Banja Luka was recorded by the United States Department of State:

"17 May 93 Bosnian Serbs blew up the 1587 Fershad Pasha mosque and the 1587 Arnaudija mosque, both located in Banja Luka.(...)
On May 26-28 1992 Sanski Most was subjected to an intense bombardment. Up to 400 buildings were destroyed and all the mosques were dynamited." [United States Department of State, Bureau of Public Affairs, *Dispatch*, 26 July 1993, Vol. 4, No. 30, pp. 547-548, Annex 18].

276. The destruction of mosques in the Banja Luka area was reported upon by the corespondent of the *Daily Telegraph* of London, Patrick Bishop:

"Bedrudin Gosic pointed out of the window at the spectacular pile of ancient rubble heaped among the trees. 'Look at the evil outside. *A mosque, 450 years old which has withstood war after war. All my childhood I spent there. Now it's destroyed.'*
The Fershad Pasha mosque, a jewel of religious architecture, was blown up early one Friday morning this month.
'Who did it ? The same people who blew up the other 800 mosques around Bosnia,' said Mr. Gosic, president of the Ferhad Pasha community. The Serb authorities have announced an investigation into the blowing up of the mosque which sits 100 yards from the police headquarters. Officials say that the likeliest explanation was that Islamic extremists were responsible.
The destruction of the mosque is an unnecessary remainder of the 20,000 Muslims still living in and around this Serb stronghold of the Bosnian Krajina that they have no future here and to linger is dangerous, even fatal." [Patrick Bishop, *The Daily Telegraph*, 20 May 1993, Annex 42].

277. The Humanitarian Law Centre is a Belgrade-based organization for the study of human rights and their violation on the territory of the former Yugoslavia. Among a number of reports published on human rights violations is a report of August 1994, which included a section on the cultural destruction in the Banja Luka area:

"2. Destruction of Historical, Cultural and religious landmarks.
2.1 Mosques
Of the 202 mosques in the Bosnian Krajina before the war, only two now remain in the Serb held region. One is in Baljvine, a village in Mrkonjić Grad township. According to the Mufti of Banja luka, it was saved from destruction by Serbs from the neighbouring village of Bregovi. The other is in Konjuhovci in Prnjavor Township.
In the town of Banja Luka, there were sixteen mosques, four Roman Catholic and two Serb Orthodox churches before the war. All the mosques were destroyed between April 6 and September 9, 1993. No Catholic or Orthodox church has been attacked.
The sites of eight of the mosques were levelled by bulldozers belonging to the *Put* corporation between December 15 and December 24, 1993. Leaders of the Islamic Community have repeatedly appealed to the local authorities for the sites and remains of the destroyed mosques to be placed in the Community's care. The most recent appeal was on May 23, 1994. The last traces of several more destroyed mosques have been removed since then. The sites of the medhi Begova, Šefer Begova and Hadži Kurtova mosques were bulldozed during the first half of July 1994. The graves, fences, paths and lawns of these mosques were destroyed at the same time.
Today, the only remains of the cultural and religious monuments of the Bosnian-Muslim community in Banja Luka and the town's islamic past are parts of the walls Stupnička, Hadži Salihija and Pobrdjanska mosques, two towers of Gazanferija mosque and several graveyards with a total of about 15,000 graves." [The Humanitarian Law Centre, *Spotlight Report*, No. 14, August 1994, pp. 143-144].

278. Nowhere has the destruction of non-Serb religious and cultural monuments been more exactly recorded by competent legal authorities than in *opština* Prijedor, both by the ICTFY and by Judge Hanna Sophie Greve of the United Nations Commission of Experts. As recorded in Section 7 of this Chapter, *opština* Prijedor was taken over by the Serb forces in the month of May 1992. The main town of the district was taken over in a bloodless coup on the night of 30 April 1992 and although there was some fighting in outlying areas, the Serb forces overwhelmingly well-equipped and

organized, captured these areas with few losses among their own troops. Prijedor neatly illustrates the destruction of churches and mosques during the Serb take-over and the continued destruction of these buildings after any perceivable threat to the Serbs has disappeared.

279. Kozarac was one of the outlying areas in *opština* Prijedor destroyed by the Serb forces in May 1992. The Commission of Experts described the attack on the village thus:

> "The attack on Kozarac lasted three days and caused many villagers to flee to the forest while the soldiers were shooting at 'every moving thing'. Survivors calculated that at least 2,000 villagers were killed in that period. The villagers' defence fell on 26th May. *When the Serbian forces entered the village, they began destroying the village's 14 mosques and nine minarets.*" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, 28 December 1994, Annex III. A, "Special Forces", pp. 154-155, paras. 484-485].

280. As referred to in Section 5 of this Chapter, the Serb forces used Muslim and Catholic places of worship as detention centres, often desecrating them before destroying them. In the village of Čarakovo something even more terrible took place. On 27 May 1992, the mosque was used as an incinerator for captured Muslim prisoners. This was described by the United States Department of State:

> "Radio Prijedor had announced that Muslims should not be afraid, that the soldiers were only looking for extremists. Both witnesses were hiding in the village during the attack. The attack began at 8.15 am. The Serbs first killed two older men by slitting their throats. The witnesses then heard gunfire and afterward saw a pile of 15-20 bodies in the street. *Seventeen people were forced into a local mosque. The soldiers then burned down the mosque with the people inside.*" [United States Department of State, Bureau of Public Affairs, *Dispatch*, 19 April 1993, Vol. 4, No. 16, p. 261, Annex 19].

281. During these attacks, it was the practice of the Serb forces to mark the Serb-owned property with inscriptions such as "Serb house, do not touch". Such property invariably remained unharmed, whereas everything else was deliberately destroyed. This fact was noted by the ICTFY in its Judgment in the Tadić case [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 54, para. 144].

282. The Commission of Experts, in its "Prijedor Report", described in great detail the destruction of non-Serb cultural property:

"554. In Prijedor town, the following five mosques - and all objects and buildings belonging to them such as mausoleums and religious schools, etc. were destroyed:

(a) the mosque in the centre of the town in Marsala Tito Street:
(b) the mosque in Stari Grad;
(c) the mosque in Muharema Suljanovica Street, the Zagrad;
(d) the mosque in the suburb of Donja Puharska; and
(e) the mosque in the suburb of Gornja Puharska.

555. It is said that in the Korazac area all 16 mosques have been destroyed.

556. It is actually claimed that not a single mosque, or other Muslim religious building in the whole of opstina Prijedor has been spared and remains intact. Most religious constructions are not only damaged but reduced to rubble. The sacral edifices were allegedly not desecrated, damaged and destroyed for any military purpose nor as a side-effect of military operations as such. Conversely, most of the destruction was due to later separate operations of dynamiting. At least on one occasion, some non-Serbs and Serbs concerned alerted the local Serbian police that a mosque in Prijedor seemed to be in the process of being dynamited. The police reportedly refused to take any action and even state that the police were not opposed to the destruction in progress.

557. Also, other buildings and habitations considered as typically Muslim have been demolished. The Old Town in Prijedor town, Stari Grad, was one such area with a strong Muslim architectural influence. After the Serbian forces purged the area, Stari Grad was levelled almost completely, including a number of new houses which had been erected according to Muslim traditions.

558. The Catholic churches and religious buildings in opstina Prijedor listed below have been destroyed and damaged as follows:

(a) the parish church in Prijedor (built in 1896) was destroyed on 29 August 1992;
(b) Kozarac church, affiliated with the Prijedor parish, was heavily damaged in June 1992;
(c) the parish church in Ljubija was damaged and looted in the period between July and August 1992;
(d) the pastoral centre in Ljubija was burned down and heavily damaged in the June 1992;
(e) Briševo church, affiliated with the Stara Rijeka Parish was burnt down in July 1992;
(f) the Sunday school hall and rectory in Briševo was burnt down in July 1992.
(g) the parish church in Šurkovac was destroyed in March 1993;
(h) the pastoral centre in Šurkovac was heavily damaged in the period between January and March 1993;
(i) Tomašica church, affiliated with the Sasina parish , was destroyed in November 1992;
(j) Doanja Ravska church, affiliated with the Ravska Parish was destroyed in July 1992.

559. The sacral institutions were allegedly desecrated, destroyed and damaged for no military purpose and not in connection with any military activity as such.

560. A Serbian official in Banja Luka, who was later asked about the destruction of mosques and churches, responded that a number of such buildings had been misused as convenient places for battle. Being tall and of solid construction, mosques and churches were suitable for snipers to shoot from, 'from that point on,' these buildings cease to have sacred importance," he added. Obviously, every building fitting a sniper has not been razed in opština Prijedor. On the contrary, there is no report of any general communal or Serbian construction in the district which was levelled to prevent snipers from misusing it.

> 561. According to an article printed by the Ministry of Information of the Republic of Serbia (i.e. Serbia proper), not a single Serbian sacred object has been destroyed or damaged in opština Prijedor. The map which is attached to the article, shows destruction and damage related to Eparchy seats , monasteries, religious service objects (cathedrals, parish churches and chapels) and parish seats and other church objects.
>
> 562. Save for buildings not specific to the non-Serbian traditions - especially in Prijedor town - most of the non-Serbian homes and habitations have been seriously damaged, if not completely destroyed. Large scale devastation is the case in the Kozarac area and in the villages in the left bank of the Sana River. Heavily damaged are not only the variety of the architectural expressions, but also the outer frame for the sociological and anthropological expressions of the pluralistic culture of the district." [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 106-107, paras. 554-562].

283. In the Memorial at paragraph 2.2.5.15, the Applicant noted the destruction of mosques in Bijeljina. The fate of the ruins of these mosques was discussed by Andràs Riedlmayer in his testimony before the United States Congress:

> "The next day, bulldozers were clearing away the rubble and a long line of trucks and buses stood ready to take away the town's terrified Muslim residents. Two months later, in May 1993, Western reporters visiting the town found grass and trees planted on the levelled sites; it was as if the mosques and Muslims had never been there." [Hearing Before the Commission on Security and Co-operation in Europe, 4 April 1995 "Genocide in Bosnia-Herzegovina" Testimony presented by Andràs Riedlmayer, Harvard University, p. 51, Annex 33].

284. The destruction of the physical manifestations of Muslim life in Bijeljina was followed by a systematic program which was clearly aimed at expelling the remaining Muslims and extorting property and money from them. This programme was noted and recorded by Amnesty International. The expulsions, and many events surrounding them, were organized by an official or semi-official "exchange commission" working in Bijeljina ["Bosnia-Herzegovina: "Living for the Day", Forced Expulsion from Bijeljina and Janja", *Amnesty International*, AI Index: EUR 63/22/94, Dec. 1994; See also: United States Department of State, Bureau of Public Affairs, *Dispatch*, 26 July 1993, Vol. 4, No. 30, p. 547, Annex 18].

285. That this policy has been in force up until the end of the conflict in Bosnia and Herzegovina can be demonstrated by the example of Bihać, described in the Eighth Report of the European Community Monitoring Mission (ECMM) which presented its Cultural Heritage Report, having visited areas in what is now the Federation

entity, access having been severely restricted in areas which are now part of the "Republika Srpska":

> "45. The worst recent damage was encountered in the Bihać area, in the villages of Sokolac and Zavalje when RSK [Republika Srpska Krajina] and BSA withdrew - in the former the mosque was destroyed by dynamiting, probably in November 1994, and the Catholic church in the latter badly damaged by projectiles, including artillery, and perhaps by set explosives, and the ossuary inside was emptied and the bones thrown about, along with other vandalism to the interior (November 1994-February 1995).
>
> 46. The pattern for Bosnia corresponds to earlier findings - the worst damage is caused by setting of explosives, in this case by RSK and BSA forces; there is extensive damage though sometimes 'intensive' - from mortars and artillery in front areas, and there is even more widespread damage from vandalism that takes the form of firing by troops or other elements and wrecking of interiors...
>
> 47. The damage perpetrated by RSK and forces in the Bihać area (which also includes the firing and vandalising of the villages of Sokolac and Zavalje) is especially worrisome, because it reveals continuing indifference to the laws of war and deliberate destruction of other peoples' sacral heritage." [Council of Europe, Parliamentary Assembly, *Eight Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, Doc. 7341, 28 June 1995, p. 11, Annex 43].

286. The destruction of mosques, libraries, churches, graveyards was an essential part of the policy of ethnic purification. In Serb-controlled areas of Bosnia and Herzegovina, the destruction of Muslim and Croatian homes and cultural and religious objects is pervasive:

> "Mosques, and to a lesser extent, Catholic churches have been bulldozed in city centres during daylight hours. Such public displays of destruction suggest that local and regional Serbia authorities issued orders, organised or condoned efforts to destroy Muslim and Croatian cultural and religious institutions. Human Rights Watch/Helsinki knows of no case in which the Serbian authorities have made even a half-hearted effort to arrest those guilty of such destruction (...)." ["War Crimes in Bosnia Herzegovina", *Human Rights Watch/Helsinki*, June 1994, Vol. 6, No. 8, p. 15, Annex 44].

It is clear, that after the destruction of part of the non-Serb population and the expulsion of the remainder, the Serb forces sought to prevent the expelled from ever returning. Where mosques stood for centuries, there are now car parks. Indeed, in some localities, such as Zvornik, which had a substantial Muslim population and nineteen mosques, the message actually being sent out now is that there never were any mosques or Muslims there in the first place. Here, as elsewhere, there is no trace left of a Muslim presence whatsoever. And this is exactly what the Serb campaign was all about: the eradication of non-Serb society, including its cultural manifestation and, for that matter, including its people.

5. Camps

Introduction

287. In the following pages of this Section, the Applicant will elaborate on a phenomenon particularly prevalent in the conflict in Bosnia and Herzegovina: the widespread use of camps by the Serbs. The Applicant will show the Court that these camps were not the by-product of the Bosnian or Yugoslav conflict, but the direct consequence of the Serb aim to create an ethnically pure Greater Serbia and as such, an important and necessary link in the policy of ethnic purification. The camps, which held not only men, but also women, the elderly and children, were erected all over the territory under Serb control at the moment the fighting in Bosnia and Herzegovina erupted. The treatment of the non-Serb population of the camps was often beyond the scope of human imagination. The Muslim and Croat prisoners were systematically and routinely tortured, raped, mutilated, starved or simply killed. The only criterion for being imprisoned in these camps was ethnicity, or in the case of camps erected exclusively for women: ethnicity and gender.

Memorial

288. In the Memorial, the Applicant referred to the widespread manner in which the Serb forces used camps to detain, torture and kill Muslim and Croat civilians [Memorial, Section 2.2.1, pp. 17-29]. By way of example, the Applicant focused on three specific cases: the camps in Omarska and Keraterm, both in the Prijedor region, and Luka, the detention facility in Brčko, in northeastern Bosnia and Herzegovina. The overview given in the Memorial of these camps clearly illustrated that the treatment of the non-Serb inmates was indeed "so shocking as to almost defy description" [Memorial, p. 22, para. 2.2.1.3].

289. In the introduction to the Section on camps in the Memorial, the Applicant listed the names and location of 173 detention facilities. Out of these 173 camps, 14 were located in the Federal Republic of Yugoslavia. As the Applicant will discuss the atrocities committed on Yugoslav territory in a separate Section of this Reply [Reply, Chapter 8, Section 12], this category will not be dealt with here. It is important to note, however, that the nature of these camps and the treatment of the detainees were in fact the same. Non-Serbs detained in camps in the Federal Republic of Yugoslavia were treated no differently than those imprisoned on the other side of the river Drina, separating the Federal Republic of Yugoslavia from the "Republika Srpska".

Counter-Memorial

290. The Respondent's reaction to the evidence presented in the Memorial is confused and ambiguous. This ambiguity is largely reflected in the terminology used by the Respondent when describing the various camps in Bosnia and Herzegovina.

291. The Respondent first advances the proposition that "concentration camps" never existed on territory under Serb control. In response to the above mentioned list of camps presented by the Applicant in the Memorial, the Respondent states the following:

> "There were no concentration camps on the Serbian [sic] side and the assertions of the Applicant that there were 170 'such camps' imply that, in addition to the three of which only superficial charges are made, there existed another 167, which is absurd and cannot be proved at all." [Counter-Memorial, p. 29, para. 1.3.1.6.].

After having denied the existence of "concentration camps" on the "Serbian side", the Respondent in one and the same breath frankly admits that the "Serbian authorities in the Republic of Srpska" indeed "operated a number of detention centres" [Counter-Memorial, p. 29, para. 1.3.1.4.]. It further accepts that the Serbs in Bosnia and Herzegovina ran "investigation" [*ibid.*, p. 32, para. 1.3.1.13.] and "protection" facilities [*ibid.*, p. 36, para. 1.3.1.26.].

292. It is interesting to note that the Federal Republic of Yugoslavia considers itself capable of making categorical pronouncements on events in which it alleges it played absolutely no part.

293. The foregoing statement, quoted from the Counter-Memorial, and the terminology used by the Respondent give the impression that an important distinction should be made between concentration camps on the one hand and other camps or centres on the other. In spite of the apparent importance the Federal Republic of Yugoslavia attaches to the distinction (it vehemently denies the first ever existed but candidly admits the latter were established), nowhere in its Counter-Memorial does the Respondent explain how to distinguish these two categories.

294. What is the difference between a concentration camp and a detention or investigation centre?

295. The Applicant is of the opinion that the answer to this question is not relevant to the issues involved. It is at best an academic question, without relevance to events that took place during the armed conflict in Bosnia and Herzegovina. The Applicant will demonstrate to the Court that the Muslim and Croat prisoners in the Serb-run camps were *always* maltreated, if not simply killed, whatever epitheton or euphemism the Federal Republic of Yugoslavia uses to describe these camps.

The Bosnian archipelago

296. Some eight months after the submission of the Memorial, the Commission of Experts published its Report on "prison camps". It compiled lists of camps, after reports had been investigated and corroborated by independent sources. The Commission's Report was published after the Applicant submitted its Memorial. The Report identified no less than 960 camps operating in the territory of former Yugoslavia during the conflict [United Nations, *Report of the Commission of Experts*, S/1994/674/Add.2 (Vol.IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 9, para. 9].

297. While 84 detention centres were identified as having been operated by the Bosnian government, the Commission found that there were no systematic abuses of human rights of detainees in such camps:

> "[t]he Commission has not been able to detect any particular pattern or policy of wrongdoing. The Commission has, however, ascertained that the Government of Bosnia and Herzegovina has expressed its opposition to these individual violations." [United Nations, *Final Report of the Commission of Experts*, S/1994/674, 27 May 1994, p. 52, para. 227].

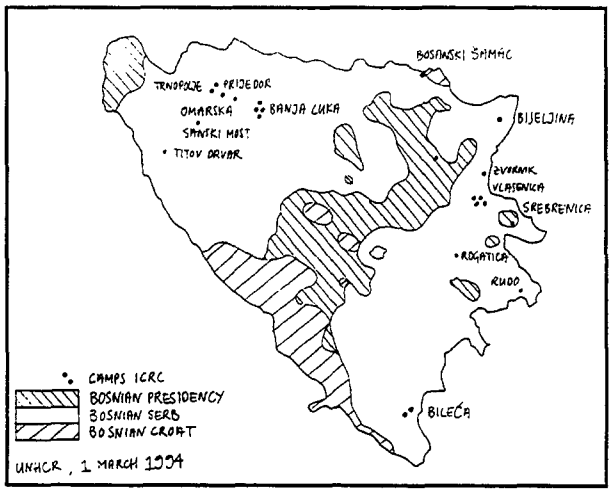
In stark contrast, the camps operated by the Serb forces were found to be "by far" the ones "where the largest number of detainees have been held and where the harshest and largest number of violations occurred" [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol.IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 9, para. 10].

298. Out of the mentioned 960 camps, 466 of them turned out to be operated by Bosnian Serbs or the Federal Republic of Yugoslavia, almost three times as many as the Applicant was able to mention with sufficient certainty at the time the Memorial was submitted.

299. The Commission of Experts used a great number of sources to compile the list of camps run by the Serbs in Bosnia and Herzegovina. In spite of the fact that it proved extremely difficult to inspect possible detention sites on the territory under Serb control, the Commission corroborated the existence of some 200 camps with evidence supplied by sources from outside the former Yugoslavia.

300. The International Committee for the Red Cross, for example, confirmed the existence of at least the following 21 camps on territory under Serb control:

- Manjača, Banja Luka;
- Mali Logor, Banja Luka;
- Banja Luka hospital, Banja Luka;
- Tunjice, Banja Luka;
- Batković, Bijeljina, northeast Bosnia;
- Police station, Bileća, south Bosnia and Herzegovina;
- Civilian jails, Bileća;
- Old Police building, Bosanski Šamac, north Bosnia;
- Omarska, Prijedor, northwest Bosnia;
- Trnopolje, Prijedor;
- Podosoje, Rogatica, east Bosnia and Herzegovina;
- Prison, Rudo, east Bosnia;
- Krings factory, Sanski Most, northwest Bosnia;
- Kamenica, Titov Drvar, west Bosnia;
- Milići, Vlasenica, east Bosnia;
- Vlasenica camp, Vlasenica;
- Police station, Vlasenica;
- Local prison, Vlasenica;
- Factory, Vlasenica;
- Glinica factory, Zvornik, east Bosnia;
- Divič stadium, Zvornik.



The ICRC is perhaps the most reliable source used by the Commission of Experts to corroborate reports, as the organisation occasionally managed to visit the sites of Serb-run camps.

301. The Commission, however, also relied on other international sources to confirm its reports on suspected camps used by the Serbs to detain Muslims and Croats. The CSCE, for example, confirmed the existence of, among others, the following camps:

- Ripač, Bihać, northwest Bosnia;
- Unidentified detention facility, Trebinje, eastern Herzegovina.

The European Union also confirmed several reports on camps:

- Agricultural school, Bijeljina, northeast Bosnia;
- "Home Ghettoes", Čelinac, east of Banja Luka;
- Police station, Gacko, south-eastern Bosnia and Herzegovina;
- Hotel Rudnik, Gacko.

Various other United Nations sources, other than the Commission of Experts, corroborated the existence of, for example, the following sites:

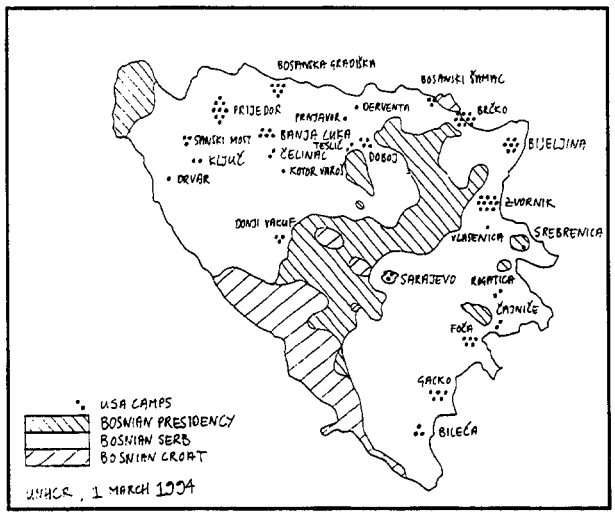
- Coffee house near Skijana, Brčko, north Bosnia;
- Private house in Grčica, Brčko;
- Power plant, Gacko, south-eastern Bosnia and Herzegovina;
- Ćela, Prijedor, northwest Bosnia and Herzegovina;
- Jajce, Prijedor.

302. Numerous camps were also reported by United Nations member states. The United States government was the most important corroborating source for the Commission of Experts. It confirmed the existence of, among other camps, the following facilities:

- Manjača, Banja Luka;
- Dubička Gora, Banja Luka;
- Mali Logor, Banja Luka;
- Paprikovac Optical hospital; Banja Luka;
- Novoselija, Banja Luka;
- Batković, Bijeljina, northeast Bosnia;
- Storage facility, Klis, Bijeljina;
- Military barracks, Bijeljina;
- Popovi, Bijeljina;
- Slaughterhouse, Bijeljina;
- Spanac JNA Barracks, Bijeljina;
- Velika Obarska, Bijeljina;

- Civilian jails, Bileća, south Bosnia and Herzegovina;
- Djački Dom, Bileća;
- Reserve officers school, Bileća;
- Stara Gradiška prison, Bosanska Gradiška, north Bosnia;
- Red Cross community centre, Bosanska Gradiška;
- Local school, Bosanska Gradiška;
- The Praktikum, Bosanska Gradiška;
- Podgrace school, Bosanska Gradiška;
- Donja Nova Topola, Bosanska Gradiška;
- T.O. facility, Bosanski Šamac, north Bosnia;
- Elementary school, Bosanski Šamac;
- Secondary school, Bosanski Šamac;
- JNA casern, Brčko, north Bosnia;
- Police station, Brčko;
- Hotel Galija, Brčko;
- Bimex agricultural complex, Brčko;
- Unidentified detention facilities, Brčko;
- Laser factory, Brčko;
- Three mosques, Brčko;
- Es Naselje ghetto, Brčko;
- Hotel Posavina, Brčko;
- Brezovo Polje village, Brčko;
- Mostina hunting lodge, Čajniče, east Bosnia;
- Shipping container, Čajniče;
- Milos Dujić elementary school, Čelinac, north Bosnia and Herzegovina;
- Stanari coal mine, Čelinac;
- Grain mill, Derventa, north Bosnia;
- Red Cross refugee camp, Doboj, north Bosnia and Herzegovina;
- Bare military barracks, Doboj;
- Military barracks at Sevarlije kod Doboja, Doboj;
- SUP building complex, Doboj;
- Secretariat for Internal Affairs, Donji Vakuf, central Bosnia;
- Vrbas-Promet detention camp, Donji Vakuf;
- Police station, Donji Vakuf;
- KP Dom, Foča, east Bosnia;
- Buk Bijelo workers barracks, Foča;
- High school, Foča;
- Partizan sports hall, Foča;
- Velečevo women's prison, Foča;
- Military casern Avtovac, Gacko, south Bosnia and Herzegovina;
- Samački hotel, Gacko;
- Secretariat for Internal Affairs, Gacko;
- Hotel Kosuta, Gacko;
- Hotel, Gacko;
- Jedinstvo school, Ključ, central Bosnia and Herzegovina;
- Jezerce, Ključ;
- Vrbanja lumber factory, Kotor Varos, near Banja Luka;
- Omarska, Prijedor, northwest Bosnia;
- Keraterm, Prijedor;
- Trnopolje, Prijedor;
- Brezičani, Prijedor,
- Ljubija soccer stadium, Prijedor;
- Miska Glava village hall, Prijedor;
- Police station, Prijedor;
- Prison, Prijedor;

- Prijedor sports centre, Prijedor;
- Village of Prnjavor, Prnjavor, north Bosnia;
- Church/Priest's garage/priory, Rogatica, east Bosnia;
- Veljko Vlahovic high school, Rogatica;
- Hasan Kikić primary school, Sanski Most, northwest Bosnia;
- Police headquarters, Sanski Most;
- Sportski centar, Sanski Most;
- Hadžići sports centre, Sarajevo;
- Trapare, Sarajevo;
- Hotel Park Vogošća, Sarajevo;
- Sase mine, Srebrenica, east Bosnia;
- Stara Opština, Teslić, north central Bosnia;
- Police station, Teslić;
- Elementary school, Titov Drvar;
- Sušica, Vlasenica, east Bosnia;
- Kindergarten, Zvornik, east Bosnia;
- Courthouse, Zvornik;
- Unknown house in Zvornik, Zvornik;
- Central prison, Zvornik;
- "Novi Izvor"-owned building, Zvornik;
- JNA barracks at Karakaj, Zvornik;
- "Alhos" textile plant, Zvornik;
- Movie theatre in Čelopek, Zvornik;
- Lumber factory, Caparde, Zvornik;
- Vidikovac hotel in Divič, Zvornik;



Other governments were also mentioned by the Commission of Experts as the corroborating source, such as France:

- Šekovići women's camp, Šekovići, eastern Bosnia and Herzegovina;

Austria:

- FK "Bratstvo" Stadium, Bratunac, east Bosnia;
- "Vuk Stefanović Karadžić" primary school, Bratunac;
- Mostina hunting lodge, Čajniče, south-eastern Bosnia;
- Omarska, Prijedor;
- Keraterm, Prijedor;
- Stadium, Zvornik, east Bosnia;
- Glinica factory, Zvornik;
- "Gathering points", Zvornik;

Canada:

- Central prison, Doboj, north Bosnia and Herzegovina;
- SUP building, Prijedor;

Denmark:

- Concrete factory, Sanski Most, northwest Bosnia;
- Narodni Front school, Sanski Most;

or the United Kingdom:

- Forest camp near Jasenica, Bosanska Krupa, northwest Bosnia;
- Sports Hall, Ključ, northwest Bosnia and Herzegovina;
- Omarska, Prijedor;
- Keraterm, Prijedor;
- Kevlani, Prijedor;
- Ljubija mine, Prijedor;
- Mrakovica mountain barracks, Prijedor;
- Mrakovica mountain hotel, Prijedor;
- Puharska district, Prijedor.

303. The existence of numerous Serb camps in Bosnia and Herzegovina was also confirmed by organisations such as Amnesty International and Human Rights Watch.

304. The international media also played an important role in exposing the camps. The existence of the Bosnian archipelago of camps was first publicised by Roy Gutman, foreign correspondent for the United States daily *Newsday* in the summer of 1992. For his reporting on Bosnia and Herzegovina, particularly for exposing the existence of the Omarska camp and for publicising some of the first testimonies of women who had been held in camps and repeatedly raped, Gutman was awarded the prestigious Pulitzer Prize in 1992. Ed Vulliamy of *The Guardian* and a British film crew from *ITN* were the first foreign journalists to be allowed to enter both the

Omarska and Trnopolje camps with a camera in August of 1992 [see: David Rieff, *Slaughterhouse: Bosnia and the Failure of the West*, Reading, 1995, p. 9]. It is largely due to the efforts of journalists like Gutman and Vulliamy that the Serbs were forced to close some of the most infamous camps.

Pattern

305. As soon as the conflict erupted in April and May 1992, a network of camps emerged, which remained in place until the end of the conflict. The widespread pattern of camps was established by the Trial Chamber in the Rule 61 Review of the Indictments against Mladić and Karadžić:

> "During the period in question (April 1992-July 1995), a network of camps which were managed and organised by civilian and military personnel and Bosnian Serb police, and which were located across the entire territory of Bosnia-Herzegovina under Bosnian Serb occupation (Omarska, Keraterm, Trnopolje, Luka, Manjača, Sušica, KP Dom, Foča, Livade, Batković etc.), was used to intern thousands of civilian Bosnian Muslims and Bosnian Croats, including women, children and elderly people who had been systematically selected and assembled for national, ethnical, political or religious reasons." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 6, para. 13].

The camps appeared suddenly and proliferated rapidly throughout Bosnia and Herzegovina. They were located "across the entire territory of Bosnia-Herzegovina under Bosnian Serb occupation" and were used to detain Muslim and Croat civilians, "including women, children and elderly people who had been systematically selected and assembled for national, ethnical, political or religious reasons".

306. Thereupon, the Trial Chamber outlined what was to become the fate of many of those non-Serb men, women, children and elderly people interned in the camps:

> "Detained for weeks, months or even years under inhuman living conditions (involving inadequate rations and lack of medical care and proper hygiene), the civilians were then either executed, subjected to mistreatment and other physical and mental harm calculated to bring about their physical destruction, or used as human shields against other troops. After their execution, the remains of the victims from the KP Dom and Luka camps were thrown into the nearby Drina and Sava rivers respectively. In the Omarska camp in July 1992, many detainees were said to have been burned alive by soldiers celebrating St. Peter's Day, a Serbian family's saint's day." [*ibid.*, pp. 6-7, para. 13].

307. In the same case, the Trial Chamber, in reviewing the Indictment, was satisfied that there was enough evidence to conclude that the setting up of the detention facilities had been planned at the highest level:

> "The Trial Chamber is of the view that the evidence and testimony submitted (...) demonstrate the active participation of the highest political and military leaders in the commission of the crimes by Bosnian Serb military and police forces in the detention facilities. *The uniform methods used in committing the said crimes, their pattern, their pervasiveness throughout all of the Bosnian Serb-held territory, the movement of prisoners between the various camps, and the tenor of some of the accused's statements are strong indications tending to show that Radovan KARADŽIĆ and Ratko MLADIĆ planned, ordered or otherwise aided and abetted in the planning, preparation or execution of the genocide perpetrated in the detention facilities.*" [*ibid.*, p. 47, para. 84, emphasis added].

The Trial Chamber of the ICTFY then confirmed both Karadžić and Mladić's Indictments for genocide.

308. The pattern that led the Trial Chamber to confirm the Indictments for genocide was also found by the Commission of Experts in their Final Report on the conflict in Bosnia and Herzegovina [United Nations, *Final Report of the Commission of Experts*, S/1994/674, 27 May 1994]. The Report was published on 27 May 1994. It is important to note that the Commission of Experts used the present tense when describing the patterns underlying the Serb camps in Bosnia and Herzegovina and elsewhere in the former Yugoslavia. Many Serb-run camps continued to function throughout the entire conflict; they were therefore not "dissolved" after "a short time", as falsely claimed by the Respondent [Counter-Memorial, p. 29, para. 1.3.1.4.]. When the Report was published, two years after the fighting had started, numerous camps were still operational.

309. The Commission of Experts described the general characteristics of the Bosnian archipelago in great detail. The Final Report reads as follows:

> "'Bosnian Serb Republic' camps
>
> 229. The Commission has information that Bosnian Serbs are operating camps where grave breaches of the Geneva Conventions and other violations of international humanitarian law, including killing, torture and rape reportedly occur on a large scale. These camps are mostly in Bosnia and Herzegovina and hold Bosnian Muslims for the most part, but also Bosnian Croats. The Bosnian Serbs use camps to facilitate territorial and political control of a geographic region and to expel and eliminate other ethnic and religious populations from that area.
>
> (...)
>
> 230. The following patterns have reportedly emerged from these camps:

(a) Camps are ultimately intended to achieve 'ethnic cleansing' (...);

(b) Groups of camps are established and operated in clusters in various geographical areas and are frequently part of a network. Prisoners are frequently moved from one facility to another. Different facilities often have separate specific purposes like mass killing, torture, rape and exchange and holding of civilian prisoners;

(c) Detainees are sometimes transported form camps within a given region to camps in another region because of overcrowding, anticipated ICRC inspection, visits by the media, exchange of prisoners and as a result of triage for unlawful purposes;"
[United Nations, *Final Report of the Commission of Experts*, S/1994/674, 27 May 1994, p. 53, paras. 229-230].

The camps were thus linked to each other as if they were part of a grid. The fact that prisoners were regularly transferred from one camp to another is an indication of the high level of organisation.

310. The Commission of Experts then described the treatment of the Muslim and Croat detainees. They were systematically tortured and often killed:

"(d) Purposeful humiliation and degradation of prisoners is a common feature in almost all camps;

(e) After a village, town or city is conquered, the local population is rounded up en masse and interned in different locations. During the rounding-up process, members of the population are frequently tortured, raped and killed. Local religious, political, civic, professional, business leaders and prominent personalities are singled out for the worst abuses. On the captors' side, local civil servants, political leaders and particularly the police participate or are involved in the rounding-up process;

(f) Prisoners are forced to surrender their money and valuables to their captors and, if released, these valuables are not returned;

(g) In most instances, captors interrogate prisoners for information about military and strategic information, political affiliation and political belief. Captors also interrogate detainees concerning the personal wealth and family connections of other detainees. Most of the time, the questioning is unrelated to military or security matters. Almost always, interrogation is accompanied by brutality and humiliation and, in many cases, by torture and murder;

(h) The smaller camps house the population temporarily until the captors divide the prisoners into smaller groups and transport them to larger camps or to separated sections of large camps. When prisoners are transported to larger camps, they are often packed tightly into buses, lorries or freight and cattle trains and are subjected to physical and mental abuse. While being transported, prisoners are often killed at random and are denied food, water and access to toilet facilities. When the buses or freight cars reach their destinations, while the prisoners are unloaded, several prisoners are often killed. Sometimes prisoners are transported by car to camps by locals;

(i) Men between the ages of 16 (or younger) and 60, who are considered to be of military age, are usually separated from older men, women and children. These men are transferred to heavily guarded larger camps where killings and brutal torture are prevalent;

(j) At the larger camps, prisoners are subjected to random beating. Many prisoners are beaten under the guise of being interrogated. Beating, more severe torture and killings escalate when there has been a Bosnian-Serb military setback and when there are Serb casualties;

(k) Prisoners who are targeted for torture or death at the larger camps include prominent members of the community who are wealthy, educated or politically influential persons in the community. Guards usually have information identifying which prisoners fall into these categories. They obtain that information from their own local population, through coercion and violence from other prisoners or from other detention facilities that are used solely to interrogate displaced populations;

(l) In several instances, prisoners have been forced to inflict injury on each other, sometimes as entertainment for the guards. In other instances, prisoners are mass executed by machine-gun fire;

(m) In most camps (particularly during the second half of 1992 and the first half of 1993), prisoners are killed on a daily basis. Their bodies are sometimes left to rot on camp grounds, disposed of in mass graves abutting the camps and thrown into rivers, ravines, mine shafts and mining pits. The Commission has some information concerning the locations of many of these mass graves (...);" [*ibid.*, pp. 53-54, para. 230].

The Commission of Experts found that camps often "specialised". After their arrest, prisoners were divided according to gender and age and transferred to different detention facilities. The Serb camp system was run with great efficiency:

"(n) Women, children and men over 60 years of age are usually separated from others and taken to separate camps. These camps are guarded and surrounded by fences, but prisoners are usually allowed to walk from building to building within the camp compound. Although fewer killings occur at these camps, torture and particularly rape are commonplace;

(o) Rape is prevalent in the camps (...). Captors have killed women who resisted being raped, often in front of other prisoners. Rapes were also committed in the presence of other prisoners. Women are frequently selected at random during the night. These rapes are done in a way that instills terror in the women prisoner population. The Commission has information indicating that girls as young as 7 years old and women as old as 65 have been raped while in captivity. The group most targeted for rape, however, is young women between the ages of 13 and 35. Mothers of young children are often raped in front of their children and are threatened with the death of their children if they do not submit to being raped. Sometimes young women are separated from older women and taken to separate camps where they are raped several times a day, for many days, often by more than one man. Many of these women disappear, or after they have been raped and brutalized to the point where they are traumatized, they are returned to the camps and are replaced by other young women. There have also been instances of sexual abuse of men as well as castration and mutilation of male sexual organs;" [*ibid.*, p. 55, para. 230].

Whatever the "specialisation" of the camp, prisoners were severely maltreated as a rule:

"(p) Prisoners in all camps are subjected to mental abuse and humiliation, including barrages of ethnic slurs. Prisoners are detained in unsanitary environments where dysentery and lice epidemics are rampant. Prisoners are often denied the use of toilet facilities. Often, male prisoners of fighting age are packed so tightly in the prison facilities that they do not have room to lie down or sit, or sometimes even to breathe. In addition, prisoners are nearly starved to death and, at best, are given

one meal a day consisting of meagre portions of thin soup and bread. In instances where food is delivered to a camp by the ICRC, the food is not distributed to prisoners as intended. Instead, food is retained for the Bosnian-Serb fighting forces or is consumed by the camps guards. Furthermore, medical attention is, for the most part, non-existent at the camps, and often the sick and wounded prisoners are buried alive in mass graves along with the corpses of killed prisoners.

231. The Commission concludes that grave breaches of the Geneva Conventions and other violations of international humanitarian law have been committed over a long period of time, on a large scale, and very frequently in the most brutal, inhuman and degrading manner. These violations are ordered by or known to the camp commanders, the local political leadership and police. Army units may or may not be involved. However, they do not intervene to stop these violations, thereby implying responsibility by omission." [United Nations, *Final Report of the Commission of Experts*, S/1994/674, 27 May 1994, pp. 53-55, paras. 229-231].

311. In the separate Annex entirely dedicated to camps, the Commission of Experts further elaborated on the system of camps set up by the Serbs in Bosnia and Herzegovina. The camps were found to be an integral aspect of the Serb campaign of ethnic cleansing:

"29. The reports indicate that Bosnian Serbs used camps in BiH to facilitate territorial and political control of geographic regions and to expel and eliminate other ethnic and religious populations from that area. In essence, the Bosnian Serb forces, including former Yugoslav National Army (JNA) officers and soldiers, paramilitary units, police forces, civilians, and the political leadership of the Serbs of BiH, apparently with a significant degree of participation by and cooperation with the Serbs and Montenegrins of FRY, incorporated and exploited the detention of civilians as an integral aspect of their campaign of "ethnic cleansing". While armed, uniformed soldiers of the forces opposed to the Serbs were incarcerated in significant numbers, the vast majority of those imprisoned by Serbs in BiH appear to have been civilians." [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 11, para. 29].

The vast majority of the prisoners in the Serb camps were thus civilians - men, women, elderly and children - and not former soldiers, as falsely alleged by the Respondent in its Counter-Memorial [Counter-Memorial, p. 36, para. 1.3.1.26.]. It is true, in fact, that many camps, especially the better-known ones, were established mainly for men. As the Commission of Experts rightly pointed out, however, these men are not to be considered as prisoners of war:

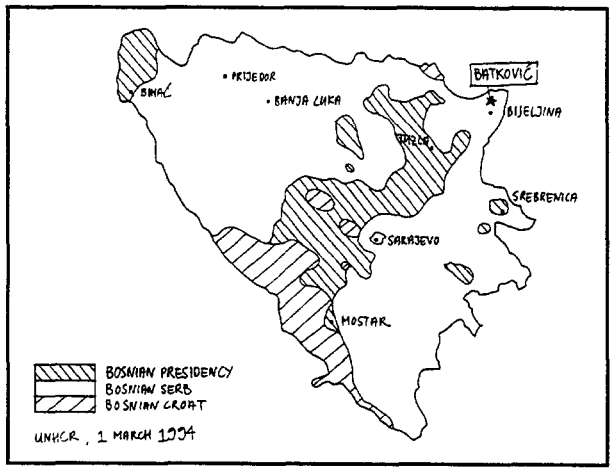
"It was often reported that men between the ages of 18 and 60 were separated from women, children, and elderly men. Apparently, men between the ages of 18 (or younger) and 60 were considered to be of fighting age, constituting a class of quasi-prisoners of war or perhaps legitimate internees because of their potential for hostility. However, rarely did reports include any information to suggest that those considered capable of fighting had ever actually committed hostile acts or had organized to do so. In fact, many Muslim villagers simply surrendered the weapons they had upon an initial demand by the Serb forces in the region. After that surrender, the villagers

> were in many cases detained. The reports indicate that in many instances, men between the ages of 18 and 60, were ultimately transferred to heavily guarded larger camps where killings or torture were prevalent." [*ibid.*, p. 12-13, para. 35].

312. In the following paragraphs of this subsection to Chapter 5, the Applicant will illustrate the pattern described above with some notorious and more well-known camps, also referred to in the Memorial, and with a few less noted facilities. Together they will show both the enormous magnitude of the phenomenon and its atrocious character.

Batković

313. The Batković camp was located near Bijeljina in north- eastern Bosnia. It was established in June 1992 and consisted of two large barns or warehouses previously used to store grain. The camp was surrounded on three sides by a barbed wire fence and on one side by a sheet-metal wall. People were kept from looking either into or out of the compound by piles of hay and straw. The camp was operated by paramilitary forces involved in the Serbian Democratic Party (SDS). The camp was commanded, however, by a Serb army officer [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 61-62, paras. 462-465]. The estimates of the total camp population, which consisted of Muslims and Croats, vary between 740 and 2,000 [*ibid.*, para. 467]. Many, if not all, of the detainees in the camp were civilians, as was later also admitted by the camp commander, Colonel Petar Dmitrović [*ibid.*, p. 63, para. 475]. Most of the prisoners who were not killed were eventually exchanged for Serb prisoners of war.



314. Batković was the first camp referred to by the Respondent in the Counter-Memorial. It is mentioned in a quote from one of the earlier reports submitted by Special Rapporteur Tadeusz Mazowiecki. The Counter-Memorial reads as follows:

> "The Special Rapporteur goes on to state: 'The camps in Batković contained approximately 1.000 Muslim prisoners at the time of the visit, housed in two storage buildings. The prisoners did not complain of ill-treatment and, in general, appeared to be in good health.'" [Counter-Memorial, p. 29, para. 1.3.1.5.].

By quoting the given passage, the Respondent was probably attempting to show that the "Muslim prisoners" in the Serb camps in Bosnia and Herzegovina were treated relatively well. However, the impression the Respondent is trying to create is in sharp contrast with the truth. This becomes immediately clear when one reads the quote in its full context, where the Special Rapporteur describes the difficulties he encountered when visiting "Serbian-controlled areas":

> "28. The Special Rapporteur has had only limited access to prisons and other places of detention in Serbian-controlled Bosnia. During his first mission, he was denied access to prisoners in Manjaca military prison. During his second mission, the delegation was allowed to visit Batcović [sic] detention facility, in north-eastern Bosnia. However, members of the delegation who intended to visit detention facilities near Prijedor were not allowed into the area." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, A/47/666, S/24809, 17 November 1992, p. 13, para. 28, emphasis added].

With the exception of Batković, the Mazowiecki mission was therefore not allowed to visit any of the indicated camps. The Respondent failed to quote the entire paragraph on the Batković camp:

> "29. The camp in Batcovic contained approximately 1,000 Muslim prisoners at the time of the visit, housed in two storage buildings. The prisoners did not complain of ill-treatment and, in general, appeared to be in good health. *However, they sleep on straw bedding on the floor or cavernous unheated buildings, where living conditions will become intolerable as cold weather arrives.*" [*ibid.*, p. 13, para. 29, emphasis added].

The emphasised passage at least casts a different light on the situation in the Batković camp, which was obviously not as comfortable as the Respondent implied by only citing the first two sentences. In spite of this, it is without any doubt that Mazowiecki was shown a "model" camp, especially prepared for the visit. The situation in the camps was much worse than the Mazowiecki Report suggested and,

in addition, not representative of the conditions in the many other Serb-run camps, which the mission was not allowed to enter. Special Rapporteur Tadeusz Mazowiecki was well aware of the fact that the conditions in Batković could not be considered to be illustrative of the other camps in Bosnia and Herzegovina [*ibid.*, pp. 13-14, paras. 30-33].

315. On 19 April 1993, that is, after the visit of Mazowiecki to Batković, the United States Bureau of Public Affairs published one of its Dispatches, in which it explained how the Serb guards of the camp succeeded in misleading international observers visiting the site:

> "Between July 15 and September 23, the ICRC visited Batkovic camp twice. One visit was on or about August 15. Each time, prior to the arrival of Red Cross personnel, the guards would take away the beaten prisoners and children under the age of 14 and hide them. The prisoners were taken to the town of Raca, where the rivers Sava and Drina join together. The prisoners were brought back after the departure of the Red Cross personnel." [US Department of State, Bureau of Public Affairs, *Dispatch*, 19 April 1993, Vol. 4, No. 16, p. 262, Annex 19].

316. The treatment of the prisoners in the "model" camp of Batković was hardly better than in the other camps under Serb control. In another Dispatch, the Bureau of Public Affairs recounted the story of two Muslim men who were arrested in May 1992 and detained in various Serb-run camps in Bosnia and Herzegovina:

> "The witnesses said Batkovic was the worst of the camps in which they had been held. There had been about 1,600 prisoners in Batkovic when they arrived, all of them from northeastern Bosnia. A number of children and elderly men were moved out of the camp in closed trucks after it was announced there would be an ICRC visit to the camp.
> Beating[s] were common at Batkovic. Zulfo Saracevic, aged 55, died of beatings. A jeweller from Bijeljina died after 3 nights of beatings, the purpose of which was to get him to tell where he had hidden gold and jewelry. Several elderly men died from the bad conditions at the camp. One of the witness's cousins died of gangrene in a leg wound for which he (had) received no medical care. On several occasions, they and other prisoners were forced to remove their clothes and perform sex acts on each other and on some of the guards." [US Department of State, Bureau of Public Affairs, *Dispatch*, 26 July 1993, Vol. 4, No. 30, p. 538, Annex 18].

317. The beatings of detainees was standard practice in the camp. The Commission of Experts reported the following:

> "469. Abuse is invariably indicated in accounts regarding treatment of prisoners prior to September. According to one detainee, prisoners were forced to perform sexual acts with each other, and sometimes with guards. Detainees were beaten regularly until new guards arrived in September [1992]. Reports of the frequency of beatings vary from daily beatings to beatings 10 times each day. Prisoners arriving from Sušica [camp near Vlasenica, eastern Bosnia and

> Herzegovina] were beaten upon exiting their bus. Upon arrival on 15 July, another group of prisoners were beaten with sticks. Thereafter, they were beaten regularly. Thirty-five guards 'had a go' at each member of a group brought in July. Beginning in July, 15 Muslims, considered to be extremists, were beaten every day until they were transferred to Doboj in September. In one incident, four men were beaten outside of the camp. Two of them managed to get into the camp, one was beaten so much that he could later not recognize his own father (a fellow prisoner), and the fourth man, about 20 years old, was killed.
>
> 470. Prisoners were also forced to labour. This did not excuse them from other abuse, and, as one prisoner reported, they were beaten while at work to make them work harder.
>
> 471. One detainee reported that it was not the guards, but rather soldiers going to or coming from the front that abused the prisoners. This same man claimed that POWs received worst treatment, whereas civilian prisoners were not treated as badly. Another prisoner alleged that those prisoners from areas in which Serbs had suffered losses were most harshly treated.
>
> 472. Because of the level of mistreatment, many prisoners died. One man stated that during his stay, mid-July to mid-August, 13 prisoners were beaten to death. Another prisoner died because he had gangrene which went untreated. Five more may have died from hunger. Allegedly, 20 prisoners died prior to September." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 62-63, paras. 469-472].

The situation in the camp improved in the beginning of September. Local Serb villagers protested, after having heard reports and rumours of the atrocities in the camp [*ibid.*, p. 63, para. 474].

318. After the situation in the camp had improved, foreign journalists were allowed to visit. Roy Gutman, foreign correspondent for the United States daily *Newsday*, visited the camp on 24 January 1993. His vivid account was later published:

> "In the dark void of the vast sheds, pigeons fly between their perches in the rafters while on the concrete floor below, the sound of coughing men punctuates the chill air. Here in two hangars where grain was once stored, hundreds of Bosnian Muslim and Croat detainees, survivors of Bosnian Serb death camps, huddle together or lie under layers of blankets on their lice-infested straw mattresses.
> There is neither heat nor electric light, and between Christmas and New Year's Day the temperature inside the sheds dropped to about zero. Water canteens froze under the detainees' pillows, and their blankets 'practically stood up on end,' a Red Cross official said. Now the temperature hovers just above freezing.
> 'We couldn't sleep because it was so cold,' said Kemal Sobani, 23. One elderly man died, and in their frozen stupor, detainees, as well as wardens, left him there for two days.
> In the outdoor latrines, which consist of planks placed over a ditch, ice formed on the boards, and more than a few men slipped into the pit of human waste.
> (...)
> The 970 men here range in age from 18 to over 60. Some are veterans of four camps in the past eight months, and three Croats held here were arrested by Serbs 15 months ago, during a different war. All are civilians. Witnesses to the murder and torture of thousands of fellow Muslims and Croats, they still have no idea why they are being held.

> (...)
> According to Lt. Col. Petar Dmitrovic, in charge of the camp here, 532 Manjaca [camp near Banja Luka] detainees were brought to Batkovic; 130 of them were taken to Sarajevo and freed in an exchange, while 401 stayed in Batkovic. The Red Cross has been unable to confirm the release of the 130 and lists them as disappeared.
> (...)
> Bosnic, a salesman and cafe owner, said he was arrested along with 41 others in his hometown of Bosanska Dubica [north Bosnia] last June 25. 'They took all the people who owned businesses. None of us were even asked about the war. None of us had any weapons. They told us we'd be freed in ten to fourteen days.' He stayed in Manjaca almost six months, then was transferred to Batkovic.
> Zlata Jakupovic, 19, was arrested in the town of Kozarac [near Prijedor] in early May. Batkovic is his fourth camp. First he was taken to Keraterm, outside Prijedor, where he said he was beaten daily. Then he went to Omarska, where U.S. government interviewers believe as many as 5,000 men were slaughtered. Omarska was closed at the beginning of August, and he was taken to Manjaca. There, he said, he waited with other prisoners in buses before the camp gates and saw guards kill eight men by slitting their throats. 'They were all very rich, and the guards wanted to know where they had their money.'
> (...)
> Josica Cendric, a 31-year-old car mechanic from the Croatian town of Slunj, was arrested by the Serb army on November 18, 1991, along with two other Croats, while riding a bus from Cazin to Zagreb. They were taken to a Serb prison at Stara Gradiska [Croatia], and then early last June to Manjaca. 'We weren't soldiers. There were never any charges against us,' he said.
> (...)
> Dmitrovic [the camp commander] admitted that all the detainees at his camp are civilians. 'We do not have prisoners of war,' he said. So why have they been taken into custody and held here in defiance of the Geneva conventions on war, which prohibit the arbitrary detention of civilians? According to Dmitrovic, their towns and villages happened to be in a war corridor. 'Many fought as civilians,' he asserted, 'and were arrested.' Meanwhile, their houses 'have been destroyed in the fighting, and they have nowhere to go.'" [Roy Gutman, *A Witness to Genocide, The First Inside Account of the Horrors of 'Ethnic Cleansing' in Bosnia,* Shaftesbury, 1993, pp. 137-140].

The inmates Roy Gutman met and spoke to had all been in various other Serb-controlled camps in Bosnia and Herzegovina. One of the interviewees had apparently been arrested in Croatia, by the JNA, as early as November 1991, that is, more than a year before being questioned by Gutman. The presence of this Croat from Croatia proper in the Batković camp shows that the military campaign carried out by the Respondent - aimed at the creation of a Greater Serbia - was neither restricted in time nor in territory.

319. Particularly in the period before September 1992, many prisoners died as a result of the treatment by the Serb guards. Most deaths would occur at night and corpses were normally wrapped in sheets and then removed by a military truck every evening [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex X, "Mass Graves", p. 9, para. 30]. According to a witness interviewed by the Commission of Experts, a mass grave with former prisoners of Batković was located next to the camp and at least fifteen

bodies were buried next to a cow stable that stood approximately two hundred metres from the camp's buildings [*ibid.*, p. 9, para. 31].

Trnopolje

320. The Trnopolje camp in the Prijedor area was mentioned twice by the Applicant in the Memorial [Memorial, p. 22, para. 2.2.1.2 and p. 25, para. 2.2.1.12]. In reaction to these short references, the Respondent stated the following:

> "Protection centre in Trnopolje was a place where local civilian people gathered to find shelter from military operations taken in this area." [Counter-Memorial, p. 31, para. 1.3.1.8.].

Then, after having admitted that 1,500 prisoners were transferred from the Keraterm camp to Trnopolje, the Respondent explained that these persons:

> "were transferred to Trnopolje for the family reunion, while those who wanted to leave the Municipality of Prijedor were further transferred to the territory under the control of the Muslim side." [Counter-Memorial, p. 33, para. 1.3.1.15.].

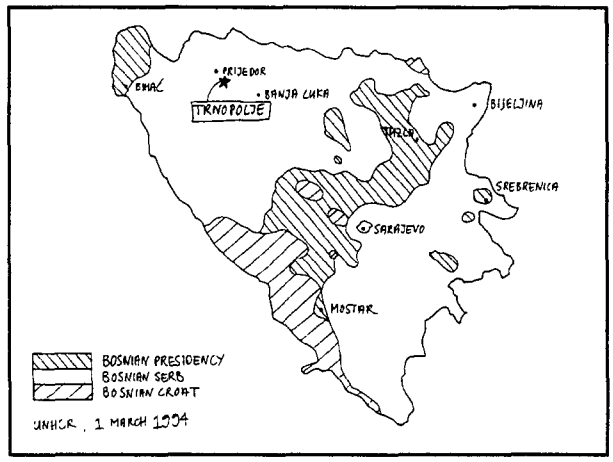
According to the Respondent, Trnopolje was a camp were the local civilians were protected against "military operations" taking place in the area. The Respondent failed to mention the precise nature of these operations, which were in fact carried out by the Respondent itself [see Reply, Chapter 8, Section 3]. By the time the Trnopolje camp was up and running, the Prijedor area had been taken over by a combination of JNA forces and Serb paramilitaries under their control.

321. The Respondent's description of Trnopolje as a place "for the family reunion" is an outright effrontery, most of all to the victims of the camp. It also illustrates its utmost contempt toward the Applicant and, for that matter, toward the Court as well. The following pages of this Section will demonstrate why.

322. Trnopolje is a small village near Kozarac, in the Prijedor area. Before the Serb take-over, the village had a predominantly Muslim population of some 5,000 people. The camp in Trnopolje was established in late May 1992, when the first group of Muslims arrived in the village under the escort of armed Serb soldiers [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 240, para. 1950].

323. The location and lay-out of Trnopolje was described by the Trial Chamber of the ICTFY in the *Tadić* case:

> "172. The Trnopolje camp was located near the Kozarac station, on the Prijedor-Banja Luka railway line. The camp held thousands of prisoners, most of whom were older men and women and children. Armed soldiers guarded the camp. The commander of the camp was Slobodan Kuruzovic.
>
> 173. The camp consisted of a two-storied former school building and what had been a municipal centre and attached theatre, known as the "dom". An area of the camp was surrounded by barbed wire." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 63-64, paras. 172-173].



324. According to the Commission of Experts, the camp's population consisted mainly of three categories. The first were non-Serbs who were transferred to the camp after being ethnically cleansed from their homes in the area. This group consisted primarily of women, children and elderly men. The other men were detained at Omarska or Keraterm, all camps in the Prijedor region [see below]. The second category were prisoners who were transferred to Trnopolje after Omarska and Keraterm closed down. These people were separated from the rest of the detainees at first. The third and last category were non-Serbs who voluntarily abandoned their villages in the region, after the Serb occupation, and thought it would be safer to be in the camp than to remain in their homes. According to the Commission of Experts, these Muslims and Croats were under the impression that they would be registered by the Red Cross and resettled in third countries [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 242, para. 1966].

325. The Trnopolje camp differed from the other infamous camps in the Prijedor region, as the barbed wire fencing was removed in early August 1992, after the first visit by international journalists. With the removal of the fencing, Trnopolje gave the appearance of an open camp. However, strategically placed guards, armed with automatic rifles, prevented the prisoners from escaping [*ibid.*, p. 242, paras. 1963-1964]. Moreover, Serb troop movements in the area made leaving the camp equally or even more dangerous.

326. In the Tadić Judgment, the camp was indeed described as an "open prison":

> "176. Trnopolje was, at times at least, an open prison but it was dangerous for inmates to be found outside, where they might be attacked by hostile groups in the neighbourhood, and this, in effect, amounted to imprisonment in the camp. In the beginning, the Serb soldiers informed the inmates that they were being held there for their own protection against Muslim extremists. However, the camp actually proved to be rather a point where the civilian population, men, women and children, would be gathered, collected and then deported to other parts of Bosnia or elsewhere.
>
> 177. Because of the lack of food and the insanitary conditions at the camp, the majority of inmates, one estimate is as high as 95 percent, suffered from dysentery. There was no running water at all, and only limited lavatory facilities. There was almost no water to drink, as only one pump existed for the whole camp. Lice and scabies were also rampant. At one time the buildings at Trnopolje proved insufficient to house all the inmates, many of whom were forced to camp outdoors in the grounds in makeshift shelters of plastic sheeting and the like." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 63-64, paras. 172-173].

To further discourage the flight of the camp inmates at night, the guards constantly fired shots over the heads of the people sleeping in the field after the evening curfew [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 244, para. 1991].

327. In the Tadić case, the Trial Chamber also described the regime in Trnopolje, which was less monstrous than other camps in the area, such as Omarska and Keraterm [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 64, para. 175]. Inmates were, however, subjected to interrogations, beatings and killings, albeit not regularly. Moreover, Trnopolje was notorious for the number of women and girls who were either taken to another facility or brutally raped there, usually at night.

328. The violent interrogations in the Trnopolje camp were reported by the Commission of Experts:

> "2083. (...) There are reports of interrogations of detainees at Trnopolje. Reportedly, an office in one of the main camp building[s] was used for interrogations and torture.
>
> 2084. One subject reports that he was interrogated by a man wearing a black hat with the letters SDS affixed. He was interrogated and beaten by this man and three others who were present. They beat him with steel rods, table legs, and truncheons. He was even hit over the head with a rocket-propelled grenade launcher, and was stabbed with a knife in his left leg.
>
> 2085. One subject reports that every day various males were taken to one of the houses near the camp that were used for interrogation. There they were interrogated and often had their achilles tendons cut. The subject speculated that since the men were of fighting age, this was done so they would be physically unable to fight Serbs in the future.
>
> 2086. Another subject reports that the office used for interrogations was locked when not in use, and at night the prisoners could hear the screams coming from the room. He claims that none of the men taken for interrogation would return to the camp as all were killed from beatings."
> [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 251-252, paras. 2083-2086].

The Commission of Experts also recorded the many rapes which took place in the camp. Here the Applicant will list but a few examples:

> "2097. The incidents are usually reported as occurring at night when drunk soldiers entered the rooms where the women and children slept and by the light of flashlight choose the women who would be taken away.
>
> 2098. One subject reports that Serb soldiers with flashlights came around midnight every night for at least 20 nights in July [1992]. Approximately 10 young women were taken each night, and were raped across the hall from where the women slept. Subject claims that she submitted because five girls who refused were shot in front of her.
>
> 2099. According to one subject every night at about 9.00 p.m., drunk soldiers would come into the camp and take two or three young girls over 12 and rape them. They would bring the girls back after a few hours or early in the morning. Many of the girls were taken to a hospital in Prijedor after being raped. Some were never returned; after being raped they were killed and buried near the lake located a few hundred yards from the village.
>
> 2100. Some reports state that it was the camp guards who raped the women. However, other reports attribute the rapes to Serb soldiers who were not associated with the camp. Several reports describe the perpetrators as tank soldiers.
>
> 2101. According to two subjects drunken tank drivers came into the camp on 6 June 1992, between 10:00 p.m and midnight. They took iron rods with them and used flashlights to choose women, especially girls up to 18 years old. This group of girls were returned at around midnight and the soldiers went into the hall and got more. The women told the subjects that the soldiers had threatened them if they reported what had happened.

> 2102. According to one report, on an unrecalled date in mid-July, two T-55 tanks with about 20 drunken soldiers on each, arrived at Trnopolje from the direction of Kozarac. Four soldiers (one described as wearing a hat with a cockard displaying a two-headed eagle) entered the former Community Hall and selected three females (identified). They were taken away and returned the next morning by car." [*ibid.*, p. 253, paras. 2097-2102].

Because of the large number of women and girls in the camp, there were probably more rapes in Trnopolje than in any other camp in Bosnia and Herzegovina [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 64, para. 175].

329. Rapes were also reported by the United States Department of State. Young girls were exceptionally vulnerable, as is illustrated by the following example:

> "A 15-year-old Bosnian Muslim girl from Kozarac described being gang-raped by at least eight Serbian soldiers and guards near Trnopolje.
> The witness was in high school when the Serbian forces took charge of her town in Kozarac. She fled on foot into the surrounding woods but was later captured and imprisoned in the Trnopolje camp.
> Three days after her arrival at the prison, she went with a large number of women and other girls to fetch water from a well about 50 meters from the prison gates. Returning from the well, Trnopolje guards held back six girls, including the witness, and stopped them from re-entering the prison gates. They were then joined by four more female prisoners.
> Prison guards took the 10 girls to a house across the meadow. They were taken to the side yard of the house, out of sight of the roadway. Thirty Serbian soldiers - including 'some dressed like a tank crew' - were there and they taunted the girls, calling them 'Turkish whores.' The girls were ordered to undress or have their clothes pulled off. Three girls resisted or hesitated from their fear. Their clothes were cut off with knives.
> The Serbian soldiers told the naked girls to parade slowly in a circle. The men sat at the outside of the circle - smoking, drinking, and calling out foul names. The witness estimates the 'parade' lasted about 15 minutes.
> Three soldiers took one girl - one to rape her while the two others held her down. The three men took turns. A soldier approached the witness and mocked her, saying he had seen her before. Though she did not recognize him, he pulled out a photo of the witness with her 19-year-old Muslim boyfriend, whom he cursed for being in the Bosnian Territorial Defense Forces.
> The man with the photograph raped her first. The witness said she fought and pulled his hair, but he bit her and hit her face. Her lips bled. He hit her hard with the butt of his gun on her cheek, causing extreme pain. Another rapist ran the blade of a knife across her breasts as if to slice the skin off, leaving bleeding scratches. After that, she was raped by eight more men before losing consciousness." [US Department of State, Bureau of Public Affairs, *Dispatch*, 12 April 1993, Vol. 4, No. 15, p. 248, Annex 46].

330. Killings were reported as well. The Commission of Experts found Muslim and Croat inmates were regularly killed while scavenging for food outside the camp [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 254, para. 2120]. Prisoners would also be taken away and never be seen again. At times

guards would read from lists the names of those prisoners to be taken. They would also shoot men at random. Muslims married to Serbs were routinely singled out for harsh treatment [*ibid.*, p. 255, paras. 2122-2123]. It was estimated that fifty to sixty people died in Trnopolje every day [US Department of State, Bureau of Public Affairs, *Dispatch*, 12 April 1993, Vol. 4, No. 15, p. 245, Annex 46].

331. One particularly cruel killing was reported by Roy Gutman in his acclaimed book on the Bosnian tragedy, *A Witness to Genocide*. The incident was recounted by Began Fazlić, shortly after being released from Trnopolje, upon his arrival in Croatia:

> "In the detention centre [Trnopolje], Fazlic says he witnessed the execution of his next-door neighbors, Hadzic Ilijaz and his wife Ismeta. Ilijaz had been the local chairman of the Muslim SDA party, which had organized the town's resistance. 'They demanded that he provide the names of all Muslim activists,' Fazlic said. Ilijaz refused. Fazlic spoke matter-of-factly as he described what had happened to the Ilijaz family.
> 'They [the military] took electric drills and bore them into their chests,' he said. The three children, ages 1, 3 and 5 were impaled on spikes. 'We saw it with our own eyes,' he said." [Roy Gutman, *A Witness to Genocide, The First Inside Account of the Horrors of 'Ethnic Cleansing' in Bosnia*, Shaftesbury, 1993, p. 41].

Is this what the Respondent means when it diabolically states that Trnopolje was meant for "family reunions"?

332. Two other incidents which resulted in the violent death of Trnopolje inmates were described by the Commission of Experts:

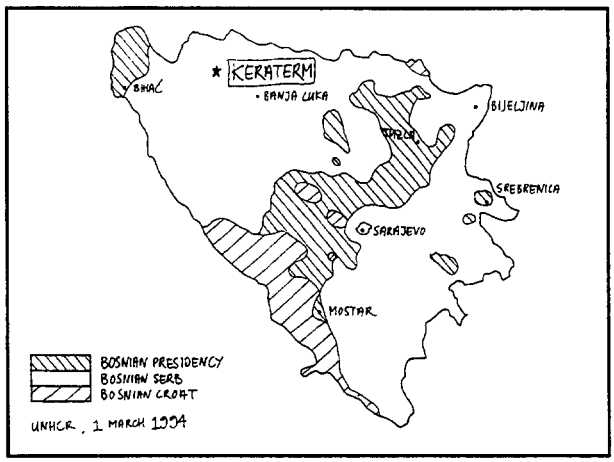
> "2125. One subject reports that on an unrecalled date in July, men who had been sleeping in the school were required to sleep outside (2,500 women and children from the Kozarac area were being held one night at the camp). At around 1:00 a.m. four or five soldiers came to where the men were sleeping and took away six men from Kamičani, all with the same surname. The next day seven prisoners were selected to dig the mass grave. According to the men who dug the grave, the men from Kamičani had had crosses carved on their chests, knives pushed through their chin and tongue with wire inserted through the hole in the tongue.
>
> (...)
>
> 2127. One subject reports that many people were killed by shooting or having their throat slit. He also reports witnessing two little children killed by Cetniks, by being thrown into a rotating cement mixer while the mother watched, and a prisoner led around by a wire driven through his tongue." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 255, paras. 2125 and 2127].

The bodies of killed prisoners were buried at the cemetery in nearby Sivić, in the park in Trnopolje village or simply in the fields around the camp [*ibid.*, p. 255, para. 2130].

333. Most of the Muslim or Croat detainees were allowed to return to their homes. If not killed, they were eventually all transported to Croatia or to territory still under the control of the Bosnian government [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 256, para. 2133]. Trnopolje was not a centre for "family reunion", but it was, as the Trial Chamber of the ICTFY established in the Tadić Judgment, "the culmination of the campaign of ethnic cleansing" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 65, para. 178].

Keraterm

334. In the Memorial, the Applicant supplied evidence on the atrocities committed in the Keraterm camp [Memorial, pp. 25-27, paras. 2.2.1.11-2.2.1.15]. The Keraterm camp was also located at the site of a former ceramic factory near Prijedor in the northwest of Bosnia and Herzegovina.



335. The Respondent, in its Counter-Memorial, admitted that the Keraterm camp existed, but only after having complained first about the "unscrupulous media smear campaign" of which the Serbs supposedly were the "victims" [Counter-Memorial, p. 33, para. 1.3.1.14.]. This remark illustrates the cynical approach of the Federal

Republic of Yugoslavia [see *e.g.*, Counter-Memorial, p. 33, para. 1.3.1.16.]. The true victims of Keraterm were, of course, not the Serbs who ran the camp, but the innocent Bosnian Croats and Muslims who had the misfortune of ending up in it. As will be shown below, many inmates did not survive their stay in the camp, despite the fact that Keraterm was forced to be shut down in August 1992, after having been discovered by international journalists [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 230, para. 1860].

336. In the Counter-Memorial, the Keraterm camp was portrayed as "a detention centre in which investigation was carried out of war crimes committed by the persons brought to this centre" [Counter-Memorial, p. 33, para. 1.3.1.14.]. The Respondent failed, however, to present any evidence of "war crimes investigations" carried out in the Keraterm camp.

337. Below, the Applicant will demonstrate that the explanation offered by the Respondent for the existence of the Keraterm camp is nothing more than a simple ruse.

338. As stated in the Memorial, the Keraterm prisoners were all put on a starvation diets [Memorial, p. 25, para. 2.2.1.11]. In reaction to this statement, the Federal Republic of Yugoslavia responded with the following:

> "1.3.1.16. The Applicant alleges that in camps and other places the Serbs resorted to a policy of starvation which, in addition to being unfounded, is cynical as well. At that time almost the entire population of the Republic of Srpska was starving. The situation had been created by the civil war, as well as by the sanctions imposed by the United Nations Security Council, so that it was not possible to provide more food to camp prisoners." [Counter-Memorial, p. 33, para. 1.3.1.16.].

The Respondent thus acknowledges that the food distributed was insufficient, but adds to it that "it was not possible to provide more food to camp prisoners". The Applicant will show that here again, the Respondent simply distorted the truth.

339. On 21 July 1995, the Prosecutor at the ICTFY indicted thirteen Serbs who were responsible for the running of the Keraterm camp [ICTFY, Indictments, *The Prosecutor v. Duško Sikirica & others*, Case No. IT-95-8-I, 21 July 1995]. Among the accused are the commander of Keraterm, Duško Sikirica, three shift commanders,

four guards or interrogators and five frequent visitors to the camp. The charges against Sikirica include, among others, genocide.

340. In addition to the thirteen indictees mentioned above, the Prosecutor indicted two Serbs, Simo Drljača and Milan Kovačević, on 13 March 1997 [ICTFY, Indictment, *The Prosecutor v. Simo Drljača & Milan Kovačević*, Case No. IT-97-24-I, 13 March 1997]. Both held important positions in the local Crisis Staff [see Reply, Chapter 8, Section 3]. This organ was responsible for the establishment and running of all camps or detention facilities in the Prijedor region, including Keraterm. The Indictment describes the responsibilities of the indictees for the atrocities committed in the camps:

> "10. Beginning in the Spring of 1992, the Crisis Staff of the municipality of Prijedor, including SIMO DRLJAČA and MILAN KOVAČEVIĆ, planned, organized and implemented the creation of a number of detention facilities or camps, including the Omarska, Keraterm and Trnopolje camps. These camps were staffed and operated by military and police personnel and their agents, under the control of the Bosnian Serb military and civilian members of the Crisis Staff. In addition, other Bosnian Serb police, military and civilians not directly assigned to the guard staff of the camps had unfettered access to all of the detention facilities and operated in conjunction with the personnel in control of these detention facilities.
>
> 11. In none of the camps were the detainees afforded proper judicial process and their internment was not justified by military necessity. They were detained primarily because of their religious and ethic identification. The conditions in the Omarska, Keraterm and Trnopolje camps were abject and brutal. Bosnian Serb military and police personnel in charge of these facilities, their staff, and other persons who visited the camps, all of whom were subject to the authority and control of the Crisis Staff, killed, sexually assaulted, tortured, and otherwise physically and psychologically abused the detainees in the camps.
>
> 12. At Omarska and Keraterm, the camps were deliberately operated in a manner designed to inflict upon the detainees conditions intended to bring about their physical destruction with the intent to destroy, in part, the Bosnian Muslim and Bosnian Croat people as national, ethnic or religious groups. Serious violations of international humanitarian law of a similar pattern were committed in both Omarska and Keraterm camps. Detainees were continuously subjected to or forced to witness inhumane acts, including murder, rape and sexual assaults, torture, beatings and robbery, as well as other forms of mental and physical abuse. Daily food rations provided to detainees amounted to starvation rations. Medical care for the detainees was insufficient or non-existent and the general hygienic conditions prevalent at these camps were grossly inadequate.
>
> (...)
>
> 14. Keraterm camp was located at a former ceramics factory in Prijedor. Conditions for prisoners were similar to those in Omarska camp. Detainees were so crowded in the four rooms that, on many occasions, they could not lie down. The detainees were not permitted to move around freely in the camp. Whether detained in the rooms or on the open area outside, they were only allowed to move when specifically permitted to do so, usually only to receive their starvation rations or to go to the toilet. On a daily basis, the camps leadership, the camp guards, who were both police and military personnel, and others who came to the camp to abuse the detainees, subjected the detainees to inhuman conditions, physical violence, constant humiliation, degradation and fear of death.

> Many detainees were executed in the camp. On one night in July, 1992, more than 150 military-aged men from the 'Brdo' region were executed. Severe beatings were commonplace. All manner of weapons were used during these beatings, including wooden batons, metal rods, baseball bats, lengths of thick industrial cable, rifle butts and knives. The beatings, sexual assaults, tortures, and others cruel and humiliating actions were generally inflicted in full view of other detainees and were accompanied by derogatory and humiliating comments to the victims or their families and general threats to the other detainees. After they were beaten, tortured, or sexually assaulted, the detainees were carried, dragged or forced to crawl back into their rooms, without any form of care for their injuries. Hundreds of detainees, whose identities are known and unknown, did not survive the camp."
>
> (...)
>
> 16. Between 30 April 1992 and 31 December 1992, SIMO DRLJAČA and MILAN KOVAČEVIĆ, in concert with others, planned, instigated, and ordered the establishment of the camps at Omarska, Keraterm and Trnopolje and the detention therein of Bosnian Muslims and Bosnian Croats from the municipality of Prijedor under conditions calculated to bring about the physical destruction of the detainees, with the intent to destroy part of the Bosnian Muslim and Bosnian Croat groups, as such. Further, between 30 April 1992 and 31 December 1992, SIMO DRLJAČA and MILAN KOVAČEVIĆ, knew or had reason to know that their subordinates who staffed the detention facilities were killing or causing serious physical or mental harm to Bosnian Muslims and Bosnian Croats with the intent to destroy them, in part, as a national, ethnic or religious group or had done so and failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
>
> By these acts and omissions, SIMO DRLJAČA and MILAN KOVAČEVIĆ were complicit in the commission of GENOCIDE (...)." [ICTFY, Indictment, *The Prosecutor v. Simo Drljača & Milan Kovačević*, Case No. IT-97-24-I, 13 March 1997, pp. 5-8, paras. 10-16, capitals in original].

The Prosecutor concluded that Simo Drljača and Milan Kovačević, by establishing camps such as Keraterm, had intended to destroy part of the non-Serb community of Bosnia and Herzegovina. Both Serbs were thus indicted for genocide.

341. The Keraterm camp was also discussed by the Trial Chamber of the ICTFY in the Tadić case. Its findings confirm the deplorable conditions at the camp. After having described these conditions as "atrocious", the Trial Chamber established the following:

> "170. Food consisted of a daily plate of watery soup and a scrap of bread and the suffering from hunger was acute. Beatings were very frequent, prisoners being called out, attacked with bars and batons and made to beat each other. There was much calling-out and beating of prisoners at night and those who returned were bloody and bruised all over; some died of their injuries. Some who were called out never returned, and prisoners assumed that they had died as a result of the beatings. Dysentery was rife and there was no medical care for illness or for the injuries inflicted by beatings. Interrogations were conducted, accompanied by beatings. Some prisoners were questioned about money and taken to their homes and made to search for money, to be handed over to the guards if found." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 63, para. 170].

342. The findings of the Trial Chamber at the ICTFY were confirmed by numerous other sources. Below, the Applicant will give a few examples of the indeed atrocious conditions within the Keraterm camp.

343. The food rations in the camp were highly insufficient. The Commission of Experts reported that prisoners at the camp received one meal per day, composed of two slices of bread and a kind of soup or a couple of scoops of beans or peas [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 233, para. 1888]. Frequently, prisoners were denied food and drink altogether for extended periods of time as a punitive measure [United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General*, S/25377, 6 Mar. 1993, p. 24]. The water which was handed out occasionally was often polluted [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 234, para. 1892]. The Commission of Experts related that prisoners suffered an average weight loss of twenty kilograms during their stay in the camp [*ibid.*, p. 235, para. 1906].

344. At times, the camp guards tolerated visitors at the camp, who would talk to prisoners through the fence and hand over food parcels:

> "1910. Members of a family, whose home was reportedly located in the vicinity of the Keraterm camp stated that they witnessed people bringing food to their relatives who were imprisoned at the camp. It was reported that on one occasion, an old man who brought food for his three sons was not allowed to give food to them and was denied access to the camp. According [to] the report, the man was stopped approximately 50 metres from the camp by two drunk soldiers who beat him to death." [*ibid.*, p. 236, para. 1910].

People were thus "discouraged" from bringing life-saving food to the prisoners in the camp. The Commission of Experts also reported that raw cattle offal was thrown to the prisoners, who in their hunger would tear it up and subsequently eat it [*ibid.*, p. 237, para. 1923].

345. Upon their arrival, the new inmates of the camp would be administered a beating before being put into one of the crowded rooms in which prisoners were kept:

> "1873. It was reported that during intake, prisoners had to leave their buses in groups of five and were beaten with heavy sticks to the head. It was also reported that after arriving in the evening, the prisoners had to walk to the camp building through rows of soldiers who beat them. One

> subject who arrived on 9 July 1992 reported that two prisoners died the same night due to their injuries. Another subject, who also arrived at the Keraterm camp on 9 July 1992, reported that the arriving prisoners had to line up and sing Serbian songs, and that soldiers shot around in order to make them sing louder." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 231, para. 1873].

After being beaten at their arrival, all new prisoners were selected and categorised by the camp guards:

> "One subject from Trnopolje who was held at the [Keraterm] camp from 27 May to late July 1992 reported that there was a system at the Keraterm camp to process, identify, and house three categories of prisoners. The subject stated that at the end of May 1992, newly arrived prisoners were taken into a room to be interrogated individually. According to the subject, the questions most frequently asked during interrogation concerned the names of persons selling and buying weapons; persons who had fought against the Bosnian Serbs; persons who were members of the Muslim Party for Democratic Action (SDA); policemen; professionals and highly educated individuals such as doctors, lawyers and teachers, and engineers. After the interrogation was completed, the prisoners were reportedly classified into one of the following three categories: Category A: Prisoners who had not confessed to any crimes, were not members of the SDA, and were not professionals or highly educated individuals. (Category A was reportedly entered on their administrative records and their clothing was marked with green paint); Category B: Prisoners who had confessed during their interrogation to having fought against the Serbs, or who were members of the SDA, were policemen, or were professionals or highly educated individuals. (Category B was reportedly entered on their administrative records and their clothing was marked with black paint); Category C: Prisoners who were female, men over the age of 65, and boys under the age of 14 or 15. (Category C was reportedly entered on their administrative records and their clothing was marked with yellow paint). According to the subject, once the prisoners were categorized, they were sent to the holding area for their assigned category. The first section was reportedly the holding area for the Category C prisoners, the second section, the holding area for the Category A prisoners, and the third the holding area for the Category B prisoners. According to the subject, each day a group of between 30 to 40 prisoners from holding area three containing the Category B prisoners were led away with their hands tied behind their backs with wire and placed onto military trucks. The subject reported that the trucks would leave at night and return empty several hours later and the prisoners were not seen or heard from again." [*ibid.*, pp. 225-226, para. 1824].

All prisoners were subjected to "interrogations" upon their arrival at Keraterm. The questions posed did not focus on supposedly committed "war crimes"; being a doctor, teacher, engineer, policeman or politician sufficed in order to be treated as a "suspect" and to be singled out for the harshest treatment.

346. As shown above, women were also kept in the camp, albeit occasionally and in small numbers. Keraterm was no exception to the rule that female inmates were systematically raped in Serb-run camps [*ibid.*, p. 225, para. 1822].

347. During the interrogations, the inmates were routinely tortured, usually in the form of beatings. It was common practice for guards to single out a group of men from the same region and interrogate them collectively:

> "1883. One subject similarly reported that on his second day in the camp in mid-June 1992, 40 prisoners from the village of Kamičani were called out by an identified guard, who screamed at them and beat them outside the dormitory with a baton. The subject reported further that the prisoners were asked who had kept firearms at home and that the subject was identified and was beaten repeatedly with thick electric cables and truncheons. The subject reported that three days later, two of the guards who had beaten him, yelled at him about his supposed involvement in the attack on a Serb village. The subject reported that he tried to defend himself and that an identified guard pulled out knife to gouge out his eyes, but that subject managed to push away the guard's arm and instead had the right side of his neck slashed. The subject reported that the guard then pulled the trigger of an un-loaded pistol point-blank at subject's temple, whereupon the subject confessed to having fired on the Serb village, although he had not done so. The subject reported that the identified guard then unsuccessfully attempted to cut off his ear and thereafter stabbed both of the subject's thighs and twisted the knife, taking out pieces of flesh." [*ibid.*, p. 233, para. 1883].

The citation above illustrates how "confessions" from the prisoners were extracted during interrogations.

348. Inmates at the camp were also tortured without the excuse of the "interrogation" being used:

> "1926. One subject reported that he was (...) attacked by an identified guard at the camp who cut his left foot with a knife and forced him to sew it with a 'twist'. The subject further alleged soldiers cut a 'U' for 'Ustaše' into his back.
>
> 1927. One subject reported that the camp guards would often torture prisoners by extinguishing cigarette butts on naked parts of their bodies, or on their faces.
>
> 1928. Another subject who arrived at the camp in mid-June 1992, reported that he witnessed as one brother was forced to bite the testicles off of another brother. The subject also reportedly witnessed a prisoner who was forced to sit naked upon a one litre Coca-Cola bottle and was beaten upon his shoulders until blood poured out of his anus and he bled to death. Other subjects similarly reported that prisoners had to take off their clothes and sit on bottles and were subjected to other 'games' by the guards." [*ibid.*, p. 238, paras. 1926-1928].

349. The Austrian government reported on a similarly gruesome incident, which at the same time shows the Serbs' disdainful attitude toward authoritative international organisations such as the International Committee for the Red Cross. About twenty persons chosen arbitrarily among the prisoners were forced to lay on the floor. A truck from the Serbian Red Cross then drove over their legs [United Nations, *Letter*

Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General, S/25377, 6 March 1993, p. 27].

350. In late July 1992, a large group of prisoners kept in section three of the Keraterm camp were executed. This incident was also referred to in the Memorial [Memorial, pp. 26-27, para. 2.2.1.15]. In reaction, the Respondent denied that the incident took place and stated that it had "not been proved in an appropriate way" [Counter-Memorial, p. 33, para. 1.3.1.17.]. On the next page, however, the Respondent admitted that the killing incident did indeed happened, but claimed that it should be seen as the reaction of the prison guards to a "rebellion of the prisoners". The dubious legal merits of this sort of reasoning were dealt with above [Reply, Chapter 2]. In the following passages, the Applicant lets the facts speak for themselves.

351. The following description of the incident was given by the Prosecutor at the ICTFY in Duško Sikirica's Indictment:

> "14.1. About 20 July 1992, detainees from an area of the opština Prijedor known as 'Brdo,' which included the villages of Hambarine, Čarakovo, Rakovcani, Biscani, and Rizvanovici, were brought to Keraterm camp. The detainees from the Brdo area were crowded into room 3. The previous occupants of room 3, had earlier been transferred to other rooms.
>
> 14.2. About 24 July 1992, the detainees in room 3 were not allowed out of the room. During the day and early evening, machine guns were set up in front of the rooms. That night soldiers were brought into the camp and formed a semi circle around room 3.
>
> 14.3 Later that night, the guards and soldiers, including Zoran ŽIGIĆ, began firing into the room with machine guns and heavy calibre guns. The firing continued off and on over a period of several hours, alternating between continuous fire and short bursts of fire. The fire was directed toward room 3. However, some of the bullets went into at least one of the other rooms." [ICTFY, Indictments, *The Prosecutor v. Duško Sikirica & others*, Case No. IT-95-8-I, 21 July 1995, p. 7, paras. 14.1-14.3].

The Prosecutor estimated that at least 140 non-Serbs were killed in this "rebellion". The identities of 48 of the victims were revealed in the Indictment. After the shooting had stopped, the bodies were piled "like wood" into a truck, as was recounted by the Commission of Experts. When it pulled away, there was "a sound like water was spilling" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 238, para. 1929].

352. The incident described by the Prosecutor was reported by numerous other sources [United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of*

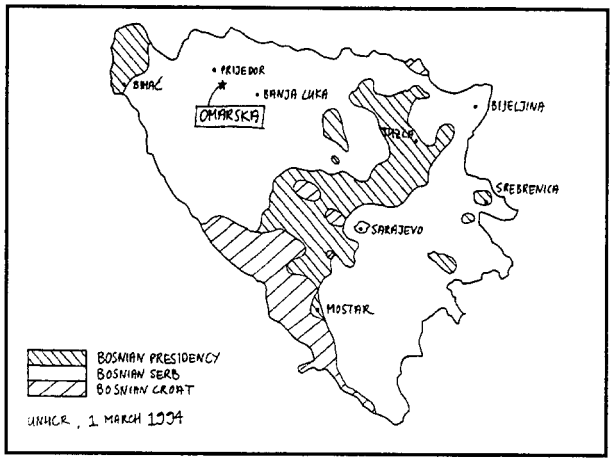
Austria to the United Nations Addressed to the Secretary-General, S/25377, 6 March 1993, pp. 28-31; US Department of State, Bureau of Public Affairs, *Dispatch*, 19 April 1993, Vol. 4, No. 16, p. 258, Annex 19; US Department of State, Bureau of Public Affairs, *Dispatch*, 8 Feb. 1993, Vol. 4, No. 6, p. 75, Annex 47; US Department of State, Bureau of Public Affairs, *Dispatch*, 26 July 1993, Vol. 4, No. 30, p. 542, Annex 18].

353. The Commission of Experts estimated that the number of prisoners killed at Keraterm was at least ten per day during the approximately three months that the camp was operated [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 239, para. 1932]. Other sources estimated that between 400 and 500 prisoners died at Keraterm from early July until 5 August 1992 [US Department of State, Bureau of Public Affairs, *Dispatch*, 12 April 1993, Vol. 4, No. 15, p. 244, Annex 46].

354. The remains of the camp inmates were transported away by truck and disposed of in various mass graves in the area. The prisoners which were appointed to remove the corpses often went missing after carrying out their duties [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 239, para. 1940].

Omarska

355. The Omarska camp near Prijedor was arguably the cruelest camp in Bosnia and Herzegovina. In the Memorial, the Applicant gave various examples of the daily atrocities committed in the camp [Memorial, pp. 22-24, paras. 2.2.1.4-2.2.1.10].



356. In response to the evidence presented in the Memorial, the Respondent stated the following:

> "The way they have been made, none of these statements can be sustained as court evidence and the immense differences in the perception of the same events which occurred within the same period of time cast a serious doubt on their veracity. The Respondent denies the veracity of the presented statements of the witnesses." [Counter-Memorial, p. 32, para. 1.3.1.10.].

The Respondent then characterised Omarska as an "investigation centre" for persons who had "participated in war operations and committed war crimes" [Counter-Memorial, p. 32. para. 1.3.1.13.]. In doing so, the Respondent entirely ignored the fact that almost three months before it submitted its Counter-Memorial, the Trial Chamber at the ICTFY had concluded the case against Duško Tadić and had convicted him for, among other things, atrocities committed in Omarska, after months of public hearings [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997]. In its Judgment, the Trial Chamber gave a detailed description of the camp and the terrible conditions under which the detainees were held. This description was based on evidence presented during the course of the mentioned public hearings by thirty former inmates of the camp. Their accounts can thus be "sustained as court evidence".

357. The Trial Chamber at the ICTFY first described the location, the layout and the population of the Omarska camp:

> "155. Perhaps the most notorious of the camps, where the most horrific conditions existed, was the Omarska camp. It was located at the former Ljubija iron-ore mine, situated some two kilometres to the south of Omarska village. The camp was in operation from 25 May 1992 until late August

1992 when the prisoners were transferred to Trnopolje and other camps. Omarska held as many as 3,000 prisoners at one time, primarily men, but also had at least 36 to 38 women. With little exception, all were Muslims or Croats. The only Serb prisoners sighted by any of the witnesses were said to have been there because they were on the side of the Muslims. The commander of the camp was Željko Meakić. The camp consisted of two large buildings, the hangar and the administrative building, and two smaller buildings, known as the "white house" and the 'red house'.

156. The hangar was a large oblong structure, running north-south, along the eastern side of which were a number of roller doors leading into a large area extending the length of the building with the ground floor designed for the maintenance of heavy trucks and machinery used in the iron-ore mine. The western side of the hangar consisted of two floors of rooms, over 40 in all, extending over the whole north-south length of the building and occupying rather less than one half of the entire width of the hangar. Access to these rooms could be gained either from a door on the western side or, internally, from the large truck maintenance area described above. The bulk of the prisoners were housed in this building. To the north of the hangar and separated from it by an open concreted area, known as the "pista", was the administration building, where prisoners ate and some were housed, with rooms upstairs where they were interrogated. The white house was reserved for especially brutal treatment of selected prisoners. The other small building, the red house, was also a place to which prisoners were taken for severe beatings, and from which most often they did not leave alive. The administration building was in part two-storied, the single storied western portion containing a kitchen and eating area. There were two small garages forming part of the extreme northern end of the building. To the west of the hangar building was a grassed area on the western side of which lay the white house, a small rectangular single-storied building, having a central corridor with two rooms on each side and one small room at its end, not wider than the corridor itself. The small red house was on the same side as the white house, and across from the end of the hangar building." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 59-60, paras. 155-156].

With some 3,000 inmates, Omarska was one of the larger camps in Bosnia and Herzegovina. The camp held mainly Muslim and Croat men, but some women were also detained under horrendous conditions.

358. The Trial Chamber then described the treatment of prisoners at their arrival in the camp. If they survived their "welcome", the new inmates were put in one of the buildings belonging to the camp. The room in which the prisoners were held were too cramped and severely overcrowded as a rule:

"157. The Trial Chamber heard from 30 witnesses who survived the brutality to which they were systematically subjected at Omarska. By all accounts, the conditions at the camp were horrendous; killings and torture were frequent.

158. When prisoners arrived by bus at Omarska, they were usually searched, their belongings taken from them, and then beaten and kicked as they stood, legs apart and arms up stretched, against the eastern wall of the administration building. The new arrivals were then sent either to stay outside on the pista or to rooms in the hangar or in the small garages in the office blocks or, if so selected, to the white house.

159. Prisoners were held in large numbers in very confined spaces, with little room either to sit or lie down to sleep. Sometimes 200 persons were held in a room of 40 square metres; and 300

> prisoners were confined in one small room. Others spent the time crowded together in the lavatories. There, as well, however, prisoners were packed one on top of the other and often had to lie in the midst of excrement. The doors of the overcrowded garage were often kept closed even in the heat of the summer. As many as 600 prisoners were made to sit or lie prone outdoors on the pista, some staying there continuously regardless of the weather for many days and nights on end, and occasionally for as long as a month, with machine-guns trained on them." [*ibid.*, p. 60, paras. 157-159].

359. As in all camps under Serb control in Bosnia and Herzegovina, food and water rations were minimal and often unfit for human consumption and when coupled with profoundly unsanitary facilities, made conditions for the prisoners unbearable:

> "160. Only one meal a day was provided at Omarska for prisoners, consisting of a plate of watery potato soup and a small slice of bread or just rotten beans, and the suffering from hunger was acute. The prisoners were fed in batches of about 30 at a time and had to run to and from their daily meal, often being beaten by guards as they came and went. They were then allowed only a minute or two in which to eat. When they first arrived at the camp, some prisoners did not however, receive either food or water for several days. Many of those confined in the white house received no food at all during their time there. Some prisoners, particularly those already badly injured by beatings in the camp, often chose to miss their daily meal for fear of further beatings on the way to, or return from, the meal. Some prisoners lost 20 to 30 kilograms in body-weight during their time at Omarska, others considerably more.
>
> 161. Drinking water at Omarska was often denied to the prisoners for long periods and was, in any event, unsuitable for human consumption, causing sickness. There was very little in the way of lavatories; prisoners had to wait hours before being allowed to use them, and sometimes risked being beaten if they asked to use them. Prisoners were often forced to excrete and urinate in their rooms. There were no effective washing facilities, and men and their clothes quickly became filthy and skin diseases were prevalent, as were acute cases of diarrhoea and dysentery.
>
> 162. The crowded rooms were stifling in the summer heat and often guards refused to open windows in rooms crowded to overflowing or demanded the handing over of any possessions prisoners had managed to retain as the price of an open window or a plastic jar of water." [*ibid.*, pp. 60-61, paras. 160-162].

360. All prisoners at the camp were interrogated at some point. The Trial Chamber found that these interrogations would generally be accompanied by beatings. Beatings were also administered by people from outside the camp, who were allowed to visit the camp freely. Many inmates succumbed to the inflicted beatings:

> "163. Prisoners were called out for interrogation, usually some days after their arrival, and would be taken by a guard to the first floor of the administration building; guards would beat and kick them as they went. Some prisoners were very severely beaten during interrogation, a guard standing behind the prisoner, hitting and kicking him, often knocking him off the chair in which he sat; there were instances where prisoners knocked to the floor would be trodden and jumped on by guards and severely injured; all of this while the interrogator looked on. Treatment varied from prisoner to prisoner and seemed to depend rather more on the brutality of the individual interrogator and guards rather than on the behaviour of the particular prisoner. Prisoners, after their

interrogation, were often made to sign false statements regarding their involvement in acts against Serbs.

164. The calling-out of prisoners was not only for the purposes of interrogation. In the evening, groups from outside the camp would appear, would call out particular prisoners from their rooms and attack them with a variety of sticks, iron bars or lengths of heavy electric cable. Sometimes these weapons would have nails embedded in them so as to pierce the skin. On occasions knives would be used to slash a prisoner's body. The prisoners as a whole feared groups of men from outside the camp even more than they did the regular camp guards. These groups appeared to be allowed free access to the camp and their visits greatly increased the atmosphere of terror which prevailed in the camp. Frequently prisoners who were called out failed to return and witnesses who were their close relatives gave evidence that they had never been seen since, and were assumed to have been murdered.

165. Women who were held at Omarska were routinely called out of their rooms at night and raped. One witness testified that she was taken out five times and raped and after each rape she was beaten.

166. The white house was a place of particular horror. One room in it was reserved for brutal assaults on prisoners, who were often stripped, beaten and kicked and otherwise abused. Many died as a result of these repeated assaults on them. Prisoners who were forced to clean up after these beatings reported finding blood, teeth and skin of victims on the floor. Dead bodies of prisoners, lying in heaps on the grass near the white house, were a not infrequent sight. Those bodies would be thrown out of the white house and later loaded into trucks and removed from the camp.

167. The red house was another small building where prisoners were taken to be beaten and killed. When prisoners were required to clean the red house, they often found hair, clothes, blood, footwear and empty pistol cartridges. They also loaded onto trucks bodies of prisoners who had been beaten and killed in the red house." [*ibid.*, pp. 61-62, paras. 163-167].

361. The findings of the Trial Chamber are reaffirmed by evidence gathered by, among others, the Commission of Experts, who dedicated a long section of their Report on prison camps to Omarska. In the following passages, the Applicant will illustrate the conditions under which the prisoners were held with examples provided by various authoritative sources.

362. According to the Commission of Experts, the newly arrived prisoners of the Omarska camp were divided into three categories. These categories roughly corresponded with the selection made at the Keraterm camp [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 189-190, paras. 1552-1557]. Croats and Muslims who had defended themselves against the Serb forces which attacked their towns and villages in the region, were specifically targeted for the cruellest treatment. Most rich and educated persons brought to the camp were, in addition, killed before the camp was abandoned in August 1992 [*ibid.*, pp. 213-214, paras. 1724-1730].

363. After their arrival at the camp, the prisoners would be "interrogated" at least once. The "interrogations" were generally held on the top floor of the administration building, also described above by the Trial Chamber of the ICTFY, and were seized as an ideal opportunity to torture the detainees and to extract false confessions. The following example of such an "interrogation" was given by the Commission of Experts:

> "1677. One subject reported that on 27 July 1992, he was called out of the 'white house' by two soldiers and then taken to an upstairs room in the building where the kitchen was located. He stated that in the interrogation room the chief sat behind a table and two men sat one on each side. One of the two asked questions, and the other two wrote them down. After taking personal data, the chief said he wanted to eat his lunch, and the other two men reportedly took the subject into another room where there were other soldiers: a total of five men. Each man reportedly held an object for use in a beating. The objects were reported to be: a police stick; a whip; a rubber stick; a metal stick that was square in shape; and a metal ball on a chain. The subject was reportedly told to get on his knees and hands and each man hit him on the back, legs, and neck with one of the objects. The refugee stated that he had heard from the other prisoners that it was important not to fall flat on the floor because then all of the men would hit him at the same time. He stated that he was then hit repeatedly about the legs with the metal stick until his legs grew numb. After the beating he was reportedly returned to the interrogation room. The chief then reportedly asked the subject if he was ready to hear his accusation, which stated that the subject was accused of having said in Donja Puharska that Muslim men would kill all Serbian men and would keep the Serbian women for use in reproduction purposes and for sexual training of young Muslim boys." [*ibid.*, pp. 207-208, para. 1677].

364. The prisoners were not only beaten during the so-called interrogations; in the Omarska camp, there were no safe havens:

> "1686. One subject reported that on 6 June 1992, an identified prisoner looked through the camp's kitchen window when eating and was shot dead for doing so by a guard on the outside. The subject also reported that on the same day an identified prisoner was eating by the kitchen when he was asked by a guard what he was doing. The prisoner reportedly replied 'I am eating cheese (Bojrum) would you like some?'. As the word 'Bojrum' was of Turkish origin the guard reportedly took exception to its use and began to beat the prisoner. He was thereafter joined by two other guards who reportedly beat the prisoner to death. This same incident was reported by another source who stated that several prisoners witnessed the beating and killing of an identified prisoner. According to the source, the prisoner-victim received his daily slice of bread after which a guard said 'Dobar Tek' (good appetite) to which the prisoner spontaneously replied 'Bujum' (the Muslim equivalent). According to this source, several guards beat the prisoner senseless. He thereafter lay on his back and vomited and suffocated as guards reportedly prohibited others from turning him over. Another source reported that on 6 July 1992, a prisoner said 'bujrum' to one of the guards was then beaten until he died ('they were jumping on his chest until they broke his breast plate')." [*ibid.*, p. 209, para. 1686].

The forgoing statement clearly illustrates the way beatings and killings were motivated by anti-Muslim and anti-Croat sentiments.

365. The Omarska camp contained two small buildings which were exclusively used for torture: the "white house" and the "red house". These buildings were described by the Trial Chamber as places were people were taken to be tortured and killed. The Commission of Experts reported that the conditions at the "white house" were terrible, but that on occasion, prisoners would returned from it. From the "red house", however, no one ever came back [*ibid.*, p. 216, para. 1746]. Former inmates of Omarska estimated that up to forty persons were killed per day in the "red house" [*ibid.*, p. 216, paras. 1749-1750]. In the "white house", an average of fifteen prisoners was killed each night [*ibid.*, p. 217, para. 1760].

366. Prisoners were usually not shot; the Serb guards and daily visitors to Omarska had a sadistic preference for other methods of killing. The following was reported by the Commission of Experts:

> "According to one subject, a prisoner begged to be killed by a gun and the answer was 'no', a bullet is too expensive. According to the subject, the victim was thereafter tortured to death. Another subject similarly reported that executions at the camp were usually carried out with knives or by beating and seldomly with firearms. He stated that a BiH Muslim prisoner survived three beatings and after the fourth beating he lay dying on the floor. One of the guards reportedly asked 'what is your last wish?' The prisoner reportedly first asked for some water and then to be killed with a bullet. The guard reportedly gave the man water and let the man die from his beatings." [*ibid.*, p. 222, para. 1796].

367. The United States government recounted the following incident that took place at the Omarska camp:

> "The brothers were reluctant to estimate how many killings they had personally observed that first week, but suggested it was about 50. They saw five of their fellow prisoners stabbed in the face and cut across the throat until their heads were virtually severed. Others had the Serbian (Orthodox) cross carved into their chests or arms." [United Nations, *Letter Dated 5 November 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24791, 10 November 1992, p. 10].

The American journalist Roy Gutman reported that in late July a prisoner was poured over with gasoline by a Serb guard and subsequently set alight [Roy Gutman, *A Witness to Genocide*, Shaftesbury, 1993, p. 98].

368. The Commission of Experts reported many castrations. Serb guards and visitors repeatedly engaged in sexual torture resulting in the castration of prisoners:

> "A young Bosnian Muslim subject who owned a Suzuki motorcycle was reportedly tortured in front of the other prisoners, after which time his teeth were knocked out. According to one subject, the guards then tied one end of a wire tightly around the prisoner's testicles and then tied the other end of the wire to his motorcycle. A guard then reportedly got on the motorcycle and sped off.
>
> 1769. According to one subject, a prisoner on an unspecified date asked an extreme guard if he could sneak him a bit of bread. The prisoner reportedly said 'I'm hungry' to the guard. The guard then reportedly ordered another prisoner to take off his pants and then told the first prisoner to kneel in front of the other man. 'If you're hungry, now you'll eat eggs', the guard reportedly said. 'If you don't eat, I'll cut your throat', the guard added. The subject said that the prisoner bit off the testicles of the other man who died shortly thereafter.
>
> (...)
>
> 1771. A television media report featured prisoner eyewitnesses and a prisoner participant in an often reported castration incident alleged to have occurred on approximately 17 June 1992. The report contained interviews with a witness who reported that Serb guards started the incident by calling up names. Q, the participant, confirmed that at around 5:15 p.m., Serb soldiers in camouflage uniforms came in to pick out a cafe-owner and active policemen to beat them up. He also reported that the guards later dragged out two truck-owners and three policemen and thereafter beat them and carved crosses on their bodies with bayonets mounted on automatic rifles. Q stated that he was then told to go outside with the other prisoners and that he had to drag them through the hall, half-dead. One witness reported that he witnessed as the guards first forced Q to jump into a duct filled with waste oil and shout, 'I am a pig, I love pigs!' Q confirmed that he was forced to drink motor oil from his hand and later from a beer bottle. Another witness stated that while Q was doing this, the guards were beating the others and trampled them. Q reported that he was then forced to tear off the testicles of the other prisoners with his teeth and that the men were screaming in pain. The witness stated that one victim died immediately and that two others gave some final screams and that they were thereafter taken away in a truck. The witness stated that he and others had to clean up the blood. Q stated that he was ordered by men to tear off the other prisoners' testicles. The witness stated that the guards at the time were under the command of one who was a supervisor at the camp and whose shift was said to have been the worst. The witness stated that there were about 15 guards on this individual's shift. Q stated that the guards witnessed the incident and were laughing, and the next day they told in the 'galleries' what he had done."
> [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 218-219, paras. 1768-1771].

The Commission of Experts described other castration incidents as well, which illustrates the common nature of this specific kind of torture in the Omarska camp.

369. The estimates of prisoners killed at Omarska vary between at least 1,000 and 5,000 [*ibid.*, p. 222, para. 1795; Roy Gutman, *A Witness to Genocide*, Shaftesbury, 1993, p. 139]. At some point, the camp authorities even lost track of who was still alive and who had already been slaughtered:

> "They wanted to kill me too, but their greatest mistake was they were killing but had no records, nothing. They'd call out names of people they'd already killed. Later, when we realised what was going on, we didn't answer. They missed me. We'd no papers, they didn't know who we were."
> [*ibid.*, p. 220, para. 1782].

The remains of the inmates who were killed were driven away in trucks to mass graves near the camp. Prisoners who were forced to load bodies on the trucks were often executed later [*ibidem*, p. 223, para. 1806].

370. On 13 February 1995, the commander of the camp, Željko Meakić, was indicted for genocide by the Prosecutor of the ICTFY [ICTFY, Indictments, *The Prosecutor v. Željko Meakić, & others*, Case No. IT-95-4-I, 13 Feb. 1995]. Some two years later, Simo Drljača & Milan Kovačević, the two leading members of the Crisis Staff in Prijedor and as such, responsible for the establishment and running of Omarska, were indicted for genocide as well [ICTFY, Indictment, *The Prosecutor v. Simo Drljača & Milan Kovačević*, Case No. IT-97-24-I, 13 March 1997].

371. On 7 May 1997, the Trial Chamber at the ICTFY convicted Duško Tadić for the atrocities he committed in Omarska. He was one of the "visitors" who were allowed into the camp and whom the prisoners on some occasions feared even more than the regular guards.

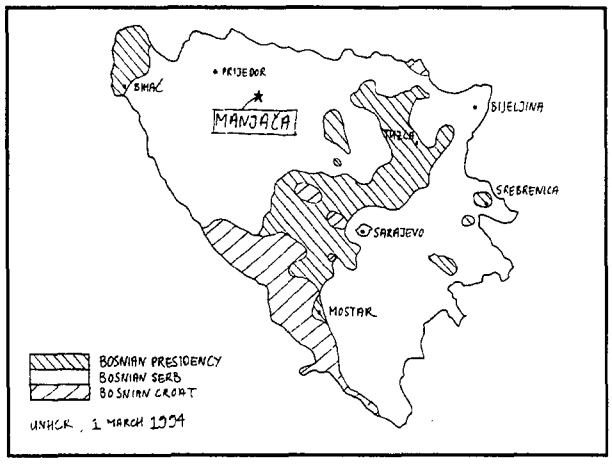
372. Tadić was convicted for actively beating, stabbing and killing Muslim prisoners in one of the Omarska hangars between 1 June and 31 July 1992 [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 86, paras. 235-236 and p. 300]. The Trial Chamber additionally found beyond reasonable doubt that Tadić was part of a group of Serbs who beat and kicked another Muslim prisoner until he was unconscious in the "white house" on 8 July 1992 [*ibid.*, p. 95, para. 261]. Tadić was convicted for another beating on 10 July 1992. The Muslim victim died as a result of the maltreatment [*ibid.*, p. 100, para. 279 and p. 300]. Around late July, a number of Serbs from outside the camp severely beat and kicked several Omarska inmates behind the infamous "white house". Tadić was one of these Serbs. For his contribution to this beating as well, Tadić was later convicted by the Trial Chamber [*ibid.*, p. 108, para. 303 and p. 300].

373. In March 1996, Prof. Manfred Nowak, expert member of the Working Group of Enforced or Involuntary Disappearances, reported that a number of inmates of the Omarska camp had been transferred to the Federal Republic of Yugoslavia to undertake forced labour in the mines of Aleksinac [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by*

Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1996/36, 4 March 1996, p. 15, para. 52].

Manjača

374. In the Counter-Memorial, the Respondent acknowledged the existence of the Manjača camp in the Banja Luka area and continued describing it as a centre "where mainly war criminals were gathered shortly before exchange" [Counter-Memorial, p. 31, para. 1.3.1.8.].



375. The Manjača camp was described by the Commission of Experts. It was situated some 25 kilometres south of the city of Banja Luka. It was located in a training centre of the JNA. There were three main detention buildings, surrounded by a fence erected to prevent the prisoners from escaping. The surrounding area was mined for the same reason. Each of the buildings housed between 600 and 700 prisoners. During the peak of its operation, in the summer of 1992, Manjača held approximately 3,700 prisoners. These numbers were, according to the Commission of Experts, confirmed by the International Committee for the Red Cross. The majority of the prisoners were men; some eighty percent Muslim, the remaining twenty percent Croat. The inmates were of all ages, but mostly between the ages of eighteen and sixty [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 33-35, paras. 254-257, 259, 267 and 271].

376. The Commission of Experts also reported on the status of the prisoners:

> "Reports indicate that the majority of the prisoners at the Manjača camp were civilians. CSCE mission member John Zerolis, a U.S. Foreign Service officer assigned to the US Embassy in Zagreb, inspected the Manjača camp and reported that he observed several thousand prisoners, none of whom were wearing any type of uniform. He stated that he was told by the prisoners that they were non-combatants and that they had been arrested from their homes. The CSCE Mission further reported that the vast majority of the Manjača's prisoners claimed to be civilians or were arrested at their homes for no apparent reason except as an integral part of 'ethnic cleansing' operations. One subject who was held at the camp said that Manjača was not a POW camp as claimed by Serbian authorities and that an estimated 95 per cent of the prisoners there were civilians." [*ibid.*, p. 35-36, para. 273].

The findings of the Commission of Experts were confirmed by the Special Rapporteur Tadeusz Mazowiecki [*ibid.*, p. 36, para. 274] and the United States Department of State [US Department of State, Bureau of Public Affairs, *Dispatch*, 28 September 1992, Vol. 3, No. 39, p. 734, Annex 29].

377. The camp was established by the Yugoslav Army (JNA) as early as the summer or autumn of 1991. It was initially used to detain Croats captured in the war in Croatia. The camp remained under military control until its closure in December 1992 [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 36-37, paras. 280-281]. Manjača was closed due to intense international pressure, as was also found by the Trial Chamber of the ICTFY in the Tadić case [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 34, para. 95].

378. Many of the prisoners were transferred to Manjača from other camps [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 40, para. 302]. When Omarska was closed in August 1992, for example, the surviving inmates were transported to Manjača *en masse* [*ibid.*, pp. 42-44, paras. 314-318]. During their transport to the camp and at their arrival, the inmates were regularly maltreated:

> "328. One subject reported that during his transfer from Omarska in early August 1992, the prisoners were made to stay on the buses until 7:00 the following morning. He added that they were ill-treated and that nine prisoners were taken off the bus by guards and beaten to death. He identified four of these men and stated that they were killed for no apparent reason other than the fact that they had raised their heads. According to the subject, the first of the identified individuals was beaten to death after first begging to be killed swiftly. Subject said that after beating this victim to death, guards urinated on the body. The subject also described and identified another prisoner who was stabbed to death after looking out of the bus window. The subject stated that the prisoners were thereafter called out of the buses by name and formed into groups of 100. He said

> they were marched into barns outside of the fenced camp area where they were made to strip naked and adopt the Islamic position of prayer and shout blasphemies. He added that their clothing was searched and items such as razor blades and toothbrushes were confiscated.
>
> 329. One subject who was transferred to Manjača from Omarska in early August stated that on the morning of 7 August, the guards at Manjača called out the names of about eight prisoners who were taken from the buses and shot or beaten and slashed to death. He stated that several prisoners inside the bus were able to peek through the curtain and witnessed the killings. He stated that once removed from the buses, the prisoners were seated on the ground in two groups of 600 men each. Each group reportedly formed 60 rows of 10 men. According to the subject there was no water and each prisoner was required to sit with his head between his knees. He said that the first 600-man group entered Manjača at about 3:00 p.m. and that the second group followed two hours later. Once inside the camp, he stated that for the first time prisoners received medical attention. He added that those who were sick, very old, very young, or injured, were sent to Trnopolje in two buses." [*ibid.*, p. 45-46, paras. 328-329].

The horrendous reception of the new inmates at the Manjača camp was also related by the United States Department of State [US Department of State, Bureau of Public Affairs, *Dispatch*, 26 July 1993, Vol. 4, No. 30, p. 544, Annex 18].

379. Manjača was visited by the International Committee of the Red Cross (ICRC). Special Rapporteur Tadeusz Mazowiecki, however, was denied permission to visit the camp when he tried to inspect it during the last week of August 1992:

> "33. Despite being denied access to the Manjaca prison camp, the Special Rapporteur has received ample information about conditions there. Most sources give the number of detainees as being approximately 4,000 men, who are housed in large, open buildings formerly used as stables. Physical conditions were especially bad during the first several months after the detention facility was opened. Evidence of serious malnutrition, harsh discipline, strictly rationed water, poor sanitation, overcrowding, lack of proper medical care and beating of prisoners has been received form a variety of credible sources. Physical conditions have improved somewhat since the camp began to be visited by international bodies in August." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, A/47/666, S/24809, 17 November 1992, p. 14, para. 33].

380. In spite of the regular visits of the ICRC, the conditions within the camp remained atrocious. Food rations were far below the necessary minimum. Inmates lost between ten and forty kilograms during the first months of their detention in the camp [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 50, para. 360].

381. During their stay in Manjača, the inmates were routinely subjected to beatings:

> "386. One report quotes a subject who stated that every day guards took him and the other prisoners out of the stables at 7:00 a.m., and forced them to sit in the sun holding their heads down with their hands behind their backs. He stated that Serb guards forced them to stay in that position until 3:00 to 4:00 p.m. He added that Serb guards, soldiers and civilians came to beat them with bats, pieces of wood, metal bars, hoses, wire cables, and that they kicked them, and hit them in the kidneys, across the neck, back, and over the head. He stated that Serb civilians were let into the camp, including women and children, and that they spit on the prisoners, stoned them and beat them with various objects. He stated that some of them even cut fingers from the prisoners' hands, leaving only three fingers (the Serb salute)." [*ibid.*, p. 53, para. 386].

Testimony presented by a former camp inmate to the United States Senate Committee on Foreign Relations provided a harrowing account of the prisoners' treatment at Manjača:

> "when we arrived, almost all of us knew where we were: in Manjaca, a place that was in the pre-war period used as a military ground of a tank division for the Yugoslav Peoples Army. Six barns were a part of the complex (...) As we arrived, I noticed that this huge place was surrounded by barbed wire and soon I realized that mine-fields were set up around the camp in order to prevent our escape. I estimated that it took several months to set up the camp. Soon I realized that people from cities of Ključ, Sanski Most, Mrkonjic Grad were being brought to Manjaca, and later-as the camp at Omarska was closed down, the detainees from Prijedor were also shipped to Manjaca. Barns in Manjaca could hold between 650-700 people. We were told to sit on the concrete floor, our heads down, hands behind our backs. They started taking people away already on the first evening. Those people were systematically beaten in a separate room, hours at a time. Soon we found out that there was a system behind the beating procedure; a policeman would hold the detainee, while three others were beating him with police batons and metal sticks or kicked with soldier boots. Us detainees were not able to help the beaten people who were returned to the barn. The only thing we could do and that was only sometimes, is to hand them some water (...) None of use [sic] could sleep, since night after night we were listening to their moaning and screaming. None of us knew when it was going to be his turn. They were especially vicious toward intellectuals and well-respected people. I remember the case of Omer Filipovic, a respected Muslim from Ključ, who was beaten with metal sticks throughout the night to death. If a police guard would think that one man was not following their rules in the camp, men in the whole barn were beaten that day. Very soon we realized that our torturers were men highly trained for such violent sadism. The commander of the camp was Bozidar Popovic. I found out he was from Monte Negro and he was a lieutenant colonel in the Yugoslav Army" [War Crimes in the Balkans Senate Hearing 104-448, Joint Hearing before the Select Committee on Intelligence of the United States Senate and Committee on Foreign Relations of the United States Senate, 104th Congress, first session, 9 August 1995, pp. 61-62].

The Manjača camp thus fell under the command of the Yugoslav Army, until December 1992, when the facility was abandoned.

382. The camp held a limited number of women. During their stay in Manjača they were raped repeatedly. One young girl was raped in front of her mother and died soon afterwards. Muslim inmates were also coerced to rape female prisoners. A 14 year-

old boy was, for example, forced to have sex with a 60 year-old woman [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 53-54, paras. 393-394].

383. Both the Thomson CSCE Mission and the Commission of Experts found that in the Manjača camp, numerous deliberate killings of prisoners took place [*ibid.*, p. 51, paras. 368-369]. Some incidents will be related in greater detail below, as described by the Commission of Experts:

> "370. One subject stated that almost everyday in the late afternoon, six to eight 'Martićevci' [Serb paramilitaries from Republika Srpska Krajina] would come to the prisoner housing and pick from five to 10 prisoners to torture them in a building which the prisoners called Samica (meaning single prison cell). The subject was never personally beaten in this manner but reported that other prisoners were made to stand at the wall and were beaten with bats, rubber clubs, metal wires, electric cables, and other objects. According to the subject, prisoners were also kicked about the head and face when they were unable to walk. The subject said that some of these prisoners died and some were shot in the Samica. He stated that prisoners who were picked up after 8:00 p.m. were almost always beaten to death and did not return from the Samica.
>
> 371. A subject who was brought to Manjača in late May 1992, stated that every night after dark, several guards would come to the barn with a list of names to remove approximately five to six prisoners whose names were on a list. Those prisoners were then taken to the Samica building which was approximately 50 metres from the barn where the subject was held. The subject stated that the prisoners in the adjacent barn could hear the screams of the prisoners while they were being tortured. He said that the prisoners on the lists were generally either people of standing or members of the Party for Democratic Action (SDA - Stranka Demokratske Akcije).
>
> 372. Another subject who was brought to the camp in early June said that every second day the camp guards beat him in the evening after the prisoners had gone to bed. He said that the guards walked past his housing stall and read out about 10 names. The prisoners followed the guards to a room near the kitchen, and each prisoner was beaten for 20 minutes to a half-hour. He said, 'We were beaten until we fell over. It was best to stay up as long as you could. It was easier to take body blows than to be kicked.' It was also reported that one prisoner earned the nickname 'rubber man' because he never let himself be knocked down.
>
> 373. One subject described beatings at the camp with high voltage wire. The subject said that once the prisoners fell, they were kicked until they died.
>
> 374. Another subject reportedly witnessed the guards at the camp shoot a man and then jump on his head. The prisoner decedent was not identified. The same subject also reported prisoners being forced into genital biting.
>
> 375. One report quotes a subject who said that prisoners at the camp were frequently beaten. He reportedly lost 11 teeth in three days due to beatings. He alleged that Serbian soldiers were 'taking out' the skilled people and the 'intelligentsia' from a list. He alleged that when a new group of prisoners arrived at the camp the soldiers selected 10 persons at random and cut their throats.
>
> 376. One subject who was transferred to the camp from Ključ in late June 1992, said that on 27 August 1992, he was severely beaten. He said that on 28 August 1992, he witnessed the President of the Party for Democratic Action in Prijedor and two other men being killed. He said that the

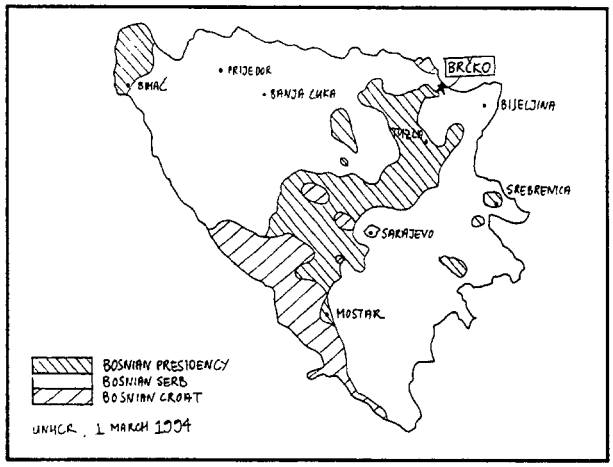
prisoners were beaten in an area that was used for solitary confinement of prisoners, about 100 metres from the barn." [*ibid.*, pp. 51-52, paras. 370-376].

Although prisoners were regularly beaten and killed by the guards during their stay in the camp, inmates generally remarked that the conditions at Manjača were far better than those at Omarska [*ibid.*, p. 52, para. 377].

384. In September 1995, mass graves were discovered near Krasulje in northwest Bosnia and Herzegovina. The graves contained 540 (five hundred and forty) bodies of persons previously detained at Manjača in 1992 [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1996/36, 4 March 1996, p. 15, para. 52].

Luka

385. The Luka camp was located in the Brčko area on the southern bank of the Sava River, which serves as the boundary between Bosnia and Herzegovina and Croatia.



386. In the Memorial, the Applicant referred to the treatment of Muslims and Croats in this area and the Luka camp operated by Serb forces from May until July/August 1992 [Memorial, pp. 27-29, paras. 2.2.1.16-2.2.1.20]. In response, the Federal Republic of Yugoslavia stated that the evidence presented by the Applicant is "of such scope and character that they escape serious court control". All "allegations"

with regard to the Luka camp are denied "as untrue and unproved" [Counter-Memorial, pp. 34-35, para. 1.3.1.21.].

387. In the Memorial, the Applicant also explained how the remains of the victims were at times disposed of [Memorial, p. 28, para. 2.2.1.18]. Bodies were destroyed in a meat processing plant or burned in nearby factory furnaces. In its Counter-Memorial, the Respondent did not deny that these acts were committed, but it most vehemently repudiated the evidence showing that the remains were also thrown in the Sava river:

> "such allegations are impossible to prove without corpses or eyewitnesses. There is no witness in Bosnia-Herzegovina and the FR of Yugoslavia that has seen such a corpse. When the Serbs were killed and thrown into the Sava river in World War Two, corpses could be seen along the entire course of the Sava river and it was not possible to hide them." [Counter-Memorial, p. 35, para. 1.3.1.22.].

The Applicant cannot take denials of this type seriously in light of all available evidence. The statement quoted above shows, however, that the Respondent is aware of the fact that bodies thrown into a river remain visible as *corpora delicti*. If that is indeed what history taught the Respondent, it is remarkable that it has not denied the "procedure" followed at Luka, which implied that many corpses were first destroyed in a processing plant before the remains were thrown into the river Sava.

388. In the following pages, the Applicant will show that the non-Serb inmates of the Luka camp were tortured, raped and killed in great numbers. It will also show that the corpses of the prisoners were indeed disposed of in the most inhumane ways.

389. On 30 June 1995, the Prosecutor at the ICTFY indicted two Serbs for the part they played in the atrocities committed in the Luka camp: Ranko Češić and Goran Jeličić, also known as the "Serb Adolf". Jelisić was the acting commander of the camp. In the Indictment, the Prosecutor gave an overview of events in the Brčko region in May 1992 and the role of the accused in the months following the Serb take-over:

> "1. Beginning on about 30 April 1992, Serb forces from Bosnia and elsewhere in the former Yugoslavia fought to obtain control of Brčko, a town and municipality in the Republic of Bosnia and Herzegovina in the former Yugoslavia. Serb forces forcibly expelled Croat and Muslim residents from their homes, and, with the assistance of local Serb authorities, held them at collection centres, where many were killed, beaten or otherwise mistreated. Many of the women, children and elderly were confined at the nearby village of Brezovo Ploje. Most of the men of military age, and a few women, were taken to Luka camp.
>
> 2. From about 7 May 1992 until early July 1992, Serb forces confined hundreds of Muslim and Croat men, and a few women, at Luka camp in inhumane conditions and under armed guard. From

about 7 May 1992 until about 21 May 1992, detainees were systematically killed at Luka. Almost every day during that time, the accused, often assisted by camp guards, entered Luka's main hangar where most detainees were kept, selected detainees for interrogation, beat them and then often shot and killed them.

3. The accused, often assisted by camp guards, usually shot detainees at close range in the head or back. Often, the accused and camp guards forced the detainees who were to be shot to put their heads on a metal grate that drained into the Sava River, so that there would be minimal clean-up after the shootings. The accused and guards then ordered other detainees to move the bodies to one of two disposal areas where the bodies were piled until they were later loaded on trucks and taken to mass graves outside the town of Brčko or disposed of in other ways.

4. From about 21 May 1992 until early July 1992, the detainees were subjected to beatings and, less frequently than before, killings.

5. In early July 1992, the surviving Luka detainees were transferred to another detention camp at Batković.

6. During the time Luka camp operated, the Serb authorities killed hundreds of Muslim and Croat detainees" [ICTFY, Indictments, *The Prosecutor v. Ranko Češić and Goran Jelišić*, Case No. IT-95-10-I, 21 June 1995, pp. 1-2, paras. 1-6].

After having summarised the atrocities committed in the camp, the Prosecutor stated that

"[a]ll acts and omissions charged as crimes against humanity were part of a widespread, systematic or large-scale attack directed against the Muslim and Croat civilian population of Brčko." [*ibid.*, p. 2, para. 14],

and charged Goran Jelisić with genocide:

"In May 1992, Goran JELISIĆ, intending to destroy a substantial or significant part of the Bosnian Muslim people as a national, ethnical, or religious group, systematically killed Muslim detainees at the Laser Bus Co., the Brčko police station and Luka camp. He introduced himself as the 'Serb Adolf', said that he had come to Brčko to kill Muslims, and often informed the Muslim detainees and others of the number of Muslims he had killed (...) By these actions, Goran JELISIĆ instigated, ordered, committed or aided and abetted: (...) Genocide." [*ibid.*, p. 3, para. 17].

Despite the fact that Jelisić used to boast about the number of Muslims he had slaughtered, the true extent of the atrocities committed by the "Serb Adolf" remains unknown.

390. The Commission of Experts described Luka camp in its Report on prison camps and found that it was the largest Serb camp operated in the Brčko area. It was situated at the brick factory and port facilities on the river Sava and consisted of three hangars, where most of the prisoners were kept, and some other buildings. The population of

the camp ranged from 1,000 to 5,000 inmates with the total number of people who passed through unknown. The majority of the detainees were ethnic Muslims and the remainder Croat. The camp population consisted mainly of men, but women were also detained [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 92, para. 748].

391. In its Report on prison camps, the Commission of Experts described the conditions under which the prisoners were held. Internees in the largest hangar were forced to sleep standing because of the limited space. In the other two hangars the internees were allowed to sit along the wall, but their legs had to remain straight out along the ground. The prisoners were allowed to use the toilet, once a day, for no longer that one minute. At times blood would be ankle deep from behind the third hangar where the dead bodies were usually kept until disposed of. Food rations in the camp were insufficient; each prisoner initially received no more than fifty grams of bread and one small cup of thin bean soup per day. Later the rations were drastically cut [*ibid.*, pp. 95-96, paras. 775-777].

392. The detainees of the camp were tortured, raped and killed systematically. The systematic nature of the atrocities was described by the Commission of Experts with the example of a Bosnian Muslim from Brčko who had been arrested when Serb forces stormed his neighbourhood. After his arrest he was taken to Luka:

> "755. During his first days at the camp, the captors called out names of prisoners from electoral rolls. All those who were members of the SDA (a Bosnian, primarily Muslim, political party) or who had held positions of leadership in business or industry were killed. Shootings often occurred at 4:00 a.m. The witness estimates that during his first weeks at Luka more than 2,000 men were killed and thrown into the Sava River.
>
> (...)
>
> 757. The witness was interrogated on the seventh day of his captivity. This was the stage when detainees with property or money were subjected to questioning and torture. The witness, who was affluent, would not describe his own beating. By this point, all prisoners known to have been politically active had already been killed.
>
> 758. Following his second week in the Luka facility, the witness saw guards torture or kill Serbs who had hidden or helped Muslims. The camp commander designated a Bosnian Serb who had been a waiter at a Brčko hotel to seek out specific ethnic Serb prisoners for interrogation because he knew most of the Brčko area residents by name.
>
> 759. After the witness had been interrogated, he was taken with other prisoners to Hanger Two of the loading dock, where they were forced to look at a pile of more than 200 corpses or torsos. Most of the body parts had been chopped off: hands, arms, and genitals. The prisoners standing

> outside Hangar Two were told they would end up like that if they told lies while being interrogated.
>
> 760. Looking out of the window during one of his interrogations, the witness saw the soldiers gang-rape a woman whom he had known since his high school days, and murder her husband. A Brčko school teacher among the guards, an ethnic Serb, was shot dead for refusing to join in the torture and killing of this couple." [*ibid.*, pp. 93-94, paras. 755-760].

393. After having killed all of the non-Serb elite, the Serb guards started torturing and killing the prisoners at random:

> "777. Apparently, murder and torture were a daily occurrence. Such activity often appeared to be random. Reports received described a plethora of various acts of violence and degradation. For example, witnesses reported ears and noses cut off and eyes gouged out. Some of the internees were killed for such slight infractions of camp rules as raising a leg off the ground. Many prisoners were killed by being shot in the back of the head. Such killings were usually carried out near floor drains which emptied into the Sava River. Knives were reported to be used to cut into the skin of the internees all the way to the bone and others had their fingers cut off.
>
> 778. Guards regularly beat prisoners with different types of clubs. Some prisoners were reportedly beaten with clubs to the point that their faces caved in and were then simply left to die. Another form of maltreatment was to jump from tables onto internees breaking their ribs and other bones. Many men were allegedly castrated. Such atrocities were almost always reported to have been committed in front of other detainees. The bodies of the dead or dying internees, were often taken to the camp dump or moved behind the prisoner hangars. Other internees were required to move the bodies. Sometimes the prisoners who carried the dead were killed while carrying such bodies to the dump. The dead were also taken and dumped outside the Serbian Police Station located on Majevička Brigada Road in Brčko." [*ibid.*, p. 96, paras. 778-779].

394. The most monstrous acts were committed by Serbian paramilitaries and special soldiers from the Federal Republic of Yugoslavia, thus illustrating the direct involvement of the Respondent in the camp:

> "779. One source indicates that these daily atrocities were committed by 10-15 Serbian paramilitary soldiers and an unknown number of Arkanovci, Šešeljovci, and Yugoslavian Federal Specijalci soldiers, as well as by Serbian police. Internees were often told to sing and those that did not sing loud enough were shot point blank. After the singing started the guards would often come in and start randomly shooting the internees. In one undated incident, approximately 50 men, women and children were killed. The internees were told that this was in retaliation for the deaths of 12 Serbian paramilitary soldiers killed at the front. This type of random shooting was reported to have occurred on a daily basis with anywhere from 15-50 victims.
>
> 780 There was also reported to be a torture room at the camp, and those internees taken there never returned. Those tortured were either killed immediately or left to bleed to death in pools of their own blood. No other prisoners were allowed to help them and if they did not die on their own within two to three days, they too were then shot to death.

781 It was reported dozens of Muslim prisoners had crosses engraved into their foreheads with knives and were then given Orthodox names such as Aleksander and then required to repeat, for example, 'I am Aleksander'." [*ibid.*, p. 96, paras. 779-781].

395. The female prisoners of the camp were not spared. Their treatment was as bad as the treatment of the men, if not worse. The United States Department of State related the atrocities committed to young non-Serb women:

"A 55-year-old Bosnian Muslim from Brcko was a prisoner at Luka camp during which time he saw teen-aged girls being brought, eight to ten at a time, into the camp commander's office building on Wednesdays and Saturdays, between about 2 and 6 pm. The teenagers came only those 2 days of the week.
Monika, a Serbian woman in her early 20s, would say 'We've brought them.' The camp commander would take his time selecting a girl, who would then be escorted upstairs. Once the commander had made his choice, three or four guards would select another girl, and so on. Only the commander had a girl to himself.
The witness identified Monika as the well-known daughter of Brcko's leading prostitute. She bragged about her job of going around town to 'buy and prepare' the girls, and she was assisted by three men who participated in the 'delivery service', as well as serving as 'police' at Luka prison. The witness identified all of the afore-mentioned people and provided names of girls known to be dead and presumed to have died from being gang-raped at Luka camp.
Monika brought a nurse to Luka to 'prepare the girls and make them calm.' The girls apparently had no idea what was going to happen to them, because they were only slightly frightened. The witness implied that the nurse was coerced into 'treating' the girls. The witness observed Monika beating young men on the genitals repeatedly and for extended periods of time.
The nurse, also a fellow refugee, said that Monika had stabbed one girl, who had resisted being sent to the soldiers, on the breast and in the vagina with the broken neck of a glass bottle; the girl bled to death. The nurse personally witnessed this incident." [US Department of State, Bureau of Public Affairs, *Dispatch*, 19 April 1993, Vol. 4, No. 16, p. 264, Annex 19].

The above mentioned "Monika" also participated in the abusing of young Muslim and Croat men. Young men were routinely lined up in rows of three or four, Croats against Muslims. The prisoners were then forced to perform sodomy on one another while being taunted by laughing guards [*ibid.*, p. 262].

396. Between 100 and 150 Serbs from Serbia proper were in charge of the daily operation of the camp, carrying out most of the interrogation, torture and killing of prisoners [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 97, para. 789]. Local Serbs were, however, engaged as guards as well. The Commission of Experts related the story of one of these local Serbs working in the Luka camp:

"793. One of the more notorious incidents to have occurred at the Luka-Brčko camp was related by a Bosnian Serb who joined the Serbian forces and worked as a guard at the camp. On 17 May 1992, in the afternoon, six guards at the Serb detention camp in Brčko [Luka], selected 12 female

prisoners between the ages of 12 and 25 and took them to what was known as the rape room. A small room attached to the corner of one of the two warehouses used for housing prisoners at the camp. The room had no furnishings. Part of the floor was covered with cardboard. Five of the guards were from a group that had come from Belgrade. The sixth was from Bosnia. Once inside the room the girls were forced against one of the walls. Two of the guards grabbed a 12 year old girl, removed her clothes and pinned her to the floor. One held her hands while the other held her legs. The Bosnian guard was ordered to rape her. The other guards watched to ensure compliance with the order. After the rape, the victim dressed and the prisoners were removed.

794. About an hour after the rape, a group of 80 male Bosnian prisoners, [Muslims] and Croats between the ages of 20 and 50 were lined up against the wall of a ruined building located close to the river and in line with a point halfway between the two warehouses. Three prisoners between the ages of 35 and 40 who were standing closest to the guards, were separated from the group and brought to the Bosnian guard about 20 metres away. One of the other guards gave the Bosnian guard a knife about 30-35 centimetres long and ordered him to kill all three by slashing their throats. The Bosnian hesitated. The other guard grabbed his hand and forced the knife through one prisoner's neck below the ear. The knife was pulled out and the victim fell into convulsions for 30 seconds before death. The Bosnian guard was ordered to kill another prisoner in the same manner, he again hesitated so another guard pushed the knife into the prisoner's neck killing the man instantly. The Bosnian guard then tried to kill the third prisoner with the knife, failed, so finished him off with his rifle. The three bodies were loaded onto a military truck. The Bosnian guard was then ordered to kill the remaining 77. He did so with his rifle. The bodies were placed on trucks and brought to the Kafilerija farm for disposal." [*ibid.*, p. 98, paras. 793-794].

397. The Bosnian Serb guard figuring in the passage above was not the only local guard being forced to commit atrocities by special forces from the Federal Republic of Yugoslavia. New guards were ragged like freshers:

"795 A Bosnian Serb forcibly conscripted into the Reserve Contingent of the Serbian Territorial Military Police by 'Specijalci' [Yugoslav Army special forces] described a situation indicative of the atmosphere at the Luka camp and amongst the guards. He was assigned to the camp on 15 May 1992 because of a shortage of guards. Upon arrival at the camp, he was picked up by a 'specijalci' soldier in the camouflage uniform and posted on an open street about 50 metres from the warehouses. He replaced another guard who left with the 'specijalci'. After about two hours on guard around 9.00 am another soldier in camouflage came to the guard post and told him to follow. This soldier appeared to be one of those in charge. About 10 metres from a hangar, the other soldier told him it was time to have some fun. He was told that as a Serb it is his duty to rape several Bosnian Croatian or Bosnian Muslim women to show his patriotism to the government in Belgrade that had sent 'Specijalci' to Brčko to liberate local Serbs. He was told that unless he got his hands dirty like the rest he would be shot as a traitor. After threatened with death, he agreed to commit rape.

796. He failed in his first attempt to rape a young woman about 25 who seemed to be Muslim. He successfully raped a 15 year-old girl who fought back and had to be held down by four soldiers. Ten to 12 'specijalci' stood outside the warehouse indifferent or bored, jeering and cursing the conscript when he protested. Over a period of one hour, he raped five women between the ages of 15 and 22. Not totally convinced of his loyalty and saying the rapes were just for fun the soldiers informed him that he must now do something more serious.

797. At about 1,000, two well dressed men between the ages of 30 and 50 were brought out from one of the warehouses and placed in front of its wall. The conscript was ordered to shoot. He resisted. He was then threatened with a pointed rifle, at which time he did the job. Then to further

> prove his loyalty to the Serbian cause he was told to cut some throats. He couldn't do it so the soldiers guided his hand to cut the two throats of the prisoners." [*ibid.*, pp. 98-99, paras. 795-797].

398. Special Rapporteur Tadeusz Mazowiecki estimated that up to 3,000 (three thousand) of the inmates were killed in the months the camp was operated [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, Annex II, p. 93, para. 749]. Other sources put the number of people slaughtered between 3,000 and 5,000 [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III. A, "Special Forces", p. 142, para. 396].

399. The Report on prison camps by the Commission of Experts shed some light on the final destination of the bodies of those killed in the camp, thus illustrating the methodical manner in which even the bodies were eliminated so as to leave no trace, wherever possible:

> "813. Many of the prisoners killed in Luka-Brčko were allegedly buried in a series of mass graves situated behind a local drinking establishment on the road between Brčko and the village of Brezovo Polje. The road runs parallel to and is about 500 metres from the Sava River. The mass graves lie in a wooded area between the road and the river.
>
> 814. The bodies of internees from the Luka-Brčko camp were also reported to have been transported to and burned at the old 'Kefilerija' animal feed and rendering factory in Brčko. This factory was approximately four miles from the camp and located where Bijeljinska Cesta ended and Vase Pelagica Street began. Refrigerated and TAM-110 trucks were reported to leave Luka-Brčko camp at 4.00 am each morning with approximately 20 bodies each. Additional refrigerated trucks, from other unknown locations, also arrived at this factory. When the bodies arrived at the factory they were first dumped by 10-12 internees inside a building where three large furnaces were located. Unnamed Serbian paramilitary forces then stripped the bodies of valuables before dumping them into the furnaces. This facility was also guarded by un-named 'Šešelj's' forces. The burning of the bodies started in May 1992 and prior to this time the bodies had been dumped into the Sava River until the number of bodies needing to be disposed of became too high.
>
> 815. Apparently, the ECMM reported an allegation that Serbs in Brčko destroyed the cadavers of their Muslim victims by throwing them into machines designed to grind up dead animals to make animal feed for cattle. Other Muslims were allegedly forced to operate this machine and later allegedly also killed. This may very well be a description of the Kafilerija plant.
>
> 816. It seems that yet another source had heard that children at the Luka camp had been killed and then thrown into cement mixers; their remains used as food for poultry.
>
> (...)

> 818. Another witness who allegedly spent some time at the Luka camp claimed that from 9-11 May 1992, he and three other Luka prisoners were taken to the Brčko hospital to load dead bodies into a furnace. According to this witness, the bodies had been cut into pieces and placed into 50 kilogram nylon sacks. He saw body parts from men, women and children, most with civilian clothing. The sacks were brought to the hospital in small trucks. The witness claims that he personally loaded about 200 such sacks into the furnace over the two day period. When his group left, they were replaced by another group of four men. The men were always under armed guard." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 101-102, paras. 813-816, 818].

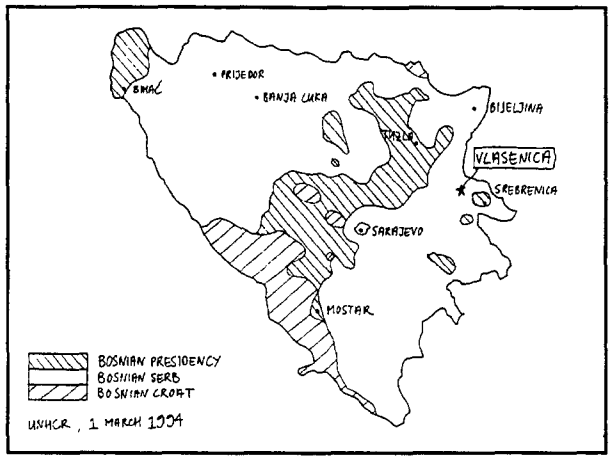
400. The conclusions of the Commission of Experts were confirmed by other sources. The corpses of the Luka inmates were indeed thrown in the river Sava, however, only after being "processed" first:

> "A prisoner who was transferred from the Luka camp in Brčko to the Batkovic camp in early September 1992 stated that while at the Luka camp he was assigned to a working party whose daily mission was to destroy corpses. The working party would collect the corpses from a freezer located at a meat processing plant and dump them into a meat processing machine. After the corpses were ground up, the working party would load the processed corpses into the trucks and dump them into the Sava River." [US Department of State, Bureau of Public Affairs, *Dispatch*, 19 April 1993, Vol. 4, No. 16, p. 262, Annex 19].

401. The Luka camp combined all the horrors of the ethnic cleansing campaign. It was a camp where people would be tortured, raped and eventually killed. Being Muslim or Croat and living in territory which the Serbs considered to be part of the future Greater Serbia, was a sufficient reason to end in the Luka camp.

Sušica

402. The Sušica camp was located in a former military depot in Vlasenica, in eastern Bosnia. The camp was not mentioned in the Memorial, as little was known about it at the time it was submitted by the Applicant. The Respondent did not mention the camp in its Counter-Memorial, although it dedicated several pages of its counter-claims to the Vlasenica area [Counter-Claim, pp. 586-589, para. 7.1.42.0.]. One may therefore assume that the existence of the camp was known to the Respondent.



403. Sušica consisted of two warehouses and one small building. At full capacity, it held an estimate of 560 to 700 prisoners [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 332-333, para. 2771]. All prisoners were civilians, as was found by the Trial Chamber of the ICTFY when it reviewed the Indictment of Dragan Nikolić, the commander of Sušica, on 20 October 1995:

> "According to the written statements as well as the oral testimony presented to the Chamber, large numbers of people were detained at Sušica camp during the period 1 June to 30 September 1992. The regular population of the camp is said to have been about 500 persons. The majority of the detainees were men but women and children were also part of that regular population. Over the entire period in question, 8,000 people are said to have been detained at Sušica camp in total.
>
> All the witnesses who testified to having been detained at Sušica camp emphasized that, at the time of their arrest, they had not been participating in a resistance movement against the authorities who had seized power in Vlasenica and who were responsible for the camp. It does not seem that such a movement could have taken shape in Vlasenica region, where the detainees were locals, during the period in which the camp was operational. The arrests seem to have taken place only after the population had been totally disarmed. Thus it would appear that the establishment of Sušica camps was aimed at detaining a defenceless civilian population which was not organised into a resistance movement." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, pp. 9-10, para. 20].

The population of the camp consisted not only of civilian men, but also of women and children, who detained in considerable numbers as well [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 335, paras. 2796-2797].

404. The civilians in the camp were all Muslim. Their persecution was, acoording to the view of the Trial Chamber of the ICTFY, solely motivated by a "discriminatory intent based principally, if not exclusively, on the religious characterisation of the targeted population" [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, p. 10, para. 21].

405. The atrocious conditions in the camp were described by the Commission of Experts in its Report on prison camps:

> "2772. Food was virtually non-existent at the camp. Each prisoner was given only one slice of bread per 24 hour period. As the summer progressed, soup was occasionally given in addition to bread, but prisoners still commonly lost consciousness as a result of malnutrition.
>
> 2773. Prisoners who had to use the bathroom were made to run to a toilet outside the warehouse in the corner of the fenced area. In such a case, other prisoners were given sticks and forced to beat the individual while they were defecating or urinating. The prisoners were not allowed to wash, and in the summer the smell is said to have been 'overwhelming'." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 333, paras. 2772-2773].

The Muslim detainees were regularly tortured:

> "2774. Prisoners were also beaten with timber and iron rods and slashed with knives at the camp. Men were regularly stripped to the waist and beaten. One ex-prisoner relates that he and others were called 'Balija' [derogatory term for Muslims] and forced to sing Serbian songs. He states that he was beaten three and four times a day. Others were even beaten to death. One such victim died in the hangar on or near 15 June 1992. Another older man who was believed by guards to have hidden weapons in Vlasenica was also beaten to death shortly thereafter. Apparently, a dead body would sometimes lie in the hangar for hours before the guards took it away." [*ibid.*, p. 333, para. 2774].

In Sušica, rape occurred as well, just as it did in all Serb camps containing women and girls [*ibid.*, p. 333, para. 2777]. After having been raped, the women were usually killed [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 53, para. 257].

406. An ex-guard of the camp related details of the activities which took place in Sušica to international organisations and the Western media. The former guard deserted the Bosnian Serb Army, which he had joined when the conflict in Bosnia and Herzegovina broke out, and fled the city of Vlasenica on 1 January 1993. The

Commission of Experts recorded his statements, in which he revealed the systematic killing in the camp:

> "2785. According to him, the camp opened on 2 June 1992 and closed four months later. During this entire time, Muslims were executed every night at the command of Dragan Nikolić, a man who now works for the Bosnian Serb secret police and was in charge of the day-to-day running of the camp. He estimates that he personally witnessed the execution of close to 3,000 Muslims from Vlasenica at the Sušica Camp and watched thousands more pass through it. He states that all of the prisoners at the camp were civilians taken from their home.
>
> 2786. The ex-guard describes how the 'selection process' for killing and transfer worked at the camp. Apparently, men suspected of having some political influence or trafficking in arms were not taken for exchange and were generally executed; others were exchanged and held for transfer to Batković camp.
>
> 2787. Despite these general guidelines, the 'selection process' was often much more random than planned. Sometimes, one brother of a family was executed while another was transferred for exchange. In short, prisoners had no guarantee that they would stay alive.
>
> 2788. An ex-guard reports that the small-scale executions took place on the camp grounds. Male prisoners were generally lined up against an electricity pylon just outside the barracks and shot. The larger ones were carried out at a nearby ravine called Han Ploča on the road toward Han Pijesak. Men were loaded into the back of a truck, taken up to the edge of the ravine about five miles away, and then shot as they got out of the vehicle. Apparently, groups of young soldiers were brought in to perform the executions. The bodies fell into the ravine and bulldozers were later used to cover them up.
>
> 2789. An ex-guard personally witnessed the mass execution of 25 people at the ravine. He claims that on this occasion one of the prisoners got away by running to the woods once he got of the truck. In all, at least 1,000 prisoners were executed at the ravine. At first, the killings took place during the day but later were carried out only at night." [*ibid.*, p. 334, paras. 2785-2789].

Most of the 3,000 (three thousand) Muslims massacred in Sušica were men. Women, however, were also killed [*ibid.*, p. 335, para. 2796].

407. As mentioned above, the commander of the Sušica camp, Dragan Nikolić, was indicted by the ICTFY. Nikolić's Indictment, which was reviewed by the Trial Chamber on 20 October 1995, consists of 24 counts. These counts include the torture and killing of prisoners. Nikolić was, for example, indicted for the murder of Durmo Handžić and Azim Zildžić:

> "6. A number of witness statements, both written and oral, of persons detained in Sušica camp reported the murder of Durmo Handžić and Asim Zildžić. Those testimonies indicate that, allegedly, one evening in June 1992, Dragan Nikolić and some camp guards approached the hangar and called out Durmo Handžić and Asim Zildžić. Shortly after leaving the hangar, these two men were subjected to serious physical assaults for more than 45 minutes by Dragan Nikolić and the guards. They were punched and kicked and struck with truncheons and rifle butts. Some prisoners actually witnessed parts of these assaults and others heard the victims cry out, scream, moan and beg for and end to their torture. Durmo Handžić and Asim Zildžić were then brought back into the

> hangar. According to the eyewitness testimony of other prisoners, their bodies were covered with bruises and their clothes were soiled and torn. Azim Zildžić had been beaten so violently that his face was unrecognizable and one eye had come out of its socket. He died shortly after having been brought back. Dragan Nikolić ordered his body to be taken away and two prisoners, Hasim and Alija Ferhatović, to bury it.
>
> Dragan Nikolić came into the hangar next morning and approached Durmo Handžić. The latter was suffering intensely from [the] beating the night before and Dragan Nikolić prohibited prisoners from helping him. Durmo Handžić thereupon begged Dragan Nikolić to kill him to put an end to his suffering. Dragan Nikolić answered that a bullet was worth more than Durmo Handžić life, that it would be wasted on him and that he should suffer before dying. Durmo Handžić died shortly afterwards. He was buried the same day by Hasim and Alija Ferhatović." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, pp. 3-4, para. 6].

After having reviewed the Indictment, the Trial Chamber invited the Prosecutor to pursue his investigation "with a view to indicting Dragan Nikolić for complicity in genocide or acts of genocide [*ibid.*, p. 20, para. 34].

408. During its existence, United Nations observers and the ICRC managed to visit the Sušica camp. In its Report, the Commission of Experts explained how the Serb guards succeeded in misleading the international visitors:

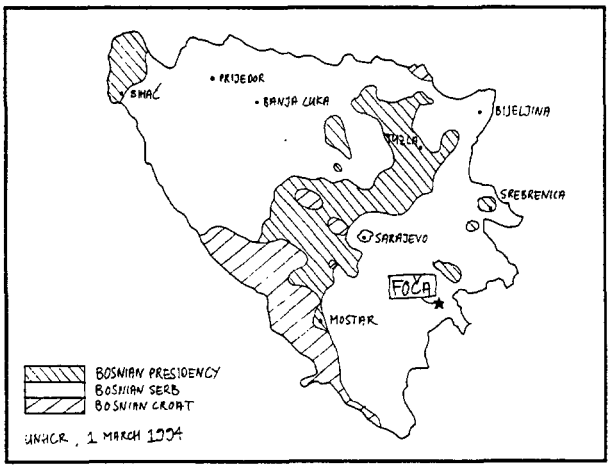
> "Sometime in July 1992, the UN apparently arranged a visit to Sušica Camp, but the prisoners were taken into the woods and forced to lie down for three hours until the UN had left. A French Red Cross team turned up at the camp unexpectedly, and a young Muslim boy in the camp who could speak French told them that it was a detention facility. The Red Cross did not do anything and shortly thereafter the boy was killed." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 335, para. 2799].

409. When Sušica was closed in the autumn of 1992, the decision was taken to execute the two hundred surviving prisoners of the camp [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", pp. 31-32, para. 166].

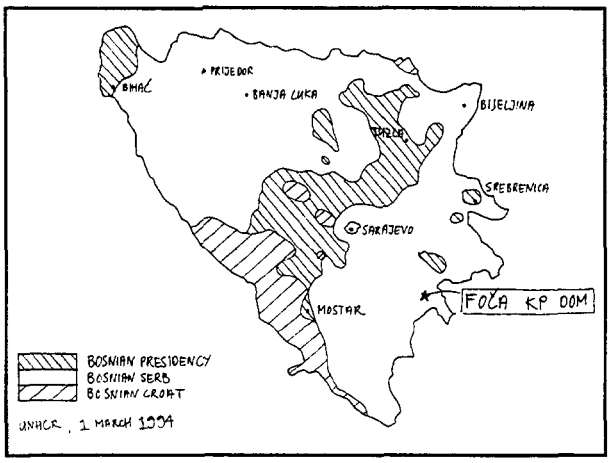
410. The bodies of the Muslims killed in the camp were buried in the Han Ploča ravine or on a waste land at a nearby aluminium factory [*ibid.*, p. 335, para. 2790]. The Mračnica Quarry, two kilometres from Vlasenica, has also been mentioned as the site of a mass grave for victims of the Sušica camp [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex X, "Mass Graves", p. 50, para. 334].

Foča KP Dom

411. Foča is a town located some sixty kilometres to the southeast of Sarajevo and the Foča area borders the Federal Republic of Yugoslavia on its western border.



412. In Foča as elsewhere, mistreatment of the civilian non-Serb population held particular consequences for women, who were imprisoned in various rape camps in the area. The Prosecutor at the ICTFY in The Hague indicted a group of Serbs for their involvement in these camps and in numerous acts of rape [ICTFY, Indictments, *The Prosecutor v. Dragan Gagović & others,* Case No. IT-96-23-I, 26 June 1996]. The Foča Kazneno-popravni Dom (KP Dom) was not a rape camp, however, as it was mainly used to imprison non-Serb men. While Muslim women, children and the elderly were generally detained in houses, apartments and motels in the town of Foča or in surrounding villages, the men were usually separated and taken to KP Dom. This selection process was described in the Indictment [*ibid.*, p. 2, paras. 1.1-1.5].



413. The camp at the KP Dom was extensively portrayed by the Commission of Experts [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 128-132, paras. 1048-1078]. The Commission displayed the way in which the former prison facility was turned into a torture and killing centre for non-Serb civilians.

414. Before the outbreak of the conflict in Bosnia and Herzegovina, the KP Dom used to be one of the largest prison facilities in the former Yugoslavia, with a 2,000 inmate capacity. On or about 1 April 1992, Foča prison guards set an unknown number of inmates free, most probably in order to make room for new non-Serb prisoners to be ethnically cleansed from the surrounding areas. According to the reports received by the Commission of Experts, all but twenty of the original inmates left the prison compound [*ibid.*, p. 128, para. 1048]. In early April, the Muslim guards of the prison were all dismissed. At the same time, the emblem on the cap worn by the prison guards was changed from a red star into the Serbian flag [*ibidem*, p. 128, para. 1049].

415. According to the Commission of Experts, the KP Dom consisted of two four storey buildings and one L-shaped one storey building. All three buildings were surrounded by two walls. One of the buildings was used for the interrogation of prisoners and for the administration of the camp [*ibid.*, pp. 128-129, para. 1050]. The number of prisoners in the camp fluctuated, but decreased as the ethnic cleansing of the area progressed. In early August 1992, when the area was still being cleansed, the camp held an estimate of 570 inmates.

416. Upon their arrival at the camp, the non-Serb prisoners would be "interrogated" and subjected to beatings. The beatings were, according to the view of the Commission of Experts, part of the daily routine. The Commission based this conclusion, among other sources, on reports received from Helsinki Watch:

> "1064. Helsinki Watch included the story of another alleged prisoner of Serb forces in Foča. He reported that detainees were beaten in the prison. This individual claims that all those interrogated were also threatened. He states that for three and a half months he was held in one room. The number of prisoners in that room, he stated, gradually increased from about 30 to 75. According to this man, a police officer would come to the room in the evening and read out the names of some men who would then be taken from the room and beaten. Although he was not beaten, he claims that some were beaten severely. Some men who were taken out reportedly never returned." [*ibid.*, p. 130, para. 1064].
>
> (...)
>
> "Bosnian Serbs captured him [a Muslim school teacher] and interned him in the men's prison from May to December 1992, when he was released in a prisoner exchange. Between 12 June and 20 June 1992, at least five or six prisoners were taken nightly from their cells and interrogated in the administration building opposite the detention building. Prisoners could see their fellow inmates taken into the two interrogation rooms on the ground floor of the administration building opposite and were able to see individuals from the waist up through windows looking into the two rooms. Two prisoners were taken into the interrogation rooms while the others waited outside under guard. Prisoners in the detention building heard screams for 20 minutes, after which a second pair of prisoners were brought into the two rooms." [*ibid.*, p. 130, para. 1066].

The interrogations of the prisoners in the camp did not serve any investigative purpose. At times, even the guards did not know what they were supposed to ask the persons being interrogated [*ibid.*, p. 129, para. 1058]. Whenever the inmates were questioned, however, the interrogators wanted the prisoners to relate the names of people who allegedly possessed weapons and the identity of members of the Party for Democratic Action (SDA) [*ibid.*, p. 131, para. 1074].

417. The beatings during the so-called interrogations of the prisoners were also reported by the United States Department of State:

> "A 59-year-old Bosnian Muslim from Foča was at home on April 27, 1992, when Serbian special forces entered his home and forced him and his son to go outside. *The soldiers wore camouflage uniforms and black headbands and were complete strangers to him. He assumes they came from Serbia because they spoke in the Ekovski dialect.*
> The witness, his son, and 18 other men from the neighborhood were taken by buses to the local KP Dom, a criminal rehabilitation center near the railway bridge on the Drina River. According to the witness, 560 Muslim men, all from the greater Foča area, were interned at KP Dom. The Serbs running the camp kept written records and biographic files on all those interned. Interrogations focused primarily on uncovering which Muslims in town had weapons.
> Those running the center instilled fear in the Muslim prisoners by selecting certain prisoners for beatings. From his window in Room 13, the witness saw prisoners regularly being taken to a

> building where beatings were conducted. This building was close enough for him to hear the screams of those who were being beaten.
> The witness said about four men were beaten almost every night between midnight and 1 am. From his window in Room 13, he saw prisoners, covered with blood, leaving the building. The witness remained at KP Dom until his release on August 29, 1992."
> [US Department of State, Bureau of Public Affairs, *Dispatch*, 19 April 1993, Vol. 4, No. 16, p. 262, emphasis added, Annex 19].

418. The KP Dom camp was mainly used to detain men. Sometimes however, women were also imprisoned. They were not treated any better than their male counterparts, as was related by the United States Department of State:

> "A 43-year-old Bosnian Muslim from Foča was in Sokuvac on April 18, 1992, when she witnessed Serbs setting fire to all the homes 500 metres below her mother's home.
> The witness was arrested at the same time by these men who shouted at her, 'Do you know who we are? We are Cetniks!' They wore stockings over their faces to conceal their identity.
> The soldiers brought the witness to KP Dom, a detention facility, to be interrogated. Following the interrogation, she was beaten with a rifle butt and bled from her ears and mouth. She then was thrown into a cell where she was the only woman. A half an hour later, a Muslim man, who had been wounded by a bullet and beaten on the head, was thrown into the same cell.
> Two other prisoners came into the cell; one was vomiting blood, the other barely recognizable because of his beating. The witness said the guards threatened to cut her up and throw her into the Drina river. She was also forced to hand over her wedding ring when a Serb fighter threatened to cut off her finger. The witness eventually was released and put on a convoy out of Bosnia." [US Department of State, Bureau of Public Affairs, *Dispatch*, 19 April 1993, Vol. 4, No. 16, pp. 262-263, Annex 19].

The women detained in KP Dom were also raped while in the camp [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 131, para. 1072].

419. After being taken away for "interrogation", many prisoners in the camp were never heard from again:

> "1053 Approximately 200 inmates were taken from the prison for unknown reasons in late August, most inmates believed they were killed by the guards. Thirty-five prisoners were taken away on 15 September and 12 more at the end of the same month, allegedly for a prisoner exchange. Prisoners released since that time failed to locate any of these men. Prisoners on the fourth floor observed guards carrying blankets containing what seemed to be human bodies and dumping them in the Drina river." [*ibid.*, p. 129, para. 1053].

Partly as a result of the killing, the number of inmates decreased from 570 in early August 1992, to 130 two months later [*ibid.*].

420. The bodies of the prisoners which were thrown into the Drina washed ashore in Goražde, which remained under the control of the Bosnian government until the end of the conflict:

> "1071. Several witnesses describe bodies dumped into the Drina River and washing up on the shores of Goražde, many, former inmates of the KP Dom. Corpses which are believed to be those of Muslims executed in Foča prison camp were seen daily in the River Drina at Goražde. Amongst them were children as young as seven. Corpses were frequently mutilated and carried signs of torture. There were seven to eight corpses a day as late as end of July 1992, although Serbs claimed Foča [was] ethnically clean." [*ibid.*, p. 131, para. 1071].

When reviewing the Indictments against Radovan Karadžić and Ratko Mladić, the Trial Chamber at the ICTFY found that the remains of the victims of the camp were routinely thrown into the Drina river [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 7, para. 13].

421. Not all killed prisoners were thrown in the river Drina. Some were also buried in nearby mass graves. The United States Department of State related the story of a Muslim woman who witnessed the regular executions of KP Dom inmates in July 1992:

> "A 40-year-old Muslim woman witnessed the killing of Foča Muslims in early July 1992.
> One night at 9 pm, the witness saw Serbs leading a group of seven people up to the 'Tito' sign on a hill overlooking Foča. She said (that) the group was driven up the hill in a yellow mini-van. The group included Nezir Hatibovic, a dentist, and his wife, Majda. She saw the Serbs make the group strip, take their money and identification cards, and murder them with knives. The bodies were thrown into the Drina River.
> During the next 4 to 5 days, the witness saw the same yellow mini-van bringing people to the same site where they were slaughtered in the same fashion. She saw some bodies thrown in the Drina, and others thrown into trucks that were driven away.
> The witness said the van came from the direction of the men's prison at the KP Dom and she suspected (that) the victims were prisoners from that camp. She believes there is a mass grave under the 'Tito' sign, and two or three mass graves near the outdoor stadium in Foča." [US Department of State, Bureau of Public Affairs, *Dispatch*, 19 April 1993, Vol. 4, No. 16, p. 258, Annex 19].

Blueprint

422. The various camps singled out above expose a precise pattern. As explained at the beginning of this Section, this pattern was described in detail by both the ICTFY and the Commission of Experts. According to the Commission of Experts, this pattern

also revealed an underlying blueprint, an "overall plan", in which Yugoslav armed forces and paramilitary from Serbia and Montenegro proper played a cardinal role:

> "31. The Bosnian Serb implementation of practically identical strategies and tactics for the conquest of territories and subsequent detention of non-Serb populations suggest an overall plan devised prior to the conflict and carried out locally. There seems to be a similarity in the structure of camps which might suggest a degree of pre-planning before the war was started. The notion of clusters of camps, triage camps, distribution camps, older persons and women and children held in established minimum security facilities, and men of fighting age held in established maximum security facilities, suggests such a plan. The similarities of the allegations of camp usage also strongly suggests that a plan did exist and was carried out across the board geographically. Reports suggest a common method of initial apprehension and identification of those non-Serbs detained for ultimate disposition (either long-term detention, deportation, or execution). A common plan is also suggested by the implementation of a system whereby prisoners were detained, classified, and subjected to similar types of abuse (e.g., it was often reported that intellectuals, politicians, police, and the wealthy were regularly tortured and killed in certain camps). There is also a similarity in the command and control of the camps, whereby there was a mix of civilian, political, JNA, paramilitary, and local Serb reservists and civilians involved in camp operations. With regard to practical aspects of camp operation, large suitable facilities appear to have been selected and prepared, to some extent, in advance. Whether a plan was established by the military, police, or politicians, is something that could not be ascertained.
>
> 32. The method by which the campaign of 'ethnic cleansing' was carried out ensured that, comparatively, the most brutal and inhumane treatment of those detained occurred within the geographic arc following the Sava and Drina Rivers of the former Yugoslavia. See examples, camps in Prijedor, Višegrad, Zvornik, Brčko and Foča, and Bijeljina. For, it is within this region of BiH that the Serbs required absolute control in order to establish a separate nation with contiguous borders and an uncompromised geographic link with Serbia and Montenegro. That control required the subjugation, if not the disappearance of the non-Serb populations of the area. In large part, that subjugation and elimination was accomplished by wholesale detention of those populations in various places of detention." [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol.IV), 28 December 1994, Annex VIII, "Prison Camps", p. 12, paras. 31-32].

Without this "overall plan" it would not have been possible to set up the intricate network of camps within days after the outbreak of the fighting. The plan as described by the Commission of Experts was in fact the *sublimation* of the Greater Serbia ideology. The camps were an important and necessary link in the policy of ethnic purification.

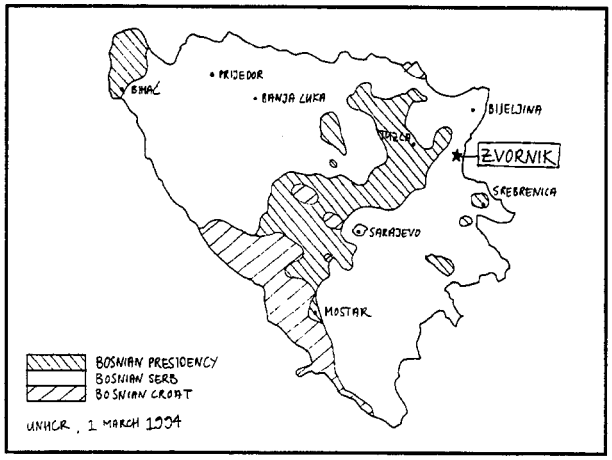
6. Zvornik

Introduction

423. The events that transpired in Zvornik in April and May 1992 illustrate how the Muslim population was erased from eastern Bosnia and Herzegovina in the early part

of the armed conflict. In April and May 1992, five centuries of Muslim life and culture in Zvornik were eradicated. Before the attacks on the area of Zvornik, a majority of the inhabitants (48,173, or 59 %) were Muslims. In August 1996, only 100 Muslims lived in Zvornik. They were outnumbered by almost 70,000 Bosnian Serbs: "the ethnicity of the population is now almost exclusively Bosnian Serb" ["Bosnia and Herzegovina. Repatriation Information Reports", *UNHCR*, Aug. 1996, pp. 84, 87]. Many Muslims were killed. Many more Muslims were subjected to acts that caused serious bodily and mental harm, including torture and rape. More than 40,000 Muslims fled Zvornik. They now live in Tuzla, elsewhere in the Federation or in third countries [*ibid.*, p. 87]. Others have disappeared. People who disappeared in Zvornik were part of the between 2,500 and 3,000 persons that according to the ICRC disappeared in eastern Bosnia and Herzegovina in May and June 1992 [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1997/55, 12 Jan. 1995, p. 29, para. 100].

424. The killings, torture, rape and expulsion of Muslims in and around Zvornik have been chronicled in an in-depth study by the Ludwig Boltzmann Institute of Human Rights [Hannes Tretter e.a., "'Ethnic cleansing operations' in the Northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, Annex 48]. A large number of intensive, preparatory interviews and 31 in-depth interviews with expellees from Zvornik were conducted for the purpose of this study. The strength of its methodology makes it a reliable source of factual information. This study was found credible and was relied on by the United Nations Commission of Experts and annexed to its Final Report [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing"]. The Commission of Experts also provided other evidence for the facts detailed below.



A brief history of the fall of Zvornik

425. Zvornik is a town in the eastern part of Bosnia and Herzegovina. It is situated directly at the river Drina, which forms the border between Bosnia and Herzegovina and Serbia. Zvornik town was inhabited in 1991 by around 14,000 people. The town of Zvornik is part of the district of Zvornik. In 1991, the district of Zvornik had a population of 81,111. 48,173 of the inhabitants were Muslim, 30,822 were Serb ["Bosnia and Herzegovina. Repatriation Information Reports", *UNHCR*, Aug. 1996, pp. 84, 87].

426. Zvornik was one of the towns that was attacked in the wave of violence in eastern Bosnia and Herzegovina in April 1992. The evidence demonstrates that the attack on Zvornik and the following expulsion of its Muslim population was carefully planned. Around the turn of the year 1991/1992, troops of the JNA were for the first time assembled in the region of Zvornik [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 7, p. 18, Annex 48]. Official maps of the JNA show that until then, there had not been an official garrison in the district of Zvornik. New JNA troops were also stationed on the Serbian side of the Drina river, supplied with tanks, artillery and anti-aircraft weapons [*ibid.*, p. 7]. About two to three months prior to the attack, military exercises in the vicinity of Zvornik were conducted. They were organised by the JNA and only Serbs were invited [*ibid.*, p. 18]. In the same period, the JNA initiated the distribution of arms among the Serb population [*ibid.*, p. 18; see also Reply, Chapter 8, Section 2].

427. In late March 1992, paramilitary units led by Vojislav Šešelj informed the Muslim residents that they had ten days during which to turn in their weapons [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 166, para. 567]. On April 4, 1992, Serbs erected a barricade to separate the town from the industrial area of Karakaj, north of Zvornik [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 19, Annex 48]. Two days later, Serb members of the police force vacated the police headquarters in Zvornik, taking with them weapons and equipment and moving them to the Karakaj industrial area [*ibid.*, p. 20]. On 7 April 1992, one day before the attack, Belgrade TV claimed that an attack by "Muslim extremists" was imminent [*ibid.*]. The Respondent has not produced any evidence that makes lends credibility to the claim that such an attack was indeed about to occur. The fact that at the time of the attack by the Serb forces, the Muslim population could not and did not defend itself makes it most unlikely that Muslims indeed had prepared their own attack. In any case, if a plan for an attack had in fact existed, which, again, is highly unlikely, this would in no way justify the facts that are detailed below.

428. On 8 April 1992, Zvornik was attacked. Units from the JNA and paramilitaries shelled Zvornik from the Serbian side of the Drina. According to several witnesses, destruction caused by artillery and tank fire was rather insignificant: "The aim was not to destroy the town, but to forestall all potential resistance activities and to frighten and terrorise the inhabitants" [*ibid.*, p. 32]. On 9 April 1992, Arkan, commander of the paramilitary unit known as "Arkan Tigers", issued an ultimatum to the Muslims of Zvornik to hand over weapons and to surrender. When they failed to do so, Arkan's paramilitary group moved into Zvornik. Infantry units of the JNA and other paramilitary troops from Serbia proper (the Šešeljevci led by Vojislav Šešelj and Mirko Jović's White Eagles) followed [*ibid.*, pp. 21-22]. Zvornik fell on 11 April 1992 [Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, pp. 222-223, Annex 21]. After Zvornik had been taken, some Muslims continued to offer resistance from the fortress of Kulagrad, situated in the north of Zvornik. The fortress was conquered on 26 April 1992, in a concerted attack by JNA troops and paramilitary units relying on JNA air support [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 20, Annex 48]. After the fall of Kulagrad, the town of Divić was attacked. Divić was almost exclusively inhabited by Muslims [United Nations, *Final Report of the United*

Nations Commission of Experts, S/1994/674/Add.2 (Vol.IV), 28 Dec. 1994, Annex VIII, "Prison camps", p. 47, para. 342]. It was occupied by the JNA on 26 April 1992 [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 23, Annex 48].

429. After the attack on Zvornik, several thousand Muslims fled either across one of the bridges over the Drina to Mali Zvornik (located in Serbia) or via Kulagrad to Tuzla. Jose Maria Mendiluce, UNHCR's most senior official in the region, who had happened to pass through Zvornik at the time of the attack, reported that he found many refugees in a narrow valley:

> "When I arrived in the car I was surrounded by 1000 people. They were all over me, begging 'Save us! Save us!' with such despair that I stayed there for an hour trying to calm them down. There were lots of dead people, wounded children on the floor looking terrified - absolutely terrified - and we could hear the sound of mortar fire approaching." [Cited in Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, p. 223, Annex 21].

430. Those who stayed behind became the target of a policy of terrorisation by paramilitary groups [Hannes Tretter e.a., "Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 25, Annex 48]. Some of those who had fled returned after a few weeks, faced with the threat that their property would be taken away [see further below]. In the months that followed, the Muslim population of Zvornik was erased by a combination of forced relocation, i-mprisonment and killings, accompanied by terrorisation, torture and rape. The deeds by which the ethnic cleansing was effectuated are detailed below.

431. It is evidenced by the facts set out below that while before the war 29% of the population was Serb, only the Muslims were targeted by the attack on Zvornik. This was foreshadowed by the fact that the Serb population of Zvornik had been informed about the imminent attack. At the time of the attack, "the overwhelming part of Serb families (...) had left the city for the weekend" [*ibid.*, p. 19, Annex 48]. That it was the Muslims who were targeted by the attack on Zvornik became fully manifest when in May and June of the same year, most of the remaining Muslim population was deported [*ibid.*, p. 29, Annex 48]. In view of the facts detailed below, there can therefore be no doubt that the Serb activities were an attempt to erase the Muslims, as a group, from eastern Bosnia and Herzegovina.

Killings

432. The attack on Zvornik was part of a sequence of fighting that started on 1 April 1992 in north-eastern Bosnia and Herzegovina and spread toward the south [Jan Willem Honig and Norbert Both, *Srebrenica: Record of a War Crime*, London, 1996, pp. 72-73, Annex 49]. In this gulf of violence, "up to 40,000 people are believed to have been killed" [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1995/37, 12 Jan. 1995, p. 13, para. 36].

433. Exactly how many of these 40,000 persons were inhabitants of Zvornik is not known. Numbers that are cited by authoritative sources differ. The Commission of Experts states that "2,500 men were killed on 9 and 10 April 1992]" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex X, "Mass Graves", p. 56-57, para. 387]. Elsewhere, the Commission of Experts cites a report that states that some 1,000 Muslims were killed in the attack at Zvornik [*ibid.*, (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison camps", p. 342, para. 2853].

434. The Commission of Experts also reports that "two hundred houses were burned, and 76 people were killed", but it must be inferred from the other numbers cited by the Commission that this concerned a specific, yet unspecified, incident during the first days of the occupation of Zvornik [*ibid.*, (Vol. V), 28 Dec. 1994, Annex X, "Mass graves", p. 57-58, para. 387].

435. Some Muslims were killed when, after the town was taken, paramilitary troops conducted a house-to-house search for Muslim men. A witness reported to Amnesty International that Arkan's men rounded up a group of residents on 10 April:

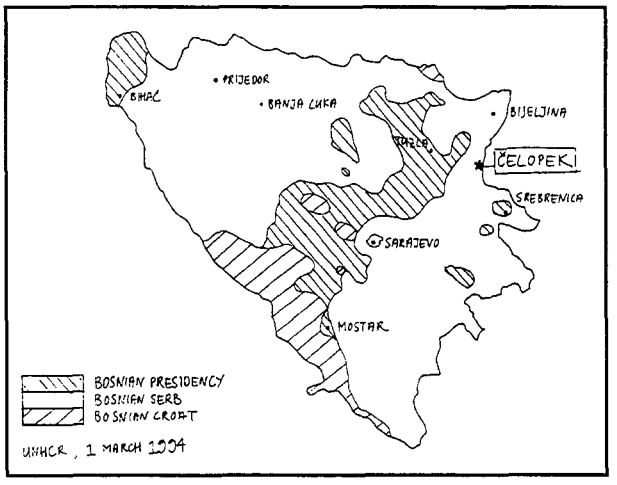
> "They were taken out into the orchard and forced to lie down. There were 15 captives in total, nine women and six men. The men were killed, and the women were locked in the cellar of a house. After three days, people from a nearby village discovered the women." [*ibid.*, (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", para. 578].

436. Mazowiecki reports what may be the same incident as follows:

> "a Serb woman, her Muslim husband and several neighbours were forced to lie down in their orchard by a group of 30 Serb paramilitaries. The woman's husband, two elder sons and three

neighbours were then allegedly strangled by the Serb forces." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, pp. 9-10, para. 34].

437. On 18 May 1992, shooting in Zvornik resumed. This forced most remaining Muslims to flee to other villages or to the woods at the edge of the village. The Commission of Experts reports that some of those who fled returned, following Serbian instructions [see further below]. The Commission reports that "The men who returned were shot in front of their families." [*ibid.*, para. 585].



438. Many Muslims from Zvornik were killed after they were imprisoned in camps or other locations. The Commission of Experts has identified one of those locations at the cinema in Čelopek. The Commission reports several instances of torture and killings at this location. In one incident, two men were "brutally beaten and then stabbed" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 346, para. 2884]. In another incident,

> "a young boy was made to identify his father, after which, a Serb soldier, put a rifle in the boy's mouth and killed him as his father looked on. This same Serb soldier then turned his semi-automatic rifle onto those on stage and those seated in the audience. This behaviour resulted in the death of 10 men." [*ibid.*, p. 346, para. 2885].

439. In May 1992, Serbian forces moved into the Zvornik village of Djulići, killing 60 residents [*ibid.*, (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 169, para. 588].

440. Strong evidence of massive killings in Zvornik is provided by the reports of Jose Maria Mendiluce, senior official of the UNHCR. While he was in Zvornik at the time the town was attacked, he witnessed the massacres and reported as follows:

> "I could see trucks full of dead bodies. I could see militiamen taking more corpses of children, women and old people from their houses and putting them on trucks. I saw at least four or five trucks full of corpses. When I arrived the cleansing had been done. There were no people, no one on the streets. It was all finished. They were looting, cleaning up the city after the massacre." [Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, p. 223, Annex 21].

441. Reports of killings were corroborated by findings of bodies. The Commission of Experts reports that

> "Many Muslims killed in the siege of Zvornik were later found floating in the Drina River. Some of the bodies had their throats cut and black Muslim berets nailed to their heads." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994-/674/Add.2 (Vol. V), 28 Dec. 1994, Annex X, "Mass Graves", p. 57/58, para. 387].

442. Further evidence of killings is provided by findings of mass graves. While not all bodies in all graves can be traced to killings in Zvornik, they are evidence of the widespread killing in the region. Findings of the Commission of Experts include the following:

> Kazambaši Cemetery: "The Kazambaši Cemetery is just outside of Zvornik proper, approximately two kilometres north-east of the city. The site is on the north-west side of the road that branches off west to Tuzla and north-east to Belgrade. It is believed to be a Muslim cemetery. In mid-April 1992, Serbian forces began using a bulldozer in the cemetery to dig large pits... After the pits were excavated, buses and trucks arrived at the site up to three times per day. On some days, no bodies were dumped, but a bulldozer operator was always on site.
>
> The excavation and burial at the cemetery was witnessed by several people. Residents of Little Zvornik (on the Serbian side of the Drina River) observed the digging of the graves and bodies being dumped into them as early as April. Another report noted that 600 Muslims, who had been detained at the Čelopek and Divić camps, were killed, loaded onto trucks by Muslim and Croatian prisoners, and taken to the cemetery for burial. On 26 May, seven boys, who were detained in the Karakaj district, were walking past the cemetery with a 'Cetnik'. On that date, they observed approximately 600 bodies being dumped into the pits from trucks. The boys described the gravesites as being on both sides of a road that ran north-west through the cemetery and about 100

metres from the main road." [*ibid.*, (Vol. I), 28 Dec. 1994, Annex X, "Mass Graves", p. 58, paras. 388-389].

Ravnaje Stone Quarry: "The Ravnaje rock quarry is located three kilometres east of Zvornik, near the Hotel Drina, in Serbia. Muslims from Zvornik reported seeing a convoy of refrigerator trucks driving on a road which leads to Ravnaje. The trucks had been loaded with the bodies of 60 prisoners, who had been shot and killed at the loading dock of the Karakaj camp slaughterhouse. A prisoner who had been one of those shot survived, watched the loading of the trucks, and was able to escape to Bosnian Muslim held territory. He joined the Muslim Defence Forces and viewed the convoy of trucks during his service with the organization. Another resident of Zvornik, who is now a refugee, also stated that she had heard of burials occurring in the gravel pits below the Drina River from Čelopek." [*ibid.* p. 58, para. 391].

Snagovo, 'Crni Ves': "Snagovo is a village in Zvornik county, eight kilometres from Zvornik proper. It is situated along the road that leads from Zvornik to Pale and Sarajevo. A former captain with the Yugoslav Territorial Defence stated that in April and May 1992, at least 500 people were buried in a mass grave at Crni Ves, which is near the village of Snagovo." [*ibid.*, p. 59, para. 394].

Snagovo: "On 1 May 1992, Serb troops in the village of Snagovo killed 42 civilians, including a pregnant woman and a two year-old child. The bodies were transported to a truck garage, placed inside, and the building was set on fire. The remains were taken to bulldozers and taken to an unidentified mass grave." [*ibid.*, p. 59, para. 395].

Grbavci Cemetery: "Grbavci is located two kilometres from Zvornik. On 18 May 1992, Serb militiamen surrounded the village and began shooting. Residents began to flee. Many of the male villagers were rounded up, put into a line, and upon an order to 'kill the Ustaša', were shot at with automatic weapons. At least 56 men were killed. Three days later, some of the villagers returned from their hiding places and buried the victims on the edge of the cemetery, between two rows of houses, near the spot where they died." [*ibid.*, para. 396].

As will be further detailed below, deportations from Zvornik continued through May and June. There is evidence that also during this later period, killings continued:

Vidakova Njiva Suburb: "Vidakova Njiva, a suburb, is just south of Zvornik proper. The alleged gravesite is located on a 1.5 kilometre stretch of land along the west side of the Drina River. A former captain with the Yugoslav Territorial Defence stated that from 9 June to 5 August 1992, between two and seven dump trucks came at night to this location and dumped corpses in trenches that had been excavated by a bulldozer during the day. It was estimated that at least 2,000 to 3,000 bodies were buried in this area." [*ibid.*, para. 392].

443. There is thus strong evidence that during and following the attack on Zvornik, substantial numbers of Muslims were killed. As noted above, the Commission of Experts estimated that about 2,500 non-Serbs were killed on 9 and 10 April 1992 alone [United Nations, *Final Report of the United Nations Commission of Experts*,

S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex X, "Mass Graves", p. 58, para. 387].

Rape and sexual assault

444. There is compelling evidence that during and following the attack on Zvornik a large number of women, and also some men, were subjected to rape and other forms of sexual assault. The Commission of Experts compiled 35 reports of rape in the area. The incidents reported by the Commission include the following.

> "In May of 1992, Serb forces attacked the area of Zvornik. In conjunction with the attack, women in the villages of Kostijarevo and Drinjača were allegedly raped after 25 to 35 men were killed in fighting. Another report states that a 12 year old girl was raped and strangled in Salihoviči, Zvornik....Another report, which may be describing the same incident, states that an identified Serb soldier kidnapped a 16 year-old girl, took her to Papraca, and kept her as his sexual slave." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and sexual assault, p. 54, para. 260].

445. Most of the reported cases of rape took place in the camps in which Muslims were detained:

> "In May 1992, nearly 400 residents were reportedly held in the home of a prominent Muslim by Serb forces. During their captivity, young women were allegedly repeatedly raped. One man stated that he was raping girls '[b]ecause [they were] Muslims and there [were] too many of [them]'. Another stated that they were planting 'the seeds of Serbs in Bosnia'. One young girl was raped by two 'Četniks' in front of her father." [*ibid.*, p. 54, para. 261].

In what appears to be an account of rape in the same place, it was reported that:

> "an 18 year-old Muslim girl was raped consecutively for five nights, each night by three different Serbian men. On each occasion, (...) two of them held her down while the third raped her. Thereafter, they switched places (...) On the sixth night of raping, the 'Cetniks' forced the victim's father to watch as they raped her. Her father was then taken to a toilet and hung for 24 hours by his neck, legs, and hands until a neighbour rescued him." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 349, para. 2909].

> "Other reports alleged that a camp was set up in a school in Salihoviči. That camp allegedly held 470 inmates. Reportedly, the youngest women were raped first, and then older women were raped. One report alleges that a girl was raped in front of her family." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IX, "Rape and sexual assault", p. 54, para. 262].

> "Reports also allege that Bosnian Muslim women from Brcko were held in a lumber factory in Čaparde, Zvornik, and 40 were taken out and raped by Arkan's troops." [*ibid.*, para. 263].

> "Several reports describe a camp in a shoe factory in Karakaj. There a female guard, a member of Arkan's troops, ordered men to have sexual intercourse with her. When they refused, she shot them. One report called the factory the 'Glinica' factory, and stated that 48 girls and women were raped there." [*ibid.*, p. 54, para. 264].

446. The rapes and other forms of sexual assault following the attack on Zvornik are illustrative of the widespread and consistent pattern of rape and sexual assault in Bosnia and Herzegovina. As in other parts of Bosnia and Herzegovina, rape took place in and outside camps, was committed repeatedly and was committed with particular brutality. These acts are detailed in Chapter 7 of this Reply [Reply, Chapter 7, Section 1].

Camps

447. Both the Commission of Experts and the Ludwig Boltzmann Institute have provided facts concerning the existence of detention camps in and around Zvornik. The camps were used to detain non-Serbs from Zvornik [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 342, para. 2852]. The Ludwig Boltzmann Institute states that the information on camps is "based on consistent witness testimonies" [Hannes Tretter e.a., "Ethnic cleansing operations" in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 19, Annex 48].

448. The Commission of Experts identified 28 detention facilities in the Zvornik area: "nine in the city of Zvornik, seven in the village of Karakaj, two in the village of Čelopek, two in Drinjača, two in Divić, and one each in the villages of Pilice, Čaparde, Baljkovica, Salihoviči, Liplje, and Novo Selo" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 342, para. 2854]. The Ludwig Boltzmann Institute names eleven camps, without claiming the list to be exhaustive [Hannes Tretter e.a., "Ethnic cleansing operations" in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, Annex I, Annex 48].

449. Many Muslims held in places of detention were subjected to acts of inhumane treatment, torture, rape and killing. In the above sections, the Applicant has already provided evidence that killings and rape were committed in certain camps around Zvornik [see above]. These accounts can be supplemented with those that follow.

450. Multiple sources have corroborated the existence of a detention facility in a "stadium" in Zvornik. The Commission of Experts reports that after Serb forces had moved into the village of Divić, women and children were sent to free territory. The men were detained in the Zvornik city stadium for several days. During the detention, the men "were subjected to severe physical mistreatment" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison camps", p. 342, para. 2856]. The Commission of Experts also reports that Muslims were detained in the "Central Prison". It reports as follows:

> "According to a Bosnian Muslim man, he and 183 other Muslims were detained at the central prison on 29 June 1992. The prisoners were beaten daily. Reportedly every two to three hours Serb guards entered the cells and removed as many as 10 inmates at a time for interrogation. The report suggest[s] that throughout the interrogation the inmates were physically abused by four or five guards at a time. The guards reportedly extracted several inmates and subjected them to mistreatment -- beating them with rifle butts, axes, or shovel handles. Those inmates who did not return were believed to have died as a result of the beatings." [*ibid.*, p. 343, paras. 2862-2863].

451. An unknown number of people were detai2ned at the "facility of the Municipal Police Force". The Commission of Experts reports that "interrogations, abuses and killings occurred here." [*ibid.*, para. 2866]. In the detention facility "Novi Standards Shoe Factory", located in the northern region of Zvornik, "Individuals were reportedly subjected to severe mistreatment" [*ibid.*, p. 344, para. 2869]. The Ludwig Boltzmann Institute reports that men arrested in Zvornik were detained and tortured here [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, Annex I, Annex 48]. It was noted above that in this facility, Muslim women had been raped. Several sources have reported on a detention facility in a garment and textile factory called "Alhos Textile Plant". The facility was initially used as accommodations for the police. One witness reported how he and another prisoner were

> "subjected to severe beatings for several hours. Following the initial phase of beatings, a short reprieve was given at which time the victims were made to clean their own blood from the floor and walls. Thereafter the beatings resumed. According to the witness, the beatings were so severe

> that both his cheek bones were smashed and the entire bone structure enclosing his upper teeth were loosened so much that the teeth protruded from his mouth." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 344, para. 2869].

452. Reports of some of the facilities indicate the existence of a coordinated program for the detention and transfer of prisoners. The Commission of Experts notes that reports relating to the above mentioned Central Prison

> "suggest the existence of a systematic prisoner transfer program. Routinely, the arrival of new prisoners resulted in the transferral of an equal number of resident detainees to the Batkovic facility." [*ibid.*, p. 343, para. 2863].

453. All of these camps were run by Serbs. Sometimes these Serbs are identified as members of paramilitary organisations from Serbia. There is evidence of at least one detention centre which was run exclusively by regular JNA units (JNA Barracks at Karakaj) [*ibid.*, para. 2876]. Guards working in the other camps were sometimes members of JNA units [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 33, Annex 48]. Further evidence concerning the camps is provided in Section 5 of this Chapter.

454. For the Muslims who survived the camps, their stay in these detention facilities was one step on the way toward their eventual deportation to non-Serb held areas. For instance, the detention facility known as "Novi Standards Shoe Factory", located in the northern region of Zvornik, was "converted into holding areas for Muslim prisoners following the creation and institution of a mass deportation program" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex VIII, "Prison Camps", p.344, para. 2869].

Destruction of cultural property

455. During and after the attack, the Serbs destroyed or damaged mosques in and around the town of Zvornik. At least fifty were demolished in other towns and cities nearby. It is reported that

> "the Serb forces, with overwhelming firepower, apparently targeted mosques for reasons that had nothing to do with military strategy. A great many mosques, including some of the best known,

were blown up after Serbs occupied the towns, numerous Bosnian sources said." [Roy Gutman, *A Witness to Genocide*, Longmead, 1993, p. 81, Annex 50].

Looting and destruction of property

456. There is evidence that demonstrates that during and following the attack on Zvornik, the property of Muslims was looted, destroyed or simply taken by Serbs. The Commission of Experts reports that in April 1992, members of Arkan's units were looting empty houses and apartments in Zvornik and taking the goods away [*ibid.*, para. 583]. Some Muslims were forced to sign statements wherein they surrendered all of their property [*ibid.*]. On 17 May 1992, "Šešeljovic entered Divić in Zvornik County and began to loot and pillage Muslim property for nine days." [*ibid.*, para. 586]. Much of the Muslim property was taken during a process of forced relocation, described below.

Forced relocation

457. The final stage in the plan for the ethnic cleansing of Zvornik was the massive deportation of Muslims from Zvornik. As the Applicant has noted above, between 1991 and 1996, the number of Muslims in Zvornik was reduced from 48,173 to 100. The deportations from Zvornik were part of a series of deportations that led to the result that "by the end of the summer [of 1992] at least 300,000 Muslims had been 'cleansed' from the eastern part of the country." [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1995/37, 12 Jan. 1995, p. 13, para. 36]. The deportations were carried out by a series of administrative measures against a continuous backdrop of terror and violence.

458. After Zvornik had been taken, Serb rule was established. Around 10 April 1992, a provisional government of the "Serbian Community of Zvornik" was founded [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 24, Annex 48].

459. Shortly after the occupation, proclamations were broadcast by Radio Zvornik, appealing to the refugees, who had fled town, to return to their workplaces [*ibid.*, p.

24, Annex 48]. The study of the Ludwig Boltzmann Institute of Human Rights concludes that

> "the experiences of those who did follow the appeal to return to the workplace showed that the true purpose of this appeal - and of others that followed - was to monitor the male Muslim population." [*ibid.*, p. 24, Annex 48].

460. In announcements in late April and early May 1992, the "Serbian Community of Zvornik" announced that any personal property had to be registered by 15 May 1992, and that all unregistered property would fall to the "Serbian Community of Zvornik". The Ludwig Boltzmann Institute study summarises the message of the appeal as follows:

> "The situation in town was now back to normal and everybody would be able to come back unharmed. Any personal property would have to be registered with the Zvornik police by May 15 as all unregistered property would otherwise fall to the 'Serbian Community of Zvornik.'" [*ibid.*, p. 26, Annex 48].

461. Following these announcements, a large number of the refugees indeed returned to Zvornik [*ibid.*, p. 26, Annex 48]. It can be concluded that this was an essential stage in the process of forced relocation: only now was it possible for the aggressors to prepare and actually carry out the final stages of "ethnic cleansing". This conclusion was also drawn by the The Ludwig Boltzmann Institute [*ibid.*, pp. 26-27].

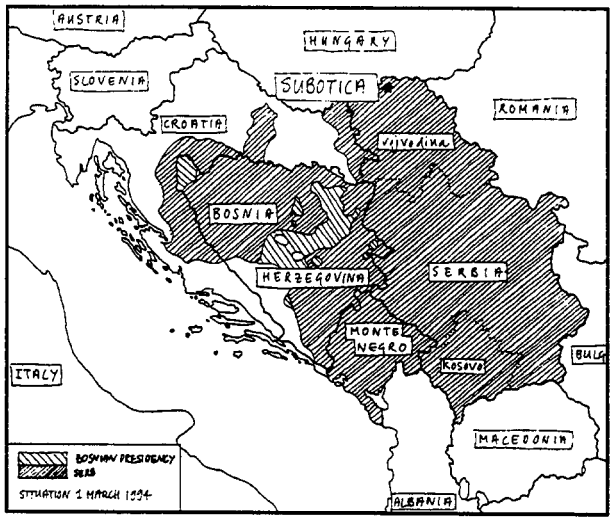
462. The obligatory registration of property served the purpose of registering the male Muslim population. Only men were eligible for registration, even if the property was registered under the wife's name [*ibid.*, p. 28]. An "Agency for the Exchange of Houses" was set up, to which the Muslim inhabitants were to transfer their homes. In return, the Muslims were promised houses belonging to Bosnian Serbs (e.g. in the Tuzla region) who supposedly had also assigned their homes to the agency [*ibid.*, p. 28]. Muslims were only allowed to leave the town on the condition that they renounced their property and transferred it to the "Serbian Community of Zvornik". The Ludwig Boltzmann Institute states that the following pattern emerges from a large number of consistent cases:

> "After their return, the refugees were first forced to register. This registration had no immediate consequences for the organized deportations. It was however a prerequisite for the subsequent transfer of property, which also had to be done before the SUP and which in many cases immediately preceded the actual deportation. The forced transfer of property to the 'Serbian Community of Zvornik' made the former house-owners eligible for obtaining an official stamp on

> their ID-card indicating a change of domicile. This stamp was an indispensable prerequisite for being allowed to leave town later on." [*ibid.*, pp. 28-29].

463. Thereafter, large-scale deportations started. It is reported "that there were days on which the Muslim populations of entire municipal districts or neighbouring villages were deported.... [to] Mali Zvornik, and from there via Loznica to Subotica or onto the Bosnian territory of Tuzla." [*ibid.*, pp. 28-29]. Forced deportations were carried out in cooperation with paramilitary groups [*ibid.*, p. 35].

464. Muslim witnesses from Zvornik reported "that their registration as residents was cancelled at the local police station after the region was taken by Serb forces." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 22, para. 98]. One witness reported that the words "deregistered from Zvornik, departing for Subotica" were written on his identity card at the police station [*ibid.*]. The Muslims from this witness' village "were reportedly given an ultimatum to leave, accompanied by the burning of several houses and the firing of shots into the air as warnings." [*ibid.*].



465. The Commission of Experts reports that the Muslim citizens of Zvornik were bused to locations as close as Mali Zvornik - across the river, and as far away as Subotica at the Serbian-Hungarian border [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), Annex VIII, "Prison camps", p. 342, para. 2852]. Those who were deported to the Serbian-Hungarian border were

issued a "Yugoslav passport" by the Serbian Red Cross and subsequently sent off to Austria via Hungary [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992, *Ludwig Boltzmann Institute of Human Rights*, 1994, pp. 35-36, Annex 48]. The Commission of Experts described as follows a deportation on 26 June 1992:

> "Muslim men, women and children were rounded up by what were believed to be Šešelj's men, as well as White Eagles. They were taken to the centre of town where they were put on trucks that took them to Loznica. In Loznica, they boarded a train that took them to Subotica. After spending several days on the train in Subotica, the Muslims were moved to a campsite at Palic, where they were issued Yugoslav passports stamped by the Ministry of Internal Affairs. Then they were taken in groups to the Hungarian border and accepted as refugees." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 170, para. 591].

466. Mazowiecki reports the following account of the forced deportation of Muslims from Zvornik to Hungary:

> "Muslim families were told that they had six hours to pack their belongings and go to a certain gathering point. In the case of Zvornik, it was a farmyard. At these gathering points, the names of the deportees were put on a list, and everyone was individually ordered to sign the list. They were informed that by their signature they 'voluntarily' gave up all their belongings. The deportees were then ordered, some at gunpoint, to board buses and trucks and later trains until they arrived at Palic (Vojvodina) where they were put up at the local camp site. Although the deportees apparently did not so request, they were provided with Yugoslav passports after photographers came to the campsite for this purpose. For some deportees, the issuing authority of their Yugoslav passport was 'MUP (Ministry of Internal Affairs) of the Republic of Serbia, Secretariat in Subotica'. Deportees reported that between 26 June and 1 July 1992 there were about 1,200 persons from Kozluk and another 1,800 from Zvornik at the Palic campsite. After being taken to the border, these persons were admitted to Hungary as refugees." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 22, para. 99].

467. The Respondent states in the Counter-Memorial that the allegation that the Federal Republic of Yugoslavia "would have aided the 'ethnic cleansing' of the Muslim population of Kozluk and Zvornik by issuing passports to Muslim refugees" and would have "transferred them to Hungary arbitrarily" (...) "are not true" [Counter-Memorial, p. 67, para. 1.3.5.18.]. To substantiate this statement, the Respondent states that the Muslim population from Zvornik "expressed the wish to be allowed the transit on their way to Western-Europe" [*ibid.*, para. 1.3.5.19.]. This observation, for which the Respondent fails to deliver any evidence, is simply irrelevant to the claim of the Applicant that the Muslims were being driven from their homes to

places where they would no longer be threatened by Serbs. It has been shown above that by a combination of terror, force and administrative measures, Muslims were expelled. Even if, *arguendo*, it could be shown that Muslims would have expressed the 'wish' to leave Zvornik or the country, against the background of terror, rape, torture and killings, this would not at all be surprising - no one would expect them to wish to stay. Indeed, the Respondent itself acknowledges that the refugees "stated that they wanted to leave Zvornik because of the outbreak of the war" or "for personal security reasons" [*ibid.*, para. 1.3.5.20.]. This part of the Counter-memorial is a flawed and objectionable attempt to present a forced expulsion as the "wish" of the population.

468. The Respondent also states that Yugoslav passports were issued because Hungarian authorities stopped the convoy as the refugees had no travel documents and that the "only way to deal with the situation" was to put the refugees in the camp at Subotica until travel documents were issued [*ibid.*, paras. 1.3.5.19 and 1.3.5.21]. This is stating the obvious. Those responsible for the deportations would hardly have expected that Hungary would have waived the normal requirements for travel documents. The Yugoslav provision of passports was an intended and anticipated step in the process of expulsion of Muslims to "third countries" - whether Hungary or other countries.

469. Equally irrelevant is the observation of the Respondent that the Federal Republic of Yugoslavia would be under an obligation to issue travel documents to the refugees [*ibid.*, p. 69, para. 1.3.5.27]. Whatever the legal merits of that proposition, it turns the facts upside down. The Respondent creates the suggestion that it simply complied with its legal obligations to help refugees. However, as the Applicant shows in this Reply, it was the Respondent itself that induced the flight of the refugees in the first place.

470. The Ludwig Boltzmann Institute concludes from the reports on deportations that

> "there can be no doubt that the measures described above pursued a far-reaching goal: the systematic expulsion of the Muslim population. For it was only after their return and the registration of their property and, as a result, the 'gathering' of the Muslim inhabitants not only of the town but of the entire Zvornik region that their total and final expulsion became possible. This enabled the aggressors not only to remove the population affected from the Zvornik region in an organized and comprehensive manner, but also to deport them beyond the boundaries of the former Yugoslavia. Due to the location of Zvornik on the border to Serbia, the Bosnian Serb leaders had no problem transporting the people out of Bosnia-Herzegovina and further on to another country." [*ibid.*, p. 35].

The fate of intellectuals

471. There is evidence that those responsible for the attack on Zvornik and the subsequent expulsion specifically targeted intellectuals among the Muslim population.

472. The Commission of Experts reports that

> "At a party held in April at the Tezeko Hotel in Zvornik, Šešelj read the names of local Muslim intellectuals from a list to an audience partly comprised of members of Arkanovici, Šešeljovci, and White Eagles. The people on this list were to be killed." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 166, par. 567].

473. The Commission also reports that intellectuals were the first to be imprisoned [*ibid.*, p. 167, para. 575].

Involvement of the Respondent

474. There is abundant evidence that the Respondent was actively involved in the attack on Zvornik and the expulsions of Muslims that followed it. The involvement of the Respondent is discussed in detail in Chapter 8 of this Reply [Reply, Chapter 8, Section 3]. The Ludwig Boltzmann Institute concludes that while a detailed assessment of the level of involvement of the JNA in the attack on Zvornik is only possible to a certain degree, it "is certain that JNA units were involved." [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 30, Annex 48]. The same report concludes that the attack on Zvornik "was planned, coordinated and directed by the former JNA" [*ibid.*, p. 31].

475. Nowak reports that the ethnic cleansing in Zvornik was carried out by JNA forces from Serbia proper, the Novi Sad and Užice Corps, and Serb paramilitary forces, especially Arkan's, Šešelj's and the White Eagles [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted to Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process*, E/CN.4/1997/55, 15 Jan. 1997, para. 100]. The Commission of Experts also stated that the attack on Zvornik on 8 April 1992 was carried out by JNA forces and paramilitary groups led by Arkan and Šešelj [United Nations, *Final Report of the United Nations Commission of Experts*,

S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", par. 569]. Evidence that corroborates these conclusions includes the following:

476. War-experienced commanders were assigned to Zvornik already before the attack. The two responsible JNA officers, Lieutenant Colonel Pejić and Colonel Marko Pavlović, had been involved in combat in Croatia [Hannes Tretter e.a., "'Ethnic cleansing operations' in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, 1994, p. 31, Annex 48]. Serb infantry reservists were recruited and stationed in barracks in the town of Čelopek near Zvornik before the attack [*ibid*].

477. JNA units from various Corps were stationed under the command of the 1st Military District in Belgrade both on the Bosnian and Serbian sides of the Drina river [*ibid*]. JNA units attacked Zvornik from the Serbian side of the river [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p.167, par. 572]. The Commission also reports that

> "Serbian forces positioned across the Drina in Serbia began shelling the Muslim village of Divić, two kilometres north of Zvornik. The village was then occupied by Serbian forces, who forced the residents to turn in their weapons." [*ibid.*, para. 574].

478. Jose Maria Mendiluce, senior official of the UNHCR, also reported that Zvornik was attacked from the Serbian side of the Drina [BBC-series by Laura Silber, *The Death of Yugoslavia*, Vol. 4: The Gates of Hell, Annex 51]. Also the town of Divić was attacked from the Serbian side of the Drina river [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p.341/342, para. 2850].

479. Military documents indicate that JNA airplanes were used in the attacks on Kulagrad [Support-action; request for action of the light combat air force, request from Command Post of the 17th Corps addressed to the 2nd Military District Command, 10 April 1992, Annex 52; see Reply, Chapter 8, Section 3].

480. The Commission of Experts reports that after the town had been taken, relief workers stated that "Arkan's forces controlled Zvornik's centre, while Yugoslav army forces were stationed around the area." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 168, par. 582]. Šešelj has stated that the attack on

Zvornik was planned and organised in Belgrade [Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, pp. 223-224, Annex 21]. He also stated that special units of the Serbian Interior Ministry participated in the attack [*ibid.*, p. 224]. Taped on video, he stated that "Milosevic himself asked me to send my fighters" [BBC-series, *The Death of Yugoslavia*, vol. 4: the Gates of Hell, Annex 51].

481. Later in this Reply, the Applicant will show that the Serbian paramilitaries that played such an important role in the expulsion of the Muslims from Zvornik were controlled and directed by the Yugoslav and Serbian Ministries of Interior in Belgrade [Reply, Chapter 8, Section 7].

Conclusion

482. The above presented evidence demonstrates that the non-Serb population in Zvornik was subjected to an organized pattern of killings, torture, and rape. At least 2,500 Muslims were killed. More than 48,000 Muslims were removed, involuntarily, from Zvornik. Their property was looted, destroyed or taken by Serbs. Non-Serb life in Zvornik was eradicated.

7. Opština Prijedor

Introduction

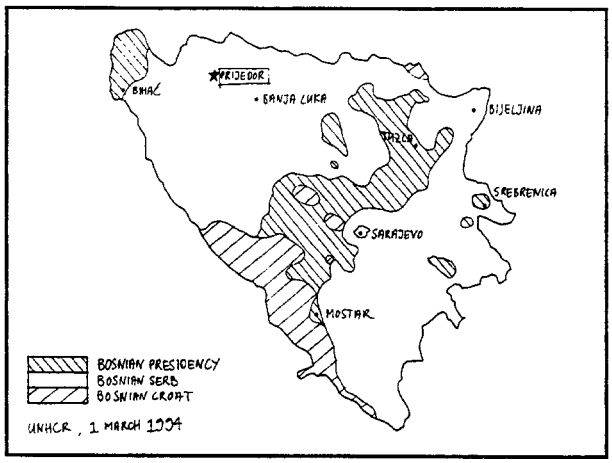
483. In the years between the take-over of Prijedor in April 1992 and the signing of the Dayton Peace accords, most of the non-Serb population living in *opština* Prijedor was destroyed or expelled. This was achieved by killing, the causing of serious bodily and mental harm - including torture, imprisonment in concentration camps, rape and other inhumane treatment. The Prijedor Muslims and Croats who were not killed in the months following the Serb assault were forcibly expelled from their homes by use of terror and the threat of torture, including rape and sexual assault.

484. The facts detailed below are shocking in their brutality. They are all the more terrible considering the Serb take-over of Prijedor was achieved practically without a shot being fired and there was almost no resistance to the Serb coup. The names of Omarska, Keraterm and Trnopolje have joined the ignoble list of camps which stains the memory of this century.

485. The killings, torture, rapes and expulsions of non-Serbs have been extensively chronicled by the ICTFY in their Opinion and Judgment in the case of Duško Tadić. In addition, the United Nations Commission of Experts had an entire Annex of their report devoted to *opština* Prijedor, written under the supervision of Judge Hanne Greve. It is this Annex which formed the basis for the findings of facts included in the foregoing Judgment of the ICTFY. The considerations in it clearly echo Greve's impressive study.

Geographical position and brief history

486. *Opština* Prijedor is a municipality in north-west Bosnia, an area which is part of the Bosnian Krajina. It is located in between the town of Sanski Most (to the south), the Bosnian-Croatian border towns of Bosanski Novi (to the west) and Bosanska Dubica (to the north), and the regional capital of Banja Luka (to the east). With the notable exception of the area of Sanski Most, the other neighbouring districts had a Serb majority population before the armed conflict started in April 1992 [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 13, para. 42].



487. The district Prijedor has one main town, called Prijedor, two smaller towns called Ljubija and Kozarac and numerous villages and hamlets. The Sana river flows through the district from the west towards the centre and then bends southwards. The district is mountainous especially in the northern and western parts with the peaks of Kozarac Mountain and Mandanska Mountain, both of which are forested.

488. Prior to the take-over, *opština* Prijedor was an ethnically mixed area. According to the 1991 census, Muslims constituted the largest ethnic group in this *opština*, with 49,700 (44%) out of a total population of 112,000. There were 44,000 (42.5%) Serbs in the municipality. The remainder of the population was made up of Croats (5.6%), Yugoslavs (5.7%) and others (2.2%). This represented a slight change compared to 1981, when there were still five percent more Serbs than Muslims [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 47, para. 128].

489. Prior to the outbreak of the hostilities in Bosnia and Herzegovina, *opština* Prijedor was one of the areas in Bosnia and Herzegovina where relations between the ethnic groups and in particular Serbs and Muslims was best. It was a mixed area ethnically and characterised with significant intermarriage across ethnic lines. During World War II, it was a staunchly anti-fascist region. It is significant that *opština* Prijedor had an extremely high percentage of partisans (from all different ethnic groups) during World War II. As a result the district was the first to be declared a liberated Partisan area in 1942. Kozarac had one of the most impressive war monuments in the former Yugoslavia and both World War II heroes Esad Midćić, a Muslim, and Mladen Stojanović, a Serb, were locals. One witness, whose testimony was recounted in the Judgment of the ICTFY in the Tadić trial described the town of Prijedor as a symbol of:

> "the brotherhood unity of the former Yugoslavia at large, because when compared to other towns in Bosnia and Herzegovina, there were no major inter-ethnic conflicts." [*ibid.*, p. 48, para. 131].

490. However, if one considers the strategy of "All Serbs in one State", it is clear that *opština* Prijedor would be indispensable to link the Serb-dominated Krajina regions in Croatia to the west with Serbia and Montenegro in the east and south [*ibid.*, p. 47, para. 127]. As such, it was the only route for the Serbs to supply the Bosnian Serbs in the west of Bosnia and Herzegovina and the Serbs in the Croatian Krajina with armaments and material from Serbia proper. The main obstacle to this corridor was the multi-ethnic nature of *opština* Prijedor, which would contest any Serb demands for the territory of the region [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 13-14, para. 43].

Preparation for the take-over

491. The take-over of *opština* Prijedor by the Serb forces was not a spontaneous uprising, but rather a well-planned and well-executed military and police operation. In the summer of 1991 elements of a heavy armoured brigade, the Pančevo Brigade of the JNA, arrived in Prijedor from Serbia. Although the pretext for their arrival was the conflict in Croatia, it did not become involved in the fighting there at all. Instead, it established itself at the aerodrome Urije near Prijedor. In early 1992, an artillery unit of the JNA which had taken part in the fighting in Croatia took up a strategic position in Benkovac on the Kozarac mountain. In the first months of 1992, also, a large number of tracked vehicles were brought to Prijedor by rail. Around this time some 200 JNA soldiers from a well-disciplined special forces unit came to Prijedor and were quartered in Hotel Prijedor [*ibid.*, pp. 26-27, para. 115-118].

492. In March 1992, the JNA and some local paramilitary organisations took control of the relay station and television transmitter on the Kozarac Mountain. At the same time, the Serbs strengthened their control over the television studio in Banja Luka. The transmitter was re-programmed to receive broadcasts from Serb controlled stations only, either Belgrade or Pale, and as a result the people of *opština* Prijedor could not longer receive programmes from Sarajevo. The inflammatory contents of the programmes broadcasted was described by Judge Hanne Greve in her report on Prijedor:

> "129. Like in the preparation for other wars, the programmes transmitted became more and more militant. Much propaganda was also broadcast. It was repeatedly broadcast that one ought to be terribly afraid of Muslims, Albanians, Croats and Slovenians - only Serbs and Montenegrins were not dangerous. The Serbs and Montenegrins were the defenders of Yugoslavia. Non-Serbs will insist that the latter was not true, most people favoured Yugoslavia as such - but leading Serbs were striving for Greater Serbia." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 28, para. 129].

On Serb television, Muslims and Croats were consistently portrayed as the source of all economic and political problems:

> "132. The Muslims who made up the majority of the political leaders were blamed for everything that came with economic crises, especially unemployment and inflation. In addition, they were branded as extremists, meaning Muslim fundamentalists or rather violent fanatics. The Croats were discredited as Ustaše wanting revenge over Serbs for what had happened in the war in Croatia with Serbs taking power in Knin and Vukovar and other areas. Non-Serbs were portrayed as savages to be feared at the same time as they were used as scapegoats." [*ibid.*, p. 28, para. 132].

493. In the six months before the take-over of Prijedor, the members of the Serbian Democratic Party (SDS) set up governmental structures parallel to the existing *legitimate* institutions. These parallel structures included a Serb Assembly, the first chairman of which was the Deputy Mayor of the official Municipal Assembly. In addition, police and security organisations were set up, including a Serb Secretariat of Internal Affairs (SUP). All Serb parallel structures were closely linked to Serbian officials outside the *opština* [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 50, para. 134]. Planning for the take-over took place at Prijedor military barracks and all of the Serb employees of the legitimate Prijedor SUP participated in the preparations [*ibidem*].

494. These parallel political and security structures were linked to those of the SDS in the rest of Bosnia and Herzegovina. The Serb Assembly in Prijedor, for example, joined the Serb autonomous region of Krajina, part of the "Republika Srpska". In a 1993 interview to a local newspaper, the chief of police, Simo Drljača, stated that the police worked hand in hand with other so-called Serb authorities and that he took his orders from the Ministry of Interior of the "Republika Srpska" in Bijeljina, in the east of Bosnia and Herzegovina. According to this interview, reproduced in the Prijedor report of the Commission of Experts, the Serb coup in Prijedor was a well co-ordinated effort:

> "They [the police force (including the secret services)] carried out my orders and the orders of the CSB [the Public Security Centre] Banja Luka and the Minister of Interior.
> (...)
> the cooperation was excellent with the army of Republika Srpska and with the officers of that army. The cooperation was manifested in the joint cleansing of the terrain of traitors, joint work at the checkpoints, a joint intervention group against disturbances of public order and in fighting of terrorist groups." [Interview of Simo Drljača by Siniša Vujaković in *Kozarski Vjesnik*, 9 April 1993, as reported in: United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 12. para. 31].

495. The foregoing interview, in which Simo Drljača admitted that the take-over of Prijedor had been a well-planned and coordinated endeavour, was also referred to by the ICTFY in the Tadić Judgment [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 50-51, para. 135]. On March 1997, the Prosecutor at the ICTFY indicted Drljača and his right hand man, Milan Kovačević, for their contribution to the events in Prijedor [ICTFY, Indictment, *The Prosecutor v. Simo Drljača & Milan Kovačević*, Case No. IT-97-24-

I, 13 Mar. 1997]. Drljača was charged with genocide, but escaped conviction in July 1997, when shot by British SFOR troops, which tried to arrest him.

Take-over

496. The town of Prijedor was taken over by the SDS with the aid of the local police and the military forces of the JNA in a bloodless coup in the early hours of 30 April 1992. Armed Serbs took up positions at checkpoints all over Prijedor, military posts were set up and the Serb flag was flown from the city hall. JNA soldiers occupied all the prominent institutions such as the radio station, the bank and the medical centre. Milomir Stakić (the former Vice Chairman of the multi-ethnic Municipal Assembly and later Chairman of the Serb Municipal Assembly) went to Radio Prijedor and made a radio broadcast in which he explained the take-over of the town and the intentions of the SDS in regard to *opština* Prijedor. The *opština* was renamed "Srpska opština Prijedor (Serbian municipality of Prijedor)" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 51-52, para. 137].

497. The pretext for the take-over was a telefax supposedly received from the Commander of Bosnia and Herzegovina Territorial Defence forces (TO), instructing the local TO to attack the JNA as they retreated to Serbia and Montenegro. However, the fax was immediately denounced as a forgery by the authorities in Sarajevo and Milomir Stakić himself later admitted that the Serb coup in Prijedor was not a spontaneous reaction to the facsimile, but rather the final stage of an established plan [*ibid.*, p. 52, para. 138]. The text of the telefax was integrally reproduced by Judge Hanne Greve in the Report on the Prijedor region. Her Report leaves little doubt as to the invalidity of the document:

> "154. There is no evidence to sustain a claim that a telefax like the abovementioned ever was produced by the legitimate authorities of BiH. Conversely, they had every reason to facilitate the departure of the JNA as soon as possible. For the legitimate authorities in BiH to have declared war against the JNA at the time, would have been suicidal. Moreover, if the leadership in BiH would have wanted to confront the JNA by force, there is every reason to believe that they would have taken certain carefully planned steps and not let it all materialize by means of a rather casual telefax." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 33, para. 154].

498. It is extremely important to note that during the take-over of the town of Prijedor there was absolutely no resistance to these actions by the non-Serbs of Prijedor. The

initial coup was immediate, total and unopposed. This was confirmed by the report of *Kozarski Vjesnik*, a Serb-controlled newspaper in *opština* Prijedor:

> "The man (Simo Drljača), who[m] the Serbian Democratic Party of the Opština Prijedor put in charge of forming the Serb police after half a year of illegal work, had done his job so well that in 13 police stations 1,775 well armed persons were waiting to undertake any difficult duty in the time which was coming. In the night between 29 and 30 April 1992, he directed the takeover of power (by the Serbs), which was successfully achieved in only 30 minutes, without any shots fired. The assembly of the Srpske Opštine Prijedor, at the end of March last year (1992), appointed him Chief of the public security station (i.e. in charge of the secret police). He was in charge of this job during the most demanding period and remained in the position until January 1993. These days he has been Vice-Minister of the Internal Affairs of the Serbian Republic ["Republika Srpska"]. He will commence his new function in Bijeljina on Monday." [*Kozarski Vjesnik*, 9 Apr. 1993, as quoted in United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 8, para. 6].

The town of Bijeljina is situated not far from the border with Serbia proper. In the view of the Commission of Experts, the town was selected as seat for the Bosnian Serb "Interior Ministry" because of its geographical linkage between the Federal Republic of Yugoslavia and the Serb-held territories in Croatia and Bosnia and Herzegovina [*ibid.*, p. 34, para. 163].

499. Shortly after the take-over, the Serbs officially established the so-called Prijedor Crisis Staff. This local Crisis Staff began to implement the decisions of the regional Crisis Staff in Banja Luka. Immediate control was taken of the two local media sources, Radio Prijedor and the newspaper *Kozarski Vjesnik* that henceforth became disseminators of propaganda. The Crisis Staff also supported the mobilisation of the Serb population and within two weeks nearly all Serbs had been mobilised into either the JNA, the army reserve or the police force [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 52, para. 139].

500. When the Serbs took over Prijedor, the JNA was still under the authority of Belgrade. The JNA indeed played a cardinal role in the take-over of the city. Without the assistance and approval of Belgrade, the coup would in fact not have been possible at all. The Serbs which were mobilised in close cooperation with the local Crisis Staff all came to fall under the authority of the JNA [see also Reply, Chapter 8, Section 4].

501. Various restrictions were then placed upon the lives of the non-Serbs in Prijedor. The treatment of non-Serbs in the Prijedor area was also described by the ICTFY in the Tadić Judgment. The regional ARK Crisis Staff in Banja Luka played an important part in formulating the instructions:

> "Immediately upon its formation, the ARK Crisis Staff [in Banja Luka] began to make decisions about the treatment of non-Serbs. The President of the ARK Crisis Staff, Radoslav Brdanin, held extreme views with regard to Greater Serbia and the acceptability of other nationalities living within that territory. His position, which was continually repeated in the media, was that the largest percentage of non-Serbs acceptable in the territory designated as Greater Serbia was 2 percent. In order to secure this percentage he advocated on Radio Banja Luka a direct struggle, including the killing of non-Serbs. Similarly Radislav Vukić, President of the Municipal SDS Committee in Banja Luka and President of the Regional Board of the SDS, as well as an elected member of the SDS Main Board of Bosnia and Herzegovina, was also an extremist, presenting through the media his decision not to allow any non-Serb women to give birth at Banja Luka Hospital. He also asserted that all mixed marriage couples should be divorced or that all mixed marriages should be annulled and that children of mixed marriages 'were good only for making soap.' The position expressed by these two prominent Serb leaders, once thought of as extreme, had, by 1992, become the predominant views of the SDS leadership, acceptance of which was a prerequisite for advancement within the SDS." [*ibid.*, pp. 55-56, para. 147].

502. Non-Serbs were fired from their jobs and their children refused entry at the local schools. A constant stream of propaganda and ethnic hatred was heard on the radio directed against Croats and Muslims. Non-Serbs were barred from movement outside the *opština* and within the *opština* there were controls and checks on all movement to the extent that the non-Serbs had to record their movements inside their own apartment blocks. In addition, there were daily searches in those apartment blocks inhabited by Muslims and Croats [*ibid.*, p. 57, para, 150]. Significantly, any non-Serbs in possession of arms were forced to surrender their weapons, leaving the non-Serb population as a whole utterly defenceless, even though there had been no resistance to the Serb take-over [*ibid.*, p. 52, para. 139].

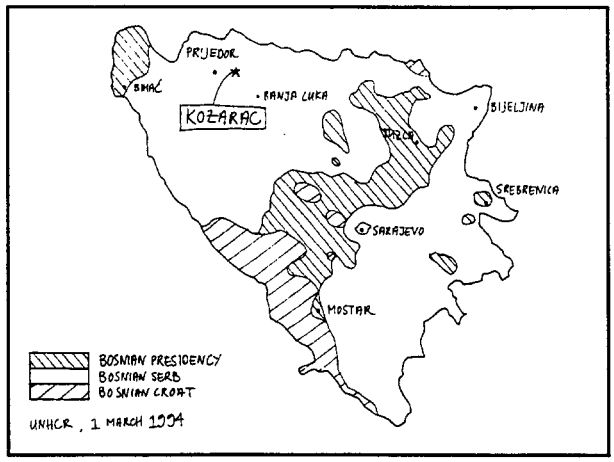
The attacks on outlying areas

503. After having consolidated their power in the town of Prijedor, the Serbs started their attacks on the towns and villages in the surrounding areas. Some of these towns and villages had large Muslim majorities.

504. The village of Hambarine, for example, was attacked some three weeks after the take-over of Prijedor with the help of paramilitary units from Serbia proper [see United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 49-

50, paras. 231-239]. The attack was preceded by an intense artillery bombardment which lasted several hours. The main attack consisted of paramilitary infantry troops supported by tanks and armoured vehicles. After a brief period of fighting, the inhabitants, hopelessly out-numbered and out-gunned, surrendered. One of the first buildings to be destroyed after the attack, was the Hambarine mosque. The Serb conquerors renamed the village *Petrovo Brdo*, "Peter's Mountain" [*ibid.*, pp. 49-50, paras. 235 and 238], a Christian version of its original name.

505. At this time the Prijedor Crisis Staff authorities also issued an ultimatum to the authorities of Kozarac - an overwhelmingly Muslim area located east of Prijedor with almost 27,000 non-Serb inhabitants - requiring the Territorial Defence (TO) and the police to surrender their weapons and pledge allegiance to the new authorities of the Srpska *opština* Prijedor. Negotiations were held between the citizens of Kozarac and the Prijedor Crisis Staff, but to no avail. On 22 May 1992, the telephone lines to Kozarac were disconnected and a blockade was instituted [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 53-55, paras. 142-146].



506. The attack on Kozarac began on 24 May 1992, in the early afternoon. As with the attack on Hambarine, it was preceded by an intense artillery bombardment and the main attack consisted of tanks and various paramilitary units. The Serb infantry burned most of the houses in Kozarac. However, they took care not to destroy the apartments of ethnic Serbs. The inscription "Serb house, do not touch" was written on Serb property and the Orthodox church was not damaged while the mosque was

destroyed. On 26 May 1992, an agreement was reached for the surrender and removal of the survivors of the attack [*ibid.*, p. 54. para. 144].

507. The exact number of non-Serbs killed during and shortly after the attack on Kozarac remains unknown. When asked about how many civilians had died in the military operation in the area, Serb leaders related that it probably was many, but that they had no records. Lists were, however, used to select prominent non-Serbs to be executed. Some sources put the number of killed civilians at 5,000. Shortly after the assault, a non-Serb camp prisoner was ordered to assist in the collecting of dead bodies in Kozarac. He himself counted 610 dead people [United Nations, Final *Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 52-53, paras. 253, 262-263]. According to Serb military sources, quoted by the ICTFY in the Tadić Judgment, 800 people were killed in the take-over of the town and an additional 1,200 had been captured. Casualties on the part of the Serb units were four soldiers killed and fifteen injured [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 54, para. 145].

508. Following the assault on Hambarine and Kozarac, the other non-Serb towns and villages in the Prijedor Municipality were conquered. This campaign was also described by the Commission of Experts in the Report on Prijedor and again resulted in the killing and torturing of many innocent non-Serb civilians [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 58-63, paras. 293-319].

The aftermath of the attacks on the non-Serb areas

509. The survivors of the attack on Kozarac were not allowed to return to their homes but were instead divided according to gender and age. The young and middle-aged men and a small number of women were taken to Omarska and Keraterm, whereas most of the women and the elderly were taken to the Trnopolje camp [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 55, para. 146].

510. One month after the takeover, on 30 May 1992, there was an ill-fated attempt by a small group of non-Serbs to regain control of the town of Prijedor. Lightly armed and badly organised, they were easily defeated by the Serb forces and most were killed. After the attack, which was seized as the opportunity to accelerate the ethnic

cleansing of Prijedor, the Serb authorities divided the non-Serb population of the town into men between the ages of 12 and 65 and women, children and elderly men. The men were taken to the Keraterm or Omarska camps and the others to Trnopolje camp. The predominantly Muslim old part of Prijedor, the Stari Grad, was destroyed and the few non-Serbs who remained were required to identify themselves as non-Serbs in public by wearing white armbands [*ibid.*, pp. 57-58, para. 151-152].

The camps

511. Right after the Serb take-over on 30 April 1992, three large camps were opened in *opština* Prijedor: Omarska, Keraterm and Trnopolje. The establishment of these notorious camps was also found by the ICTFY in the Tadić Judgment:

> "154. After the take-over of Prijedor and the outlying areas, the Serb forces confined thousands of Muslim and Croat civilians in the Omarska, Keraterm and Trnopolje camps. The establishment of these camps was part of the Greater Serbia plan to expel non-Serbs from opština Prijedor. Generally the camps were established and run either at the direction of, or in cooperation with, the Crisis Staffs, the armed forces and the police. During confinement, both male and female prisoners were subjected to severe mistreatment, which included beatings, sexual assaults, torture and executions. They were also subjected to degrading psychological abuse, by being forced to spit on the Muslim flag, sing Serbian nationalistic songs or to give the Serbian three-fingered salute. Prisoners were guarded by soldiers, police forces, local Serb military or TO units, or a combination thereof, who were dressed in uniforms and generally had automatic rifles and other weapons on their person. They cursed the prisoners, referring to them as 'balijas' or 'Ustaša' (...). Members of paramilitary organizations and local Serbs were routinely allowed to enter the camps to abuse, beat and kill prisoners." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 59, para. 154].

The same camps were also described by Judge Hanne Greve, who referred to them as both "concentration" and "death" camps:

> "After the Serbs took power on 30 April 1992, they opened three *concentration* camps in Opština Prijedor. No concentration camps had existed in Opština Prijedor at the time of the Serbian takeover, or for that matter, in the region since World War II. Two of the concentration camps were de facto *death* camps - Logor [camp] Omarska and Logor Keraterm. The third - Logor Trnopolje - had another purpose as it functioned as a staging area for massive deportations of primarily women, children, and elderly men (...). Whereas the death camps were under the authority of the Serbian military and the Serbian police, Logor Trnopolje had more of a civilian image, notably with the local Serbian Red Cross having a pivotal function." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 66, para. 337, emphasis added (italics)].

512. Judge Hanne Greve also described the general characteristics of the camps in the Prijedor region:

> "493. On 23 May 1992, Serbian spokesmen officially announced the establishment of the first detention centre near Prijedor in northern BiH.
>
> 494. Soon after the Serbs took power, in late May 1992, Muslim and Croatian leaders in Prijedor started to 'disappear', only later it became known that they had been taken to Logor Omarska and Logor Keraterm. Political leaders, officials from the courts and the administration (inclusive the police), academics and other intellectuals, religious leaders, leaders from enterprises and businesses - the backbone of the Muslim and Croatian communities that is - were no more tolerated at liberty, or rather they were taken away apparently with the intent of their removal being permanent. Left behind without guidance and the strength of leadership were the much bewildered ordinary Muslim and Croatian people. This way Logor Omarska and in a similar way, but not to the same extent, Logor Keraterm became instruments of the overall destructive policy.
> (...)
> 495. Among those detained in the camps were former non-Serbian policemen and other law and order people such as judges and jurists in general. Moreover, former military personnel, such as people enrolled in the TO, were particularly targeted. This left the non-Serbs also without any legal or armed protection.
>
> 496. As the camps of Omarska, Keraterm and Trnopolje were opened, only a few cases from there were opened for investigation although the criminal sector of the legal system was functioning in its own exclusive Serbian way.
>
> 497. In running the concentration camps, the Serbian police and the Serbian military cooperated. As in the military campaign against the non-Serbian habitations, the police and the military took advantage of the assistance of quasi-military elements and locally gathered manpower (for example, from the villages nearby Logor Omarska) also in the concentration camps. A number of the camp guards may have been recruited into the police or the military from the reserve, others were possibly new recruits. Whether to have assistance in exterminating detainees, or to give an outlet for general aggression and to legitimize aggression against non-Serbs, or a combination of these purposes, the Serbian leaders furthermore opened up the camps to the most brutal people around - belonging to paramilitary forces or just anybody. Especially in Logor Trnopolje, but also in the other camps, Serbian soldiers on leave from their ordinary service seem to have gratified both their greed and whatever sadistic inclinations they had." [*ibid.*, p. 92, paras. 493-497].

During their confinement in the camps, both male and female prisoners were subjected to severe mistreatment which included beatings, sexual assaults, torture and execution [see also Reply, Chapter 5, Section 5].

The atrocities committed in opština Prijedor

513. In the above, the Applicant in rough lines sketched the developments in *opština* Prijedor shortly before, during and after the Serb take-over in April and May 1992. It is against this background that the atrocities, ensuing the Serb coup in Prijedor, should be considered.

514. In the following, some examples of these atrocities will be singled out and divided into various categories: (1) killings of the civilian population during the attacks on non-Serbs areas and while taking the non-Serbs to the concentration camps, (2) killings in the concentration camps, (3) killing of the Muslim and Croat elite, (4) torture, (5) rape, (6) inhumane treatment and (7) the destruction of Muslim and Catholic religious and cultural heritage of *opština* Prijedor.

Killing of the civilian population in attacks on non-Serb areas

515. Large numbers of non-Serb civilians were killed in *opština* Prijedor for the simple reason that they were Croats or Muslims. Much of the killing occurred during or shortly after the actual take-over by the Serbs.

516. The horrendous example of Kozarac was already mentioned above, including the estimates of the Muslims and Croats killed by the Serb forces, ranging from 800, the "official" figure given by the Serb authorities, to 5,000, the number mentioned by Judge Hanne Greve in her Report on Prijedor. The Trial Chamber at the ICTFY described the following incident, involving among others, Duško Tadić:

> "(...) Nihad Seferović testified that on the afternoon of 26 May 1992, on his way back home from the hills in Bešići, he stopped at the orchard of a house across from the Serbian Orthodox church. In front of the church he saw approximately six Muslim policemen from Kozarac, including Edin Bešić, Ekrem Bešić, Emir Karabašić and one Osman with their hands behind their necks standing in line. In front of them were the accused, Goran Borovnica, 'Dule' [Tadić] and about 15 other Serb paramilitaries who had weapons pointed at the Muslim policemen. He saw the accused pull two of the policemen, Osman and Edin Bešić, out of the line and kill them by slitting their throats and stabbing each one several times." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 141, para. 393].

The Trial Chamber found beyond reasonable doubt that Tadić indeed killed the two Muslim policemen as depicted above.

517. The Serbs did not only kill men, they also targeted women and children who had followed the instructions broadcasted by Radio Prijedor and were leaving the area of Kozarac in a long column. Serbs fired grenades at the column repeatedly, killing several women. Some women and children were picked out and killed at the roadside by Serb soldiers. Other columns of fleeing civilians suffered the same treatment [United Nations, *Final Report of the United Nations Commission of Experts*,

S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 52, para. 255].

518. Civilians were massacred in great numbers, often after having been subjected to the most outrageous torture. On 27 May 1992, for example, eight elderly people from Kozarac were shepherded into a cellar and slaughtered [*ibid.*, p. 53, para. 261].

519. In Prijedor town a similar massacre took place which was reported by Special Rapporteur Tadeusz Mazowiecki. The massacre took place shortly after the above described attempt of a small group of Muslims and Croats to retake Prijedor. The Serb forces immediately started to ethnically cleanse those Prijedor neighbourhoods with large Muslim populations:

> "(e) The night of 29 May tanks and infantry took up positions around Prijedor, citing the same pretext as at Hambarine and Kozarac. When the attack began, Serbs from the village [Prijedor] guided the tanks to the homes of certain Muslims and the inhabitants were asked to come out and show their identity documents. Many of those who did were summarily executed. According to witnesses, some 200 residents of a single street (Partisan St.) were executed and a hundred homes were destroyed. During the attack the local radio continued to call for the surrender of arms, yet not one shot had been fired by the Muslims.
>
> (f) When the artillery barrage stopped around noon, groups of extremists, probably under the control of the paramilitary leader Arkan, began executing people, taking their victims to the street and slitting their throats, according to witnesses. The bodies of the dead were carried away by trucks, which left a trail of blood." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General Assembly and the Security Counsil*, A/47/666, S/24809, 17 Nov. 1992, pp. 8-9, para. 17].

520. Another brutal killing took place in a Prijedor suburb, shortly after the Serbs started the ethnic cleansing of the town:

> "one survivor from the area relates that an identified Serb commander of a so-called intervention unit (...), in June 1992, had come together with three or four other Serbian soldiers to arrest four brothers in their home in the suburb Tukovi. When their mother started to weep because she did not want her sons to be arrested, the Serb commander of the so-called intervention unit shot dead both the mother and her four sons." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 58, para. 290].

521. Another killing incident in Prijedor town was reported by the United States Department of State:

"A 57-year old Bosnian Muslim witnessed the ethnic cleansing of Prijedor in late July 1992. The Serbs in Prijedor killed large numbers of Muslims in the Muslim section located in the city centre. The witness saw them massacre 18 Muslim men at the home of Mustafa Ceric, who was one of the victims. JNA soldiers cut off two of his fingers (the little finger and the ring finger) 'so they could make the sign of the cross.' They then cut off the men's noses and ears and finally cut their throats.
The bodies of these 18 men were put on a truck together with 40 or 50 bodies of other men killed in Partizananka Ulica and were buried in the old coal mines at Tomasica, south of Prijedor." [US Department of State, Bureau of Public Affairs, *Dispatch*, 19 Apr. 1993, Vol. 4, No. 16, p. 258, Annex 19].

522. On 20 July 1992, Serb forces started their attack on a larger area of predominantly non-Serb villages on the left bank of the Sana river. These villages suffered the terrible fate of Hambarine and Kozarac:

"303. Very hard hit in this major Serbian military attack on villages on the left bank of the Sana river were, among others, the villages Bišćani, Čarakovo, Rizvanovići, Sredice, and Zekovi. A total of more than 1,500 people were allegedly killed on 20 July 1992 alone. The mass killings in Čarakovo first started on 23 July.

304. In Sredice and Rizvanovići, for example, the Serbian infantry, paramilitary soldiers, and other Serbs with them reportedly went from house to house mutilating, killing, and deportating the inhabitants and other civilians having sought shelter there (...). Within a few days, no living beings were left in the villages, but in numerous places there were piles of dead men - often fathers and sons together. Many of the dead bodies are said to have been terribly mutilated, 15 dead persons had been chained together, many smaller piles contained approximately 10 dead bodies each. Smaller piles were found even on the doorsteps of private homes, larger ones were in more central locations. In front of one particular house, in a sand pit, there was a relatively larger pile. From here, the Serbs had intended to take numerous captive non-Serbs by bus for detention. But, as the bus was totally overcrowded, it is claimed that the Serbs forced almost half of the passengers to leave the bus and executed them on the spot.

305. Čarakovo was encircled on 23 July 1992 at about 3:00 a.m. by Serbs coming in from all directions, not only from the main road along the Sana River. The majority of the Serbs were wearing the uniform of the Serbian army. Some were dressed in the light-blue uniform of the reserve police. Some of those in the army uniform in addition wore red ribbons and red berets. It was believed that the latter belonged to the Martićevci - among them were Serbs from neighbouring villages. Some soldiers were wearing white ribbons on their shoulders - they may have been White Eagles. All around were the sounds of bombs and grenades exploding and machine gun fire. Some of the Serbs gave commands such as 'Burn down!' and 'Kill'. It was like a hunt, as one survivor recounts, in which also the nearby forest was searched for non-Serbs. Hundreds of people were killed - shot, burnt alive, beaten or tortured to death in other ways." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 60-61, paras. 303-305].

Numerous non-Serbs were killed in other villages in the area. Judge Hanne Greve listed the villages in her Report and added the number of victims slaughtered by

Serb forces in the months following the take-over of Prijedor town. At the end of July, for example, between 100 and 120 Muslim civilians from the village of Jugovci were killed on a crossroad near Ljubija. At the same time, Serb military murdered between 70 and 100 civilians in Lisina, in a nearby forest. In the village of Redak, 200 Muslim civilians were killed in a single execution in the beginning of August 1992 [*ibid.*, pp. 62-63, paras. 312-316].

523. Those Muslims or Croats who had not been killed were then taken to the above mentioned camps which had been set up in the *opština* by the Serb forces. Many were killed on the marches to the camps. This practice was also described by the Prosecutor at the ICTFY in the Indictment of Željko Meakić, the commander of the Omarska camp:

> "In May, 1992, intensive shelling of Muslim areas in the opština Prijedor caused the Muslim residents to flee their homes. The majority of them then surrendered or were captured by Serb forces. As the Serb forces rounded up the Muslims and any Croat residents, they forced the Muslims and Croats to march in columns bound for one or another of the prison camps that the Serbs had established in the opština. *The Serbs forces pulled many of the Muslims and Croats from the columns and shot or beat them on the spot.*" [ICTFY, Indictments, *The Prosecutor v. Željko Meakić & others*, Case No. IT-95-4-I, 13 Feb. 1995, p. 2, emphasis added].

Similar incidents were also reported by the Commission of Experts [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 60, para. 300].

524. Prisoners were even killed as they were evacuated from the concentration camps in *opština* Prijedor. The Commission of Experts reported the following massacre on Vlašić Mountain:

> "598. On 21 August 1992, a convoy of vehicles with people leaving Prijedor for Travnik stopped by Logor Trnopolje and prisoners from the camp could freely enter the buses. More prisoners wanted to join the convoy than there was space for on the buses. One elderly woman warned the prisoners against going saying that she had 'heard horrible things'. When the convoy reached the Vlašić Mountain the prisoners from Trnopolje were separated from the people from Prijedor. The prisoners - men only - were cramped into two buses, conceivably 100 men in each bus. The total number was probably no less than 250. Nearby a mountain top, perhaps called Koricanske Stijene (or Kocinske Stjen), the prisoners had to leave the buses next to a cliff above the Ukrina (or Ugljenka) River. *The prisoners were lined up in two rows and ordered to kneel down and face the river. It was several hundred metres down to the river. The cliff as such was very steep, but there was also a slope next to it. There was a house on the other side of the valley. It was not far from Skender Vakuf - where some military and paramilitary Serbs had entered the buses.*

> *599. A firing squad of some 15 Serbian soldiers started shooting the prisoners, of whom a limited few jumped off the mountain before being shot. One of the survivors hid himself laying some 50 or 60 metres down the slope, under the body of another man who was already dead. Serbian soldiers were also throwing grenades down the slope from above. Some soldiers even came down the slope to see to it that all the prisoners were dead.* The next day, dead bodies were piled up and put on fire by Serbs in camouflage uniforms. One of the soldiers was wearing a badge with a white eagle on his cap." [*ibid.*, pp. 113-114, paras. 598-599, emphasis added].

Killing of civilians within the camps of Omarska, Keraterm and Manjača

525. Thousands of non-Serbs were killed in the camps established in the Prijedor region. The atrocities committed in the camps of Omarska, Keraterm and Trnopolje has been discussed at length in a previous Section of this Chapter [Reply, Chapter 5, Section 5]. In the following, the Applicant will not list the atrocities spelled out earlier in this Chapter again. It will, however, give a few examples of massacres committed on civilians from villages mentioned earlier in this Section and located in the Prijedor Municipality. Many of the non-Serbs who had survived the first cleansing operations in these villages were simply murdered upon their arrival in the camps.

526. The following incident, involving some 150 Muslims from the village of Hambarine, was established by the Trial Chamber in the Tadić case when describing the atrocities committed in the Keraterm camp:

> "171. There was testimony received of a mass execution of prisoners believed to have come from Hambarine. One night prisoners heard bursts of machine-gun-fire, followed by individual shots. Witness Q testified that the following morning they were called out to load over 150 bodies onto a large truck and trailer which then left the camp with blood dripping from it. Machine-gun-fire was repeated the following night with, according to evidence, over 50 bodies taken away the following morning. Two fire trucks arrived later and hosed down the area to wash away the blood. It seems that the shooting took place through the closed doors of the room in which those prisoners were confined; those doors had large bullet holes pierced through them. Another account by a witness speaks of a total of about 250 people being killed in this way." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 63, para. 171].

527. A similar slaughter was recounted by the Commission of Experts. It also happened in the Keraterm camp and may be the same massacre referred to by the ICTFY:

> "445. One of the former inmates in Keraterm relates the following about the by far largest alleged massacre taking place in the camp:

'On 20 July 1992, Hall No. 3 was emptied for prisoners. These detainees were dispersed into three other detention halls. Later in the day, new bus loads of captives arrived to the camp. At this time detainees in Logor Keraterm could observe that it was burning in the Hambarine area (...). The newcomers were detained in Hall No. 3. Starting at the same time the prisoners in the three other halls were ordered to urinate in plastic barrels only.
In Hall No. 3 the doors were firmly closed and there was no fresh air for the prisoners squeezed in there. No food and no water was provided for the newly arrived detainees as long as they stayed in Hall No. 3. A door from the toilet area to the hall was firmly blocked by Serbian camp officials. Thenceforth the barrels with urine were emptied next to the block door to flow into Hall No. 3.
On the night of 24 July 1992, one camp commander's shift (in the following referred to as shift A) came to the camp possibly at about 19.00 hours, later also another commander's shift of camp guards (in the following referred to as shift B) appeared. (...) Earlier in the day some 15 people in military uniforms had come to the camp. There were four machine guns posts outside the front of the factory building, now the weapons were all aimed at Hall No. 3. In the evening the guards on shift B took out in front of the factory building some ten prisoners, had them kneel in a circle with their hands behind their heads. The guards then ran around the circle screaming as they beat the prisoners severely. One of the people thus maltreated was subsequently thrown next to Hall No. 2 by the guards, and died there some 15 minutes later. Others may have encountered similar consequences.
At about mid-night it could be heard that windows high up on the front of the wall to Hall No. 3 were broken. Someone cried out, 'Do not shoot unless the commander of shift A instructs that.' (Shift A was on duty that night.) Then someone else yelled out, 'They [the detainees] are fleeing.' Then heavy machine gun fire started. The commander of shift A yelled that the shooting should stop. His instruction was ignored, and someone mocked him saying that, 'A Serbian mother has given birth to an Ustaša son.' At first the prisoners like himself detained outside Hall No. 3. thought that the long lasting shooting was merely to terrorize the prisoners. At dawn he was told by fellow prisoners that it seemed that the prisoners in Hall No. 3 had been killed. A little later he himself saw a huge pile of dead bodies outside of Hall No. 3. At about 05.00 hours a large lorry - FAD 1620, 24 tons - driven by an identified man (...) arrived to the camp. Some prisoners probably from hall No. 1 and Hall No. 4 (he was detained in Hall No. 2 himself) and a few who appeared to be survivors from Hall No. 3, were ordered to heap the dead bodies on the lorry. First they had to take out the dead prisoners from Hall No. 3, thereafter to remove the pile of corpses laying outside this hall. One prisoner participating in loading of the dead - and with the corpses also wounded prisoners - on the lorry, afterwards told him that he had counted 98 dead and 62 or 63 wounded prisoners. Others claimed the total of death was 150, and that the wounded numbered between 30 and 40. Later in the day, two fire trucks came and hosed down hall No. 3 and the area outside it to remove all the blood there.
The night of the mass killing and the next day the main road (from Prijedor to Banja Luka) passing the camp was closed for traffic." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 84-85, para. 445].

528. The villagers from Hambarine and the victims described in the incident above were shot. However, for the majority of the prisoners killed in these camps shooting would have been a relatively merciful way of being killed. Most of those who were killed died from much more primitive means. They were brutally beaten to death with rifles butts, baseball bats, bottles, industrial cable, iron bars or fists. According to the Report of Judge Greve, for every five deaths in Omarska, four were due to torture and one was due to shooting [*ibid.*, p. 78, para. 408].

529. In July 1992, for example, a number of civilians from Bišćani, the ethnic cleansing of which was referred to above, were killed just after their arrival in Omarska:

> "In July 1992, some 40 prisoners from Bišćani were killed in Logor Omarska, according to other camp inmates. It was gruesome. The prisoners from Bišćani cried out in agony as they were pulled out of the bus and thrown head first against a brick wall. There heads were allegedly smashed into the wall for each of them to 'dig' out a five centimetres deep hole, the Serbian perpetrators announced." [*ibid.*, p. 60, para. 301].

530. After having discussed the atrocities committed in Omarska, Judge Hanne Greve concluded her report on the camp as follows:

> "all information available about Logor Omarska seems to indicated that it was more than anything else a death camp. The detainees were not there to work or serve a specific purpose. There is no information to sustain a claim that the detainees were in transit to somewhere else. As far as the prisoners were concerned, the interrogation led nowhere out of the camp, and the camp conditions were such that very few, if any, prisoners would have survived a long-term detention." [*ibid.*, p. 80, para. 424].

In the Prijedor Report, the Keraterm camp was described as "a smaller, but basically not better, extension of Omarska" [*ibid.*, p. 81, para. 425].

531. As was noted earlier in this Chapter [Reply, Chapter 5, Section 5], the Prosecutor at the ICTFY indicted the commander of Omarska, Željko Meakić, and Keraterm, Duško Sikirica, for the atrocities committed in the camps under their authority. Both Meakić and Sikirica were indicted for genocide.

Killing of elite

532. As in other areas under Serb control, the non-Serb elite of Prijedor was specifically targeted for destruction [see above Reply, Chapter 5, Section 2]. As soon as Serb forces would enter a village or town, they would start selecting Muslim and Croat leaders. The following account related by Judge Hanne Greve illustrates the treatment the Serbs reserved for presumed political opponents:

> "306. The Serbs were also looking for some civilians such as the leader of the Muslim political party, the SDA, in Prijedor (...) and the party's secretary. In Čarakovo, there was a very large family with a name similar to that of the SDA leader. The Serbs mixed up this name with the family name of the SDA leader and for this reason allegedly killed every member of that family which they could find. Two elderly non-Serbs from the area registered 268 people whom they knew by name, killed in Čarakovo on 23 and 24 July 1992. On their list are 31 identified persons with the surname of the family mistaken for that of the SDA leader (...). Reportedly, a total of

> approximately 100 members of this family were exterminated during the attack. There is also a hamlet named Hopovći in the area, where people had the same family name as the SDA secretary. The elderly men have 19 identified persons with this name on their list (...). The SDA secretary is not on the list. On the list there are, however, other large family groups included, such as 29 people sharing a common family name. Altogether there are only 30 surnames on the list, save for an identified murdered imam (...) whose surname was unknown to the two elderly men." [*ibid.*, p. 61, para. 306].

When killing, the Serb slaughterers apparently preferred to remain on the "safe side" and intentionally made sure that, indeed, the destruction of the group as such would be accomplished.

533. The Omarska concentration camp had, as one of it's main functions, the elimination of the leaders of the non-Serbs of *opština* Prijedor. By murdering the educated elite of the Muslim and Croat communities the Serb nationalists aimed to permanently extinguish the functioning of the non-Serb society. In her Prijedor Report, Judge Hanne Greve demonstrated that the Serbs in control of the area considered many persons to be part of the group to be separated for extermination:

> "Among the prominent citizens of Prijedor who had survived the initial phase of the devastation and who were detained in Omarska, are long lists of identified persons whose names are not disclosed for reasons of confidentiality or prosecutorial reasons. Among them (to mention but some) : the mayor; politicians from the SDA and the HDZ in Prijedor; an imam; judges and lawyers; employees from the military and civilians sectors; a veterinarian, a physiotherapist, a dentist, and a number of medical doctors; an engineer and some economists; headmasters and teachers from schools at different levels; journalists and an editor of Radio Prijedor and of Kozarski Vjesnik; an author and an actor; directors and members of Rudnika Ljubija management board; directors and managers Bosnamontaža, Kozaracturist, Celpak, and the biscuit factory Mira Cikota; the director and the secretary of the Prijedor Red Cross, the president of Merhamet (the Muslim charity organisation) in Prijedor; restaurant owners, business men and entrepreneurs; leaders of sports clubs and football players." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 67, para. 343].

534. Politicians and academics, judges and religious leaders, merchants and artists - the backbone of the Muslim and Croat communities - were removed with the intention that the removal would be permanent. Similarly, law enforcement and military personnel were targeted for destruction. This was significant in that their disappearance rendered the group as a whole defenceless. In the opinion of the Commission of Experts this was the main objective of the concentration camps [*ibid.*, p. 42, para. 175].

535. This was entirely deliberate and planned by the Serb authorities, according to Judge Hanne Sophie Greve:

> "340. A Serbian guard in Logor Omarska told (before 29 June 1992) a friend outside that:
>
> 'Interned here are reportedly Prijedor elite from before the Serbian take-over of government control: The President of the Council (Mayor), Members of the Executive Council, the President of the Courts, two judges, doctors, presidents and directors of firms, owners of private factories and businesses.'
>
> 341. The informant asked the Serbian guard, his friend, if the Serbs were going to kill people.
>
> 'Oh no, we will not waste our bullets on them. They have no roof, there is sun and rain, cold nights, beatings twice a day, we give them no food and water. They will starve like animals." [*ibid.*, pp. 66-67, paras. 340-341].

The pattern of this violence shows the detailed preparation of the Serb authorities.

536. The screening process for leaders has been described in slightly varying terms by various authors. According to Bassiouni, the order in which the prisoners were abused and killed was: the prisoners with SDA links, intellectuals, renowned citizens and the wealthy [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 214, para. 1730]. While in the acclaimed book, *The Death of Yugoslavia*, the authors said that the prisoners were divided into three categories A, B, and C. Into category A went those who were judged to have been leaders of the Muslim community, or volunteers for one of the Bosnian militias or the territorial defence. Most of those were killed. Category B consisted of men who were drafted into the territorial defence and category C was the rest [Laura Silber & Allan Little, *The Death of Yugoslavia*, pp. 250-251, Annex 21]. However, all agree that the purpose was to identify the political and intellectual leadership of the non-Serb community in order to liquidate them.

537. The horrible murder of the SDA leader of Kozarac, Ilijaz Hadzic, epitomises the fate of the non-Serb elite in the Prijedor municipality. In the Trnopolje camp, Ilijaz Hadzic was killed with an electric drill, bored into his chest. His three small children were impaled on spikes [Roy Gutman, *A Witness to Genocide, The First Inside Account of the Horrors of 'Ethnic Cleansing' in Bosnia*, Shaftesbury, 1993, p. 41, Annex 50].

Torture

538. During the ethnic cleansing campaign carried out by the Serbs in the *opština* Prijedor, many non-Serbs were tortured. The torture was usually initiated right after

the take-over of the area. In the Tadić Judgment, the Trial Chamber, for instance, described the brutal attack on two small villages in the Kozarac area, Jaskići and Sivci, where a number of non-Serbs had sought refuge after the take-over of Kozarac:

> "346. On 14 June 1992 both villages were attacked. In the morning the approaching sound of shots was heard by the inhabitants of Sivci and soon after Serb tanks and Serb soldiers entered the village. The houses were searched one by one and all the men were ordered out onto the road that ran through the village. There they were made to run along that road, hands clasped behind their heads, to a collecting point in the yard of one of the houses. On the way there they were repeatedly made to stop, lie down on the road and be beaten and kicked by soldiers as they lay there, before being made to get up again and run some distance further, where the whole performance would be repeated. Their wallets, identification cards and any valuables they had on them were taken from them as they lay on the road. In all some 350 men, mainly Muslims but including a few Croats, were treated in this way in Sivci.
>
> 347. On arrival at the collecting point, beaten and in many cases covered with blood, some men were called out and questioned about others, and were threatened and beaten again. Soon buses arrived, five in all, and the men were made to run to them, hands again behind the head, and to crowd on to them. They were then taken to the Keraterm camp.
>
> 348. The experience of the inhabitants of the smaller village of Jaskići, which contained only 11 houses, on 14 June 1992 was somewhat similar but accompanied by the killing of villagers. Like Sivci, Jaskići had received refugees after the attack on Kozarac but by 14 June 1992 many of those refugees had left for other villages. In the afternoon of 14 June 1992 gunfire was heard and Serb soldiers arrived in Jaskići and ordered men out of their homes and onto the village street, their hands clasped behind their heads; there they were made to lied down and were severely beaten." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 124-125, paras. 346-347].

The Trial Chamber established that the attack on the villages of Jaskići and Sivci indeed occurred and that Duško Tadić was one of the Serbs involved in the consequent beatings of the villagers.

539. Like the men captured in the village of Sivci, thousands of the non-Serbs thus arrested were taken to the various camps in the area. As demonstrated earlier in this Reply [Reply, Chapter 5, Section 5], extreme ill-treatment, brutality and deliberate torture were also commonplace in these camps. These incidents involving torture were also found by the Trial Chamber. In Omarska, Emir Beganović was severely beaten:

> "After the Serb assumption of power Prijedor he [Emir Beganović] had been arrested and taken to Omarska prison camp where, after some 10 days outdoors on the pista and two days in the white house, he was placed in a room in the hanger. Apart from what he describes as routine beatings and maltreatment, he was three times beaten individually. (...) Emir Beganovic was called out from an upstairs room in the hanger, made to go onto the hanger floor, being beaten as he went, and there for up to half an hour was kicked and beaten by a group of soldiers armed with metal rods

> and metal cables. Then he was suspended upside down from an overhead gantry for some minutes until his feet slid free and he fell to the floor; he was then beaten again and told to return to his room, where he fainted. As a result of this and of previous beatings Emir Beganovic suffered head fractures, a wasted hand which he cannot use, an injured spine and damage to one leg and to his kidneys." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 73, para. 200].

The Trial Chamber was satisfied beyond reasonable doubt that the incident indeed took place and that Duško Tadić was of the group of men who severely beat Emir Beganović [*ibid.*, p. 86, para. 235]. The Trial Chamber came to the same conclusion in the case of Senad Muslimović:

> "He [Senad Muslimović] had already been beaten much and on the same day as these other incidents he was called out of the room in the hanger, beaten as he went down the stairs to the hanger floor and met by a group who beat him severely, tied him to a large tyre bigger than himself and there beat and kicked him into unconsciousness. When he regained consciousness he was on his knees and a man was holding a knife to his throat and threatening to cut it but was told to 'leave it for the end'. That man then made to cut off his ear but instead stabbed him twice in the shoulder. He was then beaten again into unconsciousness and when he came to found himself hanging upside down suspended from the hangar roof, in which position he was again beaten and kicked until he fainted. When he came to again he was lying on the floor, was beaten again, fainted yet again, came to once more and this time found himself lying in an inspection pit let into the hanger floor. He was taken out of the pit and was allowed to return to his room in the hanger. He suffered knife wounds to his right shoulder, knife cuts along his arms and feet, bruising, head pains and a broken jaw." [*ibid.*, pp. 73-74, para. 201].

Duško Tadić was not only convicted for the above described incidents, he was charged and found guilty for various other incidents involving torture of non-Serbs.

540. The Muslims and Croats in the camps were not simply maltreated. The prisoners were tortured because of their ethnicity. In its Judgment in the Tadić case, the Trial Chamber gave various examples of this humiliating practice:

> "Hase Icić (...) testified that while at the Omarska camp he was forced along with other prisoners to lie on his stomach with his arms outstretched over his head with three fingers together in the Serb salute. If a prisoner's fingers were not in the correct position he was beaten by the guards with rifle butts and the prisoners were all made to shout: 'Be a great Serb, you Serb.' Some of the Serbs slashed the prisoners' clothes and cut crosses in prisoners' backs. He testified that at one point he was called out and forced to greet the group of Serbs by saying: 'God be with you, heroes', before a noose was put around his neck and pulled as he was being beaten.' [*ibid.*, p. 168, para. 471].

541. In addition to being maltreated the non-Serbs were ridiculed for their religion. This was, among others, explained by the Trial Chamber:

> "467. The abuses against non-Serbs were motivated by religious and political reasons. The curse directed at Muslims most often was the derogatory term, 'balija', as well as 'Fuck your Alija', referring to the SDA leader Alija Izetbegović. These indicated the motivations of the perpetrators. Abuse was also directed towards Croats for political reasons. There was repeated testimony that men were forced to hold their hands in the three-finger Serb salute, which is a traditional Serb greeting and has meaning within the Serbian Orthodox church, and several witnesses testified that crosses were carved on men's bodies. Numerous witnesses testified to hearing discriminatory curses such as 'balija mother', 'Ustaša mother', and 'Alija mother', usually in association with a beating. Many were required to sing Serb nationalistic songs and some of the camp guards wore the 'Chetnik kokarda', the two-headed eagle described as equivalent to wearing a Nazi swastika. A few specific examples are sufficient to indicate the horrendous treatment inflicted on the non-Serb population of opština Prijedor on the basis of religion and politics.
>
> 468. Uzeir Bešić, a Muslim, testified that after he was beaten at the Prijedor military barracks (...), he was taken along with two others to the Keraterm camp where they were turned over to a Serb soldier named Zoran Žigić, who immediately asked their nationality. When they said that they were Muslims he ordered them to demonstrate how Muslims pray and to remove their trousers to see if they were circumcised, threatening that if they were not he would perform the operation. After they did so he beat them with the butt of his rifle and afterwards took them to Room 1. Uzeir Bešić testified that he saw others being treated in the same manner and that he and others were called out and beaten and forced to sing Serbian songs." [*ibid.*, pp. 166-167, paras. 467-468].

Therefore, the aim of the abuses was not only to cause as much pain as possible, the aim was also sheer humiliation, while the humiliation was expressly ethnically motivated.

Rape and sexual assault

542. The non-Serb residents of the Prijedor area were regularly subjected to rape and other sexual abuses [see also Reply, Chapter 7]. Many sexual assaults were committed in the Prijedor camps: Trnopolje, Omarska and Keraterm.

543. Although conditions in the Trnopolje camp were less worse than either Keraterm or Omarska, the female inmates of Trnopolje were regularly subject to rape and sexual assault by members of the Serb forces. After having noted that the women of Trnopolje were regularly abused, Judge Hanne Greve described one typical incident:

> "476. On 6 June 1992, to give just one example of what is reported, Serbian tank drivers came into the camp and seized some 30-40 young female camp inmates. Arriving between 10.00 p.m. and midnight, the soldiers (...) were more or less drunk. *They forced the girls and women out with them. When the female prisoners were returned to the camp, they had been raped and mistreated, and their clothing was in tatters.*" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 88-89, para. 476, emphasis added].

544. Rape and sexual assault of prisoners was an integral part of the regime in the Omarska camp, certainly for the small number of women held there. These rapes were combined with other abuses and often were committed by more than one perpetrator:

> "401. Starting from the very beginning of the camp, female prisoners were allegedly raped by Serbian camp guards, Serbian camp officials, and other Serbs. Rapes were reportedly often combined with beatings and other abuses. Often rapes were committed by several perpetrators one after the other. Sometimes the rapist had an audience, sometimes it was merely fellow perpetrators waiting to take turns. Like the rest of the prison population the women were not as such protected against either ill-treatment or torture.
>
> 402. Two of the youngest women spent most of the time in the White House where they were raped and tortured. Almost all the women were badly tortured when in the camp. Most women were subjected to sexual assault - they were humiliated by being promised privileges and threatened that if they did not obey, they would not survive." [*ibid.*, pp. 76-77, paras. 401-402].

545. The guards also forced or attempted to force prisoners to have intercourse with each other for the entertainment of the guards:

> "403. The guards reportedly tried to force one prisoner (...) to rape his fellow prisoner (...), a young woman. He did not want to. He had angina pectoris [a heart condition]. The guards stripped both. The male prisoner begged and screamed, 'I cannot, I cannot, she could have been my daughter'. The guards beat him, his heart could probably not take it. In any event, he was carried outside where it was raining heavily. The next morning other prisoners saw the male prisoner's dead body laying outside of the White House.
>
> 404. Men were also reportedly sexually abused in the camp. Prisoners were, inter alia, forced to have homosexual intercourse with one another, close relatives - like fathers and sons - among them." [*ibid.*, p. 77, paras. 403-404].

546. The prisoners were additionally subjected to various degrees of inhumane treatment of a sexual nature. This included forced sexual assault and castration and genital mutilation. One such incident, for example, involving a Muslim prisoner who was forced to bite off the testicles of another prisoner, was described by the Trial Chamber at the ICTFY in the case of Duško Tadić [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 75, para. 206].

Destruction of religious and cultural property

547. As was explained earlier in this Chapter [Reply, Chapter 5, Section 4], the destruction of religious and cultural property was an inherent part of ethnic

cleansing. *opština* Prijedor, unfortunately, was no exception to this rule. In Prijedor practically all Muslim sacral building have been destroyed, along with a number of Catholic sacral buildings.

548. The result of this deliberate Serb policy were described extensively by Judge Hanne Greve. The five main mosques of Prijedor town were completely destroyed shortly after the Serb assault. In the Kozarac area all sixteen mosques were demolished as well. Not a single Muslim religious building in the entire Prijedor region has been spared and remains intact. Most religious constructions are not only damaged, but reduced to rubble:

> "557. Also, other buildings and habitations considered as typically Muslim have been demolished. The Old Town in Prijedor town, Stari Grad, was one such area with strong Muslim architectural influence. After the Serbian forces purged the area, Stari Grad was levelled almost completely, including a number of new houses which had been erected according to Muslim traditions." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 106, para. 557].

Catholic churches and other religious buildings in the area encountered the same fate; many, if not all, were destroyed by Serb forces after the take-over of Prijedor [*ibid.*, pp. 106-107, paras. 554-562].

549. The Serb authorities in Prijedor often stated that religious buildings had to be demolished as they were being used by snipers "as convenient places for battle [*ibid.*, p. 197, para. 560]. Judge Hanne Greve, however, firmly dismissed these claims as false:

> "The sacral edifices were allegedly not desecrated, damaged and destroyed for any military purpose nor as a side-effect of the military operations as such. Conversely, most of the destruction was due to later separate operations of dynamiting." [*ibid.*, p. 106, para. 556].

550. In sharp contrast with the enormous and irreparable damage caused to Muslim and Croat property, not a single sacred Serb object was destroyed in the entire *opština* Prijedor [*ibid.*, p. 107, para. 561].

Conclusion

551. The key to understanding the genocidal nature of the campaign in *opština* Prijedor is that the non-Serb population was not destroyed or deported as the result of prolonged

fighting. As mentioned earlier in this Section, the Serb take-over was effectuated within thirty minutes, almost without a shot being fired. The subsequent extermination in part and deportation in total was therefore not the inevitable side effect of an armed conflict.

552. After the Serb take-over of Prijedor, the self-appointed authorities used the military and police to systematically cleanse the *opština* of all non-Serbs. The aim of all armed operations carried out in Prijedor, Kozarac, Hambarine and the other villages mentioned above was not the elimination of any Muslim or Croat armed forces; those simply did not exist. The Serb authorities used their overwhelming military power to kill, torture, rape and sexual assault the non-Serb population and to terrorise them into fleeing.

553. The core of this ethnic purification was the treatment of all non-Serbs as such and not as individuals in their own right. Everyone who was not a Serb could be subjected to persecution at any time. After the take-over of 30 April 1992, the non-Serbs lost their general legal protection and the courts stopped functioning. The entire police structure was replaced by a pre-organised fully Serb police force. The non-Serbs were disarmed physically, intellectually and spiritually when their leaders and defenders were taken away to the death camps of Omarska and Keraterm. In running the camps, the Serbian police and the Serbian military cooperated. Whether to give assistance in exterminating detainees, to give an outlet for general aggression, to legitimise aggression against non-Serbs, or as a combination of these purposes, the Serbian leaders furthermore opened up the camps to the most brutal people around - those belonging to paramilitary forces or just anyone who would participate. Men and women prisoners were subject to the will of any one of these persons.

554. The campaign against the non-Serbs was bitterly successful. By the month of June 1993 the figure of killed and deported persons was 52,811 of which 43,330 were Muslims, 3,313 Croats. In the following months the number of non-Serbs further decreased, as was established by Judge Hanne Greve:

> "The extreme persecution to which non-Serbs are subjected and their almost total lack of protection in the district is illustrated by the fact that the ICRC and the UNHCR asked permission from the Serbs, ultimo March 1994, to evacuate all remaining non-Serbs from Opština Prijedor." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 7, para. 5].

The request of the International Committee of the Red Cross and the United Nations High Commissioner for Refugees to evacuate the remaining non-Serbs marked the final stage of the ethnic cleansing process as carried out by the Serb authorities in *opština* Prijedor.

8. Srebrenica

Introduction

555. This Section of the Reply contains a strong and indeed incontestable factual basis for the finding that genocidal acts were committed in the Srebrenica region, in east Bosnia and Herzegovina. In the three years and four months between April 1992 and July 1995, part of the Muslim population living in Srebrenica was destroyed. This was achieved by mass killings, the causing of serious bodily and mental harm to members of the Muslim population, including torture, rape and other inhumane treatment, and the forced relocation of the surviving population of Muslims by starvation, terror and the threat of torture, killing and rape.

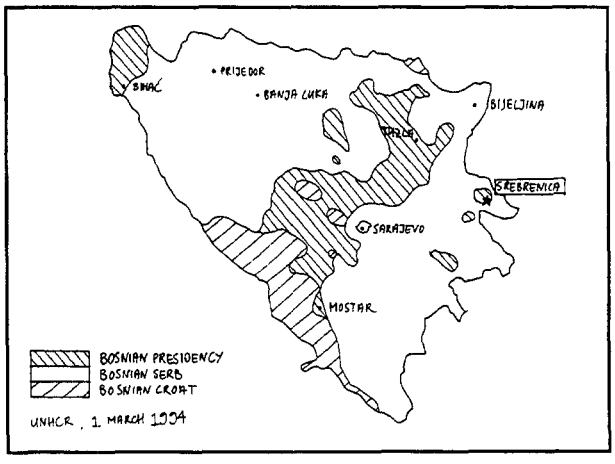
556. The facts that are recited below are gruesome. Judge Riad of the International Criminal Tribunal for the Former Yugoslavia (ICTFY) captured the horror of the facts detailed by saying that "These are truly scenes from hell, written on the darkest pages of human history" [ICTFY, Trial Chamber, Review of the Indictment, *Prosecutor v. Radovan Karadžić and Ratko Mladić ("Srebrenica")*, Case No. IT-95-18-I, 16 Nov. 1995, p. 1].

557. That the deeds committed in Srebrenica indeed were of a genocidal nature was confirmed by the Trial Chamber of the ICTFY in its Review of indictment against Mladić and Karadžić pursuant to Rule 61. The Chamber stated that many of the acts described below can be characterised as genocide. This holds true for the killing of members of the Muslim group, the causing of serious bodily harm to members of the group, which "occurred through inhumane treatment, torture, rape and deportation", and the deliberate inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part "through the siege and shelling of cities and protected areas" [ICTFY, Trial Chamber, Review of Indictment pursuant to Rule 61, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-18-I, 11 July 1996, p. 52, para. 93]. All this took place in Srebrenica. The Chamber added that

"The number of victims selected only because of their membership in a group would lead one to the conclusion that an intent to destroy the group, at least in part, was present." [*ibid.*, para. 94].

A brief history of the fall of Srebrenica

558. Srebrenica is a small town in the eastern part of Bosnia and Herzegovina. It is located in the valley of the Drina river which forms the border between Bosnia and Herzegovina and Serbia. The prewar population of the town was 9,000. Muslims comprised 74,8 per cent of the population [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), Annex IX, p. 47].



559. Srebrenica was attacked in April 1992. Paramilitary groups from Serbia crossed the border into Bosnia and Herzegovina in April 1992 and attacked Muslim communities in towns north of Srebrenica. The paramilitary group known as the "Arkan Tigers"[see Chapter 8, Section 7 of this Reply] took Srebrenica in the same month. Unlike most other towns in the region, in Srebrenica Muslims succeeded in mounting resistance and in May 1992 they retook Srebrenica. Together with Žepa and Goražde, Srebrenica was one of the few areas were the initial Serb onslaught had not succeeded. For the Serbs, Srebrenica became an enemy island within what they considered to be their territory. The Applicant infers from what followed that the Serbs had the intent to cleanse them as unwelcome ethnic areas in what otherwise was pure Serb territory. This cleansing was effectuated by a pattern of killings,

torture, rape, inhumane treatment and forced relocation of those who survived these acts.

560. In late 1992, the Serb forces launched an offensive on the enclave. Thousands of Muslims from neighbouring villages fled into Srebrenica town to seek refuge. In early March 1993, 60,000 people lived in Srebrenica. Respondent states in the Counter-Memorial that the figure of 60,000, which the Applicant has also mentioned in its Memorial, is exaggerated "in order to present a distorted picture of their suffering" and the actual number would be far lower [Counter-Memorial, p. 45, para. 1.3.2.31.]. Applicant has not made up the number of 60,000. Rather, it relies on the carefully researched report of the United Nations Special Reporters of the Commission on Human Rights [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, p. 8, para. 30]. The Security Council Mission established pursuant to Resolution 819(1993) put the number in April 1993 even higher at 70,000 [United Nations, *Report of the Security Council Mission Established Pursuant to Resolution 819 (1993)*, S/25700, 30 April 1993, p. 5, para. 8]. The Serb forces insulated Srebrenica from the outside world. On 1 April 1993, General Mladić informed the United Nations High Commissioner for Human Rights that he "would not permit any more aid to be brought into Srebrenica, but would allow UNHCR to continue the evacuation only" [United Nations, *Letter dated 2 April 1993 from the United Nations High Commissioner for Refugees addressed to the Secretary-General*, S/25519, 3 Apr. 1993, p. 2].

561. In view of the deteriorating situation in Srebrenica, on 16 April 1993, the Security Council, acting pursuant to Chapter VII of the United Nations Charter, adopted Resolution 819 (1993). In this Resolution, the Security Council demanded that all parties to the conflict in the Republic of Bosnia and Herzegovina treat Srebrenica and its surroundings as a safe area that should be free from any armed attack or any other hostile act.

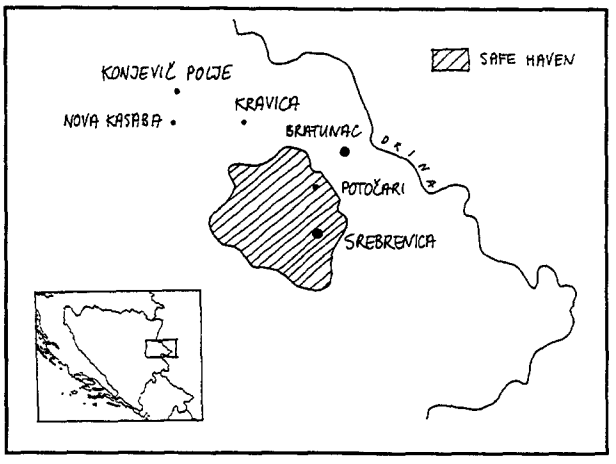
562. One day later, the Government of the Republic of Bosnia and Herzegovina and the Bosnian Serb leadership concluded the Agreement for the Demilitarization of Srebrenica [United Nations, *Report of the Security Council Mission Established Pursuant to Resolution 819 (1993)*, S/25700, 30 Apr. 1993, Annex II]. The Agreement provided *inter alia* for evacuation of the wounded and deployment of a company group of UNPROFOR into Srebrenica.

563. In accordance with the Agreement, the evacuation of wounded took place and more convoys were granted access to Srebrenica. Respondent states that the fact that evacuation was allowed would attest to the fact "that there existed no genocidal intent" [Counter-Memorial, p. 45, para. 1.3.2.33]. As has been elaborated in Chapter 2 of this Reply, this argument falls below legal criticism. The argument that ethnic cleansing by removing part of the population through killing, starvation, rape and torture would *exclude* a finding of responsibility for genocide cannot be upheld in view of the contents of the Genocide Convention and the intention of its drafters [see further Chapter 2].

564. After the evacuations, serious problems remained, particularly in view of the overcrowding of the area [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, p. 10, para. 39]. After the evacuations there were still some 40,000 Muslims in Srebrenica. These 40,000 people could not survive without outside humanitarian aid. The Serbs, however, did not allow such aid. The consequences are detailed below.

565. This situation of an overcrowded town with totally inadequate supplies of water, food and medicine lasted for two more years. On 5 and 6 July 1995, Serb soldiers entered the enclave. On 11 July, the town was taken by Serbs and the paramilitary group the Arkan Tigers.

566. At that point, the population split in two groups. A large part of the population (about 15,000 Muslims) tried to flee to Tuzla. Many of those would be killed or captured. The 25,000 Muslims that had stayed behind in Srebrenica fled to the United Nations Compound in Potočari [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 4]. On 12 and 13 July, these 25,000 people were either killed or deported. Men were separated from the women. Thousands of Muslims, both of the group that fled to Tuzla and the group that stayed in Srebrenica, were killed, tortured and otherwise subjected to acts that, as Applicant will show below, qualify as genocide.



567. The genocidal acts for which Applicant holds Respondent responsible can be grouped in the following categories: rape, torture and inhumane treatment.

Certain erroneous and misleading statements of the Respondent concerning Srebrenica

568. First, however, it is necessary to rebut certain statements that the Respondent has made on the situation of Srebrenica in paras. 1.3.2.26 - 1.3.2.29 of its Counter-memorial. The Respondent produces a rather confusing series of propositions. The Respondent apparently tries to show that Muslims would have had plans for "new destructions" that would follow alleged genocides in World War One and World War Two [Counter-Memorial, p. 44, para. 1.3.2.26.]. It is not quite clear what, according to the Respondent, the legal relevance of these statements is. But it is clear that the Respondent does not provide any credible evidence of such plans. The Annexes to which the Respondent refers contain no authentic documents that would suggest such plans. They only contain a non-authentic document of what the Respondent itself calls an illegal organisation [*ibid.* para. 1.3.2.26.] and an internal document of the Serbian Democratic Party [*ibid.*, para. 1.3.2.27.] that obviously cannot serve as proof for anything other than the fact that these documents were written.

569. The Respondent also alleges that Muslim groups attacked and destroyed "some 100 Serb villages" around Srebrenica and Bratunac, and that people would be killed and expelled [*ibid.*, p. 44, para. 1.3.2.28.]. However, the Respondent fails to provide any independent and credible evidence of these allegations. This holds equally true for the statement that "all the attacks on the Serbs" would be "prepared in advance and carried out according to plan" [*ibid.*]. Respondent does not provide a single piece of

evidence to substantiate that statement. The same holds, finally, for the statement that when Serbs had fled to Bratunac "the same fate awaited the Serbs in Bratunac as like the Serbs in Srebrenica" [*ibid.*, p. 45, para. 1.3.2.29.]. This is a rather preposterous statement in view of the clear evidence that thousands of Muslims were killed, tortured and expelled from Srebrenica [see Reply, Chapter 5, Section 2]. The Respondent does not provide any evidence, either in this part of the Counter-Memorial or in its counter-claims that anything remotely similar has happened to the Serbs. Moreover, it must be repeated that even if, *arguendo*, evidence on any of the above statements would be produced, that would be immaterial in this context as it could not possible justify genocidal acts of the Respondent [see further Reply, Chapter 2].

570. What the Respondent fails to mention is that any incidents that may have occurred when Muslims attempted to break through the encirclement were directly due to the Serbs themselves. The Serbs had cut off Srebrenica from other Muslim-held parts of Bosnia and Herzegovina and systematically blocked convoys of food and medicines. The policy of starvation was already, in general, discussed above [Section 4 of this Chapter] and will also be considered below with regard to the Srebrenica area. It is a gross distortion of the facts to present what can only be seen as an attempt to re-establish life-lines that were cut by Serbs, as a planned attack for destructions and killings.

Killings

571. The absence of any evidence to support the statements of the Respondent as to alleged killings of Serbs in Srebrenica contrasts sharply with detailed evidence, collected and verified by independent and authoritative persons and institutions, of killings of Muslims in and around Srebrenica. That evidence will be presented in six categories: (1) killings by shelling and paramilitary groups before 1995; (2) killings by preventing humanitarian aid into Srebrenica; (3) killings in Srebrenica and Potočari in July 1995; (4) killings during the trek to Tuzla; (5) mass-execution sites; and (6) other evidence of killings following the fall of Srebrenica.

Killings through shelling and by paramilitary groups before 1995

572. While most of the killings would occur in July 1995, significant numbers of civilian Muslims in Srebrenica were killed even earlier. The Commission of Experts has reported killing of civilians in Srebrenica by the paramilitary groups of Šešelj and

Arkan [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), Annex III.A, "Special Forces", p. 27].

573. There are witness reports from Muslim civilians, which show that already in mid 1992, the organized killing of the Muslim population in Srebrenica was very substantial indeed:

> "Reports from the east of Bosnia and Herzegovina include the testimony of a witness from Srebrenica who gives 21 April 1992 as the date when 'organized killing of the Muslim population began with the emphasis on younger people and distinguished Muslims'. According to the account, dozens were killed. Another witness from the nearby village of Gostilje reports that he witnessed the beating to death of his neighbour when Serb forces took the village." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, Annex II, p. 10].

574. Throughout the period between April 1992 and July 1995 Srebrenica was shelled, in varying degrees of intensity, killing many Muslims. A few examples follow. When in March 1993 evacuations were allowed, Serbs shelled the place where evacuations took place, killing several of those being evacuated [*ibid.*, *Periodic Report*, E/CN.4/1994/3, 5 May 1993, p. 9, para. 37]. It was stated in an UNPROFOR letter that "(Bosnian Serb) forces are deliberately impeding the medical evacuation from Srebrenica" [United Nations, *Letter dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General*, S/25586, 13 April 1993, p. 23].

575. On 12 April 1993 artillery attacks killed 56 people and left 106 people wounded [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, p. 9, para. 38]. At least 15 children were killed [US Department of State, Bureau of Public Affairs, *Dispatch*, 26 July 1993, Vol. 40, nr. 30, p. 546, Annex 18]. Respondent denies that this event occurred or in any case that fifteen children were killed [Counter-Memorial, p. 47, para. 1.3.2.39.]. The evidence proves otherwise. The fact was not only cited by the official from the UNHCR but also by the Security Council Mission that visited Srebrenica in April 1993 [United Nations, *Report of the Security Council Mission Established Pursuant to Resolution 819 (1993)*, 30 Apr. 1993, S/25700, para. 20].

576. When about 25,000 Muslims had gathered in and around the United Nations compound after the Serbs took Srebrenica, the Serbs shelled the compound [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Karremans*, 4 July 1996, pp. 4-6, p. 3, Annex 53]. There were reports of casualties and at least one person killed [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 4, para. 7]. Prosecutor Harmon of the ICTFY had found evidence that when many civilians fled to the United Nations compound in Srebrenica, before they fled to Potočari, the Bosnian Serb Army shelled it, "killing and wounding many of the refugees" [ICTFY, Trial Chamber, Review of Indictment Pursuant to Rule 61, Closing Arguments of the Prosecution, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 8 July 1996, p. 6].

Killings by preventing humanitarian aid into Srebrenica

577. After April 1992, the Serbs insulated Srebrenica from the outside world. Mazowiecki, Special Rapporteur of the Commission on Human Rights, wrote on 23 February 1993 that since 31 December 1992 "no humanitarian aid had been allowed in by Serb forces" [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, p. 8, para. 30]. Convoys were continuously stopped on their way to Srebrenica [United Nations, *Letter dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General*, S/25586, 13 April 1993, p. 23]. This policy can properly be called ethnic cleansing by starvation.

578. This is an apt characterization, as the blockades forced Muslims to relocate [see further below]. But the characterization is even more appropriate since the blockades were directly responsible for deaths among the Muslim population. Commander Karremans of the Dutch forces in Srebrenica testified before the ICTFY that refugees died by starvation [ICTFY, Trial Chamber, Review of Indictment Pursuant to Rule 61, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Karremans*, 4 July 1996, p. 2, Annex 53]. Dr. Mardel of the WHO reported "that 20-30 people were starving to death each day" [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Periodic*

Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, E/CN.4/1994/3, 5 May 1993, p. 8, para. 33]. In the hospital in Srebrenica, 320 people were reported to have died because of lack of medicine ["War Crimes in Bosnia-Herzegovina", *Human Rights Watch/Helsinki*, Vol. II, p. 287, Annex 54].

579. When aid was supplied by air to circumvent the blockades, Serb forces fired on Muslims who attempted to collect air-dropped humanitarian aid [US Department of State, Bureau of Public Affairs, *Dispatch*, 26 July 1993, Vol. 40, No. 30, p. 545, Annex 18]. Serbs also prevented specialists from entering the town to restore the water purification supply [*ibid.*]. The contaminated water contributed to the detoriation of the medical situation, already critical because of lack of food and medicine. Scabies was rampant, particularly among children [*ibid.*, p. 546]. The water supply and electricity was cut off. No medical support was allowed to enter the town. In April 1993, the United Nations Security Council Mission to Srebrenica stated that:

> "To impede medical assistance is a crime of genocide. This action, together with the cutting of the water supply and electricity, have been to put into effect a 'slow motion genocide'." [United Nations, *Report of the Security Council Mission Established Pursuant to Resolution 819 (1993)*, 30 Apr. 1993, S/25700, para. 19].

580. The blockades continued to be directly responsible for deaths until the fall of Srebrenica. Of the seventy-seven humanitarian convoys slated to go to Srebrenica in 1995, only nineteen actually reached the enclave ["The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, p. 9, Annex 55].

The killings in Srebrenica and Potočari in July 1995

581. The above killings of Muslims in Srebrenica proved to be just the prelude to the massive and gruesome acts that were to follow. The Serbs dramatically intensified the pattern of genocidal acts that gradually had become discernable. When on 11 July 1995 Serb forces entered Srebrenica, the Serbs encountered an unarmed civilian. Commanding officer Pelemis ordered one of the Serb soldiers to kill the man. The soldier obeyed and slit the throat of the man [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Erdemović*, 5 July 1996, p. 42, Annex 56]. What would become the final and most blatant phase in the genocide in Srebrenica had begun.

582. On the 12 and 13 July, Serbs entered the compound at Potočari and separated men from women. At meetings with the Dutch Commander Karremans, General Mladić demanded to see all men between 17 and 60 [*ibid.*, *Testimony Karremans*, 4 July 1996, p. 14, Annex 53]. While Mladić had stated that he wished to see whether any war criminals were among those men, facts make clear that this is certainly not what subsequently happened: the men were separated from the women, and most if not all of the men were simply killed.

583. Some of the men that were separated were taken to other locations and executed there [see below]. Others were killed at Potočari. Information provided in the debriefing of the members of the Dutch UNPROFOR Battalion, as well as information provided by other witnesses, provides clear evidence of the killings in and near Potočari.

584. Mazowiecki reports that:

> "An international observer described the execution of a civilian man near the place where the buses where standing. He watched as the victim was forcibly removed from a large group of people. A short time later he heard screams and on investigation saw a Bosnian Serb soldier shoot the man in the head. The same incident was reported by another international observer." [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 5, para. 14].

585. Mazowiecki reports that other international witnesses recounted how they saw and heard various events which led them to the conclusion that executions had taken place. One witness described:

> "how he saw a man being beaten with rifle butts and then dragged into a house. He then heard one shot and concluded that the man had been killed. Another witness described the same chain of events on two other occasions. There were reports of the sound of shots and screams throughout the night, particularly in the vicinity of the cornfield behind the house where the men were detained." [*ibid.*, p. 5, para. 15].

586. A Dutch soldier who testified before the ICTFY reported that throughout the 13th of July he heard "approximately 20 to 40" single shots an hour [*ibid.*, *Testimony Groenewegen*, 4 July 1996, p. 64, Annex 57].

587. Dutch soldiers found nine or ten bodies of civilian men outside the compound. There appeared to be gunshot wounds in the back at heart level [United Nations, *Report of*

the Secretary-General Pursuant to Security Council Resolution 1019 (1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most, S/1995/988, 27 Nov. 1995, para. 16]. One international observer witnessed 10 men being taken in the direction of the place where these bodies were later found [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 5].

588. A number of Netherlands Battalion personnel saw Serb soldiers force at least five men into a factory opposite the compound. Shortly afterwards, they heard five or six shots. A Serb soldier later emerged from the factory, armed with a pistol [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019 (1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 17].

589. In another account of killings, a Netherlands soldier saw five men disembark from a Serb minibus near the compound. Two of the men tried to flee. The Netherlands soldier heard shots and saw both men fall to the ground [*ibid.*].

590. Mazowiecki reports that on one occasion, Serb soldiers came into a factory complex, and took away a few men. None of these men came back, except one who returned covered in blood with very serious injuries to his face [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 6, para. 17].

591. The killings of men was not confined to men of military age. Mr. Ruez, the lead investigator of the Srebrenica inquiry for the ICTFY, testified for the Tribunal that witnesses reported that they saw Serbs kill a baby in the factory at Potočari:

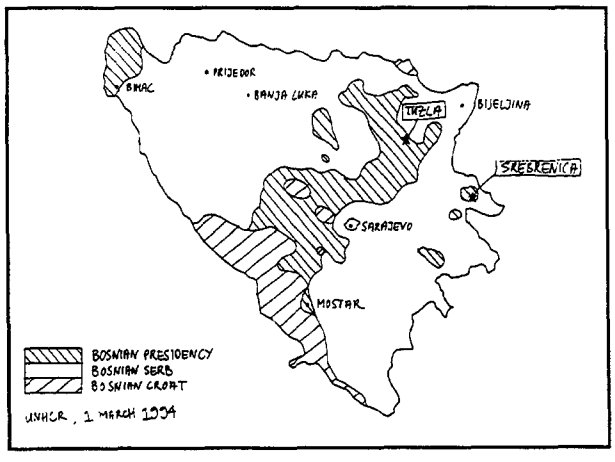
> "A witness who was there in the factory on 11th March saw several soldiers entering the factory. Some of them went towards a woman who had a baby in her arms, asked for the gender of the baby. The woman said it was a boy and immediately the soldier killed the baby with a knife. The mother fell unconscious and everybody tried to flee." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 24, Annex 17].

592. A Muslim woman described in an interview by Human Rights Watch/Helsinki Representatives how her son was killed. This may be the same incident described above. The woman stated that after "Serbian soldiers" took her husband away, her son was killed:

> "And then my son Esmir (...) It is just so hard to talk about this, I can't, it just breaks my heart. (...) I was holding him in my arms (...) We were hugging, but they took him away. They grabbed him and just slit his throat. They killed him. They made me drink his blood." ["The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, pp. 19-20, Annex 55].

593. Several witnesses reported seeing bodies in houses surrounding the compound. One woman interviewed by Human Rights Watch/Helsinki reported that she had seen three to four bodies in a house. Another said she had seen altogether fifty bodies, all men and boys. One witness reported that when she went to get water with a friend she saw ten bodies with their throats slashed. She recognized some of the men and their clothes ["The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, p. 21, Annex 55].

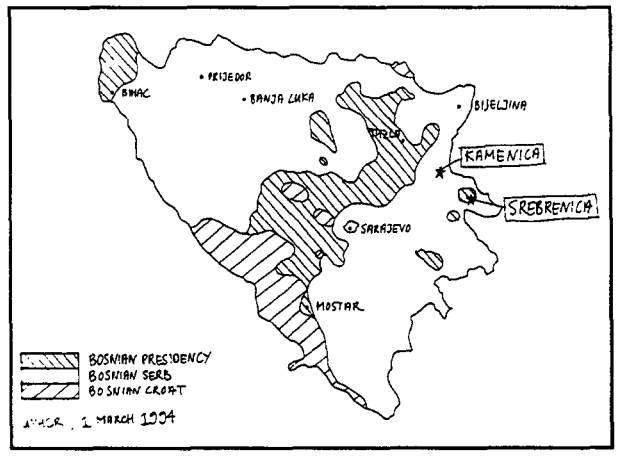
594. Mr. Ruez, mentioned above, testified that several hundred people were selected and cruelly massacred with knives [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 15, para. 35, Annex 17].



The killings during the trek to Tuzla

595. On the 10th of July and subsequent days, about 15,000 people who did not want to fall in the hands of the Serb forces decided to flee from Srebrenica to Tuzla [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 7, para. 29]. This group consisted mostly of men. Between 3,000 and 4,000 were reported to have some weapons and approximately 10,000 were unarmed [*ibid.*, pp. 7-8, para. 29]. Survivors who reached safety in Tuzla reported that Serbs were positioned at various locations on the route and killed many of the 15,000 Muslims who started the trek. The authorities, cited below, who reviewed the witness reports found them credible. Evidence collected at various sites along the trek corroborates these reports.

596. The Serbs attacked these 15,000 people by using artillery shells, anti-aircraft guns, automatic weapons and the like. These attacks caused enormous loss of life [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *The Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-18-I, 16 Nov. 1995, p. 2]. Only about a third of this column evaded or fought its way past the trap line [ICTFY, Trial Chamber, Review of Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Closing Arguments of the Prosecution*, Cases No. IT-95-5-R61 & IT-95-18-R61, 8 July 1996, p. 7]. Incidents that have been reported include the following.



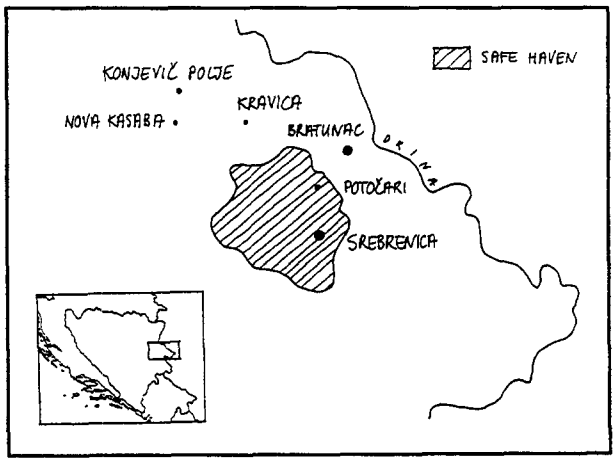
597. A large ambush took place above Kamenica, the first place encountered by the men who were in the north-eastern direction, heading for Tuzla. Ruez, investigator for the ICTFY in Srebrenica states:

> "The main ambush took place above Kamenica. When the column of refugees was massively concentrated at that point, there was a severe ambush that has been described by a number of witnesses. People were surrounded. They tried to flee and they were mowed down there. A lot of them were killed. The bodies are still there. A lot of journalists have gone there and seen that a lot of bodies are still there, corpses; amongst them military people as well as a large number of civilians." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, pp. 18-19, Annex 17].

598. A witness interviewed by Human Rights Watch/Helsinki reported that he left Srebrenica on 12 July with approximately 6,000 to 7,000 men. 5,000 to 6,000 had left earlier. He said:

> "After about three kilometres, we encountered our first ambush at a stream. The centre of our column was hit by anti-aircraft machine guns and mortars; around 200 people died just from that. The Cetniks then came down from the hills, and about 2,000 men in the middle of the column got caught in the line of fire. The people at the front and the back of the columns scattered everywhere. I was in the middle and saw how the Serbs were shooting everyone and slaughtering us with bayonets." ["The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, p. 31, Annex 55].

599. People who survived the ambush at Kamenica encountered many attacks at other parts of the trek. One witness described a shelling incident at Konjević Polje, a few kilometres from Kamenica. A shell landed in this witness' group, leading to countless dead and wounded. This witness saw "people with arms and legs blown away" [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 8, para. 32].



600. One witness interviewed by Human Rights Watch/Helsinki described how he and his group tried to cross a road near Konjević Polje:

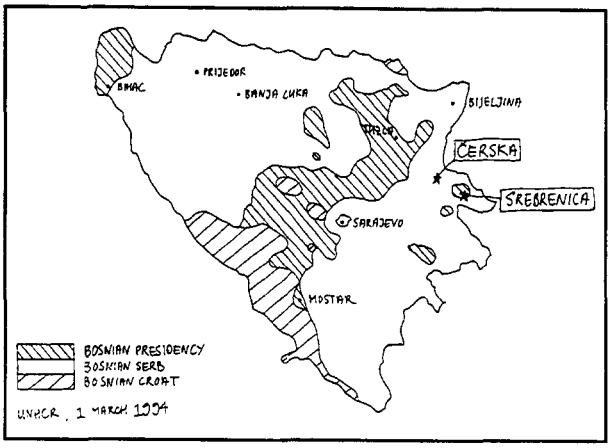
> "Suddenly there was a burst of weapons fire, and some rockets fell into a meadow (...) There was massive panic among the thousands of us. It was completely dark, and many people were being killed." ["The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, pp. 30-31, Annex 55].

601. Many Muslims that were not immediately killed by shells were captured and then killed. A witness reported that he was in a group, at least one third of which was composed of civilian men, that was forced to surrender on the road between Kravica and Konjević Polje. This witness described how the Serb soldiers killed people at random, "grabbing the hair of the victims and slitting their throats" [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, pp. 8-9, para. 33]. In his testimony before the ICTFY, Ruez described several of such executions, including one near Nova Kasaba [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, pp. 30-32, Annex 17]

602. A man who tried to flee from the region hid in the hills. This witness saw

> "A group with some 30 prisoners running up to the cross roads there at Janovici (...) The men are lined up along the road facing three armoured vehicles, including one stolen UN APC. Once they are lined up the armoured vehicles open fire with their heavy machine gun and execute that group of 30 people." [*ibid.*].

603. Another location where many refugees were killed was near Nova Kasaba. One witness reported how he hid near the main road for 48 hours, during which time Bosnian Serb soldiers forced detained men to dig large pits for graves and then executed them. The witness reported that 500 people were killed during the first day [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019 (1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 13].



604. Other men who were captured were killed near Čerska. Ruez reports as follows:

> "A witness who was on a hill overlooking the area, specifically the intersection at Konjevići, saw three buses painted white, filled with people, that turned on to a small road leading towards Cerska in the hills, into a valley. The three buses were followed by an armoured vehicle. Shortly after that vehicle passed by an excavator followed the column. There was heavy firing heard from the direction that the buses had taken. Immediately afterwards, they were seen going back towards Konjević Polje as well as the armoured vehicle. The excavator reappeared 30 minutes later. The fate of those prisoners at that point, the prisoners in the buses, were not yet known; but in the evening some witnesses were able to get through that area and in the morning along the road rising to Cerska they saw a row of bodies lined up in the grass along the edge of the road." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 39, Annex 17].

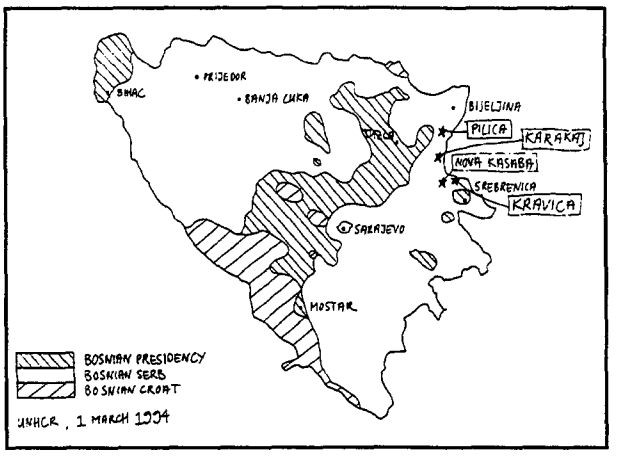
605. This account is corroborated with the findings of investigations by the ICTFY in the area. Investigators identified a mass grave in the Cerska Valley [ICTFY, Review of Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Mladić*, Case No. IT-95-R61 & IT-95-18-R61, 11 July 1996, P. 16, para. 38].

606. After 16 July 1996, several groups of Muslims who were still trying to reach Tuzla were killed by Bosnian Serb soldiers. Half of a group of 150 people was killed at Konjević Polje, and another group of 150 people at Udrč, near Cerska. The ICTFY described how on 17 July 1995, 250 people who were captured were gathered around what was to be their grave and were pushed into it alive by an excavator [*ibid.* p. 14, para. 33].

607. The gruesome conditions under which the trek to Tuzla took place, the killings and the torture [see below] caused many individuals to commit suicide to avoid capture [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*,Case IT-95-18-I, 16 Nov. 1995, p. 2]. Mazowiecki reports a particularly harrowing case where a witness described "how a man shot himself in the face but failed to kill himself and pleaded with others to finish the job" [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 9, para. 36].

Mass-execution sites

608. The factual account of the killings in and around Srebrenica takes yet a more dramatic and gruesome turn. Irrefutable evidence demonstrates that men were collected and killed at mass-execution sites. The men killed at these mass executions for the most part were captured during the trek to Tuzla. Others were separated and captured at the compound at Potočari or taken from the buses that evacuated the 25,000 people from Potočari [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 6, para. 21]. Clear evidence is available that mass executions took place at Kravica, Grbavci/Karakaj, Nova Kasaba, and Pilica.



609. A large group that was captured on their trek to Tuzla near Kamenica was taken in the direction of Kravica. The entire group contained, according to investigator Ruez,

between 500 and 1,000 individuals [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 29, Annex 17]. A witness cited by the Secretary-General puts the number at 2,000 [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019(1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 12]. The group was forced to enter into a hangar that in other reports was described as a warehouse. In his testimony before the ICTFY, Ruez reported what followed:

> "The people were forced to sit down. When the last one entered into the hangar, there was not enough space for him to sit down. The soldiers ordered him to sit down and since he did not act fast enough, he was beaten. Immediately, the soldiers who were around the hangar fired into all the openings of the hangar. Grenades were thrown into the hangar. Those who tried to escape by the openings were beaten by the soldiers at the outside of the hangar. Once the smoke was in the hangar, the firing started again. After the firing the soldiers on the outside asked if there was anyone who still was alive, some answered. They were asked to leave the hangar and as soon as they left the hangar you heard shots on the outside of the hangar as well. Nevertheless, some people managed to survive from this execution which took place inside the hangar." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, pp. 29-30, Annex 17].

610. A witness who survived the massacre stated that once the men were packed into the warehouse, soldiers began firing automatic weapons and grenades into the building. The witness survived the incident by pretending to be dead. The United Nations Secretary-General notes that this statement is corroborated in part by the report of another man, who told a journalist that he saw trucks filled with decomposing bodies coming from the direction of Kravica in mid-August 1995 [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019 (1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 12].

611. The Trial Chamber at the ICTFY noted that "with a few rare exceptions, the group was exterminated" [ICTFY, Trial Chamber, Review of the Indictments Pursuant to Rule 61, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 13, para. 28]. Ruez introduced as evidence before the ICTFY photographs that showed signs of gunshots, blood on the walls of the hangar, bloodstains on the 3 meter high ceilings and human remains splashed against the wall in the hangar [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić &*

Ratko Mladić, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 30, Annex 17].

612. Other mass executions took place near the small villages of Grbavci and Karakaj, close to Zvornik. The United Nations Secretary-General considered the eyewitness information of these executions "detailed and consistent" [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019 (1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, 27 Nov. 1995, S/1995/988, para. 11]. On 13 and 14 July, large numbers of Muslims were taken to schools in Grbavci and Karakaj. It appears that several schools were used as detention centres. From the schools, people were brought to two sites in the area, one of which is described as a meadow near a forest and the other as a grave site near a dam [*ibid.*].

613. An anonymous witness testified before the ICTFY how he, after being separated from the evacuees at Potočari, was brought to a school at Karakaj. He estimated the number of men there at 2,500. The witness described what ensued as follows:

> "When we got to a field we saw to the left, dead, a lot of dead people. Then we realised where we were going. We passed those corpses and the truck went on across some pasture land and when it turned we saw to the right the same number of dead. The truck stopped. The small car went back. Two Serb soldiers opened the back. They told us to come down quickly, not to look, not to look, just come out. So we came out. We were lined up. As soon as the small lorry went off, they started firing at us from behind. There were some people standing behind me and they fell on top of me. So I fell on my stomach and they fell on top of me. Then the firing stopped and then they started shooting individually. If anybody gave any signs of life he would be killed. I kept quiet. They moved away and again they would refill their automatic rifles." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Witness A*, 5 July 1996, p. 11, Annex 58].

614. Reports of executions at the meadow near Karakaj are also described by Human Rights Watch/Helsinki. One witness reported how he was brought with a truck to the meadow:

> "There were twelve of us in the small truck. We were driven for about two to three minutes, and when the truck stopped we were ordered to get out by twos. My cousin Haris called for me. When we jumped we were directed to go left. I saw grass underneath the blindfold. Haris took my hand. He said, 'They're going to execute us'. As soon as he said that, I heard gunfire from the right side. Haris was hit and fell towards me, and I fell with him. I heard moaning from people who were about to die, and suddenly Haris's body went limp." ["The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, pp. 42-43, Annex 55].

615. Another witness described the execution site at a plateau of gravel located near a dam. One witness described what happened there:

> "We were driven for about two kilometres (...) When the truck stopped, they told us to get off in groups of five. We immediately heard shooting next to the trucks. I got off with Kradrija onto a gravel field full of dead bodies. About ten Cetniks with automatic rifles told us to lie down on the ground face first. As we were getting down, they started to shoot, and I fell into a pile of corpses. I felt hot liquid running down my face. I realized that my head was only grazed. As they continued to shoot more groups, I kept on squeezing myself in between the dead bodies." [*ibid.*, p. 44].

616. Mazowiecki also reports an execution that appears to have taken place at these sites. One witness reported that some 2,000 men surrendered near Kravica. After capture they were moved to an unidentified outdoor location. Groups of 5 to 10 men were taken out of the trucks at a time, put in line and shot by Bosnian Serb soldiers. The witness noticed that around 100 men had already been shot when his turn came. He reported that shots were fired and that a bullet hit his leg. He pretended to be dead, and later escaped [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, pp. 9-10, para. 40].

617. These accounts are corroborated by aerial photographs and investigations. Aerial photographs taken by the United States on 27 July 1995 showed three areas of "disturbed earth" near the town of Sahanici in the vicinity of Karakaj. Photographs of the same area taken on 5 July showed no disturbance of the earth [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019(1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 29]. Investigations by the ICTFY identified mass graves at the execution site in Lazete near Krajava. The investigations found human remains at both sites where executions had been carried out - the meadow and near the dam. Ruez commented as follows on photographs of the investigations near the dam:

> "On this plateau executions are reported to have taken place. We saw and collected several bones that were strewn on the ground. We also (...) collected bullets that we found on the site, over 1,000, 1,030. The part here is a possible mass grave. According to the statements of survivors, the bodies were later loaded on to a truck. So we cannot exclude the possibility of a mass grave in this part here because the soil here was heavily disturbed, and many of the bones we discovered were found in this area. The executions took place over the entire plateau. The cartridges we found were found over the entire area. A more specific area where there were many cartridges is here. Many pieces of skull were found in this area as well. Here is an example of the bones we found at the

> part where the soil was heavily disturbed. All these bones come from human beings. There is a bit of the skull, the spine, different bones, the ribs." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 47, Annex 17].

618. The journalist David Rohde visited the sites of the executions near Grbavci, without permission, in October 1995. He had held extensive interviews with witnesses of executions, including those at Grbavci. The results are laid down in his acclaimed book *Endgame. The Betrayal and Fall of Srebrenica: Europe's Worst Massacre Since World War II* (1997). When visiting Grbavci, Rohde found that everything at these sites matched with what survivors had told him and that "[b]oth sites appeared not to have been tampered with". The journalist was arrested at the site and the photographs he had made were seized [David Rohde, *Endgame. The Betrayal and Fall of Srebrenica: Europe's Worst Massacre Since World War II* (1997), p. 343, Annex 60].

619. There is strong evidence that since the first reports of the mass execution sites became public, the human remains at these sites were dug up. The investigators for the ICTFY found evidence that both sites near Grbavci were disturbed afterwards and that the majority of the bodies was removed to other locations [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 46, Annex 17]. David Rohde returned on April 2, 1996 to the sites and found that "[n]early 70 per cent of the grave had been recently dug up" and concluded that the publicity on mass graves had prompted the Serbs to destroy the evidence [David Rohde, *Endgame. The Betrayal and Fall of Srebrenica: Europe's Worst Massacre Since World War II* (1997), p. 346, Annex 60].

620. Another location of mass executions was near Nova Kasaba, some 20 kilometres west of Srebrenica. There are testimony reports that a certain number of prisoners were executed near the soccer stadium in Nova Kasaba [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 43, Annex 17]. Indirect evidence corroborates such reports. Netherlands soldiers who were forced to spend the night at Nova Kasaba on 13 July heard continuous shooting from the direction of the soccer field, beginning at approximately 02.30 hours and lasting 45 minutes to one hour [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019 (1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995,

para. 21]. Mazowiecki reports that a displaced person saw a pile of bodies nearby the football field at Nova Kasaba [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 9, para. 39]. A Dutch soldier described when he was transferred passed the football ground at Kasaba and saw a tractor with a cart on which there were corpses [*ibid.* p. 10, para. 42]. He also saw shoes and rucksacks of an estimated 100 men. Further along he saw a truck carrying corpses on an excavator. Finally, he observed a body in the bend of the road [*ibid.*].

621. Evidence that mass executions took place at Nova Kasaba was provided when in early 1996 field investigators for the ICTFY examined sites next to the soccer field at Nova Kasaba. The investigators dug a three-meter hole by two meters which was about 80 centimetres deep. They found at least five layers of bodies in that hole [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, pp. 43-45, Annex 17]. Ruez testified about one of the photographs taken at the investigation. This particular photograph showed a body:

> "one can see that the person was wearing civilian clothes. He is wearing a civilian shirt. This body, we see the back, the back here and the head there. We can see that the hands, the arms, have been tied behind the back with a small rope." [*ibid.*].

When Mr. Ruez showed other results of the investigations, he said:

> "This man is also wearing civilian clothes. He was wearing a bright blue, blue, green, white jacket. His hands are also tied behind his back, actually lying on the head of the person under him. In the next picture we will see that more clearly. In this photo we can see that the person's hands were tied with iron wire which is here. Here are the person's hands with the fingers and here is his wedding ring which you can see here. They found bodies of killed civilians, with hands tied behind the back." [*ibid.*].

622. Aerial photographs of the Nova Kasaba area provide corroborating evidence. Photographs taken around 13 and 14 of July 1995 show non-disturbed earth at the sites as well as a large number of people crowded at the soccer field ["The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, p. 35, Annex 55]. Pictures taken days later show an area of disturbed earth 100 metres square. There are tracks from heavy vehicles leading from the road to the disturbed earth in both photographs [United Nations, *Report of the Secretary-*

General Pursuant to Security Council Resolution 1019 (1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most, S/1995/988, 27 Nov. 1995, para. 28].

623. A fourth site of mass-executions is near Pilica. Here executions took place on 16 July 1995. These executions were reported by Dražen Erdemović before the ICTFY. Erdemović, a member of the Bosnian Serb Army, plead guilty to crimes against humanity before the ICTFY in June 1996. The facts to which he plead guilty are as follows:

> "On or about 16th July 1995, Dražen Erdemović and other members of the 10th Sabotage Detachment of the Bosnian Serb army were ordered to a collective farm near Pilica. The farm is located northwest of Zvornik in the Zvornik Municipality. On or about 16th July 1995, Dražen Erdemović and other members of his unit were informed that bus loads of Bosnian Muslim civilian men from Srebrenica, who had surrendered to Bosnian Serb military or police personnel, would be arriving throughout the day at this collective farm. On or about 16th July 1995, buses containing Bosnian Muslim men arrived at the collective form in Pilica. Each bus was full of Bosnian Muslim men, ranging from approximately 17-60 years of age. After each bus arrived at the farm, the Bosnian Muslim men were removed in groups of about 10, escorted by members of the 10th Sabotage Detachment to a field adjacent to farm buildings and lined up in a row with their backs facing Dražen Erdemović and members of his unit. On or about 16th July 1995, Dražen Erdemović did shoot and kill and did participate with other members of his unit and soldiers from another brigade in the shooting and killing of unarmed Bosnian Muslim men at the Pilica collective farm. These summary executions resulted in the deaths of hundreds of Bosnian Muslim male civilians." [ICTFY, Trial Chamber, *Prosecutor v. Dražen Erdemović*, Case No. IT-96-22-D, Hearing of 31 May 1996, pp. 4-5].

The ICTFY sentenced Erdemović to five years imprisonment.

624. Aerial photographs and investigations for the ICTFY confirm the above account and identify a mass grave at the farm in Branjevo near Pilica [ICTFY, Review of Indictments pursuant to Rule 61, *Prosecutor v. Erdemović*, Case No. IT-96-22-D, para. 38]. Photographs of July 5, 1995, show nothing particular in the wooded area were the executions were to take place. Photographs of July 17, 1995, the day after the executions described above took place, show machine activity, several groups of bodies, and dug out soil [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, pp. 47-48, Annex 17]. There is strong evidence that the sites were disturbed and bodies were removed. Photographs of 21 and 27 September 1995 show activities on the same site where the mass grave was previously identified. A deep hole and an excavator were seen [*ibid.*]. When investigators arrived at the scene in March 1996, only a limited number of remains were found.

Other evidence of killings following the fall of Srebrenica

625. In addition to the evidence cited above, a number of witnesses have reported seeing incidents of dead bodies not expressly connected to executions cited above. These reports further corroborate the reality and magnitude of the killings.

626. On July 11, members of the Netherlands Battalion saw two trucks, each carrying approximately forty to fifty men, travelling in the direction of Bratunac. Shortly after the trucks had passed the bend at Yellow Bridge, approximately 100 shots were heard [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 6, para. 19].

627. Some of those being evacuated on the buses reported seeing dead bodies on the journey, particularly on the road between Bratunac, Konjević Polje and Nova Kasaba. Some of the bodies were reported to be in civilian dress with slit throats or gunshot wounds. One woman reported seeing four dead bodies of civilians during her walk from the bus to Kladanj [*ibid.*, p. 7, para. 25].

628. Two Netherlands soldiers reported seeing between 500 and 700 bodies on the way from Nova Kasaba to Bratunac on July 14. On July 15, Dutch military personnel saw approximately thirty bodies on this road, as well as teams of people wearing rubber gloves. They also saw tipper trucks and trucks carrying corpses. Dutch soldiers also reported seeing dead bodies in various other places. During the early morning of 17 or 18 July, Dutch soldiers saw approximately 100 bodies lying on two trailers coming from the direction of Srebrenica [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019(1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 22].

Conclusion as to killings

629. The facts cited above - the number of witness reports, the similarities between them, the authorities that have reviewed the credibility of these reports, and the technical evidence provided by aerial photographs and exhumations - leave no trace of doubt that thousands of male, mostly unarmed, civilians, were deliberately killed in Srebrenica.

630. The above evidence of killings is confirmed by independent authorities. Summing up his specific findings cited above, Mazowiecki concludes:

> "There is significant direct and circumstantial evidence indicating that summary executions took place, both of individuals and small groups of people." [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 12, para. 51].

The above demonstrates that there is equally strong evidence for the fact that mass executions took place.

631. Professor Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, concluded on 4 March 1996 that a number of persons reported missing from the region must be presumed to have been victims of mass executions [United Nations, *Question of Enforced or Involuntary Disappearances, Report submitted by Mr. Manfred Nowak*, E/CN.4/1996/36, 4 Mar. 1996, p. 18, para. 65]. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights, stated that

> "All evidence which has come available in recent months provides increased support for the conclusion that at least 3,000, and possibly as many as 8,000 persons, mostly men unaccounted for after the fall of Srebrenica, were the victims of mass killings committed by Bosnian Serb forces." [United Nations, *Situation of human rights in the territory of the former Yugoslavia, Report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/63, 14 March 1996, p. 3].

632. On the basis of the debriefing of the members of the Dutch UNPROFOR Battalion, the Dutch Ministry of Defence concluded that there is strong evidence to suggest that Muslim men of fighting age were murdered *en masse* by Serbs outside the enclave [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019(1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 14].

633. Exactly how many persons were killed in the events preceding and following the fall of Srebrenica remains uncertain. Thousands are still missing and the process of exhumation is far from complete; only relatively few bodies have been found. After revelations of the massacres came to the attention of the world, the Bosnian Serb Army began systematically excavating sites where they buried the victims. However,

the bottom line is that according to carefully prepared estimates by the ICRC, 7,079 people are missing [David Rohde, *Endgame. The Betrayal and Fall of Srebrenica: Europe's Worst Massacre Since World War II* (1997), p. 348, Annex ??]. In June 1997 the ICRC reported that it had requested the Bosnian Serb authorities to provide information of about 8,000 people who are unaccounted for. 3,000 of those were known to have been arrested. The 5,000 other names were of people who fled the town before it fell and have not surfaced anywhere. Only a small number (some thirty people) had reappeared during the release process [International Committee for the Red Cross, Annual Report 1996]. Also, Prof. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights, concluded that some 8,000 people remain unaccounted for [United Nations, *Report submitted by Mr. Manfred Nowak on missing persons in the territory of the former Yugoslavia*, E/CN.4/1996/36, 4 Mar, 1996, p. 3, para. 1].

Rape, torture and other acts of inhumane treatment

634. With these gruesome accounts of killings, the factual overview of deeds that are relevant to a finding of genocide is not complete. There is evidence that both at Potočari and during the trek to Tuzla, Muslims were tortured, raped and subjected to other acts of inhumane treatment.

Torture

635. Several witnesses have described seeing living or dead bodies with noses, ears and lips cut off. Investigator Ruez of the ICTFY reports that at Potočari:

> "One body was found hanging, according to one witness who was there at dawn who worked for the parking company, which was a bus company, there was a mutilated body that was found hanging. The nose was cut, the ears were cut off, the lips were cut off." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 27, Annex 17].

Ruez also reported that on the trek to Tuzla:

> "One prisoner who was hiding in the woods, observed the capture of another who was immediately tortured. He had his nose and ears and lips cut off before he had his throat slit."[*ibid.*, p 19, Annex ?].

636. Displaced persons who saw bodies along the road reported that these bodies had their throat cut or had been mutilated [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019(1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 23]. There are many reports of incidents of torture. Survivors told how a man was forced to eat the liver of his grandson and the throat of whom had been cut before his eyes by a Serbian soldier [ICTFY, Review of Indictments Pursuant to Rule 61, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 1996, 11 July, p. 12, para. 27]. A baby was executed by stabbing with a bayonet before the eyes of the mother [*ibid.*]. In his testimony before the ICTFY, Ruez reported that:

> "One soldier approached a woman in the middle of the crowd who was trying to get on to a bus. Her child was crying. The soldier asked why the child was crying. She explained that he was hungry. The soldier made a comment saying, 'Oh, well, the child will not be hungry any more' and slit the child's throat in front of everybody and then she tried to flee by getting on to a bus." [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 27, Annex 17].

Apart from constituting murder, these acts are to be characterised as torture and the inflicting of mental harm on members of the Muslim population.

Rape

637. There is also evidence that in the circumstances preceding and following the fall of Srebrenica, Muslim women were raped. These acts will be detailed in Chapter 7 of this Reply. Witness reports provided evidence that women were raped at Potočari [ICTFY, Review of Indictment Pursuant to Rule 61, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-18-I, 16 Nov. 1995, p. 2]. Rape was also reported in the debriefing of the Dutch soldiers at Potočari. Mazowiecki reports that a number of rape cases have been registered in Tuzla Hospital. He also reports a case where a girl of fourteen years old committed suicide after having been raped by Serbian soldiers. He mentions another confirmed case in which a nineteen-year old victim was raped on her way to the confrontation line as part of a medical convoy [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, pp. 10-11, para. 45].

> "Two took [the victim's] legs and raised them up in the air, while the third began raping her. Four of them were taking turns on her. People were silent, no one moved. She was screaming and yelling and begging them to stop. They put a rag in her mouth and then we just heard silent sobs coming from her closed lips." [*ibid.*, p. 26].

Other acts of inhumane treatment

638. In addition to the above, Serbs have committed in Srebrenica a continuous stream of acts that caused serious bodily or mental harm to members of the group and served to dismember the group.

639. The blockades of Srebrenica, referred to above, caused great physical and mental suffering to the civilians trapped there. Dr. Mardel of the WHO stated that the conditions were "indescribably appalling" [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, p. 8, para. 33]. The Security Council Mission that visited the town in April 1993 reported that

> "The prevailing conditions of overcrowding, lack of drinking water, which has been cut off, the absence of electricity, sanitation and basic medical assistance represent an extraordinarily dramatic and cruel situation for the people of Srebrenica." [United Nations, *Report of the Security Council Mission Established Pursuant to Resolution 819 (1993)*, S/25700, 30 April 1993, para. 8].

640. The condition of refugees at the compound in Potočari, after the fall of Srebrenica, can be equally qualified as inhumane. Mazowiecki reports that "the general atmosphere was one of panic and one international observer present commented that she had never seen so much fear in a group of people" [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 6, para. 18]. The pattern of inhumane treatment continued when Muslims were evacuated after the fall of Srebrenica. The women, children, and the elderly were put on trucks which were covered with plastic. The temperature was very high and there was little ventilation in the truck. An international observer commented "that the people were herded together like cattle and showed great fear in their eyes" [*ibid.*, para. 20]. Particularly cruel was the treatment of the wounded. On Wednesday 13 July about 65 wounded people were taken from Potočari in a convoy of seven trucks accompanied by medical staff and

UNPROFOR escorts. The convoy was halted at a Bosnian Serb checkpoint near the confrontation line. Some 30 men were removed from the vehicles. It was reported that the sick and wounded

> "were beaten, kicked and pushed by the Bosnian Serb soldiers. At least one man was severely beaten with an automatic weapon and a man with a broken leg was made to walk without assistance." [*ibid*, p. 7, para. 26].

Forced relocation

641. In April 1993 the Security Council:

> "condemned and rejected the deliberate plan of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas as part of its overall abhorrent campaign of ethnic cleansing." [United Nations, *Security Council Resolution 819 (1993)*, S/RES/819, 16 April 1993].

642. In large part, this plan of ethnic cleansing was executed in Srebrenica by killing Muslim men. Add morally, ethnic cleansing was executed by forced massive deportations of Muslims. In combination with the above mentioned cases of killings, torture and rape, these forced deportations provide a critical step in the destruction of the non-Serb population in eastern Bosnia.

643. The forced relocation took place in several stages - partly after the establishment of the "safe area", partly by the fleeing of 15,000 Muslims after the fall of the town, and partly by the evacuation of 25,000 people out of Potočari which was executed on the 12th and 13th of July. This last massive relocation took one and a half days to complete; 300 buses were used. As was pointed out by Ruez in his testimony before the ICTFY, the amount of people evacuated and the number of buses that were used for this purpose clearly demonstrated that "the preparation of the evacuation had been carried out in quite some detail" [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, pp. 54-55, Annex 17].

644. The forced relocation was an integral element of the policy to destroy Muslim life in Srebrenica. In his closing arguments in the Rule 61 procedure in the case against Mladić and Karadžić, Mr. Harmon from the office of the Prosecutor concluded:

> "Within three days of July 11th to July 13th the entire Muslim population of the enclave had either fled, been deported or been killed. The pattern of ethnic cleansing previously perfected by the

> forces of Dr. Karadžić and General Mladić in the municipalities of Prijedor, Bosanski Šamac, Brčko, Foča and Vlasenica achieved morbid perfection in Srebrenica." [ICTFY, Trial Chamber, Closing Arguments of the Prosecution, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 8 July 1996, p. 7].

Involvement of the Respondent

645. There is evidence that the Respondent was directly involved in the acts detailed above. According to reliable sources, the fighting, expulsion and subsequent massacres were undertaken by Serb forces from both sides of the river Drina as well as by Serbian paramilitary groups such as the Arkan Tigers [David Rhode, *Endgame. The Betrayal and Fall of Srebrenica: Europe's Worst Massacre Since World War II*, 1997, pp. 29, 59, Annex 60], the Šešelj Militia and the White Eagles [United Nations, *Question of Enforced or Involuntary Disappearances, Report submitted by Mr. Manfred Nowak*, report E/CN.4/1996/36, 4 Mar. 1996, p. 18, para. 65; "The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Oct. 1995, Vol. 7, No. 13, p. 11, Annex 55].

646. Displaced persons and men who had been detained also reported the involvement of paramilitary forces and soldiers from the Federal Republic of Yugoslavia. One man interviewed by the United Nations, who was held in the Karakaj gymnasium, said that the soldiers in the gymnasium stated that they were from Serbia. Another man described seeing units of the "Black Wolves" a paramilitary unit at Snavago as his group attempted to walk to Bosnian-Government held territory. Other displaced persons said they believed some of the soldiers were from Serbia and Montenegro because of their accents [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 1019(1995) on Violations of International Humanitarian Law in the Areas of Srebrenica, Žepa, Banja Luka and Sanski Most*, S/1995/988, 27 Nov. 1995, para. 36]. In his confirmation of the indictment against Radovan Karadžić and Ratko Mladić, Judge Riad also pointed to the apparent involvement of troops from the Federal Republic of Yugoslavia in the events at Srebrenica. Witnesses had stated that the take-over of Srebrenica and the events following it were not only carried out by Bosnian Serbs but also by soldiers from the Federal Republic of Yugoslavia. These soldiers were recognized by their clean-cut appearance, distinctive uniforms and use of Serbian dialects [ICTFY, Review of Indictment Pursuant to Rule 61, *Prosecutor v. Radovan Karadžić and Ratko Mladić*,

16 Nov. 1995, Case No. IT-95-18-I, p. 3]. The involvement of the Respondent in the genocidal acts committed in Srebrenica is further detailed in Chapter 8 of this Reply.

Conclusion

647. The evidence cited above has been collected by the international agencies of the highest calibre. These factual findings are entitled to the utmost respect [see further Chapter 3 of this Reply].

648. The above presented evidence indicates that the Muslim population was erased from Srebrenica and that that result was effectuated through the killing or disappearance of more than 7,000 Muslims, through torture, rape and forced relocation.

649. The victims of the deeds described above were selected because of their ethnicity. If the facts would leave any doubt that the Muslims were targeted as a group, such doubt would be erased by statements made by General Mladić. When Mladić entered Srebrenica on 11 July 1995, he openly stated for Serbian television:

> "Here we are in Srebrenica on 11th July 1995. On the eve of yet another great Serbian holiday we present this city to the Serbian people as a gift. Finally, after the rebellion against the Dahijas, the time has come to take revenge on the Turks in this region." [cited and translated in ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, *Testimony Ruez*, 3 July 1996, p. 22, Annex 17].

The rebellion against the Dahijas referred to an uprising in 1804 in the Ottoman Empire at which Serb officers had been killed [*ibid.*]. This "revenge" on the Muslims led to the gruesome results detailed above.

650. Chapter 6 will clarify that the events related in this Section of the Reply without any doubt meet the criteria of the Genocide Convention.

9. The policy of ethnic cleansing

The picture that emerges from the evidence

651. In Bosnia and Herzegovina, visions of hell came to life in the period between 1992 and 1995: fragmented body-parts dumped in rivers, in mineshafts or in the open roads of areas that were subjected to the ethnic purification campaign; literally millions driven from their homes to make way for the colonization of their lands;

thousands of people killed, because they happened to belong to a specific ethnic group; killed in camps and in cities where they were encircled, starved and finally massacred, through shelling or mass executions; thousands more killed at fields of execution, where frightened civilians were bused and carted, by day and night, anticipating their end when confronted with the mass graves excavated by heavy machinery; others brought to a horrible death in detention camps, where the infliction of pain was often only the precursor to ever more grotesque ways of slaughter; tens of thousands of non-Serbs, mainly women but also men and children, raped and abused, to injure, to dehumanize, to destroy the existence and soul of a people; and, no less frighteningly, the wholesale expunging of the reminders of the culture and religion of the people that had been driven out, the bulldozing of ancient gravesites, the demolition of mosques.

652. The fate of each individual who enduced such suffering in itself reflects the story of this genocide. The fate of the non-Serb people as a whole reflects the strategy that underpinned this campaign of horror; it is testimony to the exclusive ideology of a territory which had to belong to just a single group, to be united under the banner of a Greater Serbia controlled by Belgrade. It is testimony to the grand strategy of using military, paramilitary and police forces to achieve control over territory, and to exterminate or permanently remove the undesirables. It furnishes evidence of the vast effort in planning and logistical preparedness necessary to commit this further crime of the century, to destroy, once again, in whole or in part, an entire segment of a population.

653. The evidence of such a fate of the dispossessed and of the dead, the injured, maimed and orphaned cries out against Belgrade's smug disclaimers of facts and responsibility. It cries out so strongly, that despite the protestations of the Yugoslav government, the organs of the international community have already left no doubt in their appreciation of these facts. This was no tribal conflict among uncivilised peoples who know no better (if armed conflicts which could be described in these terms ever did occur). This, as it has been authoritatively confirmed, was a consistent, well-organised campaign on the part of the government of Yugoslavia to fulfil its dream of ethnic purity through a Greater Serbia.

654. This section will review some of these authoritative findings, placing the ethnic purification campaign into the context of the creation of this Greater Serbia. It will confirm the systematic planning and execution of this campaign and identify the horrific and ever-repeating patterns of genocidal acts. This section will also relate the

findings by the organs of the international community that these acts were emanations of official policy, rather than private acts of unspeakable inhumanity.

Achieving a Greater Serbia through ethnic purification

655. Earlier in this Reply, the Applicant explained how the Greater Serbia ideology needs to be seen as the overall motive for the Serb assault on the non-Serbs of Bosnia and Herzegovina [Chapter 4, Section 1]. The campaign of ethnic purification, reviewed and recorded as it was by the highest United Nations bodies concerned with international peace and security, by an International Criminal Tribunal, and by the most authoritative international human rights organs, has been squarely placed in the context of this strategy of achieving a Greater Serbia. The ICTFY found that:

> "84. The objective of Serbia, the JNA and Serb-dominated political parties, primarily the SDS, at this stage was to create a Serb-dominated western extension of Serbia, taking in Serb-dominated portions of Croatia and portions, too, of Bosnia and Herzegovina. This would then, together with Serbia, its two autonomous provinces and Montenegro, form a new and smaller Yugoslavia with a substantially Serb population.(...) This concept was espoused by Slobodan Milošević, with ethnic Serbs widely adopting it throughout the former Yugoslavia, including Serb political leaders in Bosnia and Herzegovina and in Croatia." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 30, para. 84].

656. The Commission of Experts also clearly linked ethnic purification to the ultimate goal of establishing a Greater Serbia:

> "With respect to the practices by Serbs in Bosnia and Herzegovina and Croatia, 'ethnic cleansing' is commonly used as a term to describe a policy conducted in furtherance of political doctrines relating to "Greater Serbia". The policy is put into practice by Serbs in Bosnia and Herzegovina and Croatia and their supporters in the Federal Republic of Yugoslavia. The political doctrine consists of a complex mixture of historical claims, grievances and fears and nationalistic aspirations and expectations, as well as religious and psychological elements. The doctrine is essentially based on ethnic and religious exclusivity and the dominance of Serbs over other groups in certain historically claimed areas. These views contrast with ethnic and religious pluralism. This doctrine breeds intolerance and suspicion of other ethnic and religious groups and is conducive to violence when it is politically manipulated, as has been the case." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 33-34, para. 131].

657. The Serb aim of a Greater Serbia obviously clashed with the historically-grown reality of the multi-ethnic Bosnia and Herzegovina. As was also recognised by the United Nations Commission of Experts:

> "The Serbs 'ethnic cleansing' campaign was shaped by several factors. First, the demographics of the region ensured that any attempt to establish 'ethnically pure' areas would entail tremendous dislocations. In BiH, the pre-war population was approximately 40 per cent Muslim, 32 per cent Serb, and 18 per cent Croat. The areas of Serb preponderance are primarily located in the north-east, south-east and north west portions of the country. However, these areas are neither homogenous nor contiguous. The areas in which Serbs are numerically dominant include substantial populations of Muslims and Croats." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674, 28 Dec. 1994, (Vol. I), Annex IV, "The Policy of Ethnic Cleansing", p. 9, para. 31].

658. However, as the Tribunal Trial Chamber ruled, the demographic obstacles to the plan of a Greater Serbia did not appear insurmountable. They would be overcome through the policy of ethnic cleansing:

> "However, among obstacles in the way were the very large Muslim and Croat populations native to and living in Bosnia and Herzegovina. To deal with that problem the practice of ethnic cleansing was adopted. This was no new concept. As mentioned earlier, it was familiar to the Croat wartime regime and to many Serb writers who had long envisaged the redistribution of populations, by force if necessary, in the course of achieving a Greater Serbia." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 30, para. 84].

659. The link between the aim of establishing a Greater Serbia, and the perceived "need" to destroy populations apparently standing in the way has also been specifically confirmed by the Tribunal's Trial Chamber in the Rule 61 hearings in relation to Karadžić and Mladić:

> "In this case, the plans of the SDS in Bosnia and Herzegovina contain elements which would lead to the destruction of non-Serbian groups. The project of an ethnically homogeneous State formulated against a backdrop of mixed populations necessarily envisages the exclusion of any group not identified with the Serbian one. The concrete expressions of these plans by the SDS before the conflict would confirm the existence of an intent to exclude these groups by violence. The project does not exclude the use of force against civilian populations. Furthermore, it appears that a certain group which had been targeted could not, in accordance with the SDS plans, lay claim to any other specific territory. In this case, the massive deportations may be construed as the first step in a process of elimination. These elements, taken together, would confirm that the project which inspired the offences before the Trial Chamber, contemplates the destruction of the non-Serbian group, and specifically the Bosnian Muslim group, as the ultimate step.
>
> In addition, certain methods used for implementing the project of "ethnic cleansing" appear to reveal an aggravated intent as, for example, the massive scale of the effect of the destruction. The number of victims selected only because of their membership in a group would lead one to the conclusion that intent to destroy the group, at least in part, was present. Furthermore, the specific nature of some of the means used to achieve the objective of "ethnic cleansing" tends to underscore that the perpetration of the acts is designed to reach the very foundations of the group or what is considered as such. The systematic rape of women, to which material submitted to the Trial Chamber attests, is in some cases intended to transmit a new ethnic identity to the child. In other

> cases, humiliation and terror serve to dismember the group. The destruction of mosques or Catholic churches is designed to annihilate the centuries-long presence of the group or groups, the destruction of libraries is intended to annihilate a culture which was enriched through the participation of the various national components of the population.
>
> This intent derives from the combined effect of speeches or projects laying the groundwork for and justifying the acts, from the massive scale of their destructive effect and from their specific nature, which aims at undermining what is considered to be the foundation of the group. The national Bosnian Croat, and, especially, Bosnian Muslim national groups are the targets of those acts." [ICTFY, Trial Chamber, Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 53, paras. 94-95].

660. Thus, in the Tadić Opinion and Judgment, the Trial Chamber ruled that there had been "a policy to commit inhumane acts against the civilian population of the territory, in particular the non-Serb population, in the attempt to achieve the creation of a Greater Serbia. In furtherance of this policy these inhumane acts were committed against numerous victims and pursuant to a recognisable plan." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997 p. 254, para. 660; see also *ibid.*, p. 208, para. 574 confirming the strategic aims of the "Republika Srpska" to create a purely Serbian State]. The Tribunal added that in Prijedor, non-Serbs were "subjected to gross abuses, seemingly as a means of attaining the historical goal of a Greater Serbia" [*ibid.*, p. 166, para. 466].

661. This direct link between aim and method has also been emphasised by the Special Rapporteur on Human Rights in the former Yugoslavia, who indicated that:

> "(...) the principal objective of the military conflict in Bosnia and Herzegovina is the establishment of ethnically-homogeneous regions. Ethnic cleansing does not appear to the consequence of the war but rather its goal. This goal, to a large extent, has already been achieved through killings, beatings, rape, destruction of houses and threats." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN4.1992/S-1/10, 27 Oct. 1992, p. 3, para. 6].

Ethnic cleansing as a strategy directed against non-Serbs

662. It is intrinsic to the very essence of the concept of ethnic cleansing or purification that it is an exclusive doctrine, aimed at particular groups. The United Nations Commission of Experts defines ethnic cleansing as:

> "a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. To a large extent, it is carried out in the name of misguided nationalism, historic grievances and a powerful driving sense of revenge. This purpose appears to be the occupation of territory to the exclusion of the purged group or groups." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674, 27 May 1994, p. 33, para. 130].

The United Nations Secretary-General confirmed that:

> "the purpose is to create areas overwhelmingly populated by a single ethnic group, a practice that has come to be known as 'ethnic cleansing'." [United Nations, *Report of the Secretary-General Pursuant to paragraph 15 of Security Council Resolution 757 (1992) and Paragraph 10 of Security Council Resolution 758 (1992)*, S/24100, 15 June 1992, para. 15].

663. In this case, it is clear that ethnic cleansing was conducted in a way specifically targeted at the groups to be expunged from territory claimed by the ideology of a Greater Serbia. The pattern of atrocities reviewed throughout this Chapter, always against non-Serbs, is too overwhelming to permit any doubt. Hence, the Trial Chamber found beyond reasonable doubt that the impugned acts were committed in full awareness of the policy of and discrimination against non-Serbs, and acting on the basis of religious and political grounds [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 171, para. 477].

664. The discriminatory nature of the actions is also evidenced in the selection and registration of victims according to ethnicity, the requirement imposed upon non-Serbs to distinguish themselves by wearing armbands and the taking of preventative measures to ensure that damage to Serb populations and property would be avoided [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 165-166, paras. 465-467]. For example, in relation to Kozarac, it was established by the Trial Chamber that:

> "care was taken to try to avoid damage to Serb property. Azra Blažević testified that after an agreement was reached allowing people to leave Kozarac on 26 May 1992 the only Serb woman who had remained behind at the hospital was ordered by soldiers affiliated with the Serb forces to indicate which apartment was hers so that it would not be harmed. Evidence was also presented of the use of the inscription 'Serb house, do not touch' on Serb property and, unlike the mosque, the Serbian Orthodox church survived the attack and subsequent destruction. Similarly, Serb-dominated villages such as Rajkovići and Podgrade were either not shelled at all or only shelled accidentally."

[ICTFY, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 54, para. 144].

665. As the Commission of Experts stated, an additional factor also confirms the existence of a policy of ethnic cleansing:

> "the wholesale and surreptitious departure of the Serbian population living in certain areas, which are to be 'ethnically cleansed', before the acts described above take place." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674, 27 May 1994, pp. 34-35, para. 138].

666. As the Trial Chamber found on the basis of wide-ranging evidence provided and confirmed through its proceedings,

> "non-Serbs (...) were subjected to such treatment simply because their religion or politics offended those who gained control of the region. A policy to terrorize the non-Serb civilian population of opština Prijedor on discriminatory grounds is evident and that its implementation was widespread and systematic throughout, at the minimum, opština Prijedor is apparent. The events (...) occurred within this context of discrimination." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 168-169, para. 472].

It concluded that the requirement that the inhumane acts must be taken on discriminatory grounds is satisfied by the evidence, proving that the attack on the civilian population was conducted against only the non-Serb portion of the population because they were non-Serbs [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 249-250, para. 652].

667. Similarly, the ICTFY found that the policy of discrimination implemented at Vlasenica:

> "(...) was specifically aimed at "cleansing" the region of its Muslim population. In this instance, this policy of "ethnic cleansing" took the form of discriminatory acts of extreme seriousness which tend to show its genocidal character. For instance, the Chamber notes the statements by some witnesses which point, among other crimes, to mass murder being committed in the region. More specifically, the constitutive intent of the crime of genocide may be inferred from the very gravity of those discriminatory acts." [ICTFY, Trial Chamber, Review of Indictment Pursuant to Rule 61, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, p. 20, para. 34].

Ethnic cleansing and the establishment of physical control over territories

668. As the Commission of Experts found:

> "the manner in which the policy of ethnic cleansing is carried out by Serbs in Bosnia is consistent throughout a certain geographic area represented by an arc ranging from northern Bosnia and covering areas in eastern and western Bosnia adjoining the Serb Krajina area in Croatia. The practice of ethnic cleansing is carried out in strategic areas linking Serbia proper with Serb-inhabited areas in Bosnia and Croatia." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 34, para. 133].

Hence, initially, the armed operations triggered a campaign to establish control over, and then ethnically purify, areas with significant Serb populations:

> "In the weeks following BiH's [March 1992] recognition by the European Community, JNA and Bosnian Serb forces attacked Bosnian towns such as Prijedor and other villages in the Kozarac region of northeast [west] BiH, and Zvornik in northwest [east] BiH. Similar attacks have occurred in many cities and villages along the Drina and Sava Rivers. These areas of BiH have high concentrations of Bosnian Serbs. The purpose of these attacks seems clear: Serb forces have sought to consolidate their control over these territories and link them with each other, as well as with Serb-controlled areas of Croatia." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 8, para. 27].

669. This link between the military campaign of establishing control and the then invariably resulting cleansing operations was widely noted, even at the very outset of the campaign of ethnic purification:

> "All international observers agree that what is happening is a concerted effort by the Serbs of Bosnia-Herzegovina, with the acquiescence of, and at least some support from, JNA, to create 'ethnically pure' regions (...) the techniques used are the seizure of territory by military force and intimidation of the non-Serb population." [United Nations, *Further Report of the Secretary-General Pursuant to Security Council Resolution 749 (1992)*, S/23900, 12 May 1992, para. 5].

670. Similar findings have been made by other independent international observers. Misha Glenny writes in *The Fall of Yugoslavia*:

> "The Serbs have left a terrible trail of blood and destruction in their wake as they closed the noose around Sarajevo's neck. (...) The aim of this offensive (...) was territorial acquisition. (...) The territory formed a huge crescent running along the four rivers from Bosanska Krupa in the north-west through Doboj in the centre, to Bijelijna in the north-east. From there, it stretched south along the Drina towards Višegrad before bending westwards through Foča towards eastern Herzegovina." [Misha Glenny, *The Fall of Yugoslavia*, London, 1992, pp. 166-167, Annex 61].

671. After this initial backbone of control over a strategic arch had been achieved, the second phase of the operation commenced. This was the connection of the regions which had been taken over, by establishing control over some 70 per cent of the territory of Bosnia and Herzegovina, whether or not the original population had contained significant or even dominant Serb elements. [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", pp. 9-10, paras. 28-36]. A more detailed Commission of Experts Report added:

> "(...)there has never been a unified or coherent battle line, but multiple theatres of operations (...) strategic positions were related to each one of these theatres, but since these theatres were part of a political-geographical arc linking Serbia with Serb-inhabited areas in BiH and Croatia, the theatres of military confrontation were readily identifiable. As the conflict progressed, the Serb side sought to solidify and enlarge its territory against the areas of the projected 'Greater Serbia' (...) Because these areas were of mixed ethnic and religious population and Serbs were usually a minority, particularly in BiH, Serbs felt that they had to dislodge the other groups. In 1992, Bosnian Serb forces were insufficient in number and disorganized. However, they were tasked by their political leaders with massive population removal in a relatively short period of time without the open and direct participation of the JNA. The JNA, however, militarily supported the Bosnian Serb forces in many ways, including bombardment and shelling. They were also directly involved in several operations. (...) The overriding political goal of depopulating these areas of non-Serbs determined the nature of the military activities. These areas were not military targets, but civilian areas with strategic importance derived from the fact that they linked Serbia with Serbs in BiH and Croatia." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III, "The Military Structure, Strategy and Tactics of the Warring Factions", p. 5, para. 9-10].

672. The achievement of the ethnically pure Greater Serbia demanded the employment of a consistent strategy of genocide, marked out by ever repeating patterns of practice.

Systematic violations and the ever repeating pattern of acts

673. Once direct control had been achieved, populations would be killed, deported or compelled to flee. Other areas were encircled, to achieve the same result, although more gradually, as Serb control over the surrounding area was consolidated. The systematic application of this pattern of practice by the Serb authorities against non-Serb populations in all Serb controlled areas is beyond any doubt:

> "Most of the territory of the former Yugoslavia, in particular Bosnia and Herzegovina, is at present the scene of massive and systematic violations of human rights, as well as serious grave violations of humanitarian law. Ethnic cleansing is the cause of most such violations. (...) According to the testimony received, the policy has been openly pursued on the territory of those parts of Bosnia and Herzegovina and Croatia which are controlled by ethnic Serbs." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by*

Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, E/CN4.1992/S-1/9, 28 Aug. 1992, p. 2, para. 6].

The Tribunal's Trial Chamber described the campaign as being composed of:

> "Consistent criminal acts, all targeting the same type of population and manifesting the same desire to annihilate its culture and religious sites, coupled with the effect of criminality on such a massive scale" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 16, para. 40].

The Chamber, in another case, added that the practice of ethnic purification "went on throughout the conflict", involving "the systematic implementation of that policy" [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-5-R61 & IT-95-18-R61, pp. 31-32, para. 60-61].

674. The technique of ethnic purification that was so systematically applied has been displayed in detail above in relation to its individual elements. As it was not possible to arrange for the direct removal of populations in all places:

> "Serb officials relied on the use of terror, entailing mass killings, torture, rapes and prison camps to eradicate the non-Serb population. The non-Serbs had to be sufficiently terrorized to ensure that they would flee the area and never return." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 9, para. 32].

675. The individual elements of the recurring pattern were identified by the ICTFY's Trial Chamber: "An area would be surrounded, subjected to military attack, subdued, non-Serb houses would be destroyed, non-Serbs would be captured and often killed and the survivors would then be driven out." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, 7 May 1997, p. 52-53, para. 140-141 on Hambarine and Ljubija; see also, *ibid.*, pp. 53-54, paras. 142-143, on the Kozarac area].

676. The United Nations Special Rapporteur described the recurrent pattern as follows:

> "The term ethnic cleansing refers to the elimination by the ethnic group exercising control over a given territory of members of other ethnic groups. A wide variety of methods are used to accomplish this end, including threats, harassment and intimidation, shooting or using explosives against homes, shops and places of business; destruction of places of worship and cultural

institutions; transfer or relocation of populations by force; summary execution, the commission of atrocities calculated to instil terror among the population, such as torture, rape and the mutilation of corpses; and the shelling of civilian population centres. Ethnic cleansing is often accompanied by confiscation of the property of those forced to leave, including homes, farms and agricultural equipment. In some areas, homes and farm buildings have been razed, in order to preclude any possibility of return. Departure often involves long and arduous journeys during which the displaced population is systematically robbed of savings, jewellery and other personal effects, exposed to beatings and rape, deprived of food and shelter. In many instances the fleeing population has been obliged to cross through areas of armed conflict. (...) it should be noted that ethnic cleansing is not practised exclusively in areas where Serbs form a majority of the population. In some of the cities most strongly affected by Serbian ethnic cleansing, such as Prijedor, Muslims and Croats were in the majority. This lends credence to the fear that the ultimate goal may be to incorporate the Serbian-occupied areas of Croatia and Bosnia and Herzegovina into a 'Greater Serbia'." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/47/666-S/24809, 17 Nov. 1992, pp. 6-7, paras. 9-13].

677. The Commission of Experts identified a similar, ever-recurring pattern:

"134. The coercive means used to remove the civilian population from the above-mentioned strategic areas include: mass murder, torture, rape and other forms of sexual assault; severe physical injury to civilians; mistreatment of civilian prisoners and prisoners of war; use of civilians as human shields; destruction of personal, public and cultural property; looting, theft and robbery of personal property; forced expropriation of real property; forceful displacement of civilian population; and attacks on hospitals, medical personnel and locations marked with the Red Cross/Red Crescent emblem.
135. Many of these acts of violence are carried out with extreme brutality and savagery in a manner designed to instil terror in the civilian population, in order to cause them to flee and never to return. This is evidenced by the large number of purposeful and indiscriminate killings, rape and sexual assaults, and other forms of torture committed against civilians and prisoners of war, both inside and outside detention facilities. These acts are also highly publicized by the perpetrators in order to achieve a terror-inspiring effect on others and cause them to flee.
136. Other noteworthy practices are widespread destruction of villages by systematically burning them to the ground and blowing up all the houses and structures in a given area. This includes cultural and religious monuments and symbols. The purpose of this destruction is to eradicate cultural, social and religious traces that identify the ethnic and religious groups. In the cases where the practices described above do not occur, these groups are forced to leave under duress by reason of a well-founded fear for their personal security.
137. Another recurring practice is to force civilian inhabitants to sign over their property as a condition of their departure or removal to other areas. Mayors and public officials, including the police, are frequently involved in this practice." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674, 27 May 1994, pp. 34-35, paras. 134-137].

678. A more specialized Expert Report for the Commission also confirms this pattern:

"First, Bosnian Serb paramilitary forces, often with the assistance of the JNA, seize control of the area. In many cases, Serbian residents are told to leave the area before the violence begins. The

> homes of non-Serb residents are targeted for destruction and cultural and religious monuments, especially churches and mosques are destroyed. Second, the area falls under the control of paramilitary forces who terrorize the non-Serb residents with random killings, rapes and looting. Third, the seized area is administered by local Serb authorities, often in conjunction with paramilitary groups. During this phase, non-Serb residents are detained, beaten and sometimes transferred to prison camps where further abuse, including mass killings, have occurred. Non-Serb residents are often fired from their jobs and their property is confiscated. Many have been forced to sign documents relinquishing their rights to their homes before being deported to other areas of the country." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 27 May 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 9, para. 28].

The pattern of acts was the result of official public policy

679. These acts were committed within an organized institutional framework and under the highest authority [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *The Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-5-R61, 11 July 1996, pp. 44-45, para. 78-80]. As the Tribunal put it:

> "the acts target the members of an identified civilian population, conceived of as one or more groups, national or political, the commission of the acts follows the same patter; *the acts are planned and organised at a State level.* They appear to have a common objective: permitting the establishment of 'ethnically pure' territories (...) ." [*Ibid.*, pp. 50-51, para. 90, emphasis added].

The fact that this systematic campaign was planned and directed at a high political and military level was also confirmed by the ICTFY in the Karadžić and Mladić proceedings:

> "The Trial Chamber is of the view that the evidence and testimony submitted suffice at this stage to demonstrate the active participation of the highest political and military leaders in the commission of the crimes by Bosnian Serb military and police forces in the detention facilities. The uniform methods used in committing the said crimes, their pattern, their pervasiveness throughout all of the Bosnian Serb-held territory, the movement of prisoners between various camps, and the tenor of some of the accused's statements are strong indications tending to show that Radovan Karadžić and Ratko Mladić planned, ordered or otherwise aided and abetted in the planning, preparation or execution of the genocide perpetrated in the detention facilities." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-5-R-61 & IT-95-18-R61, 11 July 1996, p. 47, para. 84].

680. The Commission of Experts added that "the JNA and the Army of the so-called "Bosnian Serb Republic" have been involved in carrying out and facilitating the policy and practices of ethnic cleansing in certain parts of the territory." [United

Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 35, para. 141]. It was added:

> "142. There is sufficient evidence to conclude that the practices of "ethnic cleansing" were not coincidental, sporadic or carried out by disorganized groups or bands of civilians who could not be controlled by the Bosnian-Serb leadership. Indeed, the patterns of conduct, the manner in which these acts were carried out, the length of time over which they took place and the areas in which they occurred combine to reveal a purpose, systematicity and some planning and coordination from higher authorities. Furthermore, these practices are carried out by persons from all segments of the Serbian population in the areas described: members of the army, militias, special forces, the police and civilians. Lastly, the Commission notes that these unlawful acts are often heralded by the perpetrators as positive, patriotic accomplishments.
> 143. The above-mentioned factors and others indicate the existence of an element of superior direction. At the very least, they indicate a purposeful failure by superiors to prevent and punish the perpetrators once their crimes become known to the responsible commanders.
> 144. Lastly, it should be noted that there was initially a link between local activities and activities of Serbs from the Federal Republic of Yugoslavia in Bosnia and Herzegovina and in Krajina, Croatia, and also involvement by JNA. This linkage existed until 2 January 1992, the date of the cease-fire between Serbs in Krajina and JNA and the Federal Republic of Yugoslavia, and is evident in many ways. In fact, these links are not denied by the Federal Republic of Yugoslavia. This is supported by the use of JNA in Croatia and Bosnia and Herzegovina before the conversion of some of these forces into the army of the so-called "Serbian Republic of Bosnia". Furthermore, there is a strong political, diplomatic and military influence on the part of the Federal Republic of Yugoslavia over a wide range of decisions of the "Bosnian Serb Republic" and the "Serb Republic of Krajina." [*ibid.*, pp. 35-36, paras. 142-144. See also, pp. 34-35, para. 138, confirming that the "practices reported occur under the supervision of a "crisis committee" (Krizni Štab), comprised of local political leaders, police and others, which made such decisions with the direct or indirect involvement and support of the Bosnian Serb Army].

681. The Commission added:

> "Unlike the violations committed by the other warring factions, 'ethnic cleansing' by the Serbs appears to be the result of a highly developed policy that has been planned, coordinated, and financed by Serb officials with support from the FRY and the JNA which was, at times directly involved in some of these operations." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The policy of ethnic cleansing", p. 21, para. 110].

Authoritative bodies have identified and condemned this pattern of official policy

682. The identification and condemnation of this systematic practice by international bodies, such as the United Nations Security Council and General Assembly, the Commission on Human Rights, the Human Rights Committee, the United Nations Conference on Human Rights, etc., was already reviewed in the Memorial (Chapter 3). Since then, the Committee on the Elimination of Discrimination Against Women,

in its concluding Observation/Comment of 14 April 1994 [A/49/38, paras. 732-757] has also expressed its grave concern and condemned the massive, gross and systematic human rights violations occurring in the territory of Bosnia and Herzegovina, most of which, according to the Committee, were committed in connection with the systematic policy of "ethnic cleansing" and genocidal acts in the areas under the control of the self-proclaimed Bosnian Serb authorities.

683. The General Assembly, in Resolution 49/205 of 23 December 1994, was constrained to express again its grave concern at the human rights violations in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, and

> "in particular at the continuing, odious practice of ethnic cleansing, which is the direct cause of the vast majority of human rights violations there and whose principal victims are the Muslim population, threatened with virtual extermination, as well as the Croats and non-Serbs, and to express alarm that the conflict in the Republic of Bosnia and Herzegovina and in the Republic of Croatia has also been characterized by the systematic destruction and profanation of mosques, churches and other places of worship, as well as sites of cultural heritage." [United Nations, *General Assembly Resolution 47/147 (1992)*, A/RES/47/147, 23 Dec. 1994, Preamble].

In that resolution, the Assembly:

> "6. Condemns also the specific violations identified by the Special Rapporteur, most of which are committed in connection with ethnic cleansing by Bosnian Serbs, and which include killings, torture, beatings, arbitrary searches, rape, disappearances, destruction of houses, forced and illegal evictions, detentions and other acts or threats of violence aimed at forcing individuals to leave their homes;
> 7. Condemns further the indiscriminate shelling and besieging of cities and civilian areas, the systematic terrorization and murder of non-combatants, the destruction of vital services and the use of military force against civilian populations and relief operations, including the use of cluster and napalm bombs on civilian targets by Croatian Serb and Bosnian Serb forces;" [*ibid.*].

684. The Commission on Human Rights, in Resolution 1995/89 of 8 March 1995, expressed again grave concern at the ongoing human rights situation and particularly by the systematic policy of "ethnic cleansing and genocidal acts whose principal victims are the Bosnian population, which is threatened with virtual extermination, as well as Croats and other non-Serbs, in the areas of Bosnia and Herzogovina under the control of the self-proclaimed Bosnian Serb authorities". The Commission:

> "3. Strongly condemns the specific violations identified by the Special Rapporteur in his reports, most of which are committed in connection with the systematic policy of "ethnic cleansing" and

> genocidal acts in the areas of the former Yugoslavia under the control of the self-proclaimed Serb authorities, and which include mass killing, torture, disappearances, rape, and other sexual abuses against women and children, the use of civilians as human shields on confrontation lines and as mine clearers, arbitrary executions, the destruction of houses, religious objects and cultural and historical heritage, forced and illegal evictions, detentions, arbitrary searches and other acts of violence;
> 4. Also condemns the systematic impediments by the self-proclaimed Bosnian Serb authorities and the self-proclaimed Serb authorities in the occupied part of Croatia of humanitarian operations, and particularly the obstruction of humanitarian relief convoys forwarded to besieged areas and towns;
> 5. Further condemns the indiscriminate shelling and besieging of cities and civilian areas, the systematic terrorization and murder of non-combatants, the destruction of vital services and the use of military force against civilian populations and relief operations, including the use of cluster and napalm bombs against civilian targets;
> 6. Again denounces the continued deliberate and unlawful attacks and use of military force against civilians and other protected persons by all sides, recognizing that the primary, though not the solely, responsibility lies with the Serbian forces;
> (...)
> 16. Condemns the continuation, particularly in the areas of Banja Luka, Prijedor and Bijeljina, of the heinous and illegitimate acts identified by the Special Rapporteur as elements of 'ethnic cleansing', while commending the courage and sacrifice of the many Serbs who continue to refuse to take part in such violations, and urges the international community to use all its influence on the parties, in particular the authorities in parts of Croatia and Bosnia and Herzegovina under Serbian control and occupation, to end them immediately and to reverse their effects;
> 17. Also condemns all deliberate and arbitrary impeding of the delivery of food, medical and other supplies essential for the civilian population, in particular of the Bihać area, which can constitute a serious violation of international humanitarian law, and of medical evacuations, as well as attacks on and continued harassment of the United Nations Protection Force and personnel working with the Office of the United Nations High Commissioner for Refugees and other humanitarian organizations, which have caused injuries to and the death of those who seek to protect civilians and to deliver humanitarian assistance (...)
> 18. Renews its expression of outrage at the systematic practice of rape as a weapon of war against women and children and as an instrument of "ethnic cleansing" in the areas of armed conflict in the territory of the former Yugoslavia, and again recognizes that rape in these circumstances constitutes a war crime;" [United Nations, Commission on Human Rights, *Resolution 1995/89*, 8 Mar. 1995].

685. The Sub-Commission of the Commission on Human Rights, in Resolution 1995/8 of 18 August 1995 expressed once again its horror and its total and unqualified condemnation of so-called "ethnic cleansing" wherever it occurs, being appalled by the acts of genocide carried out by the Serbs in Bosnia and Herzegovina, including the evidence indicating that large-scale massacres of the Muslim population have taken place after the occupation of the "safe areas" of Žepa and Srebrenica [United Nations, Sub-Commission on Human Rights, *Resolution 1995/8*, 18 Aug. 1995].

686. Towards the end of that year, even after the conclusion of the Dayton Accords, the General Assembly, in Resolution 50/193 of 22 December 1995, condemned the grave violations of international humanitarian law and of human rights in and around Srebrenica, and in the areas of Banja Luka and Sanski Most, including reports of mass murder, unlawful detention and forced labour, rape and deportation of civilians.

Once more, it expressed outrage at the instances of massive and systematic violations of human rights and humanitarian law as described in the reports of the Special Rapporteur, including ethnic cleansing, killings, disappearances, torture, rape, detention, beatings, arbitrary searches, destruction of houses, illegal evictions and other acts of violence aimed at forcing individuals from their homes. It condemned in the strongest terms all violations of human rights and international humanitarian law by the parties to the conflict, recognizing that the leadership in territories under the control of Serbs in the Republic of Bosnia and Herzegovina and formerly Serb-held areas of the Republic of Croatia, the commanders of Serb paramilitary forces and political and military leaders in the Federal Republic of Yugoslavia bear primary responsibility for most of those violations. The Assembly also condemned the attacks on the safe areas of Srebrenica and Žepa and the indiscriminate shelling of civilians in the safe areas of Sarajevo, Tuzla, Bihać and Goražde and the use of cluster bombs on civilian targets by Bosnian Serb and Croatian Serb forces; the deliberate obstruction of the delivery of food and medical and other supplies essential for the civilian population and all attacks on the United Nations Peace Forces and on personnel working with the Office of the United Nations High Commissioner for Refugees and other humanitarian organizations by parties to the conflict [United Nations, *Security Council Resolution 50/193*, S/RES/50/193, 22 Dec. 1995].

Parallel findings by regional bodies

687. From the beginning of the campaign of ethnic purification, the existence, aim and genocidal nature of this pattern was identified and condemned by authoritative regional bodies. The Conference for Security and Cooperation in Europe (now Organization for Security and Cooperation in Europe), condemned "the present leaders of Serbia and Montenegro" and the Serbian forces operating in Bosnia and Herzegovina for their campaign of "pursuing territorial gain through the use of force and to violate basic human standards through the odious practice of ethnic cleansing, and other brutalities." [Conclusions and Decisions of the Third Meeting of the Council of the CSCE, Stockholm, 14-15 Dec. 1992].

688. The European Community and its Member States found that:

> "primary responsibility for the conflict, and its brutality, lies with the present leadership of Serbia and of the Bosnian Serbs. The principal victims of all actions have been the Muslim population of Bosnia-Herzegovina. In defiance of United Nations Security Council Resolutions, the Serb forces in Bosnia-Herzegovina have undertaken a savage campaign of military aggression, ethnic cleansing and the persecution and torture of civilians." [Declaration adopted at the European

Council, Edinburgh, 11-12 December 1992, United Nations Document, S/24960, 14 Dec. 1992].

689. The European Parliament condemned "the murders and other acts of unspeakable brutality committed against the civilian population, which form part of a deliberate strategy to terrorize the Muslim community, as part of the policy of ethnic cleansing." [European Parliament Resolution B-3-0034, 0036, 0101/93, 21 Jan. 1993, *Official Journal of the European Communities*, No. C 42/172, 15 Feb. 1993, Annex 62].

690. The Organization of the Islamic Conference strongly condemned "the genocidal Serbian aggression against the Republic of Bosnia-Herzegovina (...) and the abhorrent Serbian policy of 'ethnic cleansing'." [Twenty-first Islamic conference of Foreign Ministers, Karachi, 25-29 April 1993, United Nations Document A/48/396, S/26440, 15 Sep. 1993, p. 20, para. 39].

691. Finally, the Heads of State or Government of the Non-aligned Movement "condemned the acts of aggression, genocide and ethnic cleansing against the Republic of Bosnia and Herzegovina and its population" [Eleventh Conference of the Heads of State or Government, Cartagena, 18-20 October 1995, Annexed to United Nations Document A/50/752, S/1995/1035, 13 Dec. 1995, p. 42].

Determinations by independent observers

692. Noel Malcolm, one of the most prescient analysts of Balkan history, concludes his book *Bosnia: A Short History*, by determining "one sees that the real causes of Bosnia's destruction have come from outside Bosnia itself (...) first in the form of the political strategy of the Serbian leadership" [Noel Malcolm, *Bosnia: A Short History*, London, 1994, p. 251, Annex 63].

693. Norman Cigar, in a book-length treatment of *Genocide in Bosnia: The Policy of "Ethnic Cleansing"*, adds that:

> "The assault on the Muslim community has happened essentially at the hands of their Serbian neighbours, whose intent was clearly to find a total solution: that is, to remove the Muslims from the land by whatever means feasible. Killings, torture, rape and deportation, often carried out in a strikingly gruesome manner, have occurred on a scale not seen since World War II." [Norman Cigar, *Genocide in Bosnia: The Policy of "Ethnic Cleansing"*, College Station, 1995, p. 3-4, Annex 64].

694. Misha Glenny decries the situation of the *Hades* into which Bosnia was turned, as:

> "the idea of including a minority population in the conquered territory becomes less acceptable as the doctrine of 'national purity' strengthens," [Misha Glenny, *The Fall of Yugoslavia*, London, 3rd revised edition, 1996, pp. 187, Annex 61].

695. Jan Willem Honig and Norbert Both confirm in their exhaustive study of *Srebrenica: Record of a War Crime*, that "The long-term success of ethnic cleansing depended on killing off the Muslim men, without whom the population's women and children would have no means of returning to their birthplaces." [Jan Willem Honig, *Srebrenica: Record of a War Crime*, London, 1996, p. 177, Annex 49].

696. Among the many citizens' organizations which have documented the ethnic purification campaign, Amnesty International confirmed that abuses were "most evident in the areas controlled by the Bosnian Serb forces and appear to be aimed at causing members of the remaining minorities to seek to leave." This campaign was focused on towns such as Banja Luka, Prijedor, Bosanska Gradiška, Mrkonjić Grad, Čelinac, Mahovljani and others, but Amnesty International "fears for the safety of members of the remaining minorities, principally Muslims, Croats and Roma, in all areas under the control of the de facto Bosnian Serb authorities." ["Bosnia-Herzegovina: 'You have no place here-Abuses in Bosnian Serb-controlled areas", *Amnesty International*, AI Index EUR 63/11/94, June 1994, p. 1, Annex 65]. Human Rights Watch, which has assembled direct evidence in hundreds of pages of reports and two books, concluded already in 1993: "What is taking place in Bosnia-Herzegovina is attempted genocide - the extermination of a people in whole or in part because of their race, religion or ethnicity. This is the gravest crime known to humankind." ["War Crimes in Bosnia and Herzegovina", *Human Rights Watch/Helsinki*, New York, 1993, Vol. II, p. 2, Annex 54]. The results of this campaign, carried out well into 1995, bear out that this was indeed a genocide which succeeded in destroying or displacing, in whole or in part, the non-Serbs in Serb-held areas.

The result of the systematic campaign of ethnic purification

697. The campaign of ethnic purification caused a huge wave of refugees. Already by April 1992, the United Nations Secretary-General reported that

> "On the day [14 April 1992] of Mr. Vance [Secretary-General's Personal Envoy for Yugoslavia] visit to Sarajevo, the number of displacement rose to approximately 184,000, according to unofficial estimates of the (...) (UNHCR). As of 20/21 April, the total number stood at approximately 230,000. During the week of Mr. Vance's visit to the area, the number of those displaced rose at an average of 30.000 per a day." [United Nations, *Report of the Secretary General Pursuant to Security Council Resolution 749 (1992)*, S/22386, 24 April 1992, para. 15].

A month later, the Secretary-General confirmed that "the devastation of Bosnia and Herzegovina continues, and that the displacement of the civilian population from its towns and villages is proceeding on a scale not seen in Europe since the Second World War [United Nations, *Report of the Secretary General Pursuant to Security Council Resolution 752 (1992)*, S/24000, 26 May 1992, para. 5].

698. The United Nations Expert on Involuntary Disappearances, Mr Manfred Nowak, noted that:

> "The JNA and Serb paramilitary units took control of large territories (...) by the end of the summer [of 1992] at least 300.000 Muslims had been 'cleansed from the eastern part of the country. Up to 40.000 people are believed to have been killed in this operation alone. In the period from May to July 1992 a similar fate hit the predominantly Muslim inhabitants of the area in and around Prijedor in western Bosnia, where thousands of civilians were reportedly killed, thousands sent to concentration camps and even larger numbers deported. (...)" [United Nations, *Special Process on missing persons in the territory of the former Yugoslavia, Report Submitted by Mr. Manfred Nowak, Member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1995/37, 12 Jan. 1995, p. 13, para. 36].

699. Despite these early "success", the campaign of purification continued relentlessly. By November 1993, over two million one hundred-thousand people had been displaced from their homes since the war in Bosnia and Herzegovina began. This is nearly 50 per cent of the population recorded in the census of 1991. Some 800.000 of them were estimated to have sought refuge outside Bosnia and Herzegovina; the rest were seeking refuge inside the country. Tens of thousands had gone to the "safe areas", such as Goražde, Žepa, Srebrenica, Tuzla, Bihać and Sarajevo. [United Nations, *Situation of human rights in the territory of the former Yugoslavia, fifth report submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 4, para. 13].

700. Perhaps it is necessary to put these huge figures into perspective, with reference to individual localities. According to the ICTFY prosecutors, in 1991, almost 17,000 Bosnian Croats and Muslims lived in the municipality of Bosanski Šamac in the

Republic of Bosnia and Herzegovina. By May 1995, fewer than 300 of the Bosnian Croats and Muslim residents remained [ICTFY, Indictment, *The Prosecutor v. Miljković & others*, Case No. IT 95-9, 21 July 1995, pp 1-2]. In Bosanski Novi, the Special Rapporteur could only determine the presence of some 800 of the 15,000 Muslims previously registered there [United Nations, *Situation of the Human Rights in the territory of the former Yugoslavia, fifth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 11, para. 70]. In Banja Luka, ethnic cleaning was "nearly complete" by May 1994 [*ibid.*, *periodic report*, E/CN4/1994/3, 5 May 1994, p. 3, para. 4]. In his Report of 21 April 1995, the Special Rapporteur found that since the beginning of the conflict, 90 per cent of the Muslim and 85 per cent of the Croat population had disappeared from Banja Luka [*Ibid.*, *Periodic Report*, E/CN.4/1996/3, 21 Apr. 1995, p. 2-4, para. 7-18, Document Population Structure, Annex 66].

701. In the words of the members of the UN Commission of Experts:

> "Through the practice of 'ethnic cleansing' the goal of creating a 'Greater Serbia' has largely been achieved. Serbian forces now control approximately 70 per cent of BiH and one-third of Croatian territory." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2, 28 Dec. 1994 (Vol. I), Annex IV, "The Policy of Ethnic Cleansing", para. 137].

702. Expanding on this view, in early January 1995, Manfred Nowak of the United Nations working group on Enforced or Involuntary Disappearances, reported:

> "during the past three years the people living in the territory of the former Yugoslavia have been suffering the most serious and systematic violations of human rights and humanitarian law in Europe since the Second World War. As a result of the policy of "ethnic cleansing", millions of human beings of various ethnic origins have been forced to leave their homes, hundreds of thousands have been killed and tortured, and tens of thousands have been reported as missing. They disappeared in the course of armed conflict or as targets of "ethnic cleansing" operations, carried out by military or paramilitary forces, by the police or civilians. They left behind their parents, spouses or children, deprived of any information as to whether they are buried in mass graves or still kept in secret detention. (...)" [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report Submitted by Mr Manfred Nowak, Member of the Working Group on enforced or Involuntary Disappearances*, E/CN.4/1995/37, 12 Jan. 1995, p. 3, para. 1].

Two years later, in January of 1997, the Expert on inforced or Involuntary Disappearances wrote:

> "(...) the full truth about the horrible crimes against humanity committed between 1991 and 1995 can no longer be concealed. It is still difficult to believe that, exactly 50 years after the Nazi holocaust, another genocide could occur in Europe as a result of a similar ideology based on nationalism, racial and religious hatred and the obsession of creation 'ethnically pure' States. While the international community was watching without taking proper action, the systematic policy of 'ethnic cleansing' operations, planned and carried out by nationalistic politicians, military and paramilitary groups as well as civilians who were themselves victims of racist propaganda, resulted in the mass exodus of more than 2 million refugees and internally displaced persons, in the death of more than 200000 human beings, in the economic destruction of vast areas of the region, and in the horrendous acts of torture, systematic rape and similar expressions of barbarity. The great majority of the victims of the second European genocide of the twentieth century were civilians of Muslim origins" [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by Mr Manfred Nowak, Expert Member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1997/55, 15 Jan. 1997, p. 4, para. 2].

703. The finding that the campaign of ethnic purification is indeed tantamount to a further campaign of European genocide in this century will now be reinforced through the analysis of the terms of the Genocide Convention, as it applies to the horrendous facts and as it applies to the entire ethnic cleansing campaign.

CHAPTER 6

THE ACTS COMMITTED CONSTITUTE GENOCIDE: THEY SATISFY THE LEGAL CRITERIA ESTABLISHED BY THE CONVENTION

1. Purposes of the Convention

1. The purpose of the Genocide Convention is to stop "acts committed to destroy in whole or in part, a national, ethnical, racial or religious groups, as such (...)" [Article II].

2. In its 1951 advisory opinion, the ICJ stated of the Convention that "its object, on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality." [Reservations to the Convention on Genocide, Advisory Opinion, *ICJ Reports 1951*, p. 15 para. 23]. It is evident from the facts presented in Chapters 5 and 7 of this Reply that "the very existence of certain human groups" was put in question by the acts committed specifically against Bosnians of non-Serb origin and against Bosnia and

Herzegovina's Muslim population in particular. It is also evident from the recurrence of a pattern of acts - murder, torture, rape, deportation and the destruction of religious and cultural institutions - that these acts were not incidental to the conduct of military hostilities but had their *raison d'être* in a plan to violate, systematically, "the most elementary principles of morality." [*ibid.*].

3. Interpreting the will of the General Assembly and the parties to the Convention, this Court has accepted

> "that it was the intention of the United Nations to condemn and punish genocide as (...) involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations." [*ibid.*].

It is impossible to examine the acts reported to this Court in Chapters 5, 7 and 8 of this Reply, without concluding that these were precisely the *sorts* of acts which sought to deny the social existence and psychical integrity and even the physical existence of entire human groups through their selective yet collective murder, torture, rape, displacement and the destruction of their religious and cultural facilities.

4. These acts were intentional wrongs even before the Conventions's entry into force. The terms used in the Genocide Convention must be understood as a culmination of earlier efforts to define a crime in international law by bringing to trial individual perpetrators after the Second World War [*Trial of the Major War Criminals before the International Military Tribunal*, Nuremberg, 14 Nov. 1945 - 1 Oct. 1946, Nuremberg, 1947, Vol. 1, pp. 43-44]. The General Assembly unanimously affirmed the existence of genocide "for the commission of which principals and accomplices (...) are punishable" in its resolution initiating work on the drafting of the Convention. [United Nations, *General Assembly Resolution 96(I)*, 11 Dec. 1946]. The use of the term "affirms" in this resolution makes clear that the Convention would be an instrument codifying what was already prohibited by *jus gentium*. It is for this reason that the ICJ, in its Advisory Opinion, declared the Convention's strictures "binding on states, even without any conventional obligations." [Reservations to the Convention on Genocide, Advisory Opinion, *ICJ Reports 1951*, p. 15, para. 23].

2. The prohibited acts are defined and enumerated by the Convention

5. Article II of the Genocide Convention specifies as genocide:

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

6. Even as these specific acts were being enumerated, it was clear to the drafters that such enumeration of acts must be construed in the light of the specific circumstances. For example it was Dr. Bartos, for Yugoslavia, who pointed out to the drafters, that

> "Genocide could be committed by forcing members of a group to abandon their homes." [United Nations, GAOR, Pt I (Sixth) at 184-185, 82nd Mtg. 23 Oct. 1948].

In so doing he pointed out as an example of genocide the deliberate German policy, during the occupation of his country, to disperse the Slav majority from certain areas to make room for a Greater Germany. In that context, the displacement clearly occurred within the parameters of enumeration (c) of Article II.

7. Moreover, it was made clear by the 1978 study of the Convention by Nicodeme Ruhashyankiko, appointed Special Rapporteur of the Commission on Human Rights' Subcommission on Prevention of Discrimination and Protection of Minorities [E/CN 2/416, 4 July 1978] that the drafters of the Convention in the Sixth Committee of the General Assembly had rejected the idea that actions against a group had to intend to destroy it in its entirety. It is to clarify this point that the words "in whole or in part" were inserted in the draft [AC.6/228]. A desire to kill or destroy the coherence of part of a targeted group could effectual constitute genocide [United Nation, GAOR, 3rd Sess. Pt. 1 6th Cttee, 73rd Mts]. As the Ruhashyankiko respond specifies: "it was not necessary for the act to be aimed at the group in its entirety." [E/CN 2/416, 4 July 1978].

8. The concept of a targeted "group", the destruction of which in whole or in part gives rise to the charge of genocide, was also elucidated by the Ruhashyankiko study

which concluded that it was intended to extend "not to persons who were citizens or held passports issued by a given State, but to those having a certain culture, language and traditional way of life peculiar to a nation "as opposed to a state [p. 291, para. 59; see also, A/C.3/L.1212].

9. It is thus apparent that the concept of genocide under the Convention was elucidated by the enumeration of 5 specific acts.

10. But it is equally clear that the definition of these 5 specific acts was intended to be open to interpretation in the light of the specific context in which those acts occurred. That was made clear by the accepted gloss placed by Yugoslavia's representative, Dr. Bartos, on the enumerated act of "deliberated inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" so as to include forced displacement of population.

11. It is evident that the drafters meant to include as genocide the commission of acts intended to achieve the partial, as well as the total, destruction of a group.

12. It seems clear, also, that the groups capable of being victimized by genocide were intended to include religious and cultural cohorts and not just citizens of a state.

13. Each of these conclusions drawn from the study of the *travaux* and the subsequent study of the intent of the drafters puts life onto the dry bones of the 5 categories of acts enumerated in article II of the Convention. It makes article II - which is even in its most literal reading applicable to the acts perpetuated against the Muslim population of Bosnia - all the more precisely applicable to the conduct of these perpetrators.

14. Article IX of the Convention leaves no room for doubt that each and all of these acts are properly the basis for an action of the kind here being brought by Applicant against Respondent: that is, alleging "responsibility of a State for genocide [Article II] or for any of the other acts enumerated in Article III".

3. These acts and facts in law constitute genocide

Killing

15. Chapter 5 produces ample proof of a concerted policy of killing the cultural or professional elites of the Muslim community in order to decapitate its leadership and thereby destroy its capacity to survive as a group. Section 2 of Chapter 5 provides extensive, reliable evidence of this methodical, systematic policy. While such a policy of killing is, in one sense, "merely" an aspect of the general policy of killing Muslims, it has deeper and even darker roots in the fermented hatred that seeks the extirpation of an entire people, in whole or in part, by the breaking of its social spine. This point is confirmed by the ICTFY's article 61 confirmation of the Karadžić and Mladić indictments, where the Tribunal emphasizes the policy of killing the leading non-Serb political figures [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Case No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 9, para. 17] and by the United Nations Commission of Experts which found that in "[v]illage after village (...) local religious, political, civic, professional, business leaders and prominent personalities are singled out for the worst abuse (...) Prisoners who are targeted for torture or death at the larger camps are wealthy, educated or politically influential (...)" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, pp. 53, 54, paras. 230 (k) and (e)].

16. Section 2 of Chapter 5 further demonstrates that the killing did not consist of random acts of murder but of a concerted, systematic policy that focused on destruction of large parts of the Bosnian male population of reproductive age; the killing of leaders of the cultural, religious and intellectual community; and the random but concerted killing of civilians in order to induce mass flight, called ethnic cleansing or "purification".

17. The killing of prisoners of reproductive age is not excusable as a product of military strategy, since such a strategy is itself prohibited by international law, whether perpetrated against civilians or prisoners of war [Reply, Chapter 2]. While some violations of the Geneva Conventions do not *per se* rise to the level of genocide, they become evidence of genocide when carried out systematically and in a concerted pattern. Evidence of such systematic killing is demonstrated in Chapter 5 of this Reply. The legal impermissibility of arguing as Respondent does, that the

killing is simply a product of civil war is refuted in Chapter 2 of this Reply. The Security Council's Commission of Experts has demonstrated that large numbers of unarmed civilian males were killed in camps where they were unarmed and posed no military dangers to the Serb policy of creating a Greater Serbia except by the fact of being living persons of the Bosnian faith. [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 11-14]. Such killing, committed over time and in many different places against members of a specific group emerge from the categories of war crimes or crimes against humanity to be instantly recognizable as genocide.

18. The killings followed a systematic pattern, as demonstrated in Chapter 5 of this Reply, citing the reports of the United Nations Commission of Experts and of Commissioner Mazowiecki, the Special Rapporteur of the Commission of Human Rights. Execution of civilians, sometimes specifically males, is documented in (among others) the cities or towns of Mostar [Chapter 5, Section 2], Zvornik [Chapter 5, Section 6], Prijedor [Chapter 5, Section 7] and Srebrenica [Chapter 5, Section 8].

19. As extensively shown throughout Chapter 5 many of these reports have been confirmed by the ICTFY in its broadly quoted decisions, while the Prosecutor at the ICTFY has charged several suspects of related atrocities with genocide.

Causing serious bodily and mental harm

20. Evidence of the causing of serious bodily and mental harm is given in detail in Chapter 5, Section 3.

21. Although the horrendous maltreatment of the non-Serb prisoners, civilian as well as military, women and children as well as men, is "excused" by the Respondent as mere crimes against humanity, the systematic, consistent and omnipresent pattern of such acts demands the drawing of the only possible inference: that these were intentional acts of genocide, not random brutality alone.

22. The discussion of the camps and of Zvornik, Prijedor and Srebrenica in respectively Section 5, 6, 7 and 8 of Chapter 5 of this Reply set out the shocking brutality with which non-Serbs, and Muslims in particular, were treated after the fall of communities to Serb captors who were determined to achieve a Greater Serbia

through the destruction of all vestiges of non-Serb life. The Decision of the ICTFY in the Confirmation of the Indictment of Karadžić and Mladić stipulates that at Serb-run camps throughout the region (Omarska, Keraterm, Trnopolje, Luka, Manjača, Sušica, KP Dom Foča, Livade, Batković) people were "systematically selected and assembled for national, ethnical, political and religious reasons (...)" [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-R61 and IT-95-18-R16, 11 July 1996, pp. 6-7, para. 13]. In that decision the Tribunal concluded that "the civilians were then either executed, subjected to mistreatment and other physical and mental harm calculated to bring about their physical destruction or used as human shields against other troops." [*ibid.*, pp. 6-7, para. 13]. The indictment itself had established the *prima facie* case that the accused had "planned, ordered or otherwise aided and abetted in the planning, preparation or execution of the genocide perpetrated in the detention facilities" [*ibid.*, p. 47, para. 84].

23. Chapter 7 of this reply focuses on the most horrendous of these systematic perpetrations of brutality: *rape and general assault.* It assembles the evidence of its planned employment as a way of causing deliberate and devastating harm to the non-Serb community of Bosnia and Herzegovina, through the creation of unwanted ("Serb") pregnancies, devaluing women and making them unable to bear children in normal circumstances, and inflicting the most egregious bodily and psychological harm with the intent of destroying in whole or in part the community of which they were a part essential to its subsistence.

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

24. Section 4 of Chapter 5 provides the evidence for the systematic way in which the Serb perpetrators inflicted conditions of life on the non-Serbs of Bosnia and Herzegovina, calculated to bring about their physical destruction. Supported by the findings of the ICFTY (Trial Chambers and Prosecutor), the Reports of Mazowiecki and of the Commission of Experts, the Applicant has extensively demonstrated this particular aspect of the ethnic cleansing policy.

25. Whenever the Serbs would not have been successful in directly destroying the non-Serb population of areas, which were to be part of Greater Serbia, they took to a campaign of expulsion or deportation. As shown in Section 4 of Chapter 5 all this

was, as a rule, carefully prepared and organised in advance. If expulsion or deportation would turn out not to be possible, a concentration of civilians would be encircled and cut off from all external supplies. In many, well-documented, cases the encirclement would be accompanied by continued shelling of the locked in population, which shelling only served to make life even more impossible for the inhabitants of the besieged areas. This policy was applied regardless whether a specific area would have been designated a "safe area" by the Security Council.

26. A group, as that concept is used in the Genocide Convention, does not live by its physical characteristics alone. Its cohesion depends also upon its capacity to function as a group with shared history and, in most cases, a shared propinquity. Concerted action was taken to destroy both: the historic and cultural legacy by targeting for destruction the Muslim mosques, civic quarters and libraries, and the propinquity by deportations and ethnic cleansing. Both were designed to destroy Muslim community life in whole or in part.
The policy of ethnic cleansing has been extensively manifested in Section 9 of Chapter 5. Ethnic cleansing as genocide is discussed in Section 4, below.

27. The destruction of religious and cultural monuments is detailed in Chapter 5, Section 4 of this Reply. Mosques, as also Catholic churches, were targeted, bulldozed, burnt and dynamited in an effort to efface the non-Serb presence from the earth of this new, Greater Serbia. As noted in detail in Chapter 5, these tactics have been recognized and condemned by the United Nations General Assembly, the ICTFY, the Security Council's Commission of Experts, the United Nations Rights Commission's Special Rapporteur, the Council of Europe and many eye-witness journalists of high reputation. This evidence need not be reiterated here. The scale of the destruction, however, is mind-boggling. For example, of 202 mosques that traditionally stood in Banja Luka, only 2 remain. Among the mosques destroyed are two dating to 1587 (authorities for this and much more evidence of systematic pillaging are found in Chapter 5, Section 4 of this Reply).

4. This genocide is actionable under Article IX

28. As a happenstance of drafting, genocide is described by the Convention as a "crime." Nevertheless, as Article IX demonstrates, insofar as it is committed by a state, its government or agents, genocide or any other violation of the Convention constitutes an international wrongful act: that is to say an "international wrong" which arises whenever "an international person acts in violation of an international legal duty."

[Jennings and Watts eds., *Oppenheim's International Law*, 1992, 9th ed., Vol. I, pt. 1, p. 502, sec. 146]. It is in this understanding that the General Assembly stated that genocide, under the Convention, would entail "national and international responsibility on the part of individuals and states." [United Nations, *General Assembly Resolution 180(II)*].

29. It should be noted, moreover, that although the basis for bringing this action is primarily founded in Articles II and III of the Convention as incorporated by specific reference in Article IX, this article permits any actions pertaining to "interpretation, application or fulfilment" of any part of the Convention "including" but not limited to, Articles II and III. Accordingly, the acts in violation of the Convention alleged by the Applicant to have been committed by Respondent include, also, violations of the Respondent's obligations under Article I to "prevent and punish" genocide, and the obligations under Articles IV, V and VI pertaining to the duty to apprehend, bring to trial and punish violators. Violations of these other legal obligations will be examined in Chapter 11 of this Reply.

5. The ethnic cleansing as practised in Bosnia also constitutes genocide

30. The test of whether acts constitute genocide is whether they were committed against a group and whether they were committed with intent to destroy the group in whole or in part. The Special Rapporteur of the United Nations Commission on Human Rights, Tadeusz Mazowiecki, has reported and illustrated in his reports to the United Nations Security Council that

> "[m]assive violations of human rights and international humanitarian law are not simply features of the war in Bosnia and Herzegovina. They are being used deliberately to achieve ethnically homogenous areas." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission of Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 7, para. 16].

He has emphasized "the deliberate and methodical character of ethnic cleansing carried out by Serb forces (...)" [*ibid.*, p. 7, para. 19], using

> "the methods by which a violent change in the demographic map of Bosnia and Herzegovina has been achieved, leaving 810,000 people displaced internally and 700,000 refugees in other countries formerly part of Yugoslavia." [*ibid.*, p. 7, para. 20].

Referring to Prijedor, this report cites "reliable sources, which illustrates the deliberate and methodical character of ethnic cleansing carried out by Serbian forces (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/47/666, S/24809, 17 Nov. 1992, p. 8, para. 17]. Mazowiecki further reports that "the majority of rapes (...) have been committed by Serb forces against Muslim women from Bosnia-Herzegovina." [*ibid.*, para. 84, and Annex II, para. 59]. The same conclusion was reached by the Security Council's Commission of Experts [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674, (Vol. I), 27 May 1994, p., 60, para. 251]. This aspect of genocide is further analyzed and discussed more fully, together with other corroborative sources, in Chapter 7, especially, insofar as it took the form of a concerted policy of rape. Mazowiecki also reports on the destruction of the last Mosque and the last Catholic church in Serb-occupied Prijedor by explosions approximately 10 minutes apart to illustrate the deliberate policy of destroying the non-Serb cultural and religious heritage. Mazowiecki also reports from interviews with "reliable sources" the other aspects of "ethnic cleansing" such as the murder of large numbers of "mainly Muslims" in camps such as Keraterm and Omarska, as well as torture, which "was practised regularly (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General Assembly and the Security Council*, A/47/666, S/24809, 17 Nov. 1992, pp. 13-14, paras. 30-31].

31. In citing the Mazowiecki Reports, the Applicant throughout this Reply as well as in this Section intends to demonstrate that:

(a) the facts - these atrocities - are well documented by unimpeachable international experts chosen for their prestige and reliability to inform the United Nations organs and the world of events as they occurred;

(b) these experts did not merely observe isolated acts, but deliberate, methodical implementations of policy through murder, torture, rape and destruction;

(c) the policy being implemented by these means was "ethnic cleansing".

To the Serbs, one intent may also have been to clear land for annexation to a "Republika Srpska" and, in time, to a Greater Serbia. But the means intentionally employed were the deliberate killing, maiming and raping of (mainly) Muslim and (Bosnian) Croat citizens of Bosnia and Herzegovina and the destruction of their historic, religious and cultural facilities. That these deliberate acts, methodically carried out, may have been designated "ethnic cleansing" could in no way obscure, to impartial observers, the real definition of what was afoot: *genocide*. This specific, methodical and brutal policy of ethnic cleansing constitutes genocide.

32. There are various components of the strategy of ethnic cleansing pursued in Bosnia. The mildest of these was the methodical policy of driving entire populations of Muslims out of their homes and communities and destroying their way of life, including the deliberate razing of their cultural and religious institutions. While this was usually accompanied by torture, rape and murder, the driving out of entire populations to achieve their eradication from large territorial areas also stands by itself as genocide. Respondent has already drawn the Court's attention to the emphatic point made by Yugoslavia's representative to the Sixth Committee of the General Assembly during the Convention's drafting that "Genocide could be committed by forcing members of a group to abandon their homes." [United Nations, N GAOR, Pt. 1, 6th Cttee., pp. 184-85]. Even the Criminal Code of the Federal Republic of Yugoslavia acknowledges as much, stating:

> "Anyone, who in the aim of fully or partially annihilat[ing] any national, ethnical, racial or religious group, gives orders to commit murders or heavy injuries of body or heavy aggravation of physical or mental health of the group members *or forced displacement of population* (...) will be sentenced to prison at least for five years or to death." [Criminal Code of the Federal Republic of Yugoslavia, Chapter 16: Criminal Act Against Humanity and International Law; Genocide, Article 141, emphasis added, Annex 67].

33. "Forced displacement," unfortunately, was usually achieved by means that are explicitly defined as genocide: killing, torturing, raping and the creation of horrendous conditions for an entire populace because of its Muslim faith and culture. For example, Mazowiecki reports, citing witnesses, that "probably as many as 1,000" were killed in the Muslim village of Hambarine on 23 and 25 May 1992 and, in the nearby Muslim village of Kozarac, "as many as 5,000 persons" of an estimated population of 15,000 "suffered (...) summary executions." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/47/666, S/24809, 17 Nov. 1992, p. 8, para. 17(c) and (d)]. This murder is

recognized by Mazowiecki as part of "ethnic cleansing" which, the Rapporteur observes, "is practised *systematically* by Serbs (...)" [*ibid.*, p. 10, para. 19, emphasis added]. He concludes that "ethnic cleansing has been accomplished through the use of the most cruel and merciless methods imaginable." [*ibid.*, p. 10, para. 20]. Thus, ethnic cleansing by itself is genocide and the killing, torturing, raping and other forbidden acts used to reinforce the terror engendered in all Muslims together and separately amount to genocide. The Respondent achieved a forbidden result and employed forbidden means; they employ those means against a designated group or groups; and they employed them deliberately with intent to destroy in whole or in part the targeted groups.

34. It is not always easy to qualify an act of brutality by attributing to it a single-minded intent. Neither is it necessary for this Court to do so. "Intent" need not be the *exclusive* intent, nor even the ultimate *goal* of a perpetrator. If a man kills his spouse he may do it *intending* to marry someone else, but he also must be taken to have *intended* to kill the wife. (This argument has been developed *in extenso* in Chapter 3 of this Reply).

35. Populations can be induced to flee in terror by acts which, taken in isolation, may not be genocide. However, even such acts of brutality that in themselves do not amount to genocide, perhaps lacking the horrendousness or the explicit intent, when taken together with other acts, or with frequent occurrence of similar acts in other places or in the same place, may nevertheless become part of a pattern of conduct that amounts to genocide, being imbued both with the necessary brutality and the requisite intent when viewed as uniform building blocks in the construction of the charnel house that is the former Yugoslavia. The International Military Tribunal at Nuremberg clarified this connection between intent of individual perpetrators and the larger purpose of their acts, when the latter appears clearly from the overall circumstances. There, a defendant had argued that the stealing of the personal property of Jews in concentration camps did not rise to the level of a "crime against humanity." The Tribunal replied that

> "under the circumstances which we have related, this plea is and must be rejected. What was done was done pursuant to a government policy, and the thefts were part of a program of extermination and were one of its objectives." [*U.S. v. von Weizsaecker* (Ministries Case), 14 Trials of War Criminals before the Nuremberg Military Tribunals under Control Council, 1949, Law No. 10, p. 611 (the Green Series)].

Similarly, even if, at times, random acts of killing, torture, rape, destruction of cultural and religious property and even acts causing flows of refugees may not, at times, rise to the level of genocide, they become genocidal when the sheer volume of such acts - their frequency, conceitedness and the methodical nature - makes clear to credible and impartial experts authorized to find facts for principal organs of the international system, that these acts are not random but occur "pursuant to a government policy" and "were part of a program of extermination."

36. Was this not precisely the situation as found by impartial official investigation of events in Bosnia? Killings may be used to exterminate a group. But killings may also be used selectively to cause a group to flee. When combined with torture, rape, destruction of religious and cultural property and of the group's leadership, it becomes clear that the intent is to destroy the group *qua* group, in whole or in part, either by causing it to flee and be scattered abroad, or, if necessary, by extermination. When these measures are implemented in a policy of group-destruction -using whatever it takes- it is not much of a stretch to deduce from an overwhelming number of different acts one single policy: to destroy the group in whole or in part. Mazowiecki reports, for example, that when "six small mountain villages called Hambarine, Rizvanovici, Rakovcani, Sredice, Carakovo, and Bisceni" were taken by "Serbian forces (...) around May 1992 three quarters of the 4,500 inhabitants are reported to have been executed." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 10, para. 39]. The same pattern was reported from Bisceni [*ibid.*], in Balgaj [*ibid.*], Visegrad [*id.* paras. 35, 38], Zaklopaca [*ibid.*, para. 37] and, of course, Srebrenica [*ibid.*, para. 36]. In Gacko, as in many other places, the pattern was to order the Muslim population (63% of Gacko) to flee. They were then ambushed while their convoy was leaving and the men were killed [*ibid.*, p. 22, para. 97]. A similar pattern was found to have operated also, among other places, at Doboj [*ibid.*, para. 96] and Zvornik [*ibid.*, para. 98]. The United States Department of State similarly has reported the eye-witness testimony of a Muslim survivor of a massacre at Grbavci that precisely replicates the pattern of reports by Mazowiecki and Bassiouni:

> "As his neighbors returned to the housing area, hands over their heads, the Serb militiamen separated men from women and children. The witness watched from about 200 meters as the men were lined up. Shortly after noon, one of the Serbs shouted an order to 'kill the Ustasha.' On this command, about 10 of the militiamen began emptying their automatic weapons into the line of Muslim men and continued shooting until they were all dead. When the shooting stopped, the

> executioners and other Serb militia, many of whom had been standing around watching, started plundering houses in the village and stealing livestock.
> The witness, his family, and other neighbors returned from their hiding place 3 days later. He participated along with other neighbors in the burial of 56 victims. They were buried about 20 meters from the edge of the existing cemetery, between two rows of houses, near the spot where they were shot." [US Department of State, Bureau of Public Affairs, *Dispatch*, 28 Dec. 1992, Vol. 3, No. 52, p. 920, Annex 68].

37. The executions, when seen in the context of the policy of "ethnic cleansing" itself, were part of a concerted, systematic and deliberate policy of killing, torturing and raping, as well as of destroying communal life intended to create, by whatever means it took, a Greater Serbia utterly "cleansed" of extraneous population groups. This was directed against a large part of the Muslim population of Bosnia and Herzegovina in order to make demographically possible a Muslim-free area for repopulation by Serbs. No euphemism can hide what was so clearly seen, heard and reported by Mr. Mazowiecki as well as many others. This precisely fits the definition of genocide: killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about a group's destruction, imposing measures like rape to prevent women from subsequently being capable of child-bearing; destroying Muslim mosques, libraries, hospitals and targeting first the leaders of the community for execution. All this was done deliberately with the intent to destroy in whole or in part the Muslim community if not in all of Bosnia then, at least, in those large parts coveted by the Serb extremists who had taken control in Belgrade and in Pale.

38. The thrust of these reports by Mazowiecki are amply supported and verified by the evidence adduced by the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994].

39. The military actions taken by Serb forces, while in each instance "merely" violative of humanitarian law, taken together form a pattern of intended genocide. The Bassiouni Commission provides numerous examples in its reports to the Security Council. For example, it cites the following eye-witness evidence of a New York Times reporter who had visited Serbian gunners:

> "Anybody who stops and climbs atop the mud walls can see about what the Serbian gunners see, and it is an astonishing sight. Many of the guns are less than one thousand yards from high-rise buildings in the center of the city, and perhaps 500 to 1,000 feet above them (...) it is plain, numbingly so, that the men firing the guns can see exactly what they are hitting. What this means is that the Serbian gun crews cannot have any doubt when their shells strike hospitals, schools,

> hotels and orphanages and cemeteries where families are burying their dead (...)" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. II), 28 Dec. 1994, Annex VI, "Part 1, Study of the Battle and Siege of Sarajevo", p. 406, para. 1403].

40. The Experts' Report is absolutely clear in observing the "widespread and systematic nature of the acts" [*ibid.*, p. 23, para. 84] which, taken as part of a pattern, cease to be isolated instances of wrongdoing and become, instead, attempts to commit genocide and, even, genocide itself. As that report confirms, on the basis of extensive evidence, "[i]t is the overall context of large-scale victimization carried out as part of a common plan or design which goes to the element of systematicity." [*ibid.*, p. 23, para. 84]. The ICTFY's Trial Chamber's decision in the Karadžić and Mladić cases concluded that systematic forced expulsions similarly, when part of a policy of ethnic cleansing, reveal a genocidal intent. To the Tribunal

> "it appears that a certain group which had been targeted could not, in accordance with the SDS plans, lay claim to any other specific territory. In this case, the deportations may be construed as a first step in a process of elimination." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-1-R16, 11 July 1996, para. 94].

41. It must be borne in mind that the SDS plan called for the annexation of all of Bosnia and Herzegovina, which would have been accomplished, on the basis of what happened in the areas that were taken over, by the expulsion or killing of all the Muslims, except perhaps for those confined to a tiny enclave. That this plan could not be realized in its entirety is irrelevant to the case. As the Trial Chamber observed, "determining the degree of which the group was destroyed in whole or in part is not necessary to conclude that genocide has occurred." [*ibid.*, para. 94].

42. Such victimization need not succeed in destroying all, or even most of a group. Article III prohibits any attempt to commit genocide, regardless of its success. Moreover, the phrase "destroy, *in whole or in part* of a (...) group as such" [emphasis added] was expressly inserted to cover a genocidal enterprise even if it does not aim at killing all the members of the group. The Report on the question of the prevention and punishment of the crime of genocide [E/CN.4/Sub.2/1985/6] states at paragraph 29 that the phrase "in part" in Article II of the Convention

> "would seem to imply a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group such as its leadership (...) considerations of proportionate scale and of total numbers are relevant."

The Genocide Convention was intended to deter or punish persons who embark on the destruction of a group, not merely those who succeed.

43. Injurious, discriminatory acts, when committed systematically, permit inferences of intent. When the acts, taken together, have the effect of destroying a group in whole or in part, the intent to bring this destruction about can be inferred from the systematic pattern of acts. This is so even when individual acts, examined in isolation, one by one and out of context, are "merely" gravely injurious instances of inhumanity. As the ICTFY's Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, in the *Nikolić* case, was able to conclude:

> "the constitutive intent of the crime of genocide may be inferred from the very gravity of those discriminatory acts." [ICTFY, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Nikolić*, case No. IT-94-2-R61, 20 Oct. 1995, p. 20, para. 34].

44. The Experts' Report, like Applicant's Reply, finds ample evidence of acts from which Respondent's intent to commit genocide can be inferred. It states that the

> "necessary element of intent may be inferred from sufficient facts. In certain cases, there will be evidence of actions or omissions of such a degree that the defendant may reasonably be assumed to have been aware of the consequences of his or her conduct, which goes to the establishment of intent (...)" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 26, para. 97].

The Commission of Experts reported that "the manner in which" various "coercive means" were employed to effect ethnic cleansing is "consistent throughout a certain geographic area" and included

> "mass murder, torture, rape and other forms of sexual assault; severe physical injury to civilians; mistreatment of civilian prisoners and prisoners of war; use of civilians as human shields; destruction of personal, public and cultural property (...) ." [*ibid.*, p. 34, paras. 133-134].

This is not the result of personal or local vendettas. On the contrary, there are well-established patterns of atrocities, demonstrated in the "Prijedor" case study made by the Commission, that the Commission found repeated in many municipalities (*opštinas*): Banja Luka, Brčko, Foča and Zvornik. In each case, the Commission stated that it "received significant information supporting the above conclusions." [*ibid.*, p. 35, para. 140]. The practices

> "were not coincidental, sporadic or carried out by disorganized groups or bands of civilians who could not be controlled by the Bosnian-Serb leadership. Indeed the patterns of conduct, the manner in which these acts were carried out, the length of time over which they took place and the areas in which they occurred combine to reveal a purpose, systematicity and some planning and coordination from higher authorities." [*ibid.*, p. 35, para. 142].

45. As will be demonstrated in Chapter 10, the responsibility for these acts in violation of the Convention rests squarely with the Federal Republic of Yugoslavia. This has been confirmed again and again in the Experts' Report [*ibid.*, pp. 30, 31, paras. 113, 118]. Chapter 11 will demonstrate that the Federal Republic of Yugoslavia's responsibility for important omissions violative of the Genocide Convention. Likewise, all this was reported by the Commission of Experts [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 35, para. 143].

46. Based on its investigation and observations, the Commission of Experts, while finding that some wrongs were also committed by Bosnian Government forces, concluded that these, unlike Serb atrocities, did not occur as part of a concerted policy [*ibid.*, p. 36, para. 148] and that "it is clear that there is no factual basis for arguing that there is a 'moral equivalence' between the warring factions." [*ibid.*, pp. 36-37, para. 149]. This issue is further addressed in Chapter 16 of this Reply.

47. The High State Court of Düsseldorf, in convicting a Bosnian Serb, Nikola Jorgić, on 30 counts of murder and 11 counts of genocide, had no doubt whatever that the acts of killing Muslims did not amount to isolated acts of an individual acting on his private animosities but also constituted part of a pattern of the intentional destruction of the Bosniak population. Imposing the life sentence on this perpetrator, Judge Günter Krentz said: "Whoever hoped that events like the Nazi genocide of the Jews could never be repeated is bitterly disappointed after the events in the former Yugoslavia." ["German Court sentences Serb to life for genocide in Bosnia", *New York Times*, 27 Sept. 1997, p. A5, Annex 69]. The Court found defendant guilty, *inter alia* of multiple (30) cases of murder and of the mistreatment of many persons, some of whom appeared as witnesses. The Court found that defendant's individual acts, taken in the context of the overall conduct of the campaign against the Muslims, constitute genocide, *first*, because, "the intent to destroy a group means destruction of the group as a social entity in its uniqueness and its feeling of being community; it is not required to show the biological-physical destruction of the group." [Case IV, 26/96, 2 StE 8/96, Generalbundesanwalt, Oberlandesgericht

Düsseldorf, *Strafsache gegen Nikola Jorgić*, pp. 161-62, Annex 70]. It found, *second*, that such intent was

> "clearly manifest by the Serb leaders of the SDS and the leaders of the Serb military, made evident by the clearly demonstrated systematic conduct and utterances of Karadzic and by the circumstances of mistreatment, use of terror, plunder, and destruction of homes and mosques of Muslims in the territories requisitioned by the Serbs, by which they were deprived of the means of survival and were forced to flee insofar as they had not been killed by violence or in the concentration camps." [*ibid.*, p. 162].

48. The German Court thus decided that destruction, in the meaning of the Genocide Convention, includes the destruction of a group as a social entity, in whole or in part. It also decided that ethnic cleansing is genocide. Finally, the Court decided that the acts of individuals -killing, torturing, etc.- must be judged in the context of their participation as responsible persons in an overall strategy that was clearly, demonstrably genocidal. These conclusions support those of the ICTFY, the Mazowiecki Reports, the Commission of Experts and of numerous reports by governments and responsible, independent journalists. The facts, in both senses of the word, are truly "notorious".

49. The ICTFY, too, has had occasion to make findings that reinforce those made by the Human Rights Commission's rapporteur and by the Security Council's Commission of Experts. Particularly cogent are the findings of the Trial Chamber in the case of Duško Tadić [ICTFY, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997]. Although Tadić was not charged with genocide, many of the findings of fact made by the 3-judge chamber independently confirm allegations being brought by the Applicant in this proceeding.

6. The Tadić case as evidence of genocide

50. As has been noted, *above*, the Tadić case was not one in which the defendant was charged with genocide. The case is replete, however, with findings of facts which bear directly on Applicant's case and which confirm all that Applicant alleges, or needs to allege, in order to demonstrate that genocide was perpetrated.
Much of the fact-finding by the ICTFY Chamber was based on the evidence of witnesses who were subjected to cross-examination by the defence. The prosecution presented 40 witnesses and 75 exhibits, including video tapes, and 10 prosecution witnesses were called in rebuttal to the 11 defence witnesses presented by live video

from Banja Luka in Bosnia and Herzegovina. This makes the fact-finding in *Tadić* particularly reliable and pertinent to the present case.

51. The Opinion of the Tribunal traces the propaganda campaign waged after 1989 to prepare the Serbs of Bosnia and Herzegovina for that which was to follow by warning them that they were the target of a massacre being prepared by the Muslims. It adopts the words of one witness, Edward Vulliamy of the Guardian Newspaper, London, who had travelled in the area during 1992, to the effect that

> "the message from the government in Belgrade was relentless and was very 'cogent and potent. It was a message of urgency, a threat to your [Serbian] people, to your nation, a call to arms, and, yes, a sort of instruction to go to war for your people (...)'" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 34-35, para. 96].

The Tribunal's acceptance of this evidence of incitement from Belgrade is directly confirmatory of the allegations and evidence of the Federal Republic of Yugoslavia's complicity in genocide that are developed in Chapter 10 of this Reply. The Tribunal equally confirms the allegations and evidence presented in the Applicant's *Memorial* and in this Reply to the effect that the JNA military force of the Federal Republic of Yugoslavia in Bosnia and Herzegovina in mid-1992 simply transformed itself into the army and militias of the "Republika Srpska", which committed most of the atrocities alleged by Applicant. This Court must determine whether state responsibility for genocide can be shed merely by the perpetrators shedding one uniform for another. The question is not what sartorial choices the perpetrators of genocide may have made but, rather, *who* had effective responsibility for their acts?

52. These atrocities are fully developed by the Tribunal in the Tadić case [*ibid.*]. Those pertaining directly to genocide include, *inter alia*, the following, which are quoted directly, verbatim, with reference to the applicable paragraph numbers:

> "147. Immediately upon its formation, the ARK Crisis Staff began to make decisions about the treatment of non-Serbs. The President of the ARK Crisis Staff, Radoslav Brdanin, held extreme views with regard to Greater Serbia and the acceptability of other nationalities living within that territory. His position, which was continually repeated in the media, was that the largest percentage of non-Serbs acceptable in the territory designated as Great Serbia was 2 percent. In order to secure this percentage he advocated on Radio Banja Luka a direct struggle, including the killing of non-Serbs. Similarly Radislav Vukić, President of the Municipal SDS Committee in Banja Luka and President of the Regional Board of the SDS, as well as an elected member of the SDS Main Board of Bosnia and Herzegovina, was also an extremist, presenting through the media his decision not to allow any non-Serb women to give birth at Banja Luka Hospital. He also asserted that all mixed marriage couples should be divorced or that all mixed marriages should be annulled and that

children of mixed marriages "were good only for making soap." The position expressed by these two prominent Serb leaders, once thought of as extreme, had, by 1992, become the predominant views of the SDS leadership, acceptance of which was a prerequisite for advancement within the SDS. Individuals outside of the SDS who did not agree with the increasingly extreme position of the SDS leadership were subjected to pressures of various kinds, including dismissal from work, threats, beatings and the planting of explosives in their homes or under their cars. Politicians both within the SDS and from other parties who disagreed with this policy were threatened with injury or death and many of them left the area as a result. After a number of peace rallies throughout the city of Banja Luka, eventually halted by means of a blockade utilizing checkpoints manned by the Serbian Defence Force, a paramilitary unit, and the subsequent manning of these checkpoints by members of the reserve police forces, all open dissent to SDS policies was silenced by spring 1992. The media focused only on SDS policy and reports from Belgrade became more prominent, including the presentation of extremist views and the promotion of the concept of a Greater Serbia."

53. This demonstrates that ethnic cleansing was meant to destroy the non-Serb communities in the areas coveted for a Greater Serbia. It also shows that the extremist views came from Belgrade and were broadcasted in the Prijedor region, while increasingly excluding "dissenting" opinions. The means included killing, torture, rape and physical harassment. Clearly, ethnic cleansing was recognized by the ICTFY as equalling genocide. The ICTFY decision continues to make this clear:

"148. In accordance with this policy the ARK Crisis Staff began to implement extreme restrictions on the movement and lives of non-Serbs. These decisions were binding throughout the territory of the Autonomous Region of Krajina, including opština Prijedor, and the ARK Crisis Staff carried out checks to ensure that its decisions were being implemented by the municipal Crisis Staffs, or other appropriate bodies. By May 1992 non-Serbs living within the territory of the Autonomous Region of Krajina faced an extremely difficult situation. As with Serbs who had not responded to their call for mobilization, freedom of movement was restricted and a curfew was established. Measures directed specifically at non-Serbs included dismissal from work, prohibition on the opening and running of private businesses and attacks on certain buildings, as well as the loss of social and health insurance as a consequence of their unemployment. Only those loyal to *Republika Srpska* were entitled to fill positions of authority and loyalty was defined in June 1992 as acceptance of the SDS as the "only true representative of the Serb people". Additionally, terror tactics were common, such as the use of the "red kombi", a large red van with a crew of eight members of the reserve policy force, dressed in their police uniforms, who drove around Banja Luka asking for the identity papers of citizens. Those arrested, predominantly Muslims and Croats, were taken not to jail but to a building designated specifically for beatings. The red kombi, which operated from May until the end of 1992, became a symbol of fear.

149. The difficulties suffered by the non-Serb population of the Autonomous Region of Krajina have been well documented. A Report of the International Committee of the Red Cross ("ICRC") found that the minority civilian population of the Banja Luka area was repeatedly beaten, threatened and robbed. Non-Serb cultural and religious symbols throughout the region were targeted for destruction and, as an additional means for minimizing the non-Serb population of the area, a state agency was created to facilitate the exchange of the non-Serb population for Serbs.

150. Upon its formation in May 1992 the Prijedor Crisis Staff implemented these restrictive measures against non-Serbs, who were fired from their jobs, refused necessary documentation and whose children were barred from attending primary and secondary schools. Non-Serbs no longer

> qualified for leadership positions and were eventually forced to leave almost all positions. Accusations and propaganda against Muslims and Croats, including ethnic insults, were heard on the radio and all travel outside of the opština for non-Serbs was prevented. The movement of non-Serbs within the opština was also obstructed, control being implemented by means of a curfew and by checkpoints where identifications were checked and if the holder was not a Serb, permission to pass could easily be denied. The control over movement extended as far as private residences through the use of registers in which Muslims and Croats had to record the movements of individuals within apartment buildings and daily searches were conducted in almost every apartment inhabited by Muslims and Croats. Additional restrictions included the blocking of telephone lines and the partial shut-down of electricity for non-Serbs. Throughout the opština mosques and other religious institutions were targeted for destruction and the property of Muslims and Croats, worth billions of dinar, was taken."

54. The ICTFY decision in the Tadić case further illustrates these findings by reference to specific instances and places, such as the notorious ethnic cleansing of Prijedor:

> "151. After an unsuccessful attempt to regain control of the town of Prijedor on 30 May 1992 by a small group of poorly armed non-Serbs, non-Serbs in Prijedor were ordered to use sheets of white material to mark their homes and indicate that they surrendered. Ultimately they were divided into two groups: one which consisted of men aged between 12 to 15 or 60 to 65, and one of women, children and elderly men. Generally the men were taken to the Keraterm and Omarska camps and the women to the Trnopolje camp. Additionally, the old part of the town of Prijedor known as Stari Grad, inhabited mostly by Muslims, was destroyed. After the cleansing of Prijedor any remaining non-Serbs were required to wear white armbands to distinguish themselves. Non-Serbs lived in fear as former friends reported them to the authorities and the disappearance of non-Serbs became an everyday experience. For those held at camps in the area, the overwhelming majority of whom were non-Serbs, the situation was horrendous, with, as described below, brutal beatings, rapes and torture commonplace and the conditions of life appalling.
>
> 152. Whereas before the conflict opština Prijedor contained approximately 50,000 Muslims and 6,000 Croats, only approximately 6,000 Muslims and 3,000 Croats remained after the cleansing and they endured very harsh conditions. They were required to perform dangerous and difficult work, had difficulties buying food, were harassed, and killings occurred on a continual basis. As late as 1994 the ICRC reported the confirmed deaths of nine Muslim civilians in two days in opština Prijedor. As a result of these difficulties the United Nations High Commissioner for Refugees and the ICRC asked the Bosnian Serb authorities for permission to evacuate all remaining non-Serbs from opština Prijedor and, when refused, they decided to increase their monitoring of the treatment of minorities in Prijedor."

55. The same policies of genocide were pursued in many other places in the region, such as Kozarac and at the Omarska, Keraterm and Trnopolje camps, where ethnic cleansing was pursued in a concerted manner. The ICTFY, in the Tadić decision, went on to specify:

> "153. This atmosphere of discrimination and hostility against non-Serbs created by the Serb leadership throughout the region was well known in Kozarac. After the take-over of the town of Prijedor and before the attack on Kozarac, continuous references were made by Serbs on the police radio about destroying mosques and everything that belonged to the "balijas", a derogatory term for Muslims, as well as the need to destroy the "balijas" themselves.

154. After the take-over of Prijedor and the outlying areas, the Serb forces confined thousands of Muslim and Croat civilians in the Omarska, Keraterm and Trnopolje camps. The establishment of these camps was part of the Greater Serbia plan to expel non-Serbs from opština Prijedor. Generally the camps were established and run either at the direction of, or in cooperation with, the Crisis Staffs, the armed forces and the police. During confinement, both male and female prisoners were subjected to severe mistreatment, which included beatings, sexual assaults, torture and executions. They were also subjected to degrading psychological abuse, by being forced to spit on the Muslim flag, sing Serbian nationalist songs or to give the Serbian three-fingered salute. Prisoners were guarded by soldiers, police forces, local Serb military or TO units, or a combination thereof, who were dressed in uniforms and generally had automatic rifles and other weapons on their person. They cursed the prisoners, referring to them as "balijas" or "Ustaša", as already mentioned. Members of paramilitary organizations and local Serbs were routinely allowed to enter the camps to abuse, beat and kill prisoners.

155. Perhaps the most notorious of the camps, where the most horrific conditions existed, was the Omarska camp. It was located at the former Ljubija iron-ore mine, situated some two kilometres to the south of Omarska village. The camp was in operation from 25 May 1992 until late August 1992 when the prisoners were transferred to Trnopolje and other camps. Omarska held as many as 3,000 prisoners at one time, primarily men, but also had at least 36 to 38 women. With little exception, all were Muslims or Croats. The only Serb prisoners sighted by any of the witnesses were said to have been there because they were on the side of the Muslims. The commander of the camp was Željko Meakić. The camp consisted of two large buildings, the hangar and the administrative building, and two smaller buildings, known as the "white house" and the "red house". Two photographs of a model of the Omarska camp (Prosecution Exhibit 130) are included in the Opinion and Judgment as Annex C.

157. The Trial Chamber heard from 30 witnesses who survived the brutality to which they were systematically subjected at Omarska. By all accounts, the conditions at the camp were horrendous; killings and torture were frequent.

164. The calling-out of prisoners was not only for the purposes of interrogation. In the evening, groups from outside the camp would appear, would call out particular prisoners from their rooms and attack them with a variety of sticks, iron bars or lengths of heavy electric cable. Sometimes these weapons would have nails embedded in them so as to pierce the skin. On occasions knives would be used to slash a prisoner's body. The prisoners as a whole feared groups of men from outside the camp even more than they did the regular camp guards. These groups appeared to be allowed free access to the camp and their visits greatly increased the atmosphere of terror which prevailed in the camp. Frequently prisoners who were called out failed to return and witnesses who were their close relatives gave evidence that they had never been seen since, and were assumed to have been murdered."

56. At Omarska, as elsewhere, rape was part of the policy of ethnic cleansing which was the euphemism for genocide. Here, again, the ICTFY decision in Tadić is unambiguous:

"165. Women who were held at Omarska were routinely called out of their rooms at night and raped. One witness testified that she was taken out five times and raped and after each rape she was beaten."

57. In its Tadić decision, the ICTFY made explicit its findings of the acts perpetrated against non-Serbs in the camps that were deliberate, consistent uses of killing, causing serious bodily injury and the imposition of physical conditions intended to destroy the life of a group in whole or in part. Thus:

> "167. The red house was another small building where prisoners were taken to be beaten and killed. When prisoners were required to clean the red house, they often found hair, clothes, blood, footwear and empty pistol cartridges. They also loaded onto trucks bodies of prisoners who had been beaten and killed in the red house.
>
> 168. The Keraterm camp, located on the eastern outskirts of Prijedor, was previously used as a ceramic tile factory. It began operating on 25 May 1992 and held up to 1,500 prisoners crowded into a number of large rooms or halls (...)
>
> 169. Conditions in Keraterm were atrocious; prisoners were crowded into its rooms, as many as 570 in one room,, with barely space to lie down on the concrete floors. The rooms were unlit and without windows and were in the summer intensely hot, with no ventilation. Prisoners were kept locked in these rooms for days on end, crowded together. Initially one lavatory was available for all but it became blocked and barrels were supplied instead which leaked, the stench being overpowering. There were no washing facilities."

58. Massive, deliberate policies of killing and of rape were pursued by the Serb authorities in what the ICTFY in the Tadić decision clearly indicated to be acts of genocide:

> "171. There was testimony received of a mass execution of prisoners believed to have come from Hambarine. One night prisoners heard bursts of machine-gun-fire, followed by individual shots. Witness Q testified that the following morning they were called out to load over 150 bodies onto a large truck and trailer which then left the camp with blood dripping from it. Machine-gun-fire was repeated the following night with, according to evidence, over 50 bodies taken away the following morning. Two fire trucks arrived later and hosed down the area to wash away the blood. It seems that the shooting took place through the closed doors of the room in which those prisoners were confined; those doors had large bullet holes pierced through them. Another account by a witness speaks of a total of about 250 people being killed in this way.
>
> 172. The Trnopolje camp was located near the Kozarac station, on the Prijedor-Banja Luka railway line. The camp held thousands of prisoners, most of whom were older men and women and children. Armed soldiers guarded the camp. The commander of the camp was Slobodan Kuruzović.
>
> 175. At Trnopolje there was no regular regime of interrogations or beatings, as in the other camps, but beatings and killings did occur. One witness, Sulejman Bešić, testified to having seen dead people wrapped in paper and wired together, their tongues pulled out and, on a later occasion, having seen the slaughtered bodies of young girls and old men in the theatre. Because this camp housed the largest number of women and girls, there were more rapes at this camp than at any other. Girls between the ages of 16 and 19 were at the greatest risk. During evenings, groups of soldiers would enter the camp, take out their victims from the dom building and rape them. Another prisoner, Vasif Gutić, who had medical training, was assigned to work in the medical unit at Trnopolje and testified to the extensive rapes that occurred at the camp. He often counselled and treated victims of rape, the youngest girl being 12 years of age.

> 178. On or about 1 October 1992 people were deported from this camp upon signing an agreement to relinquish all of their material goods. Thus the Trnopolje camp was the culmination of the campaign of ethnic cleansing since those Muslims and Croats who were not killed at the Omarska or Keraterm camps were, from Trnopolje, deported from Bosnia and Herzegovina."

59. Thus was genocide perpetrated in all its ugly manifestations. These quoted paragraphs are not conjecture or rumors. They, and much else held to have been established beyond a reasonable doubt by the ICTFY Chamber in the *Tadić* case, independently and judicially, confirm other evidence cited in this Reply regarding massive killing, torturing, rape, other subjection to inhumane treatment and the forced expulsion of a large part of the Muslim population of Bosnia and Herzegovina, as well as the destruction of its cultural and religious institutions.

60. The ICTFY, although engaged in a criminal trial of one individual, rather than an international judicial action against a state, considered not only many of the same facts as are pertinent to this case, but also some of the same law. Thus, for example, the ICTFY had to determine that prohibited acts were performed against a "population" [Article 5 of the Statute of the ICTFY] much as this Court must find that the acts were directed against a "group". The ICTFY's decision makes clear that

> "the emphasis is not on the individual victim but rather on the collective, the individual being victimised not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean. . .that the acts must occur on a widespread or systematic basis, that there must be some form of a governmental, organizational or group policy to commit these acts and that the perpetrator must know of the context within which his actions are taken, as well as the requirement (...) that the actions be taken on discriminatory grounds." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 244, para. 644].

While these requirements for conviction by the ICTFY are not identical to those for finding a state in violation of the Genocide Convention, being based on the related legal concept of Crimes Against Humanity, it is worth noting that the Tribunal convicted Tadić of four counts of Crimes Against Humanity [*ibid.*, pp. 300-301, para. 2], thereby indicating that the acts committed by Tadić were committed "as part of a widespread or systematic attack on a civilian population and that the accused intended thereby for discriminatory reasons to inflict severe damage to the physical integrity and human dignity" of the victims. [*ibid.*, p. 298, para. 764]. This finding is directly supportive of a finding, in this case, that genocide has indeed been committed.

61. The facts found by the ICTFY in Tadić closely approximate facts found by the Tribunal in other cases. In the Nikolić case, the Chamber found that the genocidal "cleansing" policy eradicated entire Muslim communities:

> "On the basis of all the testimony, in September 1992 there remained only a few traces of the Muslim population of the Opstina of Vlasenica which according to the 1991 census (the last census prior to the said events) amounted to 55% of the total population." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, para. 27].

62. So, too, the judges of the ICTFY have expressly qualified the massacre in Srebrenica [see Reply, Chapter 5, Section 8] in terms of genocide.
In the confirmation of the indictments against Radovan Karadžić and Ratko Mladić, Judge Riad stated that the mass executions in Srebrenica

> "were evidently systematic, being organised by the military and political hierarchy of the Serbian administration of Pale, apparently with close support from elements of the army of the Federal Republic of Yugoslavia (Serbia-Montenegro). These executions were committed in the context of a broader policy of 'ethnic cleansing' which is directed against the Bosnian Muslim population and which also includes massive deportations. This policy aims at creating new borders by violently changing the national or religious composition of the population. As a result of this policy, the Muslim population of Srebrenica was totally banished from the area." [ICTFY, Indictments, *Prosecutor v. Radovan Karadžić & Ratko Mladić ("Srebrenica")*, Case No. IT-95-18-I, 16 Nov. 1995, p. 4].

Judge Riad continued:

> "The policy of ethnic cleansing referred to above presents, in its ultimate manifestation, genocidal characteristics. Furthermore, in this case, the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, which is specific to genocide, may clearly be inferred from the gravity of the ethnic cleansing practised in Srebrenica and its surrounding areas, i.e. principally, the mass killings of Muslims which occurred after the fall of Srebrenica in July 1995, which were committed in circumstances manifesting an almost unparalleled cruelty." [*ibid.*].

In its Review of the Indictment pursuant to Rule 61, the Trial Chamber established that the

> "policy of ethnic cleansing resulted in a radical change in the makeup of the population. The municipality of Foča: 40,513 inhabitants, 51.6% Bosnian Muslim, in August, 1993, there were only 9 Muslims left in the city. Prijedor municipality: 88% of the Muslim population of about 49,000 inhabitants were killed or deported (...) Srebrenica: the take-over of the enclave in July, 1995 entailed the execution or deportation of 40,000 inhabitants." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and

> Evidence, *Prosecutor v. Radovan Karadžic & Ratko Mladić*, Case No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, para. 60].

The Tribunal pointedly referred to the "uniform methods used in committing the said crimes, their pattern, their pervasiveness throughout all of the Bosnian Serb-held territory (...)" [*ibid.*, p. 47, para. 84], the Chamber confirmed the charges and concluded, as already indicated in the introduction, that "an intent to destroy the group, at least in part, was present." [*ibid.* p. 53, para. 94].

63. It is extraordinary that Respondent continues to assert that the acts found by the ICTFY to have been committed and the policies that informed them cannot be deemed to have been genocidal because

> "if the goal of that policy is to repulse by force, including killing and torture, members of an ethnic or religious group from a certain territory, this excludes 'the intent to destroy, in whole or in part, a national, racial or religious group as such'." [Counter-Memorial, p. 7, para. 1.1.3.5.].

The so-called "repulse" of entire ethnic populations from their homes, by killing, torture, rape and otherwise making life unbearable, surely destroys the group and thus emphatically does constitute genocide. This is clear to the judges of the ICTFY and will surely become equally clear in these proceedings.

CHAPTER 7

RAPE AND SEXUAL VIOLENCE AS SPECIFIC MEANS OF COMMITTING GENOCIDE

1. Introduction

1. In this Chapter the Applicant will first present to the Court the overwhelming evidence of countless acts of rape and sexual violence committed by Serbs against the non-Serb population, in particular the Muslim part, as has been collected by numerous international bodies, as well as established by the ICTFY. After the presentation of the crude facts, the Applicant will demonstrate to the Court that these

acts are indeed acts of genocide, according to the criteria set forth by the Genocide Convention.

2. The Applicant here presents to the Court evidence of sexual violence against not only non-Serb women, but also non-Serb children and men. It must be stressed at the outset that the scale of sexual violence against women, including very young women, has no common measure with the scale of sexual violence against men. As a matter of fact, as will be seen, patterns of sexual violence are clearly distinguishable as far as women are concerned, while the acts of sexual violence against men are less frequent and were not distinguishable as a distinct and independent pattern. However, acts of sexual violence against Muslim men which, when taken in isolation, do not necessarily constitute genocide, do qualify as acts of genocide by virtue of their link to the overall policy aimed at the extermination of the non-Serb group, and in particular the Muslim group.

3. Rape has been a sinister tool of genocide in Bosnia and Herzegovina. As stated by Professor Cherif Bassiouni, president of the United Nations Commission of Experts:

> "The conflict in the former Yugoslavia has taken sexual violence to new levels." [Cherif Bassiouni, *Sexual Violence,* Occasional Paper No. 1, IHRLI, DePaul University College of Law, 1996, p. 2, Annex 71].

Rapes and sexual assaults have not been isolated incidents, but rather have occurred in an extensive and systematic manner.

4. The occurrence was extensive, since rape and sexual assault have been committed not only on non-Serb women, but also on non-Serb men and children – *everywhere* in Bosnia and Herzegovina and *repeatedly*, during the whole period from April 1992 to the Dayton Accords and even thereafter. However, it must be stressed again that women were by far the main targets of rape and sexual violence committed by Serbs in Bosnia and Herzegovina.

5. The occurrence was systematic, since rape and sexual assault have followed a pattern of what turned out to be *sexual violence as policy*. There is unfortunately no doubt that all the groups which have opposed each other include rapists. But an isolated rape – though appalling – is not a policy of rape, and the two types of acts are not governed by the same rules. Even several isolated rapes do not necessarily make up a policy of rape. What has happened in Bosnia and Herzegovina is not a sum of isolated events, but a systematic use of rape and sexual violence, along the lines of

clear patterns of conduct. That a policy of rape has been followed by Serb forces in Bosnia and Herzegovina will be demonstrated below, in the second part of the Chapter.

6. There is no precise definition of rape in international law. Professor Cherif Bassiouni has given a definition of the different aspects of sexual violence which the Applicant wishes to address here:

> "Rape denotes vaginal, oral or anal sexual intercourse without the consent of one of the people involved. Sexual assault is a broader term, which includes rape and other forced or coerced sexual acts, as well as mutilation of the genitals. Sexual violence is the most general term, used to describe any kind of violence carried out through sexual means or by targeting sexuality." [Cherif Bassiouni, *Sexual violence,* Occasional Paper No. 1, IHRLI, DePaul University College of Law, 1996, p. 3, Annex 71].

7. According to the Prosecutor of the ICTFY, rape is defined "as the forcible sexual penetration of another person or forcing one person to sexually penetrate another" [ICTFY, Trial Chamber, Prosecutor's Pre-Trial Brief, *Prosecutor v. Duško Tadić*, Case No. IT-94-I-T, 10 Apr. 1996, p. 53]. It is necessary to provide a more precise definition of the two terms "forcible" and "sexual penetration".

8. According to the Prosecutor, in the same case:

> "Forcible means that the act of sexual penetration was accomplished by force or threat of force against the victim or a third person. The threat of force can be either express or implied, and must place the victim in reasonable fear that he or she or a third person will be subjected to violence, detention, duress or psychological oppression" [ICTFY, Trial Chamber, Prosecutor's Pre-Trial Brief, *Prosecutor v. Duško Tadić*, Case No. IT-94-I-T, 10 Apr. 1996, p. 54; see also Ms. Patricia Viseur-Sellers, the Legal Officer on gender issues of the ICTFY, *ICTFY Bulletin*, No. 7, 21 June 1996, p. 5, Annex 72].

In the context of rape, such an interpretation is necessary in order to encompass all situations in which a woman is not "free" to have sexual relations: "forcible" means "imposed" on a person, even if no physical violence is used. Of course, a man need not physically restrain a woman to rape her, if he just tells her that unless she submits to having sexual relations with him, her children, which are in the next room – or sometimes in the same room – will be in danger. But most often, even if no specific threat of this kind was articulated against her, the woman was in a general context where she was coerced: it is needless to insist on the fact that when a guard

assaulted a woman in a detention camp or a woman living in a town or village held by Serb forces, she was unable to resist or escape her assailant.

9. As far as "sexual penetration" is concerned, a definition is given as well in the pre-trial brief of the Prosecutor in the Tadić case [ICTFY, Trial Chamber, Prosecutor's Pre-Trial Brief, *Prosecutor v. Duško Tadić*, Case No. IT-94-I-T, 10 Apr. 1996, p. 53]. The same definition can be found in the Indictment in the Gagović & others ("Foča") case, which is an indictment specifically dealing with sexual offenses, confirmed by Judge Vohrah. As declared by the Prosecutor, and confirmed by the Judge, it includes "penetration however slight, of the vagina, anus or oral cavity, by the penis. Sexual penetration of the vulva or anus is not limited to the penis" [ICTFY, Indictment, *Prosecutor v. Gagović & others ("Foča")*, Case No. IT-96-23-I, 26 June 1996, p. 5, para. 4.8.]. Again, in the context of rape, such an interpretation is necessary, especially in view of the fact that many rapes were committed with all sorts of objects, as will be seen later in this Chapter.

2. **Rape and sexual violence have been committed on an extensive scale**

The overall statistics of sexual violence

10. Although the number of rapes and sexual assaults is not as important as the intent behind them, the scale of sexual violence as committed in Bosnia and Herzegovina is a strong indication, even strong enough to lead to a presumption, that the rapes were not isolated acts but followed a clear policy. Rapes and sexual violence have been committed on an extensive scale against the non-Serb, and in particular the Muslim population of Bosnia and Herzegovina. The figures given are staggering.

11. Many figures have been advanced, but even the lowest ones are enormous. One of the most reliable sources on sexual violence is the work done by the Commission of Experts. Of particular relevance are Annexes II, IX, IX.A, and IX.B of the "Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)" of 28 December 1994, which deal specifically with sexual violence.

12. The methods used by the Commission of Experts to examine sexual violence have been cumulative:

> "The Commission investigated rape and sexual assault in three ways. The first method was through a study of the documentary evidence (...) The second method was through a field investigation (...)

> The final method was through the analysis of investigations and interviews conducted by governments." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), Annex IX, "Rape and Sexual Assault", p. 6, para. 1].

The Commission has also conducted a series of 223 direct interviews of refugees or displaced persons in Croatia: of the 79 women who were from Bosnia and Herzegovina, 32 women reported having been raped; in addition to this, 21 others interviewed were eye-witnesses to rape or sexual assault [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), Annex IX.A, "Sexual Assault Investigation", p. 5, paras. 5 and 7; see also *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 57, para. 241].

13. The data collected by the Commission of Experts is reliable because is has been compiled in a systematic and thorough manner, and usually has taken into account many other previously existing reports. First, the Commission collected documents concerning allegations of rape and sexual assaults. These documents came from a great variety of sources as well as direct investigations by members of the Commission:

> "The Commission's findings relied on documents submitted by 38 governments and 151 NGOs and other organisations." [Cherif Bassiouni, *Sexual Violence,* Occasional Paper No. 1, IHRLI, DePaul University College of Law, 1996, p. 38, Annex 71].

Then:

> "From these materials, summary sheets were created for each allegation, setting out information such as the identity of victims, witnesses, and perpetrators; the date and location of the incident; the source of the report; and the method used to record the information (...) The summaries were organised geographically, divided by the setting in which the rape occurred (custodial or non-custodial) and then arranged chronologically within the categories of custodial or non-custodial setting. The analytical portion (...) identifies specific individual cases of rape, as well as patterns or policies of rape." [Cherif Bassiouni, *Investigating Violations of International Humanitarian Law in the Former Yugoslavia*, Occasional Paper No. 2, IHRLI, DePaul University College of Law, 1996, p. 56-57, Annex 73].

14. The overall picture is the following:

> "The reports contained in the Commission's data base identify close to 800 victims by names or number. An additional 1 673 victims are referred to, but not named in reports of victims who indicate that they have witnessed or known of other similar victims. Additionally, there are some 500 reported cases which refer to an unspecified number of victims. The victims' ages range from 5 to 81 years old, with the majority of victims being below 35 years old." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994 p. 56, para. 236].

15. According to Professor Bassiouni, "Extrapolation from the reports suggests that there were well over 12,000 victims of rape and sexual assault." [Cherif Bassiouni, *Sexual Violence,* Occasional Paper No. 1, IHRLI, DePaul University College of Law, 1996, p. 10, Annex 71].

16. The Commission of Experts adds that in its opinion, although not all the data was fully corroborated with exact names, the number of victims is likely to be underestimated, especially because of the reluctance to report on sexual violence, the fear of reprisals and the shame and embarrassment of the victims of sexual violence. This important aspect of information about rape will be dealt with more extensively below.

17. It must be noted that the Report of the Commission of Experts only covers the period beginning in the fall of 1991 until the end of 1993. However, rape and sexual violence did not cease by the end of 1993, which must be taken into account when attempting to provide figures of the assaults.

18. As mentioned before in this Reply, the Commission on Human Rights nominated Tadeusz Mazowiecki as Special Rapporteur to inquire into the question of human rights in the territory of the former Yugoslavia. Mazowiecki, having received during 1992 an alarming number of allegations of the *widespread and systematic* occurrence of rape, particularly in Bosnia and Herzegovina, and gravely concerned by the nature of these reports, decided to send an international team of medical experts to investigate the findings and report them back to him [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, Annex II, p. 63, para. 1].

19. In his Report of 10 February 1993, Mr. Mazowiecki explains the thoroughness of the research conducted by these medical experts:

> "5. General information regarding the subject was obtained in meetings with representatives of the Governments concerned, international organizations with representations in the locations that were visited, non-governmental organizations concerned with women's issues, local women's groups, religious leaders of Muslim communities, and other sources including UNPROFOR officials, relatives of detained or disappeared persons as well as relatives of victims of rape.
> (...)
> 7. Statistical data including rates of birth, abortions, sexually transmitted diseases (STD) including HIV infection, as well as the numbers of pregnancies reportedly due to rape were requested from the hospitals visited in Zagreb, Sarajevo, Zenica and Belgrade.
> (...)
> 32. Interviews were conducted with victims of and eye-witnesses to rape. These interviews took place in hospitals and refugee camps in and around Zagreb, Sarajevo, Zenica, Belgrade and Loznica. Interviewees were selected through contacts with relevant physicians and by random sampling in refugee camps.
> (...)
> 44. In addition to direct interviews, the team of experts carefully examined testimonies of victims and/or witnesses of rape obtained by physicians, government representatives and independent agencies. Information regarding a number of clinical cases was also obtained through the study of medical records in these hospitals." [*ibid.*, Annex II, pp. 63-70, paras. 5-44].

20. The medical team has also closely studied the statistics on abortions, which give indications on the prevalence of rape. They have found that in Bosnia and Herzegovina:

> "In 1992, the number of abortions performed at the clinic visited by the team of medical experts in Sarajevo has doubled in September, October and November (400-500/month) compared to pre-war rates (approximately 200/month). At the same time, the number of patient visits decreased by half. This means that there was effectively four times the number of abortions in those months as compared to pre-war rates (approximately 200/month)." [*ibid.*, p. 73, para. 67, and Annex II, p. 65, para. 16].

These figures have to be compared with the ones provided by hospitals situated in Belgrade and Zagreb, where the statistics on abortions remained stable during the same period. Of course, the effect of the lack of food and medical care and the psychological trauma resulting from the ongoing conflict must also be taken into account, but it is an established fact that many of these abortions were requested by women who had been raped.

21. After the manifold approaches to the issue of rape in Bosnia and Herzegovina, the team of experts concluded that on the basis of certain estimates "it is likely" that there were "approximately 12,000 incidents of rape" [*ibid.*, Annex II, p. 67, para. 30]. But this being only a "likely" figure, the team of medical experts committed to scientifically assessing the data collected, preferred to state a non-quantified, albeit a very clear and firm, conclusion:

> "66. (...) While the data collected by this mission supports the finding that *rape has occurred on a large scale*, the team feels that it is not in a position to make an estimate of the total number of rape victims in the conflict." [*ibid.*, Annex II, p. 73, para. 66, emphasis added].

22. Upon receiving their report, the Special Rapporteur declared that he "strongly endorses the observations, conclusions and recommendations of the team of experts" [*ibid.*, p. 19, para. 83].

23. The Special Rapporteur endorsed this conclusion, and understanding the limitations of assessing a definitive number of instances of rape, chose rather to make general conclusions based on the existing carefully researched data. Thus, the Rapporteur stated that he "feels that it is not possible to determine the number of victims of rape in this conflict. However, it is clear that there are large numbers involved." [*ibid.*, p. 19, para. 86].

24. The Applicant will adopt the position of the Special Rapporteur Mazowiecki, which emphasises the huge scale of rape and sexual violence, without entering into a debate about the exact numbers.

The likelihood of an underestimation of sexual violence

25. Mazowiecki's team of medical experts rightly noted that "[r]ape is among the most under-reported crimes in peacetime throughout the world." [*ibid.*, Annex II, p. 66, para. 22]. This is a well-known fact, and was also noted in the American Journal of Preventative Medicine:

> "Historically, estimates of rape have been derived from law enforcement sources. These methods have greatly underestimated incidence and prevalence through severe underreporting" [Ivy L. Schwartz, "Sexual Violence against Women: Prevalence, Consequences, Societal Factors, and Prevention", *American Journal of Preventive Medicine*, 1991, No. 7[6], p. 364, Annex 74].

War-time rape is usually even less likely to be reported:

> "(...) documenting rape – already difficult during peacetime – is even more challenging in the midst of war. While rape is known to be underreported in peacetime (...) because of the profound emotional pain and stigma attached to it, fear for the safety of the family left behind and lack of ordinary support systems militate even further against disclosure during wartime." [S. Swiss and J.E. Giller, "Rape as a Crime of War. A Medical Perspective", *JAMA*, 4 Aug. 1993, Vol. 270, p. 613, column 2, para. 1, Annex 75].

26. The Special Rapporteur Mazowiecki insisted several times on these difficulties of proof:

> "A persistent problem besetting attempts to chart the extent of the incidence of rape and other forms of sexual abuse remains the exceptional difficulty in obtaining reports or investigating allegations. Hindrances include (...) the distress of the victims and their fear of retaliation by or on behalf of the perpetrators." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, p. 11, para. 54].

Indeed, many women who are raped are really imprisoned behind a wall of silence.

27. It is thus very likely that the figures given are underestimated, as so many women, ashamed and hurt in a profound and intimate way and finding themselves in a largely unstable and threatening situation due to the ongoing armed conflict and its aftermatch, do not report the ordeal that they have endured. According to Professor Cherif Bassiouni "if the information errs in any direction, it probably does not represent the full extent of the crimes that have occurred in the former Yugoslavia. Fear, shame, scepticism and the passage of time tends to dilute the information available from victims and witnesses." [Cherif Bassiouni, *Sexual Violence,* Occasional Paper No. 1, IHRLI, DePaul University College of Law, 1996, p. 25, Annex 71].

28. Ms. Irma Oosterman is an expert on sexual assault issues. She worked for 14 years as a police officer in the Netherlands and served as an investigator on the Commission of Experts focusing on sexual assault. She was involved in the Foča investigation, in the Prijedor investigation and in the Srebrenica investigation. She is now working on sexual assault issues within the ICTFY. She explained this reluctance of women to speak out, giving her testimony during the Article 61 Hearings in the Karadžić and Mladić cases:

> "Of course, it is very difficult for those women to talk with. Most of the time it is the first time that they tell what happened to them. Husband does not know, children do not know. So every time we must spend a great – a long time with those women. They are very afraid (...)" [ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Oosterman*, 2 July 1996, p. 28, Annex 76].

29. Amnesty International has also emphasised the psychological aspects contributing to the silence of women about having been raped:

> "Reliable information is particularly difficult to obtain about such cases as the victims are frequently reluctant to report the incidents or give details, even after reaching places where they are safe from similar abuses. Some women, it seems, feel they must obliterate the experience from their memory; others feel degraded and ashamed or fear that they would suffer social stigma should they disclose what has been done to them." ["Bosnia and Herzegovina: Rape and Sexual Abuse by Armed Forces", *Amnesty International Report*, AI Index: EUR/63/01/93, Jan. 1993, pp. 1-2, Annex 77].

The fears are multiform: fear of being ostracised by the family and community, but also fear of reprisals by the rapists, either directed at the victim or at her family menbers, particularly if they are in detention or missing.

30. The fear of being ostracised if they tell their story prevents many women from speaking out and complaining about their rape. Often, women do not dare to reveal publicly that they have been raped. Women fear that if they acknowledge having been raped they will carry a stigma, be marked as rape victims and be isolated and rejected by their community: especially if not married, they fear that they will never marry if they admit to having been raped; and if married, they fear being rejected by their husband and family; and whether or not married, they fear being rejected by their larger community. It is reported by the team of medical experts sent by Mazowiecki to investigate rape, that sometimes women that testify are strongly criticised:

> "43.(...) Two of the women had been interviewed by journalists investigating human rights violations. One of these, because of coming forward in public, was verbally attacked by another refugee woman. 'Maybe it would have been better if I hadn't spoken about it', she told the team of experts." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, Annex II, p. 70, para. 43].

31. The fear of reprisals from the perpetrators is not just perceived, but is often realistic. It has been reported that "perpetrators tell female victims that (...) if the victims ever tell anyone or anyone discovers what has happened, the perpetrators will hunt them down and kill them." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Violence", p. 11, para. 18(e)].

32. Here also, it is evident that even if no specific threat is articulated, a woman who has been raped will probably hesitate to report on what has happened to her if her husband or son or other close member of her family is in detention or "disappeared". She might fear that the person linked with her will be hurt if she complains about the actions of the military forces that also run the detention camps and have taken over the region.

33. But again, the Applicant insists on the fact that *the exact figures are not essential, the crucial element is the intent* of the perpetrators of acts of sexual violence, which to a certain extent can be inferred from the large scale of the assaults, a point which will be elaborated more in the second section of this Chapter.

The standards of proof to be used in cases of rape and sexual assault

34. In the Counter-Memorial, the Respondent rejects the submissions of the Applicant on the existence of widespread rapes, stating that no proof has been provided concerning either the early consequences or the late consequences of rape. Among the examples of early consequences that the Respondent wanted to be proven are the following:

> "injuries of the vagina or the rectum as a result of coercive insertion of objects into them, sexually transmitted diseases (...)" [Counter-Memorial, p. 60-61, para. 1.3.4.3.].

Among the examples of late consequences for which the Respondent wanted the Applicant to provide substantial evidence are the following:

> "in men: there have to be scars on the penis or scrotum, testicles atrophy, changes on the seminal duct and prostate gland, including sterility; in women: scars on the exterior genital organs, vagina or uterus (...) nipple necrosis and other scars; in both sex: fissure of the anus and fissure of the anal sphincter, changes on the rectum, damaged mucous membrane and vascular tissue, etc (...)" [*ibid.*].

These are unfortunately consequences that quite frequently follow from rape, especially when performed as gang-rape. However, the absence of this type of evidence can not serve as "proof" that the assault never took place:

> "Sexual torture is deeply traumatic, although it may leave no obvious physical traces." [Dragica Kozaric-Kovacic and others, "Rape, Torture and Traumatization of Bosnian and

Croatian Women: Psychological Sequelae, *Amer. J. Orthopsychiat.*, 65(3), July 1995, p. 432-33, Annex 78].

35. Besides the fact that the Respondent seems unable to understand that rape can be proven through evidence of the commission of the act, and need not additionally be confirmed by proof of details of injuries and other consequences, which although frequent do not necessarily accompany rape or sexual violence, and which moreover, are not always visible. The latter is, of course, particularly true for trauma and other psychological consequences of rape. Also, the Respondent seems unable to understand that "proof" of the kind which the Respondent – wrongly – requires, is often impossible to provide because of the passage of time.

36. For all these reasons, the Applicant contends that it is not necessary to provide evidence of physical injuries or of specific consequences such as pregnancy, in order to prove rape - although they can help ascertain rape when their existence is established - and, for that matter, to prove that rape under the circumstances constitutes genocide, because the acts of rape and sexual assault have followed a clear pattern from which the existence of an intent to destroy the non-Serb group is to be deduced, as will be demonstrated above.

3. Rape and sexual violence have been committed on Muslims of all gender and ages

37. The various authoritative international bodies of inquiry or judgment, which have investigated or adjudicated violations in the former Yugoslavia, have consistently insisted on the fact that the acts of rape and sexual violence that have been reported, have been committed in their overwhelming majority against non-Serbs, and among those mainly against Muslims.

38. Rapes and sexual assaults of non-Serbs are included in many indictments of the International Criminal Tribunal for former Yugoslavia. In several cases, these indictments have been reviewed by a Trial Chamber of the ICTFY; in some cases, decisions have been adopted by the ICTFY:
    - Indictment, Prosecutor v. Dragan Nikolić & others, Case No. IT-94-2-I, 4 Nov. 1994;
    - Indictment, Prosecutor v. Meakić & others ("Omarska camp"), Case No. IT-95-4-I, 13 Feb. 1995;
    - Indictment, Prosecutor v. Duško Tadić, Case No. IT-94-1-T, 13 Feb. 1995;

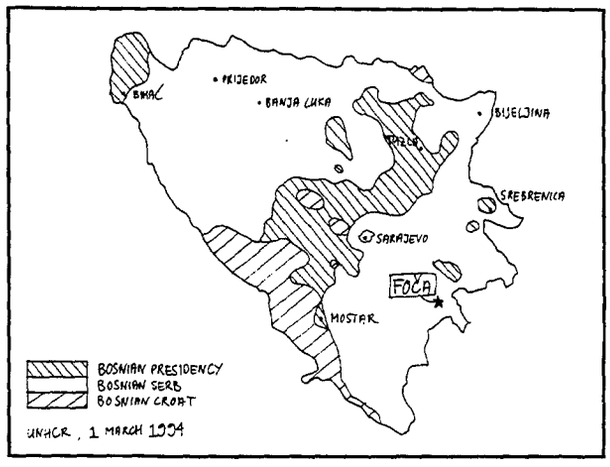
Indictment, Prosecutor v. Sikirica & others ("Keraterm camp"), Case No. IT-9 6-8-I, 25 July 1995;

- Indictment, Prosecutor v. Miljković & others ("Bosanski Šamac"), Case No. IT-95-9-I, 25 July 1995;
- Indictment, Prosecutor v. Karadžić and Mladić, Cases No. IT-95-5-R61 and IT-95-18-R61, 25 July 1995;
- Indictment 3, Amended, Tadić & Borovnica, Case No. IT-94-1-T, 1 Sept. 1995;
- Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, Prosecutor v. Dragan Nikolić & others, Case No. IT-94-2-R61, 20 Oct. 1995;
- Indictment, Prosecutor v. Karadžić and Mladić, Cases No. IT-95-5-R61 and IT-95-18-R61, ICTFY, Indictment, Prosecutor v. Gagović & others ("Foča"), Case No. IT-96-23-I, 26 June 1996;
- Trial Chamber, Review of the Indictment pursuant to Article 61 of the Rules of Procedure and Evidence, Prosecutor v. Karadžić and Mladić, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996;
- Trial Chamber, Prosecutor v. Duško Tadić, Case No. IT-94-1-T, Opinion and Judgment, 7 May 1997;
- Indictment, Prosecutor v. Drljača & Kovačević, Case No. IT-97-24-I, 13 Mar. 1997.

Of all these authorative documents a few relevant illustrations will be deducted below.

39. In the Indictment of Gagović and others ("Foča"), it is stated that:

> "The Serb forces separated men and women and unlawfully confined thousands of Muslims and Croats in various short and long-term detention facilities or kept them under constructive house arrest. During the arrest, many civilians were killed, beaten and subjected to sexual assault (...) Muslim women, children and the elderly were detained in houses, apartments and motels in Foča or in surrounding villages, such as Buk Bijela, Foča High School and Partizan Sports Hall, respectively. Many of the detained women were subjected to humiliating and degrading conditions of life, to brutal beatings and to sexual assaults, including rape." [ICTFY, Indictment, *Prosecutor v. Gagović & others ("Foča")*, Case IT-96-23-I, 26 June 1996, p. 2, paras. 1.2., 1.4.].



40. In the Decision of the Trial Chamber under Rule 61, after the Indictment of Karadžić and Mladić, it is stated that:

> "Sexual assaults occurred in several regions of Bosnia and Herzegovina (...) the victims were mainly 'non-Serbian' civilians, the vast majority being Muslims." [ICTFY, Trial Chamber, Review of the Indictment pursuant to Article 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 35, para. 64].

More details on the legal conclusions reached in this case will be given below.

41. The same conclusions had appeared before in the Report of the Commission of Experts:

> "251. Rape has been reported to have been committed by all sides to the conflict. However, the largest number of reported victims have been Bosnian Muslims, and the largest number of alleged perpetrators have been Bosnian Serbs" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 60, para. 251].

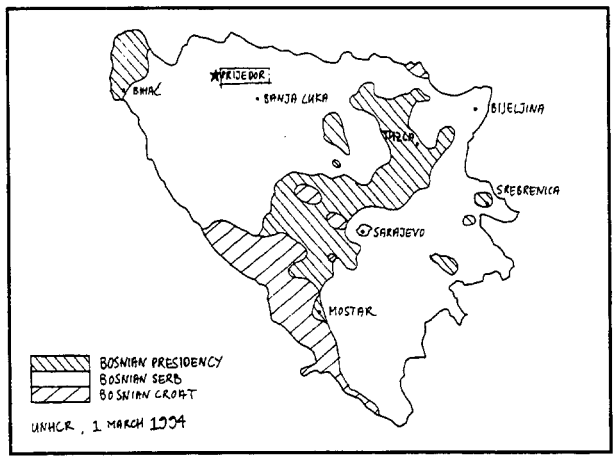
42. The same picture appears in this Report, when it examines the occurrences of rape and sexual assault on a region by region basis: for example, when the region of Foča and Kalinovik was taken over there are reported:

> "63 incidents of rape and sexual assault (...), 28 of which contain direct testimony from the alleged victims. Most reports specifically identify the victims as Bosnian Muslim, and many reports imply that the victims may be Bosnian Muslim, either through the events described or by the name of the victim" [United Nations, *Final Report of the United Nations Commission of*

Experts, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994 Annex IX, "Rape and Sexual Assault", p. 26, para. 104; see also *ibid.* p. 30, para. 124].

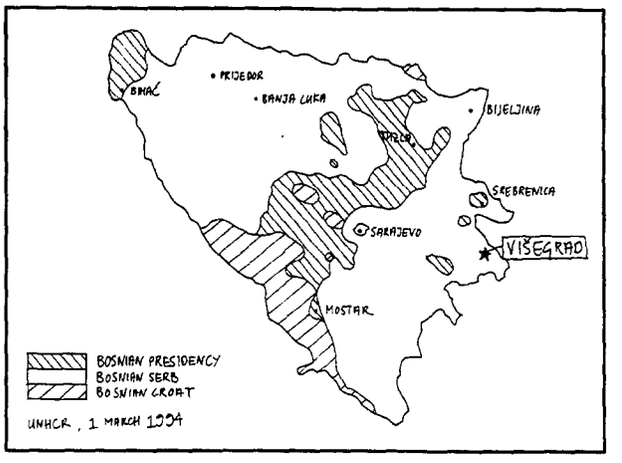
43. The same kind of picture again is found in the region of Prijedor, taken over by Serb forces in April 1992, as described extensively earlier in this Reply [Reply, Chapter 5, Section 7]. The Commission of Experts has found 178 reports of sexual assaults:

> "Ninety four of these reports are in the form of testimony, while 84 are second-hand reports. The alleged perpetrators are described primarily as Serbian. Some are described generally as Četniks, and some as Serbs from Serbia (...) The victims are described primarily as Bosnian Muslim" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994 Annex IX, "Rape and Sexual Assault", p. 39, para. 174].



44. Of the many examples that can be given of these statistics of sexual horror, another concerns the region of Višegrad, when it was taken over by the Serbs in May 1992. At least 33 reports containing allegations of rape have been made.

> "Several of these reports are general allegations of mass rape in the Višegrad area, while others are more detailed testimonies and first hand accounts. According to these reports, the Višegrad area was the seat of at least four facilities, including the hotel Vilina Vlas, where women were reportedly confined and subjected to regular and repeated rape. The victims were primarily Bosnian Muslim women and teen-age girls. The alleged perpetrators were members of the Serb forces. The purported incidents of rape began in the spring of 1992 through Autumn 1992." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 51, paras. 245-246].



Rape and sexual violence have been committed primarily on Muslim women

45. Rape and sexual violence have been inflicted on women of all ages: rape and sexual violence have been inflicted on young teenage girls discovering sexual life in such a brutal manner, rape and sexual violence have been inflicted on countless numbers of newly married woman and young happy mothers whose life was suddenly disrupted and inexorably altered and whose days will never be as they were before; rape and sexual violence have also been committed on older women, as old as 81 years, who had to face death with the burden of this last indecent offence. Whatever their age, all the raped women were confronted with very often irreparable damage to their flesh, their minds and their feelings.

46. The fact that Muslim women were the main target of sexual violence is also the conclusion reached by the Special Rapporteur Mazowiecki:

> "Rape of women, including minors, has occurred on a large scale. While the team of medical experts has found victims among all ethnic groups involved in the conflict, the majority of the rapes that they [the team of medical experts] have documented have been committed by Serb forces against Muslim women from Bosnia and Herzegovina." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 19, para. 84; see also *ibid.*, Annex II, p. 72, para. 59].

47. Amnesty International also found that Muslim women were the main target of sexual violence:

> "Amnesty International believes that abuses against women, including rape, have been widespread in the conflict in Bosnia-Herzegovina, that all sides have committed these abuses, but that Muslim women have been the chief victims and the main perpetrators have been members of Serbian armed forces" ["Bosnia and Herzegovina: Rape and Sexual Abuse by Armed Forces", *Amnesty International Report*, AI Index: EUR/63/01/93, Jan. 1993, p. 1, Annex 77].

48. The same analysis pointing to an overwhelming predominance of Muslim women among the victims is made by the Secretary-General of the United Nations. In his Report of 4 August 1995 entitled "Rape and abuse of women in the areas of armed conflict in the former Yugoslavia", he states in the concluding remarks:

> "63. (...) Available information indicates that rape has been committed by all sides to the conflict. However the largest number of reported victims have been Bosnian Muslims and the largest number of alleged perpetrators have been Bosnian Serbs" [United Nations, *Rape and abuse of women in the areas of armed conflicts in the former Yugoslavia, Report of the Secretary-General*, A/50/329, 4 Aug. 1995, p. 17, para. 63].

It is worthwhile noting that the Secretary General issued this report towards the end of the war, thus having been able to assess much more evidence, reports and other sources than, for example, the Commission of Experts or, for that matter, the Applicant when it submitted its Memorial in April 1994.

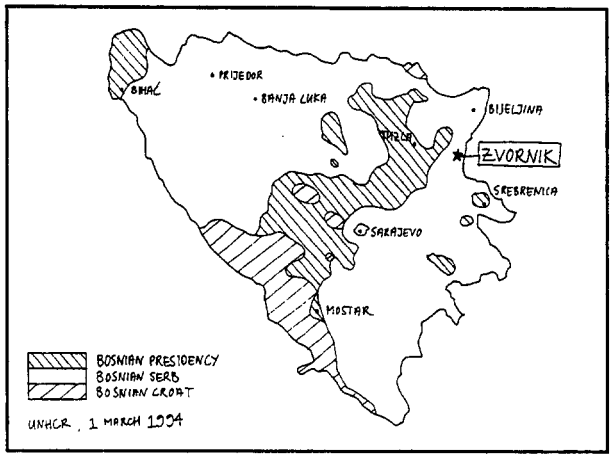
49. The fact that rape has most often been performed in public, so that endless shame rests on the raped woman, her family and her community, has been extensively reported.
It has, for example, been reported by one victim-witness interviewed by the Commission of Experts that she "saw an elderly woman and others raped in front of a group of 100 detained villagers" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 58, para. 246];
it is reported that in May 1992, 20 soldiers raped a woman in front of her child [United Nations, *Letter Dated 22 October 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24705, 23 Oct. 1992, p. 13];
it is stated that in other occurrences, several female members of the same family were raped in front of each other, that a daughter was raped in front of her father; it was also stated that "an 18 year old Muslim girl was raped (...) for five nights (...) the 'Četniks" forced the victim's father to watch as they raped her." [United Nations,

Final Report of the United Nations Commission of Experts, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 349, para. 2909];
it is further reported that in Trapare, near Sarajevo, a twelve year old girl was raped for an hour in front of her father [US Department of State, Bureau of Public Affairs, *Dispatch*, 28 Dec. 1992, Vol. 3, No. 52, p. 920, Annex 68];
it is also reported that in Kozarusa, a fourteen year old girl was raped in front of her father's eyes [United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General*, S/25377, 6 Mar. 1993, p. 11], it is specified that the information given in the letter is based on eye-witness testimonies by Bosnian-Muslims, made directly available to the Austrian authorities];
three men in military police uniforms were reported to have broken into a Muslim home and put guns into the mouths of a seven year old boy and his father, while one of them raped the mother at gun point in the next room [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Fifth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 5, para. 25];
this point has also been emphasised by Amnesty International: "The humiliation is often reinforced by carrying out the acts in front of others, sometimes including male relatives of the victim" ["Bosnia and Herzegovina: Rape and Sexual Abuse by Armed Forces, *Amnesty International Report*, AI Index: EUR/63/01/93, Jan. 1993, p. 5, Annex 77].

Rape and sexual violence have also been committed on Muslim children

50. Rape and sexual violence have also been committed on children. Rape has been committed on little girls who just opened their eyes on life, as young as four to seven. In his Sixth Periodic Report, the Special Rapporteur confirms the existence of sexual abuse of children:

> "The Special Rapporteur has learned of children and their mothers being beaten in a Bosnian Serb detention centre near Zvornik. The events took place in 1992 and involved persons from an area near Cerska who had been detained in Karakaj, and then in Batkovic camp near Bijeljina. The account indicates that children as young as four years old were beaten and sexually abused." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report, submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, p. 35, para. 226].



51. It is also reported by the Department of State, that in the Teslić area, sixty women and girls as young as ten were raped over four months, every night, [United Nations, *Letter Dated 9 March 1993 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25393, 10 Mar. 1993, pp. 16-17].

52. In the Report of the Commission of Experts there are many allegations of rape of children. For example, in the region of Banja Luka, a witness stated that " she saw a camp guard rape a seven year old girl in front of her mother and other inmates. The girl died from her injuries" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 14, para. 33]. It is also reported that in the Šekovići camp, "300 Bosnian Muslim women were raped in this camp, and some victims were as young as seven" [*ibid.*, p. 49, para. 229].

53. In the Trnopolje camp, one report of an incident describes a young girl of fourteen years old being raped [United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General*, S/25377, 6 Mar. 1993, p. 39]. Countless other examples can be found in each and everyone of the official reports.

Sexual violence has also been committed on Muslim men

54. Men were not immune from sexual violence. Sexual assaults against men took mainly two forms: one is coerced sexual activity with other men, the other is aggression against their virility, which will be dealt with later.

55. As far as coerced sexual activity between men is concerned, there are several reports, which show undoubtedly that these types of acts have been committed. It must be stated here that they are just as condemnable as rape and coerced sexual activity on women. It is true that sexual violence against men less often discussed in the context of humanitarian law than rape and sexual torture of women. One reason is because they have been less frequent. The Commission of Experts provides another possible explanation:

> "Violent crimes of a homosexual nature are not explicitly mentioned in international humanitarian law. However, this is understandable as the topic of homosexuality, even today, is not discussed freely. That international humanitarian law, insofar as it provides protection against rape and other sexual assaults, is applicable to men as well is beyond any doubt as the international human right not to be discriminated against (in this case on the basis of sex) does not allow derogation" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex II, "Rape and Sexual Assault: A Legal Study", p. 11, note 4].

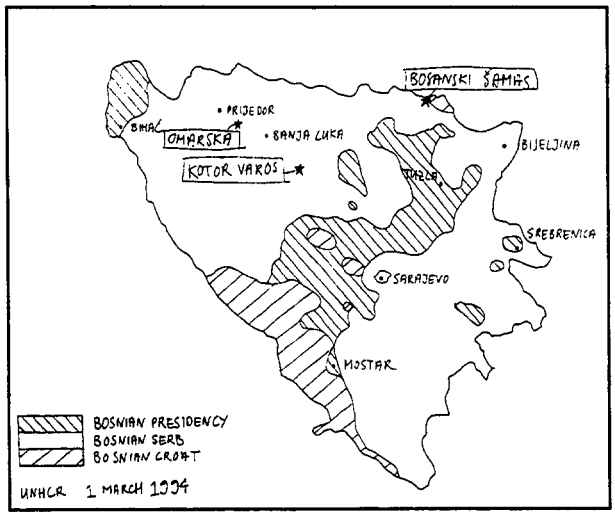
56. It can be inferred that, if acts of rape on women can, – in certain circumstances presented here and demonstrated and legally qualified below – be analyzed as genocidal acts, the same holds true for acts of sexual violence against men, which can also constitute, in certain circumstances, acts of genocide. The sexual violence against men fell inside the same policy of ethnic purification as rape and sexual violence against women.

57. The existence of acts of sexual violence against men has been asserted by the Trial Chamber in the cases of *Karadžić and Mladić*. After the description of the extensive rape policy against women, the Trial Chamber added:

> "On a smaller scale, many men were also victims of rape and sexual assault by the Serbian forces." [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 7, para. 13].

58. Quite often, prisoners in the camps were forced by Serb perpetrators, under threat of death or torture, to perform sexual acts on other prisoners in the camps. The United States reports that in May 1992, in the five detention centres in the region of

Bosanski Šamac, many prisoners were forced to perform sex acts on fellow prisoners [United Nations, *Letter Dated 5 November 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24791, 10 Nov. 1992, p. 16]. This is not an isolated incident: other reports to the same effect can be found, for example in the region of Kotor Varos, where 100 men were detained in a factory during eight days and forced to perform sex acts on one another. [United Nations, *Letter Dated 7 December 1992 from the Deputy Representative of the United States of America Addressed to the Secretary-General*, S/24918, 8 Dec. 1992, p. 12].



59. Numerous reports of sexual assaults towards men can also be found in the Report of the Commission of Experts. For example, it is stated that in Omarska camp, "Male prisoners were forced to rape women and each other." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 40, para. 179].

4. Rape and sexual assaults have been committed everywhere

60. Rape and sexual assaults against Muslim women, children and men have been committed everywhere in Bosnia and Herzegovina, in custodial as well as in non-custodial settings; they have been committed all over Bosnia and Herzegovina in geographical terms, in non-contiguous areas, using the same methods. In other words, rape and sexual assaults have been committed outside the camps, where

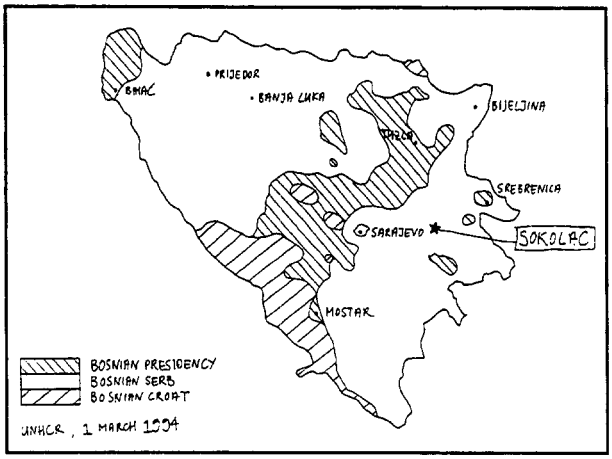
recourse to rape was systematic when Serb forces entered villages they had conquered, as well as inside the camps, where the phenomenon was the most massive.

Rape and sexual assaults have been committed outside the camps

61. In general, rapes were part of the pattern of attack of a village or city: either rapes were committed before the attack, in order to demoralise the Bosnian Muslims, and push them to flee, or at the moment of the attack itself, for the same reasons. This has happened in countless instances. Mrs. Christine Cleiren, a professor of criminal law and procedure in the Netherlands and a member of the Commission of Experts declared to the ICTFY, in an *amicus curiae* presentation on rape and sexual violence during the Hearings in the Karadžić and Mladić cases that "the information the Commission had on sexual violence in Bosnia-Herzegovina indicates that this practice was widespread. Over 80 cities and villages are alleged to have been the site of rape." [ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Cleiren*, 2 July 1996, p. 11, Annex 79]. The Trial Chamber, then, established in the cases of Karadžić and Mladić, that "Sexual assaults were committed by individuals or groups before the conflict broke out, in the context of looting and intimidation of the population" [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 34, para. 64].

62. Rape was clearly used as a tactic, linked with military attacks. On many occasions before the Serb forces attacked a village, a woman was raped and sent back to her family sending the message: "if the family does not leave, soldiers will come back to rape her and other women in her family". This is a basic scheme of intimidation. But, rape occurred even more during the attacks. Thus, for example, during the attack on Liskovac, on 1 July 1993, it is reported by the Special Rapporteur Mazowiecki that:

> "81. (...), 12 men, some in uniform, broke into a Muslim home, beat the residents and destroyed their belongings. An 80-year-old grandmother who protested was shot through the head, as were the two man of the family. The 18-year-old granddaughter was then repeatedly raped. At a neighbouring house the 12 men beat and shot the Muslim owner, beat and raped his 27-year-old wife and shot her mother dead and threw her into the street. (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, fifth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 12, para. 81].

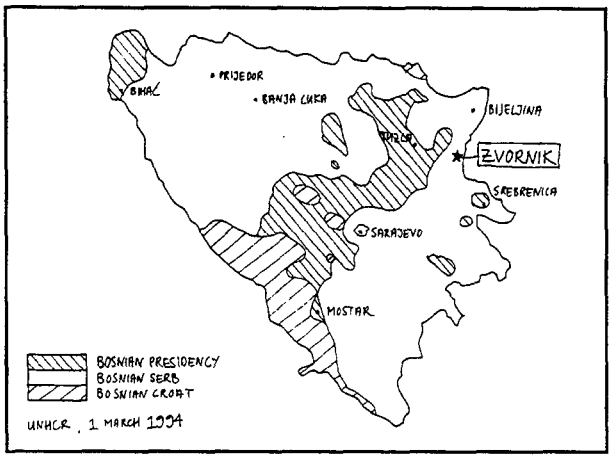


63. Rape has occurred in all places. Apparently, there existed no safe haven, where women would be protected from rape and the fear of rape, not even hospitals or medical convoys. As stated in the last Mazowiecki Report on the fall of Srebrenica:

> "In another confirmed case, the 19-year-old victim was raped on her way to the confrontation line as part of a medical convoy. (...) It was reported that another woman, who had been working as a medical assistant on the bus, was taken off. She was absent for some hours and returned in a very distraught state, stating that she had been raped by three Bosnian Serb soldiers." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, final periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, pp. 10-11, para. 45].

64. With regard to the attack on Zvornik, the Commission of Experts compiled 35 reports of rape. The incidents reported by the Commission include the following:

> "In May of 1992, Serb forces attacked the area of Zvornik. In conjunction with the attack, women in the villages of Kostijarevo and Drinjača were allegedly raped after 25 to 35 men were killed in fighting. Another report states that a 12 year old girl was raped and strangled in Salihovići, Zvornik." United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 54, para. 260].



Rape and sexual assaults have been even more frequent inside the camps

65. Section 5 of Chapter 5 of this Reply elaborates on the horrendous practices in the detention camps run by the Serb side. That Section already contains many references to the rape policy conducted in these camps. Rape and sexual assault have, indeed, been even more frequent inside the detention camps, or other confined places, than they have been outside. The fact that sexual violence was frequent and systematic, against women and men, in confined places has been asserted by the Trial Chamber in the cases of Karadžić and Mladić, which has considered that the following facts:

> "are demonstrated both from the material submitted by the Prosecution in support of the indictments and from the documents and testimony presented during the hearings" [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 6, para. 10].

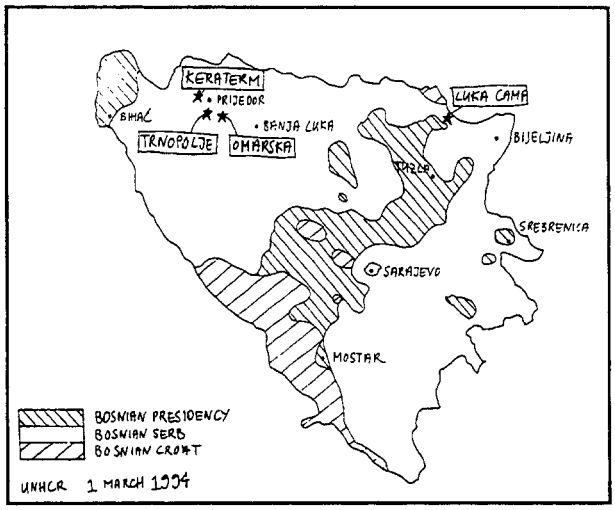
These are some of the facts that the ICTFY considered to have been proven by the evidence before it:

> "Inside the camps or at other places, many of the women and girls being detained were systematically raped and/or subjected to other form of sexual assault by Serbian soldiers and police or by their agents with the consent and complicity of the officials of the detention units. Some of the camps were nothing less than 'specialized centres' for the rape of women." [*ibid.*, p. 7, para. 13].

66. Rapes have been reported in many detention camps: Omarska, Mrakovica, Trnopolje and Keraterm in the region of Prijedor, as well as Luka camp near Brčko and so on.

Many of these camps have been listed in the Indictments of Karadžić and Mladić, and Review of the Indictment under Rule 61 by the Trial Chamber, with the name of their respective commander:

> "The non-Serbian men and women (...) were separated and then interned in detention facilities (...) Among the camps (...): Omarska (Commander: Željko Meakić); Keraterm (Commander: Duško Sikirica, Trnopolje (Commander: Slobodan Kuruzović); Luka (Commander: Goran Jelisić); (...); Sušica (Commander: Dragan Nikolić); KP Dom Foča, which was one of the largest prison facilities in the former SFRY (Commander: Milorad Krnojelac)" [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 16 Nov. 1996, p. 31, para. 60].



67. As a matter of fact, during the Hearings in the Karadžić and Mladić cases, Mr. J. Ralston, from the ICTFY Prosecutor's Office, where his duties have involved the responsibility for overall co-ordination of investigations in relation to Karadžić and Mladić, when called as a witness and interrogated, explained clearly the way in which the strategy was organised:

> "Question: Mr Ralston, you mentioned earlier that the Office of the Prosecutor has conducted in-depth investigations in certain municipalities. Can you identify these municipalities?
> Answer: Sarajevo, Foča, Bosanski Šamac, Vlasenica, Brčko and Prijedor.
> Q: Can you inform the court what the strategic significance of these municipalities is?
> A: Yes, I can (...). Firstly, the municipalities of Foča, Bosanski Šamac, Vlasenica, Brčko and Prijedor all had substantial non-Serb majority population (...) For each of these municipalities, in addition to being predominantly non-Serb surrounded by Serb controlled areas, they were also particularly important because of the transport thoroughfares that went through them.

> (...)
> Q: Mr. Ralston, I would like now to turn to another feature of the pattern that you have identified in the municipalities where the Prosecutor has conducted investigations, and that is the separation of men from women. Can you explain that feature?
> A: Yes (...) I have mentioned before in my testimony that men were separated from women. The men once they were separated were taken to detention facilities where they were held for weeks, months and even years (...) The women were also often placed in detention facilities for various periods of time. In these facilities, they were often subjected to persistent rape and sexual assault by camp officials and guards and soldiers and on occasion civilians who came into the facilities (...)" [ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61, and IT-95-18-R61, *Testimony Ralston*, 28 June 1996, p. 62 and 76, Annex 80].

68. The Gagović and others ("Foča") Indictment gives a good picture of the nature of the overall policy of rape and sexual violence that has been conducted in Bosnia and Herzegovina. The charges against the eight accused, for their own behaviour as well as the behaviour of their subordinates, because they knew or had reasons to know that the latter sexually assaulted Muslim women, are the following:

Counts 1-12:	Torture and Rape at Buk Bijela;
Counts 13-28:	Torture and Rape at Foča High School;
Counts 32-35:	Torture and Rape of FWS-48 at Partizan Sport Hall;
Counts 36-55:	Torture and Rape of FWS-48, FWS-50, FWS-75, FWS-87, FWS-95 and other women at Partizan Sport Hall;
Counts 56-59:	Enslavement and Rape of FWS-75, FWS-87 and seven other women in Karaman's House;
Count 60:	Rape of FWS-75 and FWS-87 and two other women;
Counts 61-62:	Enslavement and Rape of FWS-75 and FWS-87 in the Brena Apartment [ICTFY, Indictment, *Prosecutor v. Gagović & others ("Foča")*, Case No. IT-96-23-I, 26 June 1996].

As a matter of fact, all of the Gagović & others Indictment could be cited here. The Government of Bosnia and Herzegovina will just cite short extracts, sufficient to give an idea of the dimension of the rape policy performed against Muslim women by the Serb forces.

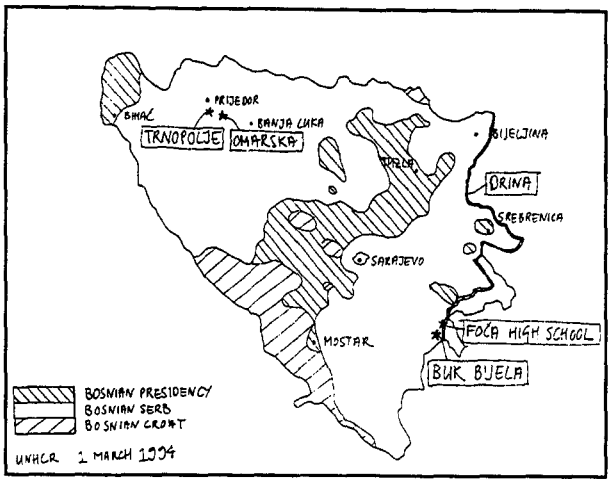
69. Count 1 to 12 relates to torture and rape at Buk Bijela:

> "Buk Bijela refers to a settlement on a hydro-electric dam construction site on the road from Brod to Miljevina by the river Drina which was turned into a local military headquarters and barracks for Bosnian Serb forces and paramilitary soldiers after the April 1992 take-over of Foča and the surrounding villages (...)
> On 3 July 1992, soldiers (...) arrested a group of at least 60 Muslim women, children and a few elderly men (...) and took them to Buk Bijela. (...) The soldiers separated the women from their

children. GOJKO JANKOVIĆ, JANKO JANJIĆ, DRAGAN ZELENOVIĆ and ZORAN VUKOVIĆ interrogated the women. (...) The accused threatened the women with murder and sexual assault if they lied. JANKO JANJIĆ and DRAGAN ZELENOVIĆ and other soldiers acting under the control of GOJKO JANKOVIĆ gang-raped, several women during or immediately after the interrogation who they suspected of lying. (...)
A witness code named, FWS-75, was interrogated by GOJKO JANKOVIĆ and DRAGAN ZELENOVIĆ about her village (...) DRAGAN ZELENOVIĆ warned the witness not to lie, otherwise she would be raped by soldiers and killed afterwards. As FWS-75 did not answer the questions sufficiently, a soldier took her to another room. There, at least ten unidentified soldiers, raped her, in turn. The nature of the rape included vaginal penetration and fellatio. FWS-75 lost consciousness after the tenth soldier sexually assaulted her. The episode of sexual assault lasted between one to two hours.
(...)
A further witness, FWS-48, was interrogated by JANKO JANJIĆ in a room at Buk Bijela. During the interrogation, JANKO JANJIĆ forcibly undressed her. When FWS-48 tried to resist, he slapped her and pushed her and threatened to bring in ten soldiers to rape her. JANKO JANJIĆ then raped FWS-48 by vaginal penetration.
A fourth witness, FWS-74, was led by JANKO JANJIĆ to a room to be interrogated in the presence of an unidentified soldier. During the interrogation, JANKO JANJIĆ instructed FWS-74 to undress. At that moment, the other soldier asked JANKO JANJIĆ to leave the room. After JANKO JANJIĆ had left, the soldier undressed FWS-74. During a period of about twenty minutes he raped her by vaginal penetration". [ICTFY, Indictment, *Prosecutor v. Gagović & others ("Foča")*, Case No. IT-96-23-I, 26 June 1996, p. 6-7, paras. 5.1, 5.2, 5.3, 5.4, 5.5, 5.7].

70. Count 13 to 28 concern torture and rape at Foča High School:

"During the occupation that followed the take-over of the town of Foča, the Foča High school, situated in the Aladža area, functioned as barracks for Serb soldiers, and as short term detention facility for Muslim women, children and the elderly.
(...)
Many of the female detainees were subjected to sexual abuse during their detention at the Foča High School. (...) Among them were witnesses FWS-50, FWS-75, FWS-87, FWS-95, FWS-74 and FWS-88, as set forth below. The soldiers threatened to kill the women or the women's children if they refused to submit to sexual assaults. Women who dared to resist the sexual assaults were beaten.
(...)
Between or about 8 July and about 13 July 1992, (...) FWS-95 was sexually assaulted in different classrooms in the Foča High School. Because she had previously been beaten and threatened when sexually assaulted, FWS-95 dared not resist the soldiers again. She was raped on numerous occasions by many perpetrators (...) (vaginal and anal penetration and fellatio).
(...)
On or about 8 July 1992, JANKO JANJIĆ took FWS-88 to an apartment in the Brena block. There, during the whole night, he raped her repeatedly (vaginal and anal penetration and fellatio). As she was a virgin before these acts, FWS-88 experienced terrible pain during the rape." [ICTFY, Indictment, *Prosecutor v. Gagović & others ("Foča")*, Case No. IT-96-23-I, 26 June 1996, p. 8-10, paras. 6.1, 6.4, 6.11, 6.13].



71. The Trnopolje camp was one of the places of detention where the highest number of rapes and sexual assaults occurred, as many women were detained there. This was explained and referred to in the Opinion and Judgment in the Tadić case:

> "Because this camp housed the largest number of women and girls, there were more rapes at this camp than at any other. Girls between the ages of 16 and 19 were at the greatest risk. During evenings, groups of soldiers would enter the camp, take out their victims from the dom building and rape them. Another prisoner, Vasif Gutic, who had medical training, was assigned to work in the medical unit at Trnopolje and testified to the extensive rapes that occurred at the camp. He often counselled and treated victims of rape, the youngest girl being 12 years of age." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 64, para. 175].

72. The Commission of Experts found:

> "70 reports (...) describing rape and sexual assault at Trnopolje camp" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 40, para. 180; see also for a great number of reports of rape by witnesses: United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General*, S/25377, 6 Mar. 1993, pp. 39, 42].

73. In the Omarska camp, sexual violence has been used both on women and men. As stated in Annex IX of the Report of the Commission of Experts:

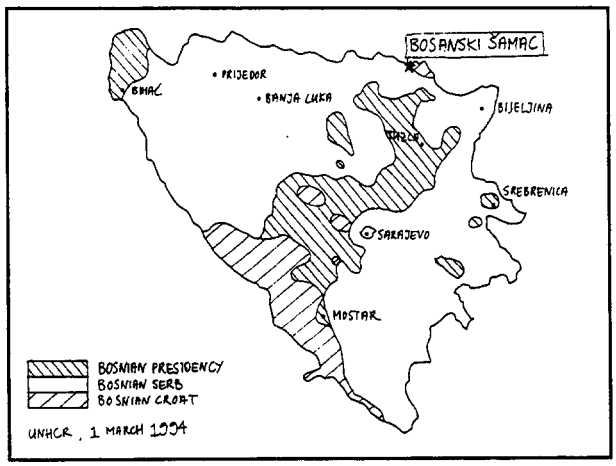
"Male prisoners were forced to rape women and each other (...)." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 40, para. 179].

74. In the Tadić case, the Trial Chamber established that:

"Women who were held at Omarska were routinely called out of their rooms at night and raped. One witness testified that she was taken out five times and raped and after each rape she was beaten." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 62, para. 165].

75. In the Indictment of Miljković and others ("Bosanski Šamac"), a suspect is charged with an act of sexual violence, and his superior also indicted for having failed to take the necessary and reasonable measures to prevent such an act or punish it. The Indictment describes such sexual assault on men committed in the city of Bosanski Šamac:

"On or about 13 June 1992 in the hallway of the Bosanski Šamac SUP building, Stevan TODOROVIĆ forced Witness A and Witness B to perform sexual acts upon each other in the presence of several other prisoners and guards." [ICTFY, Indictment, *Prosecutor v. Miljković & others ("Bosanski Šamac")*, Case No. IT-95-9-I, 21 July 1995, p. 8, para. 31].



76. Some places were exclusively devoted to detain and rape women. These places have become to be known as rape/death camps, defined in the following way by Beverly Allen:

> "Rape/death camps are buildings where Bosnian-Herzegovinian and Croatian women and girls are kept and systematically raped for weeks or months at a time by Serb personnel from the Yugoslav Army, irregular Serb soldiers, Četniks, and even civilians. The rape/death camps are restaurants, hotels, hospitals, schools, factories, peacetime brothels, or other buildings; they are also animal stalls in barns, fenced-in pens, and arenas. Testimony indicates that thirty such rape camps have been or are currently in use." [Beverly Allen, *Rape Warfare*, Minnesota, 1996, p. 65].

77. Among those, have been cited the notorious Sonja café outside Vogošća, the "Partizan" Sport Centre in Foča [United Nations, *Letter Dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25586, 13 Apr. 1993, p. 20; and ICTFY, Indictment, *Gagović & others ("Foča")*, Case No. IT-96-23-I, 26 June 1996]; "Westphalia" coffee house near Stolina, a coffee house near Skijana and a private house in Grace [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, second periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 6, para. 28]; but schools also have sometimes been diverted from their normal function, as the school in Salihovići, where 50 to 60 teenage girls were detained and raped [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 348, para. 2905]; also a movie theatre in Čelopek was the location for the enactment of a very grim sexual scene, that will be described below [*ibid.*, p. 346, paras. 2882-2888]. This list is by no means exhaustive.

78. The Commission of Experts also established that the camp identified as "Mrakovica. Mountain Barracks" in the region of Prijedor was a "rape-death camp" [*ibid.*, p. 265, para. 2232-2233].

79. The Commission of Experts also found that:

> "There were several sites where predominantly Muslim women were reportedly held and raped by Serbian soldiers. One of the sites was Velecevo prison. Another site was the 'četnik' headquarters in Brod, Foča, and another was the police station in Foča." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 28, para. 113].

In the same Report, mention is made of:

> "[t]hree reports allege the existence of a camp where Bosnian Muslim women are kept for the purpose of rape by Bosnian Serb forces in Jasenica." [*ibid.*, p. 16, para. 46].

80. In the region of Zvornik, several detention places were also the scene of countless acts of rape and sexual assaults:

> "During their captivity, young women were allegedly repeatedly raped. One man stated that he was raping girls 'because [they were] Muslims and there [were] too many of [them] (...) Other reports alleged that a camp was set up in a school in Salihovici. That camp allegedly held 470 inmates. Reportedly, the youngest women were raped first, and then older women were raped. One report alleges that a girl was raped in front of her family. (...) Reports also allege that Bosnian Muslim women from Brčko were held in a lumber factory in Carpade, Zvornik, and 40 were taken out and raped by Arkan's troops. (...) Several reports describe a camp in a shoe factory in Karakaj. There a female guard, a member of Arkan's troops, ordered men to have sexual intercourse with her. When they refused, she shot them. One report called the factory the 'Glinica' factory, and stated that 48 girls and women were raped there." [*ibid.*, p. 54 , paras. 261-264].

Rape and sexual assaults have been committed repeatedly

81. During the genocidal warfare against the non-Serbs of Bosnia and Herzegovina rape or sexual assault turned out not to be isolated events occurring between one perpetrator and one victim. considering the conditions in which these acts happened. Very often, numerous rapes and sexual assaults were perpetrated at the same time by several perpetrators against one or several victims. The rapes and sexual assaults were also often repeated against the same victim: many women stated that they had not only experienced one rape, which is a terrifying experience, but were raped repeatedly. The rapes and sexual assaults were also repeated in time: rapes and sexual assaults occurred repeatedly throughout the conflict.

82. Often, girls or women were raped by several men, in a collective assault. Numerous reports issued by international organisations have repeatedly established "gang-rape" or "gang-raping" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 261, para. 2197]. In the Tadić case the ICTFY established:

> "In addition, there were women who were subjected to gang rapes; one witness testified that a 19-year-old woman was raped by seven men and suffered terrible pains and came to the clinic for treatment for haemorrhaging" [ICTFY, Trial Chamber, Opinion and Judgment,

Prosecutor v. Duško Tadić, Case No. IT-94-1-T, 7 May 1997, p. 64, para. 175].

83. Gang-rape also features in the Indictment of Gagović & others as a frequent occurrence in the Foča High School:

> "From the second day of their detention, every evening, groups of Serb soldiers sexually assaulted, including gang-rape, some of the younger women and girls in the class-rooms or apartments in neighbouring buildings." [ICTFY, Indictment, *Prosecutor v. Gagović & others ("Foča")*, Case No. IT-96-23-I, 26 June 1996, p. 8, para. 6.4].

84. Often, the same girls or women were raped again and again, night after night. With regards to the Trnopolje camp, an incident was recorded in which a girl was raped 12 times by different men in one single night [United Nations, *Letter Dated 22 October 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24705, 23 Oct. 1992, p. 11].

85. This practice is well illustrated by the case of Suada Ramić, whose story forms an integrated part of the Tadić Judgment:

> "Suada Ramić, a Muslim, testified that she was raped at the Prijedor military barracks. After the rape she was bleeding terribly and went to the hospital where she was told by one of the doctors that she was approximately three to four months pregnant and that an abortion would have to be performed without anesthetic because there was none. When this doctor asked another doctor for assistance, the second doctor started cursing, saying that 'all balija women, they should be removed, eliminated, and that all Muslims should be annihilated (...)' When she returned from the hospital (...) returning to her apartment in Prijedor.. she was subsequently raped for a second time by a former Serb colleague who had come to search her apartment. The next day she was taken to the Prijedor police station by a Serb policeman with whom she was acquainted through work. On the way he cursed her, using ethnically derogatory terms and told her that Muslims should all be killed (...) She was taken to a prison cell which was covered with blood and where she was raped again and beaten, afterwards being taken to Keraterm camp (...) She was transferred to the Omarska camp where she often saw corpses and, while cleaning rooms, she found teeth, hair, pieces of human flesh, clothes and shoes. Women were called out nightly and raped; on five separate occasions she was called out of her room and raped. As a result of rape she has continuing and irreparable medical injuries." [ICTFY, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 167-168, para. 470].

The Trial Chamber went on to state:

> "The testimony of those witnesses [and one them was the witness Suada Ramić] is not unique and their experiences reflect the horror suffered by non-Serbs who were subjected to such treatment simply because their religion or politics offended those who gained control of the region. A policy to terrorize the non-Serb civilian population of opština Prijedor on discriminatory grounds is

evident and that this implementation was widespread and systematic (...) is apparent." [*ibid.*, pp. 168-169, para. 472].

86. Another horrendous ordeal of a woman referred to in the Gagović and others ("Foča") case as FWS-87 for the purposes of confidentiality and anonymity exemplifies the pattern of violations experienced by the Muslim women and may be summarised as follows:

> "Only 15 year of age when she was first detained in July 1992, the Prosecutor has alleged that FWS-87 was subjected to at least eight months of routine torture, including gang rape, and enslavement at the hands of accused (...) and countless other unidentified soldiers. FWS-87 was first detained at the Buj Bijela complex on the Drina River on or about 3 July 1992. There, she was interrogated by Dragan ZELENOVIĆ and three unidentified soldiers, each of whom raped her in turn. One of the soldiers put a gun to her head as he raped her. FWS-87 suffered severe pain during the attack, followed by heavy vaginal bleeding. Between 3 and 13 July 1992, FWS-87, together with at least 72 other Muslim inhabitants of Foča, was transferred to Foča High School. FWS-87 was one of several women who, from the second day of their detention, were sexually assaulted, including gang raped every evening, by groups of soldiers, either in the class-rooms or in nearby apartments (...) On or about 6 or 7 July 1992, FWS-87 was raped by VUKOVIĆ while other detained women were simultaneously raped in the same room. Between 8 and 13 July, the accused Dragan ZELENOVIĆ led a group of soldiers that sexually abused FWS-87 and another young woman at Foča High School on at least five occasions additional to the one described above. During the same period, FWS-87 was taken from Foča High School to a nearby apartment (...) on at least five occasions. There, she was raped (...) Around 13 July 1992, FWS-87 and the other detainees at Foča High School were transferred to the Partizan Sports Hall. While being held there, until about 2 August 1992, FWS-87 and other female detainees were continuously raped or otherwise sexually assaulted by innumerable soldiers (...) FWS-87 became suicidal as a result of these sexual assaults. FWS-87, along with other Muslim women, was transferred on 2 August to a house in Foča (...) Some of these women were as young as 12 years of age (...) FWS-87 and the other women held at the house were (...) treated as sexual slaves (...) On or about 30 October 1992, FWS-87, together with other Muslim girls and women, was moved back to Foča, and shifted different houses. They were raped and otherwise sexually assaulted on numerous occasions (...) Between 31 October 1992 and about 25 February 1993, FWS-87 was enslaved by Radomir KOVAĆ in an apartment block in Foča. She and other detainees were (...) frequently sexually assaulted." [ICTFY, Indictment, *Prosecutor v. Gagović & others ("Foča")*, Case No. IT-96-23-I, 26 June 1996, pp. 3-4 of the summary made by the ICTFY for the Press release, CC/PIO/093-E].

87. Rape and sexual violence have culminated in the year 1992. But this is not to say that the same policy has not continued later, which, on the contrary, it did, reflecting a policy of terrorising sustained over time.

88. Rape and sexual violence were also being reported in 1993. In his Sixth Periodic Report Mazowiecki notes:

"5. War continues unabated in Bosnia and Herzegovina (...) The commission of rape and other forms of sexual abuse against women continues.
(...)
12. During November 1993, continuing allegations were brought to the attention of the Special Rapporteur concerning widespread incidents of rape and sexual abuse by Bosnian Serb troops against Muslim women in the Olovo area.
(...)
54. A persistent problem besetting attempts to chart the extent of the incidence of rape and other forms of sexual abuse remains the exceptional difficulty in obtaining reports of or investigating allegations.
(...)
55. Despite such fact-finding problems, the Special Rapporteur is of the view that the commission of sexual abuse remains widespread, if not on a scale comparable to the earlier in the course of the war." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, p. 4, para. 5, p. 5, para. 12, p. 11, paras. 54, 55].

89. In its Seventh Periodic Report, Tadeusz Mazowiecki reports incidents of rape just before the attack on Goražde in March-April 1994:

"1. The enclave of Gorazde, situated in central Bosnia, had a pre-offensive population of some 60-65 000 of whom 35 000 lived in the town of the same name. The population was and is predominantly Muslim.
(...)
2. The enclave of Gorazde, declared as a 'safe area' by resolution of the Security Council, has been subjected to fierce attack by Bosnia Serb forces during the weeks up to late April 1994. (...)
3. The Special Rapporteur is aware of a number of incidents of military attacks on civilians, including sniping throughout the past year.
(...)
7. The early stages of the offensive were marked by the overrunning of a number of villages. By 5 March, some 13 had been taken in the Drina valley. The assaults on the villages involved widespread terrorization of the residents, eviction from and destruction of their homes, and the killing of livestock. Eye-witnesses have also attested to the commission of rape by groups of soldiers." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, seventh periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1995/4, 10 June 1994, pp. 1-2, paras. 1-3, 7].

90. In the Ninth Periodic Report, Mazowiecki also reports on attacks that occurred during the month of March 1994:

"Through the month, international sources reported rape and other forms of sexual abuse on an almost daily basis in the city [of Banja Luka] and outlying towns such as Vrbanje. Typical of such reports is a later one, from June 1994, describing how the adult female members of a Muslim family were sexually abused by a number of their Bosnian Serb neighbours, forcing them to flee." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr. Tadeusz Mazowiecki,*

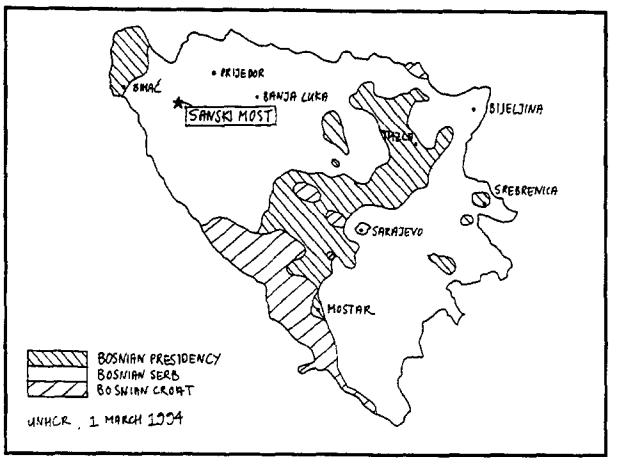
Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council, A/49/641, S/1994/1252, 4 Nov. 1994, p. 6, para. 11].

91. In the same report, Mazowiecki examines events that took place during the summer of 1994:

> "21. Between mid-June and 17 September 1994, some 4,700 non-Serbs were displaced into Government-controlled territory from the Bijeljina and Janja regions. (...) There are many reports of physical abuse, including rape, committed by Bosnian Serbs supervising the displacement." [*ibid.*, p. 8, para. 21].

92. Rape and sexual violence were, as mentioned above, also reported in 1995. According to the Secretary-General Report of 4 August 1995, "In his reports during 1995, the Special Rapporteur of the Commission on Human Rights referred to allegations of rape and sexual assaults." [United Nations, *Rape and abuse of women in the areas of armed conflicts in the former Yugoslavia, Report of the Secretary-General*, A/50/329, 4 Aug. 1995, p. 6, para. 17]. Also in his Report pursuant to Security Council resolution 1019 (1995) on violations of international humanitarian law in the areas of Srebrenica, Žepa, Banja Luka and Sanski Most, of 27 November 1995, the Secretary-General reports of rapes in Northern Bosnia and Herzegovina; he also states that, in the region of Bosanka Dubica, "there are consistent reports that young women were taken from the group and raped" [United Nations, *Report of the Secretary-General* S/1995/988, para. 48]. The same holds true in the Sanski Most area, where the Secretary-General found that:

> "There were a number of reports of (...) rape (...) One 17-year-old girl said that Bosnian Serb neighbors had killed her parents on 21 September. The girl fled with her sisters but was later forced to Šekovici by Arkan's soldiers; she reported that she was raped. Another 17-year-old girl also said she was raped." [*ibid.*, para. 53]. These events are not less serious than the ones that occurred in 1992-1993: as stated by the Secretary-General in the same Report, in his concluding remarks: 'As if the savagery of the war in the Balkans since 1991 was not enough, the past few months have seen further despicable acts of cruelty and violence, as reported by the catalogue of reported atrocities described in the present report. This and other reports provide undeniable evidence of a consistent pattern of (...) rape (...)'" [*ibid.*, para. 74].



93. Even later, rape had not been abandoned as a tool of ethnic cleansing, as is emphasised in a report by Elisabeth Rehn, who replaced Tadeusz Mazowiecki as Special Rapporteur. In her report dated 17 July 1996, – that means after the signature of the Dayton Accords – she mentioned "the odious practice of 'ethnic cleansing' as well as the effects of war, resulted in massive displacements of persons throughout Bosnia and Herzegovina" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, periodic report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1997/5, 17 July 1997, p. 7, paras. 27] and then addressed more specifically rape and sexual violence:

> "29. Displacement of minority populations continues from areas of Republika Srpska such as Teslic, Banja Luka and Vrbanje. Members of minorities, mainly Bosniaks but also Croats and Roma, are subject to concerted patterns of intimidation and administrative discrimination. As a result, in the period since April 1996, some hundreds of members of minority populations have either left or indicated an urgent desire to leave Republika Srpska. There have been incidents of physical attack, including rape, destruction of property, death threats and the hurling of racist abuse." [*ibid.*, para. 29].

Rape and sexual violence have been performed with particular savageness or perversity

94. It seems that one should speak, in many cases, of aggravated sexual torture rather than sexual violence. All kinds of torture were part of the acts of rape and sexual violence. For example, in the region of Ključ, fourteen reports of "sexual atrocities" have been listed in the Report of the Commission of Experts: among the stated atrocities, two cases were mentioned of women raped – one sixty year old, the other 53 – who were severely hurt by the forcing of the perpetrator's hand in their

vaginas, after which they were forced to lick the blood off his fingers [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 33-34, para. 142, 143].

95. The acts of rape and sexual torture have sometimes been perpetrated with the use of various objects, as is written in the Report of the Commission of Experts:

> "Victims are sexually assaulted with foreign objects like broken glass bottles, guns and truncheons" [*ibid.*, p. 11, para. 18 (f)].

In such cases, the physical injuries might be even worse, and are often irreversible. The existence of this kind of torture has also been established by the testimonies taken by the ICTFY. In her testimony before the ICTFY, during the Hearings in the Karadžić and Mladić cases, Ms. Irma Oosterman stated:

> "(...) we have several statements taken from men who (...) were forced to put objects in each other's anus." [ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61, and IT-95-18-R61, *Testimony Oosterman*, 2 July 1996, p. 28, Annex 76].

96. In its Sixth Periodic Report, Mazowiecki reports on "sexual torture", consisting of forcing children to watch acts of sexual violence performed before their eyes, often on members of their family:

> "224. On many occasions children have witnessed the rape of their mother or close relatives. 225. Many children have been placed in detention centres and several of them have been tortured there, according to reports that have been brought to the attention of the Special Rapporteur. Girls, for instance have been raped and have seen their mothers being raped and injured. In one case, an 11-year-old girl who had witnessed the killing of the young men from her town was detained by Bosnian Serb soldiers in Lukavica with her mother and was then taken with her and other girls and women to a place where many were raped. She saw a woman slashing her mother's breasts with a broken bottle." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights,* E/CN.4/1994/110, 21 Feb. 1994, p. 35, paras. 224-225].

97. Apart from sexual assaults against men described earlier, in some cases, physical injuries have been committed against the men's virility. As stated in the Report of the Commission of Experts:

> "20. Men are also subject to sexual assault. They are forced to rape and sexually assault women, they are forced to perform fellatio on guards and on each other, they are forced to perform other sex acts on each others, and they suffer castrations, circumcisions, and other sexual mutilations." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 11, para. 20].

In general, the Report of the Commission of Experts underlines the fact that when men were victims of sexual violence, it was almost always inside a detention camp, with very perverse elements:

> "247. (...) Sexual assaults were also practised against men: one witness saw prisoners forced to bite off another prisoner's genitals. (...) Another incident related in an interview involved prisoners lined up naked while Serb women from outside undressed in front of the male prisoners. If any prisoner had an erection, his penis was cut off. The witness saw a named Serb woman thus castrate a prisoner" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 59, para. 247].

98. Events of this type have been established by the Trial Chamber of the ICTFY in the Tadić case:

> "There is a considerable body of evidence regarding these events (...) From that body of evidence before the Trial Chamber it can be concluded that (...) G and witness H were compelled to and did take part in the sexual assault on Fikret Harambašić as alleged and that G was compelled sexually to mutilate him by biting off one of his testicles. It can also be concluded (...) that all these events occurred on 18 June 1992 (...) These (...) victims were all Muslims.
> (...)
> After G and witness H had been forced to pull Jasmin Hrnić's body about the hangar floor they were ordered to jump down into the inspection pit, then Fikret Harambašić, who was naked and bloody from beating, was made to jump into the pit with them and witness H was ordered to lick his naked bottom and to suck his penis and then to bite his testicles. Meanwhile a group of men in uniform stood around the inspection pit watching and shouting to bite harder. All three men then were made to get out of the pit onto the hangar floor and witness H was threatened with a knife that both his eyes would be cut out if he did not hold Fikret Harambašić's mouth closed to prevent him from screaming; G was then made to lie between the naked Fikret Harambašić's legs and, while the latter struggled, hit and bite his genitals. G then bit off one of Fikret Harambašić's testicles and spat it out and was told he was free to leave. Witness H was ordered to drag Fikret Harambašić to a nearby table, where he then stood beside him and was ordered to return to his room, which he did. Fikret Harambašić has not been seen or heard of since" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 72-73 and 75, paras. 197-198 and 206].

99. Also in the Omarska camp, it is reported that in another incident:

> "a man's testicles were tied with a wire. The other end of the wire was tied to his motorcycle. A guard drove the motorcycle off, castrating him." [United Nations, *Final Report of the*

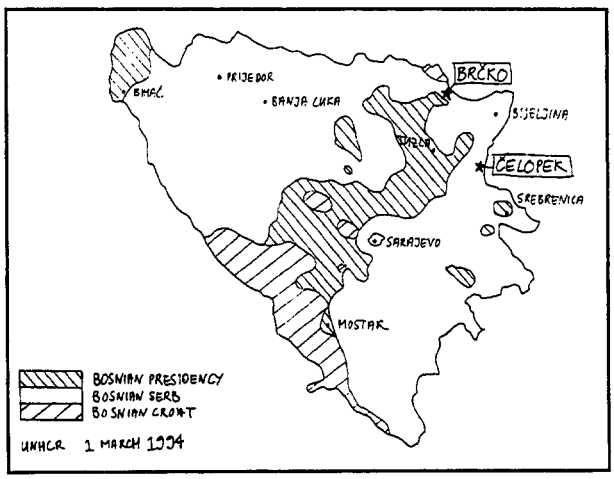
United Nations Commission of Experts, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 40, para. 179; see also, *Second US Submission, Letter Dated 22 October 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24705, 23 Oct. 1992, p. 13].

100. The existence of humiliating and degrading acts of torture committed against both women and men has also been accepted by the Trial Chamber in the cases of Karadžić and Mladić:

> "Forms of sexual assault particularly degrading for women, and using a variety of objects, and the castration of men, sometimes performed under duress by prisoners on one another, was practiced." [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić,* Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 7, para. 13].

101. In the Mazowiecki Report, it is recorded that in Luka camp, near Brčko, a witness saw fifteen corpses of young men whose genitals had been mutilated [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 15, para. 63].

102. It is also reported that in Čelopek, a guard cut off a man's penis with his knife, and reportedly made this man eat his severed penis [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 54, para. 265].



103. Rape has been quite often closely linked to death, whether murder was performed after rape, or whether it resulted as a consequence of the violence performed against the women. The Commission of Experts has found that:

> "the perpetrators reportedly also raped and killed some of the girls in front of the other victims. Those who resisted had their breasts cut off." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 309, para. 2567].

Another incident where death was closely linked with rape was reported:

> "a 17 year old girl was raped and strangled to death." [*ibid.*, p. 349, para. 2910].

In the Trnopolje camp, an incident was recorded in which two young girls were taken away and later reported to have been raped and killed [United Nations, *Letter Dated 5 March 1993 from the Permanent Representative of Austria to the United Nations Addressed to the Secretary-General*, S/25377, 6 Mar. 1993, p. 42]. In the Luka camp, it was also reported that teenage girls were brought to the commander's office two days a week and were gang raped; some died, one was stabbed to death [United Nations, *Letter Dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25586, 13 Apr. 1993, p. 21]. Amnesty International also reports that in the city of Ključ, Muslim women were raped and that two had their throats slit afterwards ["Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces", *Amnesty International Report*, Jan. 1993, AI: Index EUR 63/01/93, p. 7, Annex 77].

104. The Commission of Experts reported "raping of girls as young as seven or eight years old" in Jajce and adds that "several girls died after being raped" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 261, para. 2197]. In the same report, it is stated that in Village camp at Janja, "one 65-year old woman, after being raped, bled to death." [*ibid.*, p. 65, para. 487].

105. In the Trnopolje camp, "une petite fille de 7 ans a été violée, l'enfant est morte au bout de 12 heures" [Médecins du monde, Boulanger *et al.*, *L'enfer Yougoslave*, Paris, Belfond, 1994, p. 353, Annex 81].

106. It has been emphasised earlier that quite often rape and sexual assault were committed publicly in order to arouse shame for the sexually assaulted person and

her or his family. This perversity on the part of the Serb perpetrators was even more exaggerated when they attempted to heighten the shame of acts imposed by outsiders by inflicting reciprocal shame on family members, forcing them to perform sexual acts on one another. The existence of coerced incest was also accepted by the Trial Chamber in the cases of Karadžić and Mladić, where it stated that: "On several occasions, brothers or parents were forced to have sexual contact with one another." [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 7, para. 13].

107. This kind of sexual violence imposed on Bosnian Muslims has occurred both inside and outside the camps:

> "2884. On 10 June 1992, one of the Serbs removed seven pairs of fathers and sons from among the inmates. The pairs were forced on the theatre stage and made to disrobe. Once naked, the pairs were forced to perform fellatio on one another with the other male prisoners looking on from the audience." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 346, para. 2884].

108. The Commission of Experts also mentions two sources stating that in the Keraterm camp "two brothers were forced to perform sexual acts on each other." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 41, para. 183]. "Another ex-detainee told of (...) seeing a father and a son who shared his cell forced by guards to perform sex acts with each other." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 59, para. 247].

109. The team of medical experts sent by Mazowiecki to the former Yugoslavia has collected data on the pregnancies resulting from rape. They identified 119 cases of pregnancies resulting from rape for the year 1992 only. They insisted on the probable underestimation of pregnancies, for the very same reasons that there is an underestimation of rapes:

> "Virtually all interviewed physicians and health workers felt that the reporting of rape resulting in pregnancy would be far lower than its actual occurrence due to the profound emotional pain and stigma associated with rape. (...) The 119 cases documented to have been associated with rape, therefore, should be viewed as the minimum number of pregnancies due to rape in the populations

served by the hospital visited." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, Annex II. p. 67, para. 29].

110. This international team of four physicians included Dr. Shana Swiss, who explained in further scientific writings the analysis that can be drawn from these pregnancies:

> "The team identified 119 pregnancies that resulted from rape from a small sample of six hospitals in Bosnia, Croatia, and Serbia. According to estimates established in medical studies, a single act of unprotected intercourse will result in pregnancy between 1% and 4% of the time. Based on the assumption that 1% of acts of unprotected intercourse result in pregnancy, the identification of 119 pregnancies, therefore represents some 11900 rapes. These numbers, however, must be interpreted carefully. Underreporting, along with the reluctance of many physicians to ask women seeking abortions or perinatal care whether they had been raped during the war, would lead to an underestimate of the number of women raped. On the other hand, multiple and repeated rapes of the same women were frequently reported and could lead to an overestimate of the number of women (as opposed to the number of incidents of rape) involved. The goal is not to come up with an exact number, which is impossible, but rather to use medical data to suggest a scale of violations." [S. Swiss and J.E. Gilles, "Rape as a Crime of War. A Medical Perspective", *JAMA*, 4 Aug. 1993, Vol. 270, p. 613, Annex 75].

111. Ms. Irma Oosterman described this policy in her testimony before the ICTFY, in the Karadžić and Mladić cases, in an answer to a question asked by Judge Riad:

> "Miss Oosterman, you mentioned that in cases of rape those who committed it admitted they received orders, and sometimes orders, as you said, to make Chetnik babies?
> A: Yes, that is correct.
> Q: What was the procedure which was used and was it similar in all the cases you have viewed? How did they manage to do that?
> A: Like I have already told you, for example, women were taken out of the camp, were taken to another house or building, soldiers ordered then to wash themselves, to clean themselves, then they came back to the room or wherever they were, then they said, 'I am going to rape you and I will make you a Chetnik or Serb baby'." [ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Oosterman*, 2 July 1996, p. 31, Annex 76].

112. This Serb tactic of imprisoning women until they have reached an advanced stage of pregnancy was already mentioned by the Applicant in its Counter-Memorial [p. 44, para. 2.2.4.7.]. The idea of forced pregnancy imposed on Muslim women is closely linked with the overall process of ethnic cleansing as will be shown in more depth below.

113. Many women have reported what the true intention of their rapist was. According to them, the men who raped them told them that they would bear Serbian children as a

consequence of their rape ["Bosnia-Herzegovina Rape and Sexual Abuse by Armed Forces", *Amnesty International Report*, Jan. 1993, AI Index: Eur 63/01/93, p. 12, Annex 77]. To the trauma of rape was added the trauma of undesired pregnancy; "undesired" obviously being a terrible understatement.

114. A fifteen year old Muslim girl, who was raped by two men, while two others were holding her tight, has declared:

> "As they raped me they said they'd make sure I gave birth to a Serbian baby, and they kept repeating that during the rest of the time that they kept me there." [United Nations, *Letter Dated 5 November 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24791, 10 Nov. 1992, p. 16].

115. A Muslim victim stated that "she was raped on two occasions" and as reported in Annex IX of the Report of the Commission of Experts, her rapist "told her that they would make her have Serb babies who will be Christians." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 29, para. 122].

116. The fact that one of the intentions of the Serbian perpetrators was to give Serbian babies to the raped Muslim women is also sustained by the "humane" manner in which the "raped-pregnant" women were treated. There are reports of a precise organisation of the reproduction of Serb babies:

> "The women that became pregnant are not released, there are even special places for women which are to have Cetnik babies." [Alexandra Stigelmayer, *Stern*, 49/92 (68), Annex 82].

In the country of Doboj, a forty year old women described that:

> "'Many women and girls who were pregnant remained in the camp. They were transferred to a hospital and fed twice a day because, as the Chetnik said, they had to bear their offspring.'" [United Nations, *Letter Dated 26 January 1993 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25171, 27 Jan. 1993, p. 7].

117. The Applicant wants to repeat, in conclusion, that acts of rape and sexual violence have been committed extensively and systematically against the Muslim population,

and especially against Muslim women. From the facts presented here, it appears clearly that this use of sexual violence followed a pattern of conduct which was intended to destroy in whole or in part the Muslim group. The legal aspects of this intensive and systematic use of sexual violence oriented against Muslims will be discussed now.

5. Introduction to the legal assessment of rape under Article II

Rape committed with genocidal intent is genocide

118. The Applicant will demonstrate that rape has been carried out in such a way that it no doubt constitutes genocide. Although rape is not expressly mentioned in the Genocide Convention, it can, however, be condemned under the Convention: the wording of the Convention is referring to broad categories of acts, in order to encompass all the acts of sadism that human beings could imagine and all the new methods of genocide they could think of over time, as has been shown earlier in this Reply [see Chapter 2, Section 5].

119. In other words, the list of Article II may be exhaustive in substance, it is not in form. All the acts, whatever form they take, that can enter into one of the substantive categories of acts listed in Article II, can qualify as genocide if accompanied by genocidal intent. In particular, the Applicant submits that *from its inception, rape was included in the acts prohibited by the Genocide Convention.* Already during the Tokyo Trials, after World War II, there were charges of rape, which was considered as severe as torture and killing. This is underlined by the United Nations Commission of Experts [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex II, "Rape and Sexual Assault: A Legal Study", p. 6, para. 20; see also, Ted Meron, "Rape as a Crime Under International Humanitarian Law", *AJIL*, 1993, Vol. 87, No. 3, p. 426, Annex 83]. The Nankin rape was described in the Judgement of the Tokyo Tribunal:

> "There were many cases of rape. Death was a frequent penalty for the slightest resistance on the part of the victim or the members of her family who sought to protect her. Even girls of tender years and old women were raped in large numbers throughout the city, and many cases of abnormal and sadistic behavior in connection with these rapings occurred. Many women were killed after the act and their bodies mutilated." [*The Tokyo War Crimes Trial,* The complete Transcripts of the Proceedings of the International Military Tribunal for the Far East in Twenty-two Volumes, Garland Series, p. 49 605].

120. Even if it were not contemplated at the time – although it is the Applicant's contention that rape was included from the inception of the Convention – *rape as a genocidal tool has undoubtedly to be considered as prohibited to-day.* In the discussion at the time of the drafting of the Genocide Convention at the ILC, M. Morozov, the Representative of the USSR, stated that it was envisaged that the Convention would apply not only to the then existing forms of genocide, but also "to any method that might be evolved in the future with a view to destroying the physical existence of a group" [ILC, E/AC./25/SR.12, *ILC Yearbook*, 1948, Vol II, part 1].

121. Clearly in this case rape and sexual assaults are, considering the manner in which they have been used in Bosnia and Herzegovina, included in the acts forbidden by Article II of the Genocide Convention. As a matter of fact, these acts of rape and sexual assaults are prohibited under *all* paragraphs of Article II. Before elaborating on this, the Applicant wishes to object to the false interpretations given by the Respondent to Article II of the Genocide Convention.

The Respondent completely misconstrues Article II, by limiting expressly genocidal rape to only one category of forbidden acts of genocide

122. According to the Respondent:

> "Only rape committed with genocidal intent and 'causing serious bodily or mental harm to a member of the group' could be qualified as an act of genocide.
> (...)
> The Applicant has not presented any fact necessary to satisfy the two said conditions" [Counter-Memorial, p. 59, para. 1.3.4.2.].

123. The first answer of the Applicant to this contention is that it does not see how it could be said that it is necessary to prove, as a distinct element of the event, that rape of members of a group is "causing serious bodily or mental harm to members of the group": the serious bodily or mental harm is inherent in the barbarous act of rape. If rape is committed against members of the group – and the existence of such massive rapes and acts of sexual violence has already been substantiated earlier – then necessarily rape is "causing serious bodily or mental harm to members of the group".

124. In fact, the Respondent itself recognises implicitly this fact, as it cites in its "counter-claims" in Chapter VII of its Counter-Memorial, a series of acts allegedly committed

by Muslims, among which rapes are cited. Although the Respondent has not substantiated in any way the existence of genocidal rape against Serb women, it is interesting to underscore the fact that it considers rape to be an act of genocide, under paragraph (b) of Article II relating to the definition of genocide, when it describes rapes as "rapes causing serious bodily or mental harm to Serb women": by the Respondent's own reasoning, if Serb women could suffer in such a manner from rape, there is no reason whatsoever to deny that Muslim women suffer in exactly the same manner.

125. Secondly, the Applicant wants to emphasise that the definition of the acts of rape constitutive of genocide proposed by the Respondent does not give a full picture of genocidal rape: it is far too limited, as rape can have consequences other than serious bodily or mental harm, as will be developed later. It is evident that rape can have other consequences as well – like sterility for example – and thus qualify as genocide, under other paragraphs of Article II of the Genocide Convention.

126. Thirdly, the Applicant naturally agrees with the Respondent that genocidal intent has to exist for rape or sexual assault to be condemned as genocide: not every rape, of course, is an act of genocide. The existence of this intent in the overwhelming majority of cases will be proven below.

127. In sum, the Applicant asserts that rape necessarily causes serious bodily or mental harm to the raped woman, and that this "consequence" need not be proven separately. Moreover, the Applicant asserts that rape can be condemned under paragraph (b) of Article II referring to "serious bodily or mental harm", as well as under all the other paragraphs of Article II of the Genocide Convention, when committed with the intent to destroy the group in whole or in part.

Quite contradictorily, the Respondent completely misconstrues Article II, by implicitly limiting genocidal rape to the killing of the raped women

128. The Respondent appears to completely misconstrue the meaning of Article II of the Genocide Convention embodying the definition of genocide. In particular, the Respondent is quite wrong in its interpretation of intent. According to it:

> "There is no genocide without intent to destroy the group in whole or in part, *and* without the destruction of members of the group being committed because of their belonging to the group." [Counter-Memorial, p. 301, para. 4.4.1.2., emphasis added].

Here the Respondent seems to imply that acts of genocide would be limited to killings. This interpretation is of course unacceptable. Mr. Bartos, the Yugoslav Representative at the ILC at the time of the drafting of the Genocide Convention, rightly pointed out, at that time, that:

> "History showed that genocide was always preceded by a number of preliminary acts. It was essential to combat genocide in all its forms, not merely at the last stage." [Sixth Committee, General Assembly, Official Records, 1948, Summary records of meetings, 21 Sept.-10 Dec. 1948, p. 82].

This same interpretation was given by the Trial Chamber in its review of the indictment in the cases of Karadžić and Mladić:

> "Genocide requires that acts be perpetrated against a group with an aggravated criminal intent, namely, that of destroying the group in whole or in part. The degree to which the group was destroyed in whole or in part is not necessary to conclude that genocide has occurred. That one of the acts enumerated in the definition was perpetrated with a specific intent suffices." [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 52, para. 92].

129. This understanding of the Genocide Convention was also shared by Raphael Lemkin, who introduced the word "genocide" and who insisted on the evident fact that "genocide does not necessarily mean the immediate destruction of a nation.". According to Lemkin, genocide exists whenever there is "a coordinated plan of different actions *aiming at the destruction of essential foundations of the life of national groups*, with the aim of annihilating the groups themselves." [Raphael Lemkin, *Axis Rule in Occupied Europe*, Washington, 1944, p. 79, emphasis added, Annex 84]. And what is more essential to a group than its family structure, the sexual life and the reproductive functions of its members?
Lemkin was even more specific in explaining the concept of genocide:

> "The objectives of such plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity and even the lives of individuals belonging to the group." [*ibid.*].

From this definition, it appears clearly that not only killing members of the group, but all sorts of destructive acts can qualify as genocide, as has been embodied in the Genocide Convention.

130. Contrary to what results implicitly from the interpretation of the Respondent, the Applicant asserts that in order to qualify as genocide it is not necessary – even if it happened in fact – that the group be destroyed in whole or in part as a consequence, among others, of the policy of rape and sexual violence, for the acts perpetrated in pursuance of this policy to be qualified as acts of genocide. Nor is it necessary that the acts qualifying as genocidal acts result in the physical destruction of members of the group, in other words nor is it necessary that the women, children or men are killed or die as a consequence of rape or sexual violence, in order for rape and sexual violence to qualify as acts of genocide. The Applicant will show first that rape and sexual violence are related to each of the headings of Article II, and second that all these acts have been performed with genocidal intent.

6. Rape and sexual violence are acts prohibited by Article II

Rape and sexual assault - "killing of members of the group"

131. Sexual violence can lead to death. Not infrequently, rape resulted in the death of the raped girl or woman. Sexual violence has often preceded death or has been a medium of killing. Death is sometimes part of the same aggression against women as rape, sometimes a consequence of the conditions in which rape has been performed, or of its aftermath, sometimes a "punishment" for resistance to rape. Not infrequently either, sexual assault on a man, has ended up in the death of the assaulted man.

132. At times, death has been part of the same aggressive sexual violence as rape, when it was inflicted not after rape, but before the planned rape, because the woman resisted to being raped. Such occurrences have been reported by the Commission of Experts: "Captors have killed women who resisted being raped, often in front of other prisoners" [United Nations, *Final Report of the United Nations Commission of Expert*, S/1994/674, 27 May 1994, p. 55, para. 230 (o)]. In fact, in such a case, death must not merely be seen as a violent reaction to the attitude of the woman sexually assaulted, it was inherent in the overall policy of elimination. Death and rape were part of the same 'program' of elimination of the non-Serb group.

133. It has also been reported that a man was killed because he refused to perform a rape on a Muslim girl:

> "Un prisonnier agé de soixante-dix ans a (...) été battu à mort parce qu'il refusait de violer une petite fille de douze ans" [Agathe Logaert, "Bosnie: Témoignages sur la pratique des

viols dans les villages autour de Sarajevo. Le trop fameux Café Sonja", *Le Monde,* 5 Feb. 1993, p. 3, Annex 85].

134. Rape and death have also been linked together as part of the same destructive project towards the victim. Such type of facts have been stated by the United States which reported that very often girls "disappeared" after being raped [United Nations, *Letter Dated 22 October 1992 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24705, 23 Oct, 1992, p. 13].

135. Quite often, death did not need to be inflicted after rape, as it followed from the violence of the act itself: this is particularly frequent when very young girls or elderly women were raped. Several examples of deaths of seven or eight years old girls or of 65 old women have been given above in this Chapter which illustrate the terrible deadly consequences that rape or sexual violence had in many instances.

136. Men also died sometimes from the consequences of the sexual violence perpetrated against them, which had a fatal outcome. Occurrences of death as a consequence of violence or mutilation of the sexually assaulted man have been reported. Some examples were given earlier, such as the statement in the Mazowiecki Report that fifteen corpses of young men were found, with their genitals mutilated.

137. Several reports have been made of the suicide of women who were assumed to no longer have wanted to bear the burden of rape, and continue to live with the pain, shame and humiliation.

138. It has also been reported that deaths have occurred when Muslim women, after having been raped by Serb men, tried to get an abortion. Beverly Allen writes that the testimonies of Bosnian women showed that:

> "Many others these pages told about had not survived, nor did all the survivors live past the abortions they attempted once they got away from the rape/death camps." [Beverly Allen, *Rape Warfare*, Minneapolis, 1996, p. xi.].

Of course, it might not have been a precise intent of the perpetrators to kill the woman through an abortion following a rape. But such a death can still be linked with the overall conditions created by the intent to destroy the group in whole or in

part, that through an implacable chain of events ended up in the death of the raped woman.

Rape and sexual assault - "causing serious bodily or mental harm to members of the group"

139. The General Assembly, in its Resolution 48/143, entitled "Rape and abuse of women in the areas of armed conflict in the former Yugoslavia", adopted on 20 December 1993, has also recognised "the extraordinary suffering of the victims of rape and sexual violence", insisting at the same time that these practices were of "systematic use against the Muslim women and children in Bosnia and Herzegovina, by Serbian forces." [United Nations, *General Assembly Resolution* A/RES/48/143 (1993), 20 Dec. 1993].

140. No lengthy developments are needed in order to show that rape and sexual violence cause great suffering and/or serious injury to the victim's body and health. As has been stated earlier, such consequences are inherent in the act itself. In a book entitled "*L'histoire du viol*", (Histoire immédiate, Paris, 1998) a French historian, M. Georges Vigarello, rightly qualifies rape as a "meurtre psychique", in order to underscore its destroying effects.

141. Testifying before the ICTFY, Ms. Irma Oosterman elaborated upon the various problems which accompany rape, while answering the questions of Judge Odio Benito, during the hearings in the Karadžić and Mladić cases:

> "Q: Can you describe to the court what different problems women suffered due to the rape and sexual assault?
> A: Yes, they have *physical and emotional problems*. Some are still strong because they want to survive and still live, and some do not want to live any more, but because they have children they go on with this kind of things. Of course, they have problems with vaginas and all kind of anal problems. Some women had to give their children away, not their children but a child made by the Bosnian Serbs and some had to give abortion.
> Q: So, they suffer both, physical and psychological damage?
> A: Absolutely." [ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Oosterman*, 2 July 1996, p. 31, emphasis added, Annex 76].

142. After the hearings in these cases, the Trial Chamber concluded that:

> "the causing of serious bodily or mental harm to the member or members of the group or groups has occurred through (...) rape (...)." [ICTFY, Trial Chamber, Review of the

Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 52, para. 93].

143. The immediate and self-evident harm of rape is to the body: women are often hurt while being raped, because of the violence of the act committed against them. The Counter-Memorial cites some of the physical consequences of rape [Counter-Memorial, pp. 60-61, para. 1.3.4.3.]. Even though the psychical trauma of rape is immense, it is important not to lose sight of the fact that rape is first and foremost a physical agony. From a purely physical point of view, women who have suffered so much trauma to their body often have difficulties to have sexual relations with men. Their bodies can also be destroyed more profoundly and irreversibly, if their reproductive organs are wounded and if, as a result, the rape has an impact on their fertility.

144. Men also very often suffer physically, when they undergo sexual violence. The Trial Chamber has explicitly qualified, in the Tadić case, the sexual violence committed by the biting off of one of the testicles of a Muslim man in the Omarska camp, as a serious bodily harm:

> "In the case(s) of Fikret Harambašić, (...) the acts which the accused committed or was otherwise associated with, because of their nature and consequences, involved (...) wilfully causing great suffering or serious injury to body and health." [ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 89, para. 243].

145. The physical pain is of course generally accompanied by great psychical trauma. As stated by the Commission of Experts:

> "Rape and other forms of sexual assault harm not only the body of the victim. The more significant harm is the feeling of total loss of control over the most intimate and personal decisions and bodily functions. This loss of control infringes on the victim's human dignity and is what makes rape and sexual assault such an effective means of 'ethnic cleansing'." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 12, para. 25; see also "Amnesty International dénonce les viols qui se poursuivent en Bosnie", *Le Monde*, 23 Jan. 1993, p. 3, Annex 86].

146. This type of observations have been made by many authors. Véronique Nahoum-Grappe, a well known French social scientist, who studied the recent fate of Bosnian women in Bosnia and Herzegovina noted:

> "Ce sont les avortements provoqués au-dela du sixième mois, ainsi que les tentatives de suicide, les dépressions, les insomnies et les cauchemars à répétition qui ont mis les psychiatres des camps de réfugiés sur la piste des viols pendant l'année 1992-1993." ["Purifier le lien de filiation. Les viols systématiques en ex-Yougoslavie, 1991-1995", *Esprit*, Dec. 1996, p. 155, Annex 87].

The *American Journal of Preventive Medicine* published an extensive article on "*Rape Trauma Syndrome*", which includes:

> "Symptoms include fear, helplessness, shock and disbelief, guilt, humiliation and embarrassment, anger, and self-blame. Flashbacks of the rape, difficulty concentrating, 'seeing the assailant everywhere', and nightmares retraumatize the rape survivor, maintaining a high level of anxiety. Over the long term, the survivor of rape may suffer from depression, insomnia, sexual dysfunction, difficulties with relationships, fear and phobias, and a return of nightmares." [Ivy L. Schwartz, "Sexual Violence against Women: Prevalence, Consequences, Societal Factors, and Prevention", *American Journal of Preventive Medicine*, 1991, 7[6], p. 365, Annex 88].

These symptoms are of course even aggravated in the terrible circumstances in which rape and sexual violence occurred in Bosnia and Herzegovina against the non-Serb women.

147. One of the frequent consequence of rape – pregnancy – creates a terrible choice for the woman: she does not know whether to ask for an abortion, or, if she can no longer have an abortion, whether to abandon or keep the child. A study was done by physicians and psychiatrists on the first 25 Bosnian women admitted to the Zagreb Obstetrics and Gynaecological Clinic or its associated regional psychiatric centres, after being raped: among those, many had a pregnancy under 20 weeks and some a pregnancy over 21 weeks. The women in the last group, who could no longer get an abortion, showed extreme trauma. As stated in the medical report on their case:

> "At the end of almost every session, the pregnant women in the present study group asked for help in ridding themselves of the 'unnatural body'. They called the fetus 'a thing'. They wished that they had a tumor instead of a baby, because a tumor could be removed easily." [Dragica Kozaric-Kovacic a.o., "Rape, Torture and Traumatization of Bosnian and Croatian Women: Psychological Sequelae", *Amer. J. Orthopsychiat.*, 65(3), July 1995, pp. 431-432, Annex 78].

Such a situation is a source of unspeakable anguish, and is extremely destructive of the family and society in which face such a drama.

Rape and sexual assault - "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part"

148. It is quite clear that through attacks against the woman, the whole social fabric of the family and the group is under attack. The Yugoslav Representative emphasised this, during the preparatory work of the Genocide Convention, when he declared that "Genocide could be committed by forcing members of a group to abandon their homes" [United Nations General Assembly, 3rd Sess., Official Records, Pt. 1, Sixth Committee, pp. 184-185]. In French, the idea is even stronger, as M. Bartos, the Yugoslav member of the ILC, said: "On peut commettre le génocide en contraignant un groupe à abandonner *ses foyers*". How better to force people to abandon their *"foyers"*, than by destroying them through the psychical or physical destruction of the mothers? Professor Cherif Bassiouni stated:

> "traumatised survivors of sexual violence may not be able to fulfil their roles within the family or their society; this could seriously damage the society's fabric and destroy the group. The widespread use of sexual violence to destroy the fabric of a society may be considered a form of genocide." [Cherif Bassiouni, *Sexual Violence,* Occasional Paper No. 1, IHLRI, De Paul University, 1996, pp. 32-33, Annex 71].

149. The intent to profane the woman, that is inherent in rape, is an intent to destroy the genealogical link on which all societies are based. This intention of profanation of the fundamental values of a community has been described by the formerly mentioned French researcher in sociology:

> "(...) vouloir faire le mal est aussi un travail intellectuel: toucher le point sensible, c'est aussi connaître son espace sacré au sein de la culture de la victime. Or, le plus souvent, ce à quoi tiennent le plus les familles, et les communautés, ce sont les lieux d'inscription du lien généalogique, en direction soit du passé (cimetières, archives, monuments, langue) soit de l'avenir (enfants, sexualité des femmes (...). Ces lieux sont donc les objets privilégiés des crimes de profanation. On peut donc définir le crime de profanation comme une tentative de toucher le lien généalogique là où le profanateur croit qu'il s'exprime" [Véronique Nahoum-Grappe, "Purifier le lien de filiation. Les viols systématiques en ex-Yougoslavie, 1991-1995", *Esprit*, Dec. 1996, p. 152, Annex 87].

150. It is not at all surprising that General Mladić declared, in an interview to a French journalist:

> "Ce qu'il y a de plus sacré pour moi, ce sont la terre et les femmes, parce qu'elles créent la vie." [Véronique Nahoum-Grappe, "Purifier le lien de filiation. Les viols systématiques en ex-Yougoslavie, 1991-1995", *Esprit*, Dec. 1996, p. 152, Annex 87].

Considering the role of women as central for life itself, for the family and social cohesiveness, the Serb perpetrators intentionally targeted them, in order to destroy the cohesiveness of the Muslim group, and its ability to reproduce itself. In other words, the Applicant contends that in targeting the women and their ability or willingness to bear children, the Serb perpetrators were targeting the symbolic role of women, as well as their role in the reproduction of the group.

151. The Respondent repeatedly stated that "ethnic cleansing" or "displacement of members of a group" does not amount to genocide, only because the words "ethnic cleansing" and "displacement" are not to be found in the Genocide Convention [Counter-Memorial, p. 7, para. 1.1.3.5., and p. 306, para. 4.8.1.4.]. However, what matters are the facts, which give meaning to the language. The "*travaux préparatoires*" of the Draft Code of the code of crimes against peace and security of mankind, of which Article 19 follows word for word Article II of the Genocide Convention show, on the contrary, that its language "covered deportation when carried out with the intent to destroy the group in whole or in part" [Draft Code, Report of the ILC on its 43 session, General Assembly, Official Records, Supp. No. 10, (A/46/10), p. 262]. Many of the Representatives who expressed themselves on paragraph 2 c of Article 19 – which again restates word for word Article II b of the Genocide Convention – have unambiguously stated that their understanding was that a transfer of population can under certain circumstances be qualified as genocide. For example, M. Pawlak, President of the drafting Committee, declared that the modification of the ethnic composition of the population living in a territory must be considered as covered by this paragraph [A/CN.4/Ser.A/1991, *ILC Yearbook*, 1991, Vol. 1, p. 232, para. 88]. Also, Mr. Barzegov, the Representative of the USSR, declared that he considers that the modification of the demographic composition of a territory enters into the concept of genocide, and more specifically under paragraph 2 c of Article 19 [*ibid.*, p. 232, para. 89]. M. Thiam, the Special Rapporteur, adds that some distinctions have to be drawn and that in his view, "l'implantation de colons relevait plutôt des crimes de guerre et la modification de la composition démographique du crime de génocide" [*ibid.*, p. 233, para. 95].

152. In the previous Chapter the Applicant has argued that the "ethnic cleansing" of which the non-Serbs of Bosnia and Herzegovina became victims equals genocide [see

Chapter 6, Section 3]. The policy of rape and sexual violence has been one of the crucial factors of the ethnic cleansing, which constitutes no doubt genocide.

153. The existence of this clear policy of ethnic cleansing is included in several indictments of the ICTFY, which quite clearly describe the policy that has been followed.

154. In the Indictment confirmed by Judge Vohrah in the case of Miljković and others ("Bosanski Šamac"), in which six accused were indicted, the policy of the Serbs is described as follows, showing that rape and sexual assault were an integral part of the overall policy:

> "4. After seizing control in the military take-over, Serb authorities undertook a campaign of terror designed to force most Bosnian Croat and Muslim residents to leave the area.
> 5. Beginning on 17 April 1992, Serb military and political authorities coordinated and carried out the following actions as part of that campaign of terror:
> a) arrested and detained most of the Bosnian Croat and Muslim men (...)
> b) established and operated, primarily under the authority of the Serb police, detention camps, where prisoners were killed, beaten, tortured, *sexually assaulted*, and otherwise mistreated."
> [ICTFY, Indictment, *Prosecutor v. Miljković and others ("Bosanski Šamac")*, Case No. IT-95-9-I, 21 July 1995, p. 1, paras. 4-5, emphasis added].

Moreover, these acts are considered to be part of a more general plan directed against the non-Serb population; since many of the acts and omissions charged "were part of a widespread, systematic or large-scale attack against the Croat and Muslim residents of the municipality of Bosanski Šamac" [*Ibid.* para. 17].

155. But nowhere has the link between the policy of ethnic cleansing and the policy of rape and sexual violence been more clearly enunciated than in the Review of the Indictments of Karadžić and Mladić pursuant to Rule 61, by the Decision of the Trial Chamber where it is asserted first that there was a policy of ethnic cleansing, second that *rape and sexual violence was an inherent and essential part of that policy of ethnic cleansing.*

156. This question was first presented during the Hearings in the cases of Karadžić and Mladić, by Mrs. Christine Cleiren, who as stated earlier was a member of the Commission of Experts, in her *amicus curiae* presentation, where she stated that "part of the sexual violence can only be understood within the context of the practice in the various camps and related to the broader concept of 'ethnic cleansing.'" [ICTFY, Trial Chamber, *Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-

18-R16, *Testimony Cleiren*, 2 July 1996, pp. 15-17, Annex 79]. Following this statement, Judge Odio Benito wanted more explanation on this link and therefore interrogated Mrs. Cleiren:

> "Question: 'How does rape fit into the practices of ethnic cleansing?' (...)
> Answer: Important is (...) that the practice of ethnic cleansing is carried out in strategic areas linking the Serbia proper with the Serbian inhabited areas (...)
> The (...) question you ask is, how did rape fit into the practices of ethnic cleansing? It can be said that rape has been used *not only as an attack on the individuals, but* that it was intended to humiliate, to ashame, *to degrade the entire ethnic group*. There are reports of public rapes, for example, in front of a whole village, old women, children, young children. Also, there are reports that the rape, rape and sexual violence, was used to let people flee from their region. So you can say that this is part of a policy of ethnic cleansing.
> Another argument can be that the perpetrators often told their victims that they had to become pregnant or that they held them in custody, that it was too late for the victim to have an abortion. Also, often it is told that the women – often the women were told that they would have children of the perpetrator's ethnicity, and they would be a living remember of what happened in this war. Some perpetrators had declared that they were ordered to rape. So, all these arguments together, you can think that rape was part of this policy of ethnic cleansing (...)
> Q: Professor Cleiren, were there also rapes not necessarily associated with ethnic cleansing?
> A: Yes, I guess there are (...) I guess you can say that there were individual rape cases also. Maybe it is possible to say that they were, effectively, caused by the breakdown of law and order, so they caused their own cases of sexual violence." [*Ibid.*, pp. 15-17, emphasis addded].

157. In the Decision of the Trial Chamber, it was first stated that from April 1992 on, a clear policy of ethnic cleansing was adopted in Bosnia and Herzegovina: the policy of ethnic cleansing, entailed that "the same deliberate line of conduct was adopted, throughout the municipalities where the Prosecutor carried out investigations relating to the first indictment, i.e. Foča, Bosanski Šamac, Vlasenica, Brčko and Prijedor (...) Discriminatory administrative measures were established, and arbitrary murders and *rapes were committed.*" [ICTFY, Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, 11 July 1996, p. 31, para. 60, emphasis added].

158. Secondly, it stems also from this Decision, that not only was sexual violence one of the aspects of ethnic cleansing, but that *sexual violence was a major component of that policy of ethnic cleansing.* Initially, the Trial Chamber establishes that sexual violence was an aspect of ethnic cleansing:

> "Those methods of 'ethnic cleansing' include, in particular, (...) sexual assault" [ICTFY, Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 Jul 1996, p. 33, para. 62].

159. The Applicant deems it necessary to quote the Decision of the Trial Chamber extensively, as it establishes two important points: the first point being that acts of sexual violence outside the camps must be analyzed as genocidal acts as must acts of sexual violence inside the camps, which were the only ones qualified as genocide by the Prosecutor; the second important point being that according to the Trial Chamber this general policy of sexual violence – inside and outside the camps – was a centre-piece of the policy of ethnic cleansing:

> "Further, the Trial Chamber considers that, among the methods of 'ethnic cleansing', sexual assaults warrant special attention owing to their systematic nature and the gravity of the sufferings thereby inflicted on civilians (...) In his indictment of 25 July 1995, the Prosecutor focused on the sexual assaults committed in the detention facilities of the Bosnian Serbs (...) It seems to the Trial Chamber, however, that sexual assaults in the camps constitute but one aspect of a broader practice. Sexual assaults were committed by individuals or groups before the conflict broke out, in a context of looting and intimidation of the population. During military attacks on civilian gatherings, there was sexual abuse, in particular public rapes. It seems that some women were particularly affected by the practice of sexual assault."[*Ibid.*, p. ?, para.?]

The Trial Chamber further insists on the fact that this general policy of rape and sexual assault – whether performed inside or outside the camps – must be considered to be central to the policy of ethnic cleansing:

> "(...) On the basis of the features of all these sexual assaults, it may be inferred that they were part of a widespread policy of "ethnic cleansing": the victims were mainly "non-Serbian" civilians, the majority being Muslims. Sexual assaults occurred (...) in a systematic fashion and using recurring methods (e.g. gang rape, sexual assaults in camps, use of brutal means, together with other violations of international humanitarian law). They were performed together with an effort to displace civilians and such as to increase the shame and humiliation of the victims and of the community they belonged to in order to force them to leave. It would seem that the aim of many rapes was enforced impregnation; several witnesses also said that the perpetrators of sexual assault – often soldiers – had been given orders to do so and that camp commanders and officers had been informed thereof and participated therein" [*Ibid.*, p. 34-35, para. 64].

160. The findings of the Trial Chamber are in line with the observations of the Commission of Experts which stated that:

> "It is important to distinguish between 'opportunistic' crimes and the use of rape and sexual assault as a method of ethnic cleansing." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 13, para. 27].

161. The fact that repeated sexual assaults performed by Serb perpetrators on Muslim women was part of a policy of ethnic cleansing has also been underscored by the

Special Rapporteur of the Commission on Human Rights in the end of 1992. Mr Mazowiecki reports:

> "Ethnic cleansing does not appear to be the consequence of the war but rather its goal. This goal, to a large extent, has already been achieved through killings, beatings, rape (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1992/S-1/10, 27 Oct. 1992, p. 3, para. 6].

In a later Report Mr Mazowiecki concludes:

> "Rape is an abuse of power and control in which the rapist seeks to humiliate, shame, degrade and terrify the victim. In all his reports, the Special Rapporteur has emphasized the *variety of methods which are used to achieve ethnic cleansing*. Rape is one of these methods (...) In this context, rape has been used not only as an attack on the individual victim, but is intended to humiliate, shame, degrade and terrify the entire ethnic group. There are reliable reports of public rapes, for example, in front of a whole village, designed to terrorize the population and force ethnic groups to flee." [*Ibid.*, E/CN.4/1993/50, 10 Feb. 1993, p. 20-21, para. 85, emphasis added].

In his Ninth Periodic Report, Mazowiecki again refers to rape as part of a policy of ethnic cleansing. And as a conclusion concerning the year 1994, Mazowiecki states that rape was a component of the general policy of ethnic cleansing:

> "The current wave of forced and fear-induced displacement in areas under the control of Bosnian Serb forces is the largest since the summer of 1992. Muslims, Bosnian Croats and Roma have all suffered (...) violence, including rape (...)" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Ninth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Transmitted by the Secretary-General to the General-Assembly and the Security Council*, A/49/641, S/1994/1252, 31. Oct. 1994, p. 16, para. 79].

162. The fact that the goal was the destruction of the group as such has come to the forefront quite often in the accounts of the rapes. For example:

> "Jajce was apparently a camp for mostly women. Reportedly, it had a population of up to 500. The report from this camp alleges that girls as young as seven or eight were raped, and that the reporter was raped by several men, one after the other. The men, allegedly wore masks and forced the women to say: 'I am a Serb, I am not a Muslim.'" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 41, para. 186].

163. The way in which the systematic rapes have been performed must be analyzed as a device to destroy the Muslim group as a group. It is documented that when Serb forces enter into a conquered village in Bosnia and Herzegovina, they proceed in the following manner, they:

> "pull several girls and women from their homes and rape them in public, thereby shaming them and creating terror among the town's population (...) In this way, rape is a highly economic weapon in the kind of 'ethnic cleansing.'" [Beverly Allen, "Rape Warfare in Bosnia-Herzegovina: The Policy and the Law", *The Brown Journal of World Affairs,* 1996, Vol. III, Issue 1, p. 314-315].

164. Similar observations were made by Ms. Shana Swiss, a physician who was a member of the medical team sent by Mazowiecki to Bosnia and Herzegovina:

> "The terrorism of rape sometimes forces entire communities into flight, further disintegrating community safeguards against rape." [S. Swiss and J.E. Giller, "Rape as a Crime of War: A Medical Perspective", *JAMA*, 4 Aug. 1993, Vol. 270, p. 613, Annex 75].

165. The devastating effect of rape on the existence of the group has been best depicted by a former prisoner, Vasif Gutić, who was a doctor who examined women in the Trnopolje camp and who testified before the ICTFY. These are his words, as reported in the Judgement in the Tadić case:

> "The very act of rape, in my opinion – I spoke to these people, I observed their reactions – it had a terrible effect on them. They could, perhaps, explain it to themselves when somebody steals something from them, or even beatings or even killings. Somehow they sort of accepted it in some way, but *when the rapes started they lost all hope. Until then they had hope that this war could pass, that everything would quiet down. When the rapes started, everybody lost hope, everybody in the camp, men and women.*" [ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 64-65, para. 175, emphasis added].

Rape and sexual assault - "imposing measures intended to prevent births within the group"

166. Many of the women who survived rape have been so traumatised that they are no longer able or ready to have normal sexual relations, and are not ready to give birth to children. The mass rapes end up stopping or slowing down the reproduction inside the group.

167. It is unnecessary to insist on the fact that a woman who has survived rape is less likely to enter into marriage and to lay the foundations of a new family, as has been noted by several observers. Beverly Allen, writing on the systematic rapes that took place in the Serb-run camps, concludes that:

> "This kind of rape has genocidal intent in that it causes severe physical and psychic trauma that may well interfere with the victim's future reproductive functions and social viability." [Beverly Allen, "Rape Warfare in Bosnia-Herzegovina: The Policy and the Law", *The Brown Journal of World Affairs,* 1996, Vol. III, Issue 1, p. 315].

168. The Indictment of Gagović by the Prosecutor of the ICTFY, as confirmed by Judge Vohrah, holds that:

> "Many women suffered permanent gynaecological harm due to the sexual assaults. One woman can no longer have children, all women suffered psychic and emotional harm; some remained traumatised" [ICTFY, Indictment, *Prosecutor v. Gagović ("Foča")*, Case No. IT-96-23-I, 17 June 1996, p. 13, para. 7.10].

In the same Indictment, the accused is charged of the specific case of rape entailing particular brutality, and resulting in rendering the victim unable to bear children:

> "On or about 15 July 1992, GOJKO JANKOVIĆ led FWS-48 to an empy Muslim house in the Aladža neighbourhood. When FWS-48 arrived, about 14 Montenegrin soldiers were already present. DRAGAN ZELENOVIĆ then arrived with about 8 more soldiers, among them ZORAN VUKOVIĆ [a Serb Chief of police]. DRAGAN ZELENOVIĆ took FWS-48 to a room and threatened to slash her throat if she resisted. Then, DRAGAN ZELENOVIĆ raped FWS-48 (vaginal penetration and fellatio) together with at least other 7 soldiers. (...) During the sexual assault, ZORAN VUKOVIĆ bit [the victim's] nipples a number of times. Although the witness was bleeding from these bites, the 7th men squeezed and pinched her breasts as he raped her. [She] fainted as a result of pain (...) and can no longer give birth to children" as a result of the sexual abuses she was subjected to." [*ibid.*, pp. 16-18, paras. 9.11 and 9.19].

169. According to Professor Bassiouni:

> "women subjected to sexual violence may become physically or psychologically unable to have intimate relationships with men, or they may be rejected by the men of their community. Either situation would prevent births within the group and undermine the family structure." [Cherif Bassiouni, *Sexual Violence,* Occasional Paper No. 1, IHLRI, De Paul University, 1996, p. 32-33, Annex 71].

170. Of course, mutilation of men's genitals must also be analyzed as an act intended to prevent births within the group, as this mutilation prevents men from procreating.

But sexual violence itself can also have very negative effect on men's capability of reproduction. This aspect of sexual violence was emphasised during an International Seminar held on 22-23 April 1996 in Zagreb, organised by the Medical Centre for Human Rights, an NGO whose President is Doctor Mladen Loncar, who had himself been detained in a Serb-run camp. During this seminar, sexual violence against men was analyzed and it was demonstrated that the incident reported in the Tadić case of a man whose testicles were bitten off by another man, was not an isolated event. Following this Seminar, a research program was launched by the WHO and the European Union on sexual assaults on men during the conflict in Bosnia and Herzegovina. The first results have been summarised in *Le Monde* in the following manner:

> "Les premiers résultats permettent de constater que les hommes victimes de ces violences ont le plus souvent entre 20 et 50 ans, qu'il les ont subies dans plusieurs camps serbes (parmi lesquels Sremska Mitrovica, Omarska, et Manjaca), et qu'elles s'accompagnaient pratiquement toujours de menaces du type: 'Tu ne fera plus d'enfant musulman (ou turc ou oustachi)', ce qui suggère qu'il s'agissait de tortures ayant pour objectif de détruire la fonction reproductive" ["Un aspect particulier du nettoyage ethnique", Louise Lambrichs, *Le Monde*, 30 May 1996, p. 24, Annex 89].

171. According to Doctor Loncar, approximately 5,000 non-Serb men have been the victims of sexual violence: almost systematically, the testicles of men were severely beaten when they arrived in the camp, which creates a local oedema very frequently followed by sterility, although there is no apparent mark. Medical studies have been made on the consequences of these types of local oedema on sterility: although it is not proven that complete sterility systematically follows such injury, it has been proven that there is a clear correlation between this trauma and asthenozoospermia, which is a diminution in the mobility of sperm, necessarily having a negative influence on men's ability to procreate [see A. Köller, U. Maier and H. Pflüger, "Das Hodentrauma und seine Bedeutung für die Fertilität des Mannes" ("Testicular Trauma and its significance for Male Fertility"), *Z. Urol. Nephrol.*, 78 (1985), pp. 430-431, Annex 90].

172. The forced separation between Muslim men and Muslim women, systematically organised when Serb forces entered a village or a town and started to engage in the deportation of the population living in them which has been stated over and over in this Reply, necessarily entails that less births will happen in the community torn apart in such a way. This consequence has already been underscored by Lemkin, in his formerly mentioned article, where he stated, analysing the German policy towards

Jews in occupied territories: "The birthrate of the undesired group is being further decreased as a result of the separation of males from females by deporting them" [Raphael Lemkin, *Axis Rule in Occupied Europe*, Washington, 1944, p. 86, Annex 84].

Rape and sexual assault - "forcibly transferring children of the group to another group"

173. Rape has not only been used systematically for the purpose of inflicting fear, pain, injury and suffering as part of the campaign of genocide, rape was also used as a way of affecting the demographic balance by impregnating Muslim women with the sperm of Serb males. Reference can be made here to the fact that raped women were kept prisoners in the concentration camps, after their rape and following pregnancy, in order to give birth to "Serbian babies".

174. A discussion between Judge Odio Benito and Mrs. Christine Cleiren during the Hearings in the Karadžić and Mladić cases shows quite clearly how rape could result in transferring children from one ethnic group to the other:

> "Q: One of the forms of the ethnic cleansing which you also mentioned was to bring children of the perpetrator's ethnicity?
> A: Yes.
> Q: Which, in another way, is to change the ethnic character of the population?
> A: Yes (...) It has to do with descendency, with the succession. As far as we could see, it meant that producing a child of another ethnic background was an automatic result of the fact that he child would have the ethnic origin of the father." [ICTFY, Trial Chamber, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Cleiren*, 2 July 1996, p. 19, Annex 79].

175. These accusations of forcibly trying to change the ethnic character of the population have been made in some of the indictments of the ICTFY. The Gagović Indictment states:

> "Both perpetrators told her that she would now give birth to Serb babies." [ICTFY, Indictment, *Prosecutor v. Gagović*, Case No. IT-96-23-I, 26 June 1996, p. 15, para. 9.3].

With even more probatory force, the Decision of the Trial Chamber for the Review of the Indictments of Karadžić and Mladić recognises that:

> "some camps were specially devoted to rape, with the aim of forcing the birth of Serbian offspring, the women often being interned until it was too late to undergo an abortion (...) It would seem that the aim of many rapes was enforced impregnation (...)" [ICTFY, Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, pp. 34-35, para. 64].

176. The Commission of Experts found that:

> "One woman was detained by her neighbour (who was a soldier) near her village for sixth months. She was raped almost daily by three or four soldiers. She was told that she would give birth to a chetnik boy who would kill Muslims when he grew up." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 59, para. 248].

177. This dimension of the assault on the Muslim group, by interference with the procreative process, has been highlighted by Véronique Nahoum-Grappe:

> "L'entreprise de nettoyage ethnique ne vise pas seulement l'élimination de l'autre dans l'espace, mais aussi dans le temps, passé et futur (...) Il vise non pas sa mort seulement, mais son 'éradication' et donc son impossible recommencement (...) Le violeur veut déloger, éradiquer et concevoir à nouveau à son image le germe alternatif. La souillure du viol veut non pas la mort de l'autre, trop douce, mais défaire sa naissance, recommencer sa conception en remplaçant cet autre collectif 'génétique' par soi.. Le terme d'éradication est pertinent: ce sont bien les racines qui sont l'objet de ce nettoyage à fond qu'est le viol. Elles ne repousseront plus puisqu'une greffe alternative a été implantée dans la matrice." [Véronique Nahoum-Grappe, "Purifier le lien de filiation. Les viols systématiques en ex-Yougoslavie, 1991-1995", *Esprit*, Dec. 1996, p. 157-158, Annex 87].

In other words, rape interferes with a woman's ability to determine her lineage, and through her with her community's ability to survive.

178. The tactic of imprisoning raped women until they have reached an advanced stage of pregnancy and can no longer have an abortion has been extensively reported. As stated in *Newsweek*:

> "Rapes (were) committed expressly to impregnate Muslim women and hold them capture until they give birth to unwanted Serbian babies." ["A Pattern of Rape", *Newsweek*, 11 Jan. 1993, p. 26, Annex 91].

179. Beverly Allen has also stressed this deliberate and awful practice adopted towards the women held in detention camps and raped:

> "Those who do not get pregnant are kept alive (and continually raped and tortured) until their pregnancies have passed the point at which safe abortion would be possible. Then often in the eight month or so of pregnancy, these girls or women are released to find their way to Zagreb or a refugee camp, or a UN "safe area". This form of rape is the most devious and paradoxical of the rape crimes, as it aims for genocide by means of reproduction." ["Rape Warfare in Bosnia-Herzegovina: The Policy and the Law", *The Brown Journal of World Affairs,* Winter/Spring 1996, Vol. III, Issue 1, p. 315, Annex 92].

180. In fact, the idea that has been spread by the Serbs that raping Muslim women can be a way in which to augment the number of Serb children, is a complete negation of the Muslim women as human beings. This has been aptly underlined by Beverly Allen:

> "Enforced pregnancy as a method of genocide makes sense only if you are ignorant about genetics. No baby born from such a crime will be only Serb. It will receive half its genetic material from its mother. Moreover, it will be raised within the mother culture – if her culture survives anywhere, that is. The Serb policy of genocidal rape aimed at pregnancy, offers the spectre that making more babies with a people equals killing that people off. This illogic is possible only because the policy's authors erase all identity characteristics of the mother other than that as sexual container." [Beverly Allen, *Rape Warfare*, Minnesota, 1996, p. 87, Annex 93].

181. This policy of trying to change the identity of the group through genetics has its roots in very primitive beliefs, as underlined by Véronique Nahoum-Grappe in *Le Monde:*

> "Il s'agit d'une politique déterminée et consciente, fondée sur un système de croyance désuet qui donne au sperme et au sang une valeur de transmission ontologique, et donc de définition 'ethnique' du groupe. Les liens du 'sang' se fondent alors sur la maîtrise de la circulation du sperme, qui devient le véhicule absolu de la transmission identitaire." ["Bosnie: Le jeu des assassins", *Le Monde*, 13 Jan. 1993, p. 2, Annex 94].

182. The overall goal of this policy of forced impregnation was highlighted by M. Umer, the Representative of Pakistan at the General Assembly, during the discussion of the text of what became Resolution 48/143 of 20 December 1993, when he condemned the fact that thousands of Bosnian women were submitted to such criminal practice in order to modify the demographic composition of Bosnia and Herzegovina [Third Commission, A/C. 3/48/SR. 50, para 44].

183. The intention of the Serbs when they raped Muslim women was outspoken clearly: they wanted these women to bear Serb children instead of Muslim children. This certainly is to be seen as "preventing births within the group". And although this does not amount to a physical transfer of a born child, it is the Applicant's feeling

that it amounts to the transfer of a child to be born from the Muslim community to the Serb community, or at least shows an intention to effectuate such a transfer. Therefore, these rapes must be condemned as acts of genocide under Article II of the Genocide Convention, as their purpose is to "forcibly transfer *children (to be born)* from one group to another group".

184. Moreover, in the overwhelming majority of cases of births after a rape, the woman who gave birth to a child, decided to abandon him/her immediately. The study done by physicians and psychiatrists on the first 25 Bosnian women admitted to the Zagreb Obstetrics and Gynaecological Clinic or its associated regional psychiatric centres, shows that the raped women who did not ask for an abortion and brought their pregnancy to its term, did reject their new born child. After their delivery, they showed tragically negative primary maternal preoccupation, and abandoned their child:

> "All five of the women who gave birth to children conceived by rape abandoned them in the hospital. It was clear that each woman considered the fetus as a foreign entity in her body." [Dragica Kozaric-Kovacic and al, "Rape, Torture and Traumatization of Bosnian and Croatian Women: Psychological Sequelae", *Amer. J. Orthopsychiat.*, 65(3), July 1995, p. 429, Annex 78].

185. Although the fate of a child after being abandoned is not quite clear, it is at least evident that the newly born baby did not remain in the family in which it was born, and it is moreover a strong presumption that a child born from a Serb rapist father might not be welcome in the Muslim community. In this case, it is quite clear that the rape must be condemned as acts of genocide under Article II of the Genocide Convention. Even if the Court does not accept this interpretation of "transfer of children from a group to another", the policy here described definitely is another indication of the clear intent of the Serb perpetrators to destroy in whole or in part the Muslim group.

Conclusion

186. In this Section the Applicant has shown that, and how, each and every subsection of Article II of the Genocide Convention was violated through the massive rape and sexual assaults committed by the Serb side against the non-Serb people, especially women, mostly Muslims of Bosnia and Herzegovina. This turned out to be the case for:

- killing of members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent birth within the group;
- forcibly transferring children of the group to another group.

The Applicant will now demonstrate that mass rapes and sexual violence were committed "with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such", as required by Article II of the Genocide Convention.

7. Mass rape and sexual violence were committed with genocidal intent

Introduction

187. The Applicant will show that, as far as rape and sexual assault against the Muslim group is concerned, numerous sources are converging in coming to the substantiated conclusion that rapes were not random acts performed in a situation of chaos, but followed a clear policy of destruction of the Muslim group.

188. Rape and sexual violence have clearly been used in order to further the genocidal policy of ethnic cleansing. The policy followed by the Serbian forces was to arouse fear and panic by a massive recourse to rape and sexual violence, and fear and panic was deemed to make the Muslims flee from their homes, so that the regions that were to be part of Greater Serbia would be ethnically cleansed.

189. Very rarely will governments be as explicit as Hitler was, when he proclaimed in unambiguous terms in *Mein Kampf* his intent to exterminate the Jewish people. Therefore, it will quite seldom be possible to produce "written evidence" of an intent to destroy a group in whole or in part. Other means of proof are therefore necessary. In other words, proof has to rest on presumptions or implications.

190. It is, for the purposes of this case, not necessary to try and analyze the state of mind of each rapist, while he was performing his act. What is necessary for his act to be considered as an act of genocide is that this act is part of an overall policy, of which the intent is clearly to destroy in whole or in part the non-Serb group, and particularly the Muslim group. It is the Applicant's contention that it is not necessary to prove the psychological state of mind or *animus* of the person committing rape or

sexual assault, but that the existence of the genocidal intent can be inferred from the circumstances of the facts of the case.

191. The same approach was followed by the Representative of Yugoslavia, in 1948, at the time and on the occasion of the adoption of the Genocide Convention, when he addressed the Sixth Committee of the General Assembly of the United Nations. He observed that the text of the Genocide Convention should be interpreted in order to make the duty of "the suppression of genocide dependent" not "upon a subjective psychological condition", but on the contrary "upon the fact of the criminal act alone" [Sixth Committee, GAOR, 1948, Summary records of meetings, 21 Sept.-10 Dec. 1948, p. 82].
The idea that intent can be inferred from the facts is, indeed, not new and has been used in a very related context to prove the existence of the intent to commit inhumane acts against a civilian population, which is necessary to exist in order that these acts can be considered as crimes against humanity [See for example, Joseph Altstötter and others ("Justice case"), *Law Reports 88*, vol. VI, cited in the *Tadić* decision, note 194].

192. It has been already fully demonstrated in this Reply that intent may be inferred from patterns of facts [see Chapter 3, Section 1; Chapter 6, Section 5]. However, intent being such an important feature of genocide, it is not inadequate to restate here that the ICTFY has indicated clearly on three different occasions that intent can be inferred from circumstances: in the Nikolić case, in the Karadžić and Mladić cases and in the Tadić case.

193. The Trial Chamber found in the case of Nikolić that:

> "(...) the constitutive intent of the crime of genocide may be *inferred from the very gravity of those discriminatory acts*" [Decision of the Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Nikolić*, ICTFY, Case No. IT-94-2-R 61, 20 Oct. 1995, p. 20, para. 34, emphasis added].

194. The same interpretation was given by the Trial Chamber in its Decision in the case of Karadžić and Mladić:

> "The intent which is peculiar to the crime of genocide need not be clearly expressed. As this Trial Chamber noted in the above mentioned Nikolić case, the intent may be inferred from a certain number of facts such as the *general political doctrine* which gave rise to the acts possibly covered

> by the definition [of genocide] (...) or *the repetition of destructive and discriminatory acts*. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate, *the very foundation of the group*, acts which are not in themselves covered by the list in Article 4 (2) but which are committed as part of the same *pattern of conduct*." [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases IT-95-5-I and IT-95-5-18-R 16, 11 July 1996, p. 52, para. 94, emphasis added].

195. That "intent can be inferred from the circumstances" has been established once more in the Tadić case [ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 262, para. 676]. It is important to underscore that the Trial Chamber did not deem it necessary to prove the intent for each and every single act committed as part of the general policy, but that the consciousness of what was going on, the knowledge of the conducted policy would be sufficient:

> "The Trial Chamber finds that aiding and abetting includes all acts of assistance by words or acts that lend encouragement or support, as long as the requisite intent is present. Under this theory, presence alone is not sufficient if it is an ignorant or unwilling presence. However, if the presence can be shown or inferred, by circumstantial or other evidence, *to be knowing* and to have a direct and substantial effect on the commission of the illegal act, then it is sufficient" [*ibid.*, p. 269, para. 689, emphasis added].

196. In other words, intent can be inferred from all kind of circumstances, as long as these circumstances clearly indicate the existence of such intent to destroy the group whole or in part. The ICTFY, whether through statements of the Prosecutor, as confirmed by a Judge, or through a decision of a Trial Chamber, has indicated some of the elements most frequently indicative of an intent to destroy in whole or in part a national or ethnic group:
    - a political doctrine
    - the gravity of the acts directed against a specific group
    - the repetitive commission of the same destructive acts
    - the nature of the acts that violate the essential foundations of the group
    - the existence of a pattern of conduct directed towards the group.

197. The existence of intent to destroy drawn from the circumstances and facts of the case may be overruled by contrary proof presented by the Respondent. In other words, if the patterns of rape and sexual violence are coherent enough to give rise to the presumption of the existence of intent to destroy the group in whole or in part, the burden then rests on the Respondent to rebut this presumption. For example, the

Respondent could present evidence that the countless acts of rape and sexual violence that have occurred in very similar patterns, were not a consequence of a general pattern, but rather, the similarities of the assaults were just a coincidence.

198. The Applicant contends that it is possible to infer intent, by looking to the past (as perceived by the Respondent), the present and future (as envisaged by the Respondent) From the past, motives are derived by the Respondent, that have been repeatedly invoked in the Counter-Memorial, which imply the existence of an intent to destroy the Muslim group. The future as envisaged by the Respondent, the creation of Greater Serbia, provides for a motive for the destruction of the non-Serb groups, for whom there is no room in this future. The present demonstrates, indeed, the existence of an intent to destroy the group. This can be inferred both from the quantitative and qualitative aspects of the "sexual policy" of the Serb forces. The conclusion that this policy carried with it the intent to destroy the non-Serb group is further supported by the massive character of the acts of rape and sexual violence; the targeted victims of rape and sexual violence; the impunity towards the perpetrators of rape and sexual violence; the existence of orders to rape and commit sexual violence; the clear patterns of rape and sexual violence. And last but not least, the analysis made by the ICTFY of this policy of rape and sexual violence as a component of ethnic cleansing and genocide is very enlightening on the existence of patterns and intent to destroy the group in whole or in part.

Intent - the desire for "revenge" for alleged past sexual violence

199. In the Nikolić case, evidence was produced to the Trial Chamber concerning acts of torture against a man named Fikret "Čiče" Arnaut, which brings to light this element of revenge for past sexual violence:

> "Fikret "Čiče" Arnaut was allegedly assaulted by Dragan Nikolić on numerous occasions. Witnesses related how on one occasion, Dragan Nikolić came into the hangar and while shouting to the women, 'You are not here because of me, but because of him. He wanted to rape my mother and now we will rape you', forced Fikret "Čiče" Arnaut to put his hands behind his back and kneel on the floor (...)" [ICTFY, Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, p. 8, para. 17].

200. As explained above [Reply, Chapter 3] revenge – like revenge for rapes allegedly committed by Ustašas or "Turks" in the past – does not exclude genocidal intent, but rather is a part of it. The Trial Chamber in the case of Karadžić and Mladić insisted

on the central role of political preparation for genocide, observing that the defence of the Serbian nation rested on popular rallies "designed to rekindle tensions against the other people of Yugoslavia, *inter alia* by recalling the massacres of the Second World War" [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 19, para. 44]. Indeed, the desire of revenge for past events has in fact been used to foster the intent to destroy the Muslim group in whole or in part.

Intent - the vision of a future Greater Serbia

201. The idea of Greater Serbia has oriented the policy of Yugoslavia for a long time, as has been extensively shown in this Reply [Chapter 4, Section 1; Chapter 5, Section 9]. As mentioned, the Trial Chamber has declared that a genocidal intent can be inferred from a general political doctrine. It is true that a political doctrine – whatever its content – does not amount *per se* to genocide or incitement to genocide. However, as is shown througout this Reply, the doctrine of Greater Serbia has in fact directly lead to the genocide that the Applicant is asking this Court to recognise.

Intent - the massive character of the rapes and sexual violence directed towards the group

202. Earlier in this Chapter the Applicant has abundantly shown the massive character of the rapes and sexual assaults that have been committed against the Muslim group in Bosnia and Herzegovina.
The Respondent itself seems to admit that the scale of the perpetrated acts is a strong indication of the commission of genocide, if the relevant acts are acts forbidden by Article II of the Genocide Convention:

> "Genocide can be said to exist when members of a group are subject to genocidal acts. It is not sufficient for only one member of a group to be subjected to genocidal acts." [Counter-Memorial, p. 304, para. 4.5.1.2.].

Without entering here into a discussion on the last point, the Applicant wishes to underscore the fact that the Respondent acknowledges *the importance of the scale of the perpetrated acts as criterion to establish genocide.* The cumulative nature of the acts of rape and sexual violence brings to light the intent to destroy the group, against which these acts have been committed.

203. That rape is not a minor part of the genocide that has been committed in Bosnia and Herzegovina, but a major component of an overall policy of extermination of the Muslim group, is attested to by the number of charges of rape and sexual assaults as compared to the total number of charges for all crimes, before the ICTFY:

> "Almost half of all persons indicted by the Tribunal are accused of sexual assaults or rapes, as either perpetrators or superiors. Approximately one-fifth of all counts in the 18 indictments refer to crimes involving sexual violence, charged as grave breaches, violations of the laws or customs of war, crimes against humanity or acts of genocide." [*ICTFY Bulletin*, No. 15/16, 10 Mar. 1997, p. 4, Annex 95].

204. The very frequent occurrence of rape and sexual violence inside confined places has also been underscored by the Commission of Experts:

> "It is clear that some level of organisation and group activity is required to carry out many of the alleged rapes and sexual assaults. One factor in particular that leads to such conclusion is the large number of allegations of rape and sexual assault which occurred in places of detention. Out of about 1100 reported cases, about 600 occurred in places of detention. These custodial cases do not appear to be random and indicate a policy of at least tolerating rape and sexual assault or the deliberate failure of the camp commanders and local authorities to exercise command and control over the personnel under their authority.
> *Some of the allegations of rape and sexual assault are clearly instances of a policy of commission. In some cases, military commanders and camp commanders are reported to have ordered their subordinates to rape and sexually assault people who were not members of the subordinates' ethnic or religious group.*" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 13, paras 26-27, emphasis added].

In the same paragraph, the Commission of Experts insists on the fact that although some acts of rape have been committed towards Serbs, in most cases they were committed against Muslims: "the vast majority of victims are Bosnian Muslim and the great majority of alleged perpetrators are Bosnian Serb." [*ibid.*].

Intent - the selection of the victims of rape and sexual violence

205. Even more important than the massive scale of sexual violence is the ethnicity of the victims of rape and sexual violence, from which it can easily be inferred that there was intent to destroy the Muslim group. The victims of rape and sexual violence perpetrated by Serb forces were all non-Serbs, primarily Bosnian Muslims. The countless acts of sexual violence were mainly targeted at Bosnian Muslim women, Bosnian Muslim children and Bosnian Muslim men.

206. The Commission of the Experts summarised many times what has happened, as far as sexual violence is concerned, in various regions. It is worth citing again what can be found in many parts of the Report:

> "Most reports specifically identify the victims as Bosnian Muslim, and many reports imply that the victims may be Bosnian Muslim either through the events described, or by the name of the victim." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 26, para. 104; also *ibid.*, p. 30, para. 124].

207. That rape and sexual violence have been used as a means to destroy the Muslim group is shown by the mere fact that the targets of rape and sexual violence were civilians. This follows from the fact that women were the main targets of rape. But even considering the sexual assaults against men, nowhere, in the numerous reports on sexual violence in Bosnia and Herzegovina, has it been reported that rape and sexual assault were restricted in their occurrence and primarily directed towards military adversaries. All non-Serb civilians could be – and, indeed, have been – potential victims of sexual violence, regardless of sex and age.

208. Although all women were under a threat of sexual violence, the "selection" done among the Bosnian women indicates also that the rapes were carried out in a way which would have particularly destructive effects on the group. For example, the women raped in Omarska were intellectuals and prominent members of the community. The Commission of Experts found that one of the characteristics of the rapes and sexual assaults is that:

> "Young women and virgins are targeted for rape and sexual assault, along with prominent members of the community and educated women." [*ibid.*, p. 11, para. 18(c)].

Intent - the absence of prosecution or punishment of the perpetrators of acts of sexual violence

209. Mazowiecki's team of medical experts reported that "they heard of no attempts made by anyone in a position of authority to try and stop the raping of women and girls". The team of medical experts insists on this aspect, saying that it holds true for both military and political authorities [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 72, para. 48(c) and 60]. It means that the Serb authorities have done

nothing to stop the genocidal rapes and other genocidal acts of sexual violence committed against non Serbs.

210. This failure to prosecute has been repeatedly emphasised. For example, Mr. John Ralston, investigator within the ICTFY Prosecutors Office, when he testified in the Karadžić and Mladić cases, made that point quite clearly:

> "(...) he denied that atrocities had taken place and further went on to say that if anything had taken place, he would punish the people responsible. However, *there is clear evidence that the people responsible have not been punished.*" [ICTFY, Trial Chamber, *Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Ralston*, 1 July 1996, p. 14, emphasis added, Annex 80].

211. This was also established by the Prosecutor in the Indictment of Sikirika and others:

> "With respect to the acts described above [among them: sexual assaults] and each and every act or omission charged hereafter in the indictment, except those charges where one or more of these accused is separately charged, Duško SIKIRICA, Damir DOSEN, Dragan FUŠTAR, and Dragan KULUNDŽIJA knew or had reason to know that persons in positions of subordinate authority to them were about to commit those acts, or had already committed those acts, and failed either to take the necessary steps to prevent those acts or to punish the perpetrators after the acts had been committed." [ICTFY, Case No. IT-95-8-I, 29 June 1995, Indictment, *Prosecutor v. Sikirica & others ("Keraterm")*, Case No. IT-95-8-I, 21 July 1995, p. 5, para. 13.3].

212. Other sources also point to this absence of prosecution for the perpetrators of sexual violence. For example, Amnesty International reports that Serbian paramilitary used hotel Vilina Vlas to detain and rape Muslim women and that the police, when told of the activities at the hotel said that they couldn't do anything about it. ["Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces", *Amnesty international Report*, AI Index: Eur 63/01/93, Jan. 1993, p. 11, Annex 77].

Intent - the existence of orders to rape

213. That rapes were performed according to an overall intent to destroy the Muslim group is also proven by the fact that victims have declared and soldiers have acknowledged that they were under orders to rape. Several reports make mention of women stating that their rapists told them that they had orders to commit the sexual assaults, that they were, in fact, permitted, incited, or even ordered to commit rapes.

214. The Government of the United States provided the same information, which it deemed reliable, according to which the Serb forces were under orders to rape:

> "One of the victims of an earlier reported rape of 40 young women from Brezovo Polje told a reporter in late August [1992] that he Serbian abductor had told her: 'We have orders to rape the girls. I am ashamed to be a Serb.'" [See, *i.a.* US Department of State, Bureau of Public Affairs, *Dispatch*, 16 Nov. 1992, Vol. 3, No. 46, p. 831, Annex 96; "A Pattern of Rape", *Newsweek*, 4 Jan. 1993, p. 28, column 3, para. 1, Annex 91].

In a later report the U.S. Government reported on a middle aged Muslim woman who informed that 35 women and children were taken to Buk Bijelo, near Foča, to be raped and that the chief of police had authorised the rapes. [United Nations, *Letter Dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25586, 13 Apr. 1993, p. 20].

In the same vein the American Government reported that a 21 year old Serb confessed that his commander declared: "You can do with the women what you like." [United Nations, *Letter Dated 7 December 1992 from the Deputy Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24918, 8 Dec. 1992, p. 7, para. 6]. "You can do with the women what you like" means that the women in question are no longer considered human beings, but are reduced to objects: "You can do with the women what you like" could mean rape as well as death, or rape followed by death. "You can do with the women what you like" also means, more importantly, that there will be no penalty for any crime the soldiers choose to commit.

215. The Commission of Experts also mentioned the existence of orders. The Commission reports on a woman, who was raped daily by several soldiers, according to whom: "They repeatedly said their President had ordered them to do this" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 28 Dec. 1994, p. 59, para. 248]. Although it is not specified who exactly the "President" is, the existence of superior orders to rape non-Serb women is apparent.

216. This pattern did not change with the passage of time but, rather, persisted in Bosnia and Herzegovina throughout the period addressed in the Reply. Refugees interviewed by Roy Gutman for *Newsday*, declared that General Mladić encouraged his troops to rape the young women in Srebrenica. According to a witness, General Mladić, after his conquest of Srebenica declared to his troops, after nodding at the many young

women in the crowd: "Beautiful. Keep the good ones over there. Enjoy them." [Roy Gutman, *Newsday*, Queens Edition, 8 Aug. 1995, p. 4, para. 1, Annex 97].

Intent - similar analyses and findings by the ICTFY

217. It is now widely known that most of the sexual atrocities were committed inside the camps. Elsewhere in this Reply the Applicant has demonstrated that the existence of these many detention centres was part of a clear and well organised pattern [Chapter 5, Section 5].

218. The charge of genocide or of complicity to genocide has been brought forward against several of the Serbs accused before the ICTFY. The Applicant will focus here on the cases in which rape and sexual assaults have been mentioned.
Rape is the subject of prosecution in many of the cases before the ICTFY. In some instances, rape has been qualified as a crime against humanity, in some other instances it has been qualified as an act of genocide. For the purpose of this case before the ICJ, the Applicant contends that it does not make much difference, and it will explain why this is so.

219. First, the Applicant recalls that the Trial Chamber in its Review of the Indictment in the case of Nikolić enumerated the various criteria that have to be present for an act to qualify as a crime against humanity. According to the Trial Chamber, a crime against humanity:

> "(s)et forth in broad terms in the Statute, (...) covers, according to prevailing opinion, three distinct components. First, the crimes must be directed at a civilian population, specifically identified as a group by the perpetrators of those acts. Secondly, the crimes must, to a certain extent, be organised and systematic. Although they need not be related to a policy established at State level, in the conventional sense of the term, they cannot be the work of isolated individuals alone. Lastly, the crimes, considered as a whole, must be of a certain scale and gravity." [ICTFY, Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, p. 14, para. 26].

220. As far as the crime of genocide is concerned, it is not contested that its specificity comes from the existence of an intent to destroy a group in whole or in part. It has been stated in several Reviews of the Indictments and Decisions of Trial Chambers, that the intent can be proven by the gravity of the acts directed at a group, or by the

systematic occurrences of acts directed at a group or by the countless repetitions of acts directed at a group.

221. One can easily see that even the proof of the existence of a crime against humanity provides strong indications concerning the targeted civilian and the massivity of the acts committed against them. It is clear that for the ICTFY, which deals with individuals, it might be sufficient in some cases to qualify the acts before it as crimes against humanity instead of genocide, even if they also constitute genocide if analyzed in the overall pattern. In other words, when the ICTFY considers rape and sexual assault as a crime against humanity, this qualification is of utmost importance for the present case. As a matter of fact, it means that either an Indictment confirmed by a Judge, or a Decision adopted by a Trial Chamber has considered that an identified civilian population is the target of the acts of rape and sexual violence, that these acts of rape and sexual violence are organised and systematic, and that they are of a certain scale and gravity. When dealing with one or a few accused individuals the Judge or Judges of the ICTFY do not necessarily want to look into all of the other relevant facts which read together, demonstrate the intent to destroy the group necessary for an indictment of genocide. However, the ICJ, to which a much more conclusive body of evidence is presented, is definitely in a position to see the overall pattern, including the genocidal intent.

222. Besides this, the Prosecutor of the ICTFY has also pronounced indictments of genocide, in several instances. When a Prosecutor's Indictment confirmed by a Judge or a Trial Chamber considers that rape and sexual assault constitute genocide, this is even a more important finding in relation with this case before the Court. In fact, 7 individuals have been indicted so far with genocide: Meakić, Commander of the Omarska camp, Jelisić, Commander of the Luka camp, Sikirika, Commander of the Keraterm camp, Karadžić, President of the Bosnian Serbs Administration in Pale and Mladić, Commander of the army of the Bosnian Serb Administration, Drljača, Chief of the Public Security Station for the municipality of Prijedor and a member of its Crisis Staff, Kovačević, President of the Executive Board of the municipality of Prijedor, and a member of its Crisis Staff.

223. In the Indictment of Meakić two counts include rape as acts of genocide:

> "Željko MEAKIĆ, intending to destroy, in whole or in part, the Bosnian Muslim and Bosnian Croat people as national, ethnic or religious groups, was complicit with other persons in causing serious bodily or mental harm to Bosnian Muslim and Bosnian Croat people from the opština

> Prijedor in Omarska camp, thereby committing GENOCIDE, a crime recognised by Article 4(b) of the Statute of the Tribunal.
> Željko MEAKIĆ, intending to destroy, in whole or in part, the Bosnian Muslim and Bosnian Croat people as national, ethnic or religious groups, was complicit with other persons in the deliberate infliction of conditions of life on Bosnian Muslim and Bosnian Croat people from the opština Prijedor at the Omarska camp, calculated to bring about their physical destruction in whole or in part, thereby committing GENOCIDE a crime recognised by Article 4(c) of the Statute of the Tribunal." [ICTFY, Indictment, *Meakić & others*, Case No. IT-94-4-1, 13 Feb. 1995, p. 5, paras. 18.2-18.3].

Rape was specifically mentioned among the facts that were committed regularly and openly in the camp: "During the operation of the Omarska camp, camp guards and others who were subordinate to Željko MEAKIĆ (...) regularly and openly (...) raped" [*ibid.*, p. 5, para. 19.2].

224. Moreover, Meakić was also indicted, with others, for crimes against humanity as "criminally responsible for the acts of their subordinates in the rape of Omarska prisoners, including those described in the paragraphs hereunder" [*ibid.*, pp. 6-7, para. 19.9].
Among the numerous acts of rape or sexual assaults committed in the Omarska camp, as described by the Trial Chamber, the following events occurred:

> "During June and July, 1992, Mladen RADIĆ repeatedly subjected "A" to forcible sexual intercourse. The first occasion was on or about the night of 25 June 1992. Mladen RADIĆ took "A" to a room downstairs in the administration building, forced her on a table and subjected her to forcible sexual intercourse. Two or three nights later RADIĆ again called "A" out of the room where she slept and again subjected her to forcible sexual intercourse. On at least three more occasions during June and July 1992, Mladen RADIĆ called "A" out of the room in the administration building, forced her on a table and subjected her to forcible sexual intercourse. administration building where she slept, and subjected her to forcible sexual intercourse." [*ibid.*, pp. 6-8, para. 22.1].

For these acts, the Serb accused was charged, among other charges, of five charges of a crime against humanity for each of the five events in which he imposed forced sexual intercourse on "A". Several others were accused of the same type of forced sexual intercourse, like Gruban, Pedrag Kostić, Mirko Babić.

225. In the Indictment of Jelisić, he was indicted of genocide for the killings that occurred in the Luka camp, and Ranko Češić his subordinate but at the same time a person having a position of authority at Luka camp, was charged with crime against humanity for sexual assaults committed on men in Luka camp:

> "On about 11 May 1994, at Luka camp, Ranko ČEŠIĆ forced, at gun point, Muslim detainees A and B, who were brothers detained there, to beat each other and perform sexual acts on each other in the presence of others, causing them great humiliation and degradation. By these actions, Ranko ČEŠIĆ instigated, ordered or committed:
> (...)
> Count 52: a CRIME AGAINST HUMANITY recognized by article 5(g) (rape, which includes other forms of sexual assault) of the Tribunal Statute." [ICTFY, Indictment, *Jelisić & Češić (" Brčko")*, Case No. IT-95-10-1, 21 July 1995, p. 9, para. 33].

226. In the Indictment confirmed by Judge Vohrah in the case of Sikirika and others ("Keraterm"), in which 13 accused were charged with various crimes committed in the Keraterm camp, Duško Sikirika who was in charge of this camp and in a position of superior authority to anyone else in the camp, was charged with genocide on two counts that do encompass rape and sexual violence:

> "Duško SIKIRICA, intending to destroy, in whole or in part, the Bosnian Muslim and Bosnian Croat people as national, ethnic or religious groups, was complicit in committing genocide, a crime recognised by Article 4 (3)(e) of the Statute of the Tribunal, by participating in the following acts:
> Count:
> 12.1. killing members of the group from the opština Prijedor in the Keraterm camp (Art. 4(2)(a));
> Count:
> 12.2. causing serious bodily and mental harm to members of the groups from the opština Prijedor in the Keraterm camp (Art. 4(2)(b)); and
> Count:
> 12.3. deliberate infliction of conditions of life on members of the group from the opština Prijedor at the Omarska camp, calculated to bring about their physical destruction, in whole or in part (Art. 4(2)(c))." [ICTFY, Case No. IT-95-8-I, 29 June 1995, Indictment, *Prosecutor v. Sikirica & others ("Keraterm")*, Case No. IT-95-8-I, 21 July 1995, p. 4, para. 12].

227. In the case of Dragan Nikolić & others, Dragan Nikolić was charged in the Indictment confirmed by Judge Odio Benito with crimes against humanity for numerous serious physical assaults on prisoners in Sušica camp near the town of Vlasenica, but with no more specifications or details. However, the Trial Chamber in its Decision pursuant to Rule 61 suggested to the Prosecutor to be more specific and, among other, to qualify rape and sexual assaults as acts of genocide. This Decision of the Trial Chamber followed a reasoning in several steps. First, it restated that the acts were committed in the Sušica camp whose "population was exclusively Muslim". Then, after having heard the oral testimony given during the Hearings, the Trial Chamber invited the Prosecutor to modify its Indictment, drawing "the Prosecutor's special attention to two points which it deems particularly important." [ICTFY, Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, p. 19, para. 32 and p. 10, para. 21].

228. The first suggestion made to the Prosecutor was to amend the Indictment in order to charge Dragan Nikolić with rape and sexual assaults:

> "From multiple testimony and the witness statements submitted by the Prosecutor to this Trial Chamber, it appears that women (and girls) were subjected to rape and other forms of sexual assault during their detention at Sušica camp. Dragan Nikolić and other persons connected with the camp are alleged to have been directly involved in some of these rapes and sexual assaults. These allegations do not seem to relate solely to isolated instances.
> The Trial Chamber feels that the Prosecutor may be well-advised to review these statements carefully with a view of ascertaining whether to charge Dragan Nikolić with rape and other forms of sexual assault (...)" [*Ibid,* p. 20, para. 33].

The second suggestion made to the Prosecutor was to amend the indictment in order to consider the acts of participating in the ethnic cleansing as genocidal acts:

> "It emerged from the basis of the record that the policy of discrimination implemented at Vlasenica, of which Dragan Nikolić's acts formed a part, was specifically aimed at 'cleansing' the region of its Muslim population.
> In this instance, this policy of 'ethnic cleansing' took the form of discriminatory acts of extreme seriousness which tend to show its genocidal character (...)
> More specifically, the constitutive element of the crime of genocide may be inferred from the very gravity of those discriminatory acts.
> The Chamber considers that the Tribunal may possibly have jurisdiction in this case under Article 4 of the Statute [genocide]. It would therefore invite the Prosecutor to pursue its investigations, if feasible, with a view to indicting Dragan Nikolić for complicity in genocide or acts of genocide" [*Ibid*, p. 21, para. 34].

229. Apparently, the Trial Chamber judges that, in the context of the armed conflict in Bosnia and Herzegovina, *rapes and sexual assaults should be prosecuted as acts of genocide*. It appears from the Decision that this conclusion is not limited to the region of Vlasenica, as the Chamber insisted on the *existence of an overall identical pattern*:

> "(...) the Chamber notes that these serious discriminatory acts do not seem to have been limited to the Vlasenica region. Camps like the one in Sušica were set up in a large part of the territory under Serb control in Bosnia." [*Ibid*, p. 15, para. 28].

230. Rape and sexual violence as genocidal tool have been especially well brought to light in the Karadžić and Mladić cases. This has been emphasised by the Decision of the Trial Chamber in its Review of the Indictments of Karadžić and Mladić pursuant to Rule 61:

> "(...) certain methods used for implementing the project of 'ethnic cleansing' appear to reveal an *aggravated intent* as, for example, the massive scale of the effect of the destruction. The number of victims selected only because of their membership in a group would lead one to the conclusion that an intent to destroy the group, at least in part, was present. Furthermore, *the specific nature of some of the means used* to achieve the objective of 'ethnic cleansing' tends to underscore that the perpetration of the acts is designed to reach the very foundations of the group or what is considered as such. *The systematic rape of women*, to which material submitted to the Trial Chamber attests, is in some cases intended to transmit a new ethnic identity to the child. In other cases, humiliation and terror serve to dismember the group." [ICTFY, Trial Chamber, Review of the Indictment pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 53, para. 94, emphasis added].

231. In the Indictments of Radovan Karadžić and Ratko Mladić, and the Review of the Indictments, the charge of genocide for rape and sexual violence is made explicitly. In fact, two Indictments were issued: a first Indictment of 25 July 1995 for acts committed from 25 July 1992 to July 1995, in which the accused are charged with genocide for the internment of civilians in the detention camps and inhumane treatment therein; a second Indictment of 16 November 1995, related to the take-over of the safe-area of Srebrenica, in eastern Bosnia and Herzegovina, in July 1995, also including a charge of genocide.

232. The first Indictment, of 25 July 1995, states:

> "17.RADOVAN KARADŽIĆ and RATKO MLADIĆ, from April 1992, in the territory of the Republic of Bosnia and Herzegovina, by their acts or omissions, committed genocide.
>
> 18. Bosnian Muslim and Bosnian Croat civilian were persecuted on national, political and religious grounds throughout the Republic of Bosnia and Herzegovina. (...) Detention facilities personnel, (...), intended to destroy Bosnian Muslim and Bosnian Croat people as national, ethnic or religious groups and killed, seriously injured and deliberately inflicted upon them conditions intended to bring about their physical destruction.
> (...)
> 22.(...) Detainees were repeatedly subjected to and/or witnessed inhumane acts, including murder, *rape, sexual assault*, torture, beatings, robbery as well as other forms of mental and physical abuse. *In many instances, women and girls who were detained were raped at the camps or taken from the detention centres and raped or otherwise sexually abused at other locations.*
> (...)
> 32. KARADŽIĆ and RATKO MLADIĆ knew or had reasons to know that subordinates in detention facilities were about to kill or cause serious physical or mental harm to Bosnian Muslims or Bosnian Croats with the intent to destroy them, in whole or in part, as national, ethnic or religious groups or had done so and failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
> (...)
> 33.(...) By these acts and omissions, RADOVAN KARADŽIĆ and RATKO MLADIĆ committed:
> Count 1: GENOCIDE" [ICTFY, Indictments, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 25 July 1995, pp. 4, 6, 11 and 12, paras. 17, 18, 22, 32 and 33, emphasis added].

In other words, they were indicted as those in superior authority for acts of genocide, among which were rape and sexual violence, committed in the detention camps.

233. In its Review of the Indictment pursuant to Rule 61, the Trial Chamber has considered all relevant information in order to ascertain whether there are reasonable grounds to believe that the accused committed the offenses for which they had been charged. It is important to note that, in addition to the evidence relied on by the Prosecutor, the Trial Chamber had the benefit of "additional material produced during the hearings." [ICTFY, Trial Chamber, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 2, para. 2]. Among this additional evidence were the oral testimony of John Ralston, given on 28 June 1996, and the oral submissions made by Mrs. Christine Cleiren, a member of the Commission of Experts, as *amicus curiae*, delivered on 2 July 1996, as well as the oral testimony of Ms. Irma Oosterman, given on the same day.

234. The Trial Chamber concluded, considering the evidence before it, that it was insufficient to involve only the criminal responsibility of Karadžić and Mladić for genocide on the basis of their superior authority and their responsibility for the acts of their subordinates. It also concluded that it was not enough to charge them with genocide for acts committed inside the camps. In other words, the Trial Chamber considered that the Indictments should be extended in two ways: first, by considering that *direct* responsibility of Karadžić and Mladić should be involved and not just responsibility for the acts committed by their subordinates; and secondly, that *all* the acts – especially those of rape and sexual violence – committed in pursuit of the policy of ethnic cleansing and not only the acts of sexual violence committed in the camps must be qualified as genocidal acts.

235. As far as the direct personal responsibility of Karadžić and Mladić is concerned, the Trial Chamber has been quite clear:

> "The conditions for the responsibility of superiors under Article 7 (3) of the Statute, that is those constituting criminal negligence of superiors, have unquestionably been fulfilled (...) The Trial Chamber does consider, however, that the type of responsibility incurred is better characterized by Article 7 (1) of the Statute. The evidence and testimony tendered all concur in demonstrating that RADOVAN KARADŽIĆ and RATKO MLADIĆ would not only have been informed of the crimes allegedly committed under their authority, but also and, in particular, that they exercised their power in order to plan, instigate or otherwise aid and abet in the planning, preparation and execution of the said crimes." [*Ibid*, paras. 82-83].

The Trial Chamber insists:

> "The Trial Chamber is of the view that the evidence and testimony submitted suffice at this stage to demonstrate the active participation of the highest political and military leaders in the commission of the crimes by Bosnian Serb military and police forces in the detention facilities. The uniform methods used in committing the said crimes, their pattern, their pervasiveness throughout all of the Bosnian Serb-held territory, the movements of prisoners between the various camps, and the tenor of some of the accused's statements are strong indications tending to show that RADOVAN KARADŽIĆ and RATKO MLADIĆ planned, ordered or otherwise aided and abetted in the planning, preparation or execution of the genocide perpetrated in the detention facilities." [*Ibid*, p. 47, para. 84].

236. The Trial Chamber was also concerned that all acts of sexual violence be covered by the qualification of genocide, not only the acts committed in the camps, because they all participated to the overall policy:

> "The analysis in parts III and IV of this decision permits us to consider that the acts on which the two indictments are based, except those covered by part three of the first indictment mentioned above, [that is, personal criminal responsibility of subordinates] are similar in nature. The acts target the members of an identified civilian population, conceived as one or more groups, national or political; the commission of the acts follows the same pattern; the acts are planned and organised at State level. They appear to have a common objective: permitting the establishment of 'ethnically pure' territories and thus creating a new State. (...) The Trial Chamber therefore invites the Prosecutor to consider broadening the scope of the characterisation of genocide to include other criminal acts listed in the first indictment than those committed in the detention camps." [*Ibid*, p. 50, para. 90 and p. 54, para. 95].

237. The second Indictment relates to crimes committed as part of military operations prior to and during the fall of the Srebrenica enclave in July 1995. In its Decision, the Trial Chamber asserted that to avoid the shelling from Serbian forces on Srebrenica, the populations in the enclave adopted two lines of conduct, either trying to seek refuge with the Dutch battalion at Potočari, or trying to reach, through the woods, Tuzla, a zone controlled by the Bosnian Government. And the Trial Chamber affirms that: "The evidence is that, whichever option was chosen, Bosnian Muslims faced a similar fate of (...) rape or other humiliations." [*ibid.*, p. 12, para. 25].

238. In the Indictments of Drljača and Kovačević, rape and sexual assault as they happened in Omarska, Keraterm and Trnopolje camps are also very clearly qualified as acts of genocide:

> "Between April 1992 and January 1993, SIMO DRLJAČA and MILAN KOVAČEVIČ did, in the territory of the Republic of Bosnia and Herzegovina, by their acts and omissions, commit genocide.

Beginning in the Spring of 1992, the Crisis Staff of the municipality of Prijedor, including SIMO DRLJAČA and MILAN KOVAČEVIĆ, planned, organised and implemented the creation of a number of detention facilities or camps including the Omarska, Keraterm and Trnopolje camps. (...)

In none of the camps were the detainees afforded proper judicial process and their internment was not justified by military necessity. They were detained primarily because of their religious and ethnic identification. The conditions in the Omarska, Keraterm and Trnopolje camps were abject and brutal. Bosnian Serb military and police personnel in charge of those facilities, their staff, and other persons who visited the camps, all of whom were subject to the authority and control of the Crisis Staff, killed, sexually assaulted, tortured, and otherwise physically and psychologically abused the detainees in the camps.

At Omarska and Keraterm, the camps were deliberately operated in a manner designed to inflict upon the detainees conditions intended to bring about their physical destruction with the intent to destroy, in part, the Bosnian Muslim and Bosnian people as national, ethnic or religious groups. (...) Detainees were continuously subjected to or forced to witness inhumane acts, including murder, *rape and sexual assaults*, torture, beatings and robbery, as well as other forms of mental or physical abuse. (...)

At Omarska, prisoners were crowded together (...) *Both female and male prisoners were* beaten, *raped, sexually assaulted*, tortured and humiliated. (...)

Keraterm camp was located in a former ceramics factory in Prijedor. Conditions for prisoners were similar to those in Omarska camp. (...) The beatings, *sexual assaults*, tortures and other cruel and humiliating actions were generally inflicted in full view of other detainees and were accompanied by derogatory and humiliating comments to the victims or their families and general threats to the other detainees. After they were beaten, tortured, or *sexually assaulted*, the detainees were carried, dragged or forced to crawl back into their rooms, without any form of care for their injuries. (...)

Trnopolje camp was established at the site of a former school and adjacent buildings in Trnopolje village. It was the largest camp and the location to which Bosnian Muslim and Bosnian Croat women, children and the elderly were taken. (...) The camp served as the staging point for the mass deportation of all those who survived the initial attacks and camp regime. *It also served a much more sinister purpose: the sexual assault, rape and torture of many of the women detained there* by the camp personnel, who were both police and military personnel, and by other military units from the area who came to the camp for that specific purpose. *In many instances, the women and girls were taken from the camps and raped, tortured or sexually abused on other locations.* (...)

Between 30 April 1992 and 31 December 1992, SIMO DRLJAČA and MILAN KOVAČEVIĆ, in concert with others, planned, instigated, and ordered the establishment of the camps at Omarska, Keraterm and Trnopolje and the detention therein of Bosnian Muslims and Bosnian Croats from the municipality of Prijedor under conditions calculated to bring about the physical destruction of the detainees, with the intent to destroy part of the Bosnian Muslim and Bosnian Croat groups, as such.

Further, between 30 April 1992 and 31 December 1992, SIMO DRLJAČA and MILAN KOVAČEVIć, knew or had reason to know that their subordinates who staffed the detention facilities were killing or causing serious physical or mental harm to Bosnian Muslims and Bosnian Croats with the intent to destroy them, in part, as a national, ethnic or religious group or had done so and failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

By these acts and omissions SIMO DRLJAČA and MILAN KOVAČEVIĆ were complicit in the commission of genocide, punishable under Article 4(3)(e) and 7(1) and (3) of the statute of the Tribunal." [ICTFY, Indictment, *Prosecutor v. Drljača & Kovačević*, Case No. IT-97-24-I, 13 Mar. 1997, pp. 5-8; paras 9, 10, 11, 12, 13, 14, 15 and 16, emphasis added].

239. It is relevant to note that the Prosecutor and the Judges at the ICTFY have time and again linked rape and sexual assault to the overall pattern of genocidal acts committed against the non-Serb population of Bosnia and Herzegovina.

Intent - the existence of patterns of rape recognised by numerous other instances

240. The systematic character of the rapes and the existence of a pattern of rape ["A Pattern of Rape", *Newsweek*, 11 Jan. 1993, Annex 91] committed in Bosnia and Herzegovina has been established in many writings as well as in many reports of the United Nations organs and various committees dealing with human rights. In addition to countless mentions of rape by authoritative international organs' resolutions and decisions, as one of the means through which the genocide of the Muslim population of Bosnia and Herzegovina was brought about, some sources address specifically and primarily the issue of rape.

241. In her *amicus curiae* presentation before the ICTFY on rape and sexual assault, Mrs. Christine Cleiren insisted on "*the common threads that run through the cases reported whether they were outside or in detention camps*". She provided a general picture of these common threads:

> "(...) there were great similarities among practices in non-contiguous geographic areas; there was simultaneous commission of other humanitarian violations; simultaneous military activity; simultaneous activity to displace civilian populations and common elements of the commission of rape and sexual assault, like maximising shame and humiliation not only to the victim but also to the victim's community. The presence of these factors strongly suggest that the systematic rape and sexual policy existed." [ICTFY, Trial Chamber *Karadžić and Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R16, *Testimony Cleiren*, 2 July 1996, pp. 12-13, Annex 33].

242. On the following pages the Applicant will provide the Court with a survey of numerous sources which invariably confirm and acknowledge the existence of a pattern of rape.

243. In the Fourth *Mazowiecki* Report, it is stated without ambiguity that:

> "Rape has been used since the beginning of the conflict on a large scale, as a means of implementing the strategy of ethnic cleansing and to increase the inter-ethnic hatred (...) The victims are said to be mainly Muslims." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, Annex II, p. 63, para. 6].

244. Mazowiecki, in this same report is also the first to have perceived so clearly the *existence of patterns of sexual violence* appearing from the review of all the documents and testimonies received by its team of experts:

> "(a) Rape has been used as one method to terrorise civilian populations in villages and forcing ethnic groups to leave (...) Serb paramilitary units would enter a village. Several women would be raped in the presence of others so that the word spread out throughout the village and a climate of fear was created. Several days later, Yugoslav Popular Army (JNA) would arrive at the village offering permission to the non-Serb population to leave the village. The male villagers who had wanted to stay then decided to leave with their women and children in order to protect them from being raped.
> (b) In one pattern that was reported in several Serb-controlled areas, particularly in Bosnia and Herzegovina, local Serb forces in conjunction with Serb forces from outside the area would occupy a village and restrict the movement of the local population. Often men were deported or fled. Women were then often raped (...)
> (c) Although the team of experts heard stories about individuals, Croats, Muslims and Serbs, who risked their own safety to try and help their threatened neighbours, they heard of no attempts made by anyone in a position of authority to try and stop the raping of women and girls. In fact, some of those in power actively participated in it (...)
> (d) Rape was also commonplace in detention camps on all sides. There women were kept together in rooms in a separate part of the camp. Women were taken individually to other rooms, were they would be repeatedly raped." [*ibid.* Annex II, p. 70-71. para. 48].

245. As explained earlier, the fact that rape occurred on all sides does not imply that all these acts can be qualified in the same manner, in legal terms. The sheer quantity, combined with the existence of a clear pattern, of the rape committed by the Serb side sharply distinguishes this from rape that may have been committed, incidentally, by non-Serb perpetrators.

246. The *Commission on Human Rights* has been deeply concerned by the situation in Bosnia and Herzegovina. Some of its resolutions, however, are exclusively addressed to the issue of rape and sexual violence, as for example Resolution 1993/8 adopted by the Commission on Human Rights entitled "Rape and abuse of women in the territory of the former Yugoslavia": in this resolution, it is stated that the Commission on Human Rights is:

> "*Appalled* at the recurring and substantiated reports of widespread rape and abuse of women and children in the former Yugoslavia, in particular its systematic use against the Muslim women and children in the Republic of Bosnia-Herzegovina by Serbian forces, (...)
> *Strongly condemns* the abhorrent practice of rape and abuse of women and children in the former Yugoslavia (...)".

247. In the later sessions again, the Commission on Human Rights reiterated its profound concern for raped and abused women in the former Yugoslavia. In 1994, the

Commission referred to this matter in Resolution 1994/77 on the rape and abuse of women in former Yugoslavia; and in 1995, it renewed its expression of outrage at the systematic practice of rape against Muslim women and children and at the systematic practice of rape as an instrument of ethnic cleansing.

248. The *Commission of Experts* has extensively studied rape and sexual violence in Bosnia and Herzegovina, and has devoted three annexes to this issue. According to the Commission all the data collected:

> "could lead to the conclusion that there was an overriding *policy advocating the use of rape as a method of 'ethnic cleansing'*, rather than a policy of omission, tolerating the widespread commission of rape." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 56, para. 237, emphasis added].

249. The Commission of Experts has pointed to five patterns of rape:

> "245. The first pattern involves individuals or small groups committing sexual assault in conjunction with looting and intimidation of the target group. This is before any widespread or generalised fighting breaks out in the region. Tension in a region grow and members of the ethnic group controlling the regional government begin to terrorize their neighbours. Two or three men break into a house, intimidate the residents, steel their property and often rape the females. Some of the reported rapes are singular, some are multiple. In either case, there is often a gang atmosphere where the abuses are part of the same event and all attackers participate even if they do not sexually assault the victims. One of the woman interviewed was gang raped by eight soldiers in front of her six-year-old sister and her five-month-old daughter. One of the men was forced at gun point to rape the victim 'as she was an Ustasha'. When she reported the crimes to local authorities, they said they could do nothing as 'she was a Croat'.
>
> 246. The second pattern of rape involves individuals or small groups committing sexual assault in conjunction with fighting in an area, often including the rape of women in public. When forces attack a town or a village, the population is rounded up and divided by sex and age. Some women are raped in their homes as the attacking forces secure the area. Others are selected after the round up and raped publicly. The population of the village is then transported to camps. One victim-witness interviewed saw an elderly woman and others raped in front of a group of 100 detained villagers. The witness was herself threatened with rape (...)
>
> 247. The third pattern of rape involves individuals or groups sexually assaulting people in detention because they have access to the people. Once the population of a town or village has been rounded up, men are either executed or sent off to camps, while women are generally sent off to separate camps. Soldiers, camp guards, paramilitaries and even civilians may be allowed to enter the camp, pick out women, take them away, rape them and then either kill them or return them to the site. Reports frequently refer to gang rape, while beatings and torture accompany most of the reported rapes. Survivors report that some women are taken out alone, and some are taken out in groups. Though this is the general pattern, there are also many allegations that women are raped in front of other internees or that other internees are forced to sexually abuse each other. In camps where men are detained, they are also subjected to sexual abuse. During the Commission's interviewing process 15 people were interviewed whose major allegations related to the same detention camp. Some witnesses were men, and all of the women victims had been raped. The women were

> sometimes gang raped by, or in the presence of, the camp commander. Guards from the external ring of security around the camp (who apparently did not enter the camp in the course of their work) and soldiers who were strangers to the camp would be allowed access to the camp for rape. (...)
> 248. The fourth pattern of rape involves individuals or groups committing sexual assaults on women for the purpose of terrorising and humiliating them often as part of 'ethnic cleansing'. Survivors of some camps report that they believe they were detained for the purpose of rape. In other camps, all of the women are raped quite frequently, often in front of other internees, and usually accompanied by beatings and torture. Some captors also state that they are trying to impregnate the women. Pregnant women are detained until it is too late for an abortion. One woman was detained by her neighbour (who was a soldier) near her village for six months. She was raped almost daily by three or four soldiers. She was told that she would give birth to a chetnik boy who would kill Muslims when he grew up. One woman's home was taken by Serbian neighbours and used as a detention centre for interrogations over several months. She was raped almost daily and beaten for several months; two other women were raped there too (...)
>
> 249. The fifth pattern of rape involves detention of women in hotels and similar facilities for the sole purpose of sexually entertaining the soldiers. These woman are reportedly more often killed than exchanged (...)" [*Ibid.*, pp. 58-59, paras. 245-249; see also *ibid.* Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Violence", pp. 9-10, paras. 11-16; see also Cherif Bassiouni, *Investigating Violations of International Humanitarian Law in the Former Yugoslavia,* Occasional Paper No. 2, IHRLI, DePaul University College of Law, 1996, pp. 37-38, Annex 34].

These findings speak form themselves, all of them point to a policy for which the final goal is to destroy the Muslim group.

250. As far as the *Security Council* is concerned, mention will only be made here of resolutions centred on rape issues. Thus, for example, the Security Council Resolution 798 (1992) on 18 December 1992 has condemned rape in the following manner:

> "*Appalled* by the reports of massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia-Herzegovina,
> *Demanding* that all the detention camps and, in particular, camps for women should be immediately closed (...)
> *Strongly condemns* these acts of unspeakable brutality." [United Nations, *Security Council Resolution 798 (1992)*, S/RES/798, 18 Dec. 1992; see also *ibid.*, *Security Council Resolution 820 (1993)*, S/RES/820, 17 Apr. 1993].

In its Counter-Memorial, the Respondent tries to minimise this resolution, implying that the Security Council has condemned acts that did not happen. However, absent any strong evidence on the contrary, one may assume that if the Security Council, representing the world community, has deemed it adequate to adopt such a resolution, it is because it had sufficient evidence of the existence of such acts.

251. Another example is Resolution 827 (1993) of 25 May 1993, creating the International Criminal Tribunal for the former Yugoslavia, in which the Security Council expressly referred to the "*massive, organized and systematic detention and rape of women*" [United Nations, *Security Council Resolution 827 (1993)*, S/RES/827 (1993), 25 May 1993, emphasis added].

252. Also in later resolutions, the Security Council condemned the systematic use of rape and sexual violence. In Resolution 1019 (1995), the Security Council, gravely concerned by reports of massive violations of international humanitarian law and of human rights, among which are reports of rape, "Requests the Secretary-General to submit to the Council as soon as possible a written report based on all information available to the United Nations concerning recent violations of international humanitarian law in the areas of Srebrenica, Žepa, Banja Luka and Sanski Most (...)" [United Nations, *Security Council Resolution 1019 (1995)*, S/RES/1019, 9 Nov. 1995, para. 11]. In view of the report submitted by the Secretary-General, the Security Counsel declared as late as 21 December 1995:

> "*Gravely concerned* at the information (...) that there is overwhelming evidence of a consistent pattern (...) of rape (...)
> *Condemns* in particular in the strongest possible terms the violations of international humanitarian law and of human rights by Bosnian Serbs and paramilitary forces in the areas of Srebrenica, Žepa, Banja Luka and Sanski Most as described in the report of the Secretary-General of 27 November 1995 and showing a consistent pattern of (...) rape (...)." [United Nations, *Security Council resolution 1034 (1995)*, S/RES/1034, 21 Dec. 1995, preamble and para. 2].

253. The *General Assembly of the United Nations* was no less concerned than the Security Council about the mass rapes and sexual violence that occurred in Bosnia and Herzegovina. For example, in Resolution 47/143, adopted 18 December 1992, the General Assembly stated that rape and sexual violence were deliberately used in order to perform ethnic cleansing and that the "*abhorrent policy of ethnic cleansing was a form of genocide*" [United Nations, *General Assembly Resolution 47/143 (1992)*, 18 Dec. 1992, emphasis added]. One year later, in Resolution 48/143, adopted on 20 December 1993, the General Assembly condemned the use of rape as a "systematic practice", as well as a "heinous practice", and condemned the utilisation of that systematic and heinous practice as an "instrument of ethnic cleansing against the women and children in the area of armed conflict in the former Yugoslavia, in particular against Muslim women and children in Bosnia and Herzegovina", this "abhorrent policy of ethnic cleansing" being again qualified as "a form of genocide" [United Nations, *General Assembly Resolution 48/143 (1993)*, A/RES/48/143, 5 Jan. 1994].

254. Year after year the General Assembly has reiterated this position, as late as 23 December 1994 with Resolution 49/205, and 22 December 1995 with Resolution 50/192. In Resolution 50/192, adopted by consensus, the General Assembly clearly states that rape can be genocide:

> "*Noting* with deep concern all reports of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, regarding rape and abuse of women in the territory of the former Yugoslavia, particularly in the Republic of Bosnia and Herzegovina,
> *Convinced* that this heinous practice constitutes a deliberate weapon of war in fulfilling the policy of ethnic cleansing carried out by Serbian forces in Bosnia and Herzegovina, and noting General Assembly resolution 47/121 of 18 December 1992, in which the Assembly stated, *inter alia*, that the abhorrent policy of ethnic cleansing was a form of genocide,
> (...)
> 1. Strongly condemns the abhorrent practice of rape and abuse of women and children in the areas of armed conflict in the former Yugoslavia, which constitutes a war crime;
> 2. Expresses its outrage that the systematic practice of rape has been used as a weapon of war and an instrument of ethnic cleansing against women and children in the Republic of Bosnia and Herzegovina;
> 3. Reaffirms that rape in the conduct of armed conflict constitutes a war crime and that under certain circumstances it constitutes a crime against humanity and an act of genocide as defined in the Convention on the Prevention of the Crime of Genocide (...)." [United Nations, *General Assembly Resolution 50/192 (1995)*, A/RES/50/92, 22 Dec. 1995].

255. In the same manner, the massive and systematic character showing the existence of a general pattern, has been emphasised by the *European Union Commission of Inquiry* headed by Dame Anne Warburton, in her report to the European Union Foreign Ministers:

> "On the basis of its investigations the mission is satisfied that the rape of Muslim women has been – and perhaps still is – perpetrated on a wide scale and in such a way as to be part of a clearly recognisable pattern, sufficient to form an important element of war strategy." [EC Investigation Mission into the Treatment of Muslim Women in the Former Yugoslavia, Report to EU Foreign Ministers, 1 February 1993; this Report has also been transmitted to the Security Council by a Letter of 2 February 1993 of Permanent Representative of the Government of Denmark as Representative of the European Union." [EC Investigation Mission into the Treatment of Muslim Women in the Former Yugoslavia, 1 Feb. 1993, transmitted to the Security Council by a Letter of 2 Feb. 1993 of the Government of Denmark as Representative of the European Union, S/25240, 3 Feb. 1993, p. 4, para. 13].

256. What is important to underline in the Report submitted by Ann Warburton to the European Union, is that it states that the rape of Muslim women followed "a clearly recognisable pattern". The report insists on this overall policy:

> "The Mission does not take the view that rape in Bosnia and Herzegovina is considered as a by-product of war, rather it considers that there is a 'systematic' abuse taking place on the instructions

> of or under the direction of the commanding authorities (...) The Mission saw examples of statements and documents from Serbian sources which very clearly put such actions in the context of an expansionist strategy. Overall, the Mission accepted the view that rape is part of a pattern of abuse, usually perpetrated with conscious intention of demoralising and terrorising communities, driving them from their home regions and demonstrating the power of the invading forces. Viewed in this way, rape cannot be seen as incidental to the main purpose of the aggression but as serving a strategic purpose in itself. While the Mission was in no doubt that the conflict provides a cloak for criminality of all sorts, it felt that the type and scale of rapes being reported point towards a deliberate pattern." [*Ibid*, p. 6, para. 20].

257. In a resolution adopted on 29 March 1995, the *Commission on the Status of Women* expressed its outrage that rape was being used as a tool and an instrument of ethnic cleansing. [*Commission on the Status of Women*, Thirty-ninth Session, 12th meeting, 29 Mar. 1995, WOM/826, p. 1].

258. As stated, for example, in the Croatian Report on an exceptional basis to the *Committee on the Elimination of Discrimination against Women*, the characteristics of the brutal rapes committed against women were as follows:

> "(a) women were raped by several perpetrators, physically maltreated and at the same time forced to fellate and swallow sperm; (b) their immediate family (husband, children, parents) had to watch it, and were often maimed, stabbed with knives or simply shot; (c) a group of women was captured and raped several times in a row by a great number of perpetrators, and in some cases mothers and daughters were raped at the same time." [Committee on the Elimination of Discrimination Against Women, CEDAW/C/CRO/SP.1, Report from Croatia, 6 Dec. 1994, p. 6, para. 19].

259. The existence of this pattern was condemned by *several States*, which informed the United Nations of what they witnessed. Information was given, among others, by the governments of the United States, Canada, Austria and Croatia, in letters sent to the Secretary-General, which have been referred to frequently in this Reply. The existence of a clear pattern of policy of rape and sexual violence has been consistently underscored:

> "(...), mass raping occurring in areas flanking the major routes of Serbian military operations (...) are clear signs of 'synchronized actions': mass raping in several places in the same way, leading to the same consequences." [United Nations, *Letter Dated 7 January 1993 from the Permanent Representative of Croatia to the United Nations Addressed to the Secretary-General*, S/25082, 9 Jan. 1993, p. 3].

260. The existence of a pattern of rape and sexual violence is also underscored by several *citizens' organisations*, including Amnesty International:

> "Amnesty International believes that the rape and sexual abuse of women, the great majority of them Muslims, by Serbian forces has occurred in many places in Bosnia-Herzegovina and some cases has been carried out in an organized or systematic way, with the deliberate detention of women for the purpose of rape and sexual abuse (...) Incidents involving the sexual abuse of women appear to fit into a wider pattern of warfare, characterized by intimidation and abuses against Muslims and Croats (...)" [Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces", *Amnesty International Report*, AI Index: EUR 63/01/93, Jan. 1993, pp. 4 and 1, Annex 37]

261. Other citizens' organisations, like Helsinki Watch, related the same existence of an overall program ["War Crimes in Bosnia-Herzegovina", *Helsinki Watch*, Apr. 1993, Vol. II, p. 181, Annex 98].

262. Also, Geneviève Jacques, Secretary-General of the French citizens' organisations, CIMADE, has written that:

> "Le viol est (...) l'un des moyens odieux pour réaliser la politique d''épuration éthnique' (...) A des degrés divers de brutalité selon les lieux, la même méthode est appliquée partout par les militaires serbes en Bosnie: attaque de village; demande aux habitants de rendre les armes avec promesse que les civils seront épargnés; regroupement de la population non serbe; séparation des hommes d'avec les femmes, les enfants et les personnes agées. Et puis commençent les massacres et les tortures (...) Ensuite, les viols publics et systématiques des femmes, destinés à "détruire l'âme", l'intégrité sociale, religieuse morale de la population." [Courrier du Monde, "L'humiliation programmée", *Le Monde*, 2 Jan. 1993, p. 2, Annex 99].

263. The Applicant will not make an inventory of all the writings, books, articles, newspaper reports, etcetera, which have insisted on the existence of a Serb policy of sexual violence, but purports only to give a few examples of such analyses.

264. Beverly Allen has restated three patterns of rape:

- "Irregular Serb or Bosnian-Serb forces enter a village in Bosnia and Herzegovina (...) pull several girls and women from their homes and rape them in public, thereby shaming them and creating terror among the population (...)";
- "Persons held in Serb-run detention camps are raped (...) arbitrarily, at will, sometimes in conjunction with other forms of torture that sometimes result in death";
- "Girls and women are enslaved in rape /death camps where they are raped and tortured in other ways for months." ["Rape Warfare in Bosnia-Herzegovina: the Policy and the Law", *The Brown Journal of World Affairs,* Winter/Spring, 1996, Vol. III, Issue 1, p. 314, Annex 92].

265. In his book "Slaughterhouse", David Rieff observes about the overall policy of sexual violence:

> "The discovery of the rape camps near the town of Foča near Sarajevo in early 1993 seemed to be unthinkable. Then, it turned out that the Serbs have used rape as (...) a way of terrorizing the Muslim population into flight and thus fulfilling the Serb war aim of ethnic cleansing." [David Rieff, *Slaughterhouse: Bosnia and the Failure of the West*, 1996, New York, p. 121, Annex 100].

Conclusion

266. The Applicant has proven that all analyses converge to establish without doubt the existence of a clear intent to destroy the Bosnian Muslims as a group and that this intent is also to be inferred from:
- the desire for "revenge" for alleged past sexual violence;
- the vision of a future Greater Serbia;
- the massive scale of the rapes and sexual violence directed towards the group;
- the selection of the victims of rape and sexual violence;
- the absence of prosecution or punishment of the perpetrators of acts of sexual violence;
- the existence of orders and authority to rape;
- similar analyses by the ICTFY;
- the existence of patterns of rape acknowledged by numerous independent institutions and sources.

267. The Applicant has proven that all the acts prohibited by Article II of the Genocide Convention have, indeed, been committed through the policy of sexual violence and that they were perpetrated with the intent to destroy the Muslim group living in Bosnia and Herzegovina. As the rape and sexual violence committed against non-Serbs, and principally Muslims, are acts forbidden under all paragraphs of Article II of the Genocide Convention and have clearly been committed with the intent to destroy the group in whole or in part, the Applicant respectfully submits to the Court that these acts of rape and sexual violence, indeed, constitute genocide.

PART III

FACTS PERTAINING TO THE RESPONSIBILITY OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

CHAPTER 8

THE BASIS IN FACT FOR FINDING THAT THE VIOLATIONS OF THE GENOCIDE CONVENTION ARE ATTRIBUTABLE TO THE RESPONDENT

1. Introduction

1. Any unbiased observer of the events that took place in the former Yugoslavia in the period between 1989 and 1996, or for that matter, until this very date, will note that the government in Belgrade has played a central role all along.
More specifically, Slobodan Milošević and his associates have played a decisive role on behalf of those attempting to manifest the plan for a Greater Serbia. First, Milošević played this role as President of Serbia and later, until this very date, as President of the Federal Republic of Yugoslavia.

2. At all relevant peace talks, peace conferences and peace negotiations focusing on the armed conflict in Bosnia and Herzegovina, Belgrade was present as the most important negotiator on the Serb side, usually in the person of President Slobodan Milošević. At times, Milošević would be accompanied by Radovan Karadžić and/or Ratko Mladić, never was it the other way around.

3. Party on behalf of the Serb side to the talks preceding the Dayton negotiations was, exclusively, the Federal Republic of Yugoslavia (September 1995, Geneva and New York). At Dayton itself, the Serb side was exclusively represented by President Milošević and Milan Milutinović, the Foreign Minister of the Federal Republic of Yugoslavia. Before initialling the Dayton Accords, the Federal Republic of Yugoslavia provided written assurances to the negotiating parties, that it would "*ensure* that the Republika Srpska fully respects and complies with the provisions" of

the Agreements. This was done through various letters signed by either Milutinović or Milošević. Milošević's letter to NATO reads as follows:

> "I refer to the Agreement on the Military Aspects of the Peace Settlement, which the Federal Republic of Yugoslavia has endorsed, and the Agreement Between the Republic of Bosnia and Herzegovina and the North Atlantic Treaty Organisation (NATO) Concerning the Status of NATO and its Personnel.
> On behalf of the Federal Republic of Yugoslavia, I wish to assure you that the Federal Republic of Yugoslavia shall take all necessary steps, consistent with the sovereignty, territorial intedrity [sic] and political independence of Bosnia and Herzegovina, to ensure that the Republika Srpska fully respects and complies with commitments to NATO, including in particular access and status of forces, as set forth in the aforementioned Agreements." [Annexed to the letter to the Secretary-General of the United Nations from the Permanent Representative of the U.S.; 30 Nov. 1995, A/50/790;S/1995/999].

These written assurances were not to be considered as evidence of some newly developed inter-State relationship, but merely confirmed the actual situation as it had been all along: Belgrade, at all relevant times, represented the interests of *all* Serbs, whether from the Federal Republic of Yugoslavia, "Republika Srpska" or the "Republika Srpska Krajina". In that capacity, it continuously delineated Serb policies. This was and is equally true for the period before and for the period after Dayton.

4. This Chapter will demonstrate that the just mentioned role of Belgrade is not merely a matter of appearance, but that it precisely reflects the reality of the existing relationships within the Serb leadership. As announced in Section 3 of Chapter 4 of this Reply, this Chapter will demonstrate the decisiveness of the role played by Belgrade.

5. In line with the Applicant's consistent approach to this case the evidence presented in this Chapter, as a rule originates from independent sources. This approach is not chosen because the Applicant doesn't trust its own sources, which is definitely not the case. Rather, the Applicant wishes to avoid any unnecessary, distracting debate on the credibility of its sources and therefore prefers to rely on sources which are beyond questionability and which are, in any event, outside the Applicant's influence. Moreover, these independent sources provide such abundant and consistent evidence that there is no need, whatsoever, for the Applicant to heavily lean on its own sources. Therefore, the Applicant does not rely on statements of witnesses interrogated by its own authorities nor does it rely on its own, governmental, sources. Many of the materials discussed in this Chapter are, in fact, documents produced by Serb civil and military authorities, including Serb arms manufacturers.

6. The materials presented in this Chapter will show that not only for military purposes, but also for civil purposes, the Respondent organised its structures in a way very similar to that of the former Socialist Federal Republic of Yugoslavia. Thus, the military, civil and economic structures of the "Republika Srpska", the "Republika Srpska Krajina" and the Respondent were largely integrated. These structures, indeed, reflect the initial goal of unifying "all Serbs in one State". As will be shown below, in shaping the economic structure the Serbs themselves, refer to this unified entity as "Yugoslavia" [Section 9].

7. Each and every Section of this Chapter would, on its own, be sufficient to demonstrate the total involvement of the Belgrade authorities and institutions in all instances of the armed conflict in Bosnia and Herzegovina, and therefore their total responsibility for it.
This Chapter shows that the Respondent was material in the arming and equipping and training of the Serbs, who took up arms against the non-Serb population of Bosnia and Herzegovina.
This Chapter demonstrates that the Yugoslav People's Army (JNA) was material in the organisation and the instigation of the war against the non-Serb population of Bosnia and Herzegovina and that the JNA, under its own name, committed many atrocities in the first crucial and decisive months of the armed assault.
This Chapter will further show how the JNA troops in Bosnia and Herzegovina were cosmetically transformed into the Bosnian Serb Army (VRS). It will demonstrate that there actually is no relevance whatsoever to the date of 19 May 1992, when the Respondent presumably "withdrew" its military from the territory of Bosnia and Herzegovina; it will demonstrate that after 19 May 1992 the Yugoslav military continued functioning as it had done before that date. The structure of the Serb forces was not changed fundamentally, except for some superficial changes in the organisation and in the presentation.
This Chapter demonstrates not only that the Yugoslav military was material to the war against the non-Serbs of Bosnia and Herzegovina, but also that the Federal and the Serbian Ministries of the Interior were indispensable for the continued assault on the non-Serb population of Bosnia and Herzegovina.
This Chapter will further establish the important role of the Serbian paramilitary organisations and their close cooperation with the Yugoslav Army and the mentioned Ministries of the Interior in Belgrade.
This Chapter will substantiate how Belgrade was indispensable to the continuation of the armed conflict through the Bosnian Serb military. It will also show how the Belgrade authorities saw to it that the Serb side in the armed conflict in Bosnia and

Herzegovina was continuously supplied with personnel and military equipment and other means of support in order to enable it to continue its assault on the non-Serb population of Bosnia and Herzegovina.
The Respondent's responsibility for the genocidal campaign against the non-Serbs of Bosnia and Herzegovina is epitomised by the sustainment of concentration camps and other detention facilities on the territory of the Federal Republic of Yugoslavia, where numerous non-Serbs from Bosnia and Herzegovina were detained, tortured and, on many occasions, killed.

8. As mentioned above, each and every Section of this Chapter would be sufficient to demonstrate the Respondent's full involvement and full responsibility. If all of these Sections are taken as a whole, it becomes clear beyond any doubt that the Respondent has never been *not* responsible for the genocidal atrocities committed against the non-Serb population of Bosnia and Herzegovina.

9. President Slobodan Milošević has until this very day been playing a crucial role within the Yugoslav State system. This is, however, also true for one of the other key Serbian players: Vojislav Šešelj. As will be demonstrated in Section 7 of this Chapter, Šešelj was not only, a member of the Serbian Parliament, since June 1991, but also the leader of Serbian paramilitary groups, directly responsible for the worst genocidal atrocities committed against the non-Serbs of Bosnia and Herzegovina. On 24 March 1998, the same Vojislav Šešelj became Deputy Prime Minister of Serbia, thus confirming his direct involvement in and importance to Serbian politics since the beginning of the 1990's, including the policies of genocidal ethnic cleansing.

10. The facts related in this Chapter entirely and convincingly speak for themselves. In spite of this, the Applicant has deemed it useful to place these facts expressly into the context of legal State Responsibility. Therefore, Chapters 9, 10 and 11 will clarify the Respondent's accountability under the Genocide Convention.

2. Yugoslavia's preparations for the armed conflict

RAM

11. In the Memorial reference was made to the RAM plan, thought out and executed by the authorities in Belgrade [Memorial, Section 2.3.4., pp. 66-69, paras. 2.3.4.1.-2.3.4.4]. There is little doubt about the contents of RAM, which is Serbo-Croat for FRAME. Tim Judah is a journalist and writer based in London. In his thorough

study of the history of the Serbs, *The Serbs: History, Myth and the Destruction of Yugoslavia*, Judah also dedicated a section to RAM. He described the plan as follows:

> "(...) the purpose of the plan was the organisation of the Serbs outside Serbia, taking control of the fledging SDS [Serbian Democratic Parties] parties and the prepositioning of arms and ammunitions." [Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia*, New Haven & Londen 1997, p. 170, Annex 8].

12. In its Counter-Memorial, the Federal Republic of Yugoslavia denied the fact that the authorities in Belgrade provided the Serbs in Bosnia and Herzegovina with weapons and ammunitions:

> "1.3.17.2. The Serb population in Croatia and Bosnia and Herzegovina spontaneously armed itself always when it felt threatened. The arms for the most part came from the depots of the territorial defence which were under the control of the local population. Part of the arms (personal arms, including rifles), belonging to territorial defence units was in the houses of members of the territorial defence according to the regulations in force at that time. The Serb population in these areas procured part of the arms by illegal or legal purchases." [Counter-Memorial, pp. 102-105, para. 1.3.17.].

The Federal Republic of Yugoslavia therefore admits that the Serbs in Bosnia and Herzegovina were armed when genocidal acts were first committed in the spring of 1992. It denies, however, any responsibility. The Federal Republic of Yugoslavia seems to take the position that the local Serbs armed themselves by emptying the depots of the Territorial Defence forces. This last assertion is partly true, as many of the weapons distributed among the Serbs of Bosnia and Herzegovina originated from warehouses which had once belonged to the Territorial Defence forces. However, as will be demonstrated below, these weapons were not stolen from these warehouses, but distributed by order of and in close cooperation with the authorities in Belgrade. Without Belgrade's direct involvement, the armament of the Bosnian Serbs would indeed not have been possible at all.

13. The preparations for the distribution of arms to the Bosnian Serbs started well before genocidal acts were first committed in the spring of 1992. There is strong indication that the RAM plan was already devised in 1990. The initial stages of the armament of the Serbs in Bosnia and Herzegovina were mentioned by, among others, Cherif Bassiouni, in his Annex to the Final Report of the Commission of Experts on the policy of ethnic cleansing:

> "There is evidence, however, that the JNA, the Republic of Serbia and Serbs in Croatia and BiH were preparing for war as early as 1990. It was then that the Yugoslav military began providing arms to Croatian and Bosnian Serb groups and encouraging unrest in Serb-populated regions of Croatia and BiH. In a project (operating under the acronym "RAM") coordinated from Belgrade, thousands of weapons were reportedly delivered to Serbs in Bosanska Krajina in the north-west [of Bosnia and Herzegovina], Herzegovina in the south-west, and Romanija, a mountainous area east of Sarajevo." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 27, para. 140].

The armament of the Serb communities in Croatia and Bosnia and Herzegovina therefore commenced long before genocide was committed in the latter republic.

14. The early start of RAM is also confirmed by other sources [see Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War*, London 1992, p. 149, Annex 61].

15. In the summer of 1991, that is approximately one year after the birth of the RAM plan, the General Staff of the Yugoslav Army ordered the disarmament of the Territorial Defence forces in Bosnia and Herzegovina. This order is very significant, as it deprived the authorities of the Republic of Bosnia and Herzegovina of the necessary military means to defend themselves and the future state. In the former Yugoslavia, the Territorial Defence forces were formally controlled and financed by the various republics. In case of war, these forces could be mobilised in the short term. As their name implies, the Territorial Defence were primarily used to defend the republic to which they belonged.

16. The order given in the summer of 1991 is an important step in the execution of the RAM plan. It was described by Dr. Milan Vego in his February 1993 contribution to the authoritative *Jane's Intelligence Review*:

> "The legally elected government in Sarajevo formally controlled the main staff and subordinate district and communal staffs of the Territorial Defence Forces (TDF). However, in the operational chain of command, these forces were subordinate to the General Staff of the former federal army in Belgrade. *Because the Serbian-dominated General Staff wanted to deny the Bosnian government any means of effective defence, it ordered in June 1991 that all the weapons of the TDF be put under the federal army's control. As a result, the major part of the 200,000 small arms in the custody of the TDF was returned.* The exception was the weaponry of the TDF's staffs in the Croatian-populated western Herzegovina; these elements largely ignored the General Staff's order." [Dr. Milan Vego, The Army of Bosnia and Herzegovina, *Jane's Intelligence Review*, February 1993, p. 63, emphasis added, Annex 101].

This significant fact is also mentioned by the ICTFY in its 1996 Review of the Indictments of Radovan Karadžić and Ratko Mladić:

> "It appears that during 1991 some of the units of the Territorial Defence, composed of reservists which were under the partial command of the authorities of the federated Republics were obliged to surrender their military equipment to the JNA, which allegedly deprived the non-Serbian populations of their traditional means of defence." [ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & No. IT-95-18-R61, 11 July 1996, p. 27, para. 54].

17. The 1991 order to hand over all arms under the control of the Territorial Defence was given in all republics of the former Yugoslavia, but with varying result. In Slovenia, for example, the order was generally ignored. In Croatia, it was partly complied with; the Territorial Defence forces in Croatia handed over approximately half of their weapons. In Bosnia and Herzegovina, the order was carried out almost completely, with the exception of those areas in western Herzegovina with predominantly Croatian populations [Dr. Milan Vego, The Army of Bosnia and Herzegovina, *Jane's Intelligence Review*, February 1993, p. 63, Annex 101].

18. The response to the June 1991 order determined the future of the various republics of the former Yugoslavia. Slovenia, as was also explained in the Memorial, gained its independence with relative ease in the first stages of the fighting [Memorial, Section 2.3.2, pp. 62-64, paras. 2.3.2.1-2.3.2.4]. There, in the summer of 1991, the JNA suffered a humiliating defeat in ten days. This defeat of the JNA was primarily due to the fact that the Slovenian authorities had succeeded in creating an effective national army. This national army was almost exclusively armed with weapons which had once belonged to the Territorial Defence forces. Croatia was less succesfull in its struggle for independence, as the JNA, Serbian based paramilitary units and the Croatian Serbs succeeded in carving out large parts of the territory of the newly formed independent state of Croatia. Still, the Croatian military managed to offer some resistance, in sharp contrast with the authorities in Bosnia and Herzegovina who were not able to organise any opposition at all.

19. In the above mentioned article, Dr. Milan Vego also describes the dramatic first months of the conflict in Bosnia and Herzegovina. The consequence of the above cited JNA order became rapidly clear:

> "The first clashes between the Serbs and Muslims and Croats took place in late February 1992. Full-scale hostilities broke out on 4 April (some sources say 6 April) when Serbian irregulars opened fire on peaceful demonstrators in Sarajevo. Two days later, the European Community and the USA recognized the independence of Bosnia and Herzegovina.

> *The Serbian[s] claimed that in April the Muslims had under arms about 50 000 men in paramilitary groups. (...) The fact is that the Muslims were totally unprepared for war both psychologically and physically.* By 11 April the republic's presidency ordered unification of all armed groups, except for forces belonging to the federal army and Ministry of Internal Affairs. The Republican Staff of the TDF in Sarajevo was consequently established together with seven district and 75 communal staffs. As a result, the local staffs for territorial defence were created in all but 34 communes. These staffs employed, however, only 122 active officers and NCOs [non-commissioned officers] of the former federal army and 33 civilians. (...)
> By another decree issued on 14 May 1992, the Bosnian presidency formally established the 'Army of Bosnia and Herzegovina' to represent the common armed forces of all three constitutive peoples of the republic, namely Muslims, Croats, Serbs, and all other ethnic minorities. The decree stipulated that the highest body for the command and control of the armed forces was the presidency, with the president (currently Alija Izetbegovic) as the Supreme Commander. However, the efforts to mobilize and arm the population have been harmed by the belated decision of the presidency to declare a state of war; this did not come until 26 June. The decision authorized the Bosnian-Herzegovinian armed forces to take the steps necessary to organize nationwide resistance. By then, a large part of the territory had already fallen to Serbian control." [Dr. Milan Vego, The Army of Bosnia and Herzegovina, *Jane's Intelligence Review*, February 1993, p. 64, emphasis added, Annex 101].

The government in Sarajevo was, thus, totally unprepared when the first genocidal acts were committed on the non-Serbs of Bosnia and Herzegovina in April 1992. This was in large measure the inevitable consequence of the 1991 order to disarm the Bosnian Territorial Defence forces.

20. In his analysis of the genocide committed in Bosnia and Herzegovina, British historian Noel Malcolm estimated that, in April 1992, the forces under the control of the government in Sarajevo numbered not more than 3500 'armed' men altogether [Noel Malcolm, *Bosnia: A Short History*, London 1996, p. 240, Annex 16]. As a consequence of the order given by the JNA in the summer of 1991, this small embryonic Bosnian Army found itself almost completely without the necessary weapons:

> "... what the Bosnians always lacked was heavy armour, artillery and anti-tank weapons. In September it was estimated that they possessed two tanks and two armoured personnel carriers (APCs), while the Serb army in Bosnia had 300 tanks, 200 APCs, 800 artillery pieces and 40 aircraft." [Noel Malcolm, *Bosnia: A Short History*, London 1996, p. 243, Annex ?].

21. While the JNA was disarming the Territorial Defence forces on the one hand, Belgrade distributed weapons to the Bosnian Serbs on the other hand. These activities took place simultaneously. This process of redistribution of arms is also decribed by the ICTFY in its Tadić Judgement:

> "106. In July 1991, on instructions from headquarters in Belgrade, the JNA seized from the Republic's Secretariat for Defence in Bosnia and Herzegovina and from municipalities all the documentation relating to conscription including all the registers of conscripts. In consequence, thereafter the conscription process was exclusively in the hands of the JNA and no longer in those of the Republic's Ministry of Defence. This done, it was ensured that only ethnic Serbs were recruited into the armed forces. *Then in the second half of 1991 military units were formed in Serb-populated villages in Bosnia and Herzegovina and supplied with weapons and with uniforms.* Bosnia and Herzegovina was a vital base for JNA operations in Croatia in the second half of 1991 and Bosnian Serbs were an important source of manpower both for the JNA and for the TO [Territorial Defence forces]. *Those TO units in predominantly Muslim and Croat areas of Bosnia and Herzegovina were at the same time largely disbanded by the JNA. General Kadijević [JNA General, Federal Defense Minister from 1988 until 1992] in his book describes how "naturally we used the territorial defence (the TO) of Serb regions in Croatia and Bosnia and Herzegovina in tandem with the JNA" to paralyse territorial defence were it might provide a basis for creating the armies of secessionist republics.*" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 39, para. 106, emphasis added].

It is important to note here that the Territorial Defence forces always reflected the population in the areas were they were based. The Territorial Defence was basically a reserve force, to be quickly mobilised from the local population in case of war. This facilitated the above described process of redistribution of arms. As most of the Territorial Defence weapons were locally stored and not kept at private homes, the JNA simply seized control over their depots and storehouses. At the same time, it distributed those weapons to the local population in Serb dominated areas of Bosnia and Herzegovina.

22. The consequences of this redistribution of arms were also described in the Tadić Judgement:

> "107. The TO [Territorial Defence] of Bosnia and Herzegovina had in any event been to a degree neutralised by the action taken by the JNA to disarm it. Traditionally all TO weapons were stored locally, within each municipality, but in late 1991 and early 1992 the JNA removed all local stocks of weapons from TO control, at least in Muslim-populated areas. This left those local TO units virtually disarmed whereas units which were drawn from Serb-populated areas, and only those, were substantially re-equipped." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 39, para. 107].

23. In his analysis of the conflict in the former Yugoslavia, *My View of the Break-Up*, former Federal Defense Minister and JNA General Veljko Kadijević confirmed the conclusions drawn by the ICTFY in The Hague:

> "... the basic concept for deployment of the armed forces included the following important concepts:
> (...)
> - *To paralyze territorial defense in those parts of the country where it might provide a basis for creating armies of secessionist republics, i.e. secessionist forces. Accordingly, all territorial defense units were disarmed prior to the outbreak of fighting in Yugoslavia.* Furthermore, through some of the officers in the territorial defense units, we tried to keep it out of control of secessionist political leaders. And in part we succeeded, more elsewhere than in Slovenia. *Naturally, we used the territorial defense of Serb regions in Croatia and Bosnia-Herzegovina in tandem with the JNA.*" [Veljko Kadijević, *My View of the Break-Up*, Belgrade, 1993, pp. 98-99, emphasis added, Annex 102].

The cardinal role of the Federal and Serbian Ministries of Interior

24. In the Memorial, reference is made to the role played by the the Federal and Serbian Ministries of Interior in the armament of the Serbs in Bosnia and Herzegovina [Memorial, pp. 66-68, paras. 2.3.4.1-2.3.4.2]. This role was pivotal. It is in fact these Ministries and not the JNA which initially directed the distribution of weapons. Their role is also described by Tim Judah in his above quoted book on the history of the Serbs:

> "Milošević gave the task of laying the groundwork to his most trusted lieutenants. They were Radmilo Bogdanović, Jovica Stanišić and Mihalj Kertes. Until 1991 Bogdanović was Serbia's minister of the interior, after which he remained a powerful figure, mostly behind the scenes. Kertes was a former Yugoslav deputy interior minister who became a Serbian minister without portfolio. Despite some ethnic Hungarian antecedents, he was an SPS [Socialist Party of Serbia] deputy and an agent of Serbia's secret police, the SDB, which had played a key role in organising the rallies which had secured the Serbian president's power in Vojvodina. Stanišić was the head of the SDB. Below them were the SDB's two top men, Frano Simatović, known as Frenki, and Radovan Stojičić, known as Badža, a deputy interior minister of Serbia.
> (...)
> The SDB could not prepare a Serbian insurrection alone, however. It needed help from within the military. Because of the communist and Yugoslav orientation of many of the top brass, the high command could still not be trusted, so selected generals had to be recruited. They included General Andrija Biorčević, the commander of the Novi Sad Corps, and Colonel Ratko Mladić, the commander of the Knin garrison. A clandestine network was developed. It was not a formal group but rather a small number of people who met over dinner to discuss their plans. It became known as the Vojna Linija -the Military Line- and its main idea was simple. In the words of one source it was: 'Let's arm our people first in Croatia, then Bosnia. So if Croatia and Slovenia want to get out we won't let them take what we take before them.' The plan they evolved over 1990 was called RAM, an acronym which spells out the word frame. It is not known exactly what the letters stand for, but the purpose of the plan was the organisation of the Serbs outside Serbia, taking control of the fledging SDS parties and the prepositioning of arms and ammunition." [Tim Judah, The Serbs: *History, Myth and the Destruction of Yugoslavia*, New Haven & London 1997, p. 170, Annex 8].

In 1990 and 1991, the execution of the RAM plan was thus directed from Belgrade by the heads of the Federal and Serbian Ministries of Interior. These persons,

working for the various ministries, supervised the arms distribution from Belgrade, as will also be illustrated below.

25. Radovan Karadžić's Serbian Democratic Party (SDS) carried out the distribution itself in Bosnia and Herzegovina, thereby executing the orders given by Belgrade. SDS leaders from Bosnia and Herzegovina regularly visited Belgrade to discuss the execution of the RAM plan. One of these meetings was also described by the ICTFY in its 1996 Review of the Karadžić and Mladić indictments:

> "54. From the material submitted to the Trial Chamber at this stage, it seems that the military preparations for the take-over by the SDS in Bosnia and Herzegovina comprised two types of action: armament and logistics support for the Serbian populations in the regions controlled by the SDS authorities, which underlay preparations for a more direct military intervention by the JNA. *At the beginning of September 1991, in a confidential note to the President of the SDS, Radovan KARADZIC, Velibor Ostojić, an SDS leader reported on the conversation that he had with high officials of the Government of the Republic of Serbia. The discussions and agreements seem to have focused mainly on arms supply and communications material.*"[ICTFY, Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & No. IT-95-18-R61, 11 July 1996, pp. 27-28, para. 54, emphasis added].

26. Sometimes, certainly in the beginning, telephone lines were used to give orders and keep the authorities in Belgrade informed about the progress being made in Bosnia and Herzegovina. One such telephone conversation between Serbian President Slobodan Milošević (referred to as 'S') and SDS leader Radovan Karadžić (referred to as 'R') took place in May 1991. At that time, the former Yugoslavia still existed as such and the fighting had not broken out yet. The war in Slovenia, for example, erupted one month later, on 27 June 1991. The following conversation was intercepted by the Ministry of Interior in Sarajevo:

> "S: Radovan?
> R: Yes?
> S: I spoke with the highest level [JNA headquarters].
> R: Good.
> S: Please, you have to understand because I can't explain everything that has been said.
> R: Good.
> *S: It is of strategic significance for the coming of "RAM", you know what "RAM" is.*
> *R: I know everything about it.*
> S: The grupation from Banja Luka [northern Bosnia] has to be in state of readiness.
> R: O.K.
> S: So, you have to - number one: provide the grupation to be in state of readiness and without any problems, and number two: call [General Nikola] Uzelac in an hour and invite him to come to an agreement.
> R: Good.
> (...)

S: All the men you give, who have to stay and protect the houses and territory and block the HDZ [Croatian Democratic Union] centers, will be armed and given everything they need. We'll transport that by the helicopter.
R: Excellent.
S: So, please, you personally have to regulate these number one and number two; also this second thing is very important. The third thing I told you, really is extremely important because of the international publicity.
R: That will be O.K., but I am interesting in the following - can we arrange for the weapons of the territorial defense in Šipovo and Mrkonjić Grad [both places south of Banja Luka] to be given to me.
S: Hay, it's a piece of cake.
R: O.K. Then, let's do it. We are ready - there are 170 people in Mrkonjić and 150 in Šipovo who are ready to go at Kupres [central Bosnia and Herzegovina].
S: Is Uzelac authorised for that, too?
R: Well, I think he is.
S: O.K. - then tell him that we can't discuss every detail like this.
R: O.K., O.K., then, these 150 and 170 men will go at Kupres and we already have 750 men there, at Kupres.
S: It is important for us that YNA [JNA] battalion be at Kupres and that everything goes well."

[Transcript of telephone conversation between Slobodan Milošević and Radovan Karadžić, 29 May 1991, emphasis added, Annex 103].

In the above passage, Slobodan Milošević ordered Radovan Karadžić to "block the HDZ centers", that is those villages and towns with large Croatian populations. It is in those places Milošević apparently expected most resistance would be offered to the planned Serb revolt. The fact that he asked Radovan Karadžić whether he was acquainted with RAM shows that the plan was indeed set up in and directed from Belgrade.

27. The quotation above moreover demonstrates that Belgrade was using trusted officers within the JNA, in this case General Nikola Uzelac in Banja Luka, to distribute weapons to volunteers organised by the SDS. The arms and ammunitions were handed out without any restrictions, as Milošević promised Karadžić that his men would receive anything they needed and that helicopters would be provided to transport the weapons to their destination. The weapons were to be taken from the Territorial Defence warehouses in Sipovo and Mrkonjić Grad, both cities in central Bosnia with Serb majorities. When the conversation took place, the order to hand over all Territorial Defence ordnance to the JNA had not been given yet.

28. In the Memorial reference was made to another intercepted telephone conversation between Radovan Karadžić and Serbian President Slobodan Milošević [Memorial, p. 69, para. 2.3.4.4]. The contents of this conversation were revealed in late 1991 by the Federal Prime Minister of Yugoslavia, Ante Marković. As the first conversation

quoted above, it provides a vivid illustration of the role played by the various actors in the execution of the RAM plan. The revelation of the tape with the conversation is described by Tim Judah in his book on the Yugoslav conflict:

> "Frustrated, angry and politically impotent, Ante Marković, the last prime minister of the old Yugoslavia, told his cabinet in September 1991 what he had gleaned from a wiretap that had come into his possession:
>
> > The line has been clearly established [between the Serbian government, the army and Serb politicians in Bosnia]. I know because I heard Milošević give the order to Karadžić to get in contact with General Uzelac and to order, following the decisions of the meeting of the military hierarchy, that arms should be distributed and that the TO of Krajina and Bosnia be armed and utilised in the realisation of the RAM plan.
>
> General Nikola Uzelac was the JNA commander in Banja Luka, which was to become the main Serb-held town in northern Bosnia. The transcript of the tape that was leaked to the press runs as follows:
>
> > Milošević: Go to Uzelac, he'll tell you everything. If you have any problems, telephone me.
> > Karadžić: I've got problems down in Kupres [central Bosnia and Herzegovina]. Some Serbs there are rather disobedient.
> > *Milošević: We can deal with that. Just call Uzelac. Don't worry, you'll have everything. We are the strongest.*
> > *Karadžić: Yes, yes.*
> > Milošević: Don't worry. As long as there is the army no one can touch us ... Don't worry about Hercegovina. Momir (Bulatović, president of Montenegro) said to his men: 'Whoever is not ready to die in Bosnia, step forward five paces.' No one did so.
> > Karadžić: That's good ... But what's going on with the bombing in -
> > Milošević: Today is not a good day for the air force. The European Community is in session." [Tim Judah, The Serbs: *History, Myth and the Destruction of Yugoslavia*, New Haven & London 1997, p. 191, Annex 8].

This conversation again shows that the distribution of arms was coordinated by Belgrade and that some officers within the JNA in Bosnia and Herzegovina played an important intermediary role. As in the first telephone conversation, General Nikola Uzelac is presented as Milošević's henchman in Banja Luka.

29. The volunteers organised by the SDS were often Serb reservists of the Territorial Defence forces. As explained above, these forces were normally only to be mobilised in case of war. This also explains Federal Prime Minister Ante Marković's great anxiety, as the mobilisation of Territorial Defence reserves in areas with large Serb majorities could only be interpreted as a precursor of an armed conflict. Contrary to the assertion made in the Counter-Memorial [Counter-Memorial, p. 102, para. 1.3.17.2], these reservists were only armed *after* being mobilised. Generally, they would not keep any weapons at home.

30. In its Counter-Memorial the Federal Republic of Yugoslavia did not deny the telephone conversation revealed by Ante Marković took place. Nor did it contradict the fact that the persons involved in the telephone conversation were indeed Radovan Karadžić and Slobodan Milošević. There is, of course, no room for denial, as the conversation was revealed by Ante Marković himself, at the time Prime Minister of the Socialist Federative Republic of Yugoslavia. The existence of the recorded conversation and its contents was, by the way, confirmed by Yugoslav sources as well [*Srpska Rec*, 24 May 1993, p. 8, Annex 104].

Petar Janković's personal diary

31. The cited telephone conversations show that Radovan Karadžić's SDS and the authorities in Belgrade regularly communicated with each other to discuss the armament of the Serbs in Bosnia and Herzegovina. As mentioned above, the distribution of arms was directed at the highest level in Belgrade, the Federal and Serbian Ministries of Interior initially playing the key role. The day to day involvement of these ministries is vividly illustrated by Petar Janković's personal diary, which was found in Kalesija, a town near Tuzla in the northeast of Bosnia and Herzegovina, by Bosnian forces in May 1992. Petar Janković joined Karadžić's SDS in the early days. By the time he started keeping his diary, in the summer of 1991, he had reached the position of President of the SDS branch in Kalesija.

32. In the following pages several fragments of Petar Janković's diary will be quoted. The first entry dates from 24 July 1991 and describes Janković's visit to Belgrade, where he met both Radmilo Bogdanović, Serbia's former Interior Minister, and Borisav Jović, Serbia's representative on the Federal Presidency and a close associate of Slobodan Milošević. On his visit to Belgrade, Janković was accompanied by three Serbs, most probably also SDS members from the area around Kalesija: Drago Kerović, Milan Petrović and Milivoje Perić. This small delegation arrived at Radmilo Bogdanović's office in the early morning of 24 July 1991:

> "DATE: 24.7.91 (July 24, 1991)
>
> After the telefax was sent, I went to Belgrade with Kerović Drago, Petrović Milan and Perić Milivoje at 8:30 at Radmilo Bogdanović.
> Milan Pusula told us that Radmilo invited him. It turned out at the secretary that Milan had called and that he had announced us. Pusula tries to push in (while we are in the Radmilo [Bogdanović]'s office he calls the cabinet of Borisav Jović.
> The chief of cabinet says that he had called me in Dubnica [town near Tuzla] and to make agreement on the terms.

> He proposes me to choose the smaller group and to come with Radmilo [Bogdanović] at ten o'clock at Jović's.
> *The same group goes to Jović. He received us kindly. We presented the situation. Jović was surprised when he heard that there was 18.000 Muslims in Bijeljina.*
> *He was also suprised that the Army had not armed us. Why do not the orders go through the Army. Radmilo [Bogdanović] avoids. Jović says: 'The Serb people have been buying that arms and they must get it, and they must use it only for defence.* He asked what kind of contact we had with the Army. I said that we had good relations with the commander Cica (221) at the Dubrave airport [Tuzla military airport]. *It was agreed that in 7 days they provide us up to Loznica [Serbian city close to the Bosnian border].*
> (...)" [Petar Janković, *Diary*, 24 July 1991, emphasis added, Annex 105].

This fragment from Janković's diary demonstrates that Borisav Jović already supported the Serb cause wholeheartedly at the time the meeting took place on 24 July 1991, that is several months before Ante Marković revealed the existence of the RAM plan. When Janković mentioned the number of Muslims living in Bijeljina, not far from Janković's home base Kalesija, Jović was surprised, probably because the number was much higher than he had expected. The announcement did not fail to have its desired effect, as Jović subsequently promised to provide Janković's Serbs with the expected weapons.

33. Five days later, Petar Janković again travelled to Belgrade, where it soon became clear that Jović's intervention had not been in vain. This time only Drago Kerović accompanied him. In Belgrade they met Jovica Stanišić, which Janković cordially referred to as "Jovica", the notorious head of Serbia's secret police (SDB). The following shows that Jović had in the meantime instructed Stanišić to supply Janković's SDS branch with the required arms:

> "DATE: 29.7.91, Monday (July 29, 1991)
>
> Kerović called at 8:10. I call Kerović at 8:25 and he invites me to come and pick him up as there was an invitation for us to go to Belgrade to Jovica [Stanišić] (the chief of the State Security).
> At 12.15, we are at the State Security at Jovica's office and at Milan's, a deputy.
> They had a telefax which I had sent to Jović.
> *He says that the arms are approved for us, but less than 3.600 we had asked for. It was agreed the transportation to start on Monday.* He criticises the leaders of our party [SDS] because we are not united. He says that everybody brought over to its side. We have agreed that the two of us and Perić had done the whole work.
> (...)" [Petar Janković, *Diary*, 29 July 1991, emphasis added, Annex 105].

34. As it turned out later, the transport of the weapons was delayed for several hours. Petar Janković described the events surrounding the transport in his diary. The arrival of the arms immediately divided the various SDS leaders, each trying to get the largest share of the delivery.

"On 6.8.'91, about 22:50, Kerović comes and says that the truck with the arms has not yet departed.
He moves around and he seems suspicious to me.
He behaves strangely and not clearly.
At 01, he says to go to sleep because the truck has not started. I go to sleep with Vesna at the suite. I get up 8 o'clock and hear Lazo in the corridor.
I ask Lazo what's new. He says that some things which are not correct have been happening. He says that they had to [go to] 'Mića', from Rastosnica [town between Tuzla and Bijeljina in the northeast of Bosnia], they had to disqualify Pusula's man.
Later, both of them were also disqualified.
Kerović's boys sent them to Belgrade to wait for the truck. In the meantime the truck went off. It happened that only Kerović's boys left.
I find out that the truck was unloaded at another place. I asked a driver who had given the order. He says: Kerović's boys. The thing is suspicious. The goods were unloaded at two places.
About 09 hours, Branko came. I criticise him for the things which were happening.
He says that he knows about 50% of things and 50% have been happening apart of him.
Kerović comes. I ask him why the things have been changed. He stutters, avoids: He says that there will be no problems. He wants us to go on the spot. I say: until we gather all, I wait Milan.
I call Milan around 11 o'clock. Milan considers that there is no problem regarding the location.
But, when I told him everything he started to be suspicious. At 15(13) hours, the meeting: a driver, Kerović, I, Milan, Branko Djerić, Lazo and Bodirogić. I ask the same question. I ask if they have the papers for the goods. Nobody has any paper.
We made a conclusion that a scenario was carried out by Kerović and Branko with Kerović's boys.
We give the order to count the goods. It counts 300 68.2. We make distribution.
Now, characters and intentions are revealed. Kerović tries to get unreasonable. He doesn't agree that Pusula gets 11 pieces. The quarrel starts and insults begin. Pusula swears at Kerović and threats that he will set his house ablaze. Kerović reacts.
We calm the situation down.
I propose them not to quarrel but to take some from my goods. I also do not agree with the proposal.
In the evening we eke out a bare existence.
We found out that the counting was not.
I got 60 22.2 for 7 municipalities.
Tomorrow we drive to Predrag's building to divide.
The security is good.
All drive away theirs."
[Petar Janković, *Diary*, 29 July 1991, emphasis added, Annex 105].

One week after Janković's visit to Belgrade, the requested arms were delivered to the Bosnian Serbs. Janković himself received 60 arms, to be distributed among seven municipalities within the area under his control.

35. The news that Petar Janković had received weapons soon spread among the Serbs in the Kalesija region. On 14 August 1991, two Serbs from the village of Osmak payed him a visit to ask for arms. They returned home after being reassured by Janković:

"DATE: 14.8.91 (August 14, 1991)

Danko and Vladimir from the place of Osmak came. They were sent in the name of the Board to remind me not to forget them about arms. They went around to see all, but they came again to see

me, better to say they were sent to me. I had shown them the schedule and they went away thankful.
At 20 hours, I am with Vesna in the village of Caklovići.
They are not experienced.
They say that the Municipal Board with Milić is against me, and they criticise that.
I explained them my vision of the situation.
I told them that there would be war, and that they should organise themselves." [Petar Janković, *Diary*, 14 August 1991, emphasis added, Annex 105].

With the weapons received from Belgrade, Janković armed the neighbouring villages, while telling the inhabitants that they had to organise themselves as the conflict was about to break out. This warning was given on 14 August 1991, that is almost eight months before the first genocidal acts were actually committed in Bosnia and Herzegovina.

36. The weapons the Bosnian Serbs received after the above mentioned visit to Belgrade were not sufficient for Petar Janković. On 6 September 1991, he again visited Radmilo Bogdanović and Jovica Stanišić in Belgrade. He was accompanied by his usual fellow party members: Milan Petrović, Milivoje Perić, Drago Kerović:

"DATE: 6.9.91 Friday [deleted] (September 6, 1991)

(...)
At 24:30 I call Petrović Milan and I say him that for tomorrow the term for Belgrade is changed and that we depart at 6:30. He agrees. I call Perić and say that there is a change, at 6:30. He says that he can not go because he goes to pick up the Russian women. I say that it is not OK as we've agreed to go together. I don't like this. But I tell him. *Let it be according the agreement. Kerović to go to Jovica [Stanišić] with the papers, and we shall go to Radmilo [Bogdanović]. Our aim is only to make pressure and to speed it up.* They should not feel any distrust.
I am awake at 03 because the dogs are barking to much. I could not sleep any more. I am up at 05. I took the papers (on arms) with me for Radmilo, as I have doubts that Kerović will show the papers.
(...)
At 10.10 at Radmilo's.
A secretary says that there are some from Bosnia there, from Zvornik. I ask whether she knows any of them, she say that Kerović (a bald person) is there. I am surprised. I think very quickly. Is it better to go to eavesdrop on the conversation or to wait untill they leave. I decided to go in. The secretary announces that I've arrived. Radmilo says that he is waiting for us. We are going in, Radmilo greets me with pleasure. I am surprised because Branko is with Kerović. *Radmilo asks me how I feel. I say: so bad that it can not be worse. I explain that the people are unbearable. It seems that he understood. He call the chief of the State Security, Jovica [Stanišić].* I take out the papers and put them on a table. Kerović noticed it and he changed his colour. I say: Radmilo, this papers are for you, and Kerović gave them to Jovica. Radmilo asks: Have you, Kerović, given them to Jovica. Kerović said that he had given them to Stanko Cvijan. (And I think he lies.)
Radmilo reviews the papers and says: Just like this. Yes.
Jovica [Stanišić] comes. He greets us. Radmilo [Bogdanović] says: Jovica, let us make the agreement with this people. Jovica says that Velibor Ostojić has tried to come into the canal, but that he refuses it. *It is agreed that on Tuesday at 7 there would be a loading and a conversation.*

> *Radmilo asks me to write him down the numbers of sold weapons.* He says that they will kill somebody. He says us not the [to] do anything about the military tasks regarding the cards. If the Army is not able to work, then we to form the army. I have a feeling that he is against the Army. He says that we should let only the Serb police into the Serb villages." [Petar Janković, *Diary*, 6 September 1991, emphasis added, Annex 105].

The entry quoted above demonstrates that by September 1991 the distribution of arms by the Ministries of Interior in Belgrade to the Bosnian Serbs had become a routine operation.

The distribution of arms through the JNA

37. As shown by the diary cited above, the JNA was not involved in the first phases of the RAM plan. Initially, the co-operation of the JNA was limited to those officers who could be 'trusted', such as General Nikola Uzelac from Banja Luka, to whom Milošević referred in his above quoted telephone conversation with Karadžić. After the JNA had been purged of its 'Yugoslav' influences, however, that is, in the first months of 1992 [see *e.g.* James Gow, The Remains of the Yugoslav People's Army, *Jane's Intelligence Review*, August 1992, pp. 359-362, Annex 106], the involvement of the JNA became massive, as will be shown in the following pages.

38. With the 'Serbianisation' of the JNA in late 1991 and early 1992, the amount of weapons being distributed among the Serbs increased rapidly. The growing role played by the JNA in the run up to the Bosnian genocide is also mentioned by Judge Hanne Sophie Greve in her Prijedor report to the Commission of Experts. The following is an extract from this report, describing the months preceding the Serb take-over of the Prijedor municipality on 30 April 1992:

> "138. *The Serbian army [JNA], in close cooperation with the SDS, distributed weapons to the Serbian population in Prijedor town and other towns and villages in the Opstina. Often these deliveries took place openly in broad daylight. The distribution was mainly organized by trucks and seemed aimed at arming every Serbian male between the ages of 15 and 70.* Many Serbian women and old men were provided with arms. Serbian policemen were also moving around especially at night handing out weapons to fellow Serbs.
>
> 139. Weapons and military equipment were even flown in by military helicopter to Serbian military officers. It is said that by the end, almost no Serbian house was without an automatic gun. Many Serbs may also have received grenades.
>
> 140. *The pretext for the arms deliveries and the rearmament was that this was necessary for the defence against "the enemies of the people" - the Muslim extremists and the Ustase [Ustaša].*
>
> 141. The Serbs were provided with new automatic weaponry. Serbs who had been armed in this manner started to establish checkpoints in the villages.

142. *Ample distributions of ammunition were also made, and even larger quantities of ammunition were stored locally.* Approximately five kilometres from Malo Palanciste on the road to Knezica, there is an ammunition cache. A Serbian teacher (now director of the school), whose name is not disclosed for confidentiality or prosecutorial reasons, who used to sign out ammunition for the heavy artillery there, boasted that there was enough heavy ammunition stored that it would suffice for one year if 1,000 rounds were fired each day.
(...)
144. Many non-Serbs, who saw truck-loads of weapons being distributed in their home areas to Serbs, were so frightened that they did not dare to believe what they saw. In general, Muslims and Croats became scared. At the same time, Serbs had their informants among the Muslims and Croats who spread the word that Serbs had weapons for sale. One Serb (whose name is not disclosed for confidentiality or prosecutorial reasons), later ill-reputed and then belonging to a so-called intervention unit ... , and other Serbs, who later came to play important destructive roles when the Serbs had taken power, were involved in selling rather faulty weapons to non-Serbs. The sellers simultaneously registered the buyers for illegally being in possession of firearms. The people wanted, it seems, to buy these weapons as they were frightened and wanted to have something for self-defence. The number of such weapons around remained none the less limited.

145. When the later Serbian chief of police, Simo Drljaca, briefed visitors on the background of the events in Opstina Prijedor, he insisted that the Muslims and Croats had been preparing for war for more than 22 years, and that the Serbs had 'documents showing that 3,491 men who could fight from Kozarac, had accepted weapons'. Simo Drljaca would obviously not quote a deflated figure; there are, however, reasons for believing that his figure is highly inflated. *Considering the later attack on the Kozarac area and the interrogations conducted in the main concentration camps where the possession of arms seems to have been a main theme of accusations against camp inmates ... , it may be questioned whether the sale of rather faulty weapons to perceived enemies by key people in the Serbian military ranks was designed to give the Serbs a pretext.*

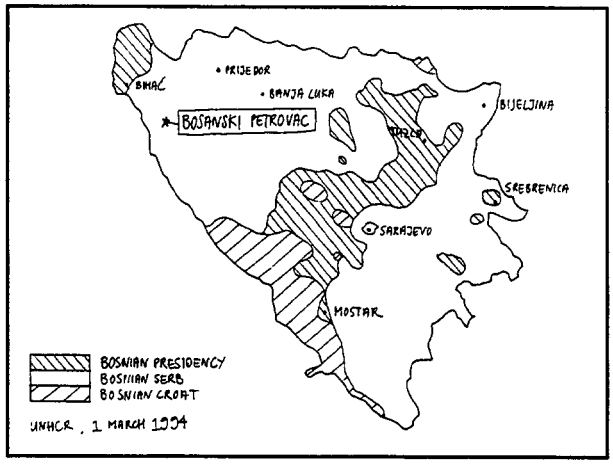
146. Radio Prijedor was, prior to 30 April 1992, constantly broadcasting that people ought to hand over their weapons to the authorities. The TO and the police kept their weapons. People who had no license to own weapons hid them if they had any. Muslims and Croats who had legal authorization to have weapons (normally for hunting) were visited by Serbs and threatened to hand over the weapons which they legally possessed. It is noteworthy that the non-Serbs, who "illegally" bought weapons from and were registered by the above-mentioned ill-reputed Serb and others associated with or members of the Serbian military, were not similarly visited. People on these sales lists were, however, among the first to be liquidated in the later Serbian military attacks whether or not they had kept their arms and whether or not they had taken any recourse to arms."
[United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol.I), Annex V, "The Prijedor Report", 28 Dec. 1994, pp. 30-31, paras. 138-146, emphasis added].

The cited extract from Greve's Prijedor report sheds an interesting light upon the earlier mentioned claim that the Serbs were threatened by "Muslim extremists and the Ustase [Ustaša]". Greve clearly demonstrates that this imaginary 'threat' was especially created and artificially bolstered to offer the Serbs a pretext for taking over power and starting to do the exact opposite of what they claimed was about to happen.

39. Judge Greve's report is completely focused on the Prijedor area. The pattern apparent in her report is, however, typical for all of Bosnia and Herzegovina. The armament of the Bosnian Serbs by Belgrade, the JNA and the SDS was indeed organised in a methodical and thorough way. The same pattern, described by Judge Greve, occurred all over the territory which later fell under the control of the Bosnian Serbs [see also Hannes Tretter e.a., *Report on "ethnic cleansing operations" in the northeast-Bosnian city of Zvornik from April through June 1992*, Ludwig Boltzman Institute of Human Rights, Vienna 6 April 1994, pp. 18-19, Annex 48; United Nations, *Final Report of the United Nations Commission of Experts* S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 27, para. 140; Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War*, London 1992, p. 149, Annex 61].

Military documents proving JNA's massive involvement in the distribution of arms

40. On 3 May 1992, the command of the 2nd Military District left Sarajevo, when the headquarters were moved to Han Pijesak in east Bosnia and Herzegovina [see Reply, Chapter 8, Section 4]. Shortly after the departure of the JNA from the barracks, the forces under control of the Bosnian government entered the premises and found a great number of military documents which the JNA had left behind. These documents provide a clear illustrution of the orderly and systematic way the plans were executed. In addition, they show the enormous extent and size of the operation. In the following some of these documents will be discussed at greater length.



41. On 13 December 1991 the Territorial Defence headquarters in Bosanski Petrovac applied to the local JNA unit with a request for arms. Bosanski Petrovac is a town located in the northwest of Bosnia with a large Serb majority:

"SOCIALIST REPUBLIC OF BOSNIA AND HERZEGOVINA
MUNICIPAL HQ OF TERRITORIAL DEFENCE
BOSANSKI PETROVAC

strictly confidential no. 06/190-1
13.12.1991

MILITARY SECRET
STRICTLY CONFIDENTIAL

Request for taking over of missing ordnance,
delivers,

MILITARY POST 1754
BOSANSKI PETROVAC

Having in mind political-security situation in Yugoslavia and the war conflict provoked by fascist forces, the need arose in the territory of municipality of Bosanski Petrovac to have better and more qualitative organization of general people's defence, including the territorial defence.
Considering such situation The Council for people's defence of municipality discussed this issue and initiated at the assembly level to increase number of TO [Territorial Defence forces] troops, to imporove their equipment and to better organize the troops, on the basis of which adequate decisions on reorganization of TO were taken as well which affairs are to be organized by Municipal HQ of TO. *In accordance with the realization of these tasks there are tasks which we are not able to realize in cooperation with Hq of district HQ of TO and Republic HQ of TO, and they are relfected in the fact that we are not able to equip TO units with ordnance.*
Having in mind that the JNA units were transferred from Croatia to our area, we consider that we are obliged to accomplish mutual cooperation in securing buildings of special significance, JNA facilities, communications and control of the municipal area having in mind that we are located in the operational depth of carrying out operational activities.
By reorganization of TO of municipality of Bosanski Petrovac, the number of TO troops was increased from 540 to 1700 troops, and in accordance with their increased number we are not able to provide the following ordnance:

1. small guns 7, 62 mm	pcs. 40
2. automatic small guns 7,65	pcs. 15
3. automatic rifles 7,62	pcs. 13
4. semi-automatic rifles 7,62 (7,9)	pcs. 60
5. mortars 60 mm	pcs. 12
6. mortars 82 mm	pcs. 10
7. mortars 120 mm	pcs. 3
8. recoiles rifles 82 mm	pcs. 6
9. anti-tank bazookas 90 mm	pcs. 20
10. bazookas M-57	pcs. 40
11. anti-tank bazookas 64 mm (Zolja)	pcs. 200
12. hand-grenades	pcs. 400
13. perimeter	pcs. 3
14. 2 sets of small arms ammunition	
15. set of troop uniforms	pcs. 1200

Please consider our request and forward it to superior command.

Command of TO
1st captain on reserve
Obrad Vržina

[stamp confirming receipt]
14.12
Military Post 1754
conf. 129-56
1991
Bosanski Petrovac"
[Bosanski Petrovac Municipal Headquarters of Territorial Defence, Request addressed to Military Post 1754, signed Captain Obrad Vrzina, 13 Dec. 1991, emphasis added, Annex 107].

The stamp at the bottom left of the letter shows that the letter was indeed posted by "captain on reserve" Obrad Vrzina. The next day, on 14 December 1991, it arrived at Military Post 1754 in Bosanski Petrovac.

42. The mobilisation of the Territorial Defence in the municipality of Bosanski Petrovac was carried out at the initiative of the local council. It was not ordered by the Territorial Defence headquarters in Sarajevo. As mentioned above, Bosanski Petrovac was a city with a large Serb majority. Although the request is coined in vague wording [maybe deliberately so], it is clear that the Territorial Defence was mobilised to execute tasks independently from the headquarters in Sarajevo. The Republican authorities in Sarajevo were intentionally left ignorant of the mobilisation of their own Territorial Defence forces. The same holds, *a fortiori*, for the tasks allotted to these volunteer units.

43. Almost three weeks after having received the above quoted letter, the Deputy Commander of the JNA unit in the Bosanski Petrovac, Colonel Milan Skondrić, forwarded the request to the JNA headquarters of the responsible 2nd Military District in Sarajevo [where the document was found on 3 May 1992]:

"COMMAND OF 530TH REAR BASE
strictly confidential 25-1
03.01.1992 MILITARY SECRET
STRICTLY CONFIDENTIAL

Request for providing ordnance
for municipal TO HQ TO B. Petrovac
- forward -

5th [2nd] Military District HQ

Municipal TO HQ of B. Petrovac, being the only military unit in the territory of B. Petrovac municipality, submitted its request strc.conf. 06/190-1 of 13.12.1991 stating the reasons for provision of small and artillery arms, with respective 2 combat sets of ammunition and troop uniforms.

By evaluation of the political-security situation in the broader operational zone of 530th Rear Base, and having in mind the assignments on newly established units of municipal TO HQ of B. Petrovac, we have concluded that they are in the function of control of territory, administrative and castling communications, protection of buildings of special significance in cooperation with the JNA units in possible combat operations in this area.

We particularly stress that insofar, from the territory of B. Petrovac municipality, mobilization of troops and volunteers has been very successful. They actively participated and proved themselves to be reliable in carrying out the tasks as members of 5th, 9th Corps and 200 military base, which proves that the local population, firm in protection of the common homeland, is in question and that they support JNA as a whole.

Considering that the organizational-formational preparations in forming of the above mentioned units of municipal HQ of TO - B. Petrovac has been succesfully completed, we think that with the provision of the requested ordnance we would gain additional forces for the accomplishment of the above mentioned important tasks for the JNA, for which reasons we propose to meet the above mentioned request at the earliest convenience.

DEPUTY COMMANDER
colonel
Milan Škondrić

encl.
request of TO B. Petrovac" [Command of 530th Rear Base, letter to 5th Military District HQ, signed colonel Milan Skondrić, 3 Jan. 1992, emphasis added, Annex108].

This letter also demonstrates that the mobilisation of Serbs was not limited to revervists, but included volunteers as well. New units were formed with these volunteers in order to support the JNA, which at that time had almost completed its 'Serbianisation' process. The JNA was, in cooperation with the local Serbs, obviously preparing itself for an armed conflict. The aim of this conflict was not to protect Bosnia and Herzegovina from a foreign invasion, but the protection of the "common homeland". This protection was done exclusively by Serbs and the Serb-controlled JNA. The "common homeland" mentioned in the letter above can only be interpreted as being the future Greater Serbia [see Reply, Chapter 4].

44. The Serbs in Bosanski Petrovac were served according to their wishes, although they did not receive all the requested ordnance. On 8 January 1992, the following confirmation was sent by the headquarters of the 2nd Military District:

"2ND MILITARY DISTRICT HQ

confidential 32/198-5
08.01.1992

HQ of the 530th Rear Base
Municipal TO HQ Bosanski Petrovac for information

Reference: your letter str.conf. 25-1 of 03.01.1992 and request of Municipal TO HQ of Bosanski Petrovac, str.conf. 06/190-1 of 13.12.1991

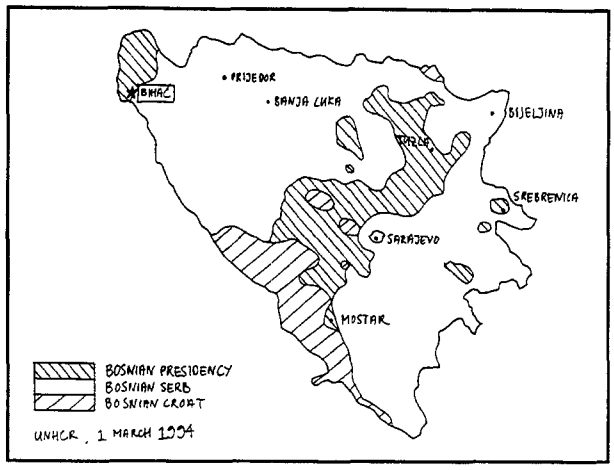
Hand out the following types and quantities of ammunition for the needs of HQ TO Bosanski Petrovac:

a) from ammunition storage Bihać	
- bullets 7,62 mm for small gun;	2100 pcs.
- bullets for 7,62 regular bullets;	1500 pcs.
- bullets 7,62 mm, piercing bullets for AP [automatic rifle]	3780 pcs.
- bullets 7,62 mm, regular bullets for AP	27720 pcs.
- bullets 7,62 mm, signalizing bullets AP	7560 pcs.
b) from ammunition storage Donji Lapac	
- mortar mines 60 mm	1440 pcs.
c) from ammunition storage Bosanski Novi	
- mortar mines 82 mm	1200 pcs.
- cumulative mines for bazookas, M 57	320 pcs.
- hand grenades M 75	420 pcs.

We would like to mention that we do not have available other ammunition mentioned in the request.

Deputy Chief of Technical Service
Colonel
Gradimir Petrovic" [2nd Military District Headquarters, letter to 530th Rear Base, signed, colonel Gradimir Petrovac, 8 Jan 1992, Annex 109].

45. On 6 February 1992, the so-called Public Safety Station in Bosanski Petrovac addressed an additional request for the JNA [Public Safety Station Bosanski Petrovac, request addressed to Military Post 1754, signed Ljubomir Kerkez, 6 February 1992, Annex 110]. Again, the addressee forwarded the request of this police unit to the command of the 2nd Military District [530th Rear Base, letter addressed to 2nd Military District, signed colonel Milan Skondrić, 17 February 1992, Annex 111].



46. On 18 February 1992, the regional headquarters of the Territorial Defence forces in Bihać, near Bosanski Petrovac in the northwest of Bosnia, asked the 2nd Military District to supply them with arms. This request is referred to in the following letter, which the 2nd Military District consequently sent to the Ministry of Defence in Belgrade:

"Command of the 2nd Military District
Conf. No. 32/205-16 — Military Secret
03.03.1992 — Confidential

Request to equip the Territorial Defense units
and the units of the Public Security Service

Federal Ministry of the National Defense - Technical Administration

Reference: Order of the Chief of the General HQ of the Armed Forces of the Socialist Federal Republic of Yugoslavia (SFRY), conf. No. 2268-1 dated from 30.12.1991

Please find enclosed the request of the Regional HQ of the Territorial Defense Bihać, strictly confidential number: 06/1-1/92 from 18.02.1992 for the supply of the 2.000 pieces of infantry arms.

(...)

We would like to ask you to, respecting the above mentioned Order of the Chief of the General HQ of the Armed Forces of the SFRY, make the verdict on fulfillment of the given requests.

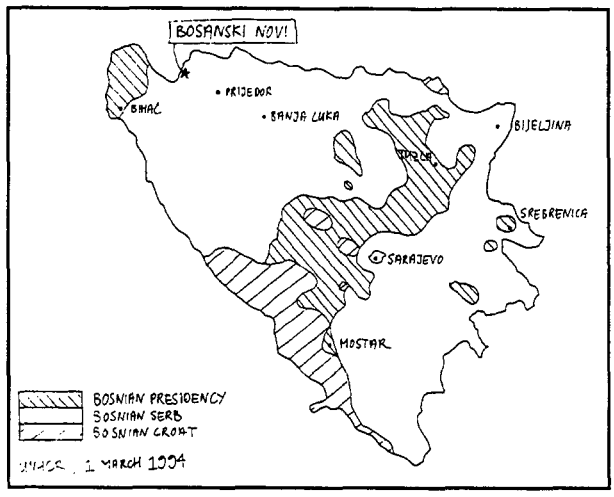
Zc

For the Chief of the Technical Services:
c o l o n e l

Gradimir Petrovic"

[2nd Military District, letter addressed to Federal Ministry of the National Defense, signed colonel Gradimir Petrovic, 3 March 1992, emphasis added, Annex 112].

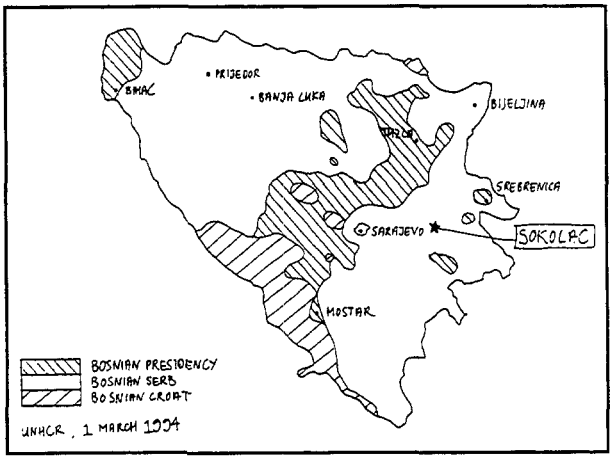
It is important to note that the request was apparently filed and forwarded in accordance with an order given on 30 December 1991 by the "Chief of the General HQ of the Armed Forces of the Socialist Federal Republic of Yugoslavia". The mobilisation of the Serbs and the distribution of arms was therefore directed and carried out in accordance with orders given by the JNA General Staff in Belgrade.



47. A similar request for large quantities of arms was made by the *Serb* municipality of Bosanski Novi in March 1992 [Territorial Defense Bosanski Novi, request addressed to Military Post 1754, signed Mile Damjanović, Annex 113]. The request was later forwarded to the command of the 2nd Military District, where it was again found by Bosnian forces on 3 May 1992, along the same procedural lines shown in the cited Bosanski Petrovac example [530th Logistics Base, letter addressed to 2nd Military District, signed Milan Skondic, 19 March 1992, Annex 114].

48. On 30 March 1992, less than two weeks later, the JNA in Sarajevo handed over almost 1000 authomatic rifles to arm newly formed voluntary units in the Banja Luka area [Military Post 4022 Banja Luka, request addressed to Military Post 5027 Sarajevo, signed Vaso Tepsić, 26 March 1992, Annex 115; and Military Post 5027 Sarajevo, order given to Military Post 5290 Banja Luka, signed colonel Gradimir Petrović, 30 March 1992, Annex 116].

49. On 24 April 1992, General Milutin Kukanjac, commander of the 2nd Military District, forwarded a request to the Ministry of Defense in Belgrade. It was filed by the Ministry of Interior of the Serb Republic of Bosnia and Herzegovina and was intended to arm a so-called special militia unit in the "Centre of Security Service Banja Luka" [2nd Military District, letter to the Federal Ministry of Defence, signed General Milutin Kukanjac, 24 April 1992, Annex 117]. In his request, General Milutin Kukanjac explicitly referred to the above mentioned order given by the General Staff in Belgrade on 30 December 1991. He advised his superiors in Belgrade to grant the request.



50. Besides the arming and mobilisation of volunteers, a war hospital was established in Sokolac, a Serb dominated city in east Bosnia. On 10 February 1992, the so-called Ministry of Defence of the Serb Autonomous Region of Romanija, the mountainous region east of Sarajevo, sent a letter to Belgrade. The Serb Autonomous Region of Romanija was establised in September 1991, together with several other Regions in Serb dominated areas. They were parallel regional structures for Serbs only, established with the aim of separating from the Republican government agencies in Sarajevo [ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 35-36, paras. 97-102]. The mentioned letter was addressed to, among others, the Ministry of Defence of Serbia. It was recovered after May 1992 by members of forces under control of the Bosnian government, during a search of abandoned apartments formerly inhabited by leading officials of the Serbian Democratic Party:

"GOVERNMENT OF SERB AUTONOMOUS REGION OF ROMANIJA

strictly confidential no. 10-9/92
10.02.1992

MILITARY SECRET
STRICTLY CONFIDENTIAL

Provision of medical equipment for the needs of war hospital
request,-

Referring to our agreement with the Chief of General Staff of Armed Forces of SFRY, chief of medical administration and command of 2nd Military District please find enclosed herewith needs for medical equipment for the war hospital Podromanija-Sokoloc.

A newly erected building some 7000 m2 of usable space will be used for a new war hospital, which is necessary to equip with technical-technological equipment as specified in the annex hereto.

(...)

Coordinators for provision of medical equipment will be Dr Sava Novaković, deputy minister for health of the Republic of Serbia, and Dr Jelana Radojković (Ministry of Defence of the Republic of Serbia), Nemanjina 11, phone 656-786 and 658-722.

Enclosure: 1

Co.
- Assistant of Federal Secretary for People's Defence for Logistics;
(...)
- Ministry of Defence of Republic of Serbia;
- Ministry of Health of Republic of Serbia;
(...)

DEPUTY HEAD OF GOVERNMENT
Milan Tupajić, B.Sc.eng
MINISTER OF DEFENCE
major Dragomir Krstović
Commander of SAO [Serb Automous Region] TO HQ
Slobodan Batinić"

[Serb Autonomous Region of Romanija, letter to Assistant of Federal Secretary for People's Defence for Logistics, signed Milan Tupajić, 10 February 1992, emphasis added, Annex 118].

As the other documents cited, this document shows that the Serbs were indeed planning for an armed conflict. The authorities in Belgrade are shown to be in complete control of the process, directing the activities in Bosnia and Herzegovina and providing all the logistical support necessary.

Once more: Petar Janković's personal diary

51. The military documents cited in the page above clearly illustrate the important role played by the JNA in the distribution of arms to the Bosnian Serbs. As explained

earlier, the JNA only got massively involved in this distribution in the beginning of 1992, when the ranks of the army had been successfully purged of all anti-Serb elements. The crucial role played by the JNA is also described by Petar Janković in the diary he kept in the months preceding the war. As mentioned above, this diary was captured in Kalesija, in northeast Bosnia, by Bosnian forces in May 1992. In the following entry, dated 24 January 1992, Janković describes his fruitful co-operation with the various officers of the JNA in the area of Tuzla. In addition he explains in what way the JNA assisted him in the creation and training of voluntary Serb units. His liaison officer within the JNA was a major called Lalić, who was based in the vicinity of Tuzla:

"DATE: 24.1.92 Friday (January 24, 1992)

(...)
All this period of time I am working to provide the arms and I co-operate with the Tuzla Corps, with the general Janković and especially with the colonel Nikola Dancić.
I judged Nikola as a good Serb.
He promised me to help me to get arms and something is working on that.
There are pieces of information that the Muslims want to take over the airport from inside.
Vlastimir Becarević starts to co-operate with me. We inform Nikola to take care about the airport.
In the meantime, there are quarrels among people about establishing of the battalion. The communists, together with the Army, do not succeed to form the battalion.
In the meantime, I informed the Army that such work is not good. The threads between people and the Army are torn off.
I decide to be included in this problem.
I go with Lazo and Stepanović to Dubrave [village near Tuzla], to the 4th motorised from Jastrebarsko [place in Croatia where the unit had been based previously] which is authorised for us.
I openly say to the major Lalić that the Army must understand that the communists can not lead the people and to manipulate with them. I felt that they also understood.
We are making agreements to form companies and that Cedo will be a co-ordinator.
Cedo promises that he together with me will organise the lists in two days.
Cedo makes treason and he teases us, 6 days and he did nothing. Somebody recruits him.
Lalić sends a word to me to come at his place.
I make agreement with Lalić that I will make alone that lists. Regarding this lists I have help: Vesna and the crisis HQ-s which I have formed. I immediately call my people and we form 6 companies.
In two days, I have the proposal. Lalić accepts.
The agreement was that each company would be trained for 6 days.
I succeeded to reduce that to two days.
Up to day, the companies Jeg Lug, Dubnica, Osmaci, Caparde, up to day they did a job.
Lalić is more than satisfied. At all meeting places there were from 80 to 120.
Osmaci were especially good although I was sceptical about.
Before each training, I went around the villages and made the agreements with people.
I made agreement with Lalić that a platoon in each company be also armed immediately after training. Lalić confirmed all this.
I have problems in the village of Jelina, between Kovacević and Draskić. Dordjo imposes Dusko to be a commander of a platoon, but others do not accept him." [Petar Janković, *Diary*, 24 January 1992, emphasis added, Annex 105].

The above shows that the JNA not only armed the local Serbs. They also assisted in the formation of new voluntary units and in the training of the Serb volunteers. A motorised JNA unit in Dubrave (a village near Tuzla) was officially "authorised" to assist and train Janković's volunteers. The same motorised unit, which had been based in Croatia until the end of 1991, later participated in the atrocious attack on Zvornik [see United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 39, para. 217].

52. The military exercises in the Kalesija area were not only recorded by Petar Janković. They were also mentioned by the Commission of Experts, in their Annex on the policy of ethnic cleansing:

> "About 2-3 months prior to the attack [on Zvornik in the beginning of April 1992], military training exercises lasting up to 2 weeks were conducted in Osmaci near Kalesija [town near Tuzla] and other villages. The JNA organized these exercises and only Serbs were invited under the pretext that the TO had to be trained." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 45, para. 264, emphasis added].

Both the period and the area mentioned by the Commission of Experts coincide with the information given by Petar Janković in his diary. In the quote above Kalesija is mentioned as the centre of the training activities organised by the JNA. Petar Janković was president of the SDS in that town and in the village of Osmaci, where according to the Commission of Experts exercises were held, Janković formed one of his six companies.

General Milutin Kukanjac's report to Belgrade

53. The results of the JNA efforts were impressive. In March 1992, General Milutin Kukanjac, Commander of the 2nd Military District, wrote a report to inform the General Staff in Belgrade about the developments in Bosnia and Herzegovina. As the other military documents referred to above, this report was later recovered by Bosnian forces in Sarajevo. The accompanying letter reads as follows:

> "HQ OF THE 2ND MILITARY DISTRICT
> Strictly confidential no. 908-1 MILITARY SECRET
> 20.03.1992 STRICTLY
>
> copy no. 2

GS OS SFRJ [General Staff of the Armed Forces of the Socialist Federal Republic of Yugoslavia]
personal attn. NGS [Chief of General Staff]

Enclosed herewith please find the requested assessment (with enclosures) of the present situation and problems in the territory of SR BiH [Socialist Republic of Bosnia and Herzegovina].

You are kindly requested to send us back these documents after their use. For fully justifiable reasons, we would like to propose to restrict access to these documents to as few people as possible.

Commander
Lieutenant General
Milutin Kukanjac"

[2nd Military District, accompanying letter addressed to JNA General Staff, signed General Milutin Kukanjac, 20 March 1992, Annex 119].

54. The enclosed report numbers twelve pages. In the first pages of the report Kukanjac presented himself and the JNA as a more or less neutral force in the approaching genocide. This was also the official stance until the the first genocidal acts were committed in the spring of 1992. This neutrality was, of course, just a facade intended to confuse the outside world and facilitate the execution of RAM. Halfway through the report the tone of the report indeed changes, fully revealing the true intentions of Kukanjac and the JNA. The most important extracts will be quoted below:

" CONCLUSIONS
BASED ON THE ASSESSMENT OF THE SITUATION IN THE TERRITORY OF BOSNIA AND HERZEGOVINA WITHIN THE ZONE OF RESPONSIBILITY OF THE 2ND MILITARY DISTRICT

(1) General Remarks

(a) Attached hereto are the following maps:
- survey of voluntary JNA units in the 2nd MD [Military District] zone and broader;
- survey of material stocks and ordnance that need to be relocated (2nd MD zone);
- plan regarding deployment of forces for securing of military objects in the Sarajevo garrison.

(b) A limited number of people are engaged in these assignments - they are very capable and reliable men from 2nd MD Command and Corps commands.

(c) The ituation is changing on a daily base (for the better); this assessment with attachment depicts the situation as it was on 19.03.1992.

(...)

(5) Voluntary units in the 2nd Military District (MD)

The map and the legend attached hereto shows in detail voluntary units in the zone of responsibility of the 2nd MD. In this regard, the following is to be emphasised:

(a) the above mentioned units are organised in companies, detachments and battalions;
(b) number of volunteers is 69.198;
(c) none of the volunteers is planned for manning of military units of 2nd MD, and, only a smaller part of them, comes from Territorial Defence (TO) of Bosnia and Herzegovina. Accordingly, voluntary units are out of formation composition of JNA and TO.

(d) Number of troops according to the zones of individual Corps:

- 9th Corps = 2.200
- 10th Corps = 2.300
- 5th Corps = 16.750
- 17th Corps = 8.240
- 4th Corps = 33.200

(e) Number of troops in voluntary units in the area of 4th Military District in the municipalities of: Kalinovik, Foca, Cajnice, and Gorazde is 6.500 (they were formed earlier by the 4th Corps).

(f) JNA distributed 51.900 pcs. of weapons (75%), while SDS distributed 17.298 pcs.

(g) As for Sarajevo, so far 300 automatic rifles have been distributed to the retired officers (reliable ones), and in 3-4 days an additional hundred of people will be armed; they will defend-protect apartment blocks, buildings, entrances and especially, families of active military officers while they are at work or when they leave with their units to set camps, to fulfil their combat assignments, etc.

Some experiences insofar:

- a majority of the armed Serbs do not want to leave their own territory (their thresholds), they prefer to defend their respective villages, parts of towns and military facilities in their immediate neighbourhood; this particularly refers to the Serbs in the areas where a majority of population is Muslim;

- *some SDS leaders - at all levels, through different channels, request JNA and MNO [Ministry of People's Defence] of Serbia to give them arms, in such a way, they want to prevail over others, which brings about divisions and discontent among the people*;

- *some SDS leaders are advocating disassociating from the JNA and creating another army, which can adversely affect JNA, particularly in respect to manning of its units [sic]*;

- there are some incidents when certain activists, some regional working bodies of different assemblies of Serb Automous Regions (SAO) are setting some kind of condintions - ultimatums to the Army, advocating the placement of some parts of the Army under some kind of their local commands, etc. (this particularly refers to the region of Ozren).

Due to all the above mentioned, some concrete measures are taken, but these problems will be soon discussed with the SDS leaders in Sarajevo, because, in case some of these voluntary units break away from control, the outcome might be serious.

> Having in mind that SDS officials are in contact with the authorities and other structures in Serbia, it would be very helpful if, at the level of SSNO [Federal Secretariat for People's Defence], the attention of the leadership of Serbia would be drawn to such phenomena and its more concrete influence recommended as to remove such deviating attitude in these areas.
>
> For the time being, it would be necessary to stop formation and arming of voluntary units, until everything is back in order again in the already existing ones and until some information and solutions have been reached. After that, it can be decided whether to continue formation of these units or not.
>
> (...) " [Conclusions based on the assessment of the situation in the territory of Bosnia and Herzegovina with the zone of responsibility of the 2nd Military District, signed Lieutenant-General Milutin Kukanjac, March 1992, emphasis added, Annex 120].

This important report confirms the picture painted in this section. In close cooperation with Karadžić's SDS party, the JNA distributed large quantities of weapons. The report was produced on 20 March 1992, that is several weeks before the fighting actually broke out in Bosnia and Herzegovina. At that time the JNA and SDS had already handed out almost 70,000 weapons to an equal number of Serb volunteers.

55. The number of weapons distributed by the JNA is certainly significant, but the number does not include all the arms divided among the Serbs in Bosnia and Herzegovina. It is important to note that the JNA only got seriously involved in the distribution in the beginning of 1992. Before that, the the distribution of arms was organised and directed by the Federal and Serbian Ministries of Interior in Belgrade. The weapons handed out under their responsibility were not included in General Milutin Kukanjac's report to his superiors in Belgrade. The actual number of arms handed out by Belgrade must have been considerably more than the almost 70,000 mentioned in the report.

56. The newly formed volunteer units were not formally incorporated into the JNA or the Territorial Defence forces. They remained "out of formation composition of JNA and TO". In spite of this, these voluntary units were subject to the orders of the JNA. In Sarajevo, for example, volunteers would be deployed to protect the apartments and families of JNA officers carrying out combat tasks in other parts of the country. This hierarchical relationship between the army and the newly formed units is confirmed by the fact that Kukanjac warned his superiors in Belgrade that some voluntary units might "break away from control", which until then had obviously not occurred yet.

57. Kukanjac's report also confirms the frequent contacts SDS leaders maintained with the authorities in Belgrade. These contacts carried on, according to Kukanjac "through different channels" and "at all levels". The aim of these contacts was to procure even more weapons. Kukanjac clearly entertained some suspicion of these contacts, on which he could exercise little control. His doubts about these regular contacts were however not based on the fact that Serbs were being given weapons, his units were also distributing weapons, but on the fact that this could create "divisions and discontent among the people", that is the *Serb* people of Bosnia and Herzegovina.

58. All the above shows that the quoted allegations made by the Federal Republic of Yugoslavia in the Counter-Memorial, that RAM did not exist and that Belgrade was never involved in the distribution of weapons to Bosnian Serbs, is false. RAM did in fact exist and weapons were indeed distributed by the authorities in Belgrade in order to facilitate the future creation of a Greater Serbia. RAM was the necessary first step. Without arming the Serbs outside the Republics of Serbia and Montenegro the establishment of such a Serb state would not be feasable at all. RAM was, in short, a necessary precondition for the fulfillment or realisation of the Greater Serbian dream. Without it the genocide in Bosnia and Herzegovina would not have happened.

3. Yugoslav military involvement in Bosnia and Herzegovina before 19 May 1992

Introduction

59. In the Memorial the Applicant listed numerous genocidal atrocities committed on the territory of Bosnia and Herzegovina by the Yugoslav Army [see Memorial, Chapter 2.2, pp. 17-59]. In this Section of the Reply the Applicant will fully concentrate on these genocidal acts perpetrated before 19 May 1992, the date the Yugoslav People's Army (JNA) formally withdrew from Bosnia and Herzegovina. On 19 May 1992, the JNA ceased to exist officially as it was split into two new armies: the Bosnian Serb Army (VRS) and the new Yugoslav Army (VJ). The cosmetic transformation of the JNA will be discussed in the separate Section of this Chapter [Reply, Chapter 8, Section 4], as will the continued involvement of the Yugoslav Army after 19 May 1992 [Reply, Chapter 8, Section 5].

60. Before its formal withdrawal on 19 May 1992, the JNA was openly involved in the atrocities committed against the non-Serbs of Bosnia and Herzegovina. The cardinal

role played by the Yugoslav Army during the first months of the genocidal conflict was acknowledged by both the ICTFY and international organisations, such as the United Nations and the European Community.

61. In its *Review of Indictment* in the case against Dragan Nikolić, the commander of the Sušica camp in Vlasenica, the First Chamber at the ICTFY devoted some considerations to the JNA and its contribution to the policy of ethnic cleansing. The Chamber first concluded that "serious discriminatory acts" were committed in the Vlasenica region. Then it went on to state that,

> "(...) these serious discriminatory acts do not seem to have been limited to the Vlasenica region. Camps like the one in Susica were set up in a large part of the territory under Serb control in Bosnia. This policy of ethnic cleansing covered other parts of Bosnia from the spring of 1992 on. According to the expert witness [Mr. James Gow],
>
> > 'The conduct of the spring 1992 attacks, including the manner in which the JNA and paramilitary groups deployed and treated the non-Serb population, was similar throughout Bosnia.'
>
> The statement of this witness shows the wide-spread nature of the criminal acts as well as the fact that they were organised at the highest level. According to the witness,
>
> > 'The speed and high level of co-ordination that these attacks required make clear that they were certainly co-ordinated and planned.'
>
> The witness finished by saying:
>
> > '*In conjunction with Serbian political leaders and Serbian irregular units, the JNA conceived, planned, prepared and implemented an armed campaign in Bosnia that involved a systematic use of terror to establish the borders of a new Yugoslavia.*'"[ICTFY, Trial Chamber, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, pp. 15-16, para. 28, emphasis added].

The role played by the JNA was therefore not limited to the preparatory phases of the genocidal campaign. It also "implemented" this policy.

62. On 16 April 1992, the European Community and its Member States published a statement on the developments in Bosnia and Herzegovina. In this joint statement the Member States strongly condemned "the violence that is now spreading in Bosnia-Hercegovina at the hands of various armed elements with the support of regular forces, and in particular of the JNA" [*Bulletin of the European Community*, No. 4-1992, p. 84, para. 1.5.14., Annex 121].

63. The United Nations Security Council also reached the conclusion that the JNA was heavily involved in the genocide being committed in Bosnia and Herzegovina. On 15 May 1992, it adopted Resolution 752, in which it demanded that "all forms of interference from outside Bosnia and Herzegovina, including by units of the Yugoslav People's Army (...), cease immediately" [United Nations, *Security Council Resolution 752 (1992)*, S/RES/752, 15 May 1992]. Two weeks later, on 30 May 1992, the Security Council noted that the "attempts to change the ethnic composition of the population" had not been heeded and it condemned the "Federal Republic of Yugoslavia (Serbia and Montenegro), including the Yugoslav People's Army" for its failure "to take effective measures to fulfil the requirements of resolution 752" [United Nations, *Security Council Resolution 757 (1992)*, S/RES/757, 30 May 1992].

64. On 11 May 1992, the European Community again condemned the role played by the JNA and the authorities in Belgrade:

> "by far the greatest share of the blame falls on the JNA and the authorities in Belgrade which are in control of the army, both directly and indirectly by supporting Serbian irregulars. The killings and expulsion of populations in Bijeljina, Zvornik, Foča and other towns and villages, the siege and systematic shelling of Sarajevo, the holding of Sarajevo airport preventing even the safe passage of humanitarian relief from the ICRC are actions deserving universal condemnation." [*Bulletin of the European Communities*, No. 5-1992, p. 104, para. 1.3.5., Annex 122].

Counter-Memorial

65. In its Counter-Memorial, the Federal Republic of Yugoslavia addressed the role played by the JNA in the first months of the conflict in its Chapter on "The policy of the Federal Republic of Yugoslavia towards the Republic of Srpska and Bosnia and Herzegovina" [Counter-Memorial, pp. 245-274, paras. 3.1.1.1.-3.1.6.15.]. Here, the Federal Republic of Yugoslavia at least acknowledged the on-going presence of its military until 19 May 1992. Later on, the Applicant will demonstrate that this presence also continued after that date [Reply, Chapter 8, Section 5].

66. In its Counter-Memorial, the Respondent first explained that the Belgrade authorities indeed tried to pull out the JNA before 19 May 1992. According to the Federal Republic of Yugoslavia, the retreat of the JNA was, however, hindered, if not prevented, by "military action of Muslim and Croat forces". To prove this assertion the Respondent quoted a United Nations Secretary General report:

> "3.1.2.6 The Report of the Secretary General pursuant to para. 4 of Security Council Resolution 752 (1992), reads inter alia:

> 'On 17 May, [I] received a letter from Admiral Milosav Simić, Chief of General Staff of JNA, requesting assistance in the safe withdrawal of JNA troops from Bosnia and Herzegovina, and particularly from Sarajevo, Pazari[c] and Zenica. The letter referred, inter alia, to an agreement signed on 10 May 1992 at the premises of the UN Protection Force in Yugoslavia (UNPROFOR) at Sarajevo by representatives of the Presidency of Bosnia and Herzegovina, JNA, The European Community Monitoring Mission and the Personal Envoy of Lord Carrington, Mr. Colm Doyle. On 21 May Vice-President Kostić again wrote to ask me to request President Izetbegović to order the deblocking of the JNA garrisons at Sarajevo.' (S/24049, para. 3, Annex 129)." [Counter-Memorial, p. 248, para. 3.1.2.6.].

In the next paragraph, the Respondent drew the following conclusion:

> "3.1.2.7. If the Vice-President of the Yugoslav Presidency and the Chief of General Staff of the JNA addressed to the Secretary-General of the UN requesting assistance in the safe withdrawal of the JNA troops from Bosnia and Herzegovina, and particularly from Sarajevo, Pazari[c] and Zenica, it could not be evidence of aggressive intention of Yugoslavia towards Bosnia and Herzegovina. On the contrary it proves firm determination of Yugoslavia to withdraw its military forces and that it was being hindered from doing so by military action of Muslim and Croat forces under the control of the Government of Sarajevo."[Counter-Memorial, pp. 248-249, para. 3.1.2.7.].

The Respondent's assertion that it was pulling out its troops from the territory of Bosnia and Herzegovina is false. The Federal Republic of Yugoslavia, on the contrary, had continued to move in *additional* troops until May 1992. The Applicant will discuss this later in this Section. Here, however, it wishes to emphasise that the foregoing quote clearly illustrates two significant premises. Firstly, JNA troops were deployed on Bosnian territory at least until 19 May 1992. Secondly, these troops fell under the command of the "Yugoslav Presidency and the Chief of the General Staff of the JNA". All JNA units in Bosnia and Herzegovina were therefore subject to the orders of the authorities in Belgrade.

67. The JNA, which thus fell under the command of the Yugoslav authorities in Belgrade, was actively and openly involved in the genocidal conflict. During this conflict, which fully erupted in April 1992, widespread genocidal acts were committed on the territory of Bosnia and Herzegovina [Reply, Chapter 5]. In the remaining pages of this section, the Applicant will address the question of whether the JNA was responsible for these atrocities. The Applicant will demonstrate that this was indeed the case.

Metamorphosis

68. After the demise of socialism, the role of the JNA in the former Yugoslavia changed dramatically. In the years preceding the outbreak of the hostilities in Bosnia and Herzegovina, the JNA underwent a true metamorphosis. This metamorphosis was also described by the Trial Chamber at the ICTFY in its *Opinion and Judgement* in the Tadić case:

> "104. The JNA has been described as taking part in attacks on Croatia and on Bosnia and Herzegovina. (...) some explanation is called for as to how the JNA, as the national army of Yugoslavia, and what had been a truly multi-ethnic national army, could become the instrument of the policy of the Federal Republic of Yugoslavia (Serbia and Montenegro). It is perhaps best expressed, if not explained, by General Veljko Kadijević, in the early 1990s the Yugoslav Federal Secretary for Defence, who in 1993 published his own description of the disintegration of Yugoslavia in his book *My view of the break-up: an Army without a State.* (...) Of the JNA he writes that by 1991 it was no longer an army with a cohesive state to defend; the state which it was its duty to defend was disintegrating and just as its ranks were now substantially filled with ethnic Serbs, so *its task in the immediate future would be to regroup its forces and equipment, scattered throughout the former Yugoslavia including seceding Republics, back into what was left of the nation and then to concentrate upon the protection and defence of those ethnic Serbs who in the course of this disintegration found themselves outside Serbia and Montenegro. This, it was envisaged, would lead ultimately to the creation of a new, substantially Serb, Yugoslavia with its core in Serbia and Montenegro but including also parts of Bosnia and Herzegovina and Croatia, principally but not exclusively those parts presently having a majority Serb population.*"[ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 37-38, para. 104, emphasis added].

At the time the conflict in Bosnia and Herzegovina erupted, in the spring of 1992, the JNA had thus changed its war aims drastically. By 1992, the JNA's only goal had become the realisation of the Greater Serbian dream, uniting the Serb nation within a common state.

69. In order to realise this Greater Serbian ideal the JNA was gradually "Serbianised" in the early 1990s. This process was also recorded by the Trial Chamber in the Tadić case:

> "A particular point had long been made, enshrined in Yugoslavia's Constitution, of ensuring that the JNA, at conscript level, should accurately reflect the overall Yugoslav population mix. However, at officer level, Serbs (including Montenegrans) had traditionally been over represented; some 60 percent of career officers were ethnic Serbs whereas Serbs formed only 34 to 36 percent of the total Yugoslav population. In the early 1990s this predominance of Serb officers swiftly increased so that very soon very few non-Serb officers remained in the JNA.
>
> The change that overtook the JNA in the early 1990s is best illustrated by the change in the ethnic mix of conscripts between pre-June 1991 and early 1992. During that time, the Serb component rose from just over 35 to some 90 percent. Similarly, whereas in an army in which Serbs had formerly made up some 40 percent of the total of officers and other ranks, by early 1992 that percentage had risen to some 90 percent. 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. However, other factors were also in operation. *Several witnesses, non-Serbs, have told of being discriminated against and being encouraged or indeed obliged to leave the JNA during 1991; they were no longer regarded as reliable members of an army that was ceasing to be Yugoslav and was becoming an instrument of Serb nationalist policy.* By 1992 many senior officers of the JNA, rejecting this transformation of the force in which they had long served, left the service or were retired. From this and other causes, including transfer to other armed forces, the number of officers of the rank of General in the JNA fell from 150 in mid-1991 to only 28 after March 1992." [*ibidem*, pp. 39-40, paras. 108-109, emphasis added].

Ironically, many non-Serbs in Bosnia and Herzegovina continued to give credence (albeit often against their better judgement) to Belgrade's often repeated claim that the JNA should be seen as an "impartial" force that was only trying to prevent bloodshed and "restore peace and security" [Counter-Memorial, p. 247, para. 3.1.2.3. and p. 258, para. 3.1.4.2]. President Alija Izetbegović was no exception to this rule. Warren Zimmermann, the last United States ambassador to the former Yugoslavia, described Izetbegović's attitude in March 1992 towards the JNA in his book on the break-up of the country, *Origins of a Catastrophe*:

> "With all his suspicions, Izetbegović still seemed willing to rely on the Yugoslav army. He said the regular army, though not the reservists whom he saw as undisciplined, would be welcome to stay in Bosnia as long as it recognized civilian authority. He and I both knew that the JNA was unlikely to accept his civilian authority since it didn't accept Bosnia's independence. Still, I detected no inkling on his part of the massive aggression that the JNA, together with Milošević and Karadžić, was mounting against him." [Warren Zimmermann, *Origins of a Catastrophe: Yugoslavia and its Destroyers - America's last Ambassador tells what happened and why*, New York, 1996, p. 191, Annex 123].

The relocation of the JNA

70. The change in the composition of the JNA thus coincided with the change in its role. In practice, this meant that the JNA would retreat its troops within the borders of the future Greater Serbia. This strategy first became apparent in Slovenia and Croatia, as illustrated by the following quote from the *Review of the Indictment* in the ICTFY case against Karadžić and Mladić:

> "Within this new context, the first operations of the Yugoslav People's Army (JNA) were carried out in Slovenia and then in Croatia, particularly at Vukovar. This Trial Chamber has reviewed several events related to the capture of that city by the JNA (Decision of 3 April 1996, IT-95-13-R61). According to [JNA] General Kadijević [Federal Defence Minister]:
>
> > 'the principle ideas behind the basic concept for deploying the JNA in the Yugoslav region were: total defeat of the Croatian army, if the situation so allowed (...), full co-ordination with Serb insurgents in the Serbian Krajina; completion of the pull out from Slovenia of remaining JNA forces; *full awareness that the role of the Serb nation in Bosnia and*

> *Herzegovina would be instrumental to the future of the Serb nation at large. The location of the (...) JNA forces was to be adjusted accordingly.'*
>
> Close contacts between the JNA and the SDS party were brought out during the Tadić trial (IT-94-1-T) by several high ranking military officers who were serving in that army at the time. In respect of co-ordination in the military preparations, these contacts might permit clarifying the official requests of the parallel institutions created by the SDS in Bosnia and Herzegovina. On 11 December 1991, for example the 'Assembly of the Serbian People in Bosnia and Herzegovina' asked the JNA to use whatever means it had available to protect the territories of Bosnia and Herzegovina considered Serbian as part of the State of Yugoslavia.
>
> (...)
>
> *The JNA also seemed to be preparing for a more direct military intervention in Bosnia and Herzegovina. After the war in Croatia, JNA troops and equipment were massively redeployed in Bosnia and Herzegovina. According to General Kad[i]jević,*
>
> > *'assessing the further development of events, we felt that leaving Croatia we should have strong forces in Bosnia and Herzegovina.'"* [ICTFY, Trial Chamber, Opinion and Judgement, Review of Indictment pursuant to Rule 61, *Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & No. IT-95-18-R61, 11 July 1996, pp. 26-28, paras. 53-55, emphasis added].

In late 1991 and early 1992, the Belgrade authorities thus orchestrated a massive redeployment of the JNA in Bosnia and Herzegovina.

71. This redeployment, which in effect meant that the JNA presence in Bosnia and Herzegovina was increased to gigantic proportions, was also recorded by the Commission of Experts. In their Annex on the policy of ethnic cleansing:

> "As the war in Croatia continued, the JNA began military movements in BiH. *The federal army relocated its troops from the cities to the countryside and deployed units at major communications points. In late 1991 and early 1992, as the war in Croatia came to a close, the JNA redeployed troops from Croatia in BiH.* The 37th Corps, for instance, was transferred to the 4th military district in Sarajevo. The Corps' headquarters was established in Mostar, the capital of Herzegovina. JNA's General Staff appointed only Serbs and Montenegrans to fill the higher posts in the redeployed units."[United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol.I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 27, para. 143, emphasis added].

As a result, Bosnia and Herzegovina was flooded by JNA troops. In the Tadić case, the ICTFY came to the following resume:

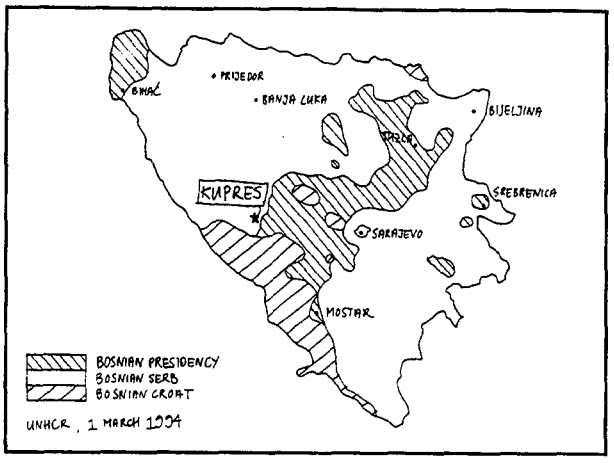
> "By early 1992, there were some 100,000 JNA troops in Bosnia and Herzegovina with over 700 tanks, 1,000 armoured personnel carriers, much heavy weaponry, 100 planes and 500 helicopters, all under the command of the General Staff of the JNA Belgrade." [ICTFY, Trial Chamber,

Opinion and Judgment, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 45, para. 124].

72. This relocation of JNA troops coincided with the reorganisation of the Military Districts. This reorganisation of the JNA was described in the Applicant's Memorial [Memorial, Part 2, Chapter 2.3, pp. 65-66, para. 2.3.3.2.] and will be further discussed in this Reply [Reply, Chapter 8, Section 4]. The purpose of this reorganisation was to secure Belgrade's grip on Bosnia and Herzegovina.

73. The new JNA forces pouring into Bosnia and Herzegovina were not deployed randomly all over the country. As found by the Commission of Experts, in the foregoing citation, the JNA "relocated its troops from the cities to the countryside and deployed units at major communications points" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol.I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 27, para. 143]. The main aim of the JNA was, after all, the protection of the Serb people in Bosnia and Herzegovina and "the location of the JNA forces was to be adjusted accordingly" [ICTFY, Trial Chamber, Review of Indictment pursuant to Rule 61, *Prosecutor v. Radovan Karadžić & Ratko Mladić*, Cases No. IT-95-5-R61 & No. IT-95-18-R61, 11 July 1996, p. 27, para. 53, emphasis added]. In practice, this meant that the JNA withdrew its forces and, even more importantly, its ordnance from areas with a large Bosnian Croat or Muslim majority. New garrisons were established in towns and villages with large Serb populations and in those areas which were important in order to link the various regions with Serb majority populations. For example, the Prijedor region had a Muslim majority before the war, but was located inside the "corridor" linking Serbia proper with the Serb-occupied Croatian Krajina [see United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol.I), 28 Dec. 1994, Annex V, "The Prijedor Report", pp. 13-13-13, para. 43].

Bosnian Serb requests for placement of JNA garrisons



74. The aim of this relocation of JNA troops within Bosnia and Herzegovina was obvious to all parties concerned. The Serbs from Bosnia and Herzegovina knew that this operation was carried out in the interest of the Serb people and as a consequence they acted accordingly. On 22 January 1992, the so-called "Association of the Serbs from Bosnia and Herzegovina in Serbia" (an organisation, situated in Belgrade representing the interests of Bosnian Serbs) sent an official request to the Chief of Staff in Belgrade, Major-General Blagoje Adžić. In May 1992, the request was found by Bosnian government forces on the premises of the former seat of the Serbian Democratic Party in Sarajevo:

"(...)

ASSOCIATION OF THE SERBS
FROM BOSNIA AND HERZEGOVINA
IN SERBIA
11000 BELGRADE
Terazije 3/9

FEDERAL SECRETARIAT FOR
PEOPLE'S DEFENCE [Yugoslav Ministry of Defence]
- attn. Chief of General Staff -
(major-general Blagoje Adžić)
11000 Belgrade

Reference: Placement of a military unit in the territory of municipality of Kupres [central Bosnia], B-H for the prevention of the genocide over the Serbs

Municipality of Kupres lies at the farthermost south of Bosanska Krajina [region in the northwest of Bosnia and Herzegovina] and it is surrounded by the municipalities populated by catholic and muslim population: Bugojno, 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 for 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.

Strategic position of Kupres Plateau

The lowest peak on this plateau is 1.200 m above the sea level. The communication which links Split with central Bosnia goes through it. According to the plans of NDH [Independent State of Croatia], this communication is of vital importance for future Croatian state. By taking control over this part by paramilitary troops of Croatia and Herzegovina, they would gain control over dominant peak, overlooking the neighbouring Serb territories in Bosanska Krajina.

(...)

Reception of troops by the local population

Shorter stay of a military unit in this area in 1991 showed that the villagers of the Serb villages received our troops with delight. In addition, they provided them the best food and drink at their homes.

Relationship with the local authorities

At the last elections, Serb Democratic Party [SDS] won in Kupres, it has the most influence in local authorities, and from that point of view the JNA could completely legally set up a garrison in this territory, before all, because Kupres voted in favour of its linking to the Serb Krajina.

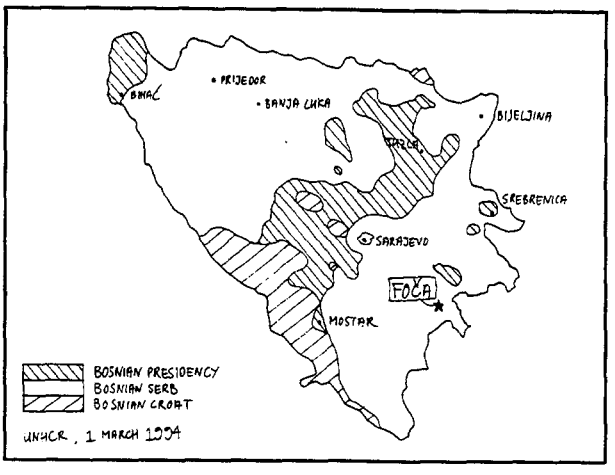
The intentions of HDZ [Croatian Democratic Union] in Kupres are to exclude from the Serb Krajina villages with a catholic population, so we think that soon presence of the army would disturb such plans and defer ever more present aggressiveness of paramilitary units from neighbouring catholic municipalities from West Herzegovina.

President of the Association
Gojko Djogo
[signature and seal]

Attn. Radovan Karadžić"
[Association of the Serbs from Bosnia and Herzegovina, letter to Chief of Staff, Major-General Blagoje Adžić, signed President Gojko Djogo, 22 January 1992, emphasis added, Annex 124]

The requested placement of a new JNA unit in the Kupres area was thus justified on two grounds. Firstly, the JNA troops had to be deployed to defend the Serb population, which in the view of the author of the request was threatened with genocide, just like the one that had allegedly taken place during the second World

War. Secondly, the "Kupres Plateau" was supposedly of primary strategic importance.



75. A similar request was sent by the "Serb Assembly of the Municipality of Foča", on 17 March 1992. The following document was also in the former SDS headquarters in Sarajevo:

"From: SERB ASSEMBLY OF THE MUNICIPALITY OF FOČA

To: GENERAL STAFF OF THE JNA
- personal attn. of major-general Blagoje Adžić
Belgrade

Reference: Request for placement of a garrison in Foča

Considering the evolution of the situation in B-H and municipality of Foča, the Serb Assembly discussed the possibility of placement of a garrison in Foča. Relying on the general feeling of exclusively Serb population who make 50% of the overall population of the municipal area, as well [as] on the fact that a JNA garrison had been located in Foča until 1976, we think in advance that this request is justified. In the town itself, there are some facilities which are property of the JNA and which, according to our estimate, could serve for placement of a unit of some 400 men. *It is also possible to take over the most contemporary equipped building constructed for the needs of women's jail with all its adjuncts, where some 500-600 men could be placed. The building is some 2 km away from the town and it is located in the area exclusively populated by the Serbs.*
Pursuant to our request, we have made some previous agreements and submitted necessary documentation to the Bileće Corps HQ, so you can make all necessary consultations in this regard with the above mentioned Corps HQ.
We are ready to provide men necessary for manning of units, who are presently being trained in the Garrison in Kalinovik.

Please, be so kind to consider this request at your earliest convenience and, if possible, inform us [ab]out the result.

In Foča, 17.03.1992

President of the Serb Assembly
Josif Miličić
[signed and sealed]"

[Serb Assembly of the Municipality of Foča, letter to the General Staff of the JNA, signed Josif Miličić, 17 March 1992, emphasis added, Annex 125].

In this letter, the "Serb Assembly" in Foča offered to house the new JNA troops in the existing detention facility for women, located in an area "exclusively populated by the Serbs". Interestingly, this same detention facility also figured in the Commission of Experts' Annex on prison camps. When the fighting erupted, the Velečevo Women's Prison was used by Serb forces as a camp for Muslim women [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 135, paras. 1098-1102]. The Commission of Experts also revealed that the offer of the "Serb Assembly of the Municipality of Foča" was accepted, as it reported that "the mobilized Serbs of Foča set up their headquarters in or next to the Velečevo Women's Prison" [*ibidem*, p. 135, para. 1102].

General Milutin Kukanjac's report to Belgrade

76. In March 1992, General Milutin Kukanjac, JNA Commander of the 2nd Military District in Sarajevo, wrote a report to inform the General Staff in Belgrade about, among other things, the redeployment of the JNA troops in Bosnia and Herzegovina. The report, which numbered twelve pages, was discussed at length in the previous Section on the distribution of arms to Bosnian Serbs paramilitaries [see Reply, Chapter 8, Section 2]. Apart from this, the report also illustrates that the JNA was withdrawing its troops and particularly its ordnance and materiel from regions with large Muslim or Croat populations. The various maps mentioned in the report were, unfortunately, not found by the forces of Bosnia and Herzegovina. In the extract underneath, some cities, towns, villages or simply "military objects" will be underlined, others will be put in bold type. The underlined places were located on territory under control of the government of Bosnia and Herzegovina, after the fighting had calmed down in the summer of 1992. The places in bold all fell in Serb hands during the first weeks of the armed conflict. The Kukanjac report shows this was no coincidence:

" CONCLUSIONS

BASED ON THE ASSESSMENT OF THE SITUATION IN THE TERRITORY OF BOSNIA AND HERZEGOVINA WITHIN THE ZONE OF RESPONSIBILITY OF THE 2ND MILITARY DISTRICT

(1) General Remarks

(a) Attached hereto are the following maps:
- survey of voluntary JNA units in the 2nd MD [Military District] zone and broader;
- survey of material stocks and ordnance that need to be relocated (2nd MD zone);
- plan regarding deployment of forces for securing of military objects in the Sarajevo garrison.

(b) A limited number of people are engaged in these assignments - they are very capable and reliable men from 2nd MD Command and Corps commands.

(c) Situation is changing on a daily base (for the better); this assessment with attachment depict the situation as it was on 19.03.1992.

(...)

(3) Situation on the ground and JNA

(...)

c) Generally speaking, the leadership of the SDS and Serb people welcome the Army, they protect it where it is objectively possible, they respond to their drafting in military and voluntary units, they display the maximum co-operation with the command posts, they have quite responsible attitude towards RMS [war ordnance], etc.; this is fully understandable, because, objectively speaking, the Serbs are jeopardised here and, by analogy, we safeguard the interests of the people;

(...)

(6) Storehouses of war ordnance on stock: present situation and problems of their dislocation

In the storehouses of the 2nd MD [Military District] the following quantities of weapons, ammunition and fuel of JNA, armament and 2 combat sets of ammunition for units TO B-H HQ [Territorial Defence Headquarters of Bosnia and Herzegovina] are stocked:

- for JNA: 30.000 pcs. of light infantry armament and 40.000 t of ammunition and MES [mines and explosives] and about 25.000 t of fuel;

- for TO [Territorial Defence]: 78.400 guns and 1.500 t of ammunition.

Some 6.000 pcs. of infantry armament from TO have been distributed for arming of the people.

The map shows the storehouses stating the kinds and quantities of reserve stocks, we shall defend, and the ones which have been partly dislocated or will have to be dislocated. According to the assessment and evaluation of the 2nd MD the most helpful will be to do the following:

- to transfer ammunition storehouse 'Donji Lapac' with 2.350 t of ammunition to the region of **Bosanski Petrovac** [northwest Bosnia], where a new storehouse is to be formed;

- to transfer the storehouse Golubić near Knin (Croatia) to the region of **Bosansko Grahovo** [west Bosnia], where also a new storehouse is to be set;

- material reserves (9.930 guns and 200 tons of ammunition) from TO storehouse 'Rabić' near Derventa [north Bosnia], to be transferred to **Banja Luka**, although the map also shows the region of village Ukrinski Lug, because a part of the ordnance will be stored there as well, but only on temporary basis; action (secret) regarding the transfer of ordnance is under way;

- 5.270 guns and 140 tons of ammunition from the storehouse in Doboj [north Bosnia and Herzegovina], to be transferred to region of village **Tumare - Tumarsko Brdo** (10 km from Zavidovići) [central Bosnia and Herzegovina];

- a part from the storehouse Ševarlije to be transferred to Loznica (Serbia);

- 10.368 guns and 137 ts of ammunition from warehouse Krepšić near Brčko [north Bosnia] to be transferred to the area **Lopare-Ugljevik** [east Bosnia];

- from the storehouse 'Kozlovac' Tuzla [northeast Bosnia and Herzegovina], 20.000 guns and 268 ts of ammunition belonging to TO to be transferred to a new storehouse in the region of **Lopare** [northeast Bosnia and Herzegovina];

- with the relocation of the 4th combined antitank-artillery regiment of 'R' [reserve troops] classification from Visoko [central Bosnia and Herzegovina] to the village of **Mokro** [east Bosnia and Herzegovina] (task recently completed) all the ammunition for this unit was transferred; soon ammunition from the 4th combined artillery regiment is to follow;

- Reserve ordnance of motorised battalion from the 46th protective regiment of SSNO [Federal Secretariat of People's Defence or Yugoslav Defence Ministry] will soon be transferred from Visoko to storehouse **Koran** [near Pale];

- 633 light artillery unit of Air Defence has been placed under the command of the 346 light artillery regiment of Air Defence (4th Corps), and their ordnance stocks are stored in this unit storehouse; we think that all the activities related to the placement under new commands of the 2 of the above mentioned units of the 2nd MD and transfer of their ordnance to other locations will be completed in 3-4 days;

- a part of stocks of quartermaster service equipment for the storehouse Butile near Sarajevo will be transferred to the region of village **Han Kran** on Romanija Mount (Han Pijesak) [east Bosnia];

- 5.980 guns with 2 combat sets belonging to TO from the storehouse TO Konjic [central Bosnia] is to be transferred to the area of Koran - village **Mokro** (municipality of Pale);

- By the relocation of the above mentioned stocks we provide their security and their use by the JNA.

Problems:

- for the time being, chances for relocation of stocks from Konjic are small, because local guards and observers from the Muslim-Croat paramilitaries observe all the developments from a close distance and inform their chiefs about any movement they notice there;

- regardless of the fact that the authorities on the grounds where to we relocate the stocks offer us the maximum of co-operation and try to meet our demands, we are forced to invest a part of the funds into repair of the facilities (bars, roof-tiles, etc.), and funds for these purposes have not been provided for.

SPECIAL REMARK: in the storehouse 'Faletići' and storehouse 'Hadžići' (Ušivak, Igman and Krupanjska Rijeka) enormous quantities of ordnance of TO and JNA are stocked; we plan to evacuate these stocks in the coming period, but we shall have to make detailed evaluation on the basis of which the decision is to be brought.

(7) Garrisons and perspective regarding the maintenance of the existing ones in some part of Bosnia and Hercegovina

Starting from the present situation in BiH [Bosnia and Herzegovina] and perspectives of further development, we have to consider the following:

- from day to day, Croats are rounding up their ethnic area, we have several garrisons in that area, as well as military industry as maintenance institutes,

- one of the key goals in forcibly taking control over everything that is military in these areas (Čapljina [Herzegovina, close to the Croatian border], Mostar, Travnik [central Bosnia], Bugojno [central Bosnia], Konjic, etc.),

- Muslims are having the same intentions,
- this is very unfavourable in regard to JNA.

Having in mind the option that, very soon, BiH will be recognised as a state, and that the Serb people do not want to stay to live in such 'ghetto' state, we can expect a lot of problems with respect to JNA.

From the above assessment and enclosures thereto it can be concluded: what has been done so far in the protection of JNA in this territory, which of the activities are underway, and some proposals what to do in the coming period.

Since hard times are coming for us and in order to avoid the destiny we have already experienced, we think that we have to do the following:

(a) to address stricter warning to the legal authorities of B-H at all levels, as well as all the citizens by applying different methods, not to take any actions whatsoever towards the members of JNA which could bring about reaction, and even conflict; we succeeded in this after the well known incident in Sarajevo by the beginning of March this year.

We informed Mr. Jose Cutillero about this [a] few days ago, during the meeting with the 2nd MD; we particularly drew his attention to serious consequences in case the EEC supports negative attitude towards JNA.

(...)

(c) To complete tasks related to the relocation of all the ordnance from the following garrisons: Visoko, Kiseljak, Travnik [all cities in central Bosnia] - and leave only well equipped and movable units in this garrisons ready for struggle and intervention in jeopardised object.

(d) To start serious evaluation of the state of military industry in these areas and bring adequate decisions in terms of their transfer to other locations; this, before all, refers to military industry in N[ovi] Travnik, Bugojno, Vitez [central Bosnia and Herzegovina], Mostar, Konjic and after that military industry in the region of Sarajevo.

(e) Urgent decision has to be brought in respect to relocation of Maintenance Institute Travnik to another location in Serbia, because it is the only institute of a kind (maintenance of communication means) in Yugoslavia.

(f) Bring decision on substantial activating of garrison **Han Pijesak** and **Koran** in terms of construction of prefabricated objects for placement of men and equipment.

(g) This HQ will continue to make more complex evaluations in respect of the above mentioned and possible other problems and forward its proposals to SSNO [Federal Defence Ministry] for final decisions; naturally, all that falls into competence of 2 MD HQ, SSNO will not be burdened with.

(8) Defence of military objects, particularly in Sarajevo

All integral parts of 2nd MD got their precise assignments regarding the protection and defence of military facilities and Army members. Attached hereto is a map - plan - of the decision for the engagement of forces in Sarajevo and its surrounding at a certain moment. The essence of the plan is in the following: to avoid any kind of blockade with adverse effects. The units are ready to assume their indicated positions on a short notice and operate according to the development of the situation. Our opponents in Sarajevo are aware that we have taken some measures and they are scared, which is good. This is a real prevention.

Command of the 4th Corps with a group of its commanding officers unifies all the units in the Sarajevo Garrison and its surroundings. Commanding officer carried out detailed surveillance of the premises as well as possible directions and ways of operation. Communications have been checked several times.

240 self-propelled regiment of Air Defence is deployed in the broader area of **Sokolac** [east Bosnia and Herzegovina]. Its passing through Sarajevo was very effective. Regiment reached new locations without any problems, because all the measures were taken timely.

A part of 346 light artillery regiment of Air defence reached its military positions in the regions of airport BUTMIR and the village of Brus. The barracks of the Central Military Academy [Maršal Tito Barracks] and the building of the Military District HQ are in the least favourable positions. But, the maximum security measures are foreseen in respect of these objects.

(9) Miscellaneous

(a) Action for selling of the barracks Jajce [situated in the old part of Sarajevo with a Muslim majority] and the old Military Hospital was taken. Some people showed their interest for the purchase, but they do not have money to pay all the amount at once; some other games might be in question; we are looking for buyers in other directions and we will probably succeed;

(b) Hospital on **Sokolac** is soon to be completed; the executors of this project are Military Hospital Sarajevo and Municipality of Sokolac;

(c) Reconstruction of the abandoned petrol station and reservoir south of **Han Pijesak** for supply and storage of our fuel reserves is soon to be completed; this petrol station used to be military property once, but it has been abandoned for long;

(d) It would be good to bring a prompt decision on military schools; that would enable the selling of a great part of military objects at the earliest convenience; we have to have in mind the blockade imposed on selling at a certain moment;

(e) Activities in considering the possibility for placement of ordnance in object 'G';

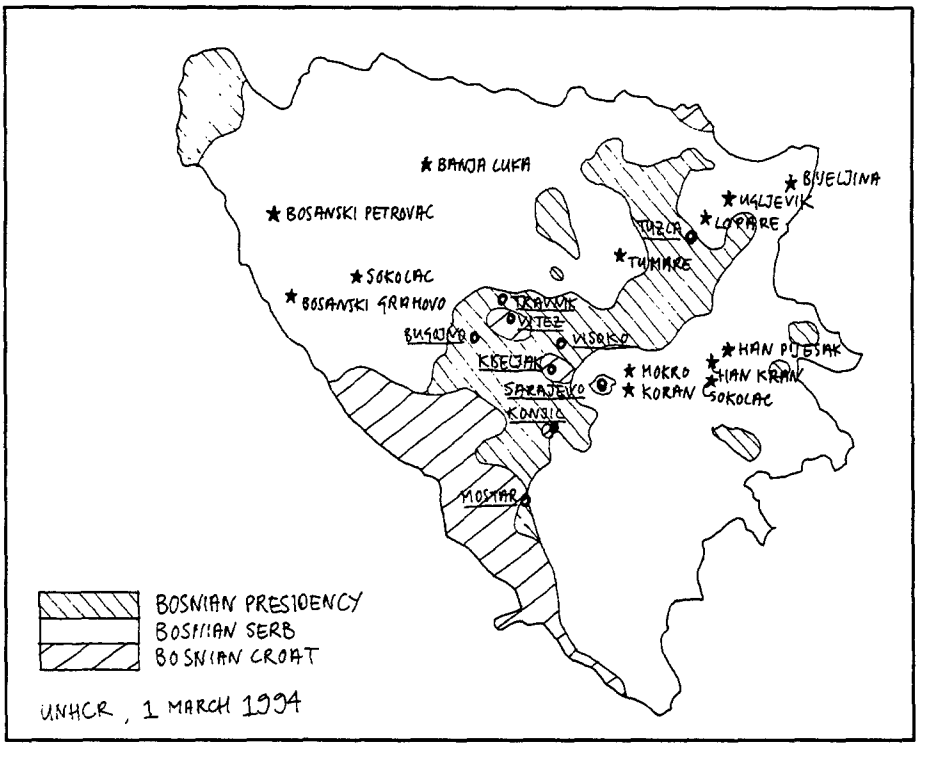
(f) 336th Motorized brigade (former 4th armoured brigade) to be transferred from Tuzla into a garrison in **Bijeljina** [northeast Bosnia, close to the Serbian border].

(...)

COMMANDER
Lieutenant-general
Milutin Kukanjac"

[Conclusions based on the assessment of the situation in the territory of Bosnia and Herzegovina with the zone of responsibility of the 2nd Military District, signed Lieutenant-General Milutin Kukanjac, March 1992, emphasis added as described in the beginning of this paragraph, Annex 120].

Lieutenant-General Milutin Kukanjac wrote this report in March 1992, approximately one month before the conflict in Bosnia and Herzegovina erupted. The relocation of troops and materiel as described above determined the outcome of the fighting. *All* cities, towns and villages mentioned above as the new destination of JNA troops and ordnance were later taken by the JNA and ethnically cleansed of their non-Serb populations.



77. The above quoted report clearly illustrates that the Belgrade authorities had no intention at all of withdrawing the JNA from Bosnia and Herzegovina. On the contrary, the JNA was moving large quantities of materiel, whether from JNA or

Territorial Defence warehouses, to *new* storehouses, purposely built to house the redeployed equipment and units. At the same time, the JNA was selling its property - the Jajce barracks and the military hospital - in Sarajevo areas with large Muslim populations. In Bosanski Petrovac, Bosansko Grahovo, Lopare, Han Pijesak, Koran and Sokolac, new facilities were built by the JNA, at a time when Lieutenant-General Milutin Kukanjac already predicted that "very soon, BiH will be recognised as a state". The Yugoslav authorities were certainly not planning a retreat, nor had they any intention of allowing the peaceful secession of Bosnia and Herzegovina, since "the Serb people do not want to stay to live in such a 'ghetto' state".

78. In paragraph 7 (a) of the cited report, General Kukanjac also referred to a "well known incident" that should have taken place in Sarajevo in the beginning of March 1992. Kukanjac probably meant the incident that took place at a Serb wedding ceremony, when one of the guests was shot dead by criminals. In reaction to his shooting, which the Respondent described as the outbreak of the conflict in Sarajevo [see *e.g.* Counter-Memorial, pp. 179-180, para. 2.13.2.10.], armed Serbs started erecting barricades in the city. Serb leaders in fact used the shooting incident during the wedding as a justification for these barricades [see Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, pp. 205-206, Annex 21]. Because of this, the situation in the city remained tense for several days. After strenuous negotiations between President Alija Izetbegović, SDS leader Radovan Karadžić and General Kukanjac, who agreed to set up joint patrols, the crisis was averted. The events of that weekend in early March were in fact a dress rehearsal for things to come [*ibidem*, p. 206, Annex 21]. As is also illustrated by Kukanjac's report, the conflict in Sarajevo did not start with the attack on the wedding. The fighting erupted one month later, on 4 April 1992, when Serb snipers started shooting at a large group of peace demonstrators [see below].

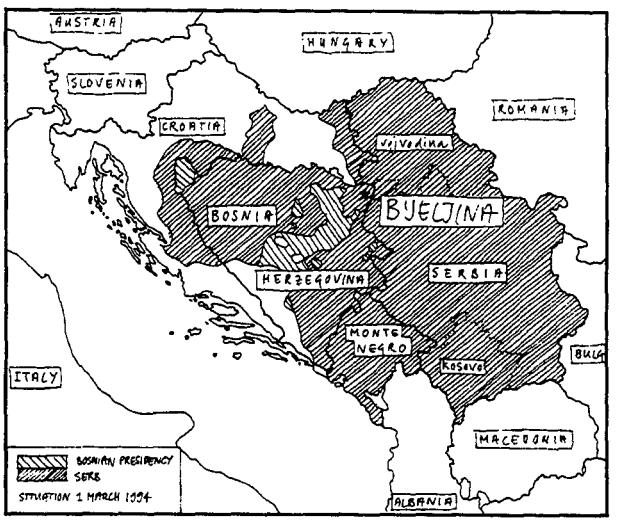
New JNA units from Yugoslavia proper

79. In the prelude to the conflict, Belgrade not only relocated troops within Bosnia and Herzegovina, it also moved in fresh troops from Serbia and Montenegro.

80. On 11 January 1992, for example, JNA Chief of Staff Blagoje Adzić personally directed a battalion with heavy artillery from Ohrid, in Macedonia, to Banja Luka in north Bosnia and Herzegovina. There it was attached to the 5th Corps, which later become part of the new Bosnian Serb Army [Federal Secretariat for National

Defense, letter to the Command of the 1st Military District, signed General Blagoje Adzić, 12 January 1992, Annex 126].

81. These fresh JNA units from across the border with Serbia and Montenegro were not redeployed in Bosnia and Herzegovina to avert an invasion of, for example, Croatian forces. They were directed to those areas within the future Greater Serbia, which the Belgrade authorities wished to cleanse from their non-Serb population.



82. This is best illustrated by the example of the 2nd armoured battalion of the 453rd motorised brigade. This army unit was based in the Kuzmin region, in the north of Serbia proper. In the beginning of April 1992, they were sent to Bijeljina, at the time the east Bosnian city was being ethnically cleansed by a combination of other JNA forces and Serbian paramilitaries. On 4 April 1992, the Chief of Staff of the 1st Military District, based in Belgrade and covering a large part of Serbia, sent the following urgent message to the Command of the 2nd Military District in Sarajevo. On 3 May 1992, the document was captured by Bosnian forces in Sarajevo on the abandoned premises of the command of the 2nd Military District:

"From: 1st Military District HQ
Ref. 1614-503
04.04.1992 URGENT

to be delivered immediately

to: 2nd Military District HQ

Based on the act of the General Staff of the Armed Forces ref. strictly confidential 629-1 of 04.04.1992, organize the reception of the 2nd armoured battalion/453rd motorized brigade in the Bijeljina Garrison and place it under the Command of the 17th Corps [which was responsible for the whole northeast Bosnia].

Battalion will start at 14,00 hours from the region of Kuzmin.

Upon its arrival at the Bijeljina Garrison inform the HQ of the 1st Military District about it.

Chief of Staff
Lieutenant-General
Nikola Mandarić

[seal which confirms the reception of the above telegram by the addressee:]
Received: day and month 04.04. hours 17,20
no. of telegram: 2620, group: 200,
Processed: day and month: 04.04. hours 17,30
Delivered: 04.04. (signature)"

[1st Military District, telegram to the 2nd Military District, signed Lieutenant-General Nikola Mandarić, 4 April 1992, Annex 127].

The transfer to Bijeljina of the mentioned JNA units was therefore ordered by the JNA General Staff in Belgrade.

83. The next day, on 5 April 1992, the Command of the 2nd Military District in Sarajevo informed the "operational centre" of the JNA headquarters in Belgrade that the units had arrived in the Bijeljina region. As the previous message, the following document was found at the JNA headquarters in Sarajevo:

"Command of the 2nd Military District
OPERATIONAL ON-DUTY TEAM
strictly confid. no. 10/36-1987
05.04.1992

To: General HQ of the SFRY Armed Forces - operational centre

Armored battalion from the 1st Military District has arrived in Bijeljina region and it is located in the expected region at village Janja [10 kilometres south of Bijeljina], *ready to carry out combat tasks*. Battalion is under the 17th Corps Command.

The Chief of the HQ
Lieutenant General
Dobrasin Prascevic"

> [Command of the 2nd Military District, letter to General HQ of the SFRY Armed Forces, signed Dobrasin Prascevic, 5 April 1992, emphasis added, Annex 128].

The mentioned battalion and brigade were redeployed in the village of Janja "to carry out combat tasks". At the time the armoured battalion and the motorised brigade arrived, ethnic cleansing in the region was in full swing. The role played by the JNA in April and May 1992 in the genocidal campaign in the Bijeljina region and the other areas under Serb control will be discussed below.

The eruption of the conflict

84. The conflict in Bosnia and Herzegovina erupted in the last days of March 1992 in Bosanski Brod, a city in the north of Bosnia, close to the Croatian border. The fighting which then spread over other parts of Bosnia and Herzegovina was also found by the Trial Chamber at the ICTFY in its judgment in the Tadić case:

> "One immediate consequence which occurred before the announced withdrawal of the JNA on 19 May 1992 was the Serb assumption of exclusive administrative power in Serb-dominated areas. *Moreover, between March and May 1992, there were several attacks and take-overs by the JNA of areas that constituted main entry points into Bosnia or were situated on major logistics or communications lines such as those in Bosanski Brod, Derventa [both cities in north Bosnia, close to the Croatian border], Bijeljina, Kupres [central Bosnia], Foča and [Z]vornik, Višegrad [all cities in east Bosnia], Bosanski Šamac [north Bosnia, close to the Croatian border], Vlasencia [east Bosnia], Brčko [north Bosnia, close to the border with Croatia] and Prijedor [northwest Bosnia].* The first attack was in Bosanski Brod on 27 March 1992. At the same time, there were clashes at Derventa. On 2 April 1992 there was an incident at Bijeljina and around this time also in Kupres. These were immediately prior to the recognition of Bosnia and Herzegovina's independence on 7 April 1992 by the European Community, with a retroactive date of 6 March 1992. In Bosanski Šamac, the 4th Detachment of the JNA entered the town, cut off telephones and fired shots in the town. There was some non-Serb resistance quickly squelched by the arrival of JNA tanks and armoured cars. On 22 April 1992 conflict began in Vlasenica with a police vehicle driving through the streets announcing through a loudspeaker that all armaments were to be surrendered. All vital functions of the town were taken over by JNA forces, including the town hall, bank, post, police and courthouse, and there were present very many uniformed men as well as some local Serbs with arms. On 29 April 1992 there was a bloodless take-over of the town of Prijedor, as noted elsewhere, and on 30 April 1992 two bridges were blown up by Serb forces in Brčko. On 19 May 1992 the withdrawal of JNA forces from Bosnia and Herzegovina was announced but the attacks were continued by the VRS [Army of the Republika Srpska].
>
> *In general, the military take-overs involved shelling, sniping and the rounding up of non-Serbs in the area. These tactics often resulted in civilian deaths and the flight of non-Serbs.* Remaining non-Serbs were then forced to meet in assembly areas in towns for expulsion from the area. Large numbers of non-Serbs were imprisoned, beaten and forced to sing Četnik songs and their valuables seized. This was accompanied by widespread destruction of personal and real property." [United Nations, ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Dusko*

Tadić, Case No. IT-94-1-T, 7 May 1997, p. 46, paras. 125-126, emphasis added].

When the conflict erupted the JNA thus started to "implement" the policy of ethnic cleansing. Their first task was the military take-over of those territories within the projected Greater Serbia.

85. The cardinal role of the JNA in the initial phase of the conflict was also recorded by the United Nations Commission of Experts in their Annex on the military structure, strategy and tactics of the various warring factions in the conflict:

> "Military operations in BiH and Croatia by the JNA, BSA [Bosnian Serb Army], and SKA [Srpska Krajina Army] have essentially been a function of the political-military goal of securing territories that link Serbia proper with Serb-inhabited areas in BiH (along the Drina and Sava rivers) and Serb-inhabited areas in Croatia. The Serb goal was to achieve a territorial and defensible link between areas constituting a 'Greater Serbia'. Thus, there has never been a unified or coherent battle line, but multiple theatres of operation between which forces shifted, depending on the status of each theatre. Strategic positions were related to each one of these theatres, but since these theatres were part of a political-geographical arc linking Serbia with Serb-inhabited areas in BiH and Croatia, the theatres of military confrontation were readily identifiable. As the conflict progressed, the Serb side sought to solidify and enlarge its territorial gains in the areas of the projected 'Greater Serbia', while BiH and Croatian forces sought to dislodge them. These theatres saw a constant ebb and flow of military activities.
>
> Because these areas were of mixed ethnic and religious population and Serbs were usually a minority, particularly in BiH, Serbs felt that they had to dislodge the other groups. In 1992, Bosnian Serb forces were insufficient in number and disorganized. However, they were tasked by their political leaders with massive population removal in a relatively short period of time without the open and direct participation of the JNA. *The JNA, however, militarily supported the Bosnian Serb forces in many ways, including bombardment and shelling. They were also directly involved in several operations. This was in execution of the policy of 'ethnic cleansing' which is described in Annex IV and more specifically in Annex V. The overriding political goal of depopulating these areas of non-Serbs determined the nature of the military activities. These areas were not military targets, but civilian areas with strategic importance derived from the fact that they linked Serbia with Serbs in BiH and Croatia.* Personnel, arms and supplies crossed the Drina River from Serbia to Serbs in BiH and through Bosnian Serb areas to certain parts of the Krajinas, which are surrounded by Croats. Military operations in these areas must therefor be seen in this light in order to be understood." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol.I), 28 Dec. 1994, Annex III, "The Military Structure, Strategy and Tactics of the Warring Factions", pp. 4-5, paras. 9-10, emphasis added].

86. Due to the earlier described "Serbianisation" of its forces, the JNA experienced a serious shortage of manpower when the fighting in Bosnia and Herzegovina was about to erupt. In consequence, the JNA to a great extent relied on "irregular forces" when executing the first phase of the Serb policy of ethnic cleansing, that is the

military take-over of the "Serb territories". During the first months of the hostilities these troops consisted of Bosnian Serb volunteers and Serb members of the local Territorial Defence forces. As described earlier in this Chapter, these Serb soldiers had been armed and trained by the Ministry of Interior in Belgrade and by the JNA [see Reply, Chapter 8, Section 2]. The Bosnian Serb irregulars were often supplemented with paramilitary units from Serbia and Montenegro, the most notorious being Arkan's Tigers and the paramilitaries under the command of Vojislav Šešelj. The activities of these paramilitary force will be discussed at length in a separate section of the Chapter [Reply, Chapter 8, Section 7]. The ICTFY, which also considered this phenomenon in the Tadić case, found that all "irregulars" or paramilitaries "operated in conjunction with the JNA and were used as infantry shock troops to make up for declining numbers in the regular army" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 40, para. 110]. The irregular Serb troops were thus deployed at the forefront, while being directed and supported by the regular JNA. If volunteers were deployed, the JNA would back up their military operations with heavy artillery and air strikes. Whenever sufficient "irregulars" were lacking, the JNA either deployed its own infantry troops or simply limited its operations to bombing and shelling of civilian targets. Sarajevo is the most poignant example of the latter category.

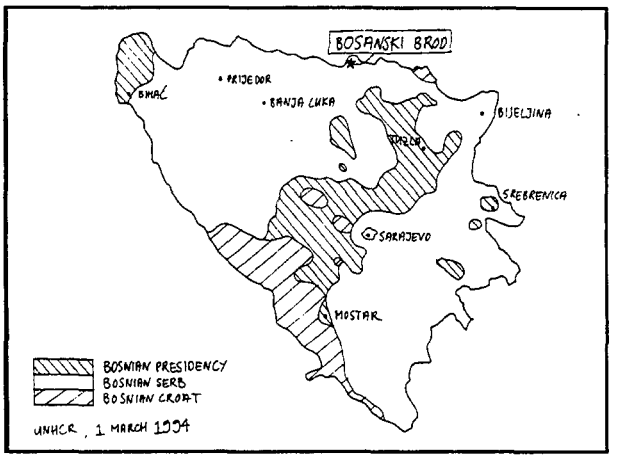
87. In the following, the Applicant will illustrate the cardinal role played by the JNA during the first phase of the armed conflict, when all JNA activities were aimed at consolidating their military hegemony. The Applicant will highlight only a few examples, cities and town which were also referred to by the ICTFY in the extract of the Tadić case cited above: Bosanski Brod, Bijeljina, Zvornik, Višegrad, Bosanski Šamac and Sarajevo.

Bosanski Brod

88. Bosanski Brod was the first town to be attack by the JNA on 27 March 1992. Bosanski Brod is a city strategically located on the river Sava, on the border with Croatia. The outbreak of the conflict was reported the next day by Belgrade based journalists Dessa Trevisan and Tim Judah in *The Times*. Their article marked the beginning of the genocidal campaign in Bosnia and Herzegovina:

> "Mortar and artillery shells rained down yesterday on the north Bosnian town of Bosanski Brod, on the border with Croatia, as Serbs announced the constitution of their own republic in Bosnia-Herzegovina. Yugoslavia jets circled above, but a spokesman at the town's Muslim-Croat crisis centre denied a Croatian police report that they had rocketed a factory.

In a ceremony in Sarajevo, local Serb leaders said they were 'laying the foundations of a fourth Serbian state in Yugoslavia [Republika Srpska; the others are: Serbia, Montenegro, Srpska Republika Krajina]'. The declaration came as Muslims and Croats on the Bosnian presidency sent a message to the United Nations appealing for military observers to help bring calm to the republic and accused Serbs of terrorism.
Yesterday Bosnia sent three leaders to check reports that civilians had been killed in the continuing fighting in Bosanski Brod. Three people were injured by an explosion in a cafe in Mostar and Serbs accused Croats and Muslims of killing ten civilians.
Armed clashes and shooting incidents threaten to destroy hopes that a Bosnian civil war could be avoided or that UN peace-keeping troops could be deployed in Croatia". [Dessa Trevisan and Tim Judah, "Serbs split Bosnian republic", *The Times*, 28 March 1992, Annex 129].



89. The fighting in Bosanski Brod carried on for several weeks without the JNA being able to crush all resistance, despite the extensive use of their far superior fire power. The Belgrade authorities did, for example, not hesitate to put their air forces into action. The following document was sent by Major General Milan Nedeljkovic to the JNA headquarters in Belgrade and the command of the 2nd Military District in Sarajevo, where it was capture on 3 May 1992:

"URGENT

Command of the 17th Corps
Stric. Conf. no. 11/2-89
Date: 26.04.1992

[in handwriting]
5346 'P'

Very urgent

Decision for carrying out the combat activities

> To: *Command of the General HQ of the SFRY Armed Forces*
> Command of the 2nd Military District
>
> 1. *I have decided to make preparations, regrouping, necessary subordination in the units on the territory of Bosanska Posavina (operation group -1, tactical group 17, 359 motorized brigade) and then in cooperation with Serbian units of the Territorial Defence and Police, and with support of the Air Forces, start with carrying out of the offensive, defensive and other different combat operations.* The goals: in offensive actions of the operational group -1, on the chosen directions, conquer the enemy forces, get to the river Sava [river marking the border with Croatia], south-west from Bosanski Brod as soon as possible, take over Bosanski Brod, pull down the bridge on the river Sava in Bosanski Brod, keep under control the bridges / crossings over the river Sava and communications in the Zone of the 1st Operation Group.
>
> (...)
>
> Commander
> Major General
> Milan Nedeljkovic"
> [Command of the 17th Corps, Decision for carrying out the combat activities, signed Major General Milan Nedeljkovic, 26 April 1992, emphasis added, Annex 130].

This "Decision for carrying out the combat activities" in the Bosanski Brod area was given one month after the beginning of the armed conflict in Bosnia and Herzegovina. It shows that Major General Milan Nedeljkovic had given the order to carry out "offensive" and "defensive" combat activities in cooperation with unspecified police forces and "irregular" units of the Bosnian Serb Territorial Defence. Major General Nedeljkovic reported directly to the General Staff in Belgrade, which in its turn illustrates that JNA commanders on the field in Bosnia and Herzegovina continued to be accountable to their superiors in Yugoslavia.

Bijeljina

90. Soon after the attack on Bosanski Brod, Bijeljina fell prey to Arkan's "Tigers", which carried out the attack of the city. Bijeljina is strategically located in the northeast of Bosnia, close to the border with Serbia. The fall of the city was, among others, reported by the Commission of Experts:

> "345. Arkan was reportedly in the town of Bijeljina for about one month preparing his battle plans before the April 1992 attack. The attack began when a grenade was thrown into a Muslim-owned cafe.
>
> 346. *In the first week of April 1992, approximately 1,000 soldiers from Arkan's units crossed the Drina River from Serbia and entered the town of Bijeljina.* The soldiers wore black uniforms and stocking caps and had unidentified small arms, at least one anti-aircraft gun, light armoured and regular transport vehicles. They were supported by an unknown, large number of local Serbs drawn from the area's Serbian population of approximately 45,000. Other reports indicate that in April

1992 Arkan bombarded Bijeljina with mortars supplied by the Yugoslav Army. Another report confirmed that the units which attacked Bijeljina in April 1992 belonged to Arkan and referred to his men as the best trained and equipped Serbian force.

347. Muslim defence units in Bijeljina fought back. The battles engulfed the town for three days and nights. Arkan captured the radio station and reportedly broadcast calls for Muslims to surrender their weapons.

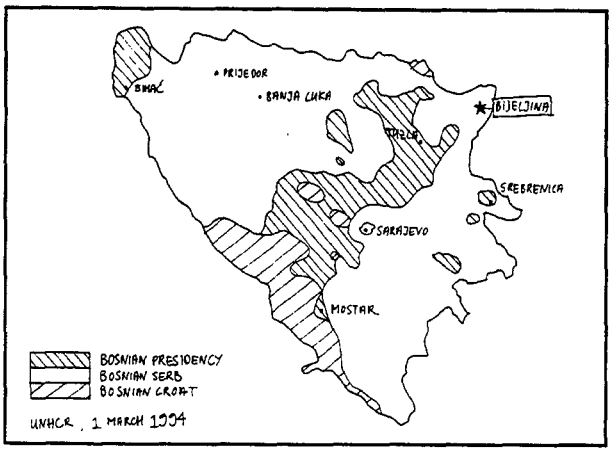
348. On 2 April 1992, Belgrade Radio Belgrade Network reported that most of Bijeljina had been 'liberated' that afternoon by members of the Serbian National Guard of Semberija and Majevica [regions surrounding Bijeljina], in cooperation with Serbian volunteers, Arkan's men, and the Serbian 'radicals'. A curfew had been imposed, and hold-outs were encouraged to surrender arms. Shooting could still be heard, according to the report, because 'the last Muslim strongholds [were] being mopped up'.

349. According to a Zagreb Radio Croatia Network report, on the night of 2 April 1992, a delegation of the BiH Presidency and Government managed to approach Bijeljina but was unable to enter the town. Presidency member Fikret Abdić, Deputy Prime Minister Miodrag Simović, and Defence Minister Jerko Doko met near Bijeljina with Arkan but returned afterward to Sarajevo. Reportedly, the SDS crisis committee for Bijeljina said that the guard of the 'Serbian Autonomous Region of Semberia' was controlling Bijeljina with the help of Arkan's units.

350. A number of reports stated that Arkan's troops harmed residents and property after capturing the town. According to one report, Arkan's men roamed Bijeljina after it fell, shooting young men suspected of carrying arms. *Yugoslav army troops at the local barracks did not intervene. They later issued a statement that they had received no orders from Belgrade to do so.* One report says that citizens of Bijeljina phoned Sarajevo radio to say that Arkan's people were terrorizing the town, breaking into apartments, searching for arms and robbing and harassing citizens. In another report, residents of Bijeljina said that in the first week of April 1992 Serbian paramilitary troops belonging to Arkan and Jović harassed the town's population.

351. It was reported that sporadic gunfire continued on 4 April 1992."
[United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol.I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 136, paras. 344-351, emphasis added].

The JNA troops based in Bijeljina "at the local barracks" did not intervene while Arkan's paramilitaries were roaming the city, because they "received no orders from Belgrade to do so". At the same time, however, the Belgrade authorities sent in fresh JNA units from Serbia proper. On 5 April 1992, the newly arrived 2nd armoured battalion joined the Bijeljina Garrison and were put under the Command of the 17th Corps, which controlled the northeastern part of Bosnia and Herzegovina. The arrival of these JNA units was described above in this Section.



91. On 7 April 1992, two days after the arrival of the mentioned units from Serbia, the 2nd Military District informed the JNA headquarters in Belgrade about the deployment of its units on the battlefields of Bosnia and Herzegovina. The following report, produced by Colonel Milutin Zekanović, was found at the abondoned JNA headquarters in Sarajevo on 3 May 1992. It painted the "combat activities" of the JNA in northeast Bosnia, first in the region of Bosanski Brod and then in the Bijeljina area:

> "From: Command of the 2nd Military District
> Strictly confidential 09/997-20
> 07.04.1992
>
> To: *War Command of 2nd MD*
> - *General Staff of the Armed Forces of the SFRY - Operational Centre*
>
> (...)
>
> 2. Combat operation zone Bosanski Brod
>
> 2.1 Enemy deployment of the 108th ZNG [Croatian Army]
> - in the region of Bos. Brod forces in the strength of two battalions of ZNG at the confrontation line school Bos. Brod-Grda-Mecelj channel, pe.e. 87, crook ČaDjiva, v. Kolibe Gornje (north of church) and G. Maja (p.e. 90)
> - in the region of v. Hrastovača p.e. 90 (north of channel), v. Ukvinari, v. Čardak (north for 1 km), v. Lug, force of about one battalion
> - in the region of v. Bijelo Polje, v. Bos. Dubočac force in the strength of about one battalion
> - artillery in the region of v. Potočani
>
> 2.2 Deployment of our forces
> - TO [Territorial Defence] detachment Bos. Brod. eastern part of Bos. Brod region of Greda
> - TO unit 'Lješče' in the region of v. Lješče

- 1/327 mtbr. [motorised brigade] with 1st company of TO in the region of v. Kolibe Gornje
- tactic. company/327 mtbr. in the region of v. Nareci
- 2nd armoured batt./336 mtbr in the region of v. Zborište, v. Bos. Lužani
- batt. TO Prnjavor and company TO 'Trstenica' in the region of v. Kalačka, Pavlovo Brdo,
- POOd-1 (1-1/17 anti-tank artillery regiment in region of v. Bjalaš
- bVBR/17 map [combined artillery regiment] in region of v. Polje (p.e. 199)
- b/had-337 mtbr. in region of v. Šokići
- 4.327 mtbr. in region of v. Glogovača
- command of 327th mtbr. in Derventa
- 2.497 eng. regiment in v. Bbetanja Mala, v. Polje
- command post of the 1st operative group/17th Corps in v. Podnolje (p.e. 179)

[Command of the 2nd Military District, telegram to General Staff of the Armed Forces of the SFRY, signed Colonel Zekanović Milutin, 7 April 1992, emphasis added, Annex 131].

The reporting officer here listed "our forces". These forces included Serb Territorial Defence (TO) units from Bosanski Brod, nearby Lijesce and Prnjavor, a city with a large Serb majority. These forces, which are often referred to as "paramilitaries", were mobilised and armed by the JNA. This report illustrates that they also fell under the authority of the JNA. Colonel Milutin Zekanović continued his report as follows:

3. Zone of combat activities in Bijeljina

3.1. Enemy Forces
- *there are some 400 members of the SDA [Party of Democratic Action] (most of them now disarmed)*
- *there are some 200 members of the SDA in the village of Janja*

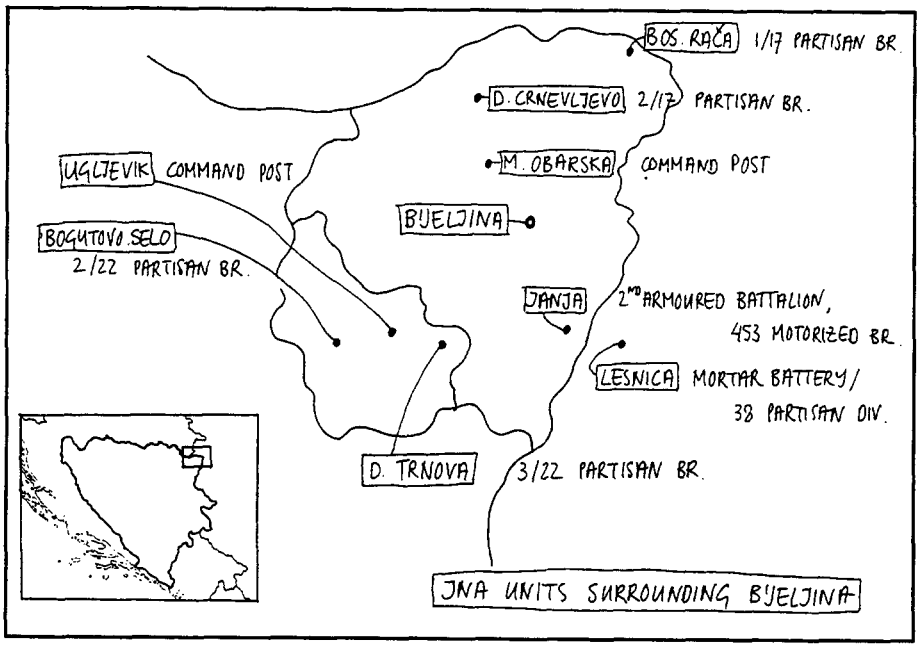
3.2. Our Forces
- *Command of the 38th partisan (infantry) division, 17th combined artillery regiment, multiple-rocket launcher battery/17 combined artillery regiment, howitzer battery/17th combined artillery regiment deployed in Bijeljina*
- *2nd armoured battalion/453 motorized brigade deployed in the village of Janja [south of Bijeljina]*
- *1/17 partisan brigade deployed in region of Bos. Rača, Galistok, v. Brodare*
- *2/17 partisan brigade deployed in v. G. Sepak (Zvornik)*
- *3/17 partisan brigade deployed in the region of Trpovačka Grda, Lukavac, v. D. Crnevljevo*
- *Command Post in the village M. Obarska*
- *mortar battery/38 partisan division deployed in village of Lješnica*
- *22nd partisan brigade deployed:*
  1/22 part. br. region of village Čelopek
  2/22 part. br. in the village of Bogatovo Selo
  3/22 part. br. in the village of D. Trnova, command post in the village of Ugljevik

(...)

Commanding officer on duty
of the leading team
Colonel
Zekanović Milutin
[signature]

[seal]
Received: 07.04.92 at 16,00 hours
no. of telegram 14321, no. of group 1000
processed: 07.04.92 at 16,30
delivered: 07.04.92"
[*ibid.*, emphasis added].

All the JNA units mentioned in the report had taken up positions in the vicinity of Bijeljina. The city was in fact completely encircled by the JNA, all the villages listed in the document are located within a radius of approximately 20 to 25 kilometres from the city centre.



92. The quoted document, which Colonel Zekanović sent to both the *War* Command of the 2nd Military District and the JNA headquarters in Belgrade, clearly illustrates that the JNA was not the neutral force which it publicly still pretended to be. On the contrary, the JNA obviously considered itself as being in state of war. The JNA units in Bijeljina were in open and armed conflict with an "enemy", the "SDA". This "enemy" was not only small in number, certainly in comparison with the enormous

concentration of JNA troops, but also completely "disarmed". By using terms like "war" and "enemy" the JNA was creating the false impression that a serious armed conflict was taking place in Bijeljina, involving two opposing parties of more or less the same strength. This was of course not the case. The inhabitants of Bijeljina were not prepared for any conflict, nor were they militarily organised in any way. The resistance offered by the population of Bijeljina was, in fact, merely symbolic.

93. The take-over of Bijeljina by Serbian paramilitaries and the JNA was also related by Laura Silber and Allan Little in their much appraised book on the conflict in Yugoslavia, *The Death of Yugoslavia*. In their book, they painted President Alija Izetbegović's incredulous reaction when the news of the take-over reached Sarajevo:

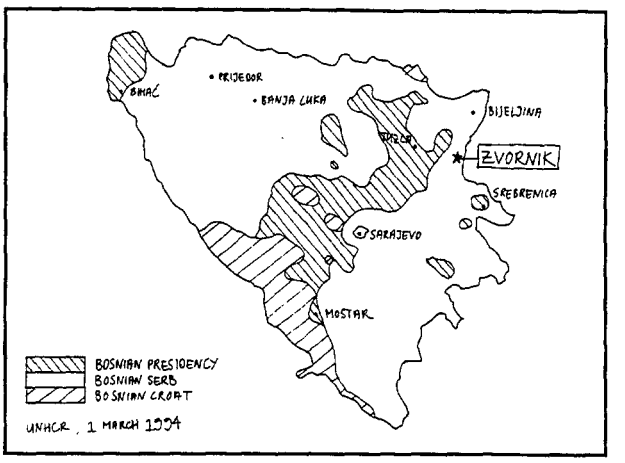
> "Pictures reached Sarajevo and, for the first time, President Alija Izetbegović grasped the scale and nature of the crisis that was closing in on his country:
>
> > 'It was unbelievable almost. The civilians being killed, pictures showed dead bodies of the women in the streets. I thought it was a photo-montage, I couldn't believe my eyes, I couldn't believe it was possible.'
>
> Izetbegović was under growing pressure to act decisively. As though completely unaware of the role that the JNA played for almost a year in Croatia - and was about to start playing in his own republic - Izetbegović turned to the generals for help. It was, as he later admitted, like putting the fox in charge of the chicken coop. With Izetbegović's naive blessing, *the JNA rolled in on April 3, and, by three o'clock in the afternoon, occupied the town. The campaign of terror continued, with JNA complicity. It would result in the flight of almost all Bijeljina's non-Serb population.* Yet again, under the guise of separating the 'warring ethnic parties,' the JNA had succeeded in occupying a chunk of territory which, under its protection, could now be incorporated in a separated Serb state." [Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, pp. 222-223, emphasis added, Annex 21].

After the Serbian paramilitaries had captured Bijeljina, the JNA consolidated the occupation of the city. When the JNA marched in on 3 April 1992, the fighting had already stopped and the "campaign of terror continued".

94. By the first week of May 1992, half of the non-Serb population of Bijeljina had been killed, imprisoned or forced to flee the city [see United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. V), 28 Dec. 1994, Annex X, "Mass Graves", p. 9, paras. 25-31].

Zvornik

95. Zvornik was the next eastern Bosnian city to be attacked by the JNA, in the beginning of April 1992. The fate of this city, on the Serbian border, has been discussed separately in this Reply [Reply, Chapter 5, Section 6]. The Applicant will therefore fully concentrate on the role played by the JNA during the take-over of Zvornik and nearby Kulagrad, the medieval fortress on a hill overlooking the city.



96. The attack on Zvornik by a combination of JNA and Serbian paramilitaries was also described by Laura Silber and Allan Little. The fighting erupted on 8 April 1992, when two thousand armed Serb soldiers and paramilitaries amassed outside the city:

> "*The Serb paramilitaries and JNA units massing outside Zvornik did not need a pretext. On April 8, they began shelling from the other side of the river - from inside Serbia proper.* Thousands began to flee - two thousand alone heading across the bridge to Mali Zvornik. The next day, Arkan, commander of the feared paramilitary unit, known as the Tigers, issued an ultimatum to the Muslims of Zvornik - who made up sixty percent of the town's population - to surrender. When they failed to respond to the surrender call, Arkan moved in. Zvornik fell on April 10.
> José Maria Mendiluce, the UNHCR's most senior official in former Yugoslavia, was visiting Milošević in Belgrade.
>
> > 'Milošević told me, as he did throughout the conflict, that he didn't have any control over the Bosnian Serbs, but he would try to use his moral authority (...). His official position was that if Bosnia was independent, then the Federal Army would move out. Obviously what he didn't tell me (...) was that a great part of the command of the Federal Army was going to stay in Bosnia as a Bosnian army. At that moment this wasn't clear as it was later in retrospect.'
>
> Mendiluce left Belgrade with a promise that Milošević would do everything in his power (which, of course, was limited to whatever moral influence he could exert) to support the UNHCR's mission in Bosnia. To return to Sarajevo, Mendiluce had to pass through Zvornik. He chose the wrong day.
>
> > 'When I arrived at the bridge [over the Drina which separates Serbia from Bosnia] *I could hear explosions of artillery and mortar fire. There was great agitation on the Serbian side.*

> *Almost a kilometre from the bridge there were militiamen and JNA soldiers, all along the river. The whole area was militarized.* I insisted on being allowed to cross the bridge. They let me pass at my own risk. I went over to the Bosnia side. There was a big artillery bombardment coming from the Serbian side of the Drina. I even saw smoke coming from the cannons on the Serbian side.'
>
> *The Serb and JNA forces who held that part of town were furious to find an outsider bearing witness to their storming of the town.*
>
> 'I was detained for two hours. I realized I was at serious risk. I could see trucks full of dead bodies. I could see militiamen taking more corpses of children, women and old people from their houses and putting them on trucks. I saw at least four or five trucks full of corpses. When I arrived the cleansing had been done. There were no people, no one on the streets. It was all finished. They were looting, cleaning up the city after the massacre. I was convinced they were going to kill me.'
>
> They did not kill him. They let him go. When he crossed the front line he did so at 140 kilometres an hour into Bosnian-held territory. There he found the victims of the cleansing. Five thousand people sheltering in a narrow valley.
>
> 'When I arrived in the car I was surrounded by 1000 people. They were all over me, begging 'Save us! Save us!' with such despair that I stayed there for an hour trying to calm them down. There were lots of dead people, wounded children on the floor looking terrified - absolutely terrified - and we could hear the sound of mortar fire approaching.'
>
> *Mendiluce's impression that both Serbian paramilitaries and JNA units were taking part in the capture of Zvornik is corroborated by the account of the extreme nationalist paramilitary leader Vojislav Šešelj, who went to Zvornik shortly after what he called its 'liberation': 'The Zvornik operation was planned in Belgrade,' he said.*" [Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, pp. 222-223, emphasis added, Annex 21].

The JNA forces thus participated in the attack on Zvornik, moving into the town alongside the units of Serbian paramilitaries, such as Arkan's Tigers and Šešelj's "Šešeljevci". These units fell under the supreme military command of the JNA [Hannes Tretter e.a., *'Ethnic cleansing Operations' in the northeast-Bosnian City of Zvornik from April through June 1992*, Ludwig Boltzmann Institute of Human Rights, Vienna 1994, p. 10, para. 4.2.1., Annex 48].

97. The complete operation was, according to Šešelj "planned in Belgrade". The JNA units participating in the attack were based in Tuzla, west of Zvornik, and Bijeljina. Some of these units were stationed in the vicinity of Zvornik prior to the actual attack [*ibidem*, p. 7, para. 4.1.1.]. All these units belonged to the 17th Corps, which in its turn fell under the command of the 2nd Military District in Sarajevo. In addition to these "Bosnian" JNA forces, units from Serbia proper participated in the operation as well. These units originated from Novi Sad, Sabac, Sremska Mitrovica,

Valjevo and Nis. All these units had their base in what is now the Federal Republic of Yugoslavia [*ibidem*, pp. 8-9, para, 4.1.1.].

98. The military attack on Zvornik lasted from 8 April through 11 April 1992. Thereafter, the military operations of the JNA and the Serb paramilitaries focused on the medieval fortress of Kulagrad, which is situated to the north of Zvornik. The attack on Kulagrad was also described by the Ludwig Boltzmann Institute of Human Rights in their report on the ethnic cleansing of Zvornik:

> "On April 9, an artillery assault on Kulagrad started since the attacking units were expecting major Muslim resistance forces. Already before the attack, the Serbian media reported that 'several thousand Muslim extremists' were hiding in Kulagrad. In fact, there were probably no more that 30 to 100 armed Muslims under the command of Kapetan Almir, a former JNA officer, who had spontaneously started to organize a resistance movement with light equipment (small arms).
>
> From April 11 onward, there were almost daily attempts by small combat groups of various paramilitary units to capture the fortress. These attempts failed, however, despite the fact that Kulagrad was constantly under fire from mortars, anti-aircraft guns and tanks." [Hannes Tretter e.a., *'Ethnic cleansing Operations' in the northeast-Bosnian City of Zvornik from April through June 1992*, Ludwig Boltzmann Institute of Human Rights, Vienna 1994, p. 10, para. 4.2.1., 48].

The assault on Kulagrad was not only supported by heavy artillery. Air strikes were also used to conquer the fortress. The following document was also found in the abandoned JNA headquarters in Sarajevo, soon after the outbreak of the conflict. It is a formal request for the deployment of the air forces, sent by the commander of the JNA forces in Zvornik to the Command of the 2nd Military District in Sarajevo:

> "From: Command Post of the 17th Corps
> strictly confidential 11/43-477
> 10.04.1992
>
> forwarded to:
> [handwriting]
> Colonel Krstić (Air Force and Air Defence)
> strictly confidential: 10/36-2284
> 17.04.1992
>
> Support - action
> request for action of the light combat air force
>
> To: 2nd Military District Command
>
> We demand that on 11.04.1992 at 9,00 the light combat air force attacks the target Kula in Zvornik. The action of light combat air force against this target is requested in order to neutralize forces who are attacking our units defending the bridges over the Drina river.
>
> Commander

Brigadier-General
Savo Janković

[stamp]
received: 11.04.92 at 02,00 hours
no. of telegram 4584, no. of group 200
processed 11.04.92, 2,10 hours
delivered: 11.04.92 at 04,00 hours
[signature]"
[Command Post of the 17th Corps, Request for action of the light combat air force to the 2nd Military District, signed Brigadier-General Savo Janković, 10 April 1992, Annex 132].

The attack on the fortress in Kula was, according to the Brigadier-General, requested in order to "neutralize forces who are attacking our units defending the bridges over the Drina river". The JNA was thus afraid, unjustifiably so, that one of its most important connections between the Serb territories in Bosnia and Herzegovina and Serbia proper would be destroyed. This would have severely hampered the establishment of the projected Greater Serbia. While the JNA was defending the bridges over the Drina, it simultaneously tried to destroy the bridges over the Sava, the river marking the border with Croatia. This is clearly illustrated by the earlier quoted document on the fighting in Bosanski Brod. In this document Major General Milan Nedeljkovic announced his attempt to "pull down the bridge on the river Sava in Bosanski Brod".

99. In spite of the support given by the air forces, the JNA only succeeded in taking the fortress on 26 April 1992. The fall of Kulagrad is again described by the Ludwig Boltzmann Institute of Human Rights:

"In the morning of April 26, the villages around Kulagrad were the first to fall in the wake of a concerted attack. At the same time, Kulagrad and Divic were attacked by heavy artillery fire from the Serbian bank of the Drina river. This enabled the attackers, who this time had coordinated their actions, to capture Kulagrad. For one, because the units were able to approach the fortress from all directions, including the power station in the south. For another, because the attack was conducted more effectively. Some respondents stated that members of the 63rd Nis parachute brigade [Serbia] were involved in the decisive attack and the seizure of Kulagrad." [Hannes Tretter e.a., *'Ethnic cleansing Operations' in the northeast-Bosnian City of Zvornik from April through June 1992*, Ludwig Boltzmann Institute of Human Rights, Vienna 1994, p. 23, para. 5.3., Annex 48].

The capture of the Kula fortress was also reported to the headquarters of the JNA in Belgrade, in a document which was again found in Sarajevo at the 2nd Military District headquarters:

"Command of the 2nd Military District
Operational on-duty team
Stric. Con. No. 10/36-2501
Date: 26.04.1992

To: General HQ of the SFRY Armed Forces
Command of the 2nd Military District, to the Commander Personally
Forward Command Post Lukavica, to Chief of the HQ

COMBAT AND OPERATIONAL REPORT

1. Enemy

(...)

In Zvornik region, in the early morning, the units of the 2nd Tactical Group/17th Corps clashed with paramilitary formations. Our forces fought back, and they took over the region of Kulagrad and presently they are fighting for village Liplje which is besieged. In the afternoon the fighting ceased.

(...)

Officers - leader of the on-duty team:
Colonel
Kazul Stevan"
[Command of the 2nd Military District, Combat and operational report to General Headquarters of the JNA, signed Colonel Kazul Stevan, 26 April 1992, Annex 133].

When "the fighting ceased", ethnic cleansing really began. On 9 and 10 April 1992 alone, approximately 2,500 men were killed by the combined Serb forces [see United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. V), 28 Dec. 1994, Annex X, "Mass Graves", pp. 57-58, para. 387].

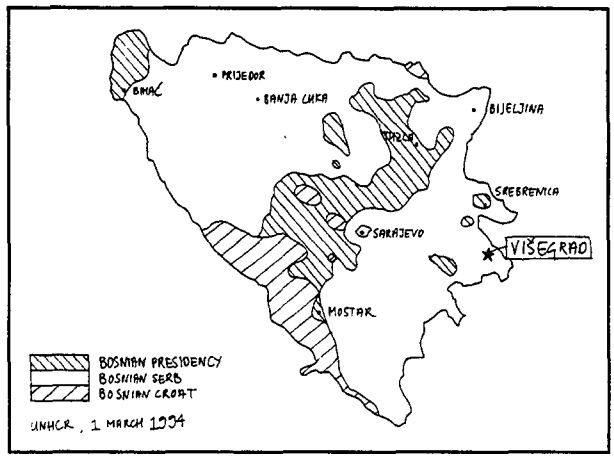
Višegrad

100. The east-Bosnian town of Višegrad is, like Bijeljina and Zvornik, located on the river Drina, close to the border with Serbia. It was attacked by JNA forces from Serbia proper on 13 April 1992, when they crossed the border shortly before the town was actually occupied. One year after the attack, the assault on Višegrad was reported by the United States Department of State:

"A middle-aged Muslim couple from the village of Rodic Brdo, 1 kilometre from Višegrad, witnessed the movement of the Uzicki corps -troops from Užice [Serbia]- into the Višegrad vicinity on April 13, 1992.

This corps consisted of JNA soldiers, reservists, Užice territorial defense forces, and White Eagles. The JNA soldiers wore their regular JNA uniforms. They brought a significant amount of heavy equipment with JNA markings (tanks, heavy trucks, and mortars) into town. Planes and helicopters with JNA markings frequently flew overhead.
The White Eagles overtly identified themselves as such and wore outfits that combined elements of military and civilian garb, including headbands. Some wore hats with the kokade emblem, a royalist insignia.
The two witnesses noted a significant difference between the way White Eagles and the JNA treated Muslims civilians, the latter appearing far more attentive to the need not to harm the civilians. They also discerned tensions between the White Eagles and the JNA.
Upon learning that the Uzicki corps was 2 kilometres away, most of the town's Muslims fled to the woods. As they were fleeing, Uzicki corps soldiers fired upon them. The corps broadcast calls over the radio for Muslim residents to return to Višegrad, assuring them of a safe return.
The witnesses returned to town on April 20 and found it filled with rubble and burned out homes. By this date, the JNA had blocked all roads out of Višegrad (Užice [Serbia], Sarajevo, Foča and Rudo), White Eagles stood behind the JNA troops, and the Uzicki corps had set up roadblocks all around the area.
At each roadblock, a soldier carried a list of Muslim names. Everyone was required to show identification; those Muslims whose names appeared on the list were taken away and not heard from again. They included factory directors, political and community leaders, and other respected citizens.
Between May 18 and 25, the Uzicki corps left Višegrad, taking its heavy equipment with it, and pulled back to a location between Višegrad and the Serbian border. The town fell under the control of the White Eagles on May 25." [United States Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 4, Number 16, 19 Apr. 1993, pp. 268-269, Annex 19].

The JNA occupied Višegrad with the help of the paramilitary "White Eagles" [see Reply, Chapter 8, Section 7]. All Serb forces involved in the military operations were from Serbia proper, including the Territorial Defense forces which were also based in Užice. The Užice Corps fell under the command of the 1st Military District in Belgrade. When the town was taken, the inhabitants offered no resistance. They fled to the woods when they heard the JNA was approaching the city. The Užice Corps left Višegrad well after the authorities in Belgrade announced that all their troops had left the territory of Bosnia and Herzegovina.



101. In its Counter-Memorial, the Federal Republic of Yugoslavia also dedicated a section of no less than 26 pages to the events in Višegrad. The Respondent fully concentrated its efforts on the period preceding the eventual take-over of the city. The aim of this historical "analysis" is to "show how the Muslim side prepared the war by political and military means, long before the beginning of the armed conflicts in Bosnia and Herzegovina" [Counter-Memorial, p. 175, para. 2.13.1.1. and pp. 182-207, paras. 2.13.3.1.-2.13.3.83.]. The Applicant denies that the events as reconstructed in the Counter-Memorial have taken place. The 26 pages of the Counter-Memorial do in fact prove nothing at all, certainly not that the "radical Muslims" of Višegrad were planning "the creation of a Muslim state" [Counter-Memorial, p. 182, para. 2.13.3.1.]. If the Respondent's "analysis" proves anything at all, it is the atmosphere of paranoia which was created by the Serbs to serve as a justification for their armed intervention in the second week of April 1992. This is, however, not the most striking aspect of this Section of the Counter-Memorial. By far the most remarkable is the fact that the Respondent abruptly ended its detailed historical "analysis" the moment its own military forces poured into the city. Not a single word was mentioned about the terrible events that followed the take-over of Višegrad by the JNA on 13 April 1992.

102. The Respondent intentionally created the false impression that the Muslims of Višegrad indeed succeeded in creating their "Muslim state".

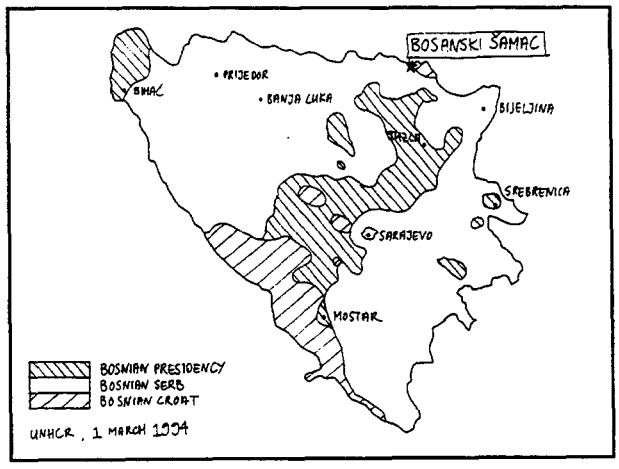
103. A "Muslim state" was in fact never created, nor was there ever any plan to try and achieve that aim. After the fall of the city, "most of the 6,600 Muslim inhabitants of Višegrad were taken by the Serbian Territorial Defence to a detention facility in Užice" [United Nations, *Final Report of the United Nations Commission of Experts*,

S/1994/674 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 419, para. 3458]. An unknown number of women was captured for the purpose of rape and taken to the Zlatibor region in southern Serbia, between the cities of Užice and Prijepolje [*ibidem*, p. 419, para. 3463].

Bosanski Šamac

104. The town of Bosanski Šamac lies in the northern region of Bosnia and Herzegovina, close to the border with Croatia, in the Serb corridor linking Serbia proper with the Republika Srpska and the Serb-controlled areas in Croatia. Like the cities mentioned above, it was attacked by the JNA in close co-operation with paramilitary forces. The capture of Bosanski Šamac on 17 April 1992 was studied by Human Rights Watch/Helsinki, the largest American based non-governmental organisation for human rights. In April 1994, Human Rights Watch/Helsinki published a report wholly devoted to the events during and following the fall of Bosanski Šamac. The events in the town followed the same pattern seen in other cities in Bosnia and Herzegovina:

> "Many of the abuses attributed to Serbian forces follow a recognizable pattern, used during the war in Croatia and in Bosnia-Hercegovina, that has come to be known as 'ethnic cleansing'. The primary aim of Serbian forces in Bosanski Šamac was to gain control of the region by forcibly displacing or killing non-Serbs in the area. During this campaign of 'ethnic cleansing', Serb forces were responsible for violations of human rights and humanitarian law including attacks against civilian targets, disproportionate use of force, pillage and the destruction of civilian homes and cultural objects, summary executions, and abuse in detention. The forced displacement of non-Serbs in Bosanski Šamac was similar, if not identical, to other 'cleansing' campaigns that occurred in many other Serbian-controlled areas of Bosnia and Hercegovina." ["War Crimes in Bosnia-Hercegovina: Bosanski Šamac", *Human Rights Watch/Helsinki*, Vol. 6, No. 5, Apr. 1994, pp. 4-5, Annex 28].



105. On the same day Bosanski Šamac was taken by the JNA, the Command of the 2nd Military District reported to the headquarters in Belgrade. The following document was found by government forces in Sarajevo on 3 May 1992. It shows that by 17 April 1992, the objectives of the JNA and the Serbs in Bosnia and Herzegovina fully coincided and that the non-Serbs of Bosnia and Herzegovina had been marked as their common enemy:

> "From:
> Command of the 2nd Military District
> Operational Centre
> strictly confidential 10/36-2298
> 17.04.1992
>
> To: Operational Centre of the General Staff of the Armed Forces of the SFRY
>
> Very urgent!
>
> Extraordinary Report
>
> *The 17th Corps HQ reported that it took control over all vital objects in Bosanski Šamac in the night of 16/17.04.1992.*
>
> Intervention came as a result of numerous conflicts and excesses on ethnic grounds, preceded by the attempt of the Croatian Army to cross the bridge on the Sava river. A part of these troops together with paramilitary troops from the Bosanski Šamac area made an attempt to attack the forces of the 17th Corps along the line Prud - Bosanski Šamac. This attack was repelled and losses inflicted to the enemy. *In the operations of taking control over the vital objects in Bosanski Šamac, the 17th Tactic Group troops together with the troops of the Serb TO [Territorial Defence] and the Serb militia took part.* The situation in the town is now relatively calm. Individuals who were opening the fire at our troops and citizens were isolated. There have been some cases of moving out of the population, while a substantial number of the municipal leadership fled to Croatia.
>
> The establishment of the civilian authorities is under way. There are some indications that the enemy might strike again. Necessary measures to unable any further attacks and to disarm the remaining enemy's troops are undertaken.
>
> Head of the team on duty
> Colonel
> Šego Nikola"

[2nd Military District, Extraordinary Report to the Operational Centre of the General Staff, signed Colonel Nikola Šego, 17 April 1992, emphasis added, Annex 134].

The occupation was carried out in close cooperation with local Territorial Defence forces and Serbian paramilitaries.

106. As in Višegrad, the military manoeuvres of the JNA in Bosanski Šamac were presented as purely defensive. This time it was not Muslim forces allegedly threatening to cross the river Drina into Serbia, but the Croatian Army, with the help of local paramilitaries allegedly provoking the JNA. The above quoted report of Human Rights Watch/Helsinki, however, clearly shows that this "provocation" of the JNA was just an excuse fabricated to give the Serbs a reason to take-over the town. The JNA forces entering Bosanski Šamac in fact met no resistance at all:

> "The initial attack on Bosanski Šamac involved light and heavy artillery, which were used indiscriminately and disproportionately in order to terrorize the local population. According to witnesses interviewed by Human Rights Watch/Helsinki, the Serbian offensive was not met with any resistance and the area appears to have been attacked solely for the purpose of displacing the non-Serbian population.
> I.B., a fifty-two-year-old Muslim clerk from the electro-industrial plant in Bosanski Šamac, recalled:
>
> > *'The attack on Bosanski Šamac started on the 17th of April 1992. The Serbs together with the JNA 'liberated' the town from Muslims and Croats. They shelled Šamac and entered it with tanks and military transports, although nobody tried to fight against them. Their attack started in the morning and the town was occupied by the evening... Almost immediately they started to round [up] Muslims and Croats.*
>
> N., a fifteen-year-old Muslim girl also from Bosanski Šamac, gave a similar account:
>
> > When the Serbs came, they were shooting, but no one was fighting [them]... They were shooting as if someone was attacking... [Later] the Serbs attacked Slavonski Šamac [on the Croatian side of the river Sava] from here...
>
> *Many witnesses and refugees from Bosanski Šamac confirmed that 'ethnic cleansing' practices in this area were carried out not only by local armed forces and the self-proclaimed 'Army of the Serbian Republic', but also by the Yugoslav People's Army and paramilitary troops from Serbia proper.* More specifically, witnesses claim that Serbian paramilitaries forces belonging to Željko Ražnjatovic (alias 'Arkan') and Vojislav Šešelj's forces - also known as the Tigers and the Četniks, respectively - participated in the hostilities." ["War Crimes in Bosnia-Hercegovina: Bosanski Šamac", *Human Rights Watch/Helsinki*, Vol. 6, No. 5, Apr. 1994, pp. 5-7, emphasis added, Annex 28].

The purpose of the Serb attack was thus to terrorise the non-Serb population into fleeing. There was no organised resistance and the "liberation" of Bosanski Šamac was not a matter of days but just hours.

107. Immediately after the town was taken, the ethnic cleansing began. In 1991, almost 17,000 Croats and Muslims - of a total population of about 33,000 - lived in the municipality of Bosanski Šamac. By May 1995, fewer than 300 of them remained [ICTFY, Indictment, *The Prosecutor v. Miljković & others*, Case No. IT-95-9-I, 21 July 1995, p. 1, para. 1].

108. The Prosecutor at the ICTFY has indicted six Serbs for their part in the ethnic cleansing of Bosanski Šamac in the first months of the war [ICTFY, Indictments, *The Prosecutor v. Miljkovića & others*, Case No. IT-95-9-I, 21 July 1995]. On 14 February 1998, two of these, Milan Simić and Miroslav Tadić, reported to the ICTFY. They are, however, not the main suspects in the Bosanski Šamac case. The main indictee, Slobodan Miljković, a Serbian paramilitary also known as "Lugar", has not been arrested yet. At the date of submission of this Reply, Miljković was still living in Kragujevac, his place of birth in the Federal Republic of Yugoslavia ["Twee Serviërs geven zich aan", *De Volkskrant*, 16 February 1998, Annex 135].

Sarajevo

109. The fighting in Sarajevo broke out on 5 April 1992, the eve of a meeting of the European Community Ministers, who were expected to recognise Bosnia and Herzegovina as an independent state. At 2.00 p.m. a deadline set by the Serbs for cancellation of a full mobilisation of the forces under government control expired. As the deadline expired, thousands of people took to the streets in spontaneous peace marches, and Sarajevo television began running appeals for ethnic amity. One group of marchers was shot at by Serb snipers. At that point, full-scale fighting broke out [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. II), 28 Dec. 1994, Annex VI, Part I, "Study of the Battle and Siege of Sarajevo", pp. 152-154, paras. 54-67; Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, pp. 225-230, Annex 21]. In the evening the JNA captured Sarajevo airport. Low flying war jets of the JNA flew over Sarajevo and the city experienced the first shelling of the armed conflict.

110. The JNA, as became more and more common, claimed that it was a neutral force and that it only tried to prevent further bloodshed. In their Annex on the siege of Sarajevo, the Commission of Experts reported on the first days of the siege and the ambiguous role played by the JNA:

> "The JNA said its troops intervened to halt several clashes in Sarajevo and that it used tanks to secure the city airport after intense fighting around the facility. *Muslim residents, however, stated that the JNA joined Serbian irregulars on two outlying hillsides in launching rocket, mortar and artillery strikes, that damaged homes and shops in the historic Muslim-dominated Old Town and nearby areas.* Muslims were reported to have returned small-arms fire." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. II), 28 Dec. 1994, Annex VI, Part I, "Study of the Battle and Siege of Sarajevo", p. 154, para. 64, emphasis added].

The first shell to fall on Sarajevo on 5 April 1992 was thus fired by the JNA, the only military force which had the necessary ordnance at its disposal at that time. As will be discussed in the next Section to this Chapter, the Bosnian Serb Army was only established on 19 May 1992, when the JNA formally "withdrew" from Bosnian territory.

111. In May 1992, forces loyal to the Bosnian government aslo found the following military document. It is an operational report sent by a JNA officer in the Sarajevo area to the 2nd Military District. The document is dated 6 April 1992, that is one day after the shelling of the city began:

> "From:
> Reserve Command Post
> of the 2nd Military District
> strictly confidential 09/1580-1
> 06.04.1992
>
> TO BE DELIVERED IMMEDIATELY
>
> To: 2nd Military District HQ - Operational Centre
>
> Regular Operational Report no. 9
>
> Overall activities of this part of the command post focused on the follow-up of the situation and evolvement of military activities in and around Sarajevo. In addition, the deployment was built up and the establishment of communications organised.
>
> On two occasions, the whole team has followed-up and directed the mobilization of all the units that are mobilized in the area.
>
> *We have been in constant contact and we coordinated all the activities with the Crisis HQ of Pale.*
>
> There have been no substantial difficulties so far.
>
> Head of the team
> Colonel
> Branko Filipović"
> [Reserve Command Post, Operational Report to the 2nd Military District, signed Bganko Filipović, 6 April 1992, emphasis added, Annex 136].

The JNA in Sarajevo was coordinating its "activities" in the area with the Crisis Staff in Pale, the Serbian Democratic Party (SDS) stronghold and future capital of the Republika Srpska. Also noteworthy is the fact that this message reports on "deployment", that is "built up", of Serb forces. Certainly, this does not suggest any defensive action. It all points in the direction of an encirclement or take-over of the city of Sarajevo.

112. The JNA did not succeed in capturing the whole of Sarajevo. Its military gains in the Sarajevo area were limited to several suburbs. In these districts, which remained under Serb control throughout the armed conflict, the JNA terrorised many non-Serbs into fleeing. The events following the take-over of the areas of Grbavica, Ilidža and Dobrinja have been reported by, among others, Human Rights Watch/Helsinki, the American based nongovernmental organisation ["Bosnia-Hercegovina: Sarajevo", *Human Rights Watch/Helsinki*, Vol. 6, No. 15 Oct. 1994, pp. 4-20, Annex 137].

113. On 12 July 1994, the former Commander of the 2nd Military District in Sarajevo, Lieutenant-General Milutin Kukanjac, was interviewed on Bosnian Serb television in Pale. After having exchanged some polite conversation, the interviewer started attacking Kukanjac for the role he played during the first weeks of the siege of Sarajevo. Kukanjac defended himself by saying that the JNA had done everything to support the Bosnian Serbs:

> "[Question] Didn't you have your men at that time up there on Trebević [hill overlooking Sarajevo] or in Grbavica [Sarajevo area], controlled by you, who could in such development of the situation, at once level the Presidency to the ground?
>
> [Kukanjac] First, I had a small number of soldiers. The number of soldiers placed in Grbavica by general Djurdjevac, that was it. According to the peace organisation, out of 100 soldiers I had only 7, and according to the war organization I had again 7 soldiers, out of 1000. I must honestly say that I expected you [the Bosnian Serbs] to help me. I must say to you at 'The Serb Republic TV' that instead to defend me, you organized a campaign against me. I think that the unit which was at the Vrbanja bridge [Sarajevo] on the 3rd of May is still there. *It was not a problem to destroy Sarajevo, but I can not agree with some people: the first, it is not humane to destroy urban settings, and the second, we could kill the Serbs in Sarajevo if we shelled it. I can't see innocent people die. My soldiers, if you don't know, defeated them everywhere.* And on the 3rd of May they tried to take revenge [by attacking the JNA convoy transporting the kidnapped President Alija Izetbegović], but the fact is that we had only six dead men, and not as some people [in Belgrade] are spreading the word about 139 dead and so on. That's horrible, that's propaganda, and it's not like that. (...) *What is the JNA, it is the Serb-Montenegrin part which encircled the Serb lands.* Please, you can see, we then, I then made an order for general Mladić to place colonel Lisica there at Kupres [central Bosnia], and the whole Osijek brigade was defeated there. We defended for you the Ilidža [Sarajevo suburb] settlement, Kupres area, Posavina area [along the Croatian border], Vogošća settlement [town north of Sarajevo], the School of the Ministry of Internal Affairs [in Sarajevo]. *At that time, if we had not been there, everything would have been defeated; I think that our tanks are even today in front of the School.*
>
> [Question] No, they are not, they are moved out of the 20 km zone.
>
> [Kukanjac] *We defeated them everywhere, even in some other small clashes.*" [Bosnian Serb Television, Pale, interview with Lieutenant-General Milutin Kukanjac, 12 July 1994, p. 6, emphasis added, Annex 138].

When asked why he did not simply flatten Sarajevo, Kukanjac gave basically two explanations. Firstly, he did not have enough soldiers at his disposal. Secondly, he

did not want to take the risk of killing "innocent" Serbs. The flattening of the city was, in Kukanjac's view, not necessary at all, as his soldiers had in any case defeated "them" everywhere, "even in some other small clashes". If the JNA had not supported the Bosnian Serbs in the conflict, "everything would have been defeated". When the JNA left Sarajevo, the Serbs were in control of those parts of the city which Kukanjac considered to be Serb:

> "[Kukanjac] *Why do you ask me about Sarajevo, you have your leaders who made the decisions, there is the leadership in Belgrade.* If somebody had given an order and materialized the decision to capture Sarajevo, it would be captured. The question is how to capture Sarajevo, and why. *I must say that I left the Serb part of Sarajevo captured for you. You must publicize that if you, the Serbs, captured the areas which we had ensured for you, and it is at least 50 percent, the war would have been finished a long time ago.* It's a pity, but you had even lost some territories. I can't understand that you had lost the left Neretva river bank [river dividing Mostar], the Žuč hill [overlooking Sarajevo], Mojmilo hill [Sarajevo], and so on." [*ibidem*, p. 7].

The Dobrovoljačka Street incident

114. In its Counter-Memorial, the Respondent also described the attack on the JNA convoy leaving Sarajevo on 3 May 1992. This is the same incident Lieutenant-General Milutin Kukanjac referred to in the above quoted interview. The Respondent described the incident as follows:

> "3.1.3.18. A mechanized the JNA column with officers and soldiers from the garrison of the Second Army District Command was attacked in Sarajevo on 3 May 1992. The evacuation was carried out on the basis of an agreement between Alija Izetbegović and the JNA. The agreement was reached with the mediation of UNPROFOR and the EC Mission. UNPROFOR participated in the organization of the evacuation. Despite this, paramilitary formations of the Ministry of the Interior and the Territorial Defence of Bosnia-Herzegovina opened fire in Dobrovoljačka Street around 6.00 p.m. on the column after the vehicle carrying Alija Izetbegović and Lt.-Gen. Milutin Kukanjac had passed." [Counter-Memorial, p. 255, para. 3.1.3.18.].

The JNA is again erroneously presented as an innocent force, which was being attacked while it was trying to evacuate its barracks in Sarajevo. This picture painted by the Respondent, however, substantially bends the truth, as it failed to explain why *President* Alija Izetbegović was part of the convoy, sharing a vehicle with Lieutenant General Kukanjac.

115. The day before the convoy was attacked in the centre of Sarajevo, President Alija Izetbegović was arrested by the JNA at Sarajevo airport. He had just arrived from Lisbon after three days of fruitless negotiations to stop the outbreaking armed conflict. The JNA soon spread the word that President Izetbegović was being held at

the airport for "his own safety" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2, (Vol. II), 28 Dec. 1994, Annex VI, Part I, "Study of the Battle and Siege of Sarajevo", p. 175, para. 181]. This JNA statement was false. The President was kidnapped and imprisoned on General Kukanjac's orders.

116. The events after President Izetbegović's arrival in Sarajevo have been described by Laura Silber and Allan Little in their book on the break-up of the former Yugoslavia, *The Death of Yugoslavia*:

> *"The President's plane had flown into the middle of the chaos, and Kukanjac had seized the opportunity that it presented. From his besieged barracks, he ordered the airport commander General Djurdjevac to detain the President 'for his own safety'.*
> The President's party [including his daughter Sabina and Deputy Prime Minister Zlatko Lagumdžija] were now in the airport director's office under armed guard. Izetbegović insisted on being allowed to return to the city. Djurdjevac refused. He told the President that he had been ordered to take him and his delegation to the JNA barracks at Lukavica, a Serb-held village on the southern edge of the city, about ten-minutes drive from the airport. Djurdjevac said General Kukanjac had insisted on a meeting with the President there. Izetbegović refused:
>
> > 'I said that we can meet, but only in the Presidency. They said no, Kukanjac insists we go to Lukavica. I said there is no way that I'll go to Lukavica and talk. They said I had to go to Lukavica. I asked them whether I was their hostage. I told them I was not going to Lukavica unless I was being forced. He said, then, you have to go.'
>
> Izetbegović had asked to be allowed to telephone the Presidency to tell his staff where he was. Djurdjevac refused, telling him that the telephone lines were down. Then the phone on the airport director's desk rang. It was a woman calling from the city to find out whether the plane her daughter had been booked on earlier that day had left. By chance, she had called the director's direct line. Izetbegović stood up, walked across the room to the director's desk and said: 'Pass me the telephone.' According to Lagumdžija [Bosnian Deputy Prime Minister]:
>
> > 'The President took the telephone, he said 'Good evening Madam, this is Alija Izetbegović, the President of Bosnia on the phone'.
> > There was a brief pause. She was confused. He said 'Yes, yes. That's right, Alija Izetbegović, the President of Bosnia. Could you please be so kind, I am here at the airport, sitting in the director's office, and the Army won't let us go. We are kept here. Could you please call the Presidency and tell them that you talked to me, that I am here, at the airport, and if you can't reach the Presidency, please call radio and TV and inform them. They insist upon my meeting with General Kukanjac, at Lukavica. Yes, General Kukanjac, yes'. The woman couldn't believe her ears. The President said 'Thank you very much, yes, yes, thank you Madam'.
>
> The woman was as good as her word. She rang Sarajevo television and told them her improbable tale. And that's how the city found out that its President had been arrested.
> *Meanwhile, Kukanjac was on the phone to Belgrade. He told the Army Chief of Staff, General Blagoje Adžic, that his men at the airport had Izetbegović and asked for instructions. Adžic called the President of rump Yugoslavia, Branko Kostić. Kostić was annoyed that Adžic had admitted, on an unprotected phone line, that the Army had arrested the legal head of state.*

> I [Kostić] reacted instinctively and said, 'Blagoje, you know that they didn't arrest him, they are just looking after him for his own personal safety ...' But Adžic said, 'No, no, they arrested him!' ... he was rather slow to pick up what I was trying to say... I told Adžić 'Look after him well, but use this opportunity to lift the blockade of the barracks.'
>
> *Thus authority to use the President's captivity as a bargaining chip in the negotiations to de-blockade the JNA barracks in Sarajevo came from the acting head of state, the slavishly pro-Milošević Kostić of Montenegro.*" [Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, pp. 235-236, emphasis added, Annex 21].

The President of Bosnia and Herzegovina was thus kept under arrest on orders from Belgrade with a view to using him as a "bargaining chip in the negotiations to de-blockade the JNA barracks in Sarajevo".

117. When the convoy was attacked President Izetbegović was still under arrest. The military convoy consisted of approximately seventy vehicles and carried not only the President of Bosnia and Herzegovina, but also an enormous quantity of arms. In *The Death of Yugoslavia* Laura Silber and Allan Little also described the shooting incident in the centre of Sarajevo. Their detailed account of the events demonstrates that it is not clear who gave the order to attack the convoy, if ever such an order was given. At the time the incident took place, there was a great deal of uncertainty among the people involved as to what agreements had exactly been made between the JNA and the various representatives of the Bosnian government. It was even unclear whether the President was still alive at all. When the Bosnians attacking the convoy saw their President coming out of the armoured vehicle, in which he was being transported, the shooting immediately stopped [Laura Silber and Allan Little, *The Death of Yugoslavia*, Revised edition, London 1996, pp. 241-242, Annex 21].

118. Two days later, on 5 May 1992, the European Community condemned "the seizure of President Izetbegović by the JNA" as well as "the repeated shelling of Sarajevo by JNA and irregular forces which has already caused the death of many innocent civilians" [*Bulletin of the European Community*, No. 5-1992, p. 104, para. 1.3.4, Annex 122].

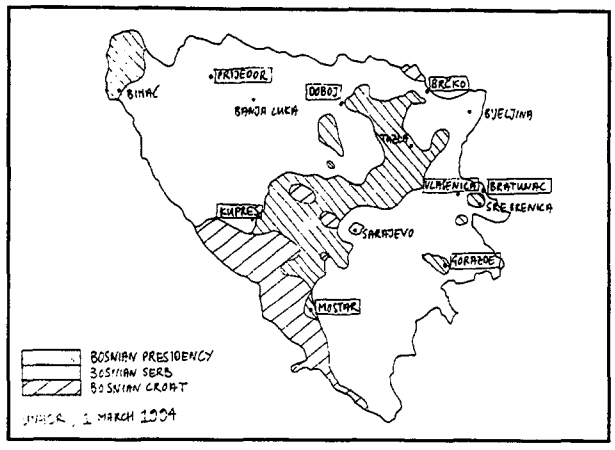
119. After President Izetbegović had been freed and the remaining JNA troops had left the city, the siege of Sarajevo continued. According to conservative reports, as of 15 November 1993, 9,359 civilians had either been killed, died of malnutrition or from the cold, or were missing in the city. This total included 1,525 children. Additionally, 55,801 persons had been wounded, including 14,538 children [United

Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. II), 28 Dec. 1994, Annex VI, Part I, "Study of the Battle and Siege of Sarajevo", p. 8, para. 14].

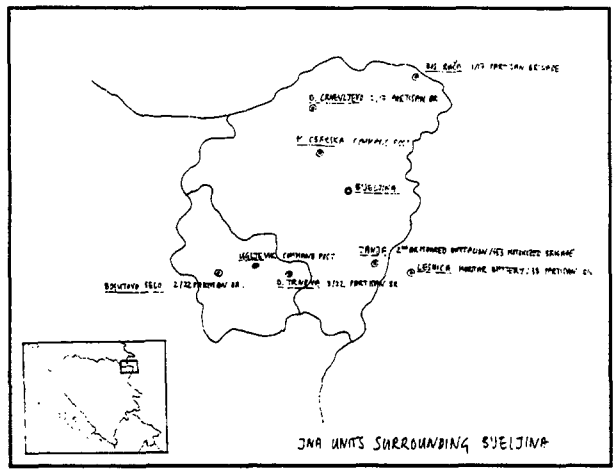
Domino effect

120. The above mentioned towns captured by the JNA at the beginning of the hostilities are only some examples of a genocidal campaign which swept through Bosnia and Herzegovina in April and May 1992. Other cities and tows were also captured; they fell like domino's.

121. After days of intensive bombardment, causing many deaths among civilians, the JNA seized the town of Kupres on 8 April 1992. On 17 April, the first Serbian troops entered Vlasenica, a town in east Bosnia. These JNA troops belonged to the Novi Sad Corps in Serbia [US Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 4, Number 30, 26 July 1993, p. 541, Annex 18]. In late April 1992, the northern city of Brčko was attacked by the JNA and Serb paramilitary units [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol.I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 141, para. 386; see also [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 89-90, paras. 713-724]. The north Bosnian town of Doboj was occupied during the same period. Again the JNA was supported by Arkan's paramilitary units as well as the "White Eagles" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 144, para. 410]. The first reports on the shelling of the town of Mostar by the JNA date from 30 April 1992 [Ian Traynor, *The Guardian*, 30 April 1992, Annex 139]. On the same day, the JNA conducted the take-over of the town of Prijedor in northwest Bosnia. They were again aided by paramilitaries [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 51, para. 137].



122. In early May 1992, the JNA Corps from Novi Sad in Serbia attacked the east Bosnian Bosnian town of Bratunac [Human Rights Committee, *Document submitted by Bosnia and Herzegovina*, CCPR/C/89, 27 April 1993, p. 4, para. 12]. On 4 May, the JNA started shelling the town of Gorazde, in east Bosnia [US Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 4, Number 16, 19 Apr. 1993, pp. 260, Annex 19].



123. By the time the JNA "withdrew" from Bosnia and Herzegovina, all towns on the territory of the projected Greater Serbia had fallen prey to the Serbs. The only exception were the Bosnian enclaves, which were kept under siege for the duration of the conflict and were later designated as safe areas by the United Nations. The tragic end of Srebrenica was discussed in a separate Section of this Chapter [Reply, Chapter 5, Section 8].

Crisis Staffs

124. In all the places captured by the JNA a Crisis Staff or *Krizni Štab* was established. The phenomenon of the Crisis Staff was, among others, studied and described by Judge Hanna Greve in her report on Prijedor, written for the United Nations Commission of Experts. Her study began with a historical assessment:

> "177. The concept of the Krizni Štab existed already in military strategic theory in the former Yugoslavia prior to the wars. The military as such was in a sense always afraid of the people. The military were above the people and had privileges which easily could lead to the people turning against the military. The military consisted of rather conservative or reactionary Communists, whereas the people seemed to be progressing towards democracy. The military wanted to control the people and thus needed to give the people the impression that in actual fact, the people controlled the military. In this the military, generally speaking, succeeded. The worst case scenario contained the plan that the military would establish the Krizni Štab. Thus, the military would make sure to have included in the Krizni Štab people whom they trusted. Trust in this context means loyalty and subordination." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 38, para. 177].

As soon as a town had been militarily secured, the JNA would make sure that a Crisis Staff was installed and fill it with reliable henchmen. In some cases the establishment of the Crisis Staff would precede the actual take-over by the JNA. In *Opština* Prijedor a Crisis Staff was installed as well. Some of their tasks were listed by Judge Greve:

> "178. The Krizni Štab Srpske Opština Prijedor was involved in the logistic support and production for the army. The Krizni Štab was an instrument of gaining complete control of the entirety of Opština Prijedor (or over any other geographic area where a Krizni Štab was proclaimed). Soldiers who worked for the interests of the army were posted also in industry and other production units to control the production, to gain support, and to control civilians.
>
> 179. The Krizni Štab also had as its function to arm the Serbs within its operational area. Other functions were to block communications and make provocations within mixed ethnic settings. The pivotal function, however, was to voice that the Serbian people as such were threatened by the non-Serbs, the consequence of which was the urgent need for the JNA to act to protect the people. The idea was to be able to mobilize strategically with the consent of the people, i.e. to take up positions with artillery and tanks, etc. and soldiers to 'defend' the Serbian people." [*ibidem*, p. 28-29, paras. 179-180].

125. The Crisis Staff in Prijedor was installed immediately after the Serb take-over of the city on 30 April 1992. It fell under the command of the more important Crisis Staff in Banja Luka, the ARK Crisis Staff. In its Tadić Judgement the Trial Chamber at the ICTFY stated that

> "[a] local Crisis Staff was established ('Prijedor Crisis Staff') which implemented a number of decisions made by the ARK Crisis Staff [in Banja Luka]." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 52, para. 139].

The Trial Chamber also elaborated on some of the tasks of the Prijedor Crisis Staff. It found the following:

> "In addition to restrictions on the lives of non-Serbs (...) control was immediately taken of town local media sources: Radio Prijedor and the newspaper *Kozarski Vjesnik*, and thereafter their principal function became the dissemination of propaganda. It also controlled mobilization and by mid-May 1992 nearly all Serbs had been mobilized either into the standing army, the army reserves or the police force. Calls were also made at that time for the surrender of weapons which, although addressed to the population at large, were only enforced in respect to Muslims and Croats, most of whom complied out of fear of punishment. At the same time the mobilization of Serbs allowed for the distribution of weapons to the Serb population." [*ibidem*].

126. As the Crisis Staffs were in essence an extension of the military, the JNA always had at least one of its officers represented in them. In the Tadić Judgement the ICTFY, for example, described the composition of the Crisis Staff in Banja Luka:

> "Members of the Crisis Staffs included SDS leaders, the JNA Commander for the area, Serb police officials, and the Serb TO Commander. For example, Lieutenant-General Momir Talić, Commander of the 5th Corps (which [after 19 May 1992] became the 1st Krajina Corps), was a member of the Crisis Staff in Banja Luka ('ARK Crisis Staff'), thus demonstrating the relationship between the political and military branches of the Bosnian-Serb-run government." [*ibidem*, p. 37, para. 103].

The Banja Luka Crisis Staff was established in April or May 1992. In early May, the Staff took over all powers of the government and other agencies in Banja Luka.

127. The Crisis Staff in Prijedor, which had to report to the above mention Staff in Banja Luka, had three military among its members: Colonel Vladimir Arsić, Major Radmilo Zeljaja and Major Slobodan Kuruzović. The SDS in Prijedor also had its representatives in the Staff [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 36, para. 170].

128. On 13 March 1997, the Prosecutor at the ICTFY endicted the two most outspoken members of the Prijedor Crisis Staff, Simo Drljača and Milan Kovačević [ICTFY, Indictment, *The Prosecutor v. Simo Drljača & Milan Kovačević*, Case No. IT-97-24-I, 13 March 1997]. Both were charged with genocide.

Prison camps

129. The Crisis Staffs were the most powerful political organ in a town or area. This meant that the Staffs were also responsible for the creation of the camps. In the Tadić case, the ICTFY in The Hague found that the notorious Omarska, Keraterm and Trnopolje camps [see Reply, Chapter 5, Section 5] "were established and run either at the direction of, or in cooperation with, the Crisis Staffs, the armed forces and the police" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 58, para. 154].

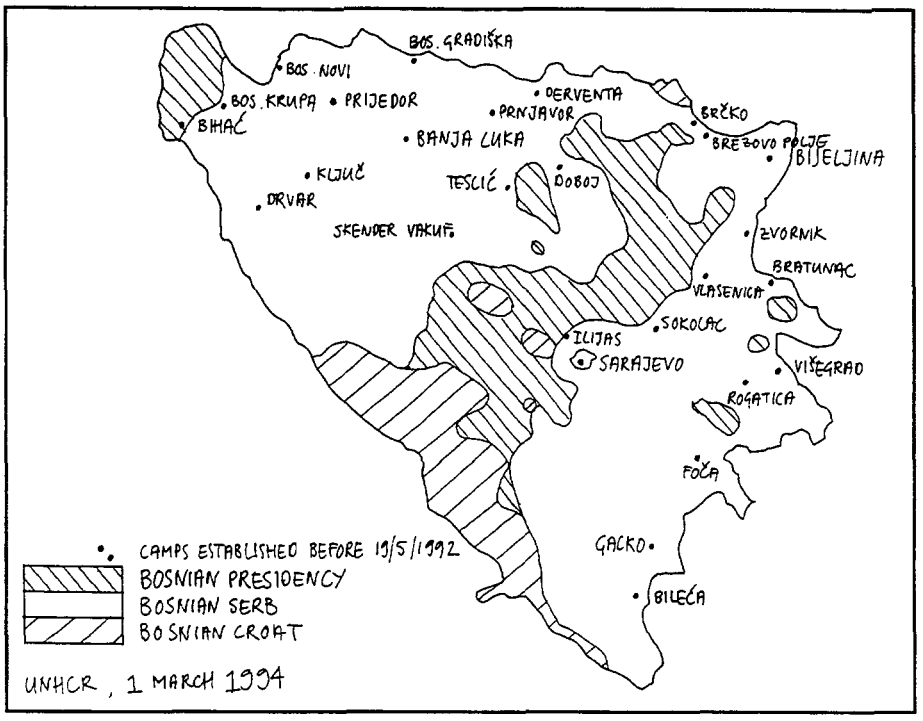
130. Through the Crisis Staffs the JNA thus helped establishing and running a great number of prison and concentration camps in the Republika Srpska.

131. Annex VIII to the Final Report published by the United Nations Commission of Experts was wholly devoted to prison camps. The camps played a cardinal role in the Serb policy of ethnic cleansing. This role was described at length in a previous Section of this Reply [Reply, Chapter 5, Section 5]. As was shown in that Section, the camps were part of an overall plan devised prior to the conflict [see also: United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 12, para. 31]. This plan envisaged the creation of an ethnically pure Greater Serbia. The Applicant will not discuss this plan again here. All attention will focus on the contribution the JNA made to these camps and thus to the implementation of the policy of ethnic purification.

132. In their report, the Commission of Experts counted 333 camps on the territory under the control of the Bosnian Serbs [*ibidem*, p. 11, para. 27]. For 114 camps the Commission of Experts succeeded in finding the date of establishment [see *ibidem*, pp. 33-349, paras. 251-2912]. Out of these 114 camps, no less than 50 were established in the period preceding the official "withdrawal" of the JNA. These 50 camps will be listed below, with their first known date of operation:

- Manjača, Banja Luka area, north Bosnia, summer/autumn 1991;
- Ripač, Bihać area, northwest Bosnia, May 1992;
- Military barracks, Bijeljina, northeast Bosnia, 8 April 1992;
- Petkovići, Bijeljina area, 13 May 1992;
- Spanac JNA Barracks, Bijeljina, 5 May 1992;
- civilian jails, Bileća area, south Herzegovina, November 1991;
- Red Cross Community Centre, Bosanska Gradiška, north Bosnia, April 1992;
- local school, Bosanska Gradiška, April 1992;
- Jasenica, Bosanska Krupa, northwest Bosnia, May 1992;

- Stadium Mlakve, Bosanski Novi, northwest Bosnia, May 1992;
- "Vuk Stefanovic Karadžić" Primary School, Bratunac, east Bosnia, 9 May 1992;
- JNA casern, Brčko, north Bosnia, April 1992;
- police station, Brčko, 7 May 1992;
- abattoir, Brčko, early May 1992;
- Luka, Brčko, 8 May 1992;
- Laser Factory, Brčko, early May 1992;
- the village of Brezovo Polje, Brčko area, 15 April 1992;
- shipping container, Čajniče, east Bosnia, 5 May 1992;
- Derventa camp, Derventa, north Bosnia, April 1992;
- Red Cross refugee camp, Doboj, north Bosnia, April 1992;
- KP Dom, Foča, east Bosnia, April 1992;
- elementary school, Donje Zepče, Foča area, 16 April 1992;
- high school, Foča, 15 April 1992;
- TPP Hotel, Gacko, Herzegovina, April 1992;
- sports hall, Ključ, west Bosnia, May 1992;
- Trnopolje, Prijedor, west Bosnia, April/May 1992;
- village of Prnjavor, north Bosnia, May 1992;
- Veljko Vlahovc High School, Rogatica area, east Bosnia, May 1992;
- Digitron Firm, Sarajevo, April 1992;
- Ilijaš, Sarajevo area, April 1992;
- Gornja Bioca School, Ilijas, Sarajevo area, April 1992;
- Lesina Furniture store, Sarajevo area, April 1992;
- Trapare, Sarajevo area, 9 May 1992;
- Skender Vakuf Post Office, Skender Vakuf, central Bosnia, mid May 1992;
- primary school, "Slavisa Vajner Čiča", Sokolac, east Bosnia, May 1992;
- unknown facility outside Teslić, north Bosnia, March 1992;
- Drvar prison, Titov Drvar, west Bosnia, May 1992;
- Banja Suse, Višegrad, east Bosnia, April 1992;
- police station, Višegrad, April 1992;
- Prelovo, Višegrad area, April 1992;
- Uramnica or Uzemnica Barracks, Višegrad area, April 1992;
- Vilina Vlas Hotel, Višegrad area, April 1992;
- Zamjenica Garrison, Višegrad area, April 1992;
- Sušica Camp, Vlasenica, east Bosnia, early May 1992;
- police station, Vlasenica, 15 May 1992;
- stadium, Zvornik, east Bosnia, 19 May 1992;
- kindergarten, Zvornik, 14 May 1992;
- Hospital "5th of July", Zvornik, April 1992;
- "Novi Izvor", Zvornik area, April 1992;
- school in Salihovići, Zvornik area, May 1992.

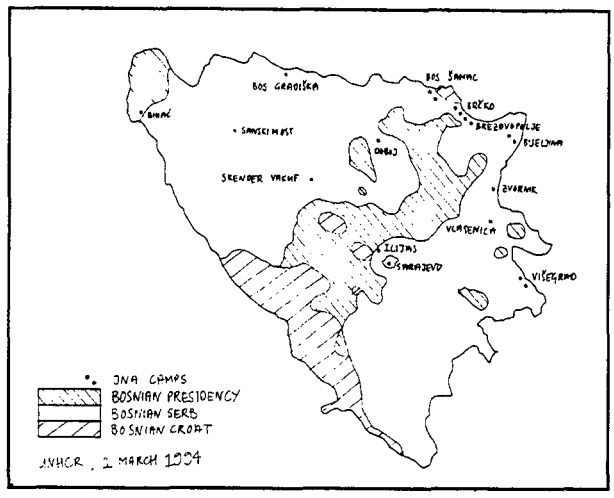


With the exception of Manjača in Banja Luka and the civilian jails in Bileća, the foregoing camps were established after the fighting erupted in late March 1992. All of them were situated on the territory under the control of the JNA. According to the Commission of Experts, the existence of 32 of these detention facilities was corroborated by at least one neutral source.

133. In some cases the Commission of Experts succeeded in establishing who was responsible for the running of the various camps [see *ibidem*, pp. 33-349, paras. 251-2912]. The JNA was *directly* involved in the following camps:

- Orasac primary school, Bihać area, west Bosnia;
- Batković, Bijeljina, east Bosnia;
- Spanac JNA Barracks, Bijeljina;
- Red Cross Community Centre, Bosanska Gradiška, north Bosnia;
- Territorial Defence (TO) facility, Bosanski Šamac, north Bosnia;
- Farmers Cooperative Storeroom, Bosanski Šamac;
- JNA casern, Brčko, north Bosnia;
- Luka, Brčko;
- three mosques, Brčko;
- the village of Brezovo Polje, Brčko area;
- Doboj School Gymnasium, Doboj, north Bosnia;
- Krings factory, Sanski Most, west Bosnia;
- Gornja Bioca School, Ilijas, Sarajevo area;

- Trapare, Sarajevo;
- Post Office, Skender Vakuf, central Bosnia;
- Prelovo, Višegrad area;
- Vilina Vlas Hotel, Višegrad area;
- Sušica camp, Vlasenica, east Bosnia;
- JNA Barracks in Karakaj, Zvornik, east Bosnia.



The above listed 19 camps were all established and at least for some time run by the JNA. With the exception of Orasac primary school, Farmers Cooperative Storeroom, Gornja Bioca School and Prelovo, the existence of all listed prison camps was corroborated by one or more independent sources.

134. The above mentioned list of camps for which the JNA was at least in part responsible does not include the detention facilities controlled through the various Crisis Staffs. The influence of the JNA in the 19 listed detention centres was much more direct, as the Applicant will demonstrate in the following paragraphs.

135. Some of the camps were established by the JNA, like for example in Višegrad. There, the Vilina Vlas Hotel was as a camp with the coming of the Užice Corps from Serbia in April 1992. It was used as a camp "brothel", or more accurately described, as a rape and death camp for women [*ibidem*, p. 325, para. 2700]. The Užice Corps also created the Prelovo detention facility in Višegrad, where prisoners were shot and burned [*ibidem*, p. 324, para. 2694].

136. Other camps were run by the JNA. The Batković camp in Bijeljina, for example, was directed by Colonel Petar Dmitrović [*ibidem*, p. 62, para. 465]. Batković was only

used to detain civilians, mostly male. Many died because of the level of mistreatment [Reply, Chapter 5, Section 5]. The Luka camp in Brčko, which was established in early May 1992, was run by Major Petar Djokić [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 93, para. 751]. The population of the camp ranged from 1,000 to 5,000 Muslim and Croat inmates. Many died during their stay in Luka, which was one of the most notorious camps in Bosnia and Herzegovina [see also Reply, Chapter 5, Section 5]. The three mosques in Brčko, which were used to detain between 100 and 150 male prisoners, were on at least one occasion visited by JNA generals who surveyed the situation in the camp [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 103, para. 827]. The JNA was also in charge of the village of Brezovo Polje, in the Brčko area, which had been turned into an enormous concentration camp immediately after its occupation by Serb forces on 15 April 1992 [*ibidem*, p. 104, paras. 835-841]. The camp held between 1,000 and 5,000 Muslim prisoners, including women and children. The Sušica camp in Vlasenica was commanded by Major Mila Jačimović. Sušica was used to detain men, women and children. At least 3,000 Muslims from Vlasenica were executed in this camp [*ibidem*, pp. 332-336, paras. 2767-2800].

137. In some cases, existing JNA facilities were used to detain prisoners. The Španac JNA barracks in Bijeljina were used as a detention facility for non-Serb prisoners from Bosanski Šamac. The barracks at the same time supported two JNA units. The camp in the barracks was guarded by JNA military police [*ibidem*, p. 66, paras. 499-504]. The JNA military barracks in Brčko housed two unidentified JNA units, while it was being used to collect and imprison the non-Serb population of Brčko after the Serb take-over of the city. The camp was commanded by a JNA major and guarded by JNA military police. The Muslim and Croat prisoners were regularly beaten [*ibidem*, p. 90-91, paras. 725-733]. In Karakaj, near Zvornik, the local barracks were used exclusively by regular JNA units as a detention facility [*ibidem*, p. 345, para. 2876]. The Manjača camp near Banja Luka was also a JNA facility when established in 1991 to detain Croatian prisoners captured during the fighting in Croatia [see Reply, Chapter 5, Section 5].

138. The JNA was also responsible for the mistreatment of detainees. In the Territorial Defence facility in Bosanski Šamac, JNA Special Forces from Serbia daily maltreated the approximately 800 civilian prisoners of Croat, Muslim and Albanian origin [*ibidem*, pp. 83-84, paras. 660-668]. In the Farmers Cooperative Storeroom,

also in the town of Bosanski Šamac, Special Forces from Serbia were responsible for the killing of at least fifteen non-Serb detainees [*ibidem*, p. 84, paras. 669-672]. In the Luka detention facility in Brčko, JNA Special Forces committed daily atrocities, causing the death of many inmates [*ibidem*, p. 96, para, 779]. JNA soldiers regularly visited the School Gymnasium near Doboj, which was a notorious rape camp where between 600 and 2,000 women and girls were raped and often killed [*ibidem*, pp. 121-122, paras. 980-992]. JNA troops were also responsible for the torture and killing of Muslim civilians in Gornja Bioča School in Ilijaš, near Sarajevo. There, men were killed and young women were raped [*ibidem*, p. 291, para. 2446].

19 May 1992

139. This Section fully concentrated on the involvement of the JNA in the events that took place in the period preceding its official "retreat" on 19 May 1992. In the first months of the hostilities in Bosnia and Herzegovina, the JNA played a key role at all crucial stages of the conflict.

140. The above mentioned prison or concentration camps epitomise the role played by the JNA and the Belgrade authorities in the genocidal campaign in Bosnia and Herzegovina. When the JNA officially "withdrew" from Bosnian territory, the genocidal mill was turning at full speed. By 19 May 1992, the JNA had captured almost all territory of the projected Greater Serbia the Belgrade authorities had intended to occupy. In these Serb territories a great number of non-Serbs had already been killed or terrorised into fleeing.

141. By May 1992 the authorities in Belgrade had in fact no reason to further prolong the official stay of the JNA in Bosnia and Herzegovina. The JNA had done its job and could safely trust the Bosnian Serbs to carry out the finishing touches. The Yugoslav military however continued to influence and be involved in the armed conflict in Bosnia and Herzegovina, albeit in another shape and through other means. The following Sections of this Chapter will illustrated how this was done.

4. Transformation of the JNA into the Bosnian Serb Army

Counter-Memorial

142. In this Section of the Reply the Applicant will show that the alleged "withdrawal" of the JNA from the territory of Bosnia and Herzegovina on 19 May 1992 was in fact

no withdrawal at all. On that date, the Yugoslav authorities announced that all JNA soldiers of Serbian or Montenegrin background had left Bosnia and Herzegovina. As will be shown in the next Section of this Chapter, that announcement proved to be untrue. The so-called withdrawal on 19 May 1992 was in any case purely cosmetic, as the majority of the JNA military stationed in Bosnia and Herzegovina were natives by the time the order was issued: large numbers of JNA soldiers born in Bosnia and Herzegovina were transferred to its territory in the period prior to the "withdrawal" so that after 19 May 1992, they would remain there to form the new Bosnian Serb Army (VRS). This army, numbering some 80,000 to 90,000 men, inherited all the arms and ammunition they had held as the JNA before 19 May 1992.

143. In the Memorial, Bosnia and Herzegovina discussed the transformation of the JNA into the Bosnian Serb Army at length [Memorial, Section 2.3.6, pp. 77-81]. In spite of this, the Respondent apparently chose to largely ignore the topic in its Counter-Memorial. It generally failed to respond to the serious allegations formulated in the Memorial. The Counter-Memorial reads as follows:

> "3.1.5.5. In paras. 2.3.6.4 and 2.3.6.5 of the Memorial (p.79), the Applicants [stated] that part of the weaponry belonging to the the [sic] JNA remained in the hands of the Army of the Bosnian Serbs in Bosnia. The Applicant says: 'The new recruits of the Serbian Army in the Republic of Bosnia and Herzegovina were not transferred empty-handed.' (Memorial, p. 79). The Applicant confirms the existence of a Serbian army in the Republic of Bosnia and Herzegovina. *It is true that part of the weaponry remained. This did not happen on the basis of a decision of the the [sic] JNA to leave part of the weapons behind. The newly-formed Army of the Bosnian Serbs simply did not allow all the weapons to be withdrawn. The withdrawal of the weaponry was also prevented from being carried out by the continued attacks of Muslim and Croat forces on barracks and on columns which were withdrawing.*" [Counter-Memorial, p. 260, para. 3.1.5.5, emphasis added].

The Respondent thus admitted that the equipment of the JNA remained in Bosnia and Herzegovina. In the Respondent's view, however, it was prevented from pulling out by the "newly-formed Army of the Bosnian Serbs", who "simply did not allow all the weapons to be withdrawn". This assertion is highly implausible. The Respondent in fact claims that the Bosnian Serbs embezzled all JNA arms and ammunition in Bosnia and Herzegovina. If this were true, the Respondent should at least have produced evidence showing that at any one point it objected to this behaviour. The Respondent, however, was not able to submit any evidence at all, since this evidence simply does not exist. The Bosnian Serbs did not have to prevent the JNA from withdrawing anything, as the newly formed Bosnian Serb Army was simply *given* all the equipment it desired. The Applicant will prove that this was not

only decided, but also organised and encouraged, by the highest authorities in Belgrade.

144. The Respondent also stated that it could not pull out its weaponry from the territory of Bosnia and Herzegovina as "Muslim and Croat forces" continued to attack "barracks" and "columns which were withdrawing". This statement offers no explanation at all for the fact that almost all of the JNA equipment on Bosnian territory was at the disposal of the Bosnian Serb Army when it was created on 19 May 1992. The statement also fails to explain why the forces under the control of the Bosnian government faced an enormous shortage of weapons and ammunition during the entire conflict. When the fighting broke out, the Bosnian "army" numbered no more than 3,500 armed men altogether [Noel Malcolm, *Bosnia: A Short History*, London 1996, p. 240, Annex 16]. In September of 1992, it was estimated that the Bosnian forces possessed not more than *two* tanks and *two* armoured personnel carriers [*ibidem*, p. 243], while the Serb Army in Bosnia inherited some 300 tanks, 800 armoured personnel carriers and over 800 pieces of artillery [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 42, para. 114, emphasis added].

Tadić Judgment

145. The foregoing extract from the Respondent's Counter-Memorial is in flat contradiction with the findings of the International Criminal Tribunal for the former Yugoslavia (ICTFY) in The Hague. The findings of the ICTFY in the *Tadić Judgment* are, in fact, in perfect harmony with the Applicant's conclusions as presented in the Memorial:

> "113. With the secession of the non-Serb Republics and the recognition by Serbia and Montenegro that the Socialist Federal Republic of Yugoslavia no longer existed, the JNA could no longer function as a national army. At a meeting of Ministries for Foreign Affairs of the European Community on 6 October 1991 alarm had been expressed at the reports that the JNA had 'shown itself to be no longer a neutral and disciplined institution' (...). Yet it remained [a] substantial force in Bosnia and Herzegovina, despite the secession of that Republic. This posed a problem: how was the JNA to be converted into an army of what remained of Yugoslavia, namely Serbia and Montenegro, yet continue to retain in Serb hands control of substantial portions of Bosnia and Herzegovina while appearing to comply with international demands that the JNA quit Bosnia and Herzegovina. On 15 May 1992 the Security Council, by resolution 752, demanded that all interference from outside Bosnia and Herzegovina by units of the JNA cease immediately and that those units either be withdrawn, be subject to the authority of the Government of the Republic of Bosnia and Herzegovina, or be disbanded and disarmed.

> 114. *The solution as far as Serbia was concerned was found by transferring to Bosnia and Herzegovina all Bosnian Serb soldiers serving in JNA units elsewhere while sending all non-Bosnian soldiers out of Bosnia and Herzegovina. This ensured seeming compliance with international demands while effectively retaining large ethnic Serb armed forces in Bosnia and Herzegovina.* What was to become the army of *Republika Srpska* within Bosnia and Herzegovina and to be known as the VRS would be officered by former JNA officers. *This new army thus inherited both officers and men from the JNA and also substantial arms and equipment, including over 300 tanks, 800 armoured personnel carriers and over 800 pieces of heavy artillery. The remainder of the former JNA was to become the army of the new Federal Republic of Yugoslavia (Serbia and Montenegro) and was to be known as the VJ.*
>
> 115. *The formal withdrawal of the JNA from Bosnia and Herzegovina took place on 19 May 1992; the VRS was in effect a product of the dissolution of the old JNA and the withdrawal of its non-Bosnian elements into Serbia.* However, most, if not all, of the commanding officers of units of the old JNA who found themselves stationed with their units in Bosnia and Herzegovina on 18 May 1992, nearly all Serbs, remained in command of those units throughout 1992 and 1993 and did not return to Serbia. This was so whether or not they were in fact in origin Bosnian Serbs. This applied also to most other officers and non-commissioned officers. Although then formally members of the VRS rather than of the former JNA, they continued to receive their salaries from the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the pensions of those who in due course retired were paid by that Government. At a briefing of officers concerned with logistics, General Djordje Djukić, then of the VRS but who had, until 18 May 1992, been Chief of Staff of the Technical Administration of the JNA in Belgrade, announced that all the active duty members of the VRS would continue to be paid by the federal government in Belgrade, which would continue to finance the VRS, as it had the JNA, with the same numerical strength of officers as were registered on 19 May 1992. *The weapons and equipment with which the new VRS was armed were those that the units had had when part of the JNA.* After 18 May 1992 supplies for the armed forces in Bosnia and Herzegovina continued to come from Serbia.
>
> 116. *General Kadijević [Federal Defense Minister 1988-1992], writing of the role of the JNA in Bosnia and Herzegovina, recounts how 'the units and headquarters of the JNA formed the backbone of the army of the Serb Republic (Republic of Srpska) complete with weaponry and equipment' and adds that 'first the JNA and later the army of the Republic of Srpska, which the JNA put on its feet, helped to liberate Serb territory, protect the Serb nation and create the favourable military preconditions for achieving the interests and rights of the Serb nation in Bosnia and Herzegovina by political means* (...).'.
>
> 117. It is noteworthy that in his report of 3 December 1992 the Secretary-General of the United Nations referred to what had occurred regarding the JNA and its purported withdrawal from Bosnia and Herzegovina and concluded that: '*Though JNA has withdrawn completely from Bosnia and Herzegovina, former members of Bosnian Serb origin have been left behind with their equipment and constitute the Army of the 'Serb Republic'*." [ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 41-43, paras. 113-117, emphasis added].

The "withdrawal" of the JNA was only intended to placate the international community which by May 1992 demanded that the authorities in Belgrade retreat all of their forces from Bosnia and Herzegovina. By retreating all but the Bosnian Serb JNA troops (as well as a number of officers of Yugoslav origin [see below Chapter 8, Section 8]), the Respondent "ensured seeming compliance with international demands while effectively retaining large ethnic Serb armed forces in Bosnia and

Herzegovina" [*Ibid.*, p. 42, para. 114]. The "withdrawal" was thus a sham aimed at maintaining the *status quo*.

146. The findings of the ICTFY were confirmed by numerous other sources. The Applicant will discuss these sources below.

Planning the masquerade

147. The alleged "withdrawal" of the JNA on 19 May 1992 and its transformation into the army of the Bosnian Serbs was not an improvised operation. It was a well planned and thoroughly executed military campaign of the Serb authorities in Belgrade.

148. The eventual transformation of the JNA started with the "Serbianisation" of the army, approximately one year prior to the outbreak of the conflict in Bosnia and Herzegovina. This "Serbianisation" of the JNA was discussed in the previous Section of this Chapter [see Reply, Chapter 8, Section 3]. Here, the Applicant would like to stress that this process was initiated as early as July 1991, when the JNA in Bosnia and Herzegovina "monopolised" the conscription of new recruits.

> "106. In July 1991, on instructions from headquarters in Belgrade, the JNA seized from the Republic's Secretariat for Defence in Bosnia and Herzegovina and from municipalities all the documentation relating to conscription including all the registers of conscripts. In consequence, thereafter the conscription process was exclusively in the hands of the JNA and no longer in those of the Republic's Ministry of Defence. *This done, it was ensured that only ethnic Serbs were recruited into the armed forces.*" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 39, para. 106, emphasis added].

The confiscation of all documents necessary to call up new recruits illustrates the determination of Belgrade to gradually "Serbianise" the JNA.

149. Preempting the international recognition of Bosnia and Herzegovina as an independent state, the authorities in Belgrade then started redeploying all Bosnian Serb conscripts to Bosnian territory. In December 1991, Serb soldiers of Bosnian background were sent *en masse* to Bosnia and Herzegovina, where they were attached to existing JNA units. This reshuffling of JNA units was also described by Warren Zimmermann, the last United States ambassador to the former Yugoslavia, in his highly informative book on the conflict, *Origins of a Catastrophe*:

> "It became clear only later that, despite its professions of innocence, the JNA was engaged in a secret strategy that depended critically on force. We knew that in addition to its direct support for the Bosnian Serbs since the spring of 1991, the JNA leaders had infiltrated fresh troops into Bosnia from Slovenia and Croatia, as the wars in those republics ended. *What we didn't know was that in early 1992 they began to transfer out of Bosnia all soldiers who were not Bosnian Serbs and bring in Bosnian Serb troops from other parts of Yugoslavia.* The result, by the time fighting began in Bosnia in the spring of 1992, was a formidable Bosnian Serb Army, soon to grow to a strength of eighty to ninety thousand. *This cynical masterstroke, the joint conception of Milosevic and the JNA, gave the Bosnian Serbs the immense military advantage over the Croats and Muslims that sustained their victories and their atrocities for over three years.*"
> [Warren Zimmermann, *Origins of a Catastrophe: Yugoslavia and Its Destroyers - America's Last Ambassador Tells What Happened and Why*, London, New York 1996, pp. 185-186, emphasis added, Annex 123].

The redeployment of Bosnian Serb conscripts to the territory of Bosnia and Herzegovina was in complete contradiction to the traditions within the JNA, which prescribed that conscripts be attached to distant army units. This traditional policy was also reported by the Commission of Experts:

> "The JNA was intended to provide a unifying force in peace and in war. Thus, the Ministry of Defence sent conscripts out of their home districts for service to avoid ethnic dominance in regular army units."
> [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol.I), 28 Dec. 1994, Annex III, "The Military Structure, Strategy and Tactics of the Warring Factions", p. 16, para. 71].

150. The redeployment of the Bosnian Serb conscripts, in preparation for the expected recognition of Bosnia and Herzegovina as an independent country, was orchestrated in advance at the highest level in Belgrade, that is by Serbian President Slobodan Milošević himself. This was found by Ambassador Warren Zimmermann and confirmed by Borisav Jović in 1995, when the Belgrade-based *Politika* publishing company published his memoirs. These memoirs cover the period from 15 May 1989 to 8 July 1992. At the time, Jović was Serbia's representative on the Federal Presidency. In his memoirs, Borisav Jović reports on a meeting he had with Slobodan Milošević on 5 December 1991. At this meeting, the mentioned redeployment of Bosnian Serb troops was designed:

> "5 December 1991
>
> Discussion with Slobodan Milošević.
>
> We assess the situation, in view of most likely imminent recognition of Croatia and Slovenia by the European Community and already existing call upon all the republics to become independent from Yugoslavia. *Our assessment is that the recognition of Bosnia and Herzegovina and Macedonia is soon to follow, so we discuss our position under such circumstances.*

> In respect of Macedonia, the matter is simple. There is no threat of inter-ethnic conflicts there. Serbs are not jeopardised. Should Macedonia wish to secede, the terms for the withdrawal of the army and division of military property have to be negotiated.
>
> But, in respect of Bosnia and Herzegovina, the matter is very difficult. Inter-ethnic conflicts have already burst out there. Muslims and Croats left the JNA and established their paramilitary units. Practically, only Serbs and Montenegrins stayed in the JNA, but the ones coming from all Serb lands. *Once Bosnia and Herzegovina is recognised, JNA will be proclaimed a foreign army and its withdrawal will be required, which is unavoidable.* In view of such situation, the Serb population in B-H have not founded their paramilitary formations and they will remain unprotected and jeopardised.
>
> *Sloba [Milošević] thinks that we should timely pull back from the JNA in BH all nationals of Serbia and Montenegro, and replace them by the JNA officers who are nationals of Bosnia and Herzegovina as to avoid, at the moment of its international recognition, an overall military chaos by having the army move from one part of the country to another. This will also enable the Serb leadership in Bosnia and Herzegovina to take over the command over the Serb part of the JNA, as has already been done by the Muslims and Croats.*
>
> *We immediately called Veljko Kadijević [Federal Defence Minister] to join our discussion. Sloba explains it to him in a very simplified way that he should execute the redeployment of the army: all who come from B-H to Bosnia and Herzegovina and vice-versa, that we need it for strategic and political reasons.*
>
> Veljko says that it is not in agreement with the policy and practice of the JNA and that it will be hardly acceptable by the military leadership, but that he will see to it and do whatever possible." [Borisav Jović, *Final Days of SFRY*, Belgrade 1995, p. 420, emphasis added, Annex].

The extract quoted above clearly illustrates that on 5 December 1991, the Respondent was already expecting a speedy recognition of Bosnia and Herzegovina by the international community. The recognition of Bosnia and Herzegovina, four months after the discussion between Milošević and Jović took place, can therefore not have been a surprise to the Respondent. Less than three weeks after the discussion with Milošević took place, Veljko Kadijević reported that the projected redeployment had been concluded:

> "25 December 1991
>
> Discussion with Veljko and Slobodan. *Veljko informs us that 90% of the army has been dislocated in accordance with the discussion on 05.12 this year. Now, there is some 10-15% of the troops in Bosnia and Herzegovina who do not come from that Republic.*
> In spite of opposition and dramatisation, dislocation was carried out timely and quietly." [*Ibid.*, emphasis added, p. 421].

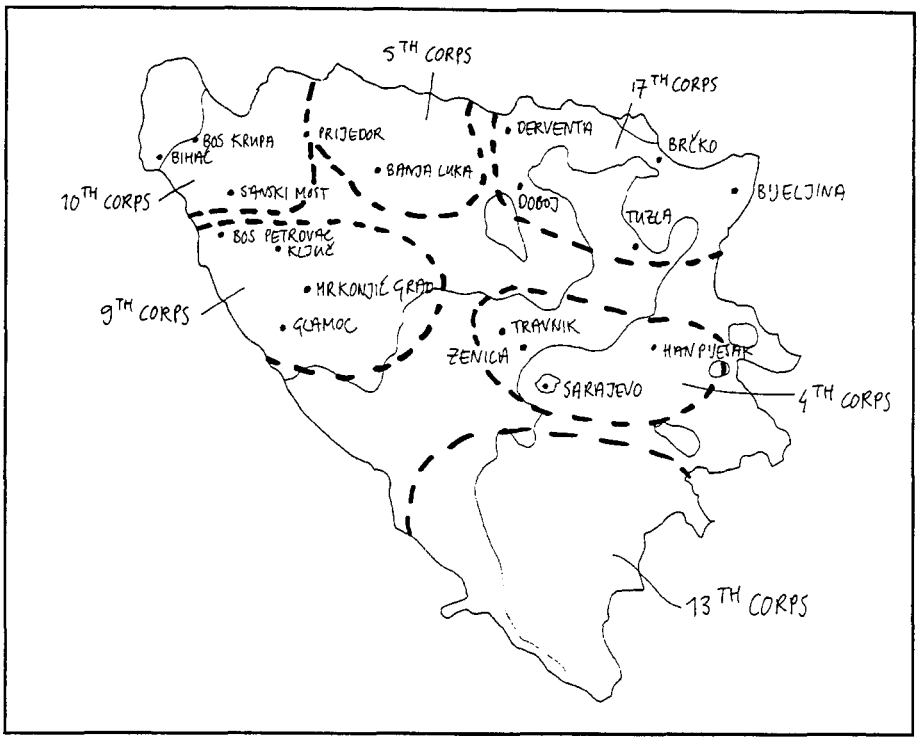
By Christmas 1991, the make-up of the JNA in Bosnia and Herzegovina had drastically changed. Less than three weeks after Milošević's order was given, the

massive relocation of troops had been completed. The JNA was ready for the transformation of the JNA and its "withdrawal" from Bosnia and Herzegovina.

The 2nd Military District

151. In the beginning of 1992, the Belgrade authorities redesigned the various Military Districts of the JNA. As a consequence of this operation, a new 2nd Military District was created. The headquarters of the 2nd Military District were established in Sarajevo. The region covered by the 2nd Military District coincided with the borders of Bosnia and Herzegovina, which was previously divided between the 1st and the 4th Military Districts. The new 2nd Military District now covered a discrete region; control over the District could be transferred from the JNA to the Bosnian Serb Army without a great deal of complication.

152. Six army corpses were put under the authority of this newly formed Military District: the 4th, 5th, 9th, 10th, 13th and 17th Corps. The 10th Corps was responsible for the northwestern corner of Bosnia and Herzegovina and had units based in Bihać, Sanski Most, Bosanska Krupa and Prijedor. In Prijedor there were also units of the 5th Corps, which controlled the centre-north of Bosnia. In addition to Prijedor, the 5th Corps also had units in Banja Luka. The 17th Corps in the northeastern corner of Bosnia controlled the JNA units in Derventa, Brčko, Doboj, Tuzla and Bijeljina. The centre-west of Bosnia and Herzegovina fell under the authority of the 9th Corps, with units in Ključ, Bosanski Petrovac, Mrkonjić Grad and Glamoć. The 4th Corps controlled the units in central Bosnia: Travnik, Zenica, Sarajevo and Han Pijesak. Finally, the south of Bosnia and Herzegovina, roughly the area of Herzegovina, fell under the authority of the 13th Corps.



153. The reorganisation of the JNA and the creation of the 2nd Military District in January 1992 prepared the grounds for a smooth transformation after the recognition of Bosnia and Herzegovina's independence. Prior to the reorganisation, the borders of the various Yugoslav Republics and the areas under the control of the three former Military Districts did not match. Until December 1991, Bosnia and Herzegovina fell mainly under the responsibility of the 1st Military District with its seat in Belgrade, as well as the 4th Military District, headquartered in Podgorica [see: United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol.I), 28 Dec. 1994, Annex III, "The Military Structure, Strategy and Tactics of the Warring Factions", pp. 17-18, paras. 76-83]. Without the reorganisation of January 1992, the creation of the new Bosnian Serb Army would have constituted a complicated logistical operation. The creation of the 2nd Military District and, more importantly, the new headquarters in Sarajevo, was a necessary precondition for the eventual reorganisation of the JNA into two new armies: the Bosnian Serb Army (VRS), replacing the 2nd Military District, and the new Yugoslav Army (VJ), taking control of the remaining Military Districts in Serbia and Montenegro.

Serb volunteers attached to the JNA

154. In the first months of 1992, the ranks of the "Serbianised" and reorganised JNA were gradually filled up with Serb volunteers, to make up for the declining number of conscripts. As was explained earlier in this Chapter, these volunteers all fell within the existing command structure of the JNA.

155. The recruitment of Serb volunteers into the JNA was, among others, explained by General Djordje Djukić. During the armed conflict, Djukić was the Assistant Commander for Logistics in the Bosnian Serb Army. He held the rank of General in the Yugoslav Army (VJ), while simultaneously being posted at the Bosnian Serb Army headquarters in Han Pijesak, east Bosnia. General Djukić was arrested by the Bosnian police on 30 January 1996, after having taken a wrong turn on his way to the Sarajevo suburb of Ilidza. During his detention in Sarajevo, on 4 February 1996, he gave the following statement to the Bosnian authorities:

> "Due to the mentioned events in Bosnia and Herzegovina [in the beginning of 1992], all members, except Serbs, left Yugoslav National Army (here, I do not refer to all officers), and due to the series of the happenings in Croatia, the decision was made to dislocate units and material reserves. Dislocation was done towards Yugoslavia and territory of Bosnia and Herzegovina on which the Serbs were majority. Regarding that, YNA [JNA] did not count on the conflicts, but it was assumed that in case of the total withdrawal of the YNA, a part of the Serbian population would move towards Yugoslavia what was estimated as undesirable. *In that period, it was also decided to fill YNA units on the territory of BiH [Bosnia and Herzegovina] with volunteers and volunteers' groups which would consist [of] Serbs, what, according to my opinion, was bad decision.* The goal was to elevate a part of the units on the level of the operational readiness, especially having in mind that they could not be filled during the regular mobilizations in Serbia, due to poor response and attainment of the opposition parties. *This decision was made at the beginning of 1992.* On the base of this decision, second level of the YNA and FMND [Federal Ministry of National Defence] did the dislocation of the material means. The Act of that kind was signed by Sljivic Vladan. The members of his team, including me, were [the] immediate [implementors] of the Act and we realized that practically by our documents. The executors were the units and Commands of the YNA in those areas of Bosnia and Herzegovina where the conditions for supplying the weapons to the individuals and organized groups of Serbs were created. Mentioning those areas, I refer to the areas where Serbian population was a majority." [Statement of General Djordje Djukić, 4 February 1996, pp. 4-5, emphasis added, Annex 140].

The ranks of the JNA were filled up with local Serbs as of January 1992, when the decision was taken by the Belgrade authorities to do so. These Serb volunteers or paramilitaries, which later committed many atrocities when the fighting broke out in April 1992, thus fell under the command of the JNA headquarters in Sarajevo and Belgrade. Djukić's statement also confirms the massive relocation of JNA equipment organised at the same time, transferring arms and weapons to warehouses in areas with Serb majorities. This relocation of JNA materiel was discussed earlier in this Chapter [Reply, Chapter 8, Section 3].

"Five or ten years at the earliest"

156. The authorities in Belgrade had no intention whatsoever of giving up their military control over those territories within Bosnia and Herzegovina which they considered to be part of the projected Greater Serbia. This was frankly admitted by General Života Panić, JNA Chief of Staff, at a meeting of officers in Belgrade on 9 April 1992:

> "The JNA should not withdraw from Bosnia-Hercegovina according to the model of the withdrawal from Macedonia, regardless of the fact that the EC has recognised the independence of Bosnia-Hercegovina, acting CGS [Chief of the General Staff] of the SFRY armed forces, Col-Gen Zivota Panic told a meeting of reserve officers of New Belgrade this evening. He recalled that the JNA has 65% of its arms industry and air fields of a European standard in Bosnia-Hercegovina. *He said that the JNA could withdraw from that republic in five to ten years at the earliest, that is when political circumstances stabilise, when there is a systematic solution to the position of the Serbs in Bosnia-Hercegovina, and in particular when the status of the Serbs in Croatia is politically resolved. Until then we must remain in Bosnia-Hercegovina, where people want us, which is above all in the Serbian Krajinas and regions, General Panic said and added that the JNA 'today is in those areas predominantly manned by personnel and soldiers from these areas'.* Speaking about the activity of the JNA in Bosnia and Hercegovina, Panic said that the tasks of the Army are 'to prevent genocide against any nation particularly the Serbs, because they are the most threatened, and to prevent the aggression of Croatia against Bosnia-Hercegovina, because that republic is still in Yugoslavia'. *In the view of General Panic there is an uncertain situation in Bosnia-Hercegovina - 'we are closer to war than to peace', he said and added that 'it is an irrefutable fact' that in this republic, as he said 'there is a Croatian-Muslim plot and a coalition against the Serbs'.*"
> [Tanjug 1921 gmt, 7 Apr. 1992, *BBC Summary of World Broadcasts,* EE/1351 C1/3, 9 Apr. 1992, emphasis added, Annex 14].

The prevention of "genocide" against the Serb nation in Bosnia and Herzegovina was, according to General Panić, the preeminent task of the JNA. As the Bosnian Serbs presumably feared a "Croatian-Muslim plot", it would be impossible for the JNA to make a speedy withdrawal from Bosnia and Herzegovina. In the opinion of the General, the minimum time-frame for withdrawal of the army was "five to ten years at the earliest".

Shopping list

157. Almost three weeks after General Panić's statement, the newly formed "Serb Republic of Bosnia and Herzegovina", which would later be renamed "Republika Srpska", sent a special request to the headquarters of the 2nd Military District in Sarajevo. On 3 May 1992, government forces found the request in the abandoned JNA barracks in Sarajevo. It is an "officers' shopping list" for the Serb Territorial

Defence forces, the projected Bosnian Serb Army. The JNA was asked to provide the future army of the Bosnian Serbs with the officers necessary to command it:

"SERB REPUBLIC OF BOSNIA AND HERZEGOVINA
MINISTRY OF DEFENCE

No. 21-89/92
Sarajevo, 27 April, 1992

HQ of the 2nd Military District
SARAJEVO

Reference: Request for providing personnel from within active military officers

Based on the needs for provision of the most essential personnel of the Territorial Defence of the Serb Republic of B-H and in accordance with the reached agreement and promise given in Belgrade, we would like to ask you to help us in providing the following commanding officers at the earliest convenience:

1. REPUBLIC HQ OF TO [Territorial Defence]
- commander of R HQ TO
- operative officer
- intelligence officer
- security officer (major Špiro Pereula)
- executive for organizational-mobilisation activities (*major Djordje Djukić*)
- chief of air force (lieut. colonel Časlav Mihajlović)
- chief of artillery
- chief of engineering
- chief of air defence
- chief of communications (lieut. colonel Obrad Daljević)
- aid for logistics
- chief of legal service

2. CITY BOARD OF TO SARAJEVO
- commander (lieut. colonel Čedomir Sladonje)
- chief of staff
- aid for logistics
- executive of organizational-mobilisational activities
- chief of communications
- four TO brigade commanders
- four chiefs of staff-deputy commanders of TO brigades
- commander of the district TO HQ of SAO [Serb Autonomous Region] Romanija (lieut. colonel Jovo Bartula)

3. FOR DOBOJ REGION
- commander of TO HQ (major Milovan Stanković)
- deputy commander of TO HQ (captain Nenad Garić)

For the commanding officers who have accepted the offered positions, it is necessary to immediately issue orders to have them assume their duties. As for other commanding officers, the ones who come from this territory [i.e. Bosnia and Herzegovina] should be found, if possible, as soon as they accept the offer they should be send to their posts.

Sincerely,
Minister

colonel Bogdan Subotić
[signature and seal]"
[Serb Republic of Bosnia and Herzegovina, Request for providing personnel to the 2nd Military District, 27 Apr. 1992, signed Colonel Bogdan Subotić, emphasis added, Annex 141].

The so-called Ministry of Defence of the "Serb Republic of Bosnia and Herzegovina" was thus involved in the planning of the transformation. The document above is a *request* addressed to the JNA headquarters in Sarajevo. This demonstrates that the transformation of the JNA and the creation of the Bosnian Serb Army were directed by the Yugoslav military. Radovan Karadžić's Serbian Democratic Party (SDS) were of course informed about Belgrade's preparations for the transformation, as most Serb volunteers in the JNA were recruited through that party. The cited document also shows that the authorities in Belgrade had promised the Bosnian Serbs every type of assistance. The request was sent to the JNA headquarters in Sarajevo "in accordance with the reached agreement and promise given in Belgrade".

158. The quoted "shopping list" demonstrates that the preparations for the transformation of the JNA were in full swing by the end of April 1992. The list at the same time shows that when the "shopping list" was sent, there was no such thing as a Bosnian Serb Army. As will be explained below, this army was in fact created on 19 May 1992, when the headquarters of the 2nd Military District in Han Pijesak (where the JNA headquarters had been moved to in the beginning of May 1992) were transformed into the headquarters of the Bosnian Serb Army. On that date, the commanding officers the Bosnian Serbs had asked for in their "shopping list" were officially attached to the newly-christened Bosnian Serb Army. General Djordje Djukić, who was expressly mentioned on the list, albeit as a mere "Major", was among the many officers who remained on the territory of Bosnia and Herzegovina after 19 May 1992.

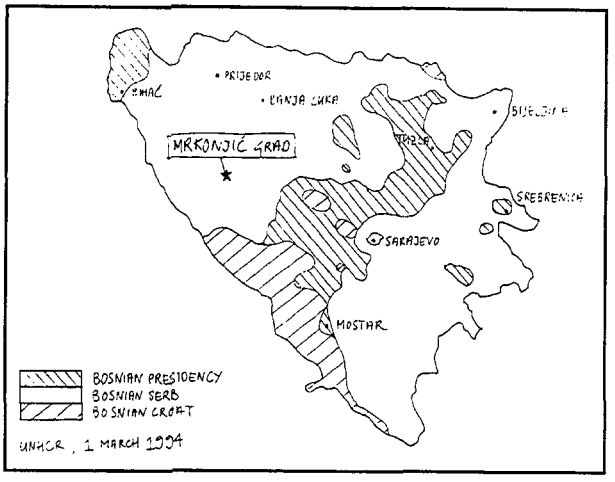
Final touches

159. On 30 April 1992, the Bosnian Serb leadership travelled to Belgrade to meet Serbian President Slobodan Milošević. This meeting was also reported by Borisav Jović in his memoirs mentioned earlier in this Section. The meeting was attended by representatives from the SFRY, the JNA and the Bosnian Serbs:

"30 April, 1992

> Discussion with the Serb leadership from Bosnia and Herzegovina. Branko Kostic [Vice-President of the Presidency of the SFRY], Slobodan [Milosevic, President of Serbia], Momir Bulatovic [President of Montenegro], General Milan [Zivota] Panic [Chief of JNA General Staff], Karadzic [Radovan, President of the Srpska Republika], Krajisnik [Momcilo, President of the Assembly of the Srpska Republika], Koljevic [Nikola, Vice-President of the Srpska Republika] and me.
>
> Security Council has recognised Bosnia and Herzegovina. Ethnic conflicts have inflamed there. We are requested to withdraw the JNA from Bosnia and Herzegovina. Slobodan and me expected and predicted that. We cannot put the JNA in a position to be proclaimed a foreign or aggressor army, as some people would hope for.
>
> *Withdrawal of 10-15% of the remaining FRY citizens from JNA in B-H, all together some 10.000 people, is neither a technical nor a transport problem.* The problem is the recent careless statement made by Branko Kostic that he, in his capacity as the vice-president of the SFRY Presidency, will never sign an order for the withdrawal of the JNA from Bosnia and Herzegovina, and also the statement given by Milan [Zivota] Panic that the army will not withdraw from Bosnia and Herzegovina for another 5 to 7 years, although that republic has been internationally recognised as an independent state. The public took these statements very seriously, whereas the two of them had not think twice before making such statements. How would it be possible for us to forcibly keep our army in another independent state against its will and not to have that army be proclaimed undesirable?
>
> *Regardless of the statements made by Kostic and Panic, we discussed the necessity to have the remaining troops - citizens of FRY withdrawn from B-H. Even without them, some 90.000 JNA troops, mainly Serbs, will stay in that republic, and the Serb leadership from Bosnia and Herzegovina can take the political leadership over them.*
>
> Karadzic agrees, Krajisnik raises a number of questions such as: how is that army going to be financed, who would give them salaries, who will provide for their pensions, etc., in fact all that exist as a problem, but is not decisive for our discussion.
>
> *We argued a lot about the dead-line for the withdrawal, and, finally agreed to accomplish it in 15 days.*
>
> *Since generals who do not come from B-H were also to withdraw, it was agreed to have General Mladić replace General Vukovic.*
>
> *This operation was too important for us, and for the Serbs in B-H, I believe, even more important. They got their army.*" [Borisav Jović, *Final Days of the SFRY*, Belgrade 1995, p. 448, emphasis added, Annex 15].

At this meeting, Borisav Jović witnessed the final decision to transform the JNA in Bosnia and Herzegovina into the Bosnian Serb Army. According to Jović, 90,000 JNA troops would stay in Bosnia and Herzegovina after the official "withdrawal". Only some 10,000 men would really be pulled out of the country. This "withdrawal" posed "neither a technical nor a transport problem".



160. The transformation of the JNA was not only discussed in Belgrade. The decision to transform the JNA in Bosnia and Herzegovina was elaborated upon by the various JNA units in the field. On 14 May 1992, such a meeting took place in the area of Mrkonjić Grad, a town in central Bosnia. The meeting was attended by three JNA officers, representing the 30th Partisan Division, and various Serb leaders from the the surrounding municipalities and the "Serb Krajina", the self-proclaimed autonomous Serb region in northwest Bosnia. Although the meeting was organised at a regional level by the 30th Partisan Division, the participants reviewed important issues of national, that is Serb, interest. They therefore also discussed the problems related to the planned transformation of the JNA:

"[stamp]
the Command HQ of the 1st Partisan Division
strictly confid. no. 1-45/92
Date: 14.05.1992

MINUTES
from the meeting with the presidents of municipalities
in the responsibility zone of the division

Meeting began at 10,45 hours
Meeting ended at 13,30 hours

AGENDA

1. Analysis of the present situation in the municipalities in military-political terms;

2. *Functioning of administration and relations until the transformation of the JNA*;

3. *Summary from the meeting held in Banja Luka on 12.05.1992 regarding armed forces of the Serb Krajina and the Army of the Serb Republic of Bosnia and Herzegovina;*

4. *Discussion and proposals regarding further co-operations with JNA units in terms of insurance of territories and treatment of troops (officers) in the area of Serb Krajina.*

MEETING ATTENDED BY:

1. commander of the 30th Partisan Division, Col. Stanislav Galić;
2. commander of the 6th Partisan Brigade, Col. Branko Basara;
3. chief of staff of the 30th Partisan Division, Lt. Col. Koković Stevan;
4. commander of Territorial Defence HQ Kjuč, Major Lukić Boško;
5. president of the municipality of Ključ, Banjac Jovo;
6. president of the municipality of Šipovo, Djukić Radoslav;
7. president of the municipality of Mrkonjić Grad, Malidža Milan;
8. president of the Serb municipality of Jajce, Miličić Dragan;
9. president of the Serb municipality of Donji Vakuf, Zagorac Nikola;
10. president of the Serb municipality of Bugojno, Mišić Nikola;
11. deputy of the Serb Krajina, Mr. Kalabić Rajko;

President of the municipality of Ključ presented the guests and the objectives of the meeting and then he gave the floor to Col. Galić.
Col. Galić, taking the floor, congratulated the Security Day first and proposed the agenda.
It was suggested to tackle, within item 4 of the agenda, the issue of refugees and their engagement in the Army of the Serb Republic of Bosnia and Herzegovina.
The agenda was adopted unanimously.
Colonel Galić reported about the situation within the responsibility zone of 30th Partisan Division, stating that the territory of the zone was somewhat reduced after the KUPRES operation.

In respect of the present situation and security in the municipalities, it was reported as follows:

(...)

The issue of JNA transformation is rather complex and it has led us to a difficult position, due to leaving of officers from the Federal Republic of Yugoslavia.
All the officers from this area (division responsibility zone) should be called back in order to assume some duties in the units.

Commander of the Corps ordered that in the next 5 days one-sided cease fire is to be respected. Only in case of substantial losses in men and ordnance, fire or an attack should be answered."
[Minutes from the meeting with presidents of municipalities in the responsibility zone of the division, signed Dmitrović Momčilo, 14 May 1992, emphasis added, Annex 142].

After having discussed the first two items on the agenda and the problems related to the leaving of JNA officers to Serbia and Montenegro [see: Reply, Chapter 8, Section 8], one of the Serb municipality presidents attending the conference presented the decisions taken at a meeting held in Banja Luka two days before [see also: ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić & Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 43, para. 77]. The main topic of

discussion at this Banja Luka meeting had been the coming transformation of the JNA:

> "*The president of Mrkonjić Grad municipality, Malidža Milan, then reported about conclusions made at the meeting held in Banja Luka.*
> *At that meeting, it was decided that the armed forces of Krajina [in Bosnia and Herzegovina] should be called: ARMY OF THE SERB REPUBLIC OF BOSNIA AND HERZEGOVINA and it was also pointed out that all JNA members who come from our areas are members of the Army of the Serb Republic of BH.* It was also pointed out that land forces, air force and air defence should be developed. It was appraised that the army was able to conquer much territory, but that this was not necessary because of incapability to defend it in the coming period."
> [*Ibid.*].

At the Banja Luka meeting the participants had thus decided that the future Serb army in Bosnia and Herzegovina *should be called*: "Army of the Serb Republic of Bosnia and Herzegovina" and that "all JNA members who come from our areas *are* members of the Army of the Serb Republic of Bosnia and Herzegovina" [emphasis added]. These excerpts and the emphasised words clearly illustrate the cosmetic character of the planned transformation of the JNA. The entire transformation was just a changing of labels. *All* JNA soldiers "from our areas", that is, with Bosnian backgrounds, would automatically be incorporated in the new Bosnian Serb Army. They were in fact offered no choice at all. Those Bosnian Serbs who decided not to join the Bosnian Serb Army were later treated as deserters by both the Bosnian Serb and the Yugoslav authorities [see Reply, Chapter 8, Sections 8 & 11].

161. At the meeting, the participants also agreed on what was coined the "strategic objectives" of the JNA and the future Bosnian Serb Army. These "objectives" reveal the true purpose of the military operations carried out by the JNA in Bosnia and Herzegovina [see also: Reply, Chapter 8, Section 3]. They are in perfect harmony with the plan for a Greater Serbia [see Reply, Chapter 4]:

> "The strategic objectives were adopted and presented at the meeting in Banja Luka as follows:
>
> 1. There must be state division between 3 national communities;
> 2. Krajina must be linked to Serbia along the right bank of the Sava river [along the border with Croatia] in the area of 25-30 km;
> 3. to create a corridor along the Drina river valley [marking the border with Serbia proper] so that the Serb people are in control of both the left and the right bank of the Drina river;
> 4. to establish borders from the river Una [west Bosnia] to the river of Neretva [Herzegovina];
> 5. Sarajevo must be divided or levelled to the ground;
> 6. a possibility of having exit of the Serb Republic BH to the sea is to be examined;

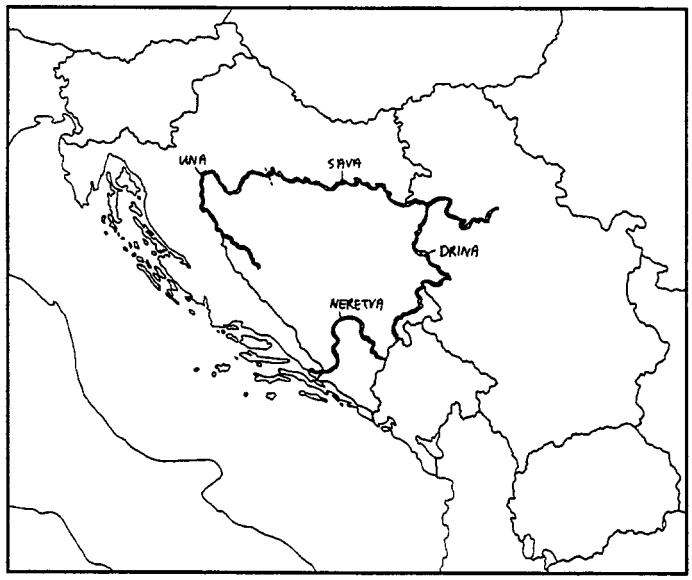
It was also proposed to establish borders towards Knin Krajina, while crossings from the Serb Republic of BH to FRY should not require passports, only identity cards.
(...)
At the end of the meeting, Colonel Galić, proposed the following conclusions:

- *to realise the conclusions from the meeting held in Banja Luka and to transmit them to the commands of units and municipalities*;
- to maintain the former position/defence without a war;
- to keep developing war units and to request weapons and equipment for new war units;
- to have all forces of the Serb Republic of BH working to the same end and to prevent war profiting;
- to enable war functioning of economy and to have neighbouring municipalities help each other;
- to give credits to all troops for combat results in so far.

The proposed conclusions have been unanimously adopted.
It was also proposed that such meetings should be held in future every fortnight and that the organisers should be presidents of municipalities.

RECORD taken by
capt. 1st class
Dmitrović Momčilo [signature]"

[Minutes from the meeting with presidents of municipalities in the responsibility zone of the division, signed Dmitrović Momčilo, 14 May 1992, emphasis added, Annex 142].



The "strategic objectives" listed above were all accomplished, with the exception of the last objective with regard to the "exit of the Serb Republic BH to the sea". The list reveals that the Serbs were in fact planning the division of both Bosnia and Herzegovina *and* its three "national communities". The Serbs were thus planning genocide. The territory of Bosnia and Herzegovina had to be divided into three

ethnically homogeneous parts, the largest of course falling to the Bosnian Serbs. These Serb territories had to be "linked" to Serbia proper. Sarajevo was not spared, it was either going to be divided or "levelled to the ground". The "objectives" listed above thus demonstrate that the siege of Sarajevo and the subsequent destruction of the city were planned well before the JNA officially "withdrew" from Bosnia and Herzegovina.

162. The three officers presiding over the conference were all JNA military, representing JNA units and reporting to the JNA headquarters of the 2nd Military District. Those units carried JNA names reminiscent of a more distant past. The so-called Partisan Divisions and Brigades were uniquely Yugoslav formations, based on the experiences gathered during the second World War [United Nations, *Final Report of the Commission of Experts*, S/1994/674/Add.2 (Vol.I), 28 Dec. 1994, Annex III, "The Military Structure, Strategy and Tactics of the Warring Factions", p. 18, para. 85]. All JNA units were stripped of their "socialist" names after 19 May 1992, when they were transformed into the Bosnian Serb Army.

19 May 1992

163. On 15 May 1992, the Security Council adopted Resolution 752, in which it demanded that all interference from outside Bosnia and Herzegovina by units of the JNA cease immediately [United Nations, *Security Council Resolution 752*, S/RES/752, 15 May 1992]. Four days later, on 19 May 1992, the formal "withdrawal" of the JNA was announced. As calculated by Borisav Jović, only 10 to 15 percent of all JNA troops, or some 10,000 men, actually left the territory of Bosnia and Herzegovina in the following period. The newly formed Yugoslav Army (VJ), however, remained active on Bosnian territory [see Reply, Chapter 8, Section 5]. The soldiers of Bosnian Serb background and many commanding officers [*ibid.*], until then part of the 2nd Military District, remained on the territory and retained all of their arms and ammunition, thus becoming the new Bosnian Serb Army. This Bosnian Serb Army was the product of the dissolution of the old JNA and the withdrawal of its non-Bosnian elements to Serbia and Montenegro.

164. The events on 19 May 1992 were also described by General Djordje Djukić. After his arrest by the Bosnian authorities on 30 January 1996, Djukić gave the following statement:

> "The Command of the Second Military District was extinguished on 19.05.1992 by the order of the Main HQ [headquarters] of the YNA [JNA]; *by the same order the Command of the Second Military District was transformed into the Main HQ of the Army of the Serbian Republic [Republika Srpska].*" [Statement of General Djordje Djukić, 5 February 1996, p. 3, Annex 140].

The new Bosnian Serb Army was therefore formed by simply renaming the 2nd Military District. This renaming was done on orders from Belgrade. This order was signed by General Blagoje Adžić, JNA Chief of Staff:

> "*Based on the Command of the Federal Ministry for National Defense*, which was signed by General Adžić, the Main Headquarters of the Army of the Serbian Republic [Republika Srpska] was formed as follows: Commander, Lieutenant-General Ratko Mladić, Chief of the ASR [Army of the Republika Srpska] Headquarters, Major-General Manojlo Milovanović, Assistant for Morale and Information, Major-General Gvero Milan, Assistant for Logistics, Major-General Djordje Djukić, Chief for the Security, Colonel Zdravko Tolimir and Chief for ORMOB Grubor Mico. Organizational structure of the HQ and the appointments of the officers within the HQ were done, by on this way formed, Main HQ. At the same time, transformation of the YNA [JNA] units into ASR [Army of the Republika Srpska] was done on such a way that 5th Corps was transformed into 1st KK [Krajina Corps], 9th and 10 Corps into 2nd KK [Krajina Corps], 17th Corps into IBK [East Bosnia Corps), 4th Corps into SRK [Sarajevo-Romanija Corps] and 13th Corps into Herzegovina Corps. From 19.05.1992, the Main HQ was functioning as the Command-in-Chief of the ASR, which work was followed by the formation of the other units and institutions. The Army, formed on this way, had a task to ensure the territory for the Serbian people in the RBiH [Republic of Bosnia and Herzegovina]." [Statement of Djordje Djukić, 3 (?) February 1996, Annex 140].

All the commanding officers of the newly formed Bosnian Serb Army were thus appointed by the JNA headquarters in Belgrade. As will be shown in a separate Section of this Chapter, all officers within the Bosnian Serb Army continued to be paid by Belgrade. Many, if not all, Bosnian Serb officers were in fact simultaneously officers in the newly formed Yugoslav Army (VJ), simply carrying out their duties in the Bosnian theatre [see Reply, Chapter 8, Section 8].

Changing the letterhead

165. The "withdrawal" announced by the authorities in Belgrade was in fact no withdrawal at all, but a simple reshuffling of the armed forces under their control. This reshuffling resulted in the dissolution of the JNA and the simultaneous creation of the so-called Republika Srpska Army (VRS) and the Army of Yugoslavia (VJ). This decision to create these two entities was only taken to placate the international community, as Judge McDonald described in her dissenting opinion in the Tadić case before the ICTFY in The Hague:

> "The evidence proves that the creation of the VRS was a legal fiction. The only changes made after the 15 May 1992 Security Council resolution were the transfer of troops, the establishment of a Main Staff of the VRS, a change in the name of the military organisation and individual units, and a change in the insignia. There remained the same weapons, the same equipment, the same officers, the same commanders, largely the same troops, the same logistics centres, the same suppliers, the same infrastructure, the same source of payments, the same goals and mission, the same tactics, and the same operations. Importantly, the objective remained the same: to create an ethnically pure Serb State by uniting Serbs in Bosnia and Herzegovina and extending that State from the Federal Republic of Yugoslavia (Serbia and Montenegro) to the Croatian Krajina ... "
> [ICTFY, Separate and Dissenting Opinion of Judge McDonald Regarding the Applicability of Article 2 of the Statute, *Prosecutor v. Duško Tadić,* Case IT-94-1-T, 7 May 1997, pp. 4-5, para. 7].

After 19 May 1992, business went on as usual:

> "... the actions of the Federal Republic of Yugoslavia (Serbia and Montenegro) were indeed calculated to make a showing of compliance while assuring that the military operations it began were successfully continued. Rather than being cynical, it would perhaps be naive not to recognize that the creation of the VRS, which coincided with the announced withdrawal of the JNA, was in fact nothing more than a ruse."
> [*ibid.*, p. 7, para. 10].

The creation of the Bosnian Serb Army (VRS) was, in Judge McDonald's words, both a "legal fiction" and a "ruse". Everything had to be changed, in order to remain the same. The "withdrawal" on 19 May 1992 was in fact no more than a smoke screen, put up by the authorities in Belgrade to try and conceal the fact that they continued to control all military operations in Bosnia and Herzegovina. The following Sections of this Chapter will demonstrate that Belgrade continued to pull all of the strings in Bosnia and Herzegovina.

5. Yugoslav military involvement in Bosnia and Herzegovina after 19 May 1992

Facade of non-interference

166. Behind a facade of non-interference, the Federal Republic of Yugoslavia continued to play a decisive role in the events in Bosnia and Herzegovina after the official "withdrawal" of the JNA on 19 May 1992. As was also discussed in Section 2.3.7. of the Memorial, Yugoslav military continued committing genocidal acts in the territory of Bosnia and Herzegovina throughout the entire armed conflict, in spite of Belgrade's official announcement that it would "withdraw" all JNA personnel of Yugoslav descent [Counter-Memorial, pp. 247-8, para. 3.1.2.4.]. On more than one

occasion, this elicited sharp reactions from the Security Council. On 30 May 1992, in Resolution 757 (1992), it condemned the Federal Republic of Yugoslavia for its failure "to end all interference and respect the territorial integrity of Bosnia and Herzegovina". One month later, in June 1992, the Security Council again urged the remaining units of the Yugoslav Army to withdraw from the territory of Bosnia and Herzegovina [see: Reply, Chapter 10].

167. The Respondent has never denied that it failed to comply with the demands laid down by the Security Council. In its Counter-Memorial, the Respondent indeed acknowledged that Yugoslav troops, that is soldiers with Yugoslav roots or background, remained in Bosnia and Herzegovina after 19 May 1992. This was according to the Respondent, however, due to the fact that:

> "(...) the JNA was attacked by Muslim and Croat forces controlled by the Government in Sarajevo and that those attacks slowed down and hindered the withdrawal of the JNA from the region." [Counter-Memorial, p. 257, para. 3.1.3.25.].

The above mentioned argument is repeated several times in the Counter-Memorial [see e.g.: Counter-Memorial, p. 258, paras. 3.1.4.3. and 3.1.5.2.] It is in fact the thread of the Federal Republic of Yugoslavia's defense for the period directly following 19 May 1992: the JNA wanted to retreat, as quickly as possible, but it was prevented from doing so by the Bosnian Army.

168. To underline this argument the Respondent extensively quotes from a Secretary General Report to the Security Council. The Federal Republic of Yugoslavia apparently considers this document, published on 30 May 1992, of such importance that it cites the same *passage* no less than three times [United Nations, *Report of the Secretary-General Pursuant to Paragraph 4 of Security Council Resolution 752 (1992)*, S/24049, 30 May 1992, as quoted in the Counter-Memorial on pp. 249-251, para. 3.1.2.8., pp. 264-265, para. 3.1.5.16. and pp. 266-267, para. 3.1.5.19.]. The following passage of the Report is extracted from the Counter-Memorial:

> "6. 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 and Montenegro, some of them having been subjected to attack during their withdrawal. Others however remain at various garrisons in Bosnia and Herzegovina, especially in Sarajevo. A further category consists of personnel who have been blockaded in their barracks by the Territorial Defence of Bosnia and Herzegovina or hostile irregular forces. These are now mostly in the Sarajevo area, where the latest developments have been as follows: (...)" [United Nations, *Report of the Secretary-General Pursuant to Paragraph 4 of Security Council*

Resolution 752 (1992), S/24049, 30 May 1992, as quoted in the Counter-Memorial on p. 264, para. 3.1.5.16. and p. 266, para. 3.1.5.19.].

The Report of the Secretary-General, as cited by the Respondent, indeed seems to support the Federal Republic of Yugoslavia's assertion that the JNA would have left the territory of Bosnia and Herzegovina in time, if the Bosnian government had allowed the army to retreat as planned. In its view, the Respondent is not to blame for any delays in the scheduled withdrawal. Accordingly, those soldiers remaining in Bosnia and Herzegovina after 19 May 1992 were all under alleged siege of government forces and therefore simply not able to leave.

169. A closer look at the *actual* Report, however, paints a different picture, as the Respondent left out a crucial passage in the cited paragraph. The original Report should have been quoted as follows:

> "6. 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 and Montenegro, some of them having been subjected to attack during their withdrawal. Others however remain at various garrisons in Bosnia and Herzegovina, especially in *Serb-controlled areas, including two installations on the outskirts of* Sarajevo. A further category consists of personnel who have been blockaded in their barracks by the Territorial Defence of Bosnia and Herzegovina or hostile irregular forces. These are now mostly in the Sarajevo area, where the latest developments have been as follows: (...)" [United Nations, *Report of the Secretary-General Pursuant to Paragraph 4 of Security Council Resolution 752 (1992)*, S/24049, 30 May 1992, p. 2, para. 6, Annex No. 129, Counter-Memorial, pp. 1044-1048, emphasis added].

The emphasised passage was not included in the document as cited by the Federal Republic of Yugoslavia. When the missing part is added to the sentence, the picture changes dramatically. The Respondent's assertion that the remaining JNA troops were prevented from leaving by the Bosnian Army, now proves to be in flat contradiction with the facts as presented in the cited Security Council Report. Most Yugoslav Army units deployed in Bosnia and Herzegovina after 19 May 1992 were not blockaded by Bosnian forces at all, but safely in their garrisons in "Serb-controlled areas".

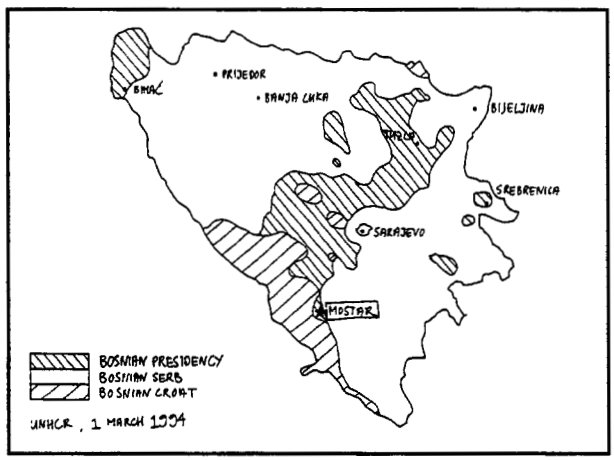
170. As mentioned above, this extract from the Secretary-General Report is quoted three times. The Report itself is cited five times [see also Counter-Memorial, pp. 129-130, para. 2.6.1.2. and pp. 331-332, para. 5.4.1.12.]. Twice the passage emphasised in the foregoing citation is missing. The correct quote was only given in the section on the

"Reorganization and Relocation of JNA". Both incomplete quotes are found in the separate section on "The Alleged Prolonged Presence of the JNA in Bosnia and Herzegovina". Strikingly, the underlined passage is the only "omission" in the quotes, which in all cover six pages of the Counter-Memorial.

171. Thus, not all military personnel of Serbian or Montenegrin descent had left Bosnia and Herzegovina by 19 May 1992. After that date, units of the newly formed Yugoslav Army (VJ) remained active in Bosnia and Herzegovina. One of these units, for example, was the so-called Podgorica Corps of the Yugoslav Army. Podgorica is the capital of Montenegro. The continued presence of this VJ unit in the Mostar area until the autumn of 1992 was confirmed the Trial Chamber at the ICTFY in their judgement in the Tadić case:

> "The Podgorica Corps of what had been the JNA and was now the VJ remained in Bosnia and Herzegovina for much of 1992 and, under the command of General Momcilo Perišić, was involved in the killing of Muslims and Croats in the Mostar region. That Corps, from Montenegro, remained in Bosnia and Herzegovina throughout the summer and autumn of 1992 as late as September of that year. General Perišić later became Commander-in-Chief of the VJ." [ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 44, para. 119].

172. When interviewed in 1993, General Momcilo Perišić, the commander of the Podgorica Corps, admitted that he had stayed on after the official "withdrawal" in May 1992. In the Yugoslav newspaper *Vesti*, Perišić explained the presence of the Podgorica Corps in Bosnia and Herzegovina by stating that the Serb Herzegovinians had to be trained on the equipment which the JNA had left behind [Biljana Sacic in *Vesti*, 12 May 1993, p. 9, Annex 143].



173. General Momcilo Perišić's ideas on the use of JNA equipment are unequivocal. At the very beginning of the fighting, he used heavy ordnance to bomb Mostar. In April 1992, British correspondent Ian Traynor witnessed the first shellings of the city. Soon afterwards, Traynor published his eyewitness report in *The Guardian*:

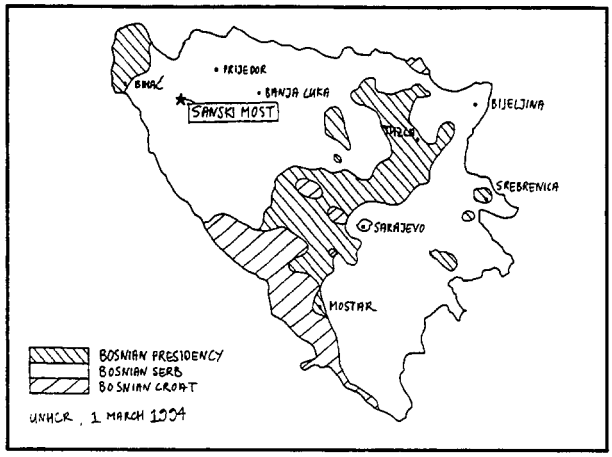
> "TWO Yugoslav air force pilots were reported missing and the general was not pleased. The ultimatum went out. At half past one on Sunday afternoon in the ancient city of Mostar, over the mountains from the Bosnian capital Sarajevo, General Momcilo Perišić, the local army commander and a noted Serbian hawk, announced that if the pilots were not returned by four o'clock, the town would pay.
> Western diplomats in Belgrade got wind of the threat and instantly got on to the army high command, warning that civilian targets should be spared and that the army would be held responsible for the consequences. That was at 3 pm.
> Twenty minutes later, the general vented his wrath on Mostar. After a lull, it then went on for another three days. When the smoke cleared on Wednesday, Mostar's residents found the hospital hammered, a student hostel rubble-strewn, blocks of flats gouged by mortars, two hotels and the aluminium works virtually destroyed." [Ian Traynor, *The Guardian*, 25 Apr. 1992, p. 8, Annex 144].

By the time the fighting in Bosnia and Herzegovina started, Momcilo Perišić had already earned himself a dubious reputation in Croatia, where he had ordered the shelling of the city of Zadar in September and October 1991. As a result of these shellings 34 civilians were killed. On 24 April 1997, the nowadays Chief of Staff of the Yugoslav Army was found guilty of war crimes against civilians by the court in Zadar. Perišić's trial was held *in absentia*, but the court nevertheless convicted him to a twenty years sentence [Zagreb Radio Croatia Network, FBIS-EEU-97-114, 24 Apr. 1997, Annex 145].

Genocidal acts

174. In the period following 19 May 1992, many violent incidents were reported involving soldiers of the Yugoslav Army.

175. The Yugoslav Army was, for example, responsible for the ethnic cleansing of Sanski Most, a town in northwest Bosnia and Herzegovina. The role played by Yugoslav forces in the ethnic purification of Sanski Most in the last days of May 1992 was among others recorded by the Commission of Experts in their Report on mass graves [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex X.A, "Mass Graves", pp. 43-44, para. 281].



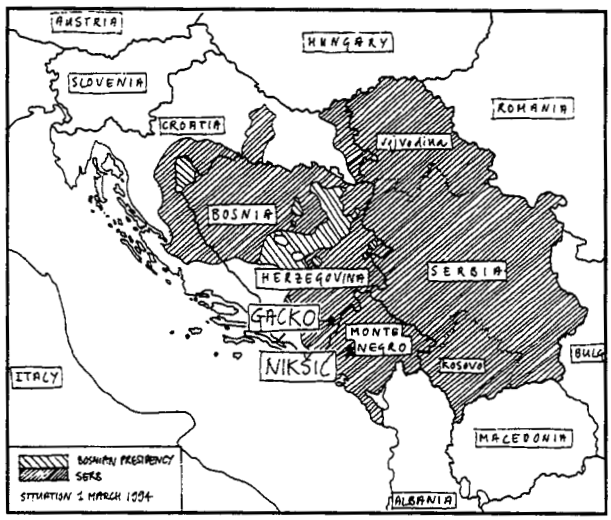
176. The campaign in Sanski Most was also described by the United States Department of State in their highly informative *Dispatches*:

> "Between May 23 and 24, the JNA [VJ] and its military police arrested Muslim officials in the city government and members of the Muslim intelligentsia. On May 25 and 26, the JNA units attacked Muslims in Sanski Most by throwing grenades in their homes in the Muslim section, Mahala, and by firing at the houses with automatic weapons. This lasted 1 day, during which 11 persons were shot to death in a house on Muhici Street that belonged to a man named Hilmija. Of these, three were women, one of whom was pregnant and five were young boys. The men were taken to the local school; women and children were transported to Velika Kladusa [town near the Croatian border]. After the 'cleansing', the Serbs continued to throw grenades into the houses, then burned them. The ruins were levelled with bulldozers."
> [US Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 4, No. 30, p. 543, 26 July 1993, Annex 18].

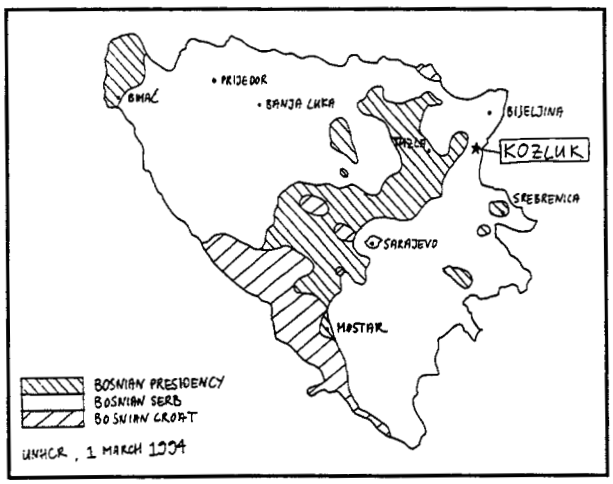
The genocidal attack on Sanski Most lasted several days, during which the Yugoslav Army used heavy ordnance to bomb Muslim neighbourhoods into submission. After the bombing, Serb paramilitaries were sent in to complete the ethnic cleansing:

> "27 May 92: a 32-year-old Bosnian Muslim said that, on the morning of May 27, 1992, the roads across the Sana River [river running through Sanski Most], from his neighbourhood to the centre of Sanski Most, were blocked by local Serbian police and soldiers whom he believed were from the JNA [VJ]. During the day, he saw the police and soldiers bringing mortars and artillery into position on the other side of the river. The shelling began at 9 pm and lasted until 8 (am) the next morning. The witness estimates that the Serbs used more than 3,000 shells and mortars. In the morning, the radio announced that all those in the neighbourhood who wanted to surrender should raise a white flag. An other broadcast said that all weapons should be turned in to a central police station. Later, the radio announced that all 'innocent citizens' should report to the main soccer field to 'settle accounts' for the activities of the Green Berets -a Muslim force allegedly fighting the Serbs. The witness said that nearly everyone from the neighbourhood -a couple of thousand people- went to the sports field. Only those who had not heard the radio broadcast or who were too scared or distrustful of the Serbs to go stayed in their homes. Once they were on the sports field, the

Serbs began to 'cleanse' the neighbourhood. From the field, the witness watched the Serbian police and irregulars roam through streets, looting and burning houses. If they found people still in their homes, the Serbs threw a grenade through the window to kill the occupants."
[US Department of State, Bureau of Public Affairs, *Dispatch*, Vol. 4, No. 16, p. 268, 19 Apr. 1993, Annex 19].



177. On 1 June 1992 Yugoslav forces, including so-called special forces from the Montenegrin city of Nikšić, launched an attack on Gacko. During and after the attack on this town close to the border with Montenegro, many Muslims were killed or arrested and transported to the camp in nearby Bileca, in Bosnia and Herzegovina [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, Annex III.A, p. 146, para. 423].



178. Several weeks later, on 26 June 1992, Yugoslav forces were involved in the take-over of Kozluk, a small town north of Zvornik, close to the river Drina which marks the border between Serbia and Bosnia and Herzegovina:

> "A 37-year-old Bosnian Muslim witnessed the arrival of local Serb paramilitary units reinforced with regular tank and infantry units from Serbia in Kozluk, Bosnia, on June 26, 1992. The units from Serbia were from Valjevo, Sabac, Loznica, Novi Sad, and Titovo Uzice. Prior the capturing the town, the Serbs bombarded it with artillery from the Gucevo mountains across the border in Serbia. On June 26, the Serbs entered the town and brought with them buses and trucks. They ordered the entire population of Kozluk to assemble in the town centre. About 1,500 people assembled. The Serbs then read from a list the names of prominent local people and told them to move to one side. They were ordered into a bus and taken away to an unknown location; they were never seen again. Next, the Serbs segregated all the men from the women and children and ordered the men to board buses. Finally, the women and children were ordered to board buses. *Before they departed, the town residents were told that for their own safety, they were being taken to a refugee camp in Palic, near Subotica [Serbia].*" [United Nations, *Letter 12 April from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25586, 13 Apr. 1993, pp. 31-32, emphasis added].

The deployment of tanks and artillery, located on Yugoslav territory, to support or cover Serb forces in Bosnia and Herzegovina happened on a regular basis. It was also mentioned in the Memorial, where a Yugoslav Army General is quoted boasting about assistance he gave to Serb units across the river Drina in January 1993 [Memorial, p. 84, para. 2.3.7.4].

The Yugoslav and the Bosnian Serb Armies co-operated in tandem

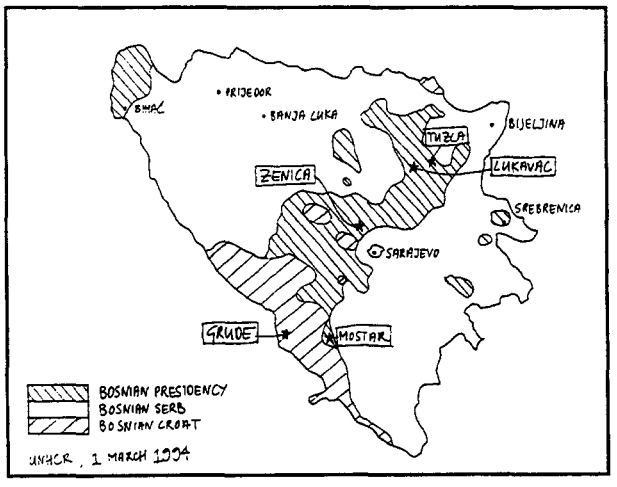
179. The Yugoslav Army (VJ) continued carrying out operations across the border throughout 1992 and 1993 [see e.g.: ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 43, para. 118]. All of these operations were executed in close co-operation with the units of the newly formed Bosnian Serb Army (VRS). This was also the view of Judge McDonald in her Separate and Dissenting Opinion in the Tadić case, who expressly mentioned the special part played by the Yugoslav Air Forces:

> "(...) despite the purported JNA withdrawal from Bosnia and Hercegovina on 19 May 1992, active elements of what had been the JNA and was now rechristened as the VJ operated in tandem with the VRS in Bosnia and Herzegovina. In particular, VJ air crew and aircraft remained in Bosnia and Herzegovina after the purported May withdrawal and worked with the VRS throughout 1992 and 1993." [ICTFY, Trial Chamber, Separate and Dissenting Opinion of Judge McDonald Regarding the Applicability of Article 2 of the Statute, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 7-8, para. 11].

The continuing activities of the Yugoslav Air Forces

180. The role of the Yugoslav Air Forces was indeed symptomatic of the role generally played by the VJ during the armed conflict in Bosnia and Herzegovina. As they had done before 19 May 1992, Yugoslav jets continued bombing civilian and military targets in Bosnia and Herzegovina in the following years.

181. In June 1992, Yugoslav aircraft attacked the chlorine-alkaline complex in Tuzla and Lukavac [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, Annex III.A, p. 162, para. 538]. In the same period, Yugoslav military aircraft bombed a tobacco factory in the Bosnian town of Grude, west of Mostar [United Nations, *Letter Dated 22 September 1992 from the Deputy Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/24583, 23 Sept. 1992, p. 9]. In the attack on Mostar itself, somewhat later, Yugoslav aircraft based in Podgorica (Montenegro) used fragmentation bombs to support the Serb counter-offensive on the ground. This was reported by the German weekly *Profil* [Gregor Mayer in *Profil*, 10 Aug. 1992, p. 40, Annex 146]. The French magazine *Le Nouvel Observateur* reported on the Yugoslav bombing of the electricity power station in Zenica, in central Bosnia, in October of the same year. [H. Guirchon in *Le Nouvel Observateur*, 29 Oct. 1992, Annex 147].



182. The Yugoslav Air Force was also involved in a first attempt to capture the town of Srebrenica in the beginning of 1993. Helicopters and planes from the Federal

Republic of Yugoslavia were used to bomb positions of the Bosnian army within the enclave in the first weeks of March. On 13 March 1993, United Nations personnel observed three aircraft dropping bombs on the village of Gladovici, south-east of Srebrenica. After dropping their bombs, the planes withdrew toward the Federal Republic of Yugoslavia [United Nations, *Note Verbale Dated 16 March 1993 from the Secretary-General Addressed to the President of the Security Council*, S/24900/Add. 27, 16 Mar. 1993, pp. 2-3, Numbers 473-475].

183. The above mentioned air attack and another one in the same area were also noted and condemned by the President of the Security Council:

> "(...)
> *The Council equally takes note of the report by the Secretary-General in his letter of 16 March 1993 (S/25444) indicating that on 13 March 1993 new violations of the no-fly zone took place by planes that proceeded to bomb the villages of Gladovici and Osatica in the Republic of Bosnia and Herzegovina before leaving in the direction of the Federal Republic of Yugoslavia (Serbia and Montenegro).*
> (...)
> The Council strongly condemns all violations of its relevant resolutions and underlines the fact that since the beginning of the monitoring operations in early November 1992, the United Nations has reported 465 violations of the no-fly zone over Bosnia and Herzegovina.
> (...)
> *The Council has mandated its President to convey to the Minister for Foreign Affairs of the Federal Republic of Yugoslavia (Serbia and Montenegro) and to the leader of the Bosnian Serbs its deepest concern about the above-mentioned developments and its demand that they take immediate action to prevent any repetitions of these attacks.*" [United Nations, *Statement by the President of the Security Council*, S/25426, 17 Mar. 1993, emphasis added].

184. In response to the Statement given by the President of the Security Council, the Yugoslav Mission to the United Nations issued a press release. This release stated that the attack on the Srebrenica area had been a provocation and a premeditated fraud set up by the "Muslim and Croat side" to exert pressure on the Security Council, which the Federal Republic of Yugoslavia accused of adopting a "one-sided approach" to the reported violation of the no-fly zone:

> "*Due to such one-sided approach in evaluating this event [the bombing of Gladovici and Osatica], the Muslim and Croatian side had been forthwith freed of any responsibility.* At the same time, the fact that the Muslim side has on a number of occasions orchestrated horrendous crimes targeting civilians in the territory under its control, particularly in Sarajevo, and blamed the Serbs, has been completely ignored. That has invariably been the case when important agreements to end the war were to be reached. *The description of aircraft and the targets, close to the border with the FR of Yugoslavia, indicate that we are dealing with a provocation and a premeditated fraud whose purpose is to exert pressure, in this moment, on the Security Council.*" [United Nations, *Permanent Mission of the Federal Republic of Yugoslavia to the United Nations*, Press Release, No. 9/3, 22 Mar. 1992, emphasis added].

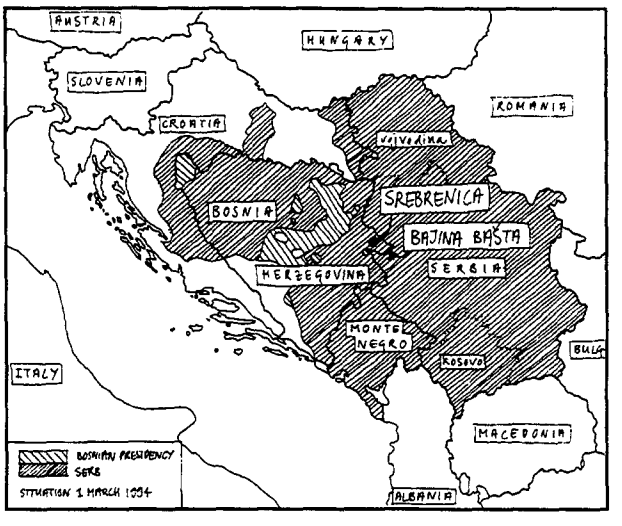
This quoted press release was the Respondent's only reaction to the Security Council's demand to "take immediate action to prevent any repetitions of these attacks". It simply accused the Bosnian forces of bombing and shelling their own people, without presenting any evidence to support this claim.

The 1993 military campaign in east Bosnia

185. On the ground, VJ forces from Serbia participated in this attack on Srebrenica as well. Heavy ordnance from across the river Drina inside Serbia was used in support of the aerial bombing [United Nations, *Letter Dated 12 April 1993 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25586, 13 Apr. 1993, p. 25]. The British newspaper *The Telegraph* published Patrick Bishop's vivid account of the attack on the enclave, which *en passant* confirmed the use of aircraft and helicopters by Yugoslav forces:

> "The United Nations commander in Bosnia-Herzegovina, who is risking his life trying to defend besieged Muslims, was in open confrontation with Serb military chiefs last night.
> The Serbs turned down an urgent request from the UN's Maj-Gen Phillipe Morillon for the wounded and refugees to be allowed to flee the fighting in eastern Bosnia.
> Gen. Morillon, who has been spurred into action by the desperate plight of civilians in the area, said he would hold out for a fourth night with his temporary headquarters in Srebrenica, which has been under constant Serb bombardment for months.
> Thousands of refugees have flooded the town, and 30 are reported to be dying daily from wounds, hunger and disease.
> Serb attacks continued throughout the Srebrenica enclave all day yesterday. *International observers have confirmed that forces from the neighbouring republic of Serbia are heavily involved, including helicopters and planes bombing Bosnian Muslim positions in recent days. Much of the heavy ordnance has been firing from across the river Drina inside Serbia, according to monitors.*
> (...)
> Gen Morillon, contacted by a French radio station, told listeners he intended to stay in Srebrenica until the Serbs stopped their bombardment. He asked for helicopters to take out the most seriously injured, and free passage for all refugees who wanted to leave. He also wanted aid convoys to be allowed in from Serbia via Zvornik.
> *The Serb authorities, speaking form Belgrade, informed the UN that they would not agree to the general's terms until he left Srebrenica.*
> *A convoy from Zvornik was turned back by a local commander a few miles down the road, at Mali Zvornik [Serbia]. He said there were no orders from his superiors in Serbia to allow the convoy to pass.*
> The experiences of Gen Morillon, and the British rescue mission to Konjevic Polje [a town in Eastern Bosnia attacked at the same time as Srebrenica] under Maj Alan Abraham, have revealed the extent of the offensive and ethnic cleansing now being carried out by Serb forces in eastern Bosnia. *They have also shown that this is being directed from Belgrade and that forces from Serbia are heavily involved.*" [Patrick Bishop e.a., "Besieging Serbs reject UN chief's evacuation plea", *The Telegraph*, 15 Mar. 1993, emphasis added, Annex 148].

The account published in The Telegraph not only shows that VJ forces were participating in the attack on Srebrenica. It also demonstrates that all orders on the field were given by the VJ headquarters in Belgrade, which were in command of *all* Serb forces active on Bosnian territory, whether from the Bosnian Serb forces or the Yugoslav Army. This is clearly illustrated by the commander in Mali Zvornik, a town located across the Drina in Serbia proper, who stopped an aid convoy on its way to Srebrenica, because there were no "orders from his superiors in Serbia to allow the convoy to pass".



186. The important role of the VJ in this first attack on Srebrenica was also reported by Belgrade media, such as *Srpska Rec*, which quoted a member of the Serbian Renewal Movement who had witnessed the offensive and had seen "280 tanks, armoured personnel carriers, self-propelled artillery, multiple rocket launchers, and missiles" moving toward the front line in Bosnia and Herzegovina. This impressive army came from the direction of Bajina Basta, a town on the Serbian side of the border with Bosnia and Herzegovina, approximately thirty kilometres from Srebrenica:

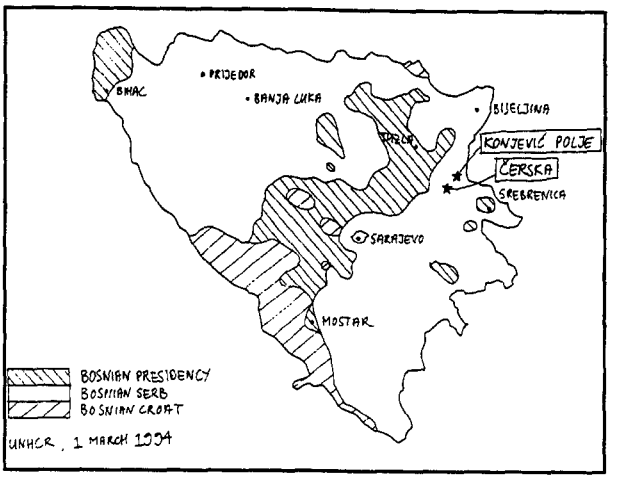
> "The earth and sky were ablaze. We could not sleep. There were dozens of flights by helicopters and aircraft ..." [*Srpska Rec*, 10 May 1993, p. 23, Annex 149].

187. The Serbs failed to take Srebrenica in the beginning of 1993, just like the area around Goražde which was attacked in the same period. On 6 May 1993, the Security Council adopted Resolution 824, in which Žepa and Srebrenica were designated as a safe area. Other areas were less "fortunate", such as the towns of

Cerska and Konjević Polje, south of Zvornik, which were overrun by, among others, VJ forces in March 1993 [United Nations, *Letter from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General*, S/25586, 13 Apr. 1993, p. 26; see also United States Department of State, Bureau of Public Affairs, *Dispatch*, 19 Apr. 1993, Vol. 4, No. 16, p. 265, Annex 19; see also Memorial, p. 83, para. 2.3.7.3]. The attack on Cerska and Konjević Polje was also described by Patrick Bishop in *The Telegraph*:

> "(...)
> British troops, who were trapped in the village of Konjevic Polje last week while trying to rescue 75 seriously wounded people, are known to have witnessed the deliberate killing of at least 12 civilians by Serb gunners. Six of the victims were children. Sgt Maj John MacNair, of the Royal Army Medical Corps, said he saw a baby decapitated by shellfire. 'I have been a medic a long, long time, and have never seen anything like this,' he said.
> (...)
> The British patrol detained by desperate Muslims in Konjevic Polje on Thursday are now known to have been deliberately targeted by Serb gunners the following morning.
> The fire was controlled by forward observation parties, or spotters, according to witnesses. So the Serb gunners must have known they were shooting at UN troops and unarmed civilians, mostly mothers and children. At least 50 were believed wounded in the sustained bombardment, and 200 killed or wounded in the period that the British troops were in Konjevic Polje, according to one report.
> The patrol withdrew in the continuing confusion of the attacks. Most of the vehicles carrying medicines and emergency supplies were wrecked in the blitz.
> *After withdrawal, Maj Abraham [the leader of the British rescue mission to Konjevic Polje] asked a local Serb commander to order a ceasefire so the wounded could be taken away. One Serb officer is understood to have said he had to get authority from his corps commander in Belgrade.*"
> [Patrick Bishop e.a., "Besieging Serbs reject UN chief's evacuation plea", *The Telegraph*, 15 Mar. 1993, emphasis added, Annex 148].

The above quoted shows that in March 1993 the VJ was not only operating in the area around Srebrenica, but in the entire region along the Drina river marking the border between Serbia and Bosnia and Herzegovina. Both the Bosnian Serb forces and the Yugoslav troops deployed across the Drina river were under the command of Belgrade.



188. During the take-over of Cerska and Konjević Polje many innocent civilians were killed [see: United Nations, *Periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/3, 5 May 1993, pp. 4-7, paras. 8-24]. The fate of those persons who were not able to leave the enclave of Cerska on time remains unknown [*ibid.*, p. 6, para. 17]. Many others died when trying to break through the Serb encircling [*ibid.*, pp. 7-8, paras. 25-29].

189. On 7 April 1993, almost a year after the official "withdrawal" of the JNA, the United Nations General Assembly strongly condemned the continued involvement of forces from Serbia and Montenegro in the conflict in Bosnia and Herzegovina. It expressed its deep concern about the "intensified aggressive acts by the Serbian and Montenegrin forces to acquire more territories by force" [United Nations, *General Assembly Resolution 47/121*, A/RES/47/121, 7 Apr. 1993]. On 10 June 1993 the Security Council adopted Resolution 838 (1993). Like the General Assembly, it condemned the Respondent's continuing involvement in the armed conflict in Bosnia and Herzegovina.

1994: the Yugoslav Army special forces

190. Western newspapers, however, continued to report on the deployment of the VJ across the border with Bosnia and Herzegovina. On 8 January 1994, that is half a year after the Security Council adopted the above mentioned Resolution 838 (1993), the American journalist Laura Silber wrote the following article for the British *Financial Times*:

"Regular Yugoslav troops are being deployed in Bosnia, United Nations officers on the ground confirmed yesterday.
In a week in which the international community has been criticised by senior UN officials for failing to stop the war in Bosnia, Norwegian Captain Jantora Strandas with the Nordic contingent, yesterday verified that Yugoslav army paratroopers are routinely engaged in hostilities in Bosnia. His comments refute claims by Serb leaders that they have not supported Bosnian Serb forces, who control 70 per cent of the republic.
It also undermines demands this week by Belgrade for the lifting of sanctions, imposed 19 months ago over the violent partition of Bosnia.
Observers and local residents have confirmed the long-term presence of Yugoslav army paratroopers and vehicles in northern and eastern Bosnia.
'Just stand in Zvornik (on the Bosnian-Serb frontier) and watch the Yugoslav army cross over,' Capt Strandas said yesterday at the UN Pancevo base, near Belgrade." [Laura Silber, "Belgrade's army fights in Bosnia", *Financial Times*, 8 Jan. 1994, Annex 150].

191. Shortly after the foregoing article was written, British newspaper *The Guardian* published the following report, which was also referred to in the Memorial [Memorial, p. 83, para. 2.3.7.3]:

"Yugoslav troops have been operating in Bosnia in recent weeks in an apparent effort to counter advances by Bosnian government forces.
'We have seen troop movements of the Yugoslav army in Bosnia, large numbers of troops and military vehicles,' said a UN official. 'The general feeling is that there is a pre-emptive attack coming.'
Despite repeated denials by the Belgrade government, it has been suspected that the rump Yugoslav federation, consisting of Serbia and Montenegro, has been giving direct support to the Serbian nationalists fighting in Bosnia. It was in an effort to force Belgrade to halt such assistance that the UN Security Council imposed a trade embargo on Yugoslavia in 1992.
(...)
The Yugoslav troops operating from Bosnian-Serb-controlled territory include special forces commandos from the 63rd Airborne Brigade, according to UN officials and Yugoslav journalists. Some of them report seeing convoys on the roads, as well as anti-aircraft guns, artillery, tanks and specialised units such as underwater demolition teams.
(...)
Yugoslav troops are widely believed to have mounted short operations inside Bosnia, often while ostensibly on leave from the regular army or in uniforms without their identifying patches.
What seems different now is that there is no effort to disguise the Yugoslav army insignia, and that some troops are even carrying their waterproof military identification papers.
Much of the Yugoslav involvement, a military expert said, was being directed by the Special Operations Command, which includes the 72nd and 63rd airborne brigades, and may involve 2,000 or more troops." [John Kifner and Ian Traynor in *The Guardian*, 28 Jan. 1994, p. 8, Annex 151].

By the beginning of 1994, Yugoslav special forces were almost overtly deployed in northern and eastern Bosnia.

192. The Yugoslav Army was not only involved in northern and eastern Bosnia. At the same time, VJ special forces participated in a major offensive in the Sarajevo area. This is clearly evidenced by the following military document that was captured on the battlefield by Bosnian forces. It is a copy of a written order distributed by the command of the Sarajevo-Romanija Corps of the Bosnian Serb Army. This Corps was responsible for the Sarajevo area, where it was also based. The order was addressed to several units under its command and gave the details of a massive attack to be carried out as of 19 December 1993 on a number of strategic hills overlooking the Bosnian capital. The Bosnian Serb troops were reinforced by 120 VJ special forces and a "department" of helicopters:

"The Command of SRK [VRS Sarajevo-Romanija Corps]
No. 20/15-1409
15.12.1993

Amendment to the Command
on Execution of Operation OP
No. 14/93 dated 03.11.1993.

Copy: Commands of all brigades, TG [Tactical Group] Vogosca, 4th MAP [Mixed Artillery Regiment], IKM [Forward Command Post], PKM [Temporary Command Post], SRK [Sarajevo-Romanija Corps]

Attn. of the Commander personally

1. According to the amendment of directive no. 6 GS [General Staff] of VRS [Bosnian Serb Army] DT no. 02/2-1014 of 14.12.1993 and decision of the highest leaderships of the Serb people of 14.12.1993 SRK [Sarajevo-Romanija Corps] with strengthening forces (1 brigade from the first KK [VRS Krajina Corps], 1 brigade from the RK, MUP [Ministry of Interior] forces up to the size of the battalion - 500 people, *special forces of VJ [Yugoslav Army] up to 120 people and department of helicopters)*, by main forces with crucial defense at larger front area to prevent the outbreak of the enemy from the central Bosnia and Gorazde towards Sarajevo, partly by the forces in the regions of Trebević, Mojmilo, Vojkovići and Ilidza [towns, villages, hills southwest of Sarajevo]. Carry out smaller effective actions with the aim of [illegible] the enemy. A part of the forces together with other organizational units to carry out attack in the direction: Vogosca, - Zuć - Pofalići - Lukavica - Hrasnica [towns and suburbs surrounding the city of Sarajevo] with the task to break Muslim forces at the directions of the attacks. To inflict them as more losses as possible, take the hills of Zuć, Orlić and Hum [strategic hills overlooking Sarajevo] under control and if possible Mojmilo as well, and in this way create conditions for undisturbed work of the factories 'Famos', 'Oroa', and 'Pretis' [important military factory in Vogosća, northwest of Sarajevo]. *Cut Muslims communication between Sarajevo and Igman [large hill overlooking Sarajevo airport] and further to central Bosnia, prepare conditions for partition of Sarajevo into two parts.*

The operation is to be executed in two stages:

- in the first stage take the hills of Zuć, Orlić and Hum under control
- in the second stage take areas of Hrasnica and Butmir under control

Readiness for the attack: 19.12.1993.

(...)"
[Order of the Command of the SRK, addressed to command of all brigades e.a., 15 Dec. 1993, emphasis added, Annex 152].

The aim of the attack ordered in the foregoing document was the ultimate division of Sarajevo into two parts. With the strategic hills of Zuć, Orlić and Hum in their possession, this would almost have been a military *fait accomplit.* The partition of Sarajevo would have effectively cut off the last line of communication between the city of Sarajevo and the rest of Bosnia and Herzegovina, that is the tunnel under the airport connecting Sarajevo with the Bosnian forces on Mount Igman. If the planned attack, carried out with Yugoslav helicopters and the assistance of Yugoslav special forces, would have succeeded, which it fortunately did not, it would inevitably have meant the fall of Sarajevo.

193. The ongoing activities of the special forces of the Yugoslav Army did not go unnoticed. On 21 February 1994, the special rapporteur for Yugoslavia, Tadeusz Mazowiecki, expressed his concern:0

> "The Special Rapporteur notes with concern the continuing support by the Federal Republic of Yugoslavia (Serbia and Montenegro), *including the direct involvement of the Yugoslav armed forces*, for Bosnian Serb forces which have been primarily responsible for large-scale 'ethnic cleansing' and other grave violations of human rights." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, p. 26, para. 154, emphasis added].

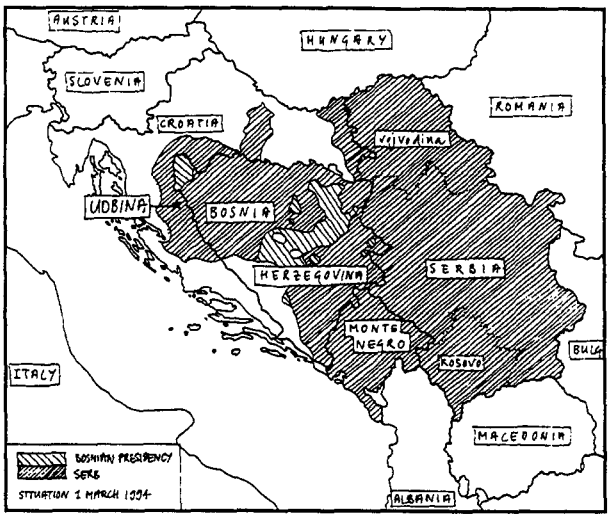
Yugoslav aircraft violated the no-fly zone imposed by the United Nations

194. Meanwhile, the Yugoslav Air Force continued to carry out flights and bombing military and civilian targets in Bosnia and Herzegovina, often using Udbina (Republika Srpska Krajina in Croatia) as their base of operations. On 28 February 1994, NATO aircraft shot down four planes which were violating the no-fly zone imposed by the United Nations. The incident was reported by UNPROFOR:

> "UNPROFOR personnel observed 4 Galeb trainer/ground attack aircraft taking off from Udbina in Sector South of the UNPAs, heading east. At 05.33 hours, AWACS made radar contact 55 kilometres southwest of Banja Luka, heading southeast. NATO fighter aircraft investigated and made visual contact with 6 Galebs. Warnings were issued on appropriate frequencies without reaction. At 05.37 hours, UNPROFOR personnel observed 2 Galebs dropping bombs on an

> ammunition factory in Novi Travnik (15 kilometres west of Vitez). At the same time, UNPROFOR personnel in Bugojno (43 kilometres southwest of Vitez) observed 4 Galebs dropping 8 bombs, hitting an ammunition compound and a hospital. Subsequently, 4 Galebs were successfully engaged. Contact was soon lost with the other 2 Galebs. At 05.50 hours, UNPROFOR personnel observed one Galeb landing at Udbina from the south. The unauthorized flights occurred in an area controlled by Bosnian Serbs." [United Nations, *Note Verbale Dated 1 March 1994 from the Secretary-General Addressed to the President of the Security Council*, S/1994/5/Add.13, 1 Mar. 1994, p. 6, No's. 1500-1505].

A correspondent of Le Monde in Yugoslavia, Florence Hartmann, witnessed the state funeral of one of the pilots in a cemetery near Belgrade [Florence Hartmann, *Le Monde*, 2 Mar. 1994, Annex 153]. A flag of the Federal Republic of Yugoslavia covered the coffin of the deceased. Florence Hartmann found out the names of two of the pilots involved and discovered that they had been based in Podgorica (Montenegro) until January 1994, when they were transferred to Udbina.



195. On 19 November 1994, a Yugoslav fighter crashed in the vicinity of Bihać in the northwest of Bosnia [United Nations, *Note Verbale Dated 22 November 1994 from the Secretary-General Addressed to the President of the Security Council*, S/1994/6/Add.84, 28 Nov. 1994, p. 2, No's 3244-3245]. According to United Nations officials, the pilot was identified as belonging to the Yugoslav Air Force [Roger Cohen, *The New York Times*, 9 Dec. 1994, Annex 154].

Operation Vihor

196. Another substantial action carried out by the Serbs in 1994 was the attack on the Goražde pocket. With the assistance of units from across the border, the Serbs succeeded in reducing the area of the enclave considerably. The town of Goražde, however, remained under the control of government forces. VJ troops supported the attack logistically. This was confirmed in the 1996 report published by the renowned British military research institute *Jane's*:

> "Operation *Vihor* (Whirlwind), conducted against the BiH Gorazde pocket, was the only major offensive action carried out by the VRS during 1994 (excluding operations around Bihac during October and November to contain the 5 Corps break out).
> *Vihor involved the concentration of troops from the Herzegovina Corps, Sarajevo Romanija Corps, the Drina Corps and the logistic support of JA troops from across the Drina in Serbia. Approximately 50 tanks and 150 guns and mortars were grouped to support the operation which lasted from 30 March to 15 April 1994.* Although the fighting continued for some time after 15 April, the VRS had effectively achieved its aim by then by securing the three main features overlooking Gorazde and containing the BiH within the UN-declared safe area".
> [*Jane's Sentinel*, 1996, Bosnia-Herzegovina, p. 27, emphasis added, Annex 155].

The Federal Republic of Yugoslavia not only offered logistical support to operation *Vihor*, it also sent special units to fight alongside the Bosnian Serb forces. These special units, part of the Yugoslav Army's Corps of Special Forces, actively participated in the assault on the Goražde safe haven. During the attack they were commanded by General Mile Mrksic, whom President Milosević later appointed commander of the Serb Army in Republika Srpska Krajina in Croatia [John Pomfret, *The Washington Post*, 4 July 1995, p. A1, Annex 156].

197. Just after the attacks the Croatian Weekly *Globus* issued an article and analyzed the operations launched by the Serb Army:

> "Will the two air-strikes against the Serb forces which have penetrated deep towards Goražde, one of the six UN designated safe areas in Bosnia and Herzegovina, be able to halt the massacre of 65.000 besieged civilians? According to the data available so far, 182 civilians have been killed and 747 wounded in this two-week Serb offensive. *As it has always been the case in so far when the Serbs were fighting their crucial battles in Bosnia and Herzegovina, regular forces of the Army of the so-called Yugoslavia have taken part. Forces of the Užice Corps have been engaged on one of the three lines of assault against this muslim enclave.* They have made a break-through along the main line of assault from Čajniče to Goražde. *At the dawn of the attack, launched on 28 March 1994, an entire armoured brigade of the Army of Yugoslavia with three heavy artillery batteries marched through Prijepolje (FRY territory) towards Čajniče, the area where a majority of the Serb forces were massing for the assault.*

> As a pretext for this latest offensive against Goražde, Serbs, as many times before, used the alleged Muslim attacks against the Serbian frontier launched in order to link with Sandžak and Kosovo and establish the socalled Green Transversal. There is no way that the BH Army, armed with infantry arms and mortars, could attack the most numerous armed power on the Balkans. As a matter of fact, the Serb offensive is not a counter attack to prevent a break-through of the BH Army towards Sandžak, but a very carefully planned and implemented military operation." [Karlo Jeger, *Globus*, 15 Apr. 1994, Annex 157].

As soon as the first rumours about the massive offensive reached the outside world, the international community denounced the Serb aggression, as it had done on numerous other occasions. In spite of the international outcry, the offensive continued. In response, NATO carried out its first ground assault in the forty-seven year history of the organisation. On 10 and 11 April 1994, two waves of air-strikes dropped several bombs on Serb targets surrounding Goražde, destroying a command bunker and several armoured personnel carriers. The bombs did not deter the Serb forces, which continued the bombardment of the enclave and even captured 150 United Nations personnel. In return for their release, NATO refrained from further air-strikes.

198. On 4 August 1994, under growing international pressure to stop aiding the Bosnian Serbs, the government of the Federal Republic of Yugoslavia publicly announced that it would break off political and economic relations with the Republika Srpska, that it would prohibit the stay of Bosnian Serb leaders on its territory and that it would close the borders with neighbouring Bosnia and Herzegovina for all transports, except for humanitarian aid such as food, clothing and medicine [United Nations, *Letter Dated 4 August 1994 from the Chargé d'Affaires A.I. of the Permanent Mission of Yugoslavia to the United Nations Addressed to the President of the Security Council*, S/1994/932, 4 Aug. 1994, p. 2]. With this official declaration the Belgrade authorities implicitly admitted that, at least until 4 August 1994, they had indeed supplied and supported the Bosnian Serbs with other than humanitarian aid, that is: fuel, munitions, materiel and troops. Following the declaration, part of the embargo was lifted and international observers were installed to control the traffic across the border with Bosnia and Herzegovina [United Nations, *Security Council, Resolution 943 (1994)*, S/RES/943, 23 Sep. 1994].

199. In spite of this solemn declaration, however, the Respondent continued its military operations across the border with Bosnia and Herzegovina, which as it turned out the international observers failed to control effectively [see also Reply, Chapter 8, Section 10].

Yugoslav radar was used to shoot down NATO aircraft in June 1995

200. On 2 June 1995, that is, almost a year after the Belgrade authorities had officially announced that they would finally stop supporting the Bosnian Serbs, United States Air Force pilot Scott F. O'Grady was shot down during a NATO reconnaissance mission above Bosnian territory. This incident greatly surprised NATO, as the Bosnian Serb Army was thought to lack the technology and the ordnance to carry out such an attack on a western aircraft. *The Washington Post* investigated the incident and discovered that Belgrade had provided the necessary assistance:

> "(...) Western officials said the downing of O'Grady on June 2 provided a rare illustration of how closely Milosevic's Yugoslav army works with Serb forces in neighbouring Bosnia and Croatia despite the assurances to the contrary.
> O'Grady was shot down while flying an F-16 over territory controlled by Bosnian Serbs. What was unusual about the shooting-down, NATO officials say, was that the SA-6 antiaircraft missile site that knocked O'Grady's jet out of the sky 'locked on' to his plane only for several seconds, thereby making it all but impossible for him to defend himself by firing a missile at the radar site.
> *The reason for this, the officials said, is that the SA-6 site and all other antiaircraft batteries in Serb-held territory throughout the former Yugoslav republics are part of an integrated air defense system that is headquartered in Belgrade and is under the command of the chief of staff of the Yugoslav army. That man, Gen. Momcilo Perisic, reports to Milosevic.*
> The system uses powerful radar based in Yugoslavia to locate the plane. Officers then relay that information to Bosnian Serb soldiers manning specific antiaircraft batteries along the flight path of the intruding plane, officials and officers said. Thus, the length of time the radar will be turned on at the specific antiaircraft batteries to target intruding NATO jets before firing on them is shortened drastically. This makes the antiaircraft batteries difficult targets for the planes to hit."
> [John Pomfret, *The Washington Post*, 4 July 1995, p. A1, emphasis added, Annex 156].

The example of the air-defense radars illustrates the continuing ties and "in tandem" co-operation between the Yugoslav Army and the Army of the Republika Srpska. During the entire conflict the radars in the Serb-held territories in Bosnia and Herzegovina remained linked to the grid in Belgrade [see: Stephen Engelberg and Eric Schmitt, *International Herald Tribune*, 12 June 1995, p. 9, Annex 158]. The missiles, necessary to make the air-defense system operational, were supplied to the Bosnian Serbs by the Yugoslav Army, shortly before Scott F. O'Grady's plane was shot down over Bosnian territory:

> "(...) were it not for Milosevic, no missile would have destroyed O'Grady's F-16 in the first place." [Karsten Prager, *Time International*, 17 July 1995, p. 19, Annex 159].

The Yugoslav Army participated in and directed the 1995 attack on Srebrenica

201. The continuing co-operation between the Federal Republic of Yugoslavia and the Bosnian Serbs is also illustrated by the genocidal attack on Srebrenica, which initiated on 6 July 1995, when the Serbs shelled the town and the surrounding observation posts set up by the United Nations. The attack on the safe area continued through 11 July 1995, when Serb forces entered the town of Srebrenica itself. There is ample evidence that Yugoslav Army units were among those forces. The presence of the Yugoslav Army in Srebrenica was for example acknowledged by the ICTFY in The Hague, which indicted both Ratko Mladić and Radovan Karadžić for their share in the horrendous slaughter of non-Serbs that followed the fall of the enclave. In the Review of the Indictment of Mladić and Karadžić, Judge Fouad Riad, among other things considered the following:

> "*It is worth noting that it appears from the witness statements that not only Bosnian Serb soldiers, but also soldiers from the Federal Republic of Yugoslavia (Serbia-Montenegro) were present during the take-over of Srebrenica.* These soldiers were easily distinguishable by their clean-cut appearance, distinctive uniforms and use of Serbian dialects. *Elements of the Yugoslav People's Army ('JNA'), including the Novi Sad Corps and 'Uvice' [Uzice] Corps, as well as irregulars loyal to 'Arkan', were seen by a number of witnesses in and around Srebrenica.* Either these additional troops were also under the command of the suspects, or they were under the control of a different commander" [ICTFY, Trial Chamber, Review of the Indictment, *The Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-18-I, 16 Nov. 1995, pp. 3-4].

For their role played in the take-over of the Srebrenica enclave, both Ratko Mladić and Radovan Karadžić were indicted for genocide.

202. The VJ participation in the attack was also ascertained by Human Rights Watch/Helsinki in October 1995, when it published a report on the take-over of the enclave:

> "*Several witnesses interviewed by Human Rights Watch/Helsinki representatives at that time stated that Serbs from Serbia proper and from formerly Serb-held areas of Croatia were present or took part in the August 1995 offensive against the Srebrenica 'safe area'.* Persons interviewed by Human Rights Watch/Helsinki representatives reported that they recognized Serbian and Croatian accents (specifically from the Krajina area of Croatia) spoken by many of the soldiers. They also reported seeing emblems, insignias, patches and uniforms worn by troops from those areas. *One witness testified that while in custody, one of his guards turned out to be an acquaintance who was a soldier in the Yugoslav army and who was a resident of Serbia proper, i.e., he was not a Bosnian Serb according to the witness.*" [Bosnia-Hercegovina: "The Fall of Srebrenica and the Failure of U.N. Peacekeeping", *Human Rights Watch/Helsinki*, Vol. 7, No. 13, Oct. 1995, p. 11, note 33, emphasis added, Annex 55].

203. The foregoing shows that Yugoslav forces were deployed during the attack on Srebrenica. The involvement of the Yugoslav Army was however not restricted to this deployment of units on the field. Compelling evidence exists that the entire operation was orchestrated by the commander of the Yugoslav Army, General Momcilo Perišić. One month after the fall of the enclave, the United States daily *Newsday* carried the following report:

> "*The head of the Yugoslav army directed the Bosnian Serb campaign against Srebrenica, and Yugoslav soldiers fought along with the rebels when they overran the 'safe haven' in July, according to western and Bosnian intelligence sources.*
> Western officials have long suspected that the government of rump Yugoslavia in Belgrade has gone beyond its acknowledged role as protector of the Serbs who rebelled against the Bosnian government more than three years ago. *The latest reports, which Yugoslavia denies, indicate that at least in the onslaught against Srebrenica, Belgrade directed the battle and provided some soldiers and weapons on the ground.*
> *Intelligence officials from two western countries and from Bosnia said that the commander of the Yugoslav army, Gen. Momcilo Perisic, was on a mountaintop across the border in Yugoslavia, sending instructions and counsel to Gen. Ratko Mladic, the commander of Bosnian Serb military forces. The radio conversations, intercepted by intelligence agencies, took place before, during and after the battle for the enclave captured by the Serbs on July 11.*
> *'Mladic and Perisic conferred constantly about their strategy and what they were doing,' said one of the western officials, who like all of the intelligence officers interviewed asked to remain unidentified. The officers said they are still analysing the radio intercepts, but 'Mladic is always asking Perisic about what he should be doing. This didn't surprise us, because they are the same rank, but Perisic was clearly in command and had the upper hand.*
> (...)
> According to a senior Bosnian government official, who also spoke on condition of anonymity, several hundred Yugoslav infantrymen fought alongside Bosnian serb soldiers when they attacked the enclave, where about 42,000 unarmed civilians, mostly Muslims, were trapped. The Yugoslav troops fought in their own units, but it could not be learned whether they reported to Bosnian Serb officers.
> *'There were about 400 or 300 infantrymen, in bunches of 50, 80 or 100 who helped out,' said the west European military intelligence officer. 'The Bosnian Serb army has always had plenty of tanks and heavy artillery, but they've always been plagued by a shortage of troops,' he said.*
> UN officials and diplomats at UN headquarters in New York could not confirm that the Yugoslav army had helped or directed Bosnian Serb troops. But there was no surprise at the question. *A U.S. official said such evidence had surfaced in the past and a key UN official said there was a general assumption that Bosnian Serb troops frequently worked in tandem with or under the supervision of the Yugoslav army.*
> (...)
> On June 17, about three weeks before the Serbs launched their offensive against the enclave, Bosnian military officials said they first noticed seven Yugoslav tanks, mostly M-84s, and dozens of armored personnel carriers cross near Srebrenica at the Drina river, which separates Yugoslavia and Bosnia.
> 'We were listening to their communications and we could hear them as they crossed the river and headed to Bratunac,' said another Bosnian government official. Bratunac is a small town about 10 miles north from the Srebrenica pocket, where thousands of Bosnian refugees were taken shortly after the enclave was overrun in July. Of the 42,000 refugees about 7,000 are still missing.

> Six days later, on June 23, Bosnian military covert units operating near Srebrenica observed five Yugoslav transport helicopters fly across the border under cover of darkness toward Bratunac, the Bosnian government official said.
> *'We knew there were some helicopter flights and there's no question that the Yugoslavs infiltrated some of their officers to help direct the Srebrenica campaign, but we've never been able to figure just how many,' said a NATO military intelligence officer."*
> [Cabell Bruce, "Belgrade Blamed - Accused of directing attacks on safe haven", *Newsday*, 12 Aug. 1995, p. A07, emphasis added, Annex 160].

The Yugoslav army therefore not only participated on the ground in the attack on Srebrenica. It also sent officers across the Drina river to command units of the Bosnian Serb forces in the assault. In addition, the commander of the Yugoslav Army, General Momcilo Perišić, directed the Serb troops across the border from a mountain top. When preparing the attack and during the actual take-over of the enclave, General Ratko Mladić simply carried out the orders given by his superior officer on the other side of the Drina river.

204. The participation of the Yugoslav Army in the take-over of the Srebrenica safe haven was confirmed by the British military research institute *Jane's* in their 1997 report on Yugoslavia [*Jane's Sentinel*, 1997 Edition, Yugoslavia, para. 10.7.1, Annex 161]. The involvement of General Momcilo Perišić was reported by, among others, *The New York Review of Books* [Tom Shanker, *The New York Review of Books*, 9 May 1996, p. 14, Annex 162; see also Andreas Zumach, *Basic Reports*, No. 47, 16 Oct. 1995, p. 1, Annex 163; Djuro Kozar in Ljubljana Oslobodjenje (Europe edition), 20-23 July 1995, FBIS-EEU-95-142, Annex 164].

205. The example of Srebrenica is emblematic for the involvement of the Federal Republic of Yugoslavia in Bosnia and Herzegovina. Yugoslav troops continued their military activities across the border until the very end of the conflict. Officers from the Yugoslav Army in addition directed the operations carried by the Serb forces in Bosnia and Herzegovina, giving directives to both the Bosnian Serb Army and their own troops deployed across the border. When deployed on the territory of Bosnia and Herzegovina, these Yugoslav forces operated in close co-operation with their Bosnian Serb peers. Sometimes, the VJ were directly involved in genocidal acts, the atrocities accompanying and following the take-over of Srebrenica being the most poignant example.

6. Federal and Serbian Ministries of Interior involvement in Bosnia and Herzegovina

Introduction

206. In the former Socialist Federation of the Republic of Yugoslavia there were six Ministries of Interior (MUP) on the Republic level, overseen by the Federal Ministry of Interior. After the dissolution of the SFRY, this federated structure remained, in the Respondent state. Now, there is a Republic of Serbia MUP, a Republic of Montenegro MUP and a Federal Republic of Yugoslavia MUP. Before the outbreak of the fighting in Bosnia and Herzegovina, a MUP for the Bosnian Serbs was organised which functioned in the manner of a Republic level MUP. The largest and most powerful of these ministries was the MUP of the Republic of Serbia.

207. The Applicant will demonstrate that there was close coordination and cooperation between the organs of both the Federal MUP, the MUP of the Republic of Serbia and the MUP of the "Republika Srpska". The Serbian and Federal MUPs, for example, organised and armed an ethnically pure Bosnian Serb MUP for Serb controlled areas. In addition, combat units of the Federal and Serbian MUP were deployed across the border in Bosnian and Herzegovina throughout the entire conflict. The MUPs of Serbia and Montenegro arrested Muslim refugees in the Federal Republic of Yugoslavia and delivered them to the "Republika Srpska". The Serbian MUP also played a key role in organising and supplying the Serbian paramilitary organisations, which were responsible for some the worst genocidal acts committed in Bosnia and Herzegovina. Finally, in the Federal Republic of Yugoslavia, the MUP of the Republic of Serbia also coordinated the forced mobilisation of Bosnian Serb refugees into the Bosnian Serb Army.

208. Each of the mentioned Ministries of Interior is responsible, among other things, for the police and the Sluzba Drzavne Bezbednost (SDB), the State Security Service. These were key agencies in the control of the various Serb forces involved in the ethnic cleansing campaign in Bosnia and Herzegovina. The reason for this is that in Yugoslavia the special police units of the MUP and the SDB provided a reservoir of well-trained, experienced and politically reliable men. Indeed, the police troops of the MUP and SDB are presently the elite of the security forces of the Federal Republic of Yugoslavia. In the opinion of *Jane's Information Group*, the specialist British military intelligence guide:

> "The Serbian police is well-equipped and well trained. A special anti-terrorist unit is based at Batajnica, near Belgrade. *The police force is nominally subordinate to the Ministry of Interior, but*

> *is directly controlled by President Milosevic. Army reservists are currently being recruited directly into the police rather than the armed forces. The police are considered politically more reliable than the JA [VJ].*" [*Jane's Sentinel*, 1997 Edition, Yugoslavia, para. 10.14.2, emphasis added, Annex 165].

209. The Helsinki Committee for Human Rights in Serbia has commented upon the power and importance of the Serbian police during Milošević's reign:

> "There are indications that the Serbian police has grown out of all proportions to become an important lever of power. *In terms of its numbers and armaments, it is a serious and professional armed force in the hands of the supreme republican authorities.*" [Helsinki Committee for Human Rights in Serbia, Report on the state of Human Rights in Serbia in 1995, p. 3, para. 10, emphasis added, Annex 166].

210. As was presented in the Memorial [Memorial, Section 2.3.4], there existed a group within the various organs of the government of Yugoslavia, known as the "Military Line", which co-ordinated the implementation of the Belgrade government's plans for the Bosnian genocide, that is the RAM plan. The members of this group were all personally loyal to President Milošević and included: Jovica Stanišić, Head of State Security and Assistant to the Ministry of Interior, his deputy Frano Simatović, Radovan Stojičić, the late Head of Public Security and Assistant to the Minister of the Interior, and Mihalj Kertes, the Deputy Interior Minister. All these men were in important official positions in the Serbian or Federal Ministry of Interior.

211. The above members of the "Military Line" played a cardinal role in coordinating the activities of the various MUPs. In the following pages, the Applicant will further elaborate on the important role played by the Serbian Ministry of Interior and the collaboration between the MUPs in Yugoslavia and the "Republika Srpska".

Distribution of arms

212. As demonstrated by the Applicant in this Reply and the Memorial [Reply, Chapter 8, Section 2 and Memorial, Section 2.3.4], in the months leading up to April 1992, the Serbian MUP in close cooperation with the JNA was helping arm the Bosnian Serb extremists of the Serbian Democratic Party (SDS). The arming was organised according to the RAM plan. In his personal diary, the SDS president in Kalesija, Petar Janković describes visits to Belgrade in search of weapons and support for the establishment of armed formations and Crisis Staffs [see also Reply, Chapter 8, Section 3]. Radmilo Bogdanović, the Minister of Internal Affairs of the Republic of Serbia, and Jovica Stanišić, Head of the State Security of the Republic of Serbia, are

described as authorising the issue of weapons and materiel [See Reply, Chapter 8, Section 2].

Parallel security structures

213. In those areas to be taken over as part of the plan to create a Greater Serbia, parallel political and police structures were put into place, long before the outbreak of fighting in Bosnia and Herzegovina. These parallel structures were set up with the assistance of the Serbian MUP and the JNA. The JNA, for example, supplied all the equipment - ranging from helicopters to a mobile kitchen - of the parallel Serb "Centre of Security Service" in Banja Luka [see 2nd Military Districts, Request addressed to the Federal Secretariat for People's Defence, str. conf. 31/103-41, 24 April 1992, Annex 167]. The creation of parallel security structures by the Serbs was affirmed in the Judgement of the Trial Chamber at the ICTFY in the case against Duško Tadić, who was himself a reserve policeman:

> "In furtherance of the creation of a Greater Serbia, the theory of which had began to assume reality after the 1990 elections, the SDS rapidly began to establish separate governmental structures. In Prijedor the SDS surreptitiously established a separate Serbian Assembly at the direction of the central SDS, the first chairman of which was the Deputy Mayor of the official Municipal Assembly, as well as a separate police force and security unit which were closely linked to Serbian officials outside the opština. This occurred about six months before the take-over of the town of Prijedor and their existence was kept secret from the non-Serbs. *Planning for the take-over, which included the establishment of a Serbian Secretariat of Internal Affairs ('SUP'), took place at the Prijedor military barracks and all of the Serb employees of the legitimate Prijedor SUP participated.* Included in this preparation was the unauthorised return of illegal weapons confiscated from Serbs and the aiding of the Serb military in circumventing control over the admittance to the Prijedor barracks.
> The link between these separate Serbian government structures in Prijedor and those outside of Prijedor became evident when the Serbian Assembly in Prijedor joined the Autonomous Region of Krajina, part of *Republika Srpska* which the SDS considered to be part of the future 'new Yugoslavia'. The Serb leadership later acknowledged that the take-over had been planned in advance and was part of a coordinated effort. *The Chief of Police, in an interview given to the newspaper Kozarski Vjesnik approximately one year later, stated that the police worked 'hand in hand' with the military and the politicians and that he took instructions from the police head-quarters in Banja Luka and from the Ministry of Interior of the Republika Srpska, it being a co-ordinated effort between politicians, police and military authorities.*" [ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 50-51, paras. 134-135, emphasis added].

Elimination of police officers

214. One of first steps of the police of the Bosnian Serb MUP was the removal of those non-Serbs who could have resisted. This process was described in great detail earlier in this Reply [Reply, Chapter 5, Section 2]. This Section will deal briefly with the non-Serb police members. They, as possible *foci* of resistance, were usually the first to be arrested or murdered, often by their former colleagues. The Judgment of the Trial Chamber ICTFY in the Tadić case recounts the evidence of the former commander of the police station in Prijedor:

> "Fikret Kadirić, commander of the police station in Prijedor until 1991 and thereafter commander of the Traffic Police in Prijedor until the take-over, testified that he was arrested in his apartment in Prijedor on 24 May 1992. He was taken to the first floor of the SUP and after a while he heard 'beatings, screaming, shouting, shooting'. From the window he saw a tank with two soldiers going by from the direction of the post office towards the SUP, their hands raised in the three-finger Serb salute, shooting with automatic rifles. Then he saw two buses stop in front of the main entrance of the SUP and two soldiers got off and posted themselves on both sides of the bus doors. *As the prisoners, all of whom were Muslims, left the buses they were made to run into the SUP with their hands on the back of their heads. The SDS President, Simo Mišković, dressed in civilian clothes, and Škondrić Vaso, a police inspector from Sarajevo dressed in uniform, and both armed, were at the entrance*. He could hear curses such as 'Alija, fuck you, fuck your Ustaša mother,' coming from the entrance of the SUP as well as screams of people in pain. Almost all the Serb police officers were in the SUP at the time. Later that evening he was taken from the SUP for interrogation, during which he was beaten from head to toe with rubber bats, wooden poles, a pistol, a knife and cables and tortured until he was rendered unconscious." [ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 167, para. 469, emphasis added].

215. This systematic identification and elimination of those non-Serb law enforcement personnel who could have protected the civilian population was not limited to Prijedor. This was reproduced in those *Opštinas* where the Serb forces took control. In Sanski Most, for example, approximately half the non-Serb police officers were killed during interrogations. The United States of America Department of State recorded:

> "A 34-year-old Croatian from Sanski Most said that the Serbian oppression of the Muslim and Croatian inhabitants of his town, which had begun in April (1992) with the dismissal of non-Serbian police officers, reached a climax on May 23 when a Serbian artillery element of the sixth Krajiska Brigade began advancing on Muslim areas from the surrounding hills. The following morning, three and four-man groups of armed Serbs began arresting male members of Muslim and Croat families. The men were taken to the basement of the police head-quarters where they were beaten for days. Some of the men were later released but, of 33 non-Serbian policemen from Sanski Most, 17 were killed there during the interrogations. Eight were sent to Manjaca." [United Nations, *Letter dated 9 March 1993 From the Deputy Permanent Representative of the United States of America to the Secretary General*, S/25393, 10 Mar. 1993, p. 6].

Bureaucracy of ethnic cleansing

216. Two months after the capture of Zvornik in April 1992 by the Serb forces, the non-Serb civilians were assembled and transported through Serbia to Subotica on the Hungarian border where they were later expelled. The Serbian MUP police forces were responsible for the administration of the deportation. This was described by Professor Tadeusz Mazowiecki, Special Rapporteur of the United Nations Commission on Human Rights; his report illustrates how the Serbian MUP were utilised in one of the first large forcible transfers of civilians at the beginning of the war, the process that would become familiar to the rest of the world as ethnic cleansing. The following incident shows the Serbian police as a necessary and effective part of this machine of ethnic purification:

> "98. Muslim witnesses from the region of Zvornik in eastern Bosnia and Herzegovina reported that their registration as residents was cancelled at the local police station after the region was taken by Serb forces. One witness reported that the words 'de-registered from Zvornik, departing for Subotica' were written on his identity card at the police station. Subotica is a border crossing point between Serbia and Hungary. The Muslims from this witness' village were reportedly given an ultimatum to leave, accompanied by the burning of several houses and the firing of shots in the air as warnings.
>
> 99. In June 1992, deportees from Kozluk and Zvornik, towns which had a Muslim majority, gave the following account of their forced deportation to Hungarian border guards. *The towns were sealed by serb forces. Muslim families were told they had six hours to pack their belongings and to go to a certain gathering point. In the case of Zvornik, it was a farmyard. At these gathering points, the names of some of the deportees were put on a list, and everyone was individually ordered to sign this list. They were informed that by their signature they 'voluntarily' gave up all their belongings. The deportees were then ordered, some at gun-point, to board buses and trucks and later trains until they arrived at Palic (Vojvodina), where they were put up at the local camp site. Although the deportees apparently did not request, they were provided with Yugoslav passports after photographers came to the camp site for this purpose. For some deportees, the issuing authority of their Yugoslav passport was 'MUP (Ministry of Internal Affairs) of the Republic of Serbia, Secretariat in Subotica'.* Deportees reported that between 26 June and 1 July 1992 there were about 1,200 persons from Kozluk and another 1,800 from Zvornik at the Palic campsite. After being taken to the border, these persons were admitted to Hungary as refugees." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 22, paras. 98-99, emphasis added].

This report demonstrates a key issue in relation to the MUP in various regions. The MUP of the Republic of Serbia acted in conjunction with the Bosnian Serb police to effect the ethnic cleansing. The Bosnian Serb police forces acted and were treated as if the "Republika Srpska" were part of the Federal Republic of Yugoslavia.

Handing over of non-Serb refugees

217. The MUPs of the Republics of Serbia and Montenegro closely co-operated with the "Republika Srpska" to deliver non-Serb refugees, who posed them no threat, into the Serb-run camps in Bosnia and Herzegovina. In a number of incidents the police from the Montenegrin MUP kidnapped and arrested Bosnian Muslim refugees, at the request of the Bosnian Serb police. After having been arrested, the refugees would be transferred to the "Republika Srpska" and detained in the camps described earlier in this Reply [Reply, Chapter 5, Section 5]. The transfer of non-Serbs from the Federal Republic of Yugoslavia to the "Republika Srpska" will be discussed at greater length later in this Chapter [Reply, Chapter 8, Section 12].

Serbian paramilitaries

218. In addition to their part in setting up of the Bosnian Serb MUP and returning non-Serb Bosnian refugees to the "Republika Srpska", the Serbian MUP aided the process of ethnic purification by organising and supplying the Serbian paramilitaries who were responsible for some of the more terrible genocidal atrocities committed in Bosnia and Herzegovina. The reason that the MUP of the Republic of Serbia was used for this task is that they were directly under the control of Slobodan Milošević [*Jane's Sentinel*, 1997 Edition Yugoslavia, para. 10.14.2, Annex 165]. The Applicant will discuss these paramilitary organisations such as the "Serbian Volunteer Guard" (Arkan's Tigers) and the "Serbian Četnik Movement" (Šešelj's Chetniks) at length in the next Section of this Chapter [Reply, Chapter 8, Section 7]. A brief overview will be given here to illustrate the cardinal role played by the MUP of the Republic of Serbia in the organisation of these groups.

219. Writing in *Tribunal*, the newspaper of the London Institute of War & Peace Reporting which monitors the ICTFY, Srdja Popović (a well known dissident during the Communist era in Yugoslavia and co-founder of the independent current affairs publication *Vreme*) stated:

> "*The police have been and remain Milošević's main power base. Most police officers were appointed during his rise to power, between 1987 and 1991.* During this time, Milošević retained control not only of Serbia, but also over federal institutions and Serb leaders outside Serbia. Radovan Karadžić and Gen. Ratko Mladić in Bosnia, and Milan Martić and Milan Babić in Croatia, lasted only as long as Milošević wanted. Milošević also controlled allegedly private institutions, such as the banks officially owned by Jezdimir Vasiljević and Dafina Milanović. These banks paid for the war by plundering people through pyramid schemes. Behind such effigies of institutions loomed the real power-the police and their boss, Milošević. *The police took part in military operations in Croatia and Bosnia in two ways. First they participated directly in units of the so-*

> *called Red Berets, commanded by Serbian police officers directly under Milošević's control: Jovica Stanišić, head of State Security and Assistant to the Minister of the Interior; his deputy Frano ('Frenki') Simatović, Radovan ('Badza') Stojičić, now Head of Serbian Public Security and Assistant to the Minister of the Interior, and Mihalj Kertes, the Deputy Interior Minister. Second they controlled the paramilitary units and their leaders - Željko ('Arkan') Ražnatović (wanted for robbery in several European countries), Dragoslav Bokan (in jail for robbery in Serbia), Vojislav Šešelj, Mirko Jović, Daniel Sneden ('Kapetan Dragan') and Vojin ('Zuca') Vucković. These paramilitary leaders say that they were armed by the JNA and the police, and that military barracks, transport, uniforms, training, and commanding personnel were placed at their disposal. They drove police vehicles. The police and the army directed them to specific locations in Bosnia and Croatia and co-ordinated their actions with those of the army. They had police escorts through Serbia, as well as unhindered passage across Serbia's borders, and they were even allowed to import their war booty into Serbia.* When Šešelj travelled to inspect his units he went by military helicopter." [*Tribunal*, A Publication of the Institute for War and Peace Reporting, No. 7, Feb./Mar. 1997, Srdja Popović, p. 1, emphasis added, Annex 168].

220. The leaders of some of the Serbian paramilitary organisations have been frank in interviews concerning their links with the MUP of the Republic of Serbia. Vojislav Šešelj, leader of the Serbian Radical Party and their military organisation the Serbian Četnik Movement, said in an interview in December 1993:

> "In addition, *our volunteers took part in combat as part of the special units of the police from here [Serbia], under the command of Mihalj Kertes*, in eastern Slavonia and on the territory of the Srpska Republika."[C. Milivojevic cekam hapsenje" ("I Await Imprisonment"), *Spona*, Frankfurt, Germany, 18 Dec. 1993, p. 15, emphasis added, Annex 169].

One of Šešelj's sub-ordinates, Branislav Vakić, described in detail the relationship between the paramilitary forces and the police, when interviewed by Julian Borger of the *Guardian*:

> "When the Chetniks slouched into Slavonia, many of them were carrying only hunting rifles. 'Badza' (Radovan Stojicic, Serbian assistant Minister of Interior) soon put that right. 'MUP (the interior ministry) started to help the Chetniks in May,' says Vakic. 'The MUP were at that time under the control of 'Badza' - Radovan Stojicic. We just got weapons from them but we started to act together in January 1993, in Skelani and towards Srebrenica.' By the time the Chetniks moved on to Bosnia, Vasic was in charge of 6,000 men. 'Badza' moved to Bosnia at the same time. His influence is clear from some photographs Vakic displays in his office in Nis. A picture in 1991 shows him and a handful of fellow Chetniks brandishing a few 1940's thompson machine guns. Two years later, in a snap taken near Srebrenica, Vasic is posing with a foot-long silencer with a telescopic scope. *'We got uniforms from the MUP and all the weapons we wanted; machine guns, sniper rifles with night scopes and mortars,' he recalls. In early 1992 Vakic and his men trained at a military base near Belgrade, called Babanj Potok. Later in 1992 and 1993, his Chetniks moved down to a new base in Bajina Basta (on the Bosnian Border) where they met a 'Frenki' Simatovic, who ran an interior ministry outfit called the 'red berets'. Frenki not only trained Vakic's men, he accompanied them on forays against muslims as the fighting spread to Bosnia. 'From September to October 1992 (months after Yugoslav forces were supposed to have officially 'withdrawn' from*

> *Bosnia) we fought with Frenki's units in Bratunac (a Bosnian town near Srebrenica).* They were good but didn't fight with the same heart as true nationalists,' adds Vakic. In August 1993, he sent 300 of his men for further training in a Serb interior ministry camp on Mount Travian near Bajina Basta but says that the relationship broke down soon afterwards when they tried to make them leave the radical party. The red berets said that they were only loyal to Milošević and his Serbian Socialist party." [Julian Borger, *The Guardian*, 2 Feb. 1997, Section 2, p. 2, emphasis added, Annex 170].

221. The MUP were also active in aiding the other main Serbian paramilitary group operating in Bosnia, the Serbian Volunteer Guard or Arkan's Tigers:

> "While 'Frenki' took over with as the Chetniks handler in eastern Bosnia, 'Badza' linked up with Zeljko 'Arkan' Radnjatovic and his notorious Tigers militia. Marko Nicovic, a former Belgrade police chief, says that 'Badza' formed a special relationship with Arkan in eastern Slavonia.' From that moment on, he adds, Arkan, a former bank robber with a long and international criminal record, became untouchable. The 1991 photograph (above) amply illustrates that 'special relationship.' Arkan and Badza are standing together smiling in front of the Tiger's training camp in Erdut, near the eastern Slavonian front. Another photograph shows a jeep emblazoned with Tigers insignia bearing Serbian interior ministry number plates." [Julian Borger, *The Guardian*, 2 Feb. 1997, Section 2, Annex 170].

Military operations

222. As mentioned in the introduction to this Section of the Reply, the Serbian police also took part in military operations across the border. Armed police units from Serbia proper participated directly in the fighting in Bosnia Herzegovina organised as police combat battalions. These included the elite combat units of the SDB, the so-called "red berets".

223. From the very beginning of the war, until the last months of 1995, the combat units of the MUP and the SDB of the Republic of Serbia were involved in attacks on the non-Serb population of Bosnia and Herzegovina. Speaking about the attack on Zvornik on 8 April 1992, in the "Gates of Hell" episode of the acclaimed BBC documentary series on the break-up of Yugoslavia, Vojislav Šešelj of the Serbian Chetnik Movement said:

> "Milošević was in total control. The operation was planned from Belgrade. The Bosnian Serbs did take part. *But the best combat units came from Serbia. They were special police commandos, 'red berets': they are from the Serbian Secret Service.*" [Vojislav Šešelj, interviewed in *The Death of Yugoslavia*, "The Gates of Hell", Episode 4, emphasis added, Annex 21].

224. In Annex V of the Final Report of the United Nations Commission of Experts, "The Prijedor Report", Judge Hanne Greve confirmed the continued presence of police forces from Serbia on the territory of Bosnia and Herzegovina. When describing the attack on the town of Prijedor she stated that:

> "*Special police units from Nis (in Serbia proper)*, which at the time [30 May 1992] were stationed in Banja Luka, Marticevci from Knin (in Croatia), and a unit with some 50 tanks and cannons from Banja Luka participated on the Serbian side in the fighting. The mentioned groups came in addition to approximately 5,000 military men stationed in Prijedor after the destruction of the Kozarac area."[United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol.I) Annex V "The Prijedor Report", p. 55, para. 276, emphasis added].

The attack on Prijedor took place on 30 May 1992, that is, some two weeks after the Respondent had announced that all Yugoslav troops had left the territory of Bosnia and Herzegovina.

225. According to the United States Department of State, Republic of Serbia police and Yugoslav special police forces, Federal Specijalci, were involved in the ethnic cleansing of Brčko:

> "3000 women, men and children were killed during May and June [1992], 95% ethnic Muslims and 5% Croatian. The bodies were dumped in the Sava river and burnt in factories in Brcko. *Torture, rape and killings were instituted by the Serbian police, Chetniks, Yugoslav Federal Specijalci.*" [US Department of State, Bureau of Public Affairs, *Dispatch*, 16 Nov. 1992, Vol. 3, No. 46, p. 827, emphasis added, Annex 96].

226. During the entire war, obituaries for those policemen from Serbia who died during combat in Bosnia-Herzegovina were published in *Politika*, the government controlled newspaper from Belgrade.

The Trnovo battlefield

227. In the Summer of 1995, the Serbs launched several major offensives across Bosnia and Herzegovina. The so-called safe havens in the north and east of Bosnia were the main targets of this offensive, which eventually led to the fall of Srebrenica and Žepa. The attack on Srebrenica and the Yugoslav involvement in it was discussed earlier in this Reply [Reply, Chapter 8, Section 5], but it is important to stress that Yugoslav forces, in particular special police units from the Serbian Ministry of

Interior in Belgrade, were also active on other fronts and that these activities were not of an incidental, but of an ongoing and structured nature.

228. This structured nature of Belgrade's involvement in the fighting in Bosnia and Herzegovina is clearly exemplified by some military documents which were recovered by Sarajevo police officers in Ilidža, after this Sarajevo suburb was reintegrated into the Federation of Bosnia and Herzegovina, on 12 March 1996. The documents all concern the area of Trnovo, a town located some thirty kilometers south of Sarajevo, on the important road from Sarajevo through Foča in Bosnia and Herzegovina to Nikšić in Montenegro. During the conflict the town was controlled by Bosnian Serb forces. Most of the military documents found in the Trnovo area are field reports produced by the Bosnian Serb Special Police Brigade to inform their superiors in Pale, Serb-controlled Sarajevo and Bijeljina about the progress being made during the fighting. In support of the Bosnian Serb Army (VRS), Serb police forces from the Ministry of Interior in Bijeljina, such as the mentioned Special Police Brigade in Trnovo, regularly carried out military tasks. Sometimes, those special forces were better armed than their counterparts in the regular army. The above-mentioned field reports, which will be discussed below, all describe the assault carried out by the Special Police Brigade on positions of the Bosnian Army in the summer of 1995.

229. The first report was written on 30 June 1995 by the Deputy Commander of the Special Police Brigade in Trnovo, Ljubisa Borovcanin, and paints the events during the first day of the attack. During the attack, the Bosnian Serbs received support from a Serbian police unit called "Kajman". This unit fell under the command of the Serbian Ministry of Interior:

> "Ministry of Interior
> Special Police Brigade
> Detached Command Post-Trnovo
> [approximately 30 kilometres south of Sarajevo]
>
> Telegram no. 113/95
> Date: 30.06.1995
>
> - Police HQ - Pale
> - Police Force HQ - Vogosca [Sarajevo suburb]
> - Special Police Brigade - Janja [town near Bijeljina, east Bosnia]
>
> *On 29.06.1995, police combat group consisting of the 4th special police squad, the 7th special police squad and the police unit 'Kajman' (MUP of Serbia) incorporated in offensive forces of the Bosnian Serb Army (BSA) launched an assault on the object Lucevik, which is under the enemy's control and which is of extreme importance for gaining control over communication Trnovo-*

Sarajevo. We have not succeeded to gain control over this object in the course of the day, because the BSA provided us inaccurate information concerning positions of their defence lines, so that the assault was transformed into forcible reconnaissance during which we established exact enemy's positions and corrected fire range of fire-support weapons. Today we proceed with the attack on the above mentioned object, and, at the same time, police forces are holding the line: Kragujevac-Hum and the reconnaissance is done in that direction which is a subsequent direction of assault for our forces. *In the fighting on 29.06.1995, two members of special police brigade (one from the 4th and the other from the 7th special police squad), and two members of MUP Serbia were wounded.*

(...)

Deputy commander of Special Police Brigade
Ljubisa Borovcanin"
[Telegram from Detached Command Post-Trnovo to Police HQ - Pale, 30 June 1995, emphasis added, Annex 171].

This report shows that a special police unit from the Serbian Ministry in Belgrade (MUP of Serbia) was involved in the attack. This special unit, called "Kajman", was incorporated into the structure of the VRS and carried out its tasks alongside similar Bosnian Serb police units.

230. The next day the offensive continued and again Deputy Commander Ljubisa Borovcanin reported to his superiors, this time also to the Bosnian Serb Deputy Minister of Interior in Bijeljina:

"MUP
Special Police Brigade
Detached Command Post - Trnovo

No. 118/95
Date: 01.07.1995

- MUP
- Deputy Minister - Bijeljina [east Bosnia]
- Police HQ (commander)
- Police HQ Vogosca
- Special Police Brigade - Janja

On 30 06 1995, the activities launched the day before continued in the Trnovo battlefield. Combat group consisting of the 5th special police squad, 7th special police squad and two squads from the units 'Kajman', 'Plavi' and 'Skorpija' (MUP of Serbia) were attacking the Lucevik object. On that occasion, the 5th special police squad advanced in the direction: Brdjak (895) - Jaica Kamen - p.e. 1012 and further towards Obrovac. Enemy was defeated at this line and suffered losses. Two mortars, a small quantity of infantry weapons were captured. If a small advance would be made towards Obrovac that would cut off the object Gradina (939), and the communication Trnovo - Vojkovic would become passable.
We expect this task to be completed in one or two days. Problem related to observance of the agreement with the SRK (Sarajevo-Romanija Corps) concerning joint operations and capturing the

lines is still present. *In yesterday's fighting Special Police Brigade had four lightly wounded members, while forces of MUP Serbia had three lightly wounded members.*

(...)

Deputy Commander of special police brigade
Ljubisa Borovcanin"
[Telegram from Detached Command Post - Trnovo to MUP, 1 July 1995, emphasis added, Annex 172].

This document reveals that the special police brigade in Trnovo was reinforced with police officers from two other Serbian units: "Plavi" and "Skorpija". Like the "Kajman" unit, those units fell under the responsibility of the Serbian Ministry of Interior in Belgrade.

231. On 6 July 1995, the police headquarters in Pale sent a report to the Serb "Centre of Public Safety" in Serb-controlled Sarajevo to explain what had happened on the battlefield near Trnovo:

"REPUBLIC OF SRPSKA
MINISTRY OF INTERIORS
POLICE FORCE HQ - PALE

NO. 56/95
DATE: 06.07.1995

CENTRE OF PUBLIC SAFETY - CJB SARAJEVO
POLICE FORCES HQ OF VOGOSCA

(...)

In the operational zone of Police of Ministry of Interior, from Siljevice to Rujevice, there were no enemy assaults in the past five days.
Special Police units of Ministry of Interiors of Republic of Srpska, Serbia and Republic of Srpska Krajina together with intervention units of Bosnian Serb Army carry out offensive operations at the p.e. Lisicija Glava with the purpose to make further advance and gain control over the river Bijela valley and Mijanovici. At the liberation of the following p.e. Gradina 939, Lucevik, Obornice, Hrastovica, Gradina 1118 and Ruzica, enemy was inflicted substantial losses in man-power, and substantial ordnance was captured. In the action of liberation of the above mentioned p.e. two policemen of SBD were wounded.

(...)

In the morning hours on 06.07.1995, offensive on Srebrenica was launched, all information on interesting developments in this battlefield will be communicated timely.

HQ Commander
Tomislav Kovac"
[Telegram from Police Force HQ - Pale to Centre of Public Safety - CJB Sarajevo, 6 July 1995, emphasis added, Annex 173].

Like the other documents, this report shows that the police units from Serbia proper and the "Republika Srpska Krajina" were closely co-operating with their counterparts in the Bosnian Serb police and the Bosnian Serb Army (VRS). The report also marks the date the final assault on the Srebrenica enclave was launched. The fact that this is mentioned in this report, sent by the police headquarters in Pale, suggests that police units were involved in that brutal attack and the atrocities which followed.

232. Almost three weeks later, on 25 July 1995, the Commander of the Special Police Brigade, Savo Cvjetanovic, reported to the Bosnian Serb Minister of Interior that the battlefield was calm and that the so-called "Skorpija" unit from Serbia proper had been replaced by another police unit [Telegram from Detached Command Post - Trnovo to Ministry of Interior of "Republika Srpska", 24 July 1995, Annex 174].

Forced mobilisation or arrest of Serb refugees in Serbia

233. Throughout the conflict in Bosnia and Herzegovina, the Republic of Serbia MUP police troops were used to forcibly recruit troops for the Bosnian Serb Army from among the Bosnian Serb refugees in Serbia. The first forced recruitments were reported in February 1993 and shortly afterwards the Special Rapporteur Tadeusz Mazowiecki was informed that a group of 500 Bosnian Serb refugees who had arrived in Vojvodina were arrested by the Serbian police and sent back to the front in Bosnia and Herzegovina [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 27, para. 186]. As will be explained later in this Chapter, the policy continued until June 1995 when it was massively enlarged as a new mobilisation campaign was carried out in all regions of Yugoslavia [United Nations, *Situation of Human Rights in the Territory of the Former Yugoslavia, Final periodic report prepared by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995 p. 23, para. 115; See also *Jane's Intelligence Review*, Europe, Nov. 1995, p. 484, Annex, 175]. The role of the Serbian MUP in the mobilisation campaigns was also confirmed by the Yugoslav media, such as the Belgrade independent political monthly magazine *Vreme* [Dejan Anastasijevic, *Vreme International*, 26 June 1995, p. 14, Annex 176]. The various mobilisation campaigns carried out by the Serbian MUP wil be further discussed in a following Section of this Chapter [See: Reply, Chapter 8, Section 11].

234. The mobilisation campaigns carried out by the Serbian MUP throughout the conflict in Bosnia and Herzegovina, clearly illustrate the continued collaboration between the various MUPs on both sides of the river Drina, marking the border between the "Republika Srpska" and the Federal Republic of Yugoslavia. The intimate collaboration is also illustrated by the following telex or telegram, which was captured by Bosnian forces toward the end of 1995. On 24 June 1995, the document was sent by the so-called "Public Security Centre" in Prijedor to various police stations in the Prijedor area. It illustrates that the press-ganged Serb refugees were interned in special camps in Bosnia and Herzegovina, after being handed over by the Serbian MUP:

"Public Security Centre - Prijedor
num. 12-01 from 374-1842/95
Date: June 24, 1995 - coded - dx -

Public Security Station - Ključ, S. Most, N. Grad, K. Dubica and Krupa
Police Stations: Prijedor 1, 2 and Omarska
Police Station for Traffic Security: Prijedor

connection: dispatch num. 1/95 dated June 23, 1995 from the RS [Republika Srpska] Ministry of Interior Affairs Camp 'Jahorina'.

From the RS Ministry of Interior Affairs Camp 'Jahorina' we have received the dispatch with the above number and we transfer it in its entireness:

'It has been established in the RS Ministry of Interior Affairs Camp 'Jahorina' that on June 23, 1995, [the] following persons moved away from the Camp in an unknown direction. *Both persons were on the list of deserters taken over from the Ministry of Interior Affairs of Serbia.*

1. Kovačević (Obrad) Vlatko, born January 2, 1968 in Sarajevo, permanent residence in FRY from October 28, 1992, latest known address: Valjevo [Federal Republic of Yugoslavia], 32 Stevana Filipovića str. Possessed an ID card number +9331/92 issued by Belgrade Police Department.

2. Lazarević (Milan) Goran, born April 18, 1972 in Pljevlja, Republic of Montenegro, permanent residence in Mioče Rudo village. Possessed an ID card number 51045/93 issued by Priboj [Serbia proper] Police Department.

Personal documentation of the above listed persons remained in the archives of the Camp, so it is rightfully assumed that they will use someone's else's or forged documents. In case you find these people, arrest them and inform the RS Ministry of Interior Affairs Camp 'Jahorina'.

Camp commander
Jević Duško

shift commander
June 24, 1995
Stanković [in manuscript]

duty operations officer
Kečan Radovan"

[Public Security Centre Prijedor, telex to various police stations, 24 June 1995, signed Stanković, emphasis added, Annex 177].

Both "deserters" mentioned in the letter above had been handed over by the Serbian police to the Bosnian Serb authorities. Their names appeared on a "list of deserters taken over from the Ministry of Interior Affairs of Serbia". Whether the two escaped refugees were ever captured again, the Applicant does not know.

235. The two Serbs were, however, not the only recruits who tried to avoid military service in the Bosnian Serb Army by fleeing to Serbia or Montenegro. The following police document shows that those recruits or "deserters" were certainly not safe across the border. On 25 June 1994, it was sent by the Bosnian Serb MUP in Bijeljina to the MUP in Serbia:

"Ministry of Interior Affairs of RS [Republika Srpska] -
Administration for the Control of Foreigners - Bijeljina
num. 02/2 - 3914/94 dx
June 25, 1994

Ministry of Interior Affairs of the Republic of Serbia
- Administration for the Control of Foreigners

Police Security Centres - all
Public Security Stations - all
Police Stations for Traffic Security - all
Police Stations for Border Crossings - all

General Staff of the Army of Republic of Srpska issued an Order num. 18/20-9-87 dated June 23, 1994, for sending out a wanted circular for the deserter Djondjić Tihomir, son of Božidar, born on January 16, 1959, doctor employed in the VRS General Staff hospital.

According to reliable information, Djondjić is in Kočevlje where he works in the local health centre.

In case you find him, arrest him and surrender to the nearest police unit of the Army of Republic of Srpska and inform this Administration citing this dispatch with the number above.

We ask Ministry of Interior Affairs of Serbia to act in accordance with the details of the dispatch.

Goran Mačar"
[Ministry of Interior Affairs of RS, letter to the Ministry of Interior Affairs of the Republic of Serbia, 25 June 1994, signed Goran Mačar, emphasis added, Annex 178].

The Bosnian Serb MUP in Bijeljina asked its Serbian counterpart to arrest a "deserter" from the hospital of the VRS General Staff. The fact that the Serbian police was requested to surrender the fugitive doctor to the "nearest police unit of the Army of the Republic of Srpska" clearly illustrates the close relationship between the police forces in the Federal Republic of Yugoslavia and the "Republika Srpska".

Epilogue

236. Both the Federal and the Serbian Ministry of Interior collaborated intimately with the Bosnian Serb Ministry of Interior in Bijeljina throughout the entire war. The MUPs in Belgrade set up the Bosnian Serb MUP and co-ordinated with it the process of ethnic purification.

237. The various police forces, well trained, equipped and politically reliable, were useful tools of the Serbian leadership. They were instruments of control over the paramilitary forces and their elite troops were used on important missions on the battlefield in Bosnia and Herzegovina. The above mentioned military documents clearly illustrate how Belgrade continued to be actively involved in Bosnia and Herzegovina after the so-called withdrawal of 19 May 1992. The documents also revealed that police units under the control of the Serbian Ministry of Interior in Belgrade were fully integrated into the structure of the Bosnian Serb Army and that joint military operations were carried out on a routine basis. When the Bosnian Serb Army was desperate for cannon-fodder at the end of the conflict it was the Serbian MUP police which was used to round up refugees to be press-ganged into Bosnian Serb service. Thus, the Respondent directly committed genocidal acts.

238. Throughout the conflict in Bosnia and Herzegovina, the Bosnian Serb MUP, in fact, functioned as if the "Republika Srpska" were a Republic of the Federal Republic of Yugoslavia.

7. Yugoslav paramilitary actions in Bosnia and Herzegovina

Introduction

239. The conflict in the former Yugoslavia has seen the widespread use of paramilitary or irregular troops. They range from the highly organised, who operated in several theatres with regular military formations, to those who were loosely organised and acted only in a single village. Annex III.A of the closely researched and authoritative

Final Report of the United Nations Commission of Experts, is entitled "Special Forces" and is entirely devoted to these paramilitary groups. It complements Annex III which is entitled "Military Structure, Strategy and Tactics of the Warring Factions". Both these Annexes were prepared by the chairman of the Commission, Professor Cherif Bassiouni. In the Report the paramilitary groups are divided into four categories: "Special Forces", "Militias", "Paramilitary units", and "police augmented by armed civilians".

240. As the title of that part of the Report suggests, its main focus is with the foremost category, those classified as "Special Forces" and defined as follows:

> "Special Forces usually operate with substantial autonomy under the command of an identified leader. They operate in several theatres, and sometimes engage in joint operations with the regular militaries. These groups are supplied, and often trained, by the governments they serve. Many of these Special Forces report solely to the senior political officials." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 9, para 4].

This section of the Reply is concerned with those units which by the Reports classification would be described as "Special Forces". In particular two groups will be examined, *Srpska Dobrovoljacka Garda* (SDG) - the "Serbian Volunteer Guard", which is also known as "Arkan's Tigers" or "Arkanovci" - and secondly *Srpski Četnicki Pokret* - the "Serbian Četnik Movement", which is also known as "Šešelj's Četniks" or "Šešeljevci" or "Šešeljovci". The word "Četnik" is a traditional term for the much heroicised bandit fighters of earlier Serbian history. The name Četnik was also used by the Serbian royalist forces in the Second World War. [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 30, para. 122]. Šešelj's Četniks claim to be the heirs of those forces. Šešelj has proclaimed himself their *Vojvoda* (duke) [*ibid.* p. 30, para. 122].

241. The Applicant will demonstrate the close links between the Belgrade Government, the JNA and these paramilitary groups. It will again show that these paramilitaries played a crucial and terrible role in the genocidal campaign against the non-Serb population of Bosnia and Herzegovina.

242. In the Counter-Memorial, the Federal Republic of Yugoslavia denies that Serbian paramilitary groups existed and states that the formation and operation of

paramilitary units is prohibited under Yugoslav regulations. Its explanation of the paramilitary units is that:

> "At the time when they were formed the regions in which they were formed (Croatia and Bosnia and Herzegovina) constituted an integral part of the SFR of Yugoslavia and there was no border control of the movement of individuals at all." [Counter-Memorial, p. 104, para. 1.3.17.8.].

This suggestion is patently untrue. While it may indeed have been the case that individuals from Serbia and Montenegro joined Serb paramilitary organisations formed in Croatia and Bosnia and Herzegovina, the most active, largest and indeed notorious paramilitary units were formed and based in Serbia and Montenegro. These Special forces based in Serbia proper and controlled by Belgrade were active in the implementation of the policy of ethnic cleansing and committed many of the worst genocidal acts. They operated in conjunction with both the JNA and Bosnian Serb Army and were used in a variety of roles from infantry "shock" troops to executioners in camps. The Federal Republic of Yugoslavia exercised great influence control over these units, by forming, arming, transporting, training, paying and supplying the paramilitaries throughout the entire war.

243. Moreover, the presence of Serbian paramilitaries was admitted by President Slobodan Milošević himself:

> "The President of Serbia, for his part, *acknowledged the presence of Serb irregulars in the fighting, particularly along the west bank of the Drina River*, while maintaining that the Republic of Serbia would not allow itself to be drawn into the conflict." [United Nations, *Report of the Secretary-General Pursuant to Security Council Resolution 749 (1992)*, S/23836, 24 Apr. 1992, p. 3, para 9, emphasis added].

244. The importance of the use of such troops was confirmed by the Judgment of the Trial Chamber at the ICTFY in the *Tadić* case:

> "110. One consequence of all of this [the transformation of the JNA into a Serb dominated army] was that the JNA experienced a shortage of manpower, especially when it came to play the role of an occupying force in hostile territory, as was the case in Croatia and, during 1992, in non-Serb parts of Bosnia and Herzegovina. *In consequence, increasing reliance was placed on Serbian paramilitary forces, recruited in Serbia and Montenegro and much employed in control of non-Serb communities in Bosnia and Herzegovina. Membership in them was attractive to those Serbs who wished to aid the Serb cause in Croatia and Bosnia and Herzegovina but who regarded the JNA as retaining to a degree a Yugoslav, as distinct from Serb, character and accordingly as being insufficiently single-minded in the Serb cause. These paramilitary forces operated in conjunction with the JNA and were used as infantry shock troops to make up for declining numbers in the regular army.* They included Željko Ražnjatović's Serbian Volunteer Guard (later known as

'Arkan's Tigers') and Vojislav Šešelj's Chetniks, both of which came to be particularly feared by the Muslim population for their brutality and indiscipline. The JNA and in particular its air force arm actively cooperated with and assisted these paramilitary units during 1991 and 1992 in operations in Croatia and Bosnia and Herzegovina and liberally supplied them with arms and equipment." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May, p. 40, para. 110, emphasis added].

245. In the Memorial and in this Reply reference is made to the RAM plan [Memorial, Section 2.3.4, pp. 66-69, paras. 2.3.4.1-2.3.4.4; Reply, Chapter 8, Section 2]. The Serbian paramilitaries were also part of this plan and were set up for the purpose of implementing it. RAM was organised from Belgrade by Mihalj Kertes who in 1990 was Deputy Federal Minister of the Interior and head of the Yugoslav secret service. Kertes organised his operations in close cooperation with Jovica Stanišić, the head of the secret service of the Serbian Ministry of the Interior. Together with Radmilo Bogdanović, the former Minister of Interior they formed the leadership of what was called the "Vojna Linija" ("military line") within the Serbian Ministry of Interior.

246. In the Memorial and in this Reply, reference is also made to the pivotal role played by the Federal and Serbian Ministries of Interior in the armament of the Serbs in Bosnia and Herzegovina [Memorial, pp. 66-68, paras. 2.3.4.1-2.3.4.2; Reply, Chapter 8, Section 2]. It was in fact these Ministries and not the JNA which initially directed the distribution of weapons and set up the paramilitary organisations. Their role is also described by Tim Judah, former Yugoslavia correspondent for the London *Times* in his thorough and exhaustive history of the Serbs and the break-up of the former Yugoslavia:

"Milošević gave the task of laying the groundwork to his most trusted lieutenants. They were Radmilo Bogdanović, Jovica Stanišić and Mihalj Kertes. Until 1991 Bogdanović was Serbia's minister of the interior, after which he remained a powerful figure, mostly behind the scenes. Kertes was a former Yugoslav deputy interior minister who became a Serbian minister without portfolio. Despite some ethnic Hungarian antecedents, he was an SPS [Socialist Party of Serbia] deputy and an agent of Serbia's secret police, the SDB, which had played a key role in organising the rallies which had secured the Serbian president's power in Vojvodina. Stanišić was the head of the SDB. Below them were the SDB's two top men, Frano Simatović, known as Frenki, and Radovan Stojičić, known as Badža, a deputy interior minister of Serbia. (...)
The SDB could not prepare a Serbian insurrection alone, however. It needed help from within the military. Because of the communist and Yugoslav orientation of many of the top brass, the high command could still not be trusted, so selected generals had to be recruited. They included General Andrija Biorčević, the commander of the Novi Sad Corps, and Colonel Ratko Mladić, the commander of the Knin garrison. A clandestine network was developed. It was not a formal group but rather a small number of people who met over dinner to discuss their plans. It became known as the Vojna Linija - the Military Line - and its main idea was simple. In the words of one source it was: 'Let's arm our people first in Croatia, then Bosnia. So if Croatia and Slovenia want to get out we won't let them take what we take before them.' The plan they evolved over 1990 was called RAM, an acronym which spells out the word frame. It is not known exactly what the letters

> stand for, but the purpose of the plan was the organisation of the Serbs outside Serbia, taking control of the fledgling SDS parties and the prepositioning of arms and ammunition." [Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia*, New Haven & London 1997, p. 170, Annex 8].

The execution of the RAM plan was therefore directed from Belgrade by the heads of the Federal and Serbian Ministries of Interior.

247. The most important paramilitary groups were set up by the Belgrade government. Radmilo Bogdanović, then President of the Security Council of the Federal Yugoslav Parliament and Serbia's Minister for Internal Affairs, declared in an interview to the Serbian magazine *Duga* in January 1995:

> "In the meantime, our National Parliament passed the Law on National Defence, with an amendment according to which volunteer units could be organized, and be put under the command of the JNA or the Territorial Defence. Thus, Arkan got started. At first, with forty volunteers, later with some more. I conducted that initially as President of the Security Council, then it was taken over by General Simovic [Commander of Serbia's Territorial Defence] and other generals. Other volunteers, not only Arkan, were set up that way, that is as a component of the JNA or of the Territorial Defence on that territory." [Radmilo Bogdanović, interviewed by Nenad Stefanović, "Logistika sluzbe za volju naroda" ("The logistics of service for the People's Will"), *Duga*, 7-20 Jan. 1995, Annex 179].

Arkan's Serbian Volunteer Guard

248. To form the paramilitary groups essential to the implementation of the plans for a Greater Serbia, the members of the *Vojna Linija* turned to criminals from the Belgrade underworld and politically extreme nationalists. Željko Ražnjatović (also known by his *nom de guerre* "Arkan"), an international criminal with links to the Yugoslav Federal Secretariat for Internal Affairs, was one such man. "Arkan" was the subject of a *CNN/Time* profile on 2 June 1997 by Christine Amanpour, *CNN*'s Senior International Correspondent in which she interviewed both Professor Cherif Bassiouni, chairman of the United Nations Commission of Experts, and Marshall Harris, former Bosnia officer at the United States State Department:

> "AMANPOUR: The man with the baby face, the founder and president of the Serbian Unity Party, has been a criminal since he was 14. By age 20, he had already spent three years in a Belgrade jail. In 1992, the first United Nations group was set up to investigate atrocities in former Yugoslavia.
>
> BASSIOUNI: This is a picture of one of our operations.
>
> AMANPOUR: The chairman was Professor Cherif Bassiouni. Arkan immediately caught his attention.

> BASSIOUNI: Arkan is remarkable, because there is a man whom we discovered has seven arrest warrants by Interpol. There is a man who used to work for the Tito regime ministry of interior as a killer of opponents of the regime.
>
> AMANPOUR: A Yugoslav government hit man. According to intelligence sources, he got the job at the age of 21, and along with it came phoney passports and plenty of new identities. Sometimes he'd be British, then Italian, or even French. From Belgrade to Stockholm, Brussels to Milan, he built a criminal record of stick-ups, armed bank robberies, burglary, theft, breaking and entering, escape from jail and violent assault - all the while on the Yugoslav government payroll.
>
> And that was just the beginning. At the start of the 1990s, power struggles between its six member states are breaking up federal Yugoslavia and Slobodan Milošević, president of Serbia, has expansionist plans.
>
> MARSHALL HARRIS, FORMER STATE DEPT. BOSNIA OFFICER: It was clear that Milošević and the people around him were determined to carve out a Greater Serbia and to expand their territory at Bosnia's expense and at Croatia's expense, and that the way they were going to do that was to purge that territory of non-Serbs.
>
> AMANPOUR: Milošević chooses Arkan for the job.
>
> August 1990, Belgrade. General Marko Negovanović of the Yugoslav national army signs the authority allowing Arkan to form a special military force." [*CNN/Time Impact*, Aired 2 June 1997, 9.00 p.m. ET, Transcripts, p. 3, Annex 180?].

249. In 1990 Željko "Arkan" Ražnjatović emerged as the head of *Delije*, the official fan-club of Belgrade's Red Star football team. The core of the militia that he subsequently formed were hooligans from Delije. On at least one occasion, Arkan offered the services of the fan club to Radmilo Bogdanović, the then Serbian Minister of the Interior, to disperse a crowd demonstrating against Milošević in the month of June 1991. The offer was accepted. The co-operation between Arkan on the one hand and the Serbian Ministry of Interior on the other hand therefore began long before the conflict in the former Yugoslavia erupted [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 31. para 129].

250. In an interview Arkan described the genesis of his paramilitary group from among the members of the *Delije* fan club:

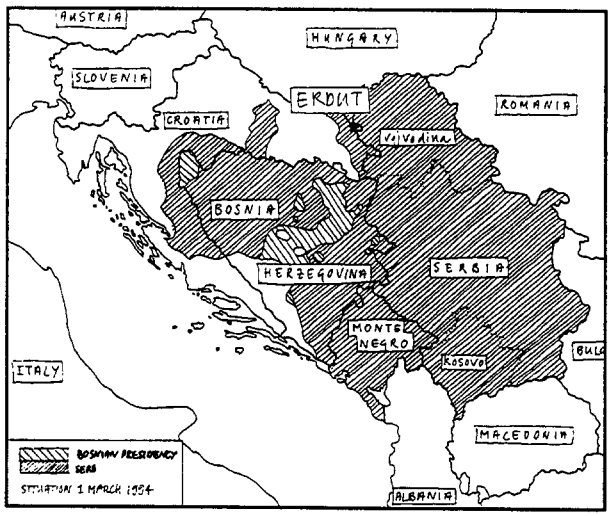
> "'We fans ... trained without weapons', said Arkan, 'which may or may not have been true. '*I insisted on discipline from the beginning. You know our fans, they are noisy, they like to drink, to joke about. I stopped all that in one go, I made them cut their hair, shave regularly, not drink* - and so it began the way it should be.'" [Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia*, New Haven & London 1997, p. 186, emphasis added, Annex 8].

251. Arkan officially formed the Serbian Volunteer Guard (SDG) on 11 October 1990 as a paramilitary group with no political affiliation. This very formation was described four years later in a public notice printed in Yugoslavia's main (and government controlled) daily newspaper *Politika* on the occasion of the fourth anniversary of the founding of the Guard:

> "On October 11, 1990, 26 like-minded persons took an oath of loyalty to Serbia and to the Serbian people at the monastery of Pokajnica. With the blessing of the prior of the monastery, on that day they founded the Serbian Guard of Volunteers, putting their lives at Serbia's service. I summon all volunteers, members of the SGV [Serbian Volunteer Guard], to the convention of guards marking the fourth anniversary of the Guard.
>
> Venue: Pokajnica.
> Date and Time: October 11, 1994 at 10 a.m.
> Commandant Željko Ražnjatović, Arkan." [*Politika*, 9 Oct. 1995, Annex 181].

252. Training camps were established in Tenja and Erdut, eastern Slavonia, Croatia. The camp at Erdut was located a few hundred yards from the United Nations headquarters. The units contained women as well as boys aged 13 to 15. The training was described in the Russian newspaper *Izvestiya*:

> "'The philosophy of brutality is drummed into the heads of the fighters - a Serbian patriot is merciless toward the enemy; he does not have the right to spare the latter's children, women or the aged'." ["Umeret v Yugoslavii" ("To die in Yugoslavia"), *Izvestiya*, 25 Nov. 1992, p. 3, Annex 182].



253. Jane's Information Group, the British specialist military intelligence organisation, in its publication *Jane's Sentinel 1997* describes the Serbian Volunteer Guard as follows:

> "Srpska Dobrovoljacka Garda (SDG): the SDG is led by Zeljko 'Arkan' Raznjatovic, a well-known criminal. He was involved in many killings of Croatian emigres in Western Europe during the previous communist regime. *The SDG's activities are controlled by the Serbian Ministry of the Interior*. Its members took part in the fighting in Croatia and Bosnia but the SDG became better known for its numerous atrocities against unarmed civilians than fighting the regular forces of the Croatian or the Bosnian Muslim army. The SDG is reportedly a well-armed and disciplined force. It operates in groups of about 20 to 40 men. After Dayton, the SDG ceased its activities in Bosnia and left its base in Erdut, eastern Slavonia [east Croatia]. Currently, the SDG is involved in a campaign of intimidation aimed at Albanian civilians in Kosovo." [Jane's Information Group, *Jane's Sentinel 1997*, Yugoslavia para. 10.14.4, emphasis added, Annex 183].

254. According to Tim Judah's impressive history, Arkan's contacts in the Serbian Ministry of Interior were Radmilo Bogdanović, Frano "Frenki" Simatović, and Radovan "Badža" Stojičić. [Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia*, New Haven & London 1997, p. 186, Annex 8]. In *The Guardian* newspaper of 3 February 1997, there is a photograph (taken in 1991) of Arkan and Radovan "Badža" Stojičić at the training centre of Erdut [*The Guardian*, 3 Feb. 1997, p. 8, Annex 184]. According to British historian Noel Malcolm, the Serbian Minister of the Interior, Mihalj Kertes had set up the training camp at Erdut for the training of the SDG. In addition, the Serbian Ministry of the Interior initially financed the SDG until they became self-financing through looting [Noel Malcolm, *Bosnia: A Short History*, London 1996, p. 226, Annex 16].

255. In its Annex on special forces, the Commission examines the links between paramilitary units and state bodies. In relation to Arkan it states:

> "94 Evidence of Arkan's ties with the governments of FRY and with the self-declared Serbian republics, as well as with the JNA, includes:
>
> (a) Serbia's Defence Minister has stated that Arkan is protected by Interior Ministry officials;
>
> (b) Šešelj has stated that Arkan's Tigers were operating under the instructions of Yugoslavia's counterintelligence organization, a claim also made by Dragoslav Bokan, the leader of the White Eagles;
>
> (c) On 28 November, 1990, Arkan was present at a planning meeting of the 'council of war' of the Knin uprising. Milan Martić, then secretary of the secretariat for Internal Affairs and now President of SAO Krajina, was also present at the meeting;

(d) Arkan's forces and the JNA were operating simultaneously in 11 counties;

(e) In at least three counties, Bijeljina, Brčko, and Zvornik, in which the JNA and Serbian paramilitary groups acted together, Arkan was reported to be the leader of the operation. In the siege of Vukovar, Arkan stated that his men were under the command of the JNA;

(f) The 'population exchange commissions' in the BiH county of Bijeljina is headed by Major Vojkan Djurković. Major Djurković is a member of Arkan's forces;

(g) There are reports of Arkan's forces entering a county at the invitation of local political leaders. In Prijedor, a spokesman for the Bosnian Serb Government in explaining Arkan's involvement, stated: 'He is very expensive, but also very efficient';

(h) In February 1993, in response to accusations that he was planning a coup d'etat in Krajina, Arkan stated that he had 'been a special advisor to the president of the Republic of Serbian Krajina for a year now'.
Arkan's interference in the Krajina government prompted the commander of the headquarters of the Army of the Republic of the Serbian Krajina, Mile Novaković, to issue an order for the withdrawal of Arkan's troops from the region;

(i) Arkan, like Šešelj, reportedly has regularly transported plundered goods from BiH into Serbia, with apparent permission of Serb authorities;

(j) The Milošević government has allegedly given Arkan control of formally state-run gas stations because of his success in smuggling petroleum products." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", pp. 24-25, para. 94].

Vojislav Šešelj's Serbian Četnik Movement

256. Around the same time that Mihalj Kertes helped set up the Serbian Volunteer Guard, he was instrumental in the creation of two other paramilitary groups: the White Eagles (Beli Orlovi), headed by Mirko Jović, founder and leader of the Serbian Renewal movement (SPO) and the Serbian Četnik Movement, under the command of Vojislav Šešelj, leader of the Serbian Radical Party (SRS) [Memorial, p. 69, para. 2.3.4.5].

257. Vojislav Šešelj was a former lecturer at political science in the University of Sarajevo. He was arrested on 22 May 1984 after the discovery of an unpublished manuscript of an article criticising Tito and the Communist Government and subsequently convicted and imprisoned for counter-revolutionary activities. He served twenty-two months in prison and after his release he settled in Belgrade and began to publish Serb nationalist books. In 1990, Šešelj became the leader of the Serbian Freedom Movement which later became the Serbian Renaissance Movement. After being expelled from the Serbian Renaissance Movement for his extreme nationalist views he formed a new political party, the Serbian National Renewal which by the

end of 1990 had become the Serbian Četnik Movement. In the beginning of 1991, Šešelj finally went on to form the Serbian Radical Party (SRS) [see United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 27-28, paras. 108-110].

258. Šešelj's political programme was rudimentary, but his speeches were clearly imbued with Greater Serbian ideology. Šešelj's political programme was later described by Sonja Biserko, the director of the Helsinki Human Rights Committee for Serbia, in *Tribunal*. *Tribunal* is the newspaper produced by the British Institute for War and Peace Reporting. Biserko's article reads as follows:

> "Vojislav Šešelj's fierce outbursts of hate speech were among the first in the former Yugoslavia. He whipped up hatred of Croats in Serbia and called for their expulsion from Serbia and Vojvodina. He demanded the creation of a Greater Serbia, encompassing Macedonia, Montenegro, Bosnia and Herzegovina, and large parts of Croatia. His party's Programme Declaration of 1991 advocated the 'suppression of the Albanian separatist rebellion by all means available,' including mass expulsions, proclamation of a state of war and introduction of a military administration.
>
> Šešelj perceived the solution for Yugoslavia in the establishment of three states: a Greater Serbia, a smaller Croatia and an even smaller Slovenia. He sees the Bosnian question as crucial for Serbia. In an interview with the magazine *Duga* in December 1993, he said: 'The siege of Sarajevo is not a war crime,' because the responsibility for the siege 'rests with those who allowed Sarajevo to become a military fort.'
>
> Šešelj's programme of war for a Greater Serbia was also the unofficial programme of the Serbian regime. The ruling Socialist Party of Serbia (SPS) maintained silence as a measure of political cunning, and parties like Šešelj's took it upon themselves to proclaim the objectives of the war.
>
> Although generally in collusion with Milošević because of the latter's 'patriotic policy', Šešelj has at times fiercely attacked the Serbian president, primarily for giving in to the rest of the world and losing territory.
>
> Šešelj has talked about the support and encouragement the paramilitaries received from the authorities in Serbia and the Federal Republic of Yugoslavia (FRY). He says that all 'volunteers were under the JNA command or the command of local home guards in Republika Srpska (RS) and Krajina.' He also says that 'some SRS volunteers were incorporated in special FRY police and army units,' and crossed over into Bosnia during military operations." [Sonja Biserko, "Serbia: Warlords in Civvy Street", *Tribunal*, a Publication of the Institute for War and Peace Reporting, No. 8, Apr./May 1997, p. 8, Annex 184].

259. Šešelj was politically active throughout the war in the promulgation of the ideology of Greater Serbia and was fully aware of what this meant for the non-Serb population in Bosnia. For example, the correspondent for *The Independent* Robert Block reported on a speech made by Šešelj in 1993:

> "Mr Šešelj told a crowd, including many soldiers and refugees, in Sokolac [east Bosnia], that he was born in Bosnia and that Sarajevo was his 'fatherland'. He warned that if the West attacked, 'I will lead the Serbian people and we will destroy Sarajevo in a couple of days.' All UN positions would come under attacks by the 'best and the bravest' soldiers Serbia could muster. *Muslims and Croats would be killed. 'We will ann[i]hilate all the people and take all of Bosnia,' he said.* The message enthralled the battle-hardened and the blood-drunk." [Robert Block, *The Independent*, 17 May 1993, emphasis added, Annex 185].

260. In June 1991, Vojislav Šešelj was elected to the Serbian Assembly in a special election to fill a vacancy. Šešelj's campaign was said to be tacitly supported and funded by Serbian President Slobodan Milošević [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 28, para. 112]. In the federal elections of May 1992, the SRS won 33 of the 138 seats in parliament, making it the largest opposition party. In the Serbian parliamentary elections of December 1992 it made an even stronger showing and formed a coalition with Milošević's Socialist Party of Serbia (SPS). However, it broke with the Serbian Socialist Party in September 1993 and Milošević was forced to call special elections in December 1993. In contrast to the previous election, Šešelj was denied access to the state-run media and was attacked by the SPS, accusing him of being a war criminal. The SRS suffered a 44 percent reduction in the number of seats in parliament. Šešelj, however, was re-elected. [*ibid.*, p. 25, paras. 96-98]. In March 1998, the Serbian Radical Party was coopted in the newly formed Serbian government, gaining fifteen out of 35 ministerial posts. Vojislav Šešelj himself was elected Deputy Prime Minister.

261. Jane's Information Group 1997 describes the Serbian Četnik Movement thus:

> "the *Srpski Cetnicki Pokret* is led by Vojislav Šešelj. The group has 1,500 fighters. Affiliated to the Serbian Radical Party, it is ill-disciplined and has been accused of war crimes in Bosnia-Herzegovina, including 'ethnic cleansing'. It is armed with infantry weapons, including anti-tank rockets." [Jane's Information Group 1997, *Jane's Sentinel 1997*, para. 10.14.4, Annex 186].

262. As stated in the Memorial [Memorial, p. 70, para. 2.3.4.6], Šešelj has emphasised Milošević's responsibility for the use of Serbian paramilitary groups in Bosnia and Herzegovina. In the Counter-Memorial, the Federal Republic of Yugoslavia claims that the accusations made by Šešelj were made as an act of political revenge against President Milošević [Counter-Memorial, p. 103, para. 1.3.17.6.]. The Respondent goes on to say that:

> "However, there is nothing in what Šešelj allegedly said and the Applicant presents that would support the assertion of the Applicant that organs of the SFR of Yugoslavia participated in the forming of paramilitary units or issued them orders to commit acts of genocide." [Counter-Memorial, p. 103, para 1.3.17.6.].

While it may be the case that Šešelj's motivation is political revenge on President Milošević, his statements do support the assertion that organs of the Federal Republic of Yugoslavia participated in the forming of paramilitary groups and issued them with orders to commit acts of genocide.

263. In an interview in the "Gates of Hell" (episode four) of the acclaimed BBC documentary "The Death of Yugoslavia", Šešelj gives a candid appraisal of the part played by his forces and their subservience to their commanders in Belgrade in relation to the assault on Zvornik:

> "*Milošević was in total control. The operation was planned from Belgrade. The Bosnian Serbs did take part. But the best combat units came from Serbia. They were special police commandos, 'red berets'. They are from the Serbian Secret Service. My forces took part, as did others. We had prepared the operation carefully, everything went according to plan.*
> (...)
> I can't deny this [ethnic cleansing] took place. But it was organised in Belgrade. *Milošević himself asked me to send my fighters.*'" [The Death of Yugoslavia, The Gates of Hell, episode four, emphasis added; see also Laura Silber and Alan Little, *The Death of Yugoslavia*, Revised Edition 1996, pp. 223-224, Annex 21].

Šešelj was even more forthright when interviewed by Massimo Nava for the respected Milan newspaper *Corriere Della Sera*, published on 23 May 1996, in an article entitled: "Milošević a Traitor to Us Serbs".

> "[Nava] Why is Milošević a traitor?
> [Šešelj] *Because he encouraged the Serbs to wage war and to rebel in Krajina and Bosnia. He armed them, financed them, supported them, and then abandoned them, arguing that he had nothing to do with it and that he facilitated peace.* This is how he betrayed national interests.
> [Nava] Is that what you will tell the judges in The Hague?
> [Šešelj] I do not need to prove my innocence of anything. I took part in all stages of the war, at the front I commanded over 1,000 volunteers, armed and equipped with Milošević's support. If anything happens to me, I have documents that incriminate Milošević, proof that he directed operations.
> [Nava] What proof?
> [Šešelj] *I will speak when the time is ripe. Now I want to protect Karadžić. It is a fact that the orders came from Belgrade. Mladić and the other Bosnian Serb officers carried out the plans drawn up by staff headquarters in Belgrade. Karadžić was not in charge of the army.*
> [Nava] It is well known that the paramilitary militias committed the worst crimes. You yourself espoused the theory of ethnic cleansing. Do you admit that you are one of the people responsible for the war?

[Šešelj] War is a method, not a crime. In the West you treat war and crimes equally. But if we want to talk about criminals, they are Clinton, Genscher, De Michelis, the advocates of the war in the Balkans. I would even include the Pope, who called for the bombardment of our villages. If we are talking about crimes, they were committed by all sides, but especially by the Croats and Muslims. It has been said that the Serbs raped thousands of Muslim women, but one of them who gave an account of the rape on television went on to give birth to a black child! *I did not put forward the theory of ethnic cleansing. It was a consequence. I support the idea of the Greater Serbia, because Bosnia and Croatia are not nations; they should not exist. But that is no crime!*
[Nava] Does Srebrenica not remind you of anything?
[Šešelj] I have no precise information. *Be that as it may, I do not deny the massacres.* What I say is that there must be evidence in the case of each person accused and that the political responsibilities must be established.
[Nava] You deny the massacres, but accuse Milošević of having provoked them. Please explain.
[Šešelj] I do not deny actions that were committed by everyone. I am saying that there is no evidence against my men and that it does not make sense to accuse Karadžić. Milošević is the proper target!
[Nava] So do you think that Karadžić and Mladić will be sanctified in the future?
[Šešelj] The Serbian people are with Karadžić. His resignation was a gesture to alleviate international pressure, but I think it is Milošević who will disappear from the political scene first. The West needs him now, but it will drop him later. As for general Mladić, I am pleased that yesterday he came to Belgrade, to his own land. It was a noble gesture to attend the funeral of General Djukić, another victim of the tribunal in The Hague. I respect Mladić, but I had a major disagreement with him, because he acted on orders from Milošević, who then dropped him and betrayed him by authorizing the NATO bombardments.
[Nava] If this is the case, why did Milošević not have you arrested, as envisaged by the Dayton accords?
[Šešelj] First, because Milošević would pay for such a decision. Second, because his signature in Dayton is worth no more than that of the governor of Texas. Yugoslavia signed nothing!
[Nava] Many witnesses have given evidence relating to the activities of armed gangs of volunteers. Those under your orders, a new version of the 'Chetniks,' or the 'White Eagles' and the 'Tigers' of commander Arkan.
[Šešelj] I have already told you about my men. As for Arkan, it comes back to Milošević. The 'Tigers' were recruited among the Serbian police. As far as I know, Arkan is chiefly a wheeler-dealer, a little Balkan Al Capone who organized looting for himself and for his men. Suffice it to see the villa where he lives in Belgrade!" ["FRY: Šešelj Has 'Documents That incriminate Milošević'", *Corriere Della Sera*, 23 May 1996, FBIS-EEU-96-101, p. 8, emphasis added, Annex 187].

264. The Commission of Experts also examined the links between the paramilitaries and state bodies. In relation to Šešelj its Report states:

"93. There is substantial evidence that Šešelj and his paramilitary formations have direct links to, or the support of, the Serbian governments and the JNA:

(a) Šešelj has stated that his paramilitary forces have received weapons from the JNA;

(b) The JNA and Šešelj's troops operated in 14 counties simultaneously, suggesting that their operations were coordinated. Some of the reports indicate that they were conducting joint operations, while others alleged that the JNA permitted Šešelj's troops to attack without intervening;

(c) In the BiH county of Kalinovik, the presence of Šešelj's men was reportedly requested to restore order to the local troops by Commander Ratko Mladić;

(d) Šešelj has regularly transported plundered goods from BiH into Serbia, with the apparent permission of Serb authorities;

(e) In his parliamentary campaign in the fall of 1993, Šešelj indicated that the following members of the Milošević government were involved in paramilitary operations: Radmilo Bogdanović, Milošević's reputed second in command who was officially dropped as Serbian interior minister in 1991; Mihalj Kertes, a former Yugoslav deputy interior minister and now a Serbian Minister without portfolio; Radovan Stojičić a deputy Serbian interior minister; and Frano Simatović, a senior Serbian secret police commander. Furthermore, Šešelj claimed that his men never acted outside the umbrella of the JNA and the Serbian police." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 24, para. 93].

Arkan and Šešelj's paramilitary activities in Bosnia and Herzegovina

265. Both these paramilitary groups (Arkan's Tigers and Šešelj's Četniks) were present throughout the war in Bosnia and Herzegovina and are responsible for the worst genocidal acts in the areas in which they operated. Their arrival in eastern Bosnia heralded the beginning of the campaign of ethnic cleansing:

"16. *There were no reports of paramilitary activity in BiH until early 1992. The first reports concerned paramilitary groups supported by Arkan and Šešelj.* The activity in BiH was strongest in May and June of 1992 in the areas of Bijeljina, Bratunac, Brčko, Doboj, Foča, Konjic, Modriča, Prijedor, Sarajevo, Višegrad and Zvornik." [*ibid.*, p. 12, para. 16, emphasis added],

and

"19. *The most active paramilitary groups operating throughout the area of conflict were the Serb groups under the command of Arkan and Šešelj.*" [*ibid.*, p. 12, para. 19, emphasis added].

266. It is highly significant that it was in areas of supposedly military importance as envisaged by the RAM plan that the Serbian paramilitary units operated:

"23. The JNA was operating with the highest paramilitary activity in eight counties simultaneously: Bijeljina, Bratunac, Brčko, Doboj, Prijedor, Sarajevo, Višegrad, and Zvornik. Excluding Sarajevo, *these counties are within the strategic arc the Serbs need to link all Serbian populations from BiH and Croatia within a contiguous Serbian state.*" [*ibid.*, p. 12, paras. and 23, emphasis added].

267. On a tactical level, the Serbian paramilitary groups acted as infantry for the JNA which provided the artillery, armour and command. A good example is the spring

offensive of April/May 1992, as explained by the Prosecution at the opening of the *Tadić* trial before the ICTFY on 7 May 1996:

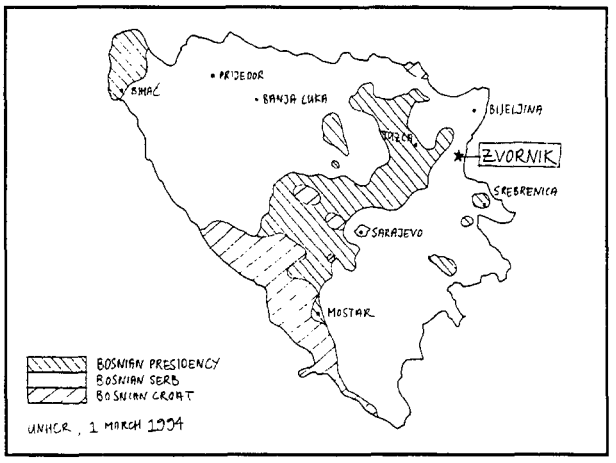
> " The military operations by the JNA and the pro-Serb paramilitary groups followed in a consistent pattern. Excessive amounts of artillery was used in the initial stages to shell non-Serb neighbourhoods in order to discourage resistance, non-Serbs were expelled from the area and where resistance occurred it was ruthlessly crushed. The artillery attack by the JNA was usually co-ordinated with street fighting by the paramilitary groups who were assisted by Serb irregulars in street fighting and the rounding up of the non-Serbs of the district. The paramilitary group operated right across Bosnia. The rounding-up of the non-Bosnian-Serb population was a systematic and thorough operation, with the paramilitary groups relying on local information and identification of the non-Serbs by the local irregulars.
>
> Once the non-Serb population had been collected together, they were then sorted: Women, children and elderly men were separated from the men of military age, although at times and in some places all men were separated from the women and children, making the women much more vulnerable to rape and mistreatment. Terror tactics such as killings, rapes and tortures, were used apparently condoned by the paramilitary commanders. The JNA, and the paramilitary commanders during the sweeps through non-Serb neighbourhoods participated in this activity. The terror served to intimidate and discourage resistance and to compel non-Serbs to leave the area." [ICTFY, Trial Chamber, Opening Statements by Mr. Grant Niemann (Prosecution) and Mr. Michail Wladimiroff (Defence), *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1996, pp. 13-14].

268. Bijeljina and then Zvornik were among the first towns in Bosnia and Herzegovina to experience the Serbian paramilitaries and ethnic cleansing [see Memorial, p. 30, para. 2.2.2.2; and Reply, Chapter 8, Section 3]. In the first week of April 1992 approximately 1,000 men from Arkan's units crossed the Drina River from Serbia. The paramilitaries quickly moved south to Zvornik, which commands two crucial bridges to Serbia, railway and road. Zvornik is an important link on both the Belgrade-Sarajevo line and the Belgrade-Tuzla line. Having control of Zvornik meant that any further movements of troops or logistical material towards Tuzla or Sarajevo could be accomplished without any obstacles.

269. The attack on Zvornik on 8 April 1992 was well planned and is an excellent example of the *modus operandi* of the Serb forces in their genocidal campaign. It is important to remember that this attack took place at the very beginning of the war in Bosnia and Herzegovina and that it is a "blue-print" for a successful ethnic cleansing operation. The paramilitary forces were intimately involved in all aspects of the attack [see also Reply, Chapter 5, Section 6].

270. Zvornik was attacked on 8 April 1992 after a six hour artillery bombardment. The attack on the town was conducted both from the Serbian side and from Bosnian territory, using tank forces, artillery and infantry units using portable mortars. JNA

units and paramilitary units co-operated and Arkan's troops reportedly led the attack [*ibid.*, p. 166 paras. 569-570; *"Ethnic Cleansing Operations" in the northeast-Bosnian City of Zvornik from April through June 1992*, Ludwig Boltzmann Institute of Human Rights, Vienna 1994, pp. 20-21, para. 5.2., Annex 48].



271. Roy Gutman, winner of the Pulitzer prize for his journalism in Bosnia, described the attack on Zvornik:

> "Shortly after the war began in eastern Bosnia, the Yugoslav army ringed Zvornik with tanks and artillery, preparing to attack the quiet town nestled on the Drina River. The city's hospital director telephoned Serbian authorities to beg that his facility be spared.
>
> The doctor had barely begun his plea when Zeljko Raznjatovic grabbed the phone at the other end.
>
> *'For Muslims the deadline to surrender has passed', said the leader of a volunteer force called the Tigers. Raznjatovic, also known as Arkan, is a close friend of Serbian President Slobodan Milošević and is a bank robber wanted internationally.*
>
> *'We are going to shell you with every weapon at our disposal,' Arkan said.*
>
> Minutes later, the federal army began shelling, snipers opened fire at civilians, and Arkan and his forces moved into the town in federal army vehicles. They went house to house with prepared lists, robbing and assassinating leading Muslims, according to witnesses interviewed by the U.S. government and Austria's Boltzmann Institute for Human Rights. They slit throats, strangled with wire or used semi-automatic weapons to kill." [Roy Gutman, *Newsday Inc.*, 30 Oct. 1995, Washington Bureau, emphasis added, Annex 188].

272. The importance of the paramilitaries as combat troops was emphasised by the Trial Chamber at the ICTFY in its Judgment in the *Tadić* case:

> "593. Excluding the Rear Service Base troops, the 1st Krajina Corps numbered some 100,000 [10,000] troops, expanded from its JNA peacetime strength of 4,500. These forces included or were supplemented by various paramilitary forces. Prior to May 1992 the JNA had played a significant role in the training and equipping of Bosnian Serb paramilitary forces. In 1991 and on into 1992 the Bosnian Serb and Croatian Serb paramilitary forces cooperated with and acted under the command and within the framework of the JNA. *These forces included Arkan's Serbian Volunteer Guard and various forces styling themselves as Chetniks, a name which, as has been seen, is of significance from the fighting in the Second World War against the German, Italian and Croat forces in Yugoslavia. Some were even given training in the compounds of the 5th JNA Corps in Banja Luka. The reliance placed on such forces by the JNA reflected a general manpower shortage. According to one witness 'whilst the JNA was prepared to use its artillery in operations, it relied on paramilitary groups to go into build up areas and to act as substituted infantry'. Air support was given to such paramilitary forces which continued into 1992. Evidence was also presented that the Serbian Security Service has been directing at least one paramilitary leader, Vojislav Šešelj, in the disposition of his forces in 1991 and 1992.*" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 219-220, para. 593, emphasis added].

273. In their authoritative and independent report "Ethnic cleansing Operations in the north-east-Bosnian city of Zvornik from April through June 1992", the Ludwig Boltzmann Institute of Human Rights gives a detailed description of the take-over of Zvornik and the part played by paramilitary units. The Report was based on the information obtained from the interviewing of 887 expellees by experienced bilingual interviewers who had been specially trained for this purpose. In its general remarks on the paramilitary units it says:

> "*During the entire period studied the supreme military command was held by JNA officers Pejic and Pavlovic. Except for the 'Arkanovci,' the para-military groups accepted the command of the JNA when conducting military operations.*
>
> From the time after the attack until the final 'ethnic expulsion,' a considerable number of para-military groups stayed in the city. They included 'organized' partisan groups as well as so-called weekend 'Chetniks,' especially from Serbia. Almost all groups exerted some form of terror over the city population. They are being held responsible for murders, rapes, lootings and tortures in the camps. They seemed to be under nobody's command or control.
>
> *The most important 'organized' para-military units were the 'Arkanovci,' the so-called territorial defence (TO), the 'Šešeljevci,' and the 'Beli Orlovi.'* ["*Ethnic Cleansing Operations" in the northeast-Bosnian City of Zvornik from April through June 1992*, Ludwig Boltzmann Institute of Human Rights, Vienna 1994, pp. 10-11, para. 4.2.1., emphasis added, Annex 48].

274. It then describes the activities of the various paramilitary units beginning with the Serbian Volunteer Guard:

> "*The Arkanovci as well as 'Arkan' himself are unanimously being described as the decisive personalities of the attack. During the attack proper, Arkan's responsibilities as leader not only*

went beyond those of the commanders of the former JNA, they also surpassed those of the leading personalities of the local SDS.

During the attack, Arkan himself held the supreme command over the Arkanovci. Other important figures besides him were: 'Rambo' (he was reportedly Arkan's brother-in-law, who was killed in the course of the battle of Kulagrad); 'Zuko,' who is held responsible for several serious war crimes and human rights violations; his companion 'Topola;' the Jovic brothers from Mali Zvornik [Serbia proper] (Dragan 'Jole' Jovic and his brother Pero Jovic commanded a special unit with red berets with Serb National badges; they, too wore the 'Tigers' badge and the slogan 'Arkanove delije' on their shoulders; others said that the two brothers were part of different groups); a certain 'Vuk' or 'Vuco;' and a woman by the name of 'Lela,' who was made responsible for tortures and killings in camps. The headquarters were in Mali Zvornik in the 'Jezero' hotel, Arkan himself stayed in Radaljska Banja.

The members of the Arkanovci had short hair and wore (dark olive) overalls, black gloves cut-off at mid-finger, and black woollen caps that could be used as masks. Their army boots were fixed to their uniforms with 'Velcro' stripes. On their left arms they had a badge showing four cyrillic letters 'S' and the words 'Serb volunteer guard' stitched around the outer circle of this emblem. According to other witness accounts, they wore camouflage uniforms with red arrows as badges, the Serb national coulours on the right arm, and a badge with the words 'Arkanove delije' on the shoulders.

One of their characteristic traits was the adherence to a strict disciplinary code. They were described as very brutal and 'meticulous' regarding 'cleansing operations.' The respondents portrayed them as 'cold blooded killers.'
Expressions such as 'fighter machines' or 'Rambos' were also used by the interviewees. The fact that the Arkanovci were never drunk made them also stand out among the other units. However they are said to have resorted to other forms of drugs.

There is evidence that they had the name lists of rich Muslims whose gold and money they robbed. Local Serbs are said to have been responsible for compiling these lists. Reportedly, it was the Arkanovci in particular who, accompanied by local Serbs, were systematically involved in house searches, killings, rapes and lootings. The 'right to be the first to loot,' which they apparently enjoyed, was obviously part of their 'remuneration.'

Arkan himself is said to have arrived in Zvornik on April 7. There is some contradiction as to whether he only participated in 'negotiations' on Zvornik's future that day, or whether he actually dominated those talks. Arkan himself issued an ultimatum for the surrender of the city and the turn-over of all weapons by the morning of April 9. Some days later, Arkan is said to have returned to Zvornik. He kidnapped hospital patients to press for the release of 'Rambo's' dead body. Members of the Arkanovci wearing civil clothes are said to have been present in the city since the beginning of March.

Their participation in the fighting began on April 8 with mortar fire and attacks by snipers located in Mali Zvornik. They conquered the city and assumed control of it on April 9, having taken control of the most important facilities (hospital, radio station) as well as strategic points. The Arkanovci were supported all along by JNA artillery and logistics. Apparently, strategic planning and command structures had been uniform.

Later other groups (Šešeljevci, Beli Orlovi, the 'territorial defence,' and 'volunteers' from neighbouring towns in Serbia assumed the task of securing the city (militarily). After the occupation of the city (April 10/11), the core troops apparently left Zvornik.

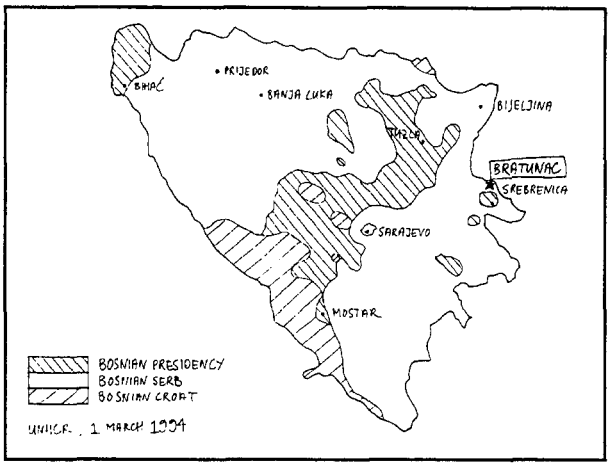
> *The Arkanovci were highly mobile and had many vehicles from private owners. Apart from their 'military tasks,' the Arkanovci were responsible for many of the atrocities and lootings. Arkan himself purportedly ordered Muslims and hospital patients to the execution sites. His people murdered several men in the house of Salim Donjic and committed massacres in the city districts Zamlas and Hrid. In the morning of April 9 they are said to have committed another massacre in Vidakove Nijeve at the access road to Zvornik. In the cafe 'Klempic,' too, they are said to have committed another massacre in the morning hours of April 9. But since the cafe is situated in the direction of Vidakove Nijeve, the massacre mentioned earlier could be identical with that in Vidakove Nijeve.*
>
> Their arms included: automatic rifles M 70A, M 70B and U.S. rifles, 'skorpion' rifles, hand grenades, anti-tank grenades and launching grenades; ropes for choking people, long 'Rambo-style' knifes, clubs; they wore bullet-proof jackets for their own security." [*"Ethnic Cleansing Operations" in the northeast-Bosnian City of Zvornik from April through June 1992*, Ludwig Boltzmann Institute of Human Rights, Vienna 1994, pp. 13-15, para. 4.2.3., emphasis added, Annex 48].

275. Then it describes the activities of the Serbian Četnik Movement which it refers to as "Šešeljevci":

> "The Šešeljevci were described as 'bearded' men. They wore Serbian military berets with the Serbian flag or a skull on the front side, or black fur hats ('Sapka') with Serbian cockade. The cross-shaped ammunition belts worn across the breast and handgrenades on the belt were another identification mark.
>
> Their leaders are said to have been Nikola Jovanovic, a taxi-driver from Loznica [Serbia]; a certain 'Nislija'; a man named 'Hladni', a man called 'Dragan Toro,' who wore a major's badge, and 'Vojvoda Šešelj'.
>
> *According to witness accounts they were frequently drunk; they repeatedly recruited criminals and 'weekend fighters.' They are said to have been particularly active as regards acts of violence against civilians - including violence in internment camps. The Šešeljevci are blamed for the desecration of at least one mosque, playing 'Chetnik songs' over the loud-speakers and raising a flag with a skull.*
>
> Their headquarters were hard to localize. According to witnesses, they were in the 'Standard' factory in Karakaj, in the 'Inzinjering' company building on the 'Alhos' premises or the 'Vezionica' in Karakaj, in the 'Drina' hotel, and in the radio stations pre-school.
>
> *Prior to the attack, members of the Šešeljevci were already present as civilians. They participated in the attack as early as April 9 and stayed involved throughout the entire period of the occupation until the conquest of Kulagrad.*
>
> *They assumed control of various parts of the city and were responsible for lootings wherever they went. They always cooperated with the JNA, both with regard to strategy and command structure.*
>
> Their weapons included: automatic rifles M 59, M 66, M70A, M 70B, long, curved knives, hand grenades." [*ibid.*, pp. 15-16, para 4.2.4., emphasis added].

276. After Zvornik's capture, there was a campaign of murder and imprisonment against those Muslims who had not fled. A Serbian woman told United States Embassy

officers in Budapest that several Yugoslav army tanks, led by Arkan, had come to Zvornik on 10 April 1992. A unit under the command of Arkan searched for Bosnian Muslim men by checking identity cards. They then cut off the heads, hands and feet of their victims [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 168, para. 577].



277. On 5 May 1992, Arkan and Šešelj troops surrounded the village of Bratunac and upon their attack 10,000 Muslims fled the small towns along the Drina river. The villages of Hrača, Glogovo and Mihaljevići were burned. During the attacks an estimated 500 Muslim houses were burned and fifty people killed. The bodies of the villagers were found on the banks of the Drina. [*ibid.*, p. 140, para. 381].

278. The United Nations Security Council recognised the part played in ethnic cleansing by paramilitary forces. On 24 April 1992 the President of the Security Council condemned "the use of force" and called upon "all regular *or irregular military forces* to act in accordance with this principle" [United Nations, *Statement by the President of the Security Council*, S/23842, 24 Apr. 1992, emphasis added]. On 15 May 1992 the Security Council adopted Resolution 752, demanding "*also that all irregular forces in Bosnia-Herzegovina be disbanded and disarmed*" [United Nations, *Security Council Resolution 752 (1992)*, S/RES/752, 15 May 1992, emphasis added]. In Resolution 757 of 30 May 1992, the Security Council repeated the same demand [United Nations, *Security Council Resolution 757 (1992)*, S/RES/757, 30 May 1992].

Yugoslavia continuing support for and control over Arkan and Šešelj

279. The Respondent ignored these demands of the Security Council and intensified its support for the Serbian paramilitaries. One of the most important functions it performed was the organisation of the transport for the paramilitary groups to those areas where shortly after their arrival the non-Serb population would be massacred. The Yugoslav air force also co-operated closely with the paramilitary groups. This did not escape the attention of the Trial Chamber at the ICTFY:

> "The JNA and *in particular its air force arm actively cooperated with and assisted these paramilitary units during 1991 and 1992 in operations in Croatia and Bosnia and Herzegovina* and liberally supplied them with arms and equipment." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May, p. 40, para 110, emphasis added].

280. Yugoslav air force squadron 242, based at Batajnica near Belgrade, is named by *Jane's* as having the closest links with the paramilitary forces. In its assessment of the Yugoslav military in June 1993 it states:

> "As well as providing military helicopters for the extremist paramilitary leader Vojislav Sešelj (whose units received arms from Stevanović), *this squadron became know[n] as the 'First Serbian' because of its close links with all the Serbian paramilitary leaders.* These included: Mirko Jović, leader of the 'White Eagles' (Beli Orl[ov]i); Captain 'Dragan', an Australian Serb who lead the Serbian fight in parts of Croatia; and Zeljko Raznjatović Arkan, leader of the 'Tigers' force." [James Gow, "Belgrade and Bosnia - An Assessment of the Yugoslav Military", *Jane's Intelligence Review*, June 1993, p. 244, emphasis added, Annex 189].

The JNA also allowed the paramilitary forces to use their helicopters for the transport of men and material. For example, Serbian Defence Minister General Tomislav Simović was reported by the Belgrade weekly *NIN* to have transported Arkan by helicopter and when Šešelj requested a helicopter to inspect his men from Simović he suggested contacting General Adžić, who consequently supplied him with a helicopter ["Iz kabineta ministra vojnoga" ("from the Defence Minister's Cabinet"), *NIN*, Part 2, 24 Apr. 1992, pp. 26-27, Annex 190].

281. As illustrated above a group of men known as the *Vojna Linija* - ("military line") of the State Security Department within the Serbian Ministry of the Interior were responsible for the paramilitaries. The Serbian Ministry of the Interior controlled the paramilitary units and their leaders. Writing in *Tribunal*, Srdja Popović (well known dissident lawyer during the communist regime and founder of the Belgrade based opposition magazine *Vreme*) demonstrates the importance of the Serbian Interior Ministry to the control of paramilitaries:

"The police have been and remain Milošević's main power base. Most police officers were appointed during his rise to power in between 1987 and 1991. During this time, Milošević not only retained control but also over federal institutions and Serb leaders outside Serbia. Radovan Karadžić and Gen. Ratko Mladić in Bosnia, and Milan Martić and Milan Babić in Croatia, lasted only as long as Milošević wanted. Milošević also controlled allegedly private institutions, such as the banks officially owned by Jezdimir Vasiljević and Dafina Milanović. These banks paid for the war by plundering the people through pyramid schemes. Behind such effigies of institutions loomed the real power - the police and their boss, Milošević.

The police took part in military operations in Croatia and Bosnia in two ways. First, they participated directly in units of the so-called Red Berets, commanded by Serbian police officers directly under Milošević's control: Jovica Stanišić, Head of State Security and Assistant to the Minister of the Interior; his deputy Frano ('Frenki') Simatović, Radovan ('Badza') Stojičić, now Head of Serbian Public Security and Assistant to the Minister of the Interior, and Mihalj Kertes, the Deputy Interior Minister. Second, they controlled the paramilitary units and their leaders - Željko ('Arkan') Ražnjatović (wanted for robbery in several European countries), Dragoslav Bokan (in jail for robbery in Serbia), Vojislav Šešelj, Mirko Jović, Daniel Sneden ('Kapetan Dragan') and Vojin ('Zuca') Vucković.

These paramilitary leaders say that they were armed by the JNA and the police, and that military barracks, transport, uniforms, training, and commanding personnel were placed at their disposal. They drove police vehicles. The police and the army directed them to specific locations in Bosnia and Croatia and co-ordinated their actions with those of the army. They had police escorts through Serbia, as well as unhindered passage across Serbia's borders, and they were even allowed to import their war booty into Serbia. When Šešelj travelled to inspect his units he went by military helicopter." [Srdja Popović, "The Milošević Conspiracy", *Tribunal*, a Publication of the Institute for War and Peace Reporting, No. 7, Feb./Mar. 1997, p. 1, emphasis added, Annex 191].

282. Julian Borger of *The Guardian* describes the relationship between Radovan Stojičić who is also known as "Badža" and Branislav Vakić, a commander in the Šešelj's Serbian Četnik Movement:

"One key source, Branislav Vakic, first met Badza in May 1991, in the eastern Slavonia region of Croatia. Vakic, a former boxing champion from Serbia's second city of Nis, was determined to fight for his kin at a time when Yugoslavia was imploding, and skirmishes were breaking out between Serbs and Croats. Vakic came with bearded band of adventurers and freed convicts calling themselves the Serbian Cetnik Movement. Under the leadership of the bespectacled history professor called Vojislav Seselj. *When the Cetniks slouched into Slovenia, many were carrying only hunting rifles. Badza soon put that right. 'MUP [the interior ministry] started to help the Cetniks in May', says Vakic.* 'The MUP forces were at that time under the control of Radovan Stojicic - 'Badza'. We just got weapons from them then. But we started to act together in January 1993, in Skelani and towards Srebrenica.'

By the time the Cetniks moved on to Bosnia, Vakic was in charge of 6,000 men. Badza moved into Bosnia at the same time. His influence is clear from some photographs Vakic proudly displays in his offices in Nis. *A picture from 1991 shows him and a handful of fellow Cetniks brandishing a few 1940s Thompson machine guns. Two years later, in a snap taken near Srebrenica, Vakic is posing with a sophisticated sniper rifle complete with foot-long silencer and telescopic scope. 'We got uniforms from the MUP, and the weapons we wanted; infantry weapons, machineguns, sniper rifles with night scopes and mortars,' he recalls.*

> In early 1992, Vakic and his men were trained at a military base near Belgrade, called Bubanj Potok. Later in 1992 and 1993, his Cetniks were moved down to a new base at Bajina Basta (on the Bosnian Border) where they met 'Frenki' Simatovic, who ran an interior ministry special forces unit known as the 'red berets'. Frenki not only trained Vakic's men, he accompanied them on forays against Muslims as the fighting spread into Bosnia.
> *'From September to October 1992 [months after Yugoslav forces were supposed to have officially 'withdrawn' from Bosnia and Herzegovina] we fought with Frenki's units in Bratunac [a town near Srebrenica (Bosnia and Herzegovia)]. They were good but they didn't fight with the same heart as true nationalists,' adds Vakic.*
> *In August 1993, he sent 300 of his men for further training in a Serb interior ministry camp on Mount Travina near Bajina Basta, but says that the relationship with Frenki's men broke down soon afterwards when they tried to make them leave the Radical party. The red berets, he says, they were loyal only to Milosevic and his Serbian Socialist party.*
> VOJISLAV Seselj, Vakic's boss in both the Cetniks and the Radical Party, has also told journalists how his men fought along side the red berets, mentioning not only Frenki but also Mihalj Kertes as their commanders. Kertes is also named as a red berets commander by another Serb warlord, Dragoslav Bokan, now in jail for armed robbery. *While Frenki took over as the Cetniks' handler in eastern Bosnia, Badza linked up with Zeljko 'Arkan' Raznjatovic and his notorious Tigers militia. Marko Nikovic, a former Belgrade police chief, says that Badza formed a 'special relationship with Arkan in eastern Slovenia.' From that moment on, he adds, Arkan, a former bank robber with a long and international criminal record, became untouchable. The 1991 photograph (above) amply illustrates that 'special relationship'. Arkan and Badza are standing together smiling in front of the Tigers' training centre in Erdut, near the eastern Slovenian front. Another photograph shows a Jeep emblazoned with Tigers insignia bearing Serbian interior ministry number plates.*
> *A well placed source within the Milosevic's ruling coalition goes further than Nikovic, on condition of anonymity. 'Where do you think the guns and jeep came from? How do you think that Arkan got to all those places? Wherever there was Arkan, there was Badza,' the source said.* Arkan's case was not exceptional. According to Nicovic, the doors of Serbia's prisons were thrown open in 1991, and 'thousands' of convicts were released so that they could fight in paramilitary groups like the Cetniks and the Tigers." [Julian Borger, "The president's secret henchmen", *The Guardian*, 3 Feb. 1997, pp. 8-9, emphasis added, Annex 192].

The Serbian paramilitary organisation were therefore also armed by Belgrade. The results of these armaments were clearly illustrated in late 1991, when Arkan's Serbian Volunteer Guard published a special calendar. On the photographs in this calendar Arkan's paramilitary soldiers are proudly showing their impressive equipment. The month June shows a picture taken at the Erdut training centre in east Slavonia, Croatia, and the month October shows a photograph taken of a group of paramilitaries in the field [Serbian Volunteer Guard, Calendar, 1992, Annex 193].

283. It should be emphasised that many paramilitaries were trained in JNA facilities. Colonel Selak testified during the *Tadić* trial that some paramilitary units such as the "red berets" and "Eagles" were trained by JNA personnel at Manjača, an area near Banja Luka formerly used for the training of tank units of the JNA. Their weapons, equipment and uniforms were supplied by the JNA. The witness heard of such activity for the first time in November 1991 [ICTFY, Trial Chamber, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Transcript of the oral testimony of Colonel Selak,

960605.DOC, 5 June 1996, p. 1246, Annex 194]. Other paramilitary groups, such as the "Serbian Falcons", which operated in Bosnia and Herzegovina as well as in Serbia had a training camp in Subotica, Serbia [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 84, para. 227].

284. The Respondent's support for the Serbian paramilitary organisations was also found by Paul Williams and Norman Cigar in their *A Prima Facie Case for the Indictment of Slobodan Milosevic*, a well documented study on the Serbian President's responsibility for the genocide committed in Bosnia and Herzegovina:

> "After establishing their paramilitary agents, the Republic of Serbia forces and agencies continued to aid and abet the commission of war crimes by these forces by providing them with substantial financial resources. Such funding was crucial to the continued operation of the paramilitary agents, since war booty by itself was not a sustainable source of income. On the whole, the most important forms of financial support to the paramilitary agents from the Republic of Serbia government were cash subsidies. In addition, the Republic of Serbia paid leave from state-sector jobs while individuals served in the ranks of the paramilitary agents, medical care for the wounded, and bonuses and pensions to the families of those who died while on duty. Wounded members of paramilitary units were also sent back for treatment at the Yugoslav Army's medical facilities in Belgrade. And, in some instances, the Republic of Serbia agencies provided office space from which to operate.
> (...)
> The provision of arms and training, in addition to funding, was key to enabling the Serbian paramilitary agents to carry out their criminal activities. While the Yugoslav Army was one primary source of arms, the Republic of Serbia police forces, Territorial Defense organization, and other republic-level agencies were also substantially involved in the provision of arms and training. Serbia's Minister of Defense, for instance, was alleged to be a primary supplier of these weapons, obtaining the weapons from various sources and turning them over to Serbia's Territorial Defense officials for distribution to the paramilitary agents.
>
> A number of paramilitary agents have acknowledged receiving arms from republic-level sources. According to Vojislav Seselj, for example, 'Moreover, we would not have been able to carry out the war during the first days by ourselves had we not received arms from them (Serbia's Socialists, that is Slobodan Milosevic). How could we have?' Elsewhere, Vojislav Seselj also noted that, 'we received arms from him (Mihalj Kertes, then Serbia's Deputy Federal Minister of Internal Affairs, Head of the Secret Service, and Vice-President of Serbia's Presidency) for our volunteers.' Asked who else, specifically, had given him arms, Vojislav Seselj replied: 'Serbia's leaders ... gave some arms ... old weapons ... (U.S.-made) Thompson and (Soviet-made) Shpagni sub-machineguns ... The (Serbian) police provided that from its stocks, and from the stocks of (Serbia's) Territorial Defense, since the Territorial Defense was under the authority of the Republic (of Serbia), rather than under the Federal Government (of Yugoslavia).' Again, Vojislav Seselj noted that, 'We received arms from [them] (the Serbian police). Of course, we also received (arms) from the Army, but many more from the police.' Colonel Vojislav Sljivancanin, chief of JNA security on the Vukovar front, who has been indicted by the Tribunal, adds that 'Serbia's MUP (Ministry of Internal Affairs) provided the complete arsenal of the 'White Eagles', 'Tigers' and Seselj's Radical Party.'

> Another paramilitary commander, Branislav Vakic, stated that in addition to the receipt of weapons, his forces also received extensive training by Serbian police forces:
>
> 'While the war was going on, our volunteers received arms and equipment from the (Yugoslav) Army and the (Serbian) police. Of course, appropriate receipts exist for that. Three hundred people were stationed in the MUP (Ministry of Internal Affairs) Personnel Training Center in Tara [Federal Republic of Yugoslavia]. We also received uniforms from the MUP.'
>
> Vojin Vuckovic, the commander of the Yellow Wasps paramilitary agent, for his part, noted that when he deployed from Serbia to Bosnia, he 'arrived in Zvornik (Bosnia) already armed.' Likewise, hardline Serbian rebel leader Simo Dubajic from Croatia claimed to have coordinated with Serbian officials such as Radmilo Bogdanovic, Mihalj Kertes, and Jovica Stanisic (Director of Serbia's State Secret Service), and that he had received rifles even before fighting broke out in Croatia from the state-owned 'Crvena Zastava' (Red Flag) enterprise in Kragujevac, Serbia.
>
> In many instances, the transfer of these weapons and the provision of training was the direct result of the personnel involvement of Slobodan Milosevic. According to Vojislav Seselj, 'Thanks to the cooperation and alliance with Milosevic, our impact on this war was exceptionally great ... We received from him weapons, uniforms, buses, and a barracks in Bubanj Potok (near Belgrade) where we trained our volunteers." [Paul Williams & Norman Cigar, A Prima Facie Case for the Indictment of Slobodan Milosevic, London 1996, pp. 36-38].

285. Support for the paramilitaries was practical as well as moral. The paramilitary organisations were frequently lionized and given wide coverage on the state-run media. A training film on behalf of the SDG was shown on Belgrade Television. Arkan and Šešelj were given favourable coverage while active in Croatia and Bosnia and this included Arkan's account of how he had "liberated" the Zvornik area.

The Politika obituaries

286. The Belgrade based newspaper *Politika*, once described as the newspaper that "projects and reflects political power" in Yugoslavia [Article 19, *Forging War: The Media in Serbia, Croatia and Bosnia- Herzegovina*, Avon 1994, p. 64 and pp. 67-70, Annex 195; see also Statement on Preliminary Objections, pp. 15-16, paras. 35-37], printed obituaries of fallen paramilitary comrades on the territory of Bosnia Herzegovina. These obituaries continued to appear in *Politika* throughout the whole armed conflict that lasted until the signing of the Dayton Accords in the autumn of 1995.

287. In 1992, *Politika* published *inter alia* the following obituaries of members of Yugoslav paramilitary units, all killed in combat on Bosnian territory:

- Zoran Tomašević, "Četnik", member of the Serbian People's Renewal Party paramilitary force called "Beli Orlovi" [White Eagles] [Obituary published in *Politika*, 3 May 1992, Annex 196];
- Zoran Obrenović, "Četnik", Major of the "flying squad" called "Dušan Silni" [Dušan the Mighty]; a unit of the Serbian People's Renewal Party paramilitary force called "Beli Orlovi" [White Eagles] [Obituary published in *Politika*, 29 May 1992, Annex 196];
- Miroslav Miljević, Serbian Volunteer Guard [Obituary published in *Politika*, 13 June 1992, Annex 196];
- Ljubomir Jorgić, "Četnik", member of the Serbian People's Renewal party, killed in Gacko Polje, south Bosnia/Herzegovina [Obituary published in *Politika*, 23 June 1992, Annex 196];
- Pedrag Mancić, "Četnik", member of the Serbian Radical Party [Obituary published in *Politika*, 11 July 1992, Annex 196];
- Branislav Pavlović, Serbian Volunteer Guard, killed on 12 July 1992 [Obituary published in *Politika*, 21 July 1992, Annex 196];
- Marjan Božić, Serbian Volunteer Guard, killed on 11 July 1992 [Obituaries published in *Politika*, 25 July and 21 August 1992, Annex 196];
- Miodrag Čumić, Serbian Volunteer Guard [Obituary published in *Politika*, 13 September 1992, Annex 196];
- Saša Tomić, Serbian Volunteer Guard [Obituary published in *Politika*, 7 October 1992, Annex 196];
- Djordje DJ Ignjatijević, Serbian Volunteer Guard, killed in the Bratunac area, east Bosnia [Obituary published in *Politika*, 17 October 1992, Annex 196];
- Zeljko Marivković, "Četnik", member of the Serbian Radical Party [Obituary published in *Politika*, 21 October 1992, Annex 196];
- Stojan Šarčev, "Četnik", member of the Serbian Radical Party [Obituary published in *Politika*, 15 december 1992, Annex 196].

288. In 1993, more obituaries were published in *Politika*:

- Dragan Ristović, Serbian Volunteer Guard, killed on 7 February 1993 [Obituary published in *Politika*, 12 February 1993, Annex 196];
- Vladica Nikolić, Serbian Volunteer Guard [Obituary published in *Politika*, 16 February 1993, Annex 196];
- Zoran Jovanović, Serbian Volunteer Guard [Obituary published in *Politika*, 7 March 1993, Annex 196];

- Kosta Gvozdenov, "White Eagle" paramilitary group, killed in the Srebrenica area [Obituary published in *Politika*, 16 April 1993, Annex 196];
- A group obituary for members of the Guards Special Brigade called the "Panters", who were killed in 1992 and 1993 [Obituary published in *Politika*, 30 April 1993];
- Dejan Stanimirović, "Četnik", member of the Serbian Radical Party [Obituary published in *Politika*, 26 May 1993, Annex 196];
- Dragan Tanjga, Serbian Volunteer Guard, killed on 23 June 1993 [Obituary published in *Politika*, June 27 1993, Annex 196];
- Branko Pantelić, Serbian Volunteer Guard, Special Brigade "Panters", killed in September 1992 [Obituary published in *Politika*, 2 September 1993, Annex 196];
- Duško Ličina, "Četnik", member of the Serbian Radical Party, killed on 18 October 1993 [Obituary published in *Politika*, 15 October 1993, Annex 196].

289. In 1994, *Politika* printed once more obituaries of paramilitaries who died in combat in that year:

- Goran Grković, "Četnik" [member of the Serbian Radical Party]; killed on 29 August 1994 on Mt. Majevica, near Tuzla [Obituary published in *Politika*, 1 September 1994, Annex 196];
- Rajko Kušić, Serbian Volunteer Guard, killed on 2 September 1994 [Obituary published in *Politika*, 4 September 1994, Annex 196];
- Miodrag Čumić, Serbian Volunteer Guard, [Obituary published in *Politika*, 9 September 1994, Annex 196];
- Nedeljko Vidaković, "Četnik" [member of the Serbian Radical Party]; killed on 27 September 1994 in the area of Konjic, central Bosnia [Obituary published in *Politika*, 29 September 1994, Annex 196];
- Goran Vucković, "Wolves of the Drina River", killed on 4 Oktober 1994 in the area of Gacko, south Bosnia and Herzegovina [Obituary published in *Politika*, 10 Oktober 1994, Annex 196].

290. In 1995 *Politika* continued printing obituaries of paramilitaries killed during the war in Bosnia and Herzegovina:

- Vladica Nickolić, Serbian Volunteer Guard, killed on 13 February 1993 [Obituary published in *Politika*, 13 February 1995, Annex 196];

- Ivan Okiljević, Serbian Volunteer Guard, killed on 10 April 1992 [Obituaries published in *Politika*, 8 and 10 April 1995, Annex 196];
- Dobrica Ljuboja and Milorad Ristić, both members of the Serbian Volunteer Guard, killed in July 1995 [Obituary published in *Politika*, 8 July 1995, Annex 196];
- Miroslav Radušić, Serbian Volunteer Guard [Obituary published in *Politika*, 12 July 1995, Annex 196];
- Zoran Marić, Serbian Volunteer Guard [Obituary published in *Politika*, 20 July 1995, Annex 196];
- Boban Gojaković, Serbian Volunteer Guard [Obituary published in *Politika*, 1 August 1995, Annex 196];
- Bogdan Drobac, Serbian Volunteer Guard, killed on 1 October 1995 [Obituary published in *Politika*, 5 October 1995, Annex 196];
- Srdjan Simić, "White Wolves", killed on 12 October 1995 [Obituary published in *Politika*, 15 October 1995, Annex 196];
- Brica Puzić, Serbian Volunteer Guard [Obituary published in *Politika*, 14 Oktober 1995, Annex 196].

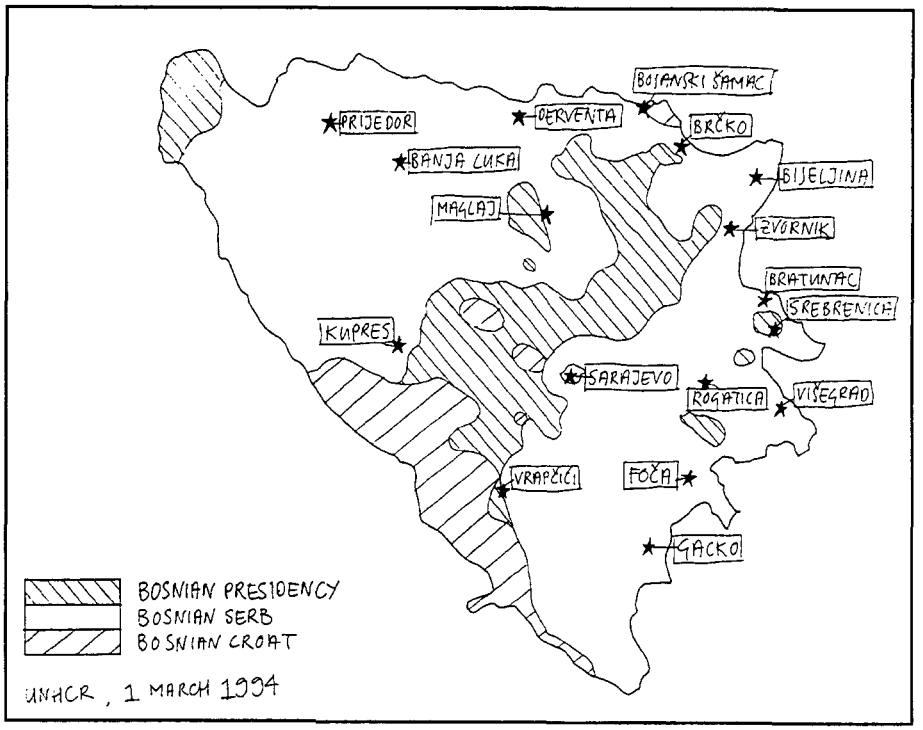
291. The obituaries published in *Politika*, during the war on Bosnian territory, demonstrate that the paramilitaries remained active until the very end of the war, on a wide scale. The above noted paramilitaries were only the tip of the iceberg.

The Yugoslav paramilitary units were responsible for the most evil atrocities

292. The paramilitary troops of Arkan and Šešelj took part in some of the worst genocidal cleansing. After entering captured villages, Arkan and Šešelj's troops would begin a reign of terror. In the overwhelming majority of these counties or *opštinas* in which Arkan and Šešelj's troops were operating, there are reports of killing of Muslim civilians, torture and rape of adults and children, looting, destruction of private and cultural property and camps. In some instances specific individuals such as prominent non-Serb leaders or intellectuals were especially targeted.

293. According to the United Nations Commission of Experts, killings of civilians by Arkan and Šešelj's men were reported in the following *Opštinas*: Banja Luka, Bijeljina, Bosanski Šamac, Bratunac, Brčko, Derventa, Dragovci, Foča, Gacko, Kupres, Maglaj, Prijedor, Rogatica, Sarajevo, Srebrenica, Višegrad and Zvornik [United Nations, *Final Report of the United Nations Commission of Experts*,

S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 197, note 161].



294. For example, in the aftermath of the take-over of Bratunac by Arkan and Šešelj's forces the non-Serb civilian population was rounded up and separated by gender. Approximately 600 to 700 Muslim men were brought to Vuk Karadžić Primary School Sports Centre where Arkan's and Šešelj's men and local Serb men tortured and killed scores of them. The torture included beating with iron rods and wooden poles. Mutilation occurred, ears, noses, and genitals were cut off and the sign of the orthodox cross was cut into prisoners' flesh. While being tortured the prisoners were made to sing Serbian nationalist songs. Most were killed by gunfire but in one day it is alleged that up to 150 people were beaten to death [*ibid.*, p. 140, para 382].

295. As stated in the Memorial and earlier in this Reply [Memorial, paragraph 2.2.2.10; Reply, Chapter 5, Section 6] Zvornik was the site of particular atrocities against the most vulnerable members of the Muslim community. Neither the sick, aged or indeed children were exempt from the brutality. Around mid to the end of May 1992, Arkan's men shot the Muslim patients of the hospital of Zvornik [United Nations, *Final Report of the United Nations Commission of Experts*,

S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 62, para. 369; see also Memorial, p. 32, para. 2.2.2.10].

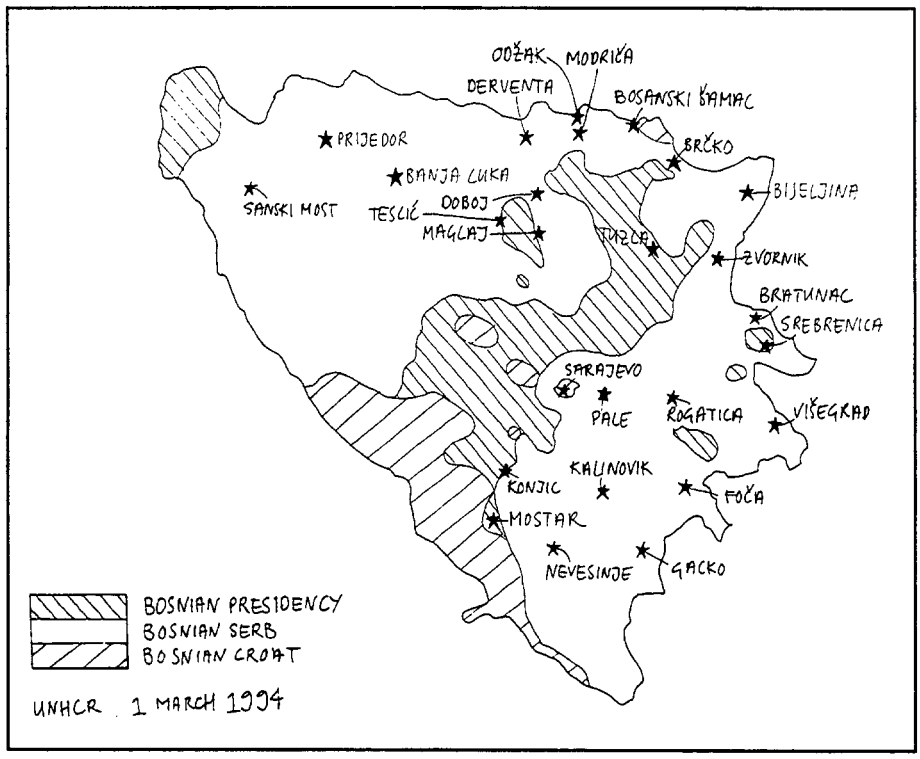
296. The paramilitary troops of Arkan and Šešelj were responsible for the rape of women and children that they had taken prisoner. After the capture of the town of Brezovo Polje in Brčko county on 17 May 1992, the women, elderly and children were loaded onto eight buses and then driven round the country side for a number of days until:

> "The group was then taken to Caparde in Zvornik county, where 50 Serb irregulars, reportedly followers of Arkan, robbed the mothers and forcibly separated them from their daughters. *The daughters were transported to the Osnovo furniture warehouse in Carparde, while the mothers were taken on a another journey through the war zone. At the warehouse, the men selected the 40 'prettiest' young women and raped them in groups of ten. One of the perpetrators told his victim that Šešelj's men would have raped them '10 men to one women'.*" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 143, para. 401].

297. Another practice of the paramilitary forces was the setting up of "brothels", or more accurately rape camps, for the use of their men. A more correct term for these "brothels" would be rape and murder camps. In the Vilina Vlas hotel in Višegrad such a "brothel" was established for the use of Arkan's and Šešelj's troops as well as local police officers. Many of the girls there were under 14 years of age [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), Annex VIII, "Prison Camps", p. 325, para. 2700]. The infamous "Sonja's cafe", just outside Vogošća, was the site of numerous rapes and killings of Muslim women. The "commander" of this detention facility was Miro Vuković, a member of Šešelj's forces. Vuković reportedly established a system for Serb fighters to rape and kill women [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 159, para. 516]. Many terrible rape camps were also located in Foča, especially in the months following the outbreak of the conflict in April 1992. Arkan's Serbian Volunteer Guard was also active in the Foča area [see *e.g.* Ministry of Interior Affairs of Republika Srpska, Telex addressed to Ministry of Interior Affairs of the Republic of Serbia, num. 02/2-2640/93, 9 July 1993, signed Goran Mačar, Annex 197]. The systematic nature of rape and the genocidal intentions of the perpetrators has been discussed above [Reply, Chapter 7].

298. The paramilitary troops of Arkan, the Serbian Volunteer Guard, had military police type functions for the Bosnian Serb Army. They were used to capture, discipline and return deserters to their units and they were also involved in the forcible mobilisation of Bosnian Serb refugees on Yugoslav territory to serve in the Bosnian Serb army. They maintained this role until the end of 1995 ["Serb Volunteers' Relations With Belgrade Examined", *Vreme*, 16 Oct. 1995, FBIS-EEU-95-204, p. 11, Annex 198].

299. The paramilitary forces of Arkan and Šešelj were also responsible for the setting up and the operation of camps. Camps were reported in the following counties in which Arkan and Šešelj were operating: Banja Luka, Bijeljina, Bosanski Šamac, Bratunac, Brčko, Derventa, Doboj, Dragovci, Foča, Gacko, Kalinovik, Konjic, Maglaj, Modriča, Mostar, Nevesinje, Odžak, Pale, Prijedor, Rogatica, Sanski Most, Sarajevo, Srebrenica, Teslić, Tuzla, Višegrad and Zvornik [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 197, note 165].



300. In addition, paramilitary troops were responsible for the supply of guards, the rounding up of prisoners and the running of many of the camps. One example in

particular, given by the Commission of Experts in its Annex on camps, shows the horror of these detention centres. The following refers to the infamous Luka camp [see also Reply, Chapter 5, Section 5], the primary detention centre in Brčko:

> "748. The Serbs detained prisoners at the Luka port facility from at least 8 May 1992 until late July or August 1992, when, it seems, the Luka camp was shut down, and the surviving prisoners were transferred elsewhere. Reports suggest that the camp population ranged from 1,000 to 5,000 inmates with the total number of people who passed through unknown. Supposedly about 95 per cent were ethnic Muslims and the remainder Croatian; (...)
>
> *749. (...) Up to three thousand prisoners may have been killed in the Luka detention complex and all inmates were subjected to inhumane living conditions and a variety of brutal assaults, including rape and torture. The perpetrators of such acts were guards, administrators, soldiers and paramilitaries.* (...)
>
> 750. The Luka camp had five main part: an administration building, which included barracks, offices, interrogation rooms, and rooms where women were held to be raped; a large warehouse divided into three compartments, where the detainees were held; a police barracks; a small building used as barracks by groups of front-line soldiers who visited the complex; and a second large warehouse, where visiting soldiers could obtain small arms and equipment. (The warehouse held a new model of rifle manufactured by the company in Serbia that usually supplied the JNA; some trucks making deliveries to the warehouse had license plates from Serbia.) *The visiting soldiers, especially members of Arkan's forces, appear to have been responsible for many of the beatings and killings.*
>
> 751. From early May, Luka's commander was reportedly Major Petar Djokić; the Deputy Commander was an identified Captain. Both men wore JNA uniforms. (...) *They were directly involved in arranging for the transfer to the 'Serbian Republic' of the property of at least some Muslims interned in the camp, in concert with the representatives of the Arkanovci. They appear to have had repeated, direct contacts with various paramilitary leaders (including Arkan, Captain Dragan, and Captain Mauser, a local paramilitary).*
> (...)
> 752. (...) *Nearly all guards in the camp (and all those seen after Kosta took command) wore blue SUP uniforms. Paramilitaries, in particular the Arkanovci and Draganovci, participated in the transportation of detainees to and from Luka.*
> (...)
> 755. During his first days at the camp, the captors called out names of prisoners from electoral rolls. All those who were members of the SDA (Bosnian, primarily Muslim political party) or who had held positions of leadership in business or industry were killed. Shootings often occurred at 4.00 a.m. The witness estimates that during his first week at Luka more than 2,000 men were killed and thrown into the Sava river.
> (...)
> 759. After the witness [a Muslim from Brčko] had been interrogated, he was taken with other prisoners to Hanger Two of the loading dock, where they were forced to look at a pile of more than 200 corpses or torsos. Most of the body parts had been chopped off: hands, arms, and genitals. The prisoners standing outside Hanger Two were told that they would end up like that if they told lies while being interrogated.
>
> 760. Looking out of the window during one of his interrogations, the witness saw soldiers gang rape a women whom he had known since his highschool days, and murder her husband. A Brčko school teacher among the guards, an ethnic Serb, was shot dead for refusing to join in the torture and the killing of the couple." [United Nations, *Final Report of the United Nations*

Commission of Experts, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 92-94, paras. 748-760, emphasis added].

301. The paramilitary troops of Arkan and Šešelj were an integral part of the genocidal Bosnian campaign, from the beginning of the armed conflict until its very end. They were also present at the fall of Srebrenica on 13 July 1995, as Professor Manfred Nowak, expert member of the United Nations Working group on Enforced or Involuntary Disappearances, noted in his second report:

> "*According to reliable sources, the Bosnian Serb forces as well as paramilitary groups such as the Drina Wolves, Šešelj Militia, Specialna Policija, 'White Eagles', 'Tigers' and Krajina Serbs were the main units conducting the fighting and responsible for the expulsion of civilians from Srebrenica and the subsequent massacres.*" [United Nations, *Special process on missing persons in the territory of the former Yugoslavia, Report submitted by Mr. Manfred Nowak, member of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1996/36, 4 Mar. 1996, p. 18, para. 65, emphasis added].

The ICTFY noted this in its indictment of General Ratko Mladić and Radovan Karadžić:

> "It is worth noting that it appears from the witness statements that not only Bosnian Serb soldiers but also soldiers from the Federal Republic of Yugoslavia (Serbia and Montenegro) were present during the take-over of Srebrenica. These soldiers were easily distinguishable by their clean-cut appearance, distinctive uniforms and use of Serbian dialects. *Elements of the Yugoslav People's Army (JNA), including the Novi Sad Corps and the 'Uvice' [Užice] Corps, as well as irregulars loyal to 'Arkan', were seen by a number of witnesses in and around Srebrenica.*" [ICTFY, Review of the Indictment before Judge Riad, *Prosecutor v. Karadžić and Mladić ("Srebrenica")*, IT-95-18-I, 16 Nov. 95, p. 3, emphasis added].

And as Roy Gutman reported as late as October of 1995:

> "Three and a half years after Zvornik, Arkan and other Serbian paramilitary forces are still active in Bosnia. *On Oct. 19, John Shattuck, [United States Assistant Secretary of State for Democracy, Human Rights and Labour], a senior State Department official, reported that Arkan and other paramilitary forces had rounded up and may have murdered 2,000 to 3,000 Muslim men and boys in northern Bosnia earlier in the month.*" [Roy Gutman, *Newsday Inc.*, 30 Oct. 1995, Washington Bureau, emphasis added, Annex 199]

Conclusions

302. Today, all the leaders of these paramilitary groups live openly and are politically active in the Federal Republic of Yugoslavia. Writing for *Tribunal*, Sonja Biserko,

the director of the Helsinki Human Rights Committee for Serbia, demonstrated the rewards for those who directed the most savage episodes of ethnic cleansing:

> "*Paramilitary leaders such as Zeljko 'Arkan' Raznjatovic and Vojislav Šešelj, whose public boasts about their men's role in atrocities and ethnic cleansing epitomised the horrors of the war, have not yet been indicted. Nor have the police chiefs who played a more shadowy but crucial role in arming and organising the paramilitaries, or the army generals who ordered massive destruction in Bosnia and Croatia. Today, Arkan and Šešelj are still active on the Serbian political scene. They are devoting their efforts to ensuring their own security and protecting the spoils they amassed as profiteers.*
>
> Paramilitary forces numbering tens of thousands of men fought on the Serb side in Croatia and Bosnia. The leading paramilitary forces were formed by opposition parties: the Serb Guards, initiated by the Serbian Renewal Movement (SPO); an estimated 30,000-50,000 volunteers from Šešelj's Serb Radical Party (SRS); and the Serb Volunteer Guards, commanded by Arkan. The authorities denied the existence of these groups at first, but when efforts at mass conscription failed, they brought them all under direct JNA control. The Serbian police, directed by the so-called Military Line in the Ministry of the Interior, also played a major role in the organising the and arming the paramilitary groups and coordinating their activities.
>
> Arkan's Serb Volunteer Guards were one of the best equipped and disciplined formations. Their war crimes against civilians were often openly reported in the Serbian press, with no attempt at concealment.
> (...)
> At first, Arkan's men turned all prisoners over to the JNA. However, in November 1992, after some of his fighters were killed, he declared, in an interview with the bimonthly magazine *Intervju*, that 'the Guards will take no prisoners to exchange alive. Every enemy soldier we take will be shot dead.' He never concealed the fact that throughout the war his forces were under JNA command.
>
> Arkan's Guards started the war in Bosnia. They entered Bijeljina at the beginning of April 1992 and embarked on the cleansing, which he said later, was 'difficult', but they 'eliminated them all.' Between April and July 1992, most of Bijeljina's Muslim population were killed or expelled. The Guards also went to Zvornik, where their activities resulted in the disappearance of some 50,000 people.
> (...)
> *Today Arkan lives in Belgrade, in a new mansion in the prestigious Dedinje area. Photographs of his wedding to folk singer Ceca Velickovic circled the world. He is seen as a success story in Serbian society especially among the young supporters of the Red Star soccer club, from whose fans he recruited his Guards. His name is brought up in all settlement of accounts in the Belgrade underworld. He is a successful business man and president of the Party of Serb Unity, which he founded. He is considered still to be under the control of Serbian President Slobodan Milošević, and was seen standing behind him at the funeral of assassinated Deputy Interior Ministry, Radovan Stojicic, in April 1997.*" [Sonja Biserko, "Warlords in Civvy Street", *Tribunal*, a Publication of the Institute for War and Peace Reporting, No. 8, Apr./May 1997, p. 8, emphasis added, Annex 184].

As mentioned above, Vojislav Šešelj became Serbian Deputy Prime Minister in March 1998.

303. Rather than being independent and unimportant elements in the war in Bosnia and Herzegovina, the Serb paramilitary forces were an intimate, crucial and brutal constituent of the genocidal Bosnian campaign. They were created, trained, armed, equipped, controlled, directed, transported and rewarded by the government of the Federal Republic of Yugoslavia. In their relationship to the JNA, they were likened by Professor Norman Cigar of the U.S Marines Corps School of Advanced Warfighting, Virginia, and former senior analyst for the United States Army Staff at the Pentagon, to the *Einsatzgruppen* of the Second World War:

> "This symbiotic relationship calls to mind the operational procedure the Nazis used in occupied areas of Eastern Europe during World War II. There, light special police, the *Einsatzgruppen*, one of whose principal missions was to target 'racially and politically undesirable elements,' coordinated closely with the regular army. In a studied division of labour, the *Einsatzgruppen*, along with locally raised and often unruly light auxiliary forces, normally went into action once the more heavily armed *Wehrmacht* combat forces had secured an area, thereby enabling the lighter forces to operate with relative impunity." [Norman Cigar, *Genocide in Bosnia*, Texas A&M University Press, 1995, p. 55, Annex 64].

8. Yugoslav control over the Bosnian Serb Army

Yugoslavia balanced the books of the Bosnian Serb Army

304. The transformation of the JNA and its alleged withdrawal on 19 May 1992 has been discussed at length above [see Chapter 8, Section 4]. The transformation process was carefully planned in advance, at the highest level, as was disclosed in 1995, when the Belgrade based *Politika* publishing company published the diaries of Borisav Jović. At the time of the dissolution of the former Yugoslavia, Borisav Jović was Serbia's representative on the Federal Presidency. Jović's diaries, which cover the period from 15 May 1989 to 8 July 1992, offer an interesting look behind the scenes of the Serbian leadership. Some of the later excerpts of the diary are dedicated to a meeting organised to discuss the "withdrawal" and transformation of the Yugoslav Army. This meeting took place on 30 April 1992 and was attended by representatives from the SFRY, the JNA and the Bosnian Serbs. The following passage clearly shows that the Serb leaders in Belgrade and Pale agreed on the transformation of the JNA in Bosnia and Herzegovina. Approximately 90,000 JNA troops would be put under the command of General Ratko Mladić to form a new Bosnian Serb Army. There was obviously no lack of manpower. The problem, however, was more of a financial nature. Borisav Jović reported as follows:

> "30 April, 1992

Discussion with the Serb leadership from Bosnia and Herzegovina. Branko Kostić [Vice-President of the Presidency of the SFRY], Slobodan [Milošević, President of Serbia], Momir Bulatović [President of Montenegro], General Milan [Zivota] Panić [Chief of JNA General Staff], Karadžić [Radovan, President of the Republika Srpska], Krajišnik [Momčilo, President of the Assembly of the Republika Srpska], Koljević [Nikola, Vice-President of the Republika Srpska] and me.

Security Council has recognised Bosnia and Herzegovina. Ethnic conflicts have inflamed there. We are requested to withdraw the JNA from Bosnia and Herzegovina. Slobodan and me expected and predicted that. We cannot put the JNA in a position to be proclaimed a foreign or aggressor army, as some people would hope for.

Withdrawal of 10-15% of the remaining FRY citizens from JNA in B-H, all together some 10.000 people, is neither a technical nor a transport problem. The problem is the recent careless statement made by Branko Kostić that he, in his capacity as the vice-president of the SFRY Presidency, will never sign an order for the withdrawal of the JNA from Bosnia and Herzegovina, and also the statement given by Milan [Zivota] Panić that the army will not withdraw from Bosnia and Herzegovina for another 5 to 7 years, although that republic has been internationally recognised as an independent state. The public took these statements very seriously, whereas the two of them had not think twice before making such statements. How would it be possible for us to forcibly keep our army in another independent state against its will and not to have that army be proclaimed undesirable?

Regardless of the statements made by Kostić and Panić, we discussed the necessity to have the remaining troops - citizens of FRY withdrawn from B-H. Even without them, some 90.000 JNA troops, mainly Serbs, will stay in that republic, and the Serb leadership from Bosnia and Herzegovina can take the political leadership over them.

Karadžić agrees, Krajisnik raises a number of questions such as: how is that army going to be financed, who would give them salaries, who will provide for their pensions, etc., in fact all that exist as a problem, but is not decisive for our discussion.

We argued a lot about the dead-line for the withdrawal, and, finally agreed to accomplish it in 15 days.

Since generals who do not come from B-H were also to withdraw, it was agreed to have General Mladić replace General Vuković.

This operation was too important for us, and for the Serbs in B-H, I believe, even more important. They got their army." [Borisav Jović, *Final Days of the SFRY*, Belgrade 1995, p. 448, emphasis added, Annex 15].

At this meeting, Borisav Jović witnessed the birth of the Bosnian Serb Army. During the meeting, Momčilo Krajišnik, President of the Bosnian Serb Assembly, also raised a point crucial to the future of this Bosnian Serb Army. As the Republika Srpska did not possess the necessary means, Krajišnik asked the representatives of the Serbian leadership how they thought the new Bosnian Serb Army was going to be financed. Who would see to payment of the salaries and pensions of the military in Bosnia and Herzegovina, after the "withdrawal" in May 1992?

305. The question of the military salaries was not solved at the meeting in Belgrade, but, as it turned out later, the Respondent took on the responsibility of balancing the books of the new Bosnian Serb Army.

306. Soon after the "withdrawal" in May 1992, all former JNA officers in Bosnia and Herzegovina were promised that their salaries would continue to be paid by Belgrade. The officers in charge of logistics were, for example, informed by General Djordje Djukić at a special briefing. In the Opinion and Judgment of the *Tadić* case, the ICTFY made special reference to this briefing:

> "115. The formal withdrawal of the JNA from Bosnia and Herzegovina took place on 19 May 1992; the VRS [Army of the Republika Srpska] was in fact a product of the dissolution of the old JNA and the withdrawal of its non-Bosnian elements into Serbia. However, most, if not all, of the commanding officers of units of the JNA who found themselves stationed with their units in Bosnia and Herzegovina on 18 May 1992, nearly all Serbs, remained in command of those units throughout 1992 and 1993 and did not return to Serbia. This was so whether or not they were in fact in origin Serbs. This applied also to most other officers and non-commissioned officers. Although then formally members of the VRS rather than of the former JNA, they continued to receive their salaries from the Government of the Federal Republic Yugoslavia (Serbia and Montenegro) and the pensions of those who in due course retired were paid by that Government. *At a briefing of officers concerned with logistics, General Dorde Dukić then of the VRS but who had, until 18 May 1992, been Chief of Staff of the Technical Administration of the JNA in Belgrade, announced that all the active duty members of the VRS would continue to be paid by the federal government in Belgrade, which would continue to finance the VRS, as it had the JNA, with the same numerical strengths of officers as were registered on 19 May 1992.* The weapons and equipment with which the new VRS was armed were those that the units had when part of the JNA. After 18 May 1992 supplies for the armed forces in Bosnia and Herzegovina continued to come from Serbia." [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 42-43, para. 115, emphasis added].

307. The authorities in Belgrade, indeed, kept their financial commitments. After May 1992, the Federal Republic Yugoslavia continued to pay the salaries of all officers, whether of Bosnian Serb descent or not, active in Bosnia and Herzegovina. During the entire conflict, all officers serving in or attached to the Bosnian Serb Army therefore remained on the Respondent's payroll [see *e.g.* Stephen Engelberg and Eric Schmitt, *International Herald Tribune*, 12 June 1995, Annex 158; ICTFY, Trial Chamber, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 219, para. 592; Tim Judah, *The Serbs: History, Myth & the Destruction of Yugoslavia*, 1997, p. 230, Annex 8]. This was, among others, confirmed by Jane's, the authoritative British military research institute:

> "By early May 1992, JNA forces had been formally withdrawn form Bosnia and Herzegovina and Macedonia. However, the JNA and its successor, the Yugoslav Army (JA) remained involved in the

war in Bosnia until the hostilities there formally ended in November 1991 [1995]. As a consequence of FRY's involvement in the war in Bosnia, the UN Security Council imposed economic sanctions against FRY in May 1992. These sanctions were progressively tightened to force Belgrade to give up its support for the Bosnian Serbs.
In 1994, Milosević formally broke all links with the Serbian leadership in Pale (the seat of the Serb Republic). However, Milosevic's apparent change of policy was aimed at lifting economic sanctions against FRY. International inspectors (but not UN officials) were allowed to monitor the 48 border crossings between FRY and the Serbian Republic in 1994.
Belgrade continued with its political and propagandist support of the Bosnian Serbs. The JA continued to provide the Bosnian Serb Army (VRS) with weapons, equipment, fuel, ammunition and training. *Moreover, all Bosnian Serb officers remained on the JA's payroll for the duration of the conflict in Bosnia.* International monitors reported in March-April, during the Bosnian cease-fire, that petroleum and possibly ammunition was passing across the Drina into Bosnian Serb hands. Some JA units also took part in the VRS attack on Srebrenica in July 1991 [1995]."
[*Jane's Sentinel*, 1997 Edition, Yugoslavia, para. 10.7.1, emphasis added, Annex 161].

Yugoslavia paid the salaries and expenses of all officers in Bosnia and Herzegovina

308. In order to facilitate the payment of the officers' salaries, special bureaucratic procedures were developed in the early months of 1993. What these procedures entailed is shown by a classified letter the Bosnian Army captured near Donji Vakuf, central Bosnia and Herzegovina, in September 1995. This letter was written by the Commander of the 30th Light Infantry Division Headquarters, Colonel Jovo Blažanović, and addressed to the Command of the 1st Light Infantry Brigade. Both the 30th Light Infantry Division and the 1st Light Infantry Brigade were Bosnian Serb Army units and part of the so-called 1st Krajina Corps, located in the Banja Luka area, in the northwest of Bosnia and Herzegovina [Dr. Milan Vego, *Jane's Intelligence Review*, Oct. 1992, p. 446, Annex ?]. The following document shows that all officers active in Bosnia and Herzegovina were on the payroll of the General Staff in Belgrade. Their salaries were routinely paid on the basis of monthly "working lists" which were compiled on the field in Bosnia and Herzegovina.

"HQ of the 30th Light Infantry Division
class. no. 86-76
06.03.1993.

Military secret
classified

Making of working lists
for active military officers
and other employees with the Army

ORDER to the Command of the 1st Light Infantry Brigade

Command HQ of the 1st Krajinski Corps has issued an Order which says that the compensations for combat services to active military officers and other employees with the Army of the Republic

of Srpska will not be paid starting from 1 January 1993. In order to provide salaries for these people, I issue the following:

O R D E R

1. All units must immediately make working lists for active all military officers and other employees with the RS Army. Affixed and filled [in] working lists must be delivered to the Personnel of this Command not later than 9 March 1993;

2. *In future, working lists are to be delivered to this Command not later than the 5th of each month for a previous month in order to send them timely to the VRC GSVJ [Military Computing Centre of the General Staff of the Yugoslav Army in Belgrade] for their payment*;

3. If necessary and in order to make accurate working lists, individuals should personally approach this Command Personnel to provide information about the the presence of active military officers and other employees with the Army in a particular unit. Other relevant documents should also be provided (medical leave referrals, etc.).

COMMANDER
Colonel
Jovo Blazanovic
[affixed by signature and seal]

Done in four copies and delivered to:
- archives;
- command of the 1st Light Infantry Brigade;
- command of the 11th Light Infantry Brigade;
- command of the 19th Sabotage Platoon of Infantry Brigade

[Seal confirming the receipt of the order]
1st Light Infantry Brigade
class. no. 331-1
7 March 1993"

[HQ of the 30th Light Infantry Division, Order addressed to the Command of the 1st Light Infantry Brigade, class. 86-76, signed Colonel Jovo Blažanović, 6 Mar. 1993, emphasis added, Annex 201].

This order clearly illustrates how so-called "working lists" with the names of active military officers were collected every month and sent to the "Military Computing Centre of the General Staff of the Yugoslav Army" in Belgrade. After having received the lists with the names of the officers active on Bosnian territory, this centre would see to payment of their salaries.

309. The Military Computing Centre of the Yugoslav Army played a pivotal role in the payment of the military officers in the Bosnian Serb Army. The Computing Centre for Material Provisions of the Yugoslav Army in Belgrade, which is either a section of the Computing Centre mentioned above or a related institution, was responsible for the payment of travel allowances. For the payment of these allowances, working lists similar to those used for the payment of the salaries were used. The following

document, which was captured in the same period as the letter cited above, was sent by the Commander of the 2nd Krajina Corps Headquarters to a unit falling under its responsibility in Bosanska Krupa. The 2nd Krajina Corps was a Bosnian Serb Army Corps based in the northwest of Bosnia and Herzegovina [see Dr. Milan Vego, *Jane's Intelligence Review*, Oct. 1992, p. 446, Annex 200]:

"Command HQ of the 2nd Krajina Corps
class. no. 23/35-273/1
26.03.1993

[remark in hand-writing]
a/a 05.02.1994
to be kept till the end of war

[seal]
MILITARY POST
7542
Class.no. 250 1/23
30.03.1993
Bosanska Krupa
[west Bosnia]

Order to execute payment
of troop travel allowances
- to be delivered to
to commander/chief of staff -

Based on the Order of the GS RSA [General Staff of the Republika Srpska Army], class. no. 26/57-29 of 29.0.1993 [month missing in original; must be either January or February], and for the purpose of organising and execution of payment of troop travel allowances in respective unit command posts of the 2nd Krajina Corps, I hereby issue the following:

O R D E R:

1. *All active military officers (commissioned and non-commissioned officers on contract) for days spent in execution of an assignment in respective command posts and units of 2nd KK [2nd Krajina Corps] are entitled to reimbursement of expenses for troop travel under provisions set forth in article 20, paragraph 1 of the Rules on Reimbursement of Travel and Other Expenses in the Yugoslav Army (Official Military Gazette-13/91).* Allowances for troop travel shall not be applied in respect of days of leave from a particular unit for a private reason or a vacation.

(...)

5. *Payment of fees from item 1 hereto will be realised by Computing Centre for Material Provisions of the Yugoslav Army in Belgrade on a reversed monthly base through payment rolls and in accordance with the data given in working lists of individual command posts of the 2nd Krajina Corps units.*

(...)

Commander
Major-General
Grujo Boric"

[Command HQ of the 2nd Krajina Corps, Order addressed to Military Post 7542, class. no. 23/35-273/1, signed Commander Major-General Grujo Borić, 26 Mar. 1993, emphasis added, Annex 202].

It is important to note that travel allowances for the military officers on service in Bosnia and Herzegovina were reimbursed in accordance with and under Yugoslav law, that is article 20, paragraph 1 of the Yugoslav Army Rules on Reimbursement of Travel and Other Expenses. The officers of the Bosnian Serb Army were treated exactly like their peers in the Yugoslav Army. They received the same salaries and allowances, from the same sources in Belgrade.

310. To effect the payment to the Bosnian Serb Army officers, the above mentioned Computing Centre used a Yugoslav bank. The officers in the Bosnian Serb Army received their monthly salaries through the Belgrade based Post Bank, *Poštanska Štedionica*, which issued the cheques to facilitate the payments. The involvement of this Belgrade-based bank is revealed by a letter, which the 7th Corps of the Bosnian Army captured with the other cited document [Command of 2nd Krajina Corps, Order addressed to Military Post 7542, no. 23/35-301, signed Commander Major-General Grujo Borić, 5 Apr. 1993, Annex 203].

311. The above shows that Belgrade, indeed, kept the promises it made before the official "withdrawal" on 19 May 1992. As it had done before that date, it continued to pay the salaries and allowances of the Serb officers in Bosnia and Herzegovina.

Yugoslavia filled up the officers' ranks of the Bosnian Serb Army

312. At the "withdrawal" of the JNA from Bosnia and Herzegovina, the Belgrade authorities not only continued paying the salaries of the officers in the Bosnian Serb Army, they also saw to it that the newly formed Bosnian Serb Army was not be left short of officers to command it. As General Djordje Djukić had announced in his briefing to his officers, the government in Belgrade would continue to "finance" the newly formed Bosnian Serb Army with the same "numerical strengths of officers" [ICTFY, Trial Chamber, Opinion and Judgment, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 42-43, para. 115].

313. At the official retreat, a considerable number of JNA officers decided to stay in Bosnia and Herzegovina. As will be shown later, no real distinction was made between officers with Bosnian and officers with Yugoslav backgrounds. In spite of this, the newly formed Bosnian Serb Army suffered badly under a shortage of commanding officers. There were simply not enough officers available to lead the more than 90,000 JNA soldiers left behind to form the new Bosnian Serb Army.

314. On 5 June 1992, General Ratko Mladić convened an officers' meeting at which he announced that the Bosnian Serb Army still needed 300 to 350 officers. One of the officers present at this meeting was Života Samardžić, a Colonel in the former JNA. On 21 May 1996, Samardžić gave a statement at the Security Service Centre at Sarajevo, mentioning among other things the meeting convened by Ratko Mladić:

> "After having left the KMT [Marshal Tito Barracks in Sarajevo] on 04.06.1992, where I stayed at the outburst of conflict in BH, on 05.06.1992, together with my colleagues, I arrived in Sokolac [town approximately 40 kilometres east of Sarajevo], where we were all gathered following the order of Col. Dušan KOVAČEVIĆ, commander of Rear Base where I was engaged, who later on became the Minister of Defence of the Republic of Srpska, and Lt.Col. Zoran Jovanović, his deputy, who is presently in Belgrade. *We gathered there, so that General Ratko Mladić could deliver us a short speech, after the roll call and establishment of exact number of troops. I remember that, on that occasion, Mladić said that we had to defend the Serbianhood, and that some 300 to 350 officers were needed, proposing us (who came from the BH) to join units of the Serb Army in BH, emphasising that all the JNA office[r]s who came from BH should feel obliged to stay with the Serb Army of BH.* In his speech Mladić also pointed out that, by leaving of KMT in Sarajevo, conditions had been created for further combat operations. *The same day, majority of us JNA officers from KMT left for Belgrade, and a number of officers, my colleagues, joined the Serb Army in BH. Among them, I recall Lt.Col. Slavko Mutabdžić, rear officer from KMT and certain Tošić, Capt. of the 1st class, both from Serbia.* I would like to mention that, among the officers, who decided to leave the BH territory were also the ones born in BH, who together with us arrived in Belgrade. After having been received in Belgrade and deployed in different JNA barracks, informational interviews followed with each of us in order to settle our future status. At that time, special attention was paid to the officers who came from BH or Croatia in terms of their further deployment/re-deployment to units of Serb army in BH and SAO Krajina [Croatia], with the remark that during the interview with superior officers from higher commands a number of privileges were offered as to motivate them to accept the offered posts. Privileges which I mentioned were, before all, reflected in maintaining all of their status rights, like salaries and increased living expenses through JNA, with the possibility to realise privileges in accordance with participation in war and settling of their housing issues. I would also mention that they filled in a form which included an item regarding war experience and which was of crucial importance in settling housing problems. This form later on, I think it was in 1993, was replaced by a new form which did not contain the said item, but war experience was still observed as being of crucial importance. *One of the basic merits in respect of status rights of officers was his rank, therefore every officer was hoping for promotion, so that one of the motivation for assigning JNA officers to the Serb army of BH was promotion. Almost each officer who accepted participation in the Serb army, had a dizzying promotion, which influenced a majority of them to accept the offered conditions.* Interviews that I mentioned were conducted with every JNA officer who came to the area of Yugoslavia and were aimed at cleansing JNA ranks and its transformation. I mentioned that JNA transformed into the Bosnian Serb army in the BH territory, that is into the Croatian Serb army in the Croatian territory, and original composition of JNA in Yugoslavia went through several changes, before all, in respect of its personnel. A great number of officers at that time was early retired or dismissed from JNA because his spouse had foreign citizenship or for likewise reasons, which were invented for all who refused to [or] did not want to go to Bosnian theatre of operation in other words for the ones who were not ideologically suitable. I would like to mention that I was early retired." [Republic of Bosnia and Herzegovina, Ministry of Interiors, Security Service Centre, Sarajevo, Života Samardžić, Statement, no. 1943, 21 May 1996, pp. 1-2, emphasis added, Annex 204].

315. In spite of Mladić's urgent appeal and the prospect of rapid promotion and extra allowances, a considerable number of former JNA officers preferred staying in or going to the Federal Republic of Yugoslavia, while others were being purged from the army for being ideologically unsuitable. The consequence was, as mentioned above, that the Bosnian Serb Army faced a serious shortage of officers after the "withdrawal" of the JNA in May 1992, a shortage which could not simply be solved by urging all former JNA officers, whether of Bosnian Serb origin or not, who had served in Bosnia and Herzegovina, to reinforce the ranks of this newly formed Bosnian Serb Army.

316. It is important to note that, in practice, no distinction was made between Serb officers with Bosnian and those with Yugoslav backgrounds. The shortage of qualified personnel did not allow the authorities in Belgrade to be too fastidious. The above quoted statement shows that both Bosnian and Yugoslav Serbs were asked to join the ranks of the Bosnian Serb Army, although particular pressure was exerted on Bosnian Serbs to stay on or go back to Bosnia and Herzegovina. In June 1995, in an interview published in the Serbian *Evropske Novosti* daily, Ratko Mladić himself admitted that officers born in Serbia and Montenegro were also told to remain in Bosnia and Herzegovina:

> "[Question] You have stressed that the Serb officers, armed with high alertness and responsibility, remained to share the destiny with their people [*i.e.* the Serbs in Bosnia and Herzegovina]. Recently, there have been frequent accusations that the same officers are the bearer of left orientation and that they are chronic communists?
> [Ratko Mladić] *I participated in bringing some important decisions at the level of the [Yugoslav] Army General Staff HQ at the time, where clear directions were given that all the officers, first of all professionals, who were born, but also the ones who were not born in this region [Bosnia and Herzegovina], were to remain here, and to make themselves available for the defence of their people*. Since the beginning of the war many officers got engaged, even without our prior request, and they made significant contribution in forming of our units." ["Boasting with Patriotism", *Evropske Novosti*, 29 June 1995, Annex 205].

In this interview, Ratko Mladić not only clarified that JNA officers with Yugoslav backgrounds remained in Bosnia and Herzegovina after the official "withdrawal" of the JNA on 19 May 1992, he also admitted that the General Staff in Belgrade gave "clear directions" to all JNA officers, whether of Bosnian background or not, to stay at their posts in Bosnia and Herzegovina.

317. The "clear directions" were given at the same time the Sokolac gathering described above took place. The military authorities in Belgrade not only used persuasion to achieve their goal, that is, to keep as many officers as possible in Bosnia and

Herzegovina, they also reverted to exercising their authority. The shortage of officers was so serious that the JNA officers of Yugoslav citizenship were simply *ordered* to stay in Bosnia and Herzegovina as long as no replacement for them had been found. This is clearly illustrated by the following military document, captured in the autumn of 1995 by troops of the 7th Corps of the Bosnian Army, during military operations in central Bosnia. It is a so-called clarification given by the 1st Krajina Corps to the units under its command. The 1st Krajina Corps was based in the Banja Luka area, in the northwest of Bosnia and Herzegovina:

"COMMAND OF THE 1ST KRAJINA CORPS [Banja Luka area]
class. no. 12./1-291
of 30 May 1992

to command posts of units within Krajina Corps [list of its units]

Due to frequent inquiries regarding transfer of officers who are not nationals of Bosnia and Herzegovina and who declared their wish to be transferred to the territory of FR Yugoslavia, we hereby provide the following clarification, referring to the act of the General Staff of the Army of the Serb Republic of Bosnia and Herzegovina class. no. 25/143-1 of 19.05.1992:

1. - *Replacement of the remaining JNA troops, FRY nationals, who expressed their wish to leave for that state shall be carried out after necessary requirements are fulfilled and adequate replacement provided.*

2. - *They may leave a unit only upon the approval of the Corps Commander, and that in an organized and planned way with necessary permit and order for transfer.*

3. - *Any arbitrary leaving of a unit or a position shall be considered as desertion and shall be prevented in the territory of the Serb Republic of Bosnia and Herzegovina and adequate measures shall be taken against any such individual. Measures will also be taken against any such individual in both the Federal Republic of Yugoslavia and the JNA.*

At the commander authorization
Colonel
Miroslav Ranković [Stamp of the Command of the 1st Partisan Brigade]

class. no. 13-2
06.06.1992

[Stamp confirming the receipt]

Received: (date) 30.05 (hour) 10.30 (signature)
Processed: (date) 30.05 (hour) 10.30 (signature)
Delivered: (date) 30.05 (hour) 10.35 (signature)"
[Command of the 1st Krajina Corps, Clarification addressed to all units under its command, class. no. 12./1-291, signed Colonel Miroslav Ranković, 30 May 1992, emphasis added, Annex 206].

This clarification, sent on 30 May 1992, shows that officers of Yugoslav descent, without Bosnian background, were treated as deserters if they decided to return to Yugoslavia without the permission of their local commanders. Strikingly, this clarification was given eleven days after the official announcement that all JNA troops had left Bosnian territory. It again demonstrates that the Yugoslav Army officers were kept in Bosnia and Herzegovina on orders from Belgrade. If these officers would leave their units without permission, both the Federal Republic of Yugoslavia and the Yugoslav Army would take the necessary punitive "measures".

318. The personnel shortage, which seriously threatened the Bosnian Serb Army's fighting power and effectiveness, was again solved by the authorities in Belgrade. Soon after the "withdrawal" of the JNA, the Yugoslav Army started filling up the ranks of the Bosnian Serb Army with its own officers, that is, officers with no Bosnian background whatsoever. This special form of "military aid" continued throughout the conflict. Up until 1995, officers of the Yugoslav Army were posted in Bosnia and Herzegovina to units of the Bosnian Serb Army.

319. The following letter, also captured in 1995 by the 7th Bosnian Army Corps, illustrates this special form of "military aid". It was sent on 14 February 1994 to the command of the 2nd Krajina Corps in Drvar, a city in the west of Bosnia and Herzegovina, in reaction to a request to pass on information about active military officers with families still living in their original place of residence in the Federal Republic of Yugoslavia [Letter from the Command of the 2nd Krajina Corps addressed to Command posts of units of 2nd Krajina Corps, class. no. 13/1-2, signed Maj. Gen. Grujo Borić, 13 Feb. 1994, Annex 207]. While serving in Bosnia and Herzegovina, the three officers listed in the following document all retained their homes in and therefore remained resident of Serbia proper:

"COMMAND OF 15th Bpbr.
class. no. 159-2
of 14.02.1994

Data on social status
of families of active army officers - delivers -

COMMAND OF 2nd Krajina Corps DRVAR [west Bosnia]
(Personnel)

Ref: your act class. no. 13-1-2 of 13.02.1994

Referring to the above act, we enclose herewith the data concerning active army officers serving in our unit, whose families live in the FRY and do not have their housing problem settled - they live as tenants.

1. ŠKRBIĆ Petar RATKO, Lt. Col.
According to military formation on duty with Army Post 2270 Kruševac [Serbia]. His family, as tenants, accommodated in the Kruševac Garrison.
(they pay rent of 50 DM)

2. STARČEVIĆ Jovo GOJKO, Major
According to military formation on duty with the Army Post 3001 Belgrade. His family, as tenants, accommodated in Smederevska Palanka, at 15 Ljube Ivoševića str. (they pay the rent of 50 DM)

3. RADONJIĆ Puniša SLOBODAN, Lt.Col.
His family accommodated in Garrison Novi Sad [Serbia]. Phone no. 021-301-710 (they pay the rent of 120 DM).

The present data are delivered to you for further proceeding.

MR/MR

COMMANDER
Lt.Col.
Ratko Skrbić
(signature)"
[Letter of Command of 15th Bpbr. addressed to Command of 2nd Krajina Corps, class. no. 159-2, signed Lt.Col. Ratko Skrbić, 14 Feb. 1994, emphasis added, Annex 208].

The above cited letter demonstrates, among other things, that the officers listed in the letter remained within the Yugoslav Army, while serving in a Bosnian Serb unit. They all retained their home base in the Yugoslav Army; Kruševac, Novi Sad and, of course, Belgrade, are places in Serbia and not in Bosnia and Herzegovina. The Yugoslav officers would therefore only be attached and not transferred to a Bosnian Serb Army unit [see also Letter of Command of 15 Bpbr addressed to Command of the 2nd Krajina Corps in Drvar, class. no. 183-2, signed Lt.Col. Ratko Skrbić, 5 Mar. 1994, Annex 209].

320. This special form of military aid is also illustrated by General Djordje Djukić's case. When arrested in early 1996, Djordje Djukić was carrying a recent military pass, issued by the General Staff in Belgrade. After his arrest on 30 January 1996, Djukić was transferred to the ICTFY in The Hague, where he was indicted for crimes against humanity and violations of the laws and customs of war. The Indictment reads as follows:

"1. *DORDE DUKIĆ* [Djordje Djukić] was born on 8 March 1934 in the village of Petrovo Vrelo, Glamoč Municipality in Bosnia and Herzegovina. *His personal identification number is 0803934710458 and he possesses an identification card of the Republika Srpska under the number 196/94. He permanently resides in Belgrade, Bulevar Lenija 151. In the Yugoslav People's Army, he held the post of Chief of the Technical Department of the Federal Secretariat for National*

> *Defence. He currently holds the rank of lieutenant general in the Bosnian Serb army and in the Yugoslav Army.* He serves in the Main Staff of the Bosnian Serb army and is the Assistant Commander for Logistics to Ratko MLADIĆ, the Commander of the Bosnian Serb armed forces." [ICTFY, Indictment, *Prosecutor v. Djordje Djukić*, Case No. IT-96-20-I, 29 Feb. 1996].

During his stay in Bosnia and Herzegovina, Djordje Djukić thus retained his position in the General Staff of the Yugoslav Army. The personal identification number referred to in the Indictment is a so-called "unique record number", granted by the Yugoslav authorities and therefore mentioned on his Yugoslav military pass [Identification documents found with General Djordje Djukić at his arrest, Annex 210] It is, however, also recorded on Djukić's identification document issued by the Republika Srpska authorities.

321. Djordje Djukić also carried a pass issued by the so-called Military Administration for the Ministry of Defence and the General Staff of the Yugoslav Army. This pass was renewed by this branch of the Yugoslav Army, on a yearly basis, the last time in 1996, shortly before Djukić's arrest by the Bosnian Army [*Ibid.*].

322. While on duty in Bosnia and Herzegovina, the Yugoslav officers would leave their families in Yugoslavia. This is, for example, illustrated by the military document cited [Letter of Command of 15th Bpbr. addressed to Command of 2nd Krajina Corps, class. no. 159-2, signed Lt.Col. Ratko Skrbić, 14 Feb. 1994, Annex 208]. Shortly after the beginning of the armed conflict in Bosnia and Herzegovina, a regular air service was set up to transport officers between Banja Luka and the Federal Republic of Yugoslavia [Order for unification of transport by air, from Command of the 30th Partisan Division to Command 1st Part.Br, strictly class. 955-2, signed Colonel Stanislav Galić, 2 June 1992, Annex 211]. One year later, this air service was supplemented or replaced by a bus line:

> "Command of the 2nd KK [2nd Krajina Corps]
> class. no. 21-70/1
> 31.05.1993
>
> Transport of military officers
> to Belgrade and back
> Change of order,-
>
> (...)
>
> *Having in mind increased needs and requests by military officers to travel to FR Yugoslavia either to visit their families, or to go for medical treatment in health centres there, or to transport mail or to execute official assignments, and in order to reduce travel expenses, to economise the use [of]*

motor vehicles and to centralise transport at the Republic of Srpska Army level, following the order of GS RSA [General Staff of the Bosnian Serb Army] class. 25/7-61 of 26.05.1993, I hereby issue the following:

ORDER

1. *Permanent bus line which will commute every Friday in the direction Ostrelj-Banja Luka will be introduced for transport of military officers of 2nd KK to Belgrade*;

(...)

10. Priority in transport of military officers shall be given to persons who travel on business, who are going to visit their families, who travel for medical treatment or who are returning from their respective tasks.

(...)

Commander
General-Major
Grujo Boric

Military Post 7542
class. 411-1
Bosanska Krupa [northwest Bosnia]"
[Order, Command of the 2nd Krajina Corps, class. no. 21-70/1, addressed to all units, signed General Major Grujo Boric, 31 May 1993, emphasis added, Annex 212].

This letter shows that the "needs and requests by military officers to travel to FR Yugoslavia" increased throughout the years of the armed conflict.

323. Interestingly, the document also lists the reasons why officers continued to travel back and forth between Bosnia and Herzegovina and the Federal Republic of Yugoslavia. The first reason mentioned is the visit to relatives. As explained above, the officers left their families in the Federal Republic of Yugoslavia, as they were only temporarily attached to units in the Bosnian Serb Army. Another reason given in the order is the transport of mail. As ordinary or civilian mail did not require a special military escort, this indicates that the various authorities in the Federal Republic of Yugoslavia and in the Serb-held territories in Bosnia and Herzegovina communicated with each other through military couriers, with officers' ranks, exchanging classified information on a routine basis. The order also talks about the execution of "official assignments", carried out by officers apparently travelling back and forth on a similar routine basis. Like the transport of mail, this illustrates the high level of communication between Belgrade and the Serbs in Bosnia.

324. The Federal Republic of Yugoslavia and the Bosnian Serbs used other ways of communication as well. As has also been noted by the ICTFY in The Hague, an open telephone line existed between the Bosnian Serb Army and Belgrade. In her Separate and Dissenting Opinion in the *Tadić* case, Judge McDonald remarked the following:

> "The VRS Main Staff, the members of which had all been generals in the JNA and many of whom were appointed to their positions by the JNA General Staff, maintained direct communications with the VJ General Staff via a communications link from Belgrade. Colonel Selak, commander of the logistics platoon that provided logistical support to units in the Banja Luka area (both before and after 19 May 1992), stated: 'Some officers had been given direct [telephone] lines, Belgrade/Pale. There was a link there and it was used in everyday communication because there was a need for direct communication between the Chief of Staff of the Army of *Republika Srpska* with the Army of Yugoslavia.'" [ICTFY, Trial Chamber, Opinion and Judgment, Separate and Dissenting Opinion of Judge McDonald Regarding the Applicability of Article 2 of the Statute, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 5, para. 8].

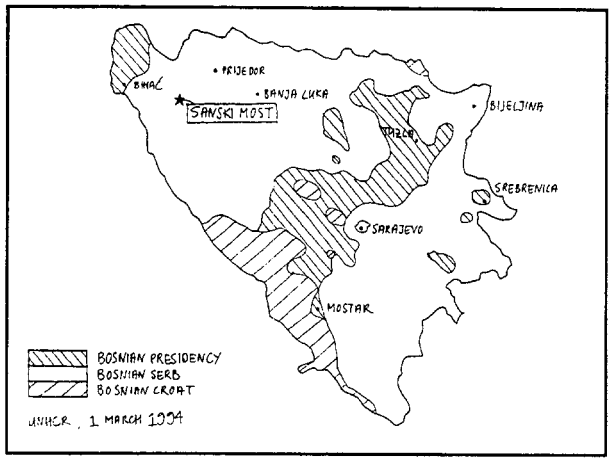
Thus, during the entirety of the conflict, Bosnian Serb officers, such as General Ratko Mladić, maintained direct lines of communications with the General Staff of the Yugoslav Army in Belgrade [Karsten Prager, *Time International*, 17 July 1995, pp. 20-21, Annex 213; United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 Dec. 1994, Annex IV, "The Policy of Ethnic Cleansing", p. 35, para. 193].

Belgrade's control over the officers in Bosnia and Herzegovina

325. The Yugoslav Army officers deployed on the territory of Bosnia and Herzegovina remained firmly within the grasp of Belgrade. In spite of the fact that these officers discharged their duties on the territory of another state, they continued to fall under the jurisdiction of the Federal Republic of Yugoslavia and the Yugoslav Army. The Yugoslav Army officers in Bosnia and Herzegovina continued to act and to be treated as subordinates to the General Staff in Belgrade.

326. During the armed conflict in Bosnia and Herzegovina, the ties between the officers attached to the Bosnian Serb Army and the Yugoslav Army were not severed. To illustrate this point, a selection of documents will be presented below. They all relate to one single Yugoslav Army officer, Colonel Nikola Kajtez, who joined the Bosnian Serbs well after the fighting in Bosnia and Herzegovina had started. Altogether, these documents offer an illustrative example and an inside view of the firm grasp the

Yugoslav Army retained on the Bosnian Serbs throughout the conflict in Bosnia and Herzegovina.



327. At their arrival in Bosnia and Herzegovina, all Yugoslav officers were obliged to notify the Yugoslav Army. In order to inform their superiors in Belgrade, these officers used standard forms. When Colonel Nikola Kajtez assumed his new post in Sanski Most, in the western corner of Bosnia and Herzegovina, he conscientiously filled in one of these pre-printed standard forms. Kajtez arrived in Bosnia and Herzegovina on 7 December 1992:

"

Form PD-1
09

Kajtez Nikola Nikola
(Family name, father's name, first name)

colonel, artillery-missile units of air defence
(rank, class and army branch)

Reg. no. KNK150342

07.12.1992
(date and garrison)

personal no. 1503942300039

REPORT ON ASSUMPTION
OF DUTY

to: Command of 1st Krajina Corps

ON: 10.12.1992

I ASSUMED the duty of COMMANDER OF THE 6TH SANA INFANTRY BRIGADE IN THE 1ST KRAJINA CORPS

formation rank of COLONEL Payroll Group 9
(by formation) COLONEL Payroll Group 9

Effective 12 months in execution of the above duty shall be counted as 15 months of the length of service (12/15).

I assumed/surrendered the present duty in accordance with the order of commander of the 1st Krajina Corps no. 12/1-797 of 07.12.1992

I reported to the above unit/institution on 07.12.1992.

I received/handed over the army property and funds in the period from 07.12.1992 to 10.12.1992 in respect of which the minutes on assumption/surrender of duty no. 126-1 of 10.12.1992 was made.

Signature
Nikola Kajtez

Officer in charge
Colonel
Nikola Kajtez
[signature and seal of Army Post 7421 Sanski Most - west Bosnia]

copies to:
- Personnel administration of SSNO
[Federal Secretariat for People's Defence in Belgrade];
- Command post;
- financial section of proper unit;"

[Report on Assumption of Duty, Nikola Kajtez, signed: Nikola Kajtez, 7 Dec. 1992, Annex 214].

This pre-printed document, captured by the 7th Corps of the Bosnian Army, was used by Nikola Kajtez to report on his so-called transfer of duty. It is a standard, albeit old, JNA form. As can be seen at the bottom of the form, a filled-in copy was also sent to the Ministry of Defence in Belgrade. The document demonstrates that Nikola Kajtez specialised in air defence and that the Yugoslav Army would continue to pay his salary in accordance with scale 9. It also proves that Nikola Kajtez arrived at his unit on 7 December 1992, that is, half a year after the JNA had officially "withdrawn" from the territory of Bosnia and Herzegovina. As will be shown below, this was Kajtez' first assignment across the border. Until then, he had been posted in the Federal Republic of Yugoslavia.

328. The Bosnian Serb Army unit joined by Nikola Kajtez was part of the 1st Krajina Corps and, as mentioned earlier, based in Sanski Most, as is revealed by the stamp at the bottom right of the form. Three days after his arrival, Nikola Kajtez assumed command of the unit. Together with the local branch of the Serbian Democratic Party (SDS), the Bosnian Serb Army unit under Kajtez' command was responsible for the formation and running of the detention facilities for non-Serb civilians in the Sanski Most area [see: United Nations, *Final Report of the United Nations*

Commission of Experts, S/1994/674/Add.2, 28 Dec. 1994, Annex VIII, pp. 276-277, paras. 2338-2341].

329. In the summer of 1993, roughly six months after Colonel Nikola Kajtez assumed command of his unit in Sanski Most, the General Staff of the Yugoslav Army decided that Yugoslav officers in service with the Bosnian Serb Army executed tasks in a crisis area and that they were therefore entitled to special compensation. This is illustrated by the following military document:

"ARMY POST 7421
clas. 1778-2/20
13.12.1993

JMBG [unique personal number] 1503942300036

Army Post 7421 Sanski Most on the basis of the article 67 of the Rules on Salaries and other Allowances of Commissioned Military Officers and Non-commissioned Troops on a part-time Contract (hereinafter referred to as "Rules") and related to article 21 of the Rules, deliberating, by official duty, on the issue of right of compensation for service under aggravated (special) circumstances, I hereby bring the following:

D I S P O S I T I O N

1. to acknowledge the right of Col. KAJTEZ Nikola NIKOLA, who is in service with the Army Post 7421 SANSKI MOST, to compensation under the aggravated (special) circumstances in the amount of 20% of the total tally allocated for the rank and status group of the above named.

2. *Compensation shall be counted as from 09.03.1993 all until the above named performs his service under the conditions set forth in the Decision of the Commander of the GS ARS [General Staff of the Army of the Republika Srpska] clas. no. 26/58-119 of 30.11.1993.*

C L A R I F I C A T I O N

Based on the Decision of the Head of the Sector for Operational Activities of the GS YA [General Staff of the Yugoslav Army] clas. no. 792-1 of 15.06.1993 clas. no. 1296-1 of 19.10.1993, persons who are in service with the ARS execute tasks in crisis area, so that, in accordance with the provisions of the Article 21 of the Rules, they are entitled to compensation under aggravated (special) circumstances. By the Decision of the Commander of GS of ARS clas. no. 26/58-119 of 30.11.1993 the amount of compensation is regulated pursuant to Article 21 of the Rules.

Compensation shall be counted as from the date indicated in the paragraph 2 of the present disposition, because the above named has executed the service under aggravated (special) circumstances since that date.

A complaint against the present disposition may be filed within 15 days from the date of receipt of the present disposition. The complaint shall be filed with the Army Post 7001 Banja Luka through the Army Post where the above named is in service.

Delivered to:
- applicant

Commander
colonel

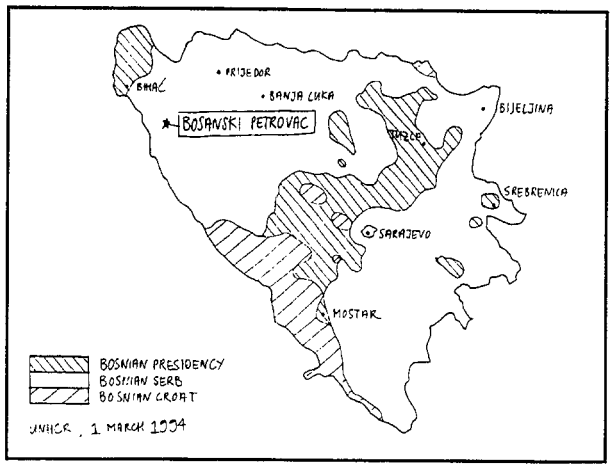
- VRC [Army Computing Centre in Belgrade]
- archives

Nikola Kajtez
[seal of Army Post 7421 Sanski Most]
[also signed by]
Lt.Gen. M. Tolić"

[Disposition Nikola Kajtez, Army Post 7421, clas. 1778-2/20, signed Nikola Kajtez, 13 Dec. 1993, emphasis added, Annex 215].

This official document s signed by Nikola Kajtez and Lieutenant-General M. Tolić, Defence Minister in the government of the "Republika Srpska", at the time of submission of the Reply. In the document, reference is made to a decision of the General Staff of the Yugoslav Army, taken on 15 June 1993. Apparently, the General Staff in Belgrade was of the opinion that the circumstances under which its officers had to work in Bosnia and Herzegovina were so "aggravated" that a special bonus was justified. As the decision taken by the General Staff in Belgrade was adopted with retro-active effect, these officers were entitled to the additional bonus over the entire period of their stay in Bosnia and Herzegovina. Colonel Nikola Kajtez was awarded a special bonus as from 9 March 1993, and not 7 December 1992, when he reported to his unit in Sanski Most. There is no ready explanation for these two divergent dates. Probably, Kajtez left Bosnia and Herzegovina for some time, between December 1992 and March 1993.

330. The decisions to give special compensation to Yugoslav military officers were taken by their commanders in Bosnia and Herzegovina, as was, for example, the case for Nikola Kajtez. However, standard Yugoslav Army forms were used for this bureaucratic procedure as well [see *e.g.* Decision Starčević Jovo Gojko, Military Post 3001 Belgrade, No. 6/8-59-12, signed Grujo Borić, 15 July 1994, Annex 216]. These standard forms were printed in the Federal Republic of Yugoslavia after the dissolution of the former JNA, as can be deduced from the pre-printed date on the document and the reference which is made in that document to recent Yugoslav Military Law. The fact that pre-printed standard forms were being used to facilitate these procedures implies that those procedures were routine.



331. In addition to the special compensation given for executing tasks under aggravated circumstances, Yugoslav officers (and perhaps other Bosnian Serb Army officers as well) were later entitled to count double their period of service in Bosnia and Herzegovina. The following document, also recovered in 1995 by the 7th Corps of the Bosnian Army, was written by the command of the 2nd Krajina Corps to one of its units in Bosanski Petrovac, in the west of Bosnia and Herzegovina:

"COMMAND OF THE 2ND KRAJINA CORPS
class. no. 6/8-73
06.08.1994

Regulation of double length of service
for professional troops, requests and
delivers clarification.- Command 15th pbr.

From the Command of the 30th Regular Army Forces Centre of the General Staff of the Yugoslav Army - of the Army of the Republic of Srpska we received additional clarification in respect of regulation of double length of service for professional troops (professional officers, professional non-commissioned officers, officers on contract, non-commissioned officers on contract and soldiers on contract) and in accordance with the clarification and for the purpose to regulate double length of service, we give the following explanation:

1. We hereby return to you the material you delivered related to regulation of double length of service;

2. *Each unit of the 2nd Krajina Corps and ARS [Army of the Srpska Republika] may issue a certificate only for the period after 20 May 1992 and further on, and not prior to this date, because the 2nd KC had not existed before this date, so, in the future, you must not issue any such certificates which refer to a date before 20.05.1992*;

3. It is required that each unit, on the basis of a list of military troops VB-8, issues a certificate (but only after 20.05.92) and affix it with seal and stamp of its proper Army Post;

In respect of a person who participated in the war prior to 20 May 1992, he has to make a request with accurate description of where he served in which unit, under whose order, where was that unit posted and enclose any proof he might have (an order on deployment, etc.)

4. *After you have collected requests, certificates and other proofs, deliver them to this command, whereas decisions on acknowledgement of double length of service shall be brought by the 30 Regular Army Forces Centre.*

In order to settle this issue, please forward the requested material as soon as possible.

If anything should be unclear, contact the telephone: [remark of interpreter: unclear, probably 7000-10 loc. 47]

DEPUTY COMMANDER
for org.mob. & per.affairs
Colonel
Kršić Radivoje
[seal of the Command of the 2nd Krajina Corps]

Enclosure:
- sample of certificate
- requests

[stamp]
Army Post 7547
class. 266-5
13.08.1994
Bosanski Petrovac [west Bosnia]"

[Regulation of double length of service for professional troops, Command of the 2nd Krajina Corps, addressed to Command 15th pbr, class no. 6/8-73, signed: Colonel Kršić Radivoje, 6 Aug. 1994, emphasis added, Annex 217].

This letter shows that Yugoslav military officers, who participated in the fighting after the official withdrawal of the JNA, have the right to retire at an early age. That was in fact the intended effect of doubling the length of service in Bosnia and Herzegovina. (Obviously, the authorities in Belgrade remained prepared to go to any extreme to supply the Bosnian Serb Army with the necessary officers). The so-called 30th Regular Army Forces Centre of the Yugoslav Army General Staff was, at least for the 2nd Krajina Corps, responsible for the processing of the pension requests.

332. The above cited document also indicates that not only Yugoslav Army *officers* were attached to Bosnian Serb Army units. In the first paragraph, express reference is made to all professional troops who qualified for the special regulation. The list of military mentioned also includes *ordinary* soldiers on contract. So, soldiers on duty with the Bosnian Serb Army were therefore on the payroll of the Yugoslav Army as well [see also David Owen, *Balkan Odyssey*, London 1995, p. 348, Annex 218].

333. On 24 July 1994, Colonel Nikola Kajtez also filed a request to have the length of his service counted double. His request was later granted, as is illustrated by the following document:

"GENERAL STAFF OF THE YUGOSLAV ARMY
SECTOR FOR MANNING, MOBILISATION
AND SYSTEM ISSUES
PERSONNEL ADMINISTRATION
clas. no. 14-2649/162
30.08.1994

MILITARY SECRET
CONFIDENTIAL

Based on articles 156 and 157 of the Law on Yugoslav Army (Official Gazette of the FRY no. 67/93), having deliberated on the request filed by Nikola Nikola KAJTEZ, colonel, by which he requested that the right to have length of his service counted double as from 07.12.1992 until present be recognised, I hereby bring the following disposition:

D I S P O S I T I O N

to acknowledge the right of KAJTEZ Nikola NIKOLA, colonel from Military Post 3001 Belgrade, to have the length of his service counted double as from 07.12.1992 until present.

C L A R I F I C A T I O N

KAJTEZ Nikola NIKOLA, colonel from the Military Post 3001 Belgrade, on 24.07.1994 filed a request for acknowledgement of right to have the length of service counted double as from 07.12.1992 until present.

Having examined enclosed documents from official records, it was established that all conditions provided under article 264, paragraph 3 of the Law on Yugoslav Army for the acknowledgement of the right to have the length of service counted double had been met, so the decision was taken as in the present disposition.

The present disposition is final in administrative proceedings and it is not allowed to file a complaint against it, but charges may be brought against it before the Supreme Military Court - Belgrade within 30 days from the date of its service. Charges shall be filed in two copies either directly to the court or by recommended mail.

VV/BL

UNDER AUTHORISATION
OF SECTOR HEAD
colonel
Ljubomir Lalić
[seal of Army Post 3001]

delivered to:
- CAOP
- DP-I
- DP-II
- applicant

[seal acknowledging receipt]
Army Post 7421
clas. 226- 15.09.1994"

[Disposition, from General Staff of the Yugoslav Army to Army Post 7421, clas. no. 14-2649/162, signed Ljubomir Lalić, 30 Aug. 1994, emphasis added, Annex 219].

This decision, captured also in 1995 in central Bosnia, was made by the General Staff of the Yugoslav Army and sent to Nikola Kajtez in Sanski Most, on 30 August 1994. As mentioned earlier, the decision was given in response to a request filed by Kajtez on 24 July 1994, that is, more than one and a half years after he was granted special compensation for service under aggravated circumstances. The stamp at the bottom of the document shows that the disposition reached the applicant on 15 September 1994, at Army Post 7421, his first and only post in Bosnia and Herzegovina. As stated above, the Yugoslav officers were only *attached* to units of the Bosnian Serb Army. All of them remained part of the Yugoslav Army. When the above mentioned disposition was given, Nikola Kajtez was attached to a Bosnian Serb Army unit in Sanski Most, but still remained a Colonel in the Yugoslav Army. In the quoted document, 7 December 1992 is mentioned as the first day of duty on Bosnian territory. This date corresponds to the date mentioned in the so-called report on the transfer of duty, the document Nikola Kajtez filled in when he assumed his duties in Sanski Most. One therefore has to assume that that was the date he first arrived in Bosnia and Herzegovina.

334. What happened to Colonel Nikola Kajtez, after his last request was complied with, in August 1994, remains unknown. Nikola Kajtez' paper trail ends with the above quoted document. Possibly, he was ordered to return to his home unit in Belgrade. When their presence was required in the Federal Republic of Yugoslavia, the Yugoslav officers on duty in Bosnia and Herzegovina were simply called back home, as is illustrated by the following document:

"Extract
Order no. 5-41
11.02.1994
of Chief of General Staff of Yugoslav Army

Following officer is transferred and appointed for the needs of service as on 10.11.1993 when the formation was regulated

44. NOVAKOVIĆ Mile JEFTO
first sergeant of technical service of
land forces, personal VES
22115, b. 15 January 1955 Reg. no. NMJ1501551

01

Date 101193

to the General Staff of Yugoslav Army
to the 30th Regular Army Forces Centre,
Rear Base 3651

as Aide to Chief Officer in the
Section for Security-Intelligence Affairs 224004

VES 21001

formation rank of sergeant-major payroll group 18
(by formation, formation rank of
sergeant-major/first sergeant major 2526 1800

Garrison Belgrade 702

Until now by material formation: Senior Officer with Security Section of 993rd Rear Base 'B' 1st Military District, formation rank sergeant-major/first sergeant major, payroll group 18, as from 5 February 1991, Garrison Banja Luka.

transferred and appointed for the needs of service as on 10 November 1993, when the present formation was regulated.

[stamp stating
that a copy is identical to original
verified by
Lt. Col. Momir Mandić
affixed by seal of Military Post 7101 Banja Luka]"

[Extract Order no. 5-41, Chief of General Staff of Yugoslav Army, 11 Feb. 1994, emphasis added, Annex 220].

This document, also found in central Bosnia, shows that the Chief of the General Staff in Belgrade was entitled to order the transfer of a military officer active on the territory of Bosnia and Herzegovina. The officer involved, in this case sergeant Jefto Novaković, was ordered to report at his new post in Belgrade on 10 November 1993, well after the official withdrawal of the JNA. Until then he had been based in Banja Luka.

The Bosnian Serb Army and the Yugoslav Army were fully integrated

335. Not all officers were as fortunate as the above mentioned Jefto Novaković. In September 1993, two officers serving under Nikola Kajtez' command, Marko Maričić and Milovan Todorović, asked their superiors for permission to return to their home units in the Federal Republic of Yugoslavia. They were not granted permission, as is shown in the following document. Importantly, this document also

illustrates that the Bosnian Serb Army and the Yugoslav Army were not parallel structures at all. Whether the Yugoslav officers serving on Bosnian territory received their orders from Belgrade or their immediate superiors in the Bosnian Serb Army was in fact irrelevant. Whoever issued the order, it was always complied with. Both command structures were fully integrated and operated in perfect symbiosis. The above mentioned Maričić and Todorović were ordered to stay at their posts in Bosnia and Herzegovina. The order, captured with the other military documents quoted above, was given by the 1st Krajina Corps in Banja Luka:

"COMMAND - 1.KRAJINA CORPS [Banja Luka area]
conf. no. 12/1-468
19.09.1993

[stamp confirming receipt]
MILITARY POST
7421
conf. no. 1595-1
23.09.1993
SANSKI MOST [north-west Bosnia]

Request for return to the Yugoslav Army

to: COMMAND of the 6.Sana brigade
-commander-

Please find enclosed the request for the return to the Yugoslav Army of the following officers:

1. Maričić Marko, captain,
2. Todorović Milovan, master sergeant,

The request has been discussed on a meeting with the corps commander.

It has been decided that the named stay in the unit until the end of the war, due to the needs of the service and the order of the commander of the Chief Staff of the Republika Srpska military.

In accordance with the order of the commander of the 1st Krajina Corps, measures will be taken against those persons who act on their own and are undisciplined. If need arises such persons will be taken before the military court.

Enclosed: request of the named

BY AUTHORIZATION OF THE COMMANDER

Lt. Col.
Radomir Lazić"

[Command 1st Krajina Corps, letter to the Command of the 6th Sana Brigade in Sanski Most, signed Lt.Col. Radomir Lazić, 19 Sept. 1993, emphasis added, Annex 221].

This letter was sent to Nikola Kajtez' unit on 19 September 1993. It shows that the two mentioned Yugoslav Army officers were ordered to stay in Bosnia and Herzegovina until the very end of the armed conflict. Apparently, the Bosnian Serb Army still needed the help of the Yugoslav Army officers to continue fighting in Bosnia and Herzegovina. As mentioned above, the order was given by the command of the 1st Krajina Corps in the Banja Luka area. The Bosnian Serb Army was therefore authorised to give such orders to Yugoslav Army officers.

336. Shortly after receiving the above mentioned document, Nikola Kajtez wrote back to his superiors to reassure them that both Marko Maričić and Milovan Todorović would continue to discharge their duties:

"MILITARY POST
7421
conf. no. 1652-2/3
07.10.1993
SANSKI MOST

List of active officers
engaged in accordance with art. 271
from the Yugoslav Military
COMMAND OF 1. KRAJINA CORPS

Two active officers from the Yugoslav Military are engaged in our unit in accordance with art. 271, namely:

1. MARIČIĆ, Nedeljko, MARKO, captain.
2. TODOROVIĆ, Borislav, MILOVAN, master sergeant.

Both officers have asked to return to the Yugoslav Military. Their requests have not been approved. Both have stated that they will continue to ask for the return.

For the time being we have no active officers who have left the unit without previous approval.

1. Command of the 1.K.C. and
2. a/a

COMMANDER
Colonel

Nikola Kajtez"

[Military Post 7421, letter to Command of 1st Krajina Corps, signed Nikola Kajtez, 7 Oct. 1993, emphasis added, Annex 222].

This letter confirms that Marko Maričić and Milovan Todorović were, indeed, Yugoslav Army officers and that they complied, albeit reluctantly, with the order

given by the command of the 1st Krajina Corps. This clearly illustrates the symbiotic relationship between the Bosnian Serb Army and the Yugoslav Army. As explained above, the two armies were completely incorporated; there was, in fact, only one all-embracing Serb army, acting, however, under two different names.

The Belgrade obituaries

337. Some officers were thus called back to the Federal Republic of Yugoslavia, while others were ordered to stay with and fight for the Bosnian Serbs until the end of the conflict in Bosnia and Herzegovina. Not all Yugoslav officers, however, made it safely back to the Federal Republic of Yugoslavia. The Belgrade-based newspaper *Politika*, once described as the newspaper that "projects and reflects political power in Yugoslavia" [Article 19, *Forging War: The Media in Serbia, Croatia and Bosnia-Hercegovina*, Avon 1994, p. 64, pp. 67-70, Annex 195; see also Statement on Preliminary Objections, pp. 15-16, paras. 35-37], regularly published obituaries of members of the Yugoslav Army military who had fallen on the Bosnian battlefields.

338. These obituaries were usually placed by close relatives. They were never placed by the Yugoslav Army, probably as part of the policy to conceal its continued involvement in Bosnia and Herzegovina as much as possible. When Djordje Djukić died in the Federal Republic of Yugoslavia in May 1996, shortly after his release for medical reasons by the ICTFY, *Politika* published fourteen obituaries in Djukić's honour. None of these obituaries was placed by Djordje Djukić's employer, the Yugoslav Army General Staff in Belgrade [Obituaries published in *Politika*, Djordje Djukić, Yugoslav Army General, 20 and 21 May 1996, Annex 223].

339. Obituaries placed in *Politika* during the duration of the conflict in Bosnia and Herzegovina reveal that Yugoslav Army officers continued to be active on Bosnian territory after the official "withdrawal" of the JNA on 19 May 1992. Moreover, many of the sentiments expressed by the officers' families in the obituaries mirror the Greater Serbian ideology of "all Serbs in one State" and portray the deceased soldiers as martyrs for this cause. The obituaries are replete with references to fighting "for the Serb homeland and the defenceless Serbs" in Bosnia and Herzegovina, "bravely and heroically on a holy Serb mission", or "while defending Serbdom" and, for example, "the dignity of the Serbian Herzegovina".

340. In 1992, *Politika* published *inter alia* the following obituaries of Yugoslav Army officers killed on the battlefield if Bosnia and Herzegovina:

- Predrag Biga, Captain, killed on 29 May 1992 in the area of Mostar [Obituary published in *Politika*, 2 June 1992, Annex 223];
- Željko Delić, Sergeant, killed on 10 July 1992 in the Sarajevo area [Obituary published in *Politika*, 14 July 1992, Annex 223];
- Ljuban Borovčanin, Captain, killed on 2 August 1992 on Mt. Romanija (near Sarajevo) [Obituary published in *Politika*, 6 August 1992, Annex 223];
- Zoran Gorovina, Colonel, killed on 4 December 1992 in the Sarajevo area [Obituary published in *Politika*, 7 December 1992, Annex 223].

341. In the obituaries published during 1992, the place the officers were killed is often mentioned. As of 1993, every reference to the place of death is notably left out, although the text of most obituaries often reveals an unnatural cause of death. Here, it is important to note that at the time the following obituaries were placed, no other armed conflict took place involving the Yugoslav Army. The complete absence of any reference to the place of death of the deceased in the years 1993, 1994 and 1995, is most probably the consequence of a deliberate attempt to conceal the fact that the Yugoslav Army continued to be involved in Bosnia and Herzegovina.

342. In 1993 obituaries continued to surface regularly:

- Saša Djordjević, Colonel of the 63rd Parachutist Brigade [Obituary published in *Politika*, 23 February 1993, Annex 223];
- Dejan Raičević, Lieutenant of the 63rd Parachutist Brigade [Obituary published in *Politika*, 23 February 1993, Annex 223];
- Milenko Telečki, Major, killed on 25 March 1993 [Obituary published in *Politika*, 27 March 1993, Annex 223];
- Dragan Tanjga, Colonel, killed on 23 June 1993 [Obituary published in *Politika*, 28 June 1993, Annex 223];
- Ljubiša Petković, Colonel, killed on 23 July 1992 [Obituary published in *Politika*, 16 July 1993, Annex 223].

343. In 1994, more obituaries were published in *Politika*:

- Krsto Kenjić, Master (first) Sergeant, killed on 8 January 1994 [Obituaries published in *Politika*, 12 and 13 January 1994, Annex 223];

- Goran Galjak, Captain, killed on 27 December 1993 and buried on 19 January 1994 in Belgrade [Obituary published in *Politika*, 18 January 1994, Annex 223];
- Srboljub Djorović, officer (rank unknown), buried on 22 January 1994 in Prokupac (Serbia) [Obituary published in *Politika*, 20 January 1994, Annex 223];
- Sead Bahtović, Lieutenant-Colonel, buried on 9 February 1994 in Belgrade [Obituary published in *Politika*, 9 February 1994, Annex 223];
- Dragan Stojković, Captain, killed on 27 December 1993 [Obituary published in *Politika*, 17 February 1994, Annex 223];
- Staniša Stakić, Second Lieutenant, killed on 3 February 1994 and buried in Belgrade [Obituary published in *Politika*, 13 March 1994, Annex 223];
- Nebojša Milošević, Second Lieutenant, killed on 15 August 1994 [Obituary published in *Politika*, 17 August 1994, Annex 223];
- Damir Vučković, Second Lieutenant, buried on 19 November 1994 [Obituary published in *Politika*, 19 November 1994, Annex 223].

344. In 1995, *Politika* continued publishing obituaries of Yugoslav Army officers killed across the border during the armed conflict:

- Branislav Knežević, Captain, buried on 28 February 1995 [Obituaries published in *Politika*, 27 and 28 February 1995, Annex 223];
- Veselin Čović, Reserve Lieutenant, buried on 27 August 1995 [Obituary published in *Politika*, 24 August 1995, Annex 223].

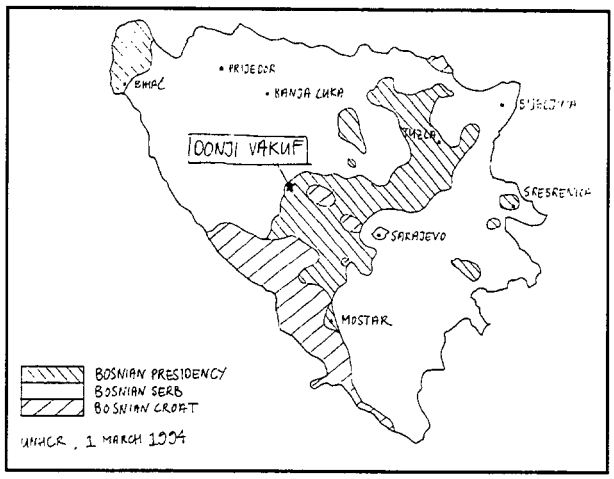
345. This clock-like regularity with which the obituaries were placed in *Politika* throughout the time of the armed conflict clearly illustrates that the number of Yugoslav Army officers deployed on the territory of Bosnia and Herzegovina was quite substantial indeed. It also shows that Belgrade never released its firm grasp of the Bosnian Serb Army.

9. The Yugoslav system of national banks

Introduction

346. Bosnia and Herzegovina has been able to obtain documents which clearly demonstrate that the Respondent has built an integrated system of national banks it has administered from Belgrade, governing the economic and financial activities of

the "Republika Srpska", in Bosnia and Herzegovina, and the "Republika Srpska Krajina", in Serb-held Croatia. This system of national banks was set up in 1992 and was still working at the time this Reply was submitted.



347. The mentioned documents were all recovered in a building in Donji Vakuf, central Bosnia. This building belonged to the administrative organs of the municipality of Donji Vakuf and had been used from May 1992 to September 1995 by the Serb municipal authorities of the so-called municipality of "Srbobran". Srbobran is Serbo-Croat for "Defence of the Serbs", the name that was given to Donji Vakuf after the Serb take-over in the spring of 1992. The documents were recovered after the reconquest of Donji Vakuf by the Army of the Republic of Bosnia and Herzegovina and the withdrawal of the Bosnian Serb Army from the territory concerned in the autumn of 1995.

The unification of the monetary system

348. The process of unification of the monetary system of the Federal Republic of Yugoslavia with the Serb entities exercising a *de facto* authority over parts of Croatia and Bosnia and Herzegovina was described in a report to the National Bank of Yugoslavia. This report was written by Milivoje Miletić, who was appointed by the management of the National Bank of Yugoslavia as Director of the so-called "Departement for rediscount and collateral loans" in the "Sector for the monetary credit system and policy". Miletić was stationed in Bosnia and Herzegovina, at the National Bank of the "Republika Srpska", from 4 to 8 April 1994, in order to survey and examine the operations of the bank.

349. According to Miletić's Report, there were three distinct phases in the evolution of the activities of the National Bank of the "Republika Srpska":

> "1. The period during which Republika Srpska, due to the fact that at the beginning of the third quarter of 1992 the National Bank of Yugoslavia designed monetary and credit policies only for the territory of the Federal Republic of Yugoslavia, formed a National Bank of Republika Srpska which operated as a central bank for this territory;
> 2. The period when the implementation of the 'Elements of Program' began; and
> 3. The period when parts of the 'Program on reconstruction of the monetary system and the strategies of economic recovery of Yugoslavia' [hereinafter: 'Program'] that refer to Republika Srpska and Republika Srpska Krajina started to be implemented." [Report to the National Bank of Yugoslavia written by Milivoje Miletić, pp. 1-2, Annex 224].

350. Although the Report describes the activities of the National Bank of the "Republika Srspka" in the first phase as activities of a "central bank", it is clear that this situation was only transitional. The dissolution of the system of national banks of the former Yugoslavia was necessary to create a new system of national banks. During this first phase, there was a close cooperation between the national banks which would join the new system:

> "The first phase of operation of the National bank of Republika Srpska started at a time when the former National Bank of Bosnia and Herzegovina separated itself from the system of national banks in the National Bank of Yugoslavia system. This was the time of dissolution of the former Bosnia and Herzegovina, and with this dissolution, the dissolution of the National Bank of Bosnia and Herzegovina. This is a time of formation of various institutions of Republika Srpska, among others the National Bank. It is normal, that these conditions require a monetary base emission that is based on experience that primarily relies on the National Bank of Yugoslavia. In this period, monetary and credit policy on the territory of Republika Srpska was conducted primarily through expert cooperation between the National Bank of Yugoslavia and the National Bank of Republika Srpska." [*ibid.*, p. 2, Annex 224].

What was "normal" in Miletić's view, is normal only if one understands that the creation of a new system of national banks common to all Serb entities had already been foreseen at that moment.

351. Accordingly, in its 1992 Annual Report, the National Bank of the "Republika Srpska" explained that:

> "The National Bank of the Republika Srpska received special support in the very beginning of its operations from the National Bank of Yugoslavia.
>
> Although there were different monetary regions, the National Bank of Yugoslavia provided expert assistance, assistance in methodologies of operation, and in the creation of currency, etc." [The National Bank of Republika Srpska, 1992 Annual Report, May 1993, pp. 3-4, Annex 225].

Moreover,

> "the National Bank of Republika Srpska conducted the same monetary policy as the National Bank of Yugoslavia." [*ibid.*, p. 4, Annex 225],

and

> "the exchange rate of the dinar was tied to the exchang rate of the dinar in the Federal Republic of Yugoslavia due to the 1 : 1 par of exchange. It was changing according to its changes in the Federal Republic of Yugoslavia." [*ibid.*, p. 14, Annex 225].

This shows that the links between the central banks were already very strong in the first phase.

352. The second phase began in the middle of February 1993. It consisted of the implementation of a "Program for regulating unified monetary policy on the territory of the Federal Republic of Yugoslavia, Republika Srpska and Republika Srpska Krajina". This unified monetary policy created "the preconditions for establishing a unified payments system" [Report to the National Bank of Yugoslavia written by Milivoje Miletić, p. 2, Annex 224]. It is worth noting the title of this Program, which refers to a single *territory*, composed of the Federal Republic of Yugoslavia, the "Republika Srpska" and the "Republika Srpska Krajina".

353. The third phase started with the implementation in the "Republika Srpska" and the "Republika Srpska Krajina" of the "Program for the reconstruction of the monetary system and the strategy of economic recovery of Yugoslavia". In this case, the title of the Program refers only to "Yugoslavia". It is clear from the content of the Program that "Yugoslavia" does not only refer to the territory of the Federal Republic of Yugoslavia, but that it encompasses the "Republika Srpska" and the "Republika Srpska Krajina". Moreover, the material scope of the "Rrogram" was much broader than unification of the monetary system; it aimed at assuring the economic and financial integration of the "Republika Srpska" into a new Yugoslavia.

Economic and financial integration of the "Republika Srpska" in a new Yugoslavia

354. Very close economic relations between the "Republika Srpska" and the Federal Republic of Yugoslavia existed from the very beginning of the disintegration of the

former Yugoslavia. Thus, the National Bank of the "Republika Srpska", in its "1992 Annual Report" dated May 1993, reported that:

> "After the separation of Bosnia-Herzegovina from Yugoslavia, the territory of Republika Srpska still factually *remained in the same economic system as the Federal Republic of Yugoslavia.*" [The National Bank of the Republika Srpska, 1992 Annual Report, May 1993, p. 4, emphasis added, Annex 225].

As explained by this Report, the "Republika Srpska" was completely dependent of the Respondent, and consequently suffered from the sanctions imposed on the Federal Republic of Yugoslavia:

> "International economic relations during 1992 were worsened after the start of armed conflict on the territory of the former Bosnia-Herzegovina and after the UN sanctions were imposed on the Federal Republic of Yugoslavia in May 1992. Later, these sanctions were imposed by the entire international community. Although the imposed sanctions did not directly affect Republika Srpska, problems occured since *all goods were transported through the Federal Republic of Yugoslavia* and we operated under uniform foreign exchange policy." [*ibid.*, p. 12, emphasis added, Annex 225].

Thus, the "third phase" mentioned in Milivoje Miletić's Report only aimed at formalising the economic union, which had already been in *de facto* existence prior to that point.

355. Through the Yugoslav system of national banks, the Respondent manifested a clear policy of integration of the "Republika Srspka" and "Republika Srpska Krajina" in the economic system of the Federal Republic of Yugoslavia. Thus, the "Official Notice from the meeting of Governors of the National Bank of Yugoslavia, Republika Srpska and Republika Srpska Krajina, held on December 5, 1994, in the offices of the National Bank of Yugoslavia in Belgrade", mentions as a starting point three documents "for regulation of relations in the economic union comprising the Federal Republic of Yugoslavia, Republika Srpska, and Republika Srpska Krajina." These documents are:

> "- Basic elements for the implementation of the 'Program of reconstruction of the monetary system and the strategy of economic recovery of Yugoslavia' in Republika Srpska and Republika Srpska Krajina;
> - Program for regulating uniform monetary policy on the territory of the Federal Republic of Yugoslavia, Republika Srpska and Republika Srpska Krajina, which entered into force on March 1, 1993.
> - Protocol on regulating uniform monetary policy for the territory of the Federal Republic of Yugoslavia, Republika Srpska and Republika Srpska Krajina." [Official Notice from the

meeting of Governors of the National Bank of Yugoslavia, Republika Srpska and Republika Srpska Krajina, 5 Dec. 1994, p. 1, Annex 226].

356. Some of the conclusions of the meeting were directly related to economic matters:

> "1. The Program on the reconstruction of the monetary system and *the strategy of economic recovery of Yugoslavia* has been adopted on the territory of Republika Srpska and Republika Srpska Krajina. Certain results have been accomplished in the initial phase.
> (...)
> 5. It is urgently necessary to conduct an accordance of legislation which regulates the *trade of goods* between the republics in order to remove the inter-republic economic borders.
> (...)
> 11. It is necessary to further develop a model of cooperation with banks in the Federal Republic of Yugoslavia as well as other methods of strengthening the depository functions of banks in Republika Srpska and Republika Srpska Krajina, *all for the purpose of gradual rehabilitation of production* on the territory of Republika Srpska and Republika Srpska Krajina." [Official Notice from the meeting of Governors of the National Bank of Yugoslavia, Republika Srpska and Republika Srpska Krajina, 5 Dec. 1994, pp. 1-2, emphasis added, Annex 226].

It is worth noting, in the same document, the use of the expression "common economic region" and the necessity to unify capital markets and foreign exchange "for all subjects of the common economic region". This indicates that the unified monetary system was only an instrument for a complete economic integration of the "Republika Srpska", the "Republika Srspka Krajina" and the Federal Republic of Yugoslavia.

357. On 1 March 1997, almost a year and a half after the Dayton Accords were signed, the Federal Republic of Yugoslavia and the "Republika Srpska" concluded an agreement on "special and parallel relations". In fact, this agreement was the last piece in the building up of a new Yugoslav federation. This is made clear by the institutional provisions of this agreement:

> "Article 5
>
> The Council for Co-operation (hereinunder referred to as the Council) shall be established. The Chairman of the Council shall be the President of the FRY, while the Vice-Chairman shall be the Representative of the RS in the Presidency of BH. The Council shall consist of seven members, three of them shall be appointed by Chairman, while the other two by the Vice-Chairman.
>
> Article 6
>
> The scope of activities of the Council shall involve the following:

- encouragement, planning and co-ordination of versatile co-operation, particularly with a view of establishing special and parallel relations in the fields of culture, education, science, technology, information, sports and other fields of human creativity;
- economic development and gradual association in the fields of production, transport, energy, infrastructure, finances, with a view of creating of a single market;
- economic restoration, reconstruction and development of transport, traffic and communications, production, exploitation and transfer of energy, tourism and environmental protection;
- social policy, health protection, averting natural disasters and elimination of aftermath thereof;
- co-operation of NGOs;
- migration, immigration and asylum seeking issues;
- combating of terrorism, illegal drug trafficking, arms trafficking, money laundering, threats to civilian air transport and all other forms of organised crimes;
- regional security, border crossing regime, citizenship;
- co-ordination of foreign policy and approach to third countries and international organisations;
- alignment of legal and other regulations, offering of legal assistance, settlement of the issue on succession of the former SFRY;
- as well as in other fields of common interests for the Parties.

In order to have more efficient realisation of the co-operation in the above mentioned fields, and of the objectives and provisions of the present Agreement, the Parties may conclude separate agreements." [Agreement between the Federal Republic of Yugoslavia and the "Republika Srpska" on "special and parallel relations", 1 March 1997, Annex 227].

358. According to this agreement, the "Council for Co-operation" would have been responsible for a wide range of activities. Although this agreement was supposed to organise "cooperation" between two "parties", in fact it enabled one of these parties to exercise its authority over the other. The composition of the Council secured the control of the Respondent over the common institutions, a control it had always had before the signing of the Dayton Accords.

The internal relations

The principles applicable to the relations between the Federal Republic of Yugoslavia and the National Banks of the "Republika Srpska" and the "Republika Srpska Krajina" are very clearly described by the "Official Notice of the meeting of Governors of the National Bank of Yugoslavia, Republika Srpska and Republika Srpska Krajina, held on December 5, 1994, in the offices of the National Bank of Yugoslavia in Belgrade". These principles are mentioned among the conclusions of the meeting:

"2. The National Bank of Republika Srpska and the National Bank of Republika Spska Krajina are disciplined in implementing decisions of the National Bank of Yugoslavia.
(...)

> 6. The National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina operate as the main branches of the National Bank of Yugoslavia and operate exclusively under its control.
> 7. Unique control over the operation of the National Bank of Republika Srpska, the National Bank of Republika Srpska Krajina and commercial banks from the territory of Republika Srpska and Republika Srpska Krajina is determined and conducted exclusively by the National Bank of Yugoslavia.
> 8. The Governor of the National Bank of Republika Srpska and the Governor of the National Bank of Republika Srpska Krajina are obliged to attend meetings of the Council of the National Bank of Yugoslavia. They do not have the right to vote.
> 9. The National Bank of Yugoslavia will provide staff and financial support to the National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina. The National Bank will produce a special model of its support to the National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina.
> (...)
> 12. Capital markets in the Federal Republic of Yugoslavia are unified for all subjects of the common economic region.
> 13. All foreign exchange of the National Bank of Yugoslavia, the National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina are commonly owned. The foreign exchange market is integrated for all subjects of the common economic region." [Official Notice from the meeting of Governors of the National Bank of Yugoslavia, Republika Srpska and Republika Srpska Krajina, 5 Dec. 1994, pp. 1-3, Annex 226].

359. It is apparent from this document that the primary functions of the monetary policy, that is the printing of currency, monetary loans policy, supervision of commercial banks, and administration of foreign currency reserves were carried out by the National Bank of Yugoslavia, and that the National Bank of the "Republika Srpska" and the National Bank of "Republika Srpska Krajina" were organised as mere branches of the National Bank of Yugoslavia.

360. In the same meeting, the Governors listed the problems they faced in the implementation of the third phase:

> "3. All conditions that were determined earlier regarding complete financial integration have not been established, particularly conditions regarding the unification of legislation of Republika Srpska
> 4. It is urgently necessary to produce a consolidated balance of public expenditures and determine the possibilities for financing the budget deficit from real sources.
> (...)
> 10. It is necessary to specially consider the reasons for the disproportionate participation of cash in the money supply of Republika Srpska." [*ibid.*, p. 2].

It seems clear that the main problems, that is the "disproportionate participation of cash" and the budget deficit, were created by the war conditions prevailing in Bosnia and Herzegovina.

361. Moreover, the complete implementation of the "third phase" implied the passing of the necessary legislation, as mentioned in item 3 of the "Note". On that topic, Miletić's Report described the situation in April 1994:

> "The National Bank of Republika Srpska continued a consistent cooperation with the National Bank of Yugoslavia in this period, in the field of the basic Program goals that refer to Republika Srpska and Republika Srpska Krajina. In order to provide the necessary conditions for a consistent implementation of the Program, the National Bank of Republika Srpska undertook efforts to secure the necessary normative and legislative framework in Republika Srpska (Law on the National bank and Law on Banks) as well as other legislation under the authority of the Parliament of Republika Srpska and the Government of Republika Srpska.
>
> Noting that there is a delay in passing the main and other legislation, actually that the authorities have not passed and issued most of these laws and regulations, the National Bank of Republika Srpska applies the currently valid legislation of the National Bank of Yugoslavia, legislation that was issued by authorities in the Federal Republic of Yugoslavia." [Report to the National Bank of Yugoslavia written by Milivoje Miletić, p. 6, Annex 224].

This document makes clear that:

- some legislative acts formally organising the vertical relationship between the Federal Republic of Yugoslavia and banking authorities of the "Republika Srpska" had already been passed in April 1994, and
- Yugoslav legislation was applied provisionally in the meantime on the territory of the "Republika Srpska".

362. All national and commercial banks were perfectly aware of their dependence on - and exclusively on - the National Bank of the Federal Republic of Yugoslavia. This explained the rather sore reaction of the Banker's Association of the "Republika Srpska" to a Report of the Financial Police, written in May 1994, which accused them of some irregularities. Their arguments focused mainly on recalling the formal and direct relationship between them and the Yugoslav authorities:

> "(...) the following conclusions are made:
>
> 1. Audits of the National Bank and of commercial banks have been conducted by persons who do not posses the authority or the expertise for the banking system supervision.
> (...)
> 4. According to the majority of conclusions and proposals, the examination indicates a lack of knowledge of the basic elements of the banking system because they are ignorant of the fact that Republika Srpska and the Federal Republic of Yugoslavia belonged to a unified payments system, monetary system and a unified foreign exchange market. (The Federal Republic of Yugoslavia was never a foreign country for Republika Srpska).
> (...)
> 7. Examinations of banks of the National Bank of Republika Srpska can be, based on the Protocol on regulation of unified monetary policy on the territory of the Federal Republic of Yugoslavia, Republika Srpska and Republika Srpska Krajina, solely conducted by the National bank of

> Yugoslavia." [Reaction of the Banker's Association of the Republika Srpska to a Report of the Financial Police, May 1994, no page numbering, Annex 228].

These hierarchical relations between the National Bank of the Federal Republic of Yugoslavia and the National Banks of the "Republika Srpska" and the "Republika Srpska Krajina" enabled the Respondent to control the economic and financial activities of the Serb entities. Actually, it reveals a structure which very closely resembles a federation.

Financing "Republika Srpska" and "Republika Srpska Krajina"

363. The role of the Respondent in financing the "Republika Srpska", and with it the Bosnian Serb Army, appears clearly from a "Note on the possibilities of mobilizing foreign exchange reserves for the purposes of budget deficit financing", produced by the National Bank of the "Republika Srpska" and dated 3 March 1993 [Note on the possibilities of mobilizing foreign exchange reserves for the purpose of budget deficit financing, 3 March 1993, Annex 229].

364. As the "Republika Srpska" had very few financial resources and many military expenses, the budget deficit was chronic. This situation was, for instance, recalled in an information note of the Banker's Association of the "Republika Srpska":

> "During the war, when the economy of Republika Srpska was operating at 10% capacity utilization rate, no payments of fiscal sources were made-the sources of Budget revenue, there was a great need to pay the meager wages, food, clothing and shoes for the Army, electricity for the Mrkonjic Grad Government session, heating for the Clinical Hospital Center in Banja Luka where most wounded soldiers were treated, and other needs." [Information note of the Banker's Association of the Republika Srpska, May 1994, p. 4, Annex 230].

365. This deficit had to be financed by the creation of money. The "Note on the possibilities of mobilising foreign exchange reserves for the purposes of budget deficit financing" describes the process for such a creation:

> "According to the Protocol on regulating the unity of monetary policy on the territory of the Federal Repubic of Yugoslavia, Republika Srpska and Republika Srpska Krajina, the new Federal Republic of Yugoslavia dinar will be the new currency, will all its functions, on the territory of the Federal Republic of Yugoslavia, Republika Srpska and Republika Srpska Krajina. The National Bank of Yugoslavia and the Payments Bureau of Yugoslavia are responsible for establishing full control of the payments system and all flows of money. The aforementioned Protocol clearly states that for each amount of new dinars, issued for the territory of Republika Srpska, there needs to be an equivalent amount of foreign currency that is deposited in the National Bank of Yugoslavia."

[Note on the possibilities of mobilizing foreign exchange reserves for the purpose of budget deficit financing, 3 March 1993, p. 1, Annex 229].

This document shows that:

- Yugoslavia authorised the use of its currency, the dinar, in a single "territory", the "territory of the Federal Republic of Yugoslavia, Republika Srpska and Republika Srpska Krajina",
- money was created by Yugoslavia especially at the demand of the Republika Srspka, and
- the "Republika Srpska" had to mobilise foreign exchange reserves.

366. The usual way to finance the budget deficit was credit. In this case again, the National Bank of the "Republika Srpska" had to refer to the National Bank of Yugoslavia. The question of the scope of credits of the National Bank of the "Republika Srpska" for 1993 was thus examined at a meeting of the Council of Governors of the National Bank of Yugoslavia. The Minutes of the meeting reveal the key role of the Yugoslav banking authorities:

"National Bank of Yugoslavia
Cabinet of the Governor

Annex to the Minutes

1. Projection of monetary policy for the second quarter of 1993 of the National Bank of Republika Srspka and the National Bank of Republika Srpska Krajina.

Council of Governors, at the closed part of the meeting, has considered and adopted the Projection of monetary policy for the second quarter and the scope of increase of Dinar credits in the second quarter of 1993, to banks of the National Bank of Republika Srpska in the amount of 854 billion Dinar and to the National Bank of Republika Srpska Krajina in the amount of 503.8 billion Dinar. At the same time, the Council of Governors has concluded that the National Bank of Republika Srpska and the National bank of Republika Srpska Krajina should prepare an information note on the sources for financing the budgets of Republika Srpska and of Republika Srpska Krajina and that these information notes should be considered at a special meeting of the Council of Governors that will be scheduled later." [Minutes of a meeting of the Council of Governors of the National Bank of Yugoslavia, date illegible, p. 3, Annex 231].

At the meeting, the Council of Governors thus decided to increase the credit given to the National Bank of the "Republika Srpska" and the National Bank of the "Republika Srpska Krajina". For the second quarter of 1993, the following was concluded:

"Annex of Minutes
(...)

> 1. The scope of Dinar credits of the National Bank of Republika Srpska and the National bank of Republika Srpska Krajina determined by the projection of monetary policy for the second quarter can increase in the same proportion as the scope of Dinar credits of the National Bank of Yugoslavia to banks, determined by the projection of monetary policy for the second quarter.
> 2. The scope of monetary base of the National Bank of Republika Srpska and the National Bank of Republika Srpska Krajina for financing the budget can amount to 40% of the volume of total budget income which has been accorded with the authoritative Ministry of the Federal Republic of Yugoslavia." [Minutes of a meeting of the Council of Governors of the National Bank of Yugoslavia, date illegible, p. 4, Annex 231].

367. These documents illustrate the fact that, through its monetary policy, the Federal Republic of Yugoslavia directly financed the budgets of the "Republika Srpska" and the "Republika Srpska Krajina". In his Report to the National Bank of Yugoslavia, written in April 1994, Milivoje Miletić made an precise calculation of the total amount used to finance the budget deficit of the "Republika Srpska":

> "Concerning the realization of credit activity in regards to financing the budget deficit of Republika Srpska, at the end of December [1993] the balance of Dinar credits amounted to 3,274,177,355 billion Dinars." [Report to the National Bank of Yugoslavia written by Milivoje Miletić, p. 6, Annex 224].

The Yugoslav system of national banks was, therefore, used to balance the books of the "Republika Srpska" throughout the time of the armed conflict and thereafter. The Federal Republic of Yugoslavia financed the deficit, which was caused by the armed conflict in Bosnia and Herzegovina, and it thus indirectly payed for the Bosnian Serb Army and its genocidal Bosnian campaign.

368. The system of national banks was used to control, develop and direct all economic and financial activities of both the "Republika Srpska" and the "Republika Srpska Krajina". The structure of the monetary system, characterised by the direct subordination of the National Bank of the "Republika Srpska" and the National Bank of the "Republika Srpska Krajina" to the National Bank of Yugoslavia, was organised as if both Serb entities were Republics of a new "Yugoslavia", a federal Greater Serbia.

10. Yugoslavia's continuing supply of the Bosnian Serb military

Introduction

369. Contrary to their often repeated claims, the Belgrade authorities continued to assist the Bosnian Serb military throughout the entire conflict in Bosnia and Herzegovina.

After the alleged "withdrawal" of the JNA on 19 May 1992 and the cosmetic transformation of the 2nd Military District into the Bosnian Serb Army [see: Reply, Chapter 8, Section 4], the Federal Republic of Yugoslavia carried on supporting the Bosnian Serbs logistically as if Bosnia and Herzegovina had never gained independence. This support was thus not only of an economic, but also of a military nature. In this Section, the Applicant will inform the Court of the wide extent and the exact nature of this support and will demonstrate that without it, the Serbs would in fact not have been able to sustain their genocidal campaign in Bosnia and Herzegovina until the very end of the hostilities in 1995.

Counter-Memorial

370. The Respondent's reaction to the evidence presented in the Memorial [Memorial, Section 2.3.8, pp. 85-93] can best be characterised as ambiguous. In its Counter-Memorial it basically limited itself to quoting three contradicting statements given by the Federal and Serbian governments. The first statement quoted was issued by the Federal government on 6 May 1993:

> "The Government of the Federal Republic of Yugoslavia reviewed today the consequences resulting from the decision of the Assembly of the Republic of Srpska at Pale not to accept the Vance-Owen plan but to leave the final decision to the Serb people in Bosnia-Herzegovina to be taken at a referendum.
> (...)
> *Bearing in mind the immediate adverse effects of UN Security Council Resolution 820 on the economic capacity of the Federal Republic of Yugoslavia and the social condition of the majority of its citizens, the Federal Government is forced to adjust all future aid to the Republic of Srpska to its objective economic possibilities and to reduce it exclusively to supplies of food and medicines.*" [Counter-Memorial, para. 3.6.1.1., p. 287, emphasis added].

The Respondent then cited a statement of the government of the Republic of Serbia, also given on 6 May 1993:

> "The Government of the Republic of Serbia discussed the Report, prepared by Prime Minister N. Šainović, on the results of the negotiating process for peace in former Bosnia and Herzegovina, and of the session of the Assembly of the Republic of Srpska.
> The Government reached the following conclusions:
> *Firmly believing that a just struggle for freedom and the equality of the Serb people is being waged in the Republic, the Republic of Serbia has unreservedly and generously been helping the Republic of Srpska, in spite of the enormous problems it had to face due to the sanctions imposed against it by the UN Security Council.*
> (...)
> Since the conditions for peace have been met, the Government also agreed, that any further supply of aid to the Republic of Srpska should be limited to food and medicines in such quantities as the competent ministries determine. *The Government of the Republic of Serbia also believes that, as the conditions for establishing peace have been met, any further aid in funds, fuel, raw materials*

> *etc. provided until now with great sacrifices by the Republic of Serbia itself, is no longer justified.*"
> [Counter-Memorial, para. 3.6.1.2., pp. 287-288, emphasis added].

As was argued in the Memorial [Memorial, p. 89, para. 2.3.8.3], by way of these statements the Respondent has admitted that it had continued to supply the Bosnian Serbs with every imaginable type of aid at least until the date the last declaration was issued.

371. The last paragraph, as quoted above by the Respondent, contains two major flaws in the translation. The Respondent again failed to quote correctly [see also, Reply, Chapter 8, Section 5]. The entire paragraph should have been cited as was done by the Applicant in its Request for Provisional Measures on 27 July 1993:

> "Since the conditions for *space* have been met, the Government also agreed, *that any further economic depletion of the Republic of Serbia is now unjustified and unsupportable*, and that future aid to the Serb Republic should be limited to food and medicines in such quantities as the competent ministries will determine. The Government of the Republic of Serbia also believes that, as the conditions for establishing peace have been reached, any further aid in funds, fuel, raw materials etc., provided until now with great sacrifices by the Republic of Serbia itself, is not justified any more." [Request for Provisional Measures, pp. 43-33 and Attachment, emphasis added].

The paragraph as quoted above was part of an official Communique of the Government of Republic of Serbia, issued on 6 May 1993 and distributed by the Respondent's so-called "Mission" to the United Nations in New York [see Second Request for Provisional Measures, 27 July 1993, p. 43]. The Respondent issued the Communique in English, not in Serbo-Croat.

372. The proper translation of the paragraph shows that the Respondent made one significant alteration to the original statement. In addition it left out a not unimportant passage. Both the alteration and the "forgotten" passage are emphasised in the correct translation as quoted above. This translation sheds a completely different light on Serbia's reasons for cutting aid to the Serbs in Bosnia and Herzegovina. Firstly, the Serbian government stated that all conditions for "space" - and not peace - had been met and that the Republic of Serbia could thus safely reduce its support for the Bosnian Serbs. The use of the word "space" is a clear reference to the Greater Serbian ideology. Since the Serbs had conquered enough "space" or *lebensraum*, the need to continue supplying the Serbs across the border had all but disappeared, at least in the view of the Republic of Serbia. Secondly, the "forgotten" passage reveals an additional reason to cut the supplies: the Serbian

reserves were in fact drying up. The reduction of its assistance to the Serbs in Bosnia and Herzegovina was presented as a simple economic requirement: "any further economic depletion of the Republic of Serbia is now unjustified and unsupportable". The reason for its statement was *not* the promotion of peace, as was implied by the Respondent in the Counter-Memorial, but the fact that, by May 1993, the Respondent had achieved all it wanted to achieve in Bosnia and Herzegovina. Further economic suffering was therefore no longer required.

373. One month after the foregoing statements were issued, on 10 June 1993, the Security Council adopted Resolution 838, in which it recalled its demand in Resolution 819 that the "Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to Bosnian Serb paramilitary units" [United Nations, *Security Council Resolution 838 (1993)*, S/RES/838, 10 June 1993].

374. The last statement the Respondent quoted in its Counter-Memorial is similar to the two cited above, the only difference being that it was issued more than a year later. The statement, released on 4 August 1994 by the Federal Government, was quoted as follows:

> "By rejecting the peace, the leadership of the Republic of Srpska has committed the gravest act against the FR Yugoslavia, the Serbian and Montenegrin peoples and all citizens living in these areas.
>
> The Federal Government has therefore made [a] decision:
> - to break off political and economic relations with the Republic of Srpska,
> - to ban the members of the leadership of the Republic of Srpska (the Assembly, the Presidency, the Government) from staying in the territory of the FR Yugoslavia;
> - *The border of the FR Yugoslavia shall as of today be shut to all transports destined for the Republic of Srpska with the exception of food, clothing and medicines.*" [Counter-Memorial, p. 289, para. 3.6.1.4., emphasis added].

With this declaration, the Respondent admitted that it had continued to support the Bosnian Serbs with all possible means after 6 May 1993. This statement is in flat contradiction with to two earlier ones quoted above.

375. In the following pages of this Section, the Applicant will demonstrate that even the statement of 4 August 1994 proved to be a masquerade, presumably intended to convince the international community to lift the economic embargo first imposed by the Security Council in Resolution 757 on 30 May 1992 [United Nations, *Security Council Resolution 757 (1992)*, S/RES/757, 30 May 1992]. In reality, the Federal

Republic of Yugoslavia continued to support the Bosnian Serbs both economically and militarily throughout the armed conflict.

ZINVOJ

376. During the armed conflict, the military industries in the Federal Republic of Yugoslavia and the "Republika Srpska" continued to cooperate with each other as if Bosnia and Herzegovina had never gained independence and, in fact, as if the "Republika Srpska" were part of a Yugoslav federation. This cooperation was epitomised by ZINVOJ, the Belgrade-based "Yugoslav Association of Arms and Military Equipment Industries". This association played a pivotal role in the reorganisation and revitalisation of the arms industry in the "Republika Srpska" after the hostilities had started in April 1992. This is best illustrated by the following letter which ZINVOJ sent to the government of the "Republika Srpska" on 25 January 1993. On 25 February 1996, after the reintegration of Vogošća, a Sarajevo suburb, into the Federation, it was found by a Bosnian government official at the premises of the local Unis Pretis arms and ammunitions factory:

"ZINVOJ
Association of arms and
military equipment industries

Address: 11000 Belgrade
Knez Mihailova St. No. 6
Tel: 626-724, 631-862
Telegram: zinvoj beograd
Telex: 12698
Acc. No. with Public Auditing Office
Beograd 60823-601-11716

Telefax: (011) 624-435

Date: 25.01.1993 Our no. and sign: 3-29 Your no. and sign:

TO THE GOVERNMENT OF
THE REPUBLIC OF SRPSKA

Subject:

INITIATIVE FOR CREATION OF PRE-REQUISITES FOR (...) FUNCTIONING IN THE REPUBLIC OF SRPSKA

Production of arms and military equipment in Bosnia and Herzegovina has been brought into condition that practically it does not exist any more in operational terms, except that some smaller quantities of simple technologies products are made in some enterprises (their sections), thanks to some stocks of the material and spare parts from the cooperation and from abroad.

> Military production enterprises are now located in different parts of Bosnia and Herzegovina and they are under all three sides control (Serbs', Croats' and Muslims'), so that all production lines have been cut, since this production had been closely technologically tied among the units within the area of Bosnia and Herzegovina and also with the enterprises from the former Yugoslavia.
>
> The following military production enterprises have existed in Bosnia and Herzegovina: 'Pretis', 'Pobjeda', 'Slavko Rodić, 'Slobodan Princip Seljo', 'Igman', 'Bratstvo', Rudi Čajavec', 'Famos', 'Zrak', 'Soko-Vazduhoplovstvo' and the remounting departments 'Orao', Hadžići', 'Kosmos' and 'Travnik'.
>
> The following military production enterprises are now within the area of the Republic of Srpska: 'Pretis', 'Rudi Čajavec', 'Famos', (locations of Pale and Hrasnica), then remounting departments 'Orao', 'Hadžići', and 'Kosmos'." [ZINVOJ, Association of Arms and Military Equipment Industries, Initiative for creation of pre-requisites for functioning in the Republic of Srpska, addressed to the Government of the Republic of Srpska, 25 Jan. 1993, p. 1, emphasis added, Annex ?].

When the letter was sent, on 25 January 1993, the arms production in the "Republika Srpska" had apparently almost completely come to a standstill. After the dissolution of the former Yugoslavia, ZINVOJ was entrusted with the task of putting the Bosnian Serb arms industry back on its feet again. In the view of ZINVOJ, this was only possible in close cooperation with the existing facilities in the Federal Republic of Yugoslavia. The letter continues:

> "*ZINVOJ Association still put efforts in attempts to provide links and coordination among different arms and military equipment production units from the territory of the FR Yugoslavia, the Republic of Srpska and the Republic of Srpska Krajina [in Croatia]. With the aim of ensuring that programs and military production capacities which were in the Republics of Srpska and Srpska Krajina before the war broke [out], still remain within these areas, the ZINVOJ Association undertook some activities which resulted [in] newly founded enterprises like: UNIS-Pale, Pretis-komerc Belgrade, UNI-PROM-Pale, UNI-PROM-Belgrade, Zrak-Sokolac.*
>
> ZINVOJ Association continues to focus its activities to establish enterprises on production programs: mine explosives and detonators 'Slavko Rodić', caps and primers, electrical fuses and detonators 'Pobjeda', products development and engineering marketing activities."
> [*ibid*, emphasis added, p. 2].

By January 1993, ZINVOJ had already established several new arms and ammunition producing companies in the "Republika Srpska". These new facilities and the previously established ones were consequently integrated into existing production programmes in the Federal Republic of Yugoslavia. ZINVOJ restored the "links and coordination among the different arms and military production units from the territory of the FR Yugoslavia, the Republic of Srpska and the Republic of Srpska Krajina". The Bosnian Serb military industry became an integral part of the Yugoslav military complex, as it had been before the break-up of the former

Yugoslavia. The arms producers in the "Republika Srpska" and the Federal Republic of Yugoslavia thus gradually came to be interdependent.

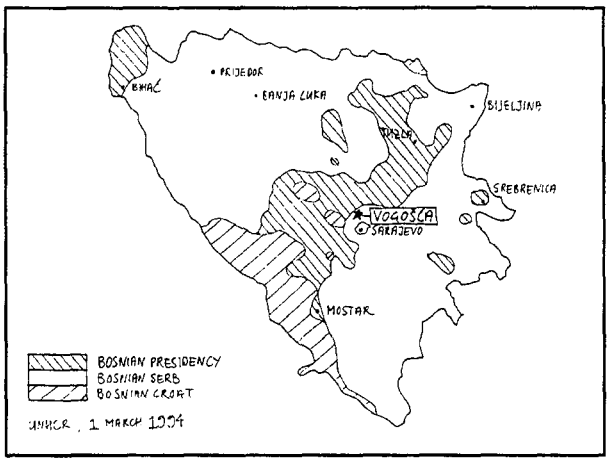
377. The aim of ZINVOJ was thus to revitalise Bosnian Serb military production by reintegrating it into the existing Yugoslav military industry. In the same letter to the Bosnian Serb government cited above, ZINVOJ gave the Bosnian Serb government the following directions:

> "Where is the way out for the military production enterprises at the territory of the Republic of Srpska?
>
> - We consider that a platform of economic cooperation between the arms and military production equipment enterprises from the Republic of Srpska and the enterprises from the FR Yugoslavia should be urgently defined, and also that as many as possible arms and military equipment capacities from the Republic of Srpska should be put in effective operation and employed so that certain level of development is ensured in future. In terms of the above stated, it is necessary to do the following:
>
> - *The Government of the Republic of Srpska should, through its activities, establish relations with the Government of the Republic of Serbia and Republic of Montenegro, and also with FRY in order to set up frames for the enterprises from the Republic of Srpska to start linking with the enterprises from the a/m Republics, in a way that future concept of military industries development in FRY takes into account the existing technologies and military production capacities in the Republic of Srpska.* If an agreement on stated possibilities among the Governments of the a/m Republics is reached, then the enterprises would begin an action and implementation of cooperation in military production development, establishing direct relations with enterprises and fully using the previous institutions for professional economy cooperation of the ZINVOJ Association.
>
> *In situation like this, when there is shortage of resources, staff and communication, restarting cooperation among the arms and military equipment capacities is only possible with mutual agreements and good will of the Government of the mentioned states, as well as of the Government of the FRY, including corresponding common institutions for the establishment and development of economy cooperation of the ZINVOJ Association.*"
> [*ibid*, emphasis added, pp. 2-3].

In the view of ZINVOJ, the Bosnian Serb military could only be reinvigorated with the help of the Federal Republic of Yugoslavia: "restarting cooperation among the arms and military equipment capacities is *only* possible with mutual agreements and good will of the Government of the FRY" [emphasis added]. Cooperation with the Respondent was thus a *conditio sine qua non* for the survival of the arms industry in the "Republika Srpska".

378. In the following pages of this Section the Applicant will demonstrate that the Respondent indeed showed all "good will" necessary to put the military industry in

the "Republika Srpska" back on its feet again. The Applicant will illustrate the cardinal role played by the Federal Republic of Yugoslavia with the example of the Unis Pretis factory, one of the Bosnian Serb production facilities mentioned in the above quoted letter. Unis Pretis was located in Vogošća, a Sarajevo suburb. The example of Unis Pretis will show that the military economies of the Federal Republic of Yugoslavia and the "Republika Srpska" were indeed completely intermingled and that, as a result, the Serbs were able to carry on their genocidal campaign in Bosnia and Herzegovina.



379. The connections between Unis Pretis on the one hand and the military industry in the Federal Republic of Yugoslavia on the other were multifold. The ammunition produced in the Unis Pretis factory was, firstly, tested on a testing ground near Belgrade. Secondly, Unis Pretis was used by the Serbs to produce ammunition for both the Yugoslav and the Bosnian Serb Army (VRS). Thirdly, the raw material necessary for the production of ammunition was obtained in the Federal Republic of Yugoslavia. This went on during the entire armed conflict. Finally, Unis Pretis gradually started buying Yugoslav end products they were not able to produce themselves. These products were either given, bought or bartered for other goods produced on the territory under Bosnian Serb control.

Unis Pretis

380. Unis Pretis was an important Serb ammunition factory near Sarajevo. In February 1996, Vogošća was reintegrated into the Federation entity of Bosnia and Herzegovina, following the implementation of the Dayton Accords. Before the armed conflict, Unis Pretis was one of the largest ammunition producing factories in

Yugoslavia. As mentioned above, it was and still is located in Vogošća, a suburb northwest of Sarajevo, which remained under Serb control until February 1996. Before the break up of Yugoslavia, Unis Pretis employed some 5,000 workers who manufactured more than fifty percent of the ammunition required by the former JNA. Before the hostilities erupted in April 1992, the factory produced, among other things, artillery ammunition, so-called "cumulative projectiles", cassette ammunition, armour-piercing shells, smoke shells, hollow-charge shells, all in varying calibre, and mines, "avio bombs" and various rockets and missiles. Unis Pretis also produced for export.

381. In 1991, long before the outbreak of hostilities, all non-Serb personnel of the Unis Pretis factory was forced to resign. When the conflict in Bosnia and Herzegovina broke out, many of the remaining Serb workers joined the Bosnian Serb Army and as a consequence, the number of employees further dropped to 250. During the conflict the number gradually increased again to approximately 500. Production levels followed the same pattern, after an initial drop in the beginning of the fighting, production gradually increased in the following years. Unis Pretis produced an estimated average of 10,000 to 15,000 rounds of ammunition a month, including shells, mines, rockets and other explosives. From April 1992 to the end of January 1993, the factory produced exactly 110,709 rounds of ammunition. In June 1992, the Serb Milorad Motika was officially appointed acting general manager, a post he had unofficially held when the conflict had started. He was proposed for appointment by ZINVOJ in Belgrade.

The Nikinci testing ground

382. In April 1992, Unis Pretis faced several problems. One of the problems which had to be resolved was the absence of an adequate testing centre, necessary to test the quality of the ammunition produced. This was probably due to the fact that the old testing grounds remained under the control of the government of Bosnia and Herzegovina. Possibly, the ammunition produced by Unis Pretis had always been tested outside of Bosnia and Herzegovina. In any case, the government of the "Republika Srpska" ordered its Ministry of Defense to solve the problem in August 1992. The following document containing the order was found on 25 February in the Unis Pretis factory, shortly after the suburb of Vogošća came under government control again:

"Pursuant to article 29, paragraph 3, of the Law on State Administration ('Official Gazette of the Serb people in Bosnia and Herzegovina' - issue 4/92) and article 8, paragraphs 2 and 3, of the Law on Defence ("Official Gazette of the Serb people in Bosnia and Herzegovina" - issue 7/92) the Head of the Government, issues the following:

ORDER

1. The Ministry of Defence is ordered to:

(...)
- request the General Army Staff to report the needs for weapons and military equipment until the end of 1992 both in respect of producers from the territory of Serb Republic and from abroad;

(...)
- *with relevant institutions of FR Yugoslavia negotiate and sign a contract on the use of services and equipment of proving grounds for testing artillery ammunition and other newly produced military equipment for which required proving grounds cannot be found in the territory of the Serb Republic*;

(...)
4. The Ministry of Economy is ordered to find satisfactory solutions regarding settling of debts related to domestic and import trade with special purpose [military] companies from Serb Republic [Republika Srpska] and relevant authorities of FRY [Federal Republic of Yugoslavia].
(...)
6. In charge of the execution of the present order are: Ministry of Defence, Ministry of Economy, Ministry of Transport and Communications and Ministry of Finance.

7. Written report on execution of the present order is to be submitted by 15.09.1992 to the government of Serb Republic.

No. 02-99
Pale, 20 August 1992

HEAD OF GOVERNMENT
Prof. Dr. Branko Djerić
[seal and signature]" [Order No. 02-99, issued by the Head of Government, Branko Djerić, Pale, 20 Aug. 1992, emphasis added, Annex 233].

The government of the "Republika Srpska" thus ordered its Ministry of Defence to approach existing testing grounds in the Federal Republic of Yugoslavia and sign a contract for the use of testing facilities. The fact that no less than four Ministries were engaged in the running of the Unis Pretis factory emphasises the importance of the facility for the Bosnian Serb Army.

383. The testing grounds were later found in Nikinci, a town near Belgrade. On 25 February 1996, when the Unis Pretis premises were inspected, numerous documents from 1993 and 1994 were also found, which show that the Yugoslav Army (VJ) facility in Nikinci regularly tested ammunition produced in Vogošća. The Nikinci testing ground provided the factory in Vogošća with detailed reports on the quality

of the ammunition it produced. One of these reports is, by way of example, reproduced below:

"Register 8.1.2/9
TOC KoV - PROVING GROUND NIKINCI

RECORD OF FIRING RESULTS

Date: 17.08.1993 Time: 10,50-11,20
PKP 0933

TESTING OF ROUNDS 105 mm with TF Grenade M1 Series no. 9301
- testing of ammunition reliability (items 4.8.6.2) -

WEAPONS:	AMMUNITION:	
- Howitzer 105 mm M53, barrel no. 1013	- grenade TF,M1	ser. TV 8921
- elevation: 336 c/00	cartridge MS,M14	ser. different-recalibrated
INSTRUMENTS:	fuse PD,M557	ser. KRI-3-4-5-55
- type: Doppler radar BS-850	capsule 7K, M2882	ser. 3803
- no:	main ring	copper
- detector:	grenade mass	
- initiator: 86.18 mm (2 pcs)	powder NOD-11	ser. MBL 9286
- roller: 8 5x7 mm ser. 254	powder NOD-21	ser. MBL 9286
	filling	TORMENTACNO
REQUESTS UNDER PKP	powder temperature	+ 22 C
Pm.POJ.=2501 - 2599 bars	fuse initiation	momentary

No.	distance (m)	direction (m) left right	velocity (m/s)	pressure (bar)	powder mass NCO-11 g	powder mass NCO-21 g
1	8861	37	547.9	2526	286	1006+250
2	9046	31	552.7	2745		
3	8996	58	551.2	2660		
4	8944	30	549.4	2610		
5	8576	44	522.5	2466	282+120	1006
Max. val:	9046		552.7	2745		
Min. val:	8576		522.5	2745		
Scope min-max	470		30.2	279		

All fuses had immediate initiation with full explosions of the grenades.

Present:	Record made by:	Chief of test group:
	Dimitrijević Bogomir, eng.	Davidović Darko, cap.
	Approved by:	
	Bajunavić Radovan, major	Head:
		Srnić Radovan, Lt.Col."

[Record of firing results, Proving Ground Nikinci, 17 Aug. 1993, signed Lt. Col. Srnic Radovan, Annex 234].

384. Transports between Unis Pretis and the Nikinci testing grounds occurred with clock-like regularity. Five days after the report quoted above was written, the Unis Pretis factory again sent ammunition to Belgrade with the intention to have it tested:

"PRETIS FACTORIES SARAJEVO - VOGOŠĆA
SHIPPING STATION SEMIZOVAC - INDUSTRIAL PLATFORM
Phone: 34-329, 34-338, 34-355, 34-356, 34-372, 34-373; telex: 41-289

ORDER - BILL OF LADING no. 779/93 Date 22.08.1993

DESTINATION: TESTING CENTRE NIKINCI

name of driver Ivanković Rade, plate no. SA 314-037

measure unit	bill of lading	quantity		description
pcs.	779/93 OF 22.8.93	8	8	mine 120 mm CTF
kg	-"- -"-	2	2	gun powder NGH - 255 for T-12

order issued	dispatched/received
sales officer	[signature]
	23.08.1993
[signature]	[stamp]
[stamp]	Yugoslav Army
PRETIS Vogošća	Military Post 2342
	Nikinci"

[Order - Bill of lading no. 779/93, Pretis Factories Sarajevo-Vogošća, 22 Aug. 1993, Annex 235].

This "bill of lading" shows that it would take the driver little time to cover the distance between the factory in Sarajevo and the testing ground near Belgrade. This was quite an achievement in war-ridden Bosnia and Herzegovina. One has to assume that customs formalities, if any, were not too complicated. In peace time, the distance between Sarajevo and Belgrade would have been approximately 300 kilometres. During the armed conflict, the distance was longer, as many through roads were not accessible due to the fighting and the jagged frontline. The quality of the roads which could be used was often very poor. The document cited above was signed in Nikinci at delivery, on 23 August 1993, that is one day after the truck or car had been loaded in Vogošća.

385. The Bosnian Serbs were never charged for the services rendered by the Yugoslav Army testing ground in Nikinci.

The Yugoslav trade

386. A second problem which threatened production at Unis Pretis was the lack of funds. This lack of funds hampered trade. In August 1992, the Bosnian Serb leadership therefore ordered the Ministry of Economic Affairs to find "satisfactory solutions" to the financial problem [see above, Order No. 02-99, issued by the Head of Government, Branko Djerić, Pale, 20 Aug. 1992, Annex 233]. The financial problems were consequently solved, although the Bosnian Serbs occasionally continued to face shortages of funds throughout the armed conflict. As a consequence, the delivery of raw materials, necessary to continue the production of ammunition at the Unis Pretis factory, could at times be delayed [See e.g. Telex from Holding Pretis Vogošća, addressed to General Staff of the Army of the Srpska Republika, Strictly Confidential No. 419/94, 20 Dec. 1994, Annex 236]. Generally, however, the Bosnian Serb government and the Unis Pretis factory could acquire the money required to obtain the indispensable feedstock, in the Federal Republic of Yugoslavia. Money was routinely transferred to accounts of companies across the border, as the following payment order illustrates:

"Pretis - Vogošća (memorandum)

To:

EI "BIRAC" ZVORNIK
Attn. Mr. Matic
ZVORNIK

fax. 015/89-269
076/587-468

Our ref. Ecc.PS/cs Vogošća, 04.04.1995

Subject: payment order

Based on contract on procurement of equipment and goods in FRY of 21.11.1994, please execute the payment in the amount of 20.000,- dinars on our behalf to the firm:

'BIROVACA' - BEOGRAD

account no. 42200-685-8-12482

Best regards,

Director of 'PRETIS' Holding
Mr. Milorad Motika, eng."

[Payment Order, from Pretis -Vogošća to EI 'Birac' Zvornik, 4 April 1995, signed: Milorad Motika, Annex 237].

This payment order was given by the director of Unis Pretis, Milorad Motika. The payment was done through an intermediary in Zvornik, on the border with Serbia proper, probably to avoid detection by the international observers controlling the so-called "embargo" the authorities of the Federal Republic of Yugoslavia had imposed on the "Republika Srpska" on 4 August 1994. Both the payment order quoted above and the underlying contract are dated after the imposition of this "embargo".

387. The Serb authorities in the Federal Republic of Yugoslavia and the "Republika Srpska" showed a great deal of ingenuity whenever financial impediments occurred. In order to receive raw materials in times of financial scarcity, the Bosnian Serbs occasionally reverted to barter; the Bosnian Serbs would, for example, supply ammunition in exchange for explosives. The following telex provides an example of this special trade. On 28 January 1994, it was sent by General-Major Djordje Djukić to the Bosnian Serb Ministry of Defence. Djordje Djukić was a Yugoslav Army General in charge of the logistics for the Bosnian Serb Army, until he was imprisoned by Bosnian authorities on 30 January 1996 [see Reply, Chapter 8, Section 8]. A copy of the telex was also sent to Unis Pretis, where it was later found by Bosnian authorities:

"General Staff of the Army
of the Republic of Srpska
rear sector
confidential 12/10-22
28.01.1994

Military secret
Confidential

TO BE DELIVERED TO: Ministry of Defence of the Republic of Srpska
COPY TO: Pretis Holding Co. Vogošća

Ordnance supply by YA [Yugoslav Army]; Information

Reference: Request of the commander of GS VRS [General Staff of the Bosnian Serb Army] addressed to NGS VJ [Chief of General Staff of the Yugoslav Army], strictly confidential 13/21-5-4 of 09.01.1994 and the reply thereto (information) 608. Technical-Supply Bases of SSNO [Federal Ministry of Defence in Belgrade], confidential 1-5 of 21.01.1994.

By the above mentioned act, the GS VJ [General Staff of the Yugoslav Army] informed us about the measures taken as to provide ordnance required by our request mentioned above, and that is the following:

1. Requested 2.000 t of steel from the forge Nikšić [Montenegro] for the production needs of Pretis cannot be provided, due to lack of funds.

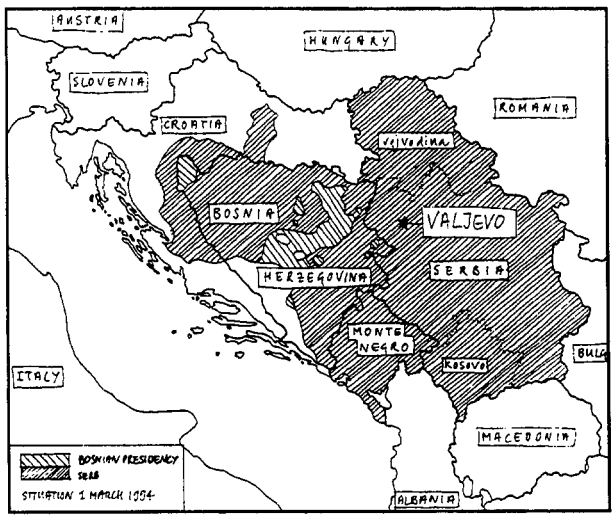
2. The provision of 100 t of explosive (out of the requested 150 t) in the compensation for 125 mm rounds for tanks type T-84 is taken into procedure. After the decision has brought, the logistic administration of the VJ [Yugoslav Army] will conclude a contract on the compensation with Pretis.

3. The provision of mortar rounds from the Krušik Valjevo factory [Serbia proper] has been approved of, according to the decision ref. confidential 85-1 of 10.01.1994 which was forwarded to the Krušik Valjevo factory.

Please, take this into consideration and settle the obligations originating from items 1-3, which are in your exclusive competence, and inform the GS VRS [General Staff of the Bosnian Serb Army] about the outcome. Also, please order Pretis Vogošća Co. to accelerate the production.

General-Major
Djordje Djukić"
[Ordnance supply by Yugoslav Army; Information, from General Staff of the Army of the Srpska Republika, to Ministry of Defense of the Srpska Republika, confidential 2/10-22, 28 January 1994, signed: General-Major Djordje Djukić, emphasis added, Annex 238].

In exchange for "125 mm rounds for tanks type T-84", the Yugoslav Army General Staff supplied Unis Pretis with no less than 100 tons of explosives. The transport of these explosives alone must have required a special convoy, consisting of various heavy trucks. The Krušik Valjevo factory mentioned in Djukić's telex as a supplier of the Bosnian Serb Army is one of the largest arms and ammunition producing facilities in the Federal Republic of Yugoslavia.



388. As mentioned in the foregoing communication, the explosives were traded for tank shells. In this way, Unis Pretis produced for the Yugoslav Army as well. The General Staff of the Yugoslav Army (VJ) was thus well informed on and approved of the arms deals Unis Pretis and the various military facilities in the Federal Republic of Yugoslavia, such as the Krušik plant, were involved in.

389. In the telex sent to the Bosnian Serb Ministry of Defence, General Djordje Djukić asked the Ministry to order Unis Pretis to accelerate production. Unis Pretis was, however, not able to meet all the requirements of the Bosnian Serb Army. As the fighting raged on and the old JNA supplies started to run out, the factory began to obtain end products in Yugoslavia as well, like mortar rounds [see above, Ordnance supply by Yugoslav Army; Information, from General Staff of the Army of the Srpska Republika, to Ministry of Defense of the Srpska Republika, confidential 2/10-22, 28 Jan. 1994, signed: General-Major Djordje Djukić, Annex 238], and mines and bullets [Contract between Technical Maintenance Institute Kragujevac and Unis Holding Pretis - Vogošća, concluded on 20 July 1995, Annex 239].

390. Unis Pretis was also supplied with so-called "weapons for operational support". These weapons were produced by the VTI, the Military-Technical Institute in Belgrade, as was revealed by the following telex. On 19 February 1994, it was sent by Unis Pretis to the Chief of Staff of the Bosnian Serb Army. As all documents referred to in this Section, it was found at the premises of the factory in Vogošća on 25 February 1996:

> "Pretis
> Vogošća
> strictly confidential 17
> 19.02.1994
>
> Attn. Chief of Staff of the VRS [Bosnian Serb Army]
> Brigadier-General Manojlo Milovanović
>
> Reference: your fax strictly confidential 03/4-154 of 18.02.1994
>
> *It is true that 2 weapons for operational support are being produced in the VTI Belgrade in accordance with the order strictly confidential 03/4-31 of 15/01/1994 of the GS VRS [General Staff of the Bosnian Serb Army], and that they will be finished by 23.02.1994 and the crew from the 89th brigade of VRS trained.*
> The disposition for the weapons is to be approved of by the Commander in Chief of the GS VRS, Major-General Ratko Mladić.

er/cs

Pretis Vogošća
Colonel, Ecimović Radmomir, eng.
19.02.1994
[signature]"

[Letter strictly confidential 17, from Pretis to Chief of Staff of the Army of the Srpska Republika, 19 Feb. 1994, signed Ecimović Radmomir, emphasis added, Annex 240].

This quoted document illustrates not only that a military facility in Belgrade produced special weapons for the Unis Pretis factory in Vogošća, but also that this was done on orders from the General Staff of the Bosnian Serb Army. The Bosnian Serb Army thus had the authority to commission the production of weapons in the Federal Republic of Yugoslavia. The document also shows that the Yugoslav Army trained Bosnian Serb soldiers, *in casu* the 89th Brigade, to operate the new weapons delivered.

Avio bombs

391. During the conflict, Unis Pretis also started designing its own new weapon systems. In 1994, the factory developed a new method to launch avio bombs from improvised rocket launchers. These adapted avio bombs were used to shell Sarajevo and Visoko in 1994 and 1995, where they caused widespread fear and many casualties among the civilian population. They were fired from rocket launchers set up on military trucks. Both the rocket engines required for the propulsion of the bombs and the avio bombs themselves were procured in the Federal Republic of Yugoslavia. This is illustrated by the following telex, which was sent by Milorad Motika, the director of Unis Pretis, to General Ratko Mladić personally:

"Fax message no. 122/94

Addressee: General Staff of the Army of Republic of Srpska
Attn: General Mladić

Sender: Unis Pretis Sarajevo, Pretis Holding Vogošća

Date: 10.05.1994

Would you be so kind as to intervene with the Chief of the General Staff of the Yugoslav Army, Gen. Perišić, to have your letter regarding 1,000 pcs of rocket-engines 122 mm type GRAD, be send to the Assistant Minister of Defence of the FRY in charge of Military-Economic Sector for the

> *approval which is to be, then, forwarded to the Holding Krušik Valjevo, for the needs of Holding Pretis.*
>
> Sincerely,
>
> Manager
> Motika Milorad, B.Sc. eng."
>
> [Fax Message No. 122/94, from Unis Pretis to General Staff of the Army of the Srpska Republika, General Mladić, 10 May 1994, signed Motika Milorad, emphasis added, Annex 241].

This message shows that the propulsion rockets for the launching of the avio bombs, the Russian "Grad", were supplied by Belgrade. The Bosnian Serb Army obtained its rockets owing to a letter General Ratko Mladić had sent to General Momčilo Perisić. The letter in addition shows that a bureaucratic procedure existed, involving a direct line of communication between the Commander of the Bosnian Serb Army, General Mladić, and the Chief of Staff of the Yugoslav Army, General Perisić. The fact that this line existed was also known to the director of Unis Pretis, who asked General Mladić to contact General Perisić again to speed up the delivery of the rocket engines which he had ordered before.

392. The avio bombs to be mounted on the rockets were also supplied by the Federal Republic of Yugoslavia when the old JNA stocks in Bosnia and Herzegovina started running dry. They were then obtained by Unis Pretis in Kragujevac, in Serbia proper, at the local Technical Maintenance Institute [Contract between Technical Maintenance Institute Kragujevac and Unis Holding Pretis - Vogošća, concluded on 20 July 1995, Annex 242].

393. The development of the avio bombs by the Bosnian Serbs was confirmed by General Djordje Djukić in the statements he gave to the Bosnian authorities, shortly after his capture on 30 January 1996:

> "As far as I can recall, the usage of the aircraft-bomb so that it could be launched with support of the rocket-engine was mentioned for the first time approximately a year before the flights of the Air-forces of the Army of the Serbian Republic [VRS] were forbidden. The idea itself came from East-Bosnian Corps of the VRS. This manner of the usage of the aircraft-bombs was not the topic of the conversations in the Main HQ of the VRS, or on the Collegiate of the Commanders. As far as I remember, deceased General Rajko Balac talked about such a usage of the aircraft-bombs to General Mladić. It was strange to me that my sector did not know anything about that, and in that conversation I discovered this method of usage of the aircraft-bombs. I did not know anything about the invention, ideas and development of this system, but I knew that the first launchings of this modified rocket system were unsuccessful. I heard that in conversation with the officers. *It is known to me that the first systems used one rocket-engine as propelling gear, and that was the*

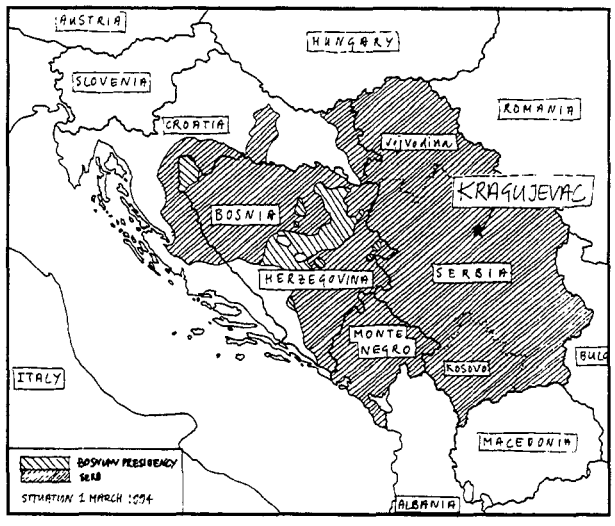
reason for unsuccessful launching. After the construction of the rocket group with two or three engines was done, the launching probably became more successful, and according to my opinion, that modified system with four rocket-engines should be the most precise. I think that the maximal range of this system is about two kilometres. After having been convinced in the efficiency of this system, Mladić gave the order to all Corps to start producing the launchers. I know that Mladić gave an order to make those launchers to all Corps of the Army of the Serbian Republic [Republika Srpska] when he was in contacts with Commanders of the Corps and during the encounters with Commanders. The launchers were made in the Corps. I am positive that nobody from the Main HQ of the VRS, except Mladić and Balac, worked on this program. Launchers were produced in the following Corps: Herzegovina, Drina, Eastern-Bosnia, Sarajevo-Romanija and 1st Krajina Corps; in some of the Corps, I do not know in which, there were two launchers. *The Army of the Serbian Republic [VRS] had already the bombs used for this modified rockets system.* The largest number of the bombs was located in Banja Luka area, then, I think that there were bombs in the warehouses in Koran [near Pale], and it was possible that there were bombs in Herzegovina in the Duz warehouse. *When the engines were provided, the bombs were transferred to the factory 'Pretis' in Vogošća, where they were equipped with engines.*
The Government of the Serbian Republic bought the engines for this modified rocket system. I remember the statement of General Mladić in the autumn of 1994. On that occasion Mladić stated that he succeeded to get rocket-engines through the Government. But, it was obvious that engines were supplied on Mladić's request. The details about the obtainment of the engines as well as the country of purchase were not known to me, and I, personally, never saw this modified rocket system. If the rocket-engines type 'Grad' were in question, then the country of their origin was Russia or more precisely, they were produced in Russia. Regarding the application of this rocket-systems, I have to emphasise that I knew that the engaging was suggested by the Commanders of the Corps, and General Mladić approved it. Once I was present during the conversation between General Mladić and a Commander of the Corps, when General Mladić in conversation with this Commander of the Corps of the VRS, approved the use of this weapon. I am positive that nobody else but General Mladić could approve the usage of this system and that each usage was approved by General Mladić personally. *I have to point out that the aircraft-bombs of 100, 150, 250 kilograms were used for this system and that I do not know the total number of the equipped aircraft-bombs as well as the number of discharged ones. I do not know the scale of damage this system can cause, but regarding the weight of the aircraft-bomb, it could be enormous.* I have never seen the effects of this system, and I found out for its usage through the mass-media. In the reports on usage of this modified rocket system, there was not direct mentioning of the aircraft-bombs, and Commander of the Corps informed Mladić about the usage of this system forming a sentence: 'boss, that, what we agreed upon, was used', and using the same formulations, they asked for the permission for the further usage." [Statement of General Djordje Djukić, Feb. 1996, pp. 2-4, emphasis added, Annex 140].

The avio bombs were specially developed to bomb civilian targets, such as the city of Sarajevo. They had no military value or purpose whatsoever.

The suppliers

394. The mortar rounds, mines, bullets, rocket engines, avio bombs and other "weapons for operational support" were procured from various military factories and institutions in the Federal Republic of Yugoslavia. Important suppliers of arms and ammunition were, for example, the Military Technical Institute (VTI) in Belgrade, where the so-called "weapons for operational support" were produced [*op. cit.* Letter

strictly confidential 17, from Pretis to Chief of Staff of the Army of the Srpska Republika, 19 Feb. 1994, signed Ecimović Radmomir, Annex 240], the Krušik factory in Valjevo [Information, str. class. no. 88/94, from Pretis Holding to General Staff of the Army of the Srpska Republika, 04 Apr. 1994, signed Radomir Ecimović, Annex 243], and the Technical Maintenance Institute in Kragujevac. All mentioned factories were located in the Federal Republic of Yugoslavia.



395. Unis Pretis signed an important contract with the military production facility in Kragujevac on 20 July 1995. This contract was agreed upon immediately after the massacre at Srebrenica [see Reply, Chapter 5, Section 8]. This contract was also found at the premises, after the factory had been reintegrated into the Federation:

"CONTRACT
Concluded on 20.07.1995

between:

1. *TECHNICAL-MAINTENANCE INSTITUTE KRAGUJEVAC represented by Colonel Todorović Borislav, manager*, (the seller) and:

2. UNIS HOLDING PRETIS - VOGOŠĆA represented by Motika Milorad, B.Sc. eng., manager, (the buyer)

Article 1.

The subject of this Contract is buying and selling of military hardware.

Article 2.

The seller sells and the buyer buys the following kinds of military hardware:

1. Mines 60 mm in the quantity of	*5000 pcs.*
2. Mines 82 mm in the quantity of	*5000 pcs.*
3. FAB type 100 in the quantity of [high-explosive avio bombs]	*100 pcs.*
4. FAB type 200 in the quantity of	*100 pcs.*
5. Bullets 7,62 mm AP and PAP in the quantity of [automatic and semi-automatic rifles]	*2.000.000 pcs*
6. Frame for automatic rifles in the quantity of	*2.000 pcs*
7. Primary filling M 74 in the quantity of	*5.000 pcs*

Article 3.

Prices, delivery deadlines and other concrete terms for the realisation shall be defined by the annexes to the present contract, which will be attached hereto and represent its integral part.

Article 4.

Parties to the present contract have agreed and undertaken the obligation to apply the current standards of the Army of Yugoslavia and PKP at the realisation of the present contract.

Article 5.

Any disputable issue that may appear in the realisation of the present contract will be settled in accordance with the Rules of Procedure of Military Institutions and before the relevant Economic Court in Kragujevac.

Article 6.

The present contract comes into force by its signing by both parties and its implementation starts from 20.07.1995.

The present contract is done in four equally authentic copies with annexes thereto, which represent an integral part of the present contract.

Kragujevac 20.07.1995

SELLER	BUYER
Colonel Todorivić Borislav	Motika Milorad, B.Sc.eng
[signed and sealed]"	

[Contract between Technical Maintenance Institute Kragujevac and Unis Holding Pretis - Vogošća, concluded on 20 July 1995, emphasis added, Annex 242].

This contract with the Technical-Maintenance Institute in Kragujevac was signed almost one year after the last solemn proclamation of the Yugoslav authorities that they would definitively stop aiding the Bosnian Serbs. The plant in Kragujevac was represented by its manager, a colonel in the Yugoslav Army. The Technical-Maintenance Institute was thus controlled by the Yugoslav military.

396. The military hardware mentioned in the above cited contract was bartered for commodities produced in Bosnia and Herzegovina. In exchange for various types of ammunition, the Unis Pretis factory supplied the institute in Kragujevac with lumber, steel profiles, metal frameworks, Golf engines and bearings for railway carriages [Compensational Contract between Unis Holding Pretis - Vogošća and Technical Maintenance Institute Kragujevac, Ref. 819-1, concluded 24 July 1995, Annex 244]. The mentioned contracts illustrate that Unis Pretis was authorised to enter into agreements with Yugoslav parties and that it sometimes even engaged in bartering products which it did not produce itself.

The international observers

397. On 4 August 1994, the Respondent again announced that it would stop supplying the Bosnian Serbs. In reaction to this announcement, the International Conference on the Former Yugoslavia Mission to the Federal Republic of Yugoslavia deployed several dozens of observers on the border between Bosnia and Herzegovina and the Federal Republic of Yugoslavia. The results of the work done by these observers were sent to the United Nations Security Council every thirty days. The documents presented in this Section, however, illustrate that, even after 4 August 1994, the Respondent continued to support the war efforts of the "Republika Srpska", the traffic across the border carried on without interruption or impediments. The international monitors deployed in the border area, in fact, did not succeed in controlling the traffic across the border effectively. The Yugoslav authorities continuously fooled the international observers, who regularly intercepted small deliveries of relatively unimportant commodities, but structurally failed to stop or even notice those border crossing that really mattered: oil tankers carrying fuel for the Bosnian Serb Army and trucks transporting all sorts of military equipment.

398. The failure of the international community to effectively control the so-called embargo the Respondent announced on 4 August 1994, is best illustrated with the following example. On 7 July 1995, Unis Pretis sent a telex to a Bosnian Serb Army base in Bijeljina, in the northeast of Bosnia. In this telex it told the army unit to transport a load of gunpowder back across the border to Valjevo in Serbia proper:

"UNIS PRETIS HOLDING CO. VOGOSCA

35TH REAR BASE - BIJELJINA
BIJELJINA

our ref. ER/ćs 81 date: 07.07.1995

SUBJECT: Recurrence of Gunpowder; request

Gunpowder type NGB 161 in the quantity of 929,7 kg has been delivered by mistake to PRETIS instead of Krušik - Valjevo. Gunpowder is intended for the production of gunpowder filling type OP-H74 for 120 mm mortar rounds in KRUSIK - Special Purposes Production.
Please transport it back to Valjevo. The General Staff of the Army of the Republic of Srpska, Logistics, Lieutenant-Colonel Cvijeti M. has been informed about it.

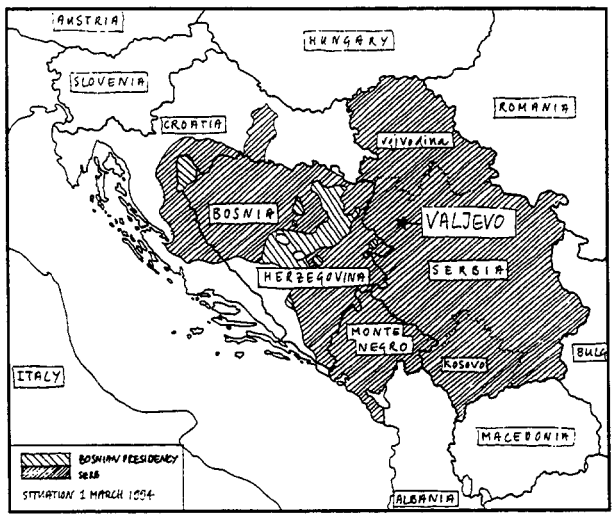
Best regards,

co.
archives

PRETIS HOLDING - TECHNICAL MANAGER
Colonel Ećimović Radomir, B.Sc.eng.
[signature and stamp]"

[Letter from Unis Pretis Holding to 35th Rear Base - Bijeljina, 07 July 1995, signed Ećimović Radomir, emphasis added, Annex 245].

As mentioned above, the Krušik factory is based in Valjevo, approximately ninety kilometres southeast of Belgrade. This letter shows that a large amount of gunpowder crossed the border between the Federal Republic of Yugoslavia and Bosnia and Herzegovina twice within a short period. The fact that the factory *returned* this considerable amount of gunpowder to Serbia, in the middle of an intense armed conflict, in addition illustrates the confidence the Bosnian Serbs had in the efficiency of the Yugoslav deliveries. Despite the "embargo" and the international observers controlling the cross border traffic, they apparently had no fear whatsoever of the supplies coming to an end.



399. On 3 August 1995, the International Conference on the Former Yugoslavia Mission presented its periodic report covering the period during which the mentioned transports of explosives took place [United Nations, *Letter Dated 3 August 1995 from the Secretary-General Addressed to the President of the Security Council*, S/1995/645, 3 Aug. 1995]. The observers reported numerous violations of the "embargo": they, for example, reported no less than 492 illegal crossings of unarmed and occasionally armed uniformed personnel [*ibid*, p. 5, paras. 14, 15] and they established numerous helicopter crossings, which the Yugoslav authorities later claimed were "medical evacuation flights" [*ibid*, p. 6, paras. 19, 20]. The International Conference on the Former Yugoslavia Mission failed, however, to observe the border crossings of the gunpowder referred to in the above quoted telex.

400. On 11 August 1995, a different truck filled with, among other things, 12,000 kilograms of TNT crossed the border between the Federal Republic of Yugoslavia and Bosnia and Herzegovina [Fax from Pretis Holding Co. - Vogošća to the Ministry of Defense of the Srpska Republika, 11 Aug. 1995, signed by Motika Milorad, Annex 246]. Again, the International Conference's Mission failed to notice this massive shipment of explosives [United Nations, *Letter Dated 3 August 1995 from the Secretary-General Addressed to the President of the Security Council*, S/1995/768, 6 Sep. 1995].

401. After 4 August 1994, border crossings between the "Republika Srpska" and the Federal Republic of Yugoslavia thus went on with clock-like regularity. In May 1995, the transport of goods across the border was even formalised, as is illustrated by the following telex sent to Unis Pretis by the Bosnian Serb Ministry of Defence on 22 May 1995:

> "Ministry of Defence
> Highly restricted, number 05-21-2179/95
> Date: 22 May 1995
>
> To: Companies for special production [factories for the production of weaponry]; Maintenance Institutes
>
> Subject: Transport of goods across the border with the SRJ [Federal Republic of Yugoslavia]
>
> *At the level of the Government of the Republic of Srpska the transport of goods from the RS [Srpska Republika] to the SRJ [Federal Republic of Yugoslavia] and vice versa is organised as a permanent activity for the companies for special production and maintenance institutes being part of the VRS [Bosnian Serb Army].*

Informing you on this, if you have now prepared goods for transport to the SRJ or goods in the [S]RJ prepared to be transferred into the RS, it is necessary you inform us immediately on kind and number of transportation means by which the prepared goods will be transported, so that the organisation of transportation could be done according to that data.
Please send data coded and keep them as highly confidential.

Deputy Minister
for Military Economy
Colonel Orasanin Spasoje, B.Sc. Machine Eng.

Deliver to:
1 x Pretis - Vogošća
1 x 'Rudi Čajavac' B. Luka
special production
1 x 'Zrak' - Teslić
1 x 'Trudbeni' - Doboj
1 x RZ 'Kosmos' - B. Luka
1 x TRZ Hadžići
1 x VZ 'Orao' Rajlovac
1 x 'Kovačnica' Bileća
1 x 'Niski napon' Doboj

22.05.'95
[signed]"

[Ministry of Defence, Telex, Transport of goods across the border, addressed to companies for special production, signed Colonel Orasanin Spasoje, 22 May 1995, Annex 247].

In May 1995, almost one year after the imposition of the alleged "embargo" by the Yugoslav authorities, border transport was thus "organised as a permanent activity".

402. How the border controls were circumvented was later clarified by General Djordje Djukić. After his arrest by the Bosnian authorities in the vicinity of Sarajevo, Djukić released the following statement, explaining how the Respondent misused the Yugoslav Red Cross to mislead the international observers:

"The transport of the collected material and goods we got on the different ways, including humanitarian relief which was used for the needs of the ASR [VRS], was done on the following manner: Lieutenant Colonel Gajić, superior of the Commissariat in the Main HQ of the Army of the Serbian Republic, after he had collected the goods on one place, made an inventory list according the sorts and quantities of the goods and he went with that list to the Red Cross of Yugoslavia to make according to that list an Inventory list of the Red Cross which was verified. With the verified Inventory list of the Red Cross of Yugoslavia and with collected goods we went to the International Custom Control. The Control could be done in Belgrade, on Sajmiste, in Sremska Mitrovica and Novi Sad. During the inspection, the foreign custom-officers compared the verified Inventory list of the Red Cross of Yugoslavia with goods, the goods were loaded on the vehicles and then they sealed the vehicles. *Such sealed vehicles with proper documentation in which was stated that the humanitarian aid was transported and in which as the final user was not*

> *mentioned the Army SR [Srpska Republika], came across the borders of the Federal Republic of Yugoslavia and the Serbian Republic without any problems.* The vehicles with civil register plates which had been previously mobilized for the needs of the ASR were used for the transport." [Statement of General Djordje Djukić, 5 February 1996, emphasis added, p. 4].

The Belgrade authorities used other methods as well to deceive the international community. After August 1994, suddenly fifty to sixty oil tankers a week began showing up at the border crossing with Bosnia and Herzegovina with papers indicating that they were travelling to Croatia [Stephen Engelberg & Eric Schmitt, International Herald Tribune, *"Milošević still sending aid"*, 12 June 1995, Annex 158]. The international observers were, because of their limited mandate, not allowed to stop these transports, nor were they able to control whether these trucks ever reached their destination in Croatia. They, however, did assume that the oil tankers dropped their cargo in Bosnia and Herzegovina [*ibid*].

Epilogue

403. The documents quoted in this Section clearly illustrate that the Yugoslav authorities indeed continued to support the Serb genocidal effort throughout the conflict. Despite the often repeated claims to the contrary, the Respondent carried on supplying the Bosnian Serbs on a massive scale. The assistance given to the Bosnian Serbs illustrates the purely cosmetic character of the JNA transformation. The Belgrade authorities carried on sending goods across the river Drina, in spite of the fact that the 2nd Military District had supposedly been disbanded on 19 May 1992 [see Reply, Chapter 8, Section 4].

404. The continuous character of the aid given by the Respondent was also explained by General Djordje Djukić during his interrogations by the Bosnian authorities in February 1996. General Djukić was, as mentioned earlier [Reply, Chapter 8, Section 8], in charge of the logistics of the Bosnian Serb Army. In that capacity, he regularly visited the authorities in Belgrade in order to secure supplies for the Bosnian Serb Army:

> "*During my stay in the Serbian Republic [Republika Srpska], due to my professional duties and tasks, I went to the territory of the Federal Republic of Yugoslavia several times. In 1992 and till the end of 1993, I went to the Federal Republic of Yugoslavia (FRY) approximately once in three months, while in 1994 and 1995 I went in FRY roughly once a month. I pointed out that sometimes I went to the FRY several times in a month, depending on the necessity.* During my stays in the FRY, I contacted Military and Civil structures of the FRY. I had to remark that I made those contacts only to provide supplies for the needs of the Army of the Serbian Republic (ASR), and never to arrange supply for the Civilian structures of the Serbian Republic. *During my visits to the FRY, I made contacts with the following Ministers in the Government of the Republic of Serbia:*

> *Minister for the Connections with Serbs out of Serbia, Minister for the Private Sector, Minister for the Economy and Minister for the Energy. All those contacts were made in order to provide the supplies for the Army of the Serbian Republic [Bosnian Serb Army].* Regarding that, I talked with the Minister for the Connection with Serbs [from] Serbia about all requests sent to the civilian structures, trying to make a good use of his position. With the Minister for the Private Sector, I talked about the engagement of the Private Sector in gathering the aid or in giving the various assistance to the ARS [Bosnian Serb Army] like: supply of the smaller quantities of the shoes, spare parts, reparation of the vehicles, etc. With the Minister for the Economy, I discussed the possibility to obtain export permission for the goods from his domain, basically for food-stuffs. Namely, the Minister for the Economy was authorized to issue the permission for the goods which were restricted for the export from Serbia, and he also knew the quantities of the Reserve Materials, what is also under his jurisdiction. With the Minister for Energy, I basically talked about heating-oil. On this manner, I succeeded to provide about 150 tons of oil every year, which we used for heating the Command place and for the needs of the garrison command Banja Luka and military barrack "Vrbas". I would like to mention that the naphtha was provided through the Government of the Serbia Republic and that I did not get it on this way." [Statement of General Djordje Djukić, 5 Feb. 1996, emphasis added, pp. 1-2, Annex 140].

The arrangements for the supply of the Bosnian Serb Army, which went on until the day Djukić was arrested, were thus made at the highest level in Belgrade and involved all important Ministries of the Republic of Serbia. Without the intensive involvement of these Ministries and organisations such as ZINVOJ and also the Yugoslav Chamber of Commerce and Industry [Yugoslav Chamber of Commerce and Industry, Invitation for 18th Session addressed to Unis Pretis, No. 0210/18, 14 April 1994, Annex 248], which continued their supporting and coordinating activities as if Bosnia and Herzegovina had never gained independence, the Bosnian Serb economy and, with it, the Bosnian Serb Army, would have collapsed soon after the "withdrawal" of the JNA in May 1992. If the Federal Republic of Yugoslavia had cut off all supply lines with the Bosnian Serbs, the genocidal conflict would not have lasted for almost four years. According to Lord David Owen, European Community mediator and co-chairman of the Peace Conference on the former Yugoslavia, the "Serb military operation in Bosnia" would then have ground "to a halt within a week" [Memorial, p. 83, para. 2.3.7.1.].

11. Forced recruitment in the Federal Republic of Yugoslavia

Introduction

405. This Section of the Reply will be entirely dedicated to one phenomenon particular to the armed conflict in Bosnia and Herzegovina. The Applicant will show the Court that the Respondent forced many Serb men living in the Federal Republic of Yugoslavia to participate in the fighting in Bosnia and Herzegovina. These men,

often but not always Bosnian Serb refugees, were forcibly mobilised by the Respondent into the Bosnian Serb Army. After being arrested in the Federal Republic of Yugoslavia, the new conscripts were transferred to Bosnia and Herzegovina, where they were deployed on the front. The Applicant will also demonstrate that these forced mobilisations continued throughout the entire conflict - that is, until the summer of 1995 - and that they were organised under the authority of the Serbian Ministry of the Interior in Belgrade, in close cooperation with the so-called bureau or office of the "Republika Srpska" in Belgrade.

Counter-Memorial

406. In the Memorial, the Applicant quoted two British newspaper reports on the forced mobilisation campaigns, explaining the involvement of the authorities in Belgrade and the fact that the Bosnian Serb refugees were handed over to military in the "Republika Srpska" [Memorial, pp. 84, 85, para. 2.3.7.5]. In spite of this reference made to the campaign in the Memorial, the Respondent completely ignored the topic in the Counter-Memorial. The Respondent, to be sure, quoted Ilija Djukić, Yugoslav Minister for Foreign Affairs, who in November 1992 solemnly declared that "the Federal Republic of Yugoslavia is strongly and persistently pursuing efforts aimed at helping end the military operations in Bosnia and Herzegovina" [Counter-Memorial, p. 280, para. 3.4.1.9.], but it failed to explain how the press-ganging of refugees was supposed to contribute to this aim. The mobilisation campaigns of the Belgrade authorities had, of course, the opposite effect, since they only contributed to prolonging the armed conflict and thus genocide being committed in Bosnia and Herzegovina. As a result of the "efforts" of the Respondent, the Serbs were able to carry on their offensives in Bosnia and Herzegovina until the very end of the hostilities, the brutal take-over of the Srebrenica safe area being the most tragic example.

The mobilisation campaigns

407. Once it became clear that the resistance of the Bosnian government was harder to overcome than the Serbs had originally thought, the Serbs started filling up the ranks of the Bosnian Serb Army with recruits from the Federal Republic of Yugoslavia. The majority of the recruits were Serbs who had left Bosnia and Herzegovina at the beginning of the war to avoid the fighting and military service. There were, however, exceptions to this rule. Often Serbs without any Bosnian antecedents were recruited as well. [United Nations, *Situation of Human Rights in the territory of the*

former Yugoslavia, Final Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, E/CN.4/1996/9, 22 Aug. 1995, p. 23, paras. 115-116].

408. The Belgrade authorities not only mobilised Serbs for the Bosnian Serb Army, they also recruited for the army of the so-called "Republika Srpska Krajina" in serb-held Croatia.

409. The mobilisation campaigns were not incidental. The forced recruitment by the authorities of the Federal Republic of Yugoslavia in fact continued throughout the entire conflict.

410. In February 1993, the first reports on the unlawful recruiting of Serb men reached Tadeusz Mazowiecki, Special Rapporteur of the United Nations Commission on Human Rights. On 17 November 1993, he reported that 500 Bosnian Serb refugees were arrested by the Serbian authorities and sent back to fight with the Bosnian Serb Army:

> "186. In February 1993, the Conference on Security and Cooperation in Europe (CSCE) mission in Vojvodina received reports of the unlawful recruiting of Serb refugees from the so-called Republic of Serbian Krajina by 'armed gangs', who took them from the streets and sent loaded trucks of 'volunteers' directly to the front. *The Special Rapporteur's staff was informed that after a group of 500 Bosnian Serb refugees arrived in a refugee centre in Sremska Mitrovica [Serbia] in March 1993, the men were taken from the camp and sent to the front, certainly with the knowledge of the camp authorities.* As a result of these and similar incidents, refugees of military age are reluctant to apply for refugee status, fearing this will simply serve to bring them to official attention.
>
> 187. The Yugoslav Government told the Human Rights Committee in November 1992 that an amnesty would be granted to those who had deserted from the federal army, or who had failed to obey the orders of the military authorities.
> However, no amnesty has been granted." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Fifth Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 27, para. 186-187, emphasis added].

At the same time, similar reports about the forced recruitment of refugees started to appear in western newspapers, such as the British daily *The Telegraph* and *The Guardian* [Michael Montgomery & Adrian Brown, "Time running out to avoid a new conflict, Serb leaders tell UN", *The Telegraph*, 9 Feb. 1993, Annex 249; Yigal Chazan, "Krajina rebels draft refugees", *The Guardian*, 17 Feb. 1993, Annex 250].

411. As the mobilisation campaign went on, it became a regularly returning topic in the media and in the reports produced by the Special Rapporteur. On 31 January 1994, that is, almost one year after the first reported incident had taken place, the "Republika Srpska" government ordered a full-scale mobilisation and as a consequence, hundreds of refugees in Serbia proper were arrested and transported to Bosnia and Herzegovina:

> "On Monday, the Bosnian Serbs ordered full-scale mobilisation, while UN aid officials yesterday protested that hundreds of refugees in Serbia were being rounded up in night-time raids and press ganged into the Bosnian Serb army. Western diplomats in Belgrade said Bosnian Serb males in the city were desperate for forged identification documents, and that the Serbian authorities were using Red Cross lists of food parcel beneficiaries to trace and dragoon male refugees." [Ian Traynor & Ian Black, "Bosnian war set to intensify as Muslims hold out", *The Guardian*, 2 Feb. 1994, p. 22, Annex 251].

The forced recruitments which followed the mobilisation call in the beginning of 1994 were also reported by some Yugoslav media, albeit sparingly, such as the Belgrade-based magazine *Srpska Reć* [Petar Cosić, "Do you know that the fatherland is calling again?", *Srpska Rec*, 31 Jan. 1994, Annex 252].

412. In February 1994, Mazowiecki noted that the mobilisation of Serb men through forced recruitment continued:

> "135. The Special Rapporteur has continued to receive disturbing reports concerning the refoulement of Bosnian Serb and Bosnian Muslim refugees through forced recruitment, primarily in refugee centres in Belgrade and other cities, for combat in the Republic of Bosnia and Herzegovina and the Republic of Croatia ... In one recent case alone, at least 26 Bosnian Serb males of fighting age were rounded up at a refugee collection centre in Kosovo." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, p. 23, para. 135].

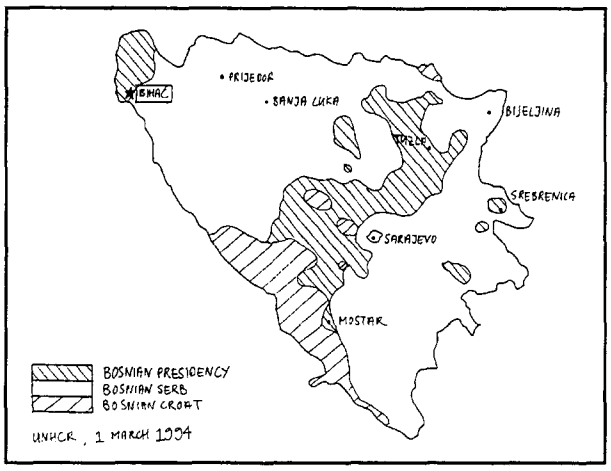
In the following months, the mobilisation of refugees went on, although on a somewhat smaller scale than before [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/54, 31 Oct. 1994, p. 31, para. 178; "Bosnia-Herzegovina - 'You have no place here': Abuses in Bosnian Serb-controlled areas", *Amnesty International*, AI index: EUR 63/11/94, June 1994, p. 5, note 7, Annex 65].

The summer of 1995

413. In June 1995, a new and massive mobilisation campaign was carried out in all regions of Yugoslavia. The existence of this campaign was again confirmed by the Special Rapporteur Tadeusz Mazowiecki in his final periodic report:

> "114. *The Special Rapporteur received multiple reports of a large number of people being deported from the territory of the Federal Republic of Yugoslavia to the territories of the so-called Republika Srpska Krajina and the so-called Republika Srpska to be recruited by force to take part in military-type activities*, in violation of article 33, paragraph 1, of the Convention relating to the Status of Refugees, and the Penal Code of the Federal Republic of Yugoslavia (art. 156, para. 1), concerning the kidnapping of persons under international protection.
>
> 115. *The campaign is said to have begun on 11 June 1995, after the UNPROFOR hostage-taking and took place in all regions of the Federal Republic of Yugoslavia. Men from Bosnian Serb territories, whose refugee status was not regularized, constituted the bulk of those mobilized.* However, there were some reports of men with citizenship of the Federal Republic of Yugoslavia and Muslims being mobilized as well. Two examples of citizens being mobilized are the cases of Dejan Mrdalj of Aleksinac, Serbia and Sasa Visatcki of Ruma, Serbia. Both of these individuals were said to have been in possession of documentation of citizenship of the Federal Republic of Yugoslavia, and Sasa Visatcki had completed his obligatory national service in the army of the Federal Republic of Yugoslavia.
>
> 116. Another example recently reported is that of Mr. Branko Licina, a citizen of the Federal Republic of Yugoslavia, who was drafted on 20 June 1995 from his home in Indija by the local police. *He reported to his family from the Bihac pocket that he was attached to the military unit in the army of the so-called Republika Srpska.*" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, p. 23, paras. 114-116, emphasis added].

The largest mobilisation campaign so far thus started on 11 June 1995. All Serbs subsequently arrested by the Serbian authorities were transferred to the territory of Bosnia and Herzegovina, where they were forcibly recruited into the Bosnian Serb Army which was preparing for its final attacks on the United Nations "safe havens" in Bosnia and Herzegovina, such as the Bihać pocket mentioned by Tadeusz Mazowiecki as one of the destinations of the arrested refugees. The Bihać safe area was never taken, in spite of an offensive carried out by the Serbs to do so. The Srebrenica enclave, however, fell on 11 July 1995; the enclave of Žepa was overrun a fortnight later [Laura Silber & Allan Little, *The Death of Yugoslavia*, London 1996, p. 350, Annex 21]. The tragic history of the Srebrenica "safe area" is discussed in a separate Section of this Reply [Reply, Chapter 5, Section 9].



414. The British-based *Jane's Intelligence Review*, published by the authoritative British intelligence institute *Jane's*, was among the western sources reporting on the campaign, stressing its nation-wide dimensions:

> "On 11 June 1995, a mass round-up of ethnic Serb refugees in the province of Vojvodina began and within weeks mushroomed into a rump Yugoslav-wide campaign. State police became involved in the press-ganging of youths who were shipped across the border to fight in Bosnian-Serb and Croatian-Serb territory." [Stan Markotich, "Security Notes: A roundup of recent security news from Europe", *Jane's Intelligence Review*, Nov. 1995, p. 484, Annex 175].

415. More than the previous mobilisations, the campaign carried out in the summer of 1995 was also discussed and reported by the Yugoslav media. On 28 July 1995, the Yugoslav magazine *NIN*, for example, published an article on a small hunger strike which was organised in Belgrade by women whose sons or husbands had been forcibly recruited. The article in *NIN* was written by Dragomir Olujić, a member of the "support committee for hunger strikers in front of the Presidency of Serbia":

> "Margita Nisacki and Milic Radulovic are already for the tenth day in hunger strike in front of the Presidency of Serbia. Until Saturday, with them was also Biljana Mrdalj-Radulovic but she had to leave the protest because of health reasons. They are demanding that Margita's son, Sasa Misacki, and Biljana's husband and Milica's brother in law, Dejan Mrdalj, be returned from the battle field in the border areas, where they have been taken by force in the framework of the so-called mobilisation!
> (...)
> Margarita and Milica have tried to solve their problem by other methods before they turned to the hunger strike. They were visiting the administrative and the authority organs - from the local police stations to minister Sokolovic, president of Serbia Milosevic and president of SRJ [Federal Republic of Yugoslavia] Lilic. Nobody wanted to receive them or listen to them. They were sending telegrams and letters. Nobody answered. They also turned to military organs and

> authorities of the so-called Republika Srpska Krajina, but also from there - no response at all! They did not succeed to make any contact at all with Sasa and Dejan. In the hopeless situation they have decided to start a hunger strike.
> Citizens that were gathered on the session of UNI Beogradski krug [Belgrade circle] on Saturday 22 July, have decided to form a support committee for the hunger strikers in front of the Presidency of Serbia and to help them to achieve their goals, to ease their suffering and show their solidarity with all those who are affected with the (once more) forced mobilisation, more precisely with the kidnapping of citizens for the war that they do not want. Some money was collected, Zene u crnom [Women in black] brought them clean clothes, means for hygiene and medicine, inhabitants were visiting them...
> Also others whose sons, husbands and brothers were kidnapped have started to accompany them. After last night's information on NTV [Night Television] Studio B, a couple of women from their (new) neighbourhood brought them juice, coffee...
> Our friends, mainly doctors and lawyers, are exercising their profession in order to help achieving the strikers' wishes. Their health condition is being checked regularly, although we did not make contact with the Srpsko lekarsko drustvo [Serbian Doctors Association].
> Although no one from the administrative and state (including military) organs is reacting, the mood of the officials is changing. For example, Mihalj Kertes [secret police] has yesterday answered rudely to the appeal of the strikers to help them that he did not send their relatives to the front line, and today, after NASA BORBA has published his reaction, he has promised all the help. Mayor Covic wished them luck!
>
> Many parents, sisters, brothers and relatives are frightened that they could, with their protests, 'hinder' those who are taken by force to the first front lines. Only the public opinion could save their nearest. Every information - name and family name, their location, and what are they doing - is breaking the walls of silence.
> We ask all inhabitants of Belgrade to show solidarity for the demands of the hunger strikers and to help them, by visiting them and by talking with them, to keep on and bring back their dearest!"
> [Drogomir Olujić, "They defend themselves by means of the public opinion", *NIN*, 28 July 1995, Annex 253].

At the time the above quoted letter was published, other Belgrade media started to report on the mobilisations as well, such as *Vreme*, arguably the only printed medium in the Federal Republic of Yugoslavia which consistently succeeded in maintaining independence from the Belgrade authorities during the years of the conflict in Bosnia and Herzegovina [Dejan Anastasijević, "Tribute in blood", *Vreme International*, 26 June 1995, Annex 254; Filip Svarm & Milos Vasić, "The Danaean gift: forced mobilisation - background", *Vreme International*, 3 July 1995, Annex 255].

416. As mentioned above, not only Serb refugees were the victims of the mobilisation. All men who were born or had lived in Bosnia ran the risk of being arrested. On 28 June 1995, the Belgrade based non-governmental organisation "Women in Black" - also referred to in the above cited letter - published a report on the campaign, confirming its comprehensive character:

> "First week only those related to Croatia were mobilized and starting from 18th of June also refugees and people born in Bosnia are picked up and sent there. *Unlike the former actions when only war refugees (draft evaders and deserters) were mobilized, this time the target are all men (18-60) born or originat[ing] in Croatia and Bosnia, regardless of citizenship (many have Serbian because they came long before the war) or refugee status (international humanitarian protection) etc.* They also are mobilizing people from Bosnia and Krajina with permit to stay in Serbia. The most absurd cases are mobilization of men married to women from Croatia or those who worked for few years in Bosnia and Croatia but always remained Serbian citizens. Furthermore there are cases of mobilized Yugoslav (Serbian) citizens. There are some cases where mobilized people with Serbian citizenship protested and afterwards were released because of a 'mistake'. Opinion of many is that 'mistakes' are done by intention. Those Serbian citizens, whose families don't protest or don't know that they have the right to protest, remain in Krajina." [Bojan Aleksov, "Report on new mobilization in Serbia since 11th of June 1995", *Women in Black*, Belgrade, 28 June 1995, emphasis added, Annex 256].

417. In the beginning of August 1995, over 100 forcibly recruited Serbs were captured on the battlefields of Bosnia and Herzegovina. The recruits were taken prisoner when the Bosnian Army launched a large attack on the Bihać front. After their capture, the draftees were filmed by a television crew and their report was later shown on both Croatian and Bosnian television. All prisoners shown in the report had been drafted forcibly in the Federal Republic of Yugoslavia two months earlier, during the campaign carried out by the Belgrade authorities in the summer of 1995.

418. While the large mobilisation campaign was sweeping the Federal Republic of Yugoslavia, Serbian President Slobodan Milošević closed the Yugoslav border for other draft-age Serbs wanting to escape Bosnia and Herzegovina into Serbia proper. This was seen by western diplomats as part of Milosevic's policy to help the Bosnian Serb Army [John Pomfret, "Serbia seen still aiding war effort", *Washington Post*, 4 July 1995, Annex 156]. By the summer of 1995, new passports could only be obtained by women, and men below the age of sixteen and above the age of sixty. Men between the age of sixteen and sixty had to submit a "certificate" of the "Republika Srpska" to prove they were unfit for military service across the border ["Report on the State of Human Rights in Serbia, *Helsinki Committee for Human Rights in Serbia*, Dec. 1995, p. 26, para. 105, Annex 166].

The extent of the mobilisations

419. The valuations of the number of people drafted for the conflict in Bosnia and Herzegovina and the "Republika Srpska Krajina" vary. This is, of course, due to the fact that the mobilisation campaign was carried out in relative secrecy and that the Belgrade authorities involved in the campaign tried to avoid publicity as much as possible. "Women in Black", the non-governmental organisation mentioned earlier,

estimated the number of refugees involved on 6,000 to 20,000. This estimate was based on numbers published in *Vreme*:

> "Official state media do not report anything on mobilization, besides one article in Ekspress Politika (June 20) saying that this is another lie of antiwar activists, already famous Serbian traitors. Also the Ministry of Interior Affairs gave a declaration at 24th of June that the controls have only the goal to find persons [who] 'reside illegally' or 'are engaged in criminal activities and other delinquent acts' (...). Meanwhile thousands of people (Vreme estimated on June 19 from 6000 - 20000) were caught on streets, cafes, restaurants, students dormitories, graduation ceremonies, refugee camps. Huge raids are taken and all buses and trains are checked. The most difficult situation is in Vojvodina [close to the Hungarian border] where most of people connected to Croatia live". [Bojan Aleksov, "Report on new mobilization in Serbia since 11th of June 1995", *Women in Black*, Belgrade, 28 June 1995, Annex 256].

When General Djordje Djukić was arrested by the Bosnian authorities on 30 January 1996 [see Reply, Chapter 8, Section 8], he also gave a statement on the forced recruitment in Yugoslavia. His estimates were more conservative, as he declared that all in all 6,000 refugees were mobilised: 4,500 for the "Republika Srpska Krajina" and 1.500 for the "Republika Srpska" [General Djordje Djukić, First statement regarding the background of his activities in the main HQ of the Army of the Srpska Republika, Feb. 1996, p. 8, Annex 140].

Belgrade's involvement

420. The mobilisation of the Serb men in Yugoslavia was carried out in a systematic way by the Respondent. This was found, among others, by Special Rapporteur Tadeusz Mazowiecki, who in February 1994 established the following:

> "135. The Special Rapporteur has continued to receive disturbing reports concerning the refoulement of Bosnian Serb and Bosnian Muslim refugees through forced recruitment, primarily in refugee centres in Belgrade and other cities, for combat in the Republic of Bosnia and Herzegovina and the Republic of Croatia ... In one recent case alone, at least 26 Bosnian Serb males of fighting age were rounded up at a refugee collection centre in Kosovo. *They were reportedly taken to the Bosnian border with Bosnia and Herzegovina by the Serbian police where they were handed over to the Bosnian Serb authorities. According to information received, the Serbian police had presented them with call-up documents stamped by the 'Defence Ministry' of the so-called 'Bosnian Serb Republic' warning them of arrest and imprisonment for non-compliance.*
>
> 136. *It is evident that such actions have been carried out with the full knowledge of the Serbian authorities. The Special Rapporteur has even received reports from a reliable source that prior to granting a passport to Bosnian Serb refugees, the Serbian authorities contact the office of the 'Bosnian Serb Republic' in Belgrade in order to determine whether the applicant is wanted for military service.* UNHCR has strongly condemned the forced recruitment of refugees in violation of fundamental principles of refugee protection." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Sixth periodic report submitted*

> *by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, p. 23, paras. 135-136, emphasis added].

The Special Rapporteur reported on the involvement of the Belgrade authorities on 21 February 1994, the date the report was published. By then it had become clear that the Federal Republic of Yugoslavia was playing a very active part in the forced recruitment of primarily Bosnian Serb refugees. It did so in close cooperation with the authorities of the "Republika Srpska", through their "office" in Belgrade. The citation above shows that the refugees from across the border were only issued a passport after the "Republika Srpska" had given Belgrade the green light. The fact that Serbian officials were serving refugees "call-up documents stamped by the 'Defence Ministry' of the so-called 'Bosnian Serb Republic'" [*ibid*, para. 135], illustrates the symbiotic relationship between the Serbian and Bosnian Serb authorities. Serbian police officers were obviously not only entitled, but also willing to serve "Republika Srpska" summons on their territory; moreover did not shrink from using force - "arrest and imprison" [*ibid*, para. 135] - against refugees who refused to comply with the Bosnian Serb order.

421. The large mobilisation campaign carried out in the summer of 1995 was, again, well organised and planned in advance by the Belgrade authorities. On 26 June 1995, *Vreme* magazine reported as follows:

> "The question as to why the action of massively sending Serbs from across the Drina river started at the peak of the peace directed policy of Slobodan Milosevic, is keeping many serious analysts busy these days. At first sight, this timing does not seem logical. Still, there is a row of elements that lead to the conclusion that this forced mobilisation was long and carefully planned and that it is on a larger scale than it looked initially. As first, a number of some large scale administrative actions, such as the revision of the refugee status which started in February 1994, preceded. The Commissariat for refugees of the Republic of Serbia was leading this operation and the commissioner Bratislava Buba Morina explained the situation as follows: 'First of all to establish the number of refugees ... and to co-ordinate with the governments of RS [Republika Srpska] and RSK [Republika Srpska Krajina] which have given us a large list of the territories where the refugees could return (...). With the revision is, actually, accomplished that 90,000 people have lost refugee status. They have joined the group of, according to the estimates of the Commissariat, 70,000 people who are staying in Serbia illegally, and who, according to Mrs. Morina are 'wandering up and down the streets'. This job took a lot of time and it was finished about a month before the mobilisation started. Not long after that, the Serbian government has again announced the suggestion of the new law about the Serbian citizenship (...). According to this law, the persons who originate from RS [Republika Srpska] and RSK [Republika Srpska Krajina] and who have, legally or illegally, come to Serbia after 1990 will not be able to become citizens of the Serbian state. At last, reliable sources say that a great deal of the MUP [Ministry of the Interior] of Serbia - from the patrolmen on the street, who were even stopping vehicles of the public transport and taking the 'deserters' from there the last couple of days, to the dispatcher in the headquarters who was giving the instructions about who should be arrested and who should not - are at the moment

> engaged in the actions of arresting the persons suitable for the front, and not suitable for the citizenship." [Dejan Anastasijević e.a., "Tribute in blood", *Vreme International*, 26 June 1995, Annex 254].

The authorities in Belgrade thus started the mobilisation campaign long before it actually erupted by changing the legislation on refugees. As a consequence of this operation, executed by the Serbian Commissariat for refugees in close cooperation with the "Republika Srpska" and the "Republika Srpska Krajina", thousands of Serbs from across the river Drina lost their right to stay in the Federal Republic of Yugoslavia. Many Serb men were thus outlawed, with the only purpose being to facilitate their forced recruitment into the Serb armies in Croatia and Bosnia and Herzegovina. The actual arrest and subsequent mobilisation of the refugees was carried out and supervised by the Serbian MUP, the Ministry of Interior of the Republic of Serbia.

422. The mobilisation campaigns in the Federal Republic of Yugoslavia always preceded major Serb offensives in Bosnia and Herzegovina. This was particularly evident during the large campaign carried out in the summer of 1995. Shortly after the mobilisations had started and the first recruits had arrived at their destinations in Bosnia and Herzegovina, the Bosnian Serb Army started its attacks on the United Nations "safe havens" of Bihać, Srebrenica and Žepa. The careful timing of the mobilisations again revealed the close collaboration which existed between the Serb authorities on both sides of the river Drina.

423. When the first rumours of the 1995 campaign reached the Special Rapporteur Tadeusz Mazowiecki, he immediately addressed the Yugoslav authorities in Belgrade to stop the forced recruitments:

> "117. Upon receiving reports regarding the forced return of refugees, the Special Rapporteur appealed, in a letter dated 22 June 1995, to the authorities of the Federal Republic of Yugoslavia to discontinue the practice. In a response addressed to the High Commissioner for Human Rights dated 17 July 1995, the Ambassador of the Federal Republic of Yugoslavia in Geneva stated that as a result of the sanctions and the large number of refugees in the Federal Republic of Yugoslavia, criminal acts had been committed by individuals staying in the Federal Republic of Yugoslavia illegally. In that connection, the authorities were conducting an organized control of persons who were not citizens of the Federal Republic of Yugoslavia and who had failed to obtain refugee status. Further, the Ministry of Internal Affairs of the Republic of Serbia, issued a statement on 24 June 1995 according to which 'a number, admittedly a small number of mistakes have been made in the establishment of identity and the implementation of measures, which is being corrected during control'.
>
> 118. Regarding this statement, the mobilization of citizens has apparently ceased following an information campaign by human rights organizations. The Ministry of the Interior is reportedly

making a list of citizens of the Federal Republic of Yugoslavia who have been mobilized, and some have been able to return." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1996/9, 22 Aug. 1995, pp. 23-24, paras. 117-118].

In response to the letter sent by Tadeusz Mazowiecki, the Federal Republic of Yugoslavia thus admitted that "an organized control of persons who were not citizens of the Federal Republic of Yugoslavia" was taking place [*ibid.*, para. 117]. The Respondent justified this "organized control" by pointing at "the large number of refugees" and the "criminal acts" they allegedly committed [*ibid.*]. It failed, however, to explain what the control exactly entailed and why it transferred the new recruits directly to the "Republika Srpska" and the "Republika Srpska Krajina", without ever taking any trouble to investigate the crimes these refugees had supposedly committed.

Summons

424. As mentioned in the above, Serb refugees in the Federal Republic of Yugoslavia were often presented with official military call-up documents. In one of his reports referred to earlier in this Section, Tadeusz Mazowiecki mentioned documents stamped by the "Defence Ministry" of the "Republika Srpska" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, p. 23, para. 135]. Not all call-up documents or summons were, however, identical. In the 1995 campaign different summons were used.

425. On 29 June 1995, the following document was delivered to Nemanja Crnogorac, a Yugoslav citizen who was born in Livno, a city in the west of Bosnia and Herzegovina:

"REGIONAL MINISTRY OF INTERIOR - SUBOTICA Form OUP - 1

.....
(name and the seat of the institution in charge)

No: 27/95 Obligatory personal delivery
Date: 29-06-1995

SUMMON
(ART. 71 AND 87. of the Law on the Administrative Procedure)

NEMANJA CRNOGORAC

.....
(name and family name or the name of the party)

from: SUBOTICA Street: E. KUMICICA No. 14/199

is invited to come on 30.06. 1995. at 07.00 h to MINISTRY OF INTER. SUBOTICA

room no._____ floor no._____ concerning JOINING THE ARMY OF REPUBLIKA SRPSKA in accordance with the file CONSCRIPTS BORN IN BIH.

NOTE: PERSONAL HYGIENE ARTICLES SHOULD BE BROUGHT ALONG

In case of being prevented from coming, the above mentioned institution should be notified immediately.

If the party does not respond to this summons, he/she could be brought to the Police Headquarters, and additionally punished to pay a penalty of _____ dinars. If damage is caused due to the party's unjustifiable absence, it may be ordered that the party should pay for the caused damage.

_____
signature (illegible) [stamp] (BELGRADE, MINISTRY OF INTERIOR)

How to fill the form:

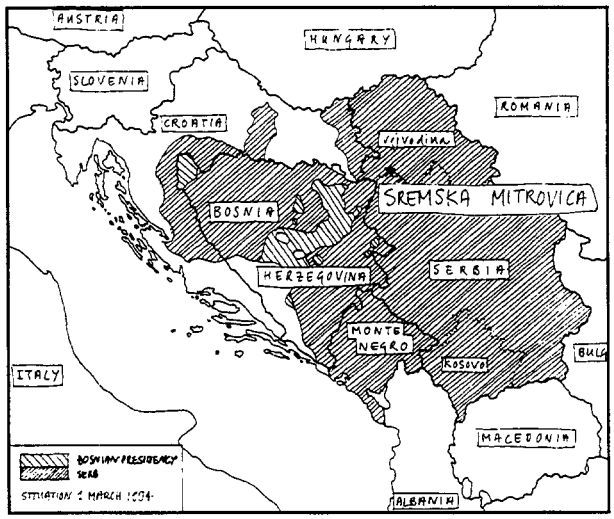
1. In the place of 'NOTE', necessary instructions should be given, for instance that the party should bring along written or other kind of proofs, or to take a witness along which he/she intends to call, or that the party, instead of coming personally can, up to a certain date submit a written statement (art. 71, point 2 of the Law on Administrative procedure).
2. On the reverse side of the bill of delivery, the deliverer makes notes concerning the deliverance."

[Ministry of Interior, Belgrade, Summons of Nemanja Crnogorac, 29 June 1995, Annex 257].

430. The Sremska Mitrovica camp was also described by Dejan Anastasijević in *Vreme* magazine in his article on a Serb refugee from Croatia, Mirko Drljača. Drljača was taken to the camp in Sremska Mitrovica, after being arrested in his home in the Serbian town of Hrtkovci. When he tried to escape the camp, he was shot by the guards:

> "On Monday morning, very early, at the doors of Drljača's house in Hrtkovci some people knocked at the door with a summon for military service in Republika Srpska Krajina. Since Drljača is a citizen of Serbia for more than a year now, he refused to accept the summon. *The police officers who then showed up, were not very interested in the issues of citizenship. 'Explain it to them there, and they will let you go', they said. This 'there' turned out to be the collection point in Sremska Mitrovica's fire brigade facility, but the Krajina police officers who received him were not even thinking of letting him go.* 'Nobody wanted to speak a decent word to me', says Drljača. 'As if we were going to prison.' When he saw that talking would not help, Drljača tried to escape Tuesday morning. 'It was clear to me that it is very difficult to escape. It was more that I wanted to get some attention so that someone would listen to me. They were shouting to stop and then they shot. I heard three shots of the automatic gun.'
> WHO IS NORMAL: Out of three fired bullets, two hit Drljača, both a bit above the knee. 'I fell down and heard them saying 'Tie him up, get him in the bus and then across'. 'I was afraid that they would kill me there.' Fortunately, one of the present Serbian police officers persuaded the 'deserter chasers' that the wounded should be transported to the nearest hospital. Doctor Bosko Lacarac who received and operated him says that it is fortunate that Drljača ended up right there. 'We have a lot of experience with the war wounds in the time from the Vukovar operation. Somewhere else, his legs would have probably been amputated, and he would definitely not survive the trip to Krajina. This way, we have finished the surgical treatment and external fixation, so that one could say that the patient, that is his extremities, is doing well.' In responding to the question as to when Drljača, being the only breadwinner of his family (wife and two children), will be back on his feet, Dr. Lacarac says: 'If there is no secondary infection and other complications - in a year at the earliest.'
> Drljača is not feeling resentful for what happened to him ('I love this country very much and I would like to damage it as little as possible', he says), but he also does not feel as a deserter. 'I was enthusiastic while I was thinking that Yugoslavia was being defended. Now, nobody normal wants to take a gun.' At the question whether anyone from the authorities has spoken to him after he was injured, he answers: *'One of the inspectors of the SUP [Secretary of Internal Affairs] was here to ask me what happened. I told him that I do not want to make fuss about it, but he said that they have to do their job.' He will not sue anybody for illegal arrest and heavy injuries. 'One day, this state will be lawful. Now, I am just praying that they do not kill me', he says submissively.*
> From the radio next to Drljača's head, somebody is singing about how women love officers. The nurse that is taking care of him says that she sometimes finds him quietly crying, with the towel over his head.
> *The fire brigade facility, where Drljača got wounded, is located at the exit of Sremska Mitrovica. Already at first sight one can see that work is carried out at full steam: ten busses are parked in front of the entrance and a group of armed people - united Serbian police and five members of Arkan's Serbian voluntary guard with 'hekleri' and recognisable black uniforms - are moving around them. There are also civilians, mostly young men, but also people who are well into their fifties. These are freshly caught 'deserters' who are waiting to be transported. Two young men that we were talking to are from Bosanski Samac [Bosnia and Herzegovina] and they were caught in Belgrade during the raid on the streets of Belgrade. Who arrested them? 'Serbians, and we are being transported by Krajina men [from the Republika Srpska Krajina in Croatia].' They are not voluntarily here but they are not even thinking about escaping: there is nowhere to go except over the field and the guards even have automatic rifles. No, they did not beat them, but they did not let them make phone calls. They have heard that they will go to Bijeljina [town across the border in Bosnia and Herzegovina], like the other newcomers.*

'Here are just Bosnians. It looks like they are done with the people from Krajina', they say indifferently. Then a police officer showed up who kindly but decisively (by leading us under the arm) removed us from the scene. At the question about Drljača being wounded he said: 'Nothing happened. I was there, and nothing happened'. He says that Drljača is lying and that it all is fiction. 'And the tracks in the legs? And the doctors?' 'That also is all fiction'." [Dejan Anastasijević, "Tribute in blood", *Vreme International*, 26 June 1995, emphasis added, Annex 254].



The camp in Sremska Mitrovica was guarded by Serbian police officers and members of Arkan's Tigers, the paramilitary organisation led by Željko Ražnatović [see Reply, Chapter 8, Section 7], and policemen from the "Republika Srpska Krajina" in Croatia. The presence of these latter police officers on the territory of the Federal Republic of Yugoslavia marks the evident synthesis of the various police corpses on both sides of the river Drina [see also Reply, Chapter 8, Section 6]. All the officers and paramilitaries guarding the camp in Sremska Mitrovica were simply doing "their job", as was explained by the Serbian policeman who visited Mirko Drljača in the hospital after he was shot in the legs. There is evidence that other paramilitary organisations were involved in the management of the camps and in the transports across the border as well ["The horror of the letter 'T'", *NIN*, 7 July 1995, Annex 259].

The "Republika Srpska" bureau in Belgrade

431. The refugees taken to the detention camps, such as the fire brigade facility in Sremska Mitrovica, were subsequently transferred to Bijeljina, a Serb-held town on

the Bosnian side of the river Drina. The transfer across the border was done in close collaboration with the Bosnian Serb authorities, who had a special coordinating bureau in Belgrade. One of the main task of this bureau, mentioned earlier in this Section, was, in fact, the streamlining of the mobilisations.

432. The activities of the "Republika Srpska" bureau in Belgrade were also described by General Djordje Djukić, during one of his statements given to the Bosnian authorities in February 1996. The bureau carried on working after the so-called "embargo" supposedly was placed on of the "Republika Srpska" by the Federal Republic of Yugoslavia in August 1994. When Djukić was interrogated, the office still existed:

> "It is not known to me when and under whose Command the Bureau of the Serbian Republic [Republika Srpska] in Belgrade was established, but it existed since 1992. The first Chief on the Bureau was Dutina, later on Momo Mandic, and I do not know who is on that function now. Formally, during a certain period of time, the Bureau had been under the jurisdiction of the Government, and then by the decision of the President this Bureau was proclaimed as the institution of the Republic and not of the Government. It was located in Mose Pijade Street (I do not know the number) in the building of the Federal Material Reserves, I do not know how many employees there were, but according my estimations could be between 20 and 25.
> (...)
> Among the employees of the Bureau, I personally knew Major Dogo, who was the representative of the Ministry for Defense in Bureau, and a certain Stanisic who was an Assistant-Chief of the Bureau for Economic relations. I think Dogo's duty was to accomplish work related to the Army of the Serbian Republic [Srpska Republika] or the Ministry of Defense.
> (...)
> *Due to the fact that Dogo was in charge to dispute all Military matters of the ASR [Bosnian Serb Army] in Belgrade, all agreements or connection through which the persons under military obligation were sent back to the Serbian Republic were done through him. In that way, persons were mobilized by force and transferred from Yugoslavia to Bijeljina in Military barracks where 35 logistics base was located.* There were 4500 mobilized persons for Serbian Republic Krajina [Croatia] and 1500 for Serbian Republic, who were provided with uniforms and transported to the units. *Major Dogo announced their arrival to Bijeljina.*" [General Djordje Djukić, First statement regarding the background of his activities in the main HQ of the Army of the Srpska Republika, Feb. 1996, pp. 6-8, Annex 140].

On the Bosnian Serb side, the mobilisation was therefore organised by the bureau of the "Republika Srpska" in Belgrade, which represented the Bosnian Serb government before the Yugoslav authorities. The arrival of the new recruits was always announced by the bureau in Belgrade. In Bosnia, the refugees would be collected in Bijeljina, at the local army base, where they were given uniforms and received transport to the different army camps across Bosnian Serb-held territory.

433. As was shown earlier in this Section [Reply, Chapter 8, Section 6], the forcibly recruited Serb were, for instance, taken to "Jahorina", a camp in the Prijedor region under the control of the Bosnian Serb Ministry of Interior. Persons who escaped

from the camp were subsequently treated as "deserters" by both the autorities in the "Republika Srpska" and the Federal Republic of Yugoslavia [*ibid.*].

Perfect unison

434. Both the timing of the mobilisations and the manner in which they were executed show that Belgrade acted in close cooperation with the Serb authorities in the "Republika Srpska".

435. The mobilisation campaign carried out in early 1994 was the direct consequence of the mobilisation call issued shortly before by the Bosnian Serb authorities in Pale. The mobilisation ordered by the Bosnian Serb government obviously covered not only the "Republika Srpska", but also the territory of the Federal Republic of Yugoslavia. The mobilisation campaigns also tended to precede major Serb offensives on the battlefields of Bosnia and Herzegovina. The extended mobilisations in the summer of 1995 were the forerunner to the massive Serb attacks on Bihać, Srebrenica and Žepa. Forcibly recruited Serbs were in fact captured in Bihać after their failed attempt to take the enclave in the summer of 1995. The genocidal take-overs of Srebrenica and Žepa would not have been possible without the participation of the Serbs forcibly mobilised by the authorities in the Federal Republic of Yugoslavia.

436. It is evident that the mobilisation of Serbs for the Bosnian Serb Army would not have been feasible without the wholehearted collaboration of the Belgrade authorities. It is important, however, to note that the opposite is also true. Without the information and the support given by the Bosnian Serbs, both in the "Republika Srpska" and the Federal Republic of Yugoslavia, the mobilisation campaign would, of course, have died an early death. The Serb authorities on both sides of the river Drina cooperated with each other in perfect unison, throughout the entire conflict in Bosnia and Herzegovina, as if the "Republika Srpska" were in fact an integral part of the Federal Republic of Yugoslavia.

437. The symbiotic relationship between the two republics was also visible in other fields, such as the monetary system and the web of national banks described earlier in this Chapter [Reply, Chapter 8, Section 9].

The District Court in Belgrade

438. In this Section the Applicant demonstrated that the Respondent was responsible for the mobilisation campaign of Serb men carried out on its territory during the conflict in Bosnia and Herzegovina. This was, quite interestingly, also the opinion of the District Court in Belgrade, which on 27 February 1998 ruled that the Republic of Serbia was responsible for the physical and psychological damages suffered by the Serb men who had been forcibly drafted into the armies of the "Republika Srpska" and the "Republika Srpska Krajina". One day after the judgment, the Serbian daily newspaper *Vesti* reported on the surprising judgment, which had been passed in appeal ["Serbia liable to pay compensation for sending them to war", *Vesti*, 28 Feb. 1998, Annex 260]. The appeal had been filed by the Republic of Serbia and was based on the objection that the Serbian Ministry of Interior had not been the authority in charge of the mobilisations. This proposition was dismissed by the District Court in Belgrade.

12. Ethnic purification in the territory of Yugoslavia

Introduction

439. This section of the Reply is completely dedicated to those genocidal acts that took place on the territory of the Federal Republic of Yugoslavia. These acts were similar to those perpetrated on Bosnian territory. All the constituent elements of ethnic cleansing as a policy, so prevalent on the territory of neighboring Bosnia and Herzegovina, were also found on the territory of the Federal Republic of Yugoslavia.

440. In both Serbia and Montenegro, camps were established for non-Serbs, often Muslim and Croat civilians captured by Serb forces during the fighting in Croatia and Bosnia and Herzegovina. In certain areas of Yugoslavia, notably Kosovo, Vojvodina and the Sandžak region, the authorities were responsible for the killing, torture and abduction of non-Serbs. As a consequence of this deliberate policy, aimed not only at citizens of Bosnia and Herzegovina but also at Albanians, Sandžak Muslims, Croats, Hungarians and other minorities, a great number of people were forced to leave the Federal Republic of Yugoslavia.

441. In the passages below, the genocide committed on the territory of the Federal Republic of Yugoslavia will be dealt with at length. Before doing so, however, the Applicant will discuss the considerations the Respondent devoted to this topic in the Counter-Memorial.

The 1993 CSCE mission to Yugoslavia

442. In the Counter-Memorial, the Federal Republic of Yugoslavia devoted one paragraph to the detention centres on its territory [Counter-Memorial, pp. 29-31, para. 1.3.1.7.]. At the end of this paragraph, the Respondent simply stated that "[t]here were no camps in the territory of the FR of Yugoslavia". In support of this statement and in response to the list of Yugoslav prison camps presented in the Memorial [Memorial, p. 21, para. 2.2.1.1], the Federal Republic of Yugoslavia quoted a Report of the CSCE mission to Serbia and Montenegro. This Report was published by the CSCE following an inspection of several detention sites by three of its rapporteurs in January 1993. The Federal Republic of Yugoslavia, however, reproduced only part of the mentioned Report, thus creating the incorrect impression that the conclusions of the CSCE Report fully support Yugoslavia's denial. This is in fact not at all the case.

443. First of all, the Respondent failed to reproduce an important introductory paragraph of the Report, in which the CSCE rapporteurs remind the readers of the Federal Republic of Yugoslavia's responsibility for the armed conflict and the related atrocities. The whole Report should be evaluated within the context of the following passage:

> "6. During the 14-15 December 1992 meeting of the CSCE Council of Ministers, *the CSCE participating States stressed that the 'primary responsibility' for the conflict and atrocities in the former Yugoslavia' lies with the present leaders of Serbia and Montenegro and with the Serbian forces operating in Bosnia and Herzegovina.*' They called for the 'cessation of violations of human rights and international humanitarian law' and specifically the policy of 'ethnic cleansing.' In addition, *the Ministers underscored their determination to 'see to it that those responsible are brought to justice' for the massive and systematic violations of human rights in the territory of the Republic of Bosnia and Herzegovina and other parts of the former Yugoslavia.* The on-going humanitarian efforts of the CSCE, exemplified by the continuation of the Thomson Mission under the leadership of Ambassador Blackwell, demonstrate the commitment of the participating States to ensure compliance with internationally recognized human rights standards and principles of humanitarian law in the former Yugoslavia." ["Report of the CSCE Mission to Inspect Alleged Places of Detention in the Republics of Serbia and Montenegro", *CSCE*, 13-18 Jan. 1993, p. 3, para. 6, emphasis added, as reproduced in the Counter-Memorial, Annexes to Chapter I, Vol. I, pp. 21-26].

In December 1992, the Council of Ministers of the CSCE thus established the "primary responsibility" of the Respondent for "the conflict and atrocities" committed in the former Yugoslavia. These atrocities were, according to the Ministers, not only

committed on the territory of Bosnia and Herzegovina; ethnic cleansing also occurred in "other parts of the former Yugoslavia".

444. The Federal Republic of Yugoslavia not only left out the foregoing introductory paragraph, but also a substantial part of the conclusions reached by the CSCE mission to Yugoslavia. During its mission, the mission indeed was not able to verify the existence of detention centres. The Respondent correctly quoted the relevant sentence of the mission's Report. It failed, however, to cite the conclusions of the CSCE, in which two possible explanations were offered for the fact that it had not been able to locate any prison camps:

> "A. Conclusions
>
> 34. On the basis of visits to the specific sites mentioned in this report, the Rapporteurs have not been able to verify the existence of any places of detention in the Republics of Serbia and Montenegro. *However, they have not been able to visit all the sites indicated on the list, nor have they been able to conduct a sufficiently thorough investigation in some of the locations. Consequently, the Rapporteurs are not in a position to exclude entirely the possibility that there are places of detention in the Republics of Serbia and Montenegro.*" ["Report of the CSCE Mission to Inspect Alleged Places of Detention in the Republics of Serbia and Montenegro", *CSCE*, 13-18 Jan. 1993, p. 11, para. 34, emphasis added, as reproduced in the Counter-Memorial, Annexes to Chapter I, Vol. I, pp. 21-26].

The three members of the CSCE mission were thus severely handicapped. They were, firstly, not able to visit all the desired potential camp sites; the mission only visited eight locations. Five of the locations it had originally intended to inspect were not visited at all. The eight sites the mission managed to visit were, secondly, not inspected as thoroughly as the rapporteurs had intended to do. The visit to these eight sites remained indeed a *visit*. Due to the above mentioned time constraints, the mission never became a real *investigation*. The CSCE rapporteurs therefore advised the CSCE to organise a follow-up investigation:

> "B. Recommendations
>
> 35. Should the CSCE feel that the findings of the present report, or additional information received from other sources, have not sufficiently relieved the concern of the international community, *the Rapporteurs recommend follow-up action in order to further investigate some of the alleged places of detention.*" ["Report of the CSCE Mission to Inspect Alleged Places of Detention in the Republics of Serbia and Montenegro", *CSCE*, 13-18 Jan. 1993, p. 11, para. 35, emphasis added, as reproduced in the Counter-Memorial, Annexes to Chapter I, Vol. I, pp. 21-26].

The Yugoslav authorities' refusal to cooperate with international observers

445. The foregoing recommendation formulated by the CSCE mission, that is, the advice to carry out a follow-up investigation, was not favourably received by the Respondent. Shortly after the Report was published, on 28 July 1993, the authorities in Belgrade informed the CSCE that they would no longer cooperate with their missions. The Respondent simply refused to allow the CSCE missions to continue their activities on Yugoslav territory. This outright refusal was later condemned by the Security Council, which stressed the importance of the CSCE missions for the stability in the various hotbeds in the Federal Republic of Yugoslavia: Kosovo, the Sandžak and Vojvodina [United Nations, *Security Council Resolution 855 (1993)*, S/RES/855, 9 Aug. 1993].

446. The Respondent not only refused the CSCE rapporteurs admittance inside its borders,, but in the beginning of 1994, it also declined to further cooperate with Tadeusz Mazowiecki, Special Rapporteur of the United Nations Commission on Human Rights. The consequences of Yugoslavia's refusal to cooperate with international rapporteurs were far-reaching, as was also pointed out by Mazowiecki in his Report published on 4 November 1994:

> "162. *The Special Rapporteur notes the fact that, owing to the refusal of the Government to permit the establishment of a field office in the Federal Republic of Yugoslavia (Serbia and Montenegro), he has been unable to collect firsthand information concerning the human rights situation in that country. In view of this fact, the Special Rapporteur finds it even more discouraging to note that the Government has, since the submission of his sixth periodic report [on 21 February 1994], rejected all his requests to send missions to the country in order to investigate recent allegations of human rights abuses.*
>
> 163. It should further be noted that the Government's reluctance to cooperate with the Special Rapporteur is in contravention of paragraph 30 of Commission on Human Rights resolution 1994/72, in which the Commission
>
> > Demands that the Federal Republic of Yugoslavia (Serbia and Montenegro) permit entry into Kosovo, Sandjak and Vojvodina of United Nations observer missions and field officers of the Special Rapporteur and resumption of the missions of long duration of the Conference on Security and Cooperation in Europe.
>
> 164. The Special Rapporteur notes with concern that foreign journalists are facing difficulties in performing their duties in the Federal Republic of Yugoslavia (Serbia and Montenegro), a fact illustrated by the withdrawal of the accreditation of 13 foreign correspondents in April 1994.
>
> 165. *The Special Rapporteur has also taken note of the comments on his sixth periodic report by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) (E/CN.4/Sub. 2/1994/45). The Special Rapporteur presented his remarks on these comments in a letter dated 26 August 1994 to the Chairman of the Commission on Human Rights, which is annexed to the present report.*

> 166. *By letter dated 16 September 1994, the Special Rapporteur informed the Minister of Foreign Affairs of the Federal Republic of Yugoslavia (Serbia and Montenegro) of his main concerns regarding the human rights situation in the country, and invited the comments of the Government. As of the date of publication of this report no substantial reply has been received by the Special Rapporteur.*
>
> 167. The Special Rapporteur has been unable to collect and verify information on-site. In order to carry out his mandate, he has been obliged to base his research on information received from a wide range of sources, including international governmental organizations, local and intergovernmental organizations and private individuals. In this regard, the Special Rapporteur wishes to express his particular gratitude to the following local non-governmental organizations, all based in Belgrade: the Humanitarian Law Fund, the Centre for Anti-War Action and the newly founded Helsinki Committee for Human Rights in Serbia." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1995/54, 31 Oct. 1994, p. 29, paras. 162-167, emphasis added].

447. By refusing to cooperate with all international rapporteurs and observers, the Yugoslav authorities successfully prevented every serious investigation into possible atrocities committed on their territory. This policy of deliberate non-cooperation precluded the actual fulfilment of the Special Rapporteur's mandate, which of course included not only Bosnia and Herzegovina, but the entire territory of the former Yugoslavia.

448. In the extract quoted above, reference was also made to a letter the Special Rapporteur sent to the Chairman of the Commission on Human Rights. In this letter, which was annexed to his Report, Mazowiecki indeed severely criticized the obstructionist policy of the Federal Republic of Yugoslavia:

> "(...) *the Special Rapporteur would like to draw the attention of the members of the Commission [on Human Rights] to the serious difficulties he has faced in his efforts to implement his mandate, due to the uncooperative attitude of the Government of the Federal Republic of Yugoslavia. During the first half of this year, the Government has rejected all requests by the Special Rapporteur and the Centre for Human Rights to undertake missions to the Federal Republic of Yugoslavia in order to collect firsthand information and to investigate allegations of human rights abuses reported to have taken place in that country.*
>
> Thus, by letter of 10 June 1994, the Special Rapporteur requested permission for two staff members of the Centre for Human Rights to visit the region of Sandzak in order to investigate recent allegations of human rights abuses in that area. To date the Government has not responded to this request. On 18 July 1994 the Special Rapporteur requested the Government to authorize a mission of two human rights officers to travel to the Federal Republic of Yugoslavia in August 1994. *In its letter of 27 July 1994 the Government explained its decision to reject this request by referring to the work of the Special Rapporteur as 'one-sided, full of prejudice and above all politicized'.*

> The Special Rapporteur would also like to draw attention to the fact that his proposal to open a permanent field office in the Federal Republic of Yugoslavia, similar to those currently operating in Zagreb, Sarajevo and Skopje, has met with a negative response from the Government. By letter of 11 March 1994 to the Government, the Director of the Centre for Human Rights proposed a meeting between representatives of the Centre and the Government to be held in Belgrade in order to discuss the possibilities of establishing such an office in Belgrade. By letter of 27 March 1994 the Government rejected this proposal by referring to General Assembly resolution 47/1, suspending the participation of the Federal Republic of Yugoslavia in the General Assembly. The Government stated that, since it could not, as a matter of principle, accept cooperation with international organizations on an unequal footing, it was not in a position to reply positively to the Centre's request.
>
> Furthermore, by letter of 6 June 1994, Professor Manfred Nowak, member of the Working Group on Enforced and Involuntary Disappearances, requested authorization to carry out a mission to the Federal Republic of Yugoslavia with a view to meeting government officials and non-governmental organizations representing families and relatives of missing persons. Notwithstanding the purely humanitarian nature of this mission, the Government decided to reject Mr. Nowak's request. *In its response of 24 June 1994 the Government stated, inter alia, the following: 'Allow me to inform you that bearing in mind the present circumstances, and, above all, the mandate of your Working Group, as well as Mr. Mazowiecki's activities so far, that have been highly politically oriented, one-sided, and not based on facts, the Government of the Federal Republic of Yugoslavia is not able to accept your visit to the Federal Republic of Yugoslavia.'*
>
> Regrettably, by refusing permission to establish a field office in Belgrade and by rejecting the Special Rapporteur's requests to send missions on an ad hoc basis to the Federal Republic of Yugoslavia, the Government has blocked the Special Rapporteur's attempts to gather firsthand information concerning the situation of human rights in that country. *There[b]y, the Government has deliberately obstructed the Special Rapporteur in his efforts to fulfil his mandate as defined in Commission on Human Rights resolutions 1994/72 and 1994/76.*" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, ninth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1995/54, 31 Oct. 1994, pp. 41-42, emphasis added].

By taking this position, the Federal Republic of Yugoslavia effectively robbed the international community of every possibility to further investigate the accusations brought against it by international rapporteurs, such as Tadeusz Mazowiecki and the Commission of Experts. In addition, the Respondent deprived itself of the opportunity to disprove the earlier mentioned accusations.

Detention camps in Yugoslavia

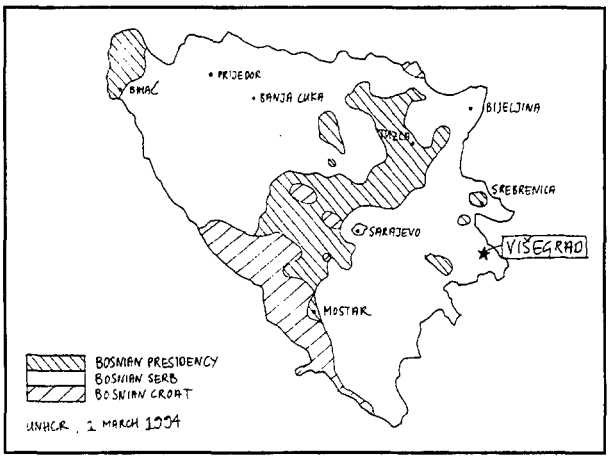
449. In spite of the total lack of cooperation by the authorities in Belgrade, the efforts of the international community in 1994 gradually began to produce further evidence. In December of that year, almost two years after the CSCE mission described above had taken place and eight months after the submission of the Applicant's Memorial, the United Nations Commission of Experts published the Annexes to its Final

Report. One of the Annexes to this Report was entirely devoted to camps and other detention facilities [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2, (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps"]. A special section of this Annex described the camps located in the territory of the Federal Republic of Yugoslavia. The Commission of Experts listed no less than 71 camps situated in Yugoslavia:

> "Of the reports of the 71 camps alleged in FRY, 42 were corroborated (i.e., reported by a neutral sources or multiple neutral sources), and 29 were uncorroborated (i.e., reported either by multiple non-neutral sources, or not corroborated by a neutral source)."
> [*ibidem*, pp. 31-32, paras. 240-245].

The "multiple neutral sources" mentioned by the Commission of Experts include international organisations like the International Committee of the Red Cross and foreign governments such as the United States Department of State [see also Reply, Chatper 5, Section 5].

450. The Commission of Experts' Report shows that most of the Yugoslav camps were established after the war in Croatia had started. Initially, these camps were used for Croatians from Croatia only. From April 1992 onward, however, when the fighting spread to Bosnia and Herzegovina, Muslims and Croats from Bosnia and Herzegovina were detained in Yugoslavia as well. These non-Serbs were removed from their home towns in Bosnia and Herzegovina, as a result of ethnic cleansing, when the JNA was still openly involved in the armed conflict. In the following pages, two examples will be given of Bosnian cities which were ethnically cleansed in April 1992: Višegrad and Bosanski Šamac. Some of the non-Serb inhabitants of these cities were deported to Serbia, where they were imprisoned in various detention centres.



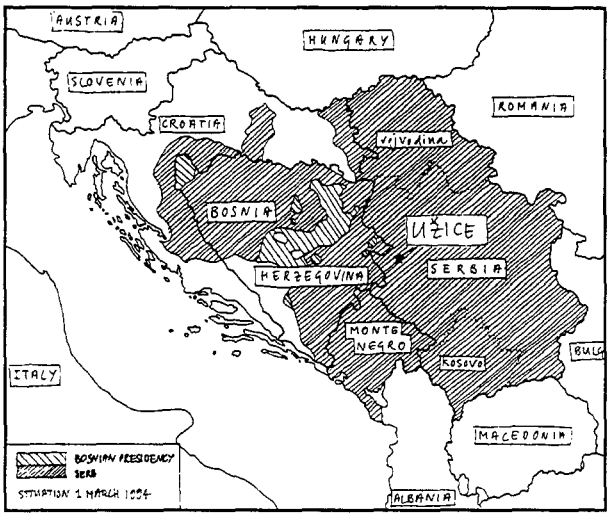
The ethnically cleansed Muslims of Višegrad

451. Višegrad is a small city in east Bosnia, not very far from the Drina river, which marks the border between Serbia and Bosnia and Herzegovina. Due to its strategic location, Višegrad was one of the first cities in Bosnia to be attacked and ethnically cleansed by the Serbs in April 1992. The assault on the city was carried out by the JNA Corps from Užice, supported by Serbian paramilitary units. Užice is a city located across the Drina river in western Serbia, not more than 50 kilometres from Višegrad. The attack is described by the Commission of Experts in its Annex on special forces:

> "On 13 April 1992, the city of Višegrad was occupied by the Užice Corps. This group consisted of JNA soldiers, reservists, Užice territorial defence forces, and White Eagles. They brought a large amount of JNA heavy equipment with them. The JNA forces wore their traditional uniforms, while the White Eagles wore identifiable outfits, combining military and civilian clothes. Some wore hats with the kokarda emblem. Upon the corps' siege, the civilian population fled the city and was fired upon. The corps then broadcast a message instructing the residents to return to Višegrad and assuring their safety. When they returned, the village was in shambles, with many homes burned. The JNA then blocked all roads leading out of Višegrad with help from the White Eagles and Užice Corps. Soldiers at the roadblocks would take away Muslims, whose names appeared on a master list. Between 18 and 25 May, the Užice Corps left Višegrad, leaving it to fall under the control of the White Eagles, Cetnik gangs and Seselj's forces." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2, (Vol. I), 28 Dec. 1994, Annex III.A, "Special Forces", p. 163, para. 543,].

After the fall of Višegrad, the JNA Corps from Užice and the various paramilitary units acting under its command started terrorising the inhabitants of the city [see also, Reply, Chapter 8, Section 3]. The genocidal acts committed in Višegrad against

its non-Serb population are also reported by the Commission of Experts [*ibidem*, paras. 540-556, pp. 162-165]. The findings of the Commission of Experts were confirmed by independent media, such as *The Guardian* [Ian Traynor, *The Guardian*, 15 April 1992, Annex 261; Ian Traynor, *The Guardian*, 16 April 1992, Annex 262]



452. In the weeks following the occupation of Višegrad, a large number of the Muslim population was arrested and deported to Serbia. The Commission of Experts acknowledged that "most of the 6,600 Muslim inhabitants of Višegrad were taken by the Serbian Territorial Defence to a detention facility in Užice" [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 419, para. 3458]. The name of the facility the Višegrad Muslims were taken to is not known, but the existence of the camp was, according to the Commission of Experts itself, corroborated by other sources. An unknown number of women was captured in Višegrad for the purpose of rape and taken to a detention centre in the Zlatibor region in southern Serbia, between the cities of Užice and Prijepolje. This deportation was reported by the Commission of Experts, which also found evidence from independent sources corroborating the existence of this rape camp [*ibidem*, p. 419, para. 3463].

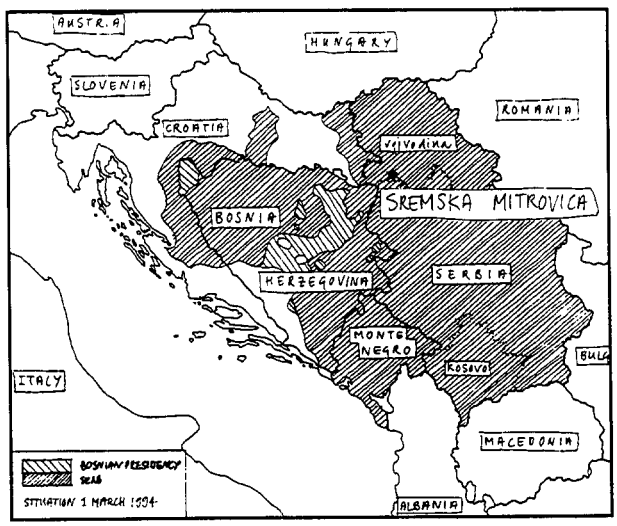
453. At the date of submission of this Reply, the fate of many of the abducted Muslims of Višegrad remains unknown.

The Sremska Mitrovica prison camp

454. The Kazneno Popravni Dom (KPD) was a camp in Sremska Mitrovica, a town in Vojvodina (Serbia), close to the border with Bosnia and Herzegovina. The Commission of Experts reported on the existence of this detention facility in their Annex devoted to prison camps. The existence of the camp was, according to the Commission of Experts "corroborated by multiple sources", including the International Committee of the Red Cross [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII: "Prison Camps", p. 430, para. 3547]. It described the Kazneno Popravni Dom (KPD) camp as follows:

> "3547. KPD was a criminal rehabilitation centre for civilians prior to the war. *Beginning on 18 November 1991, Croatians captured at the battle of Vukovar as well as Muslims from Bosnia were detained there.* Reports indicate detainees were being held in the KPD as late as 14 August 1992 by the JNA in conjunction with paramilitary and local Serbian civilians. The ICRC [International Committee of the Red Cross] visited a detention facility in Sremska Mitrovica on 2 December 1991. This camp is also mentioned in another report.
>
> 3548. The KPD is situated in the city of Sremska Mitrovica in south-western Vojvodina, FRY. The city is approximately 75 kilometres southwest of Vukovar, Croatia." [*ibidem*, p. 430, paras. 3547-3548, emphasis added].

The KPD camp in Sremska Mitrovica was therefore not only used to detain Croats from Croatia, but also Bosnian citizens.



455. The majority of the Bosnian citizens in the Sremska Mitrovica camp were from the city of Bosanski Šamac, where they were ethnically cleansed at the beginning of the

armed conflict in Bosnia and Herzegovina. Bosanski Šamac is a Bosnian town on the border with Croatia, which fell on 17 April 1992, when it was taken by a combined force of local Serb units, Serbian paramilitaries and the JNA [see also Reply, Chapter 8, Section 3]. The population of the KPD camp was analyzed by the Commission of Experts:

> "3558. *The ethnicity of the prison population was mixed; the majority of the detainees were reportedly Croatians from Vukovar and Muslims and Croatians from Bosanski Šamac, BiH. However, among the population were Hungarians and Croatians from the Vojvodina area imprisoned as part of FRY's domestic policy of relocating non-Serb groups.* There were also reports of an American, a Ruthenian, a Slovenian woman, and several Albanians being imprisoned. Several reports mention that Serbs from Vukovar, who refused to collaborate with the Serbian forces, and even a JNA soldier were detained. The KPD was also populated with civilian criminals, not being held in connection with the conflict. An undetermined number of these criminals participated in the rape of at least one female prisoner". [*ibidem*, p. 432, para. 3558, emphasis added].

The KPD was used as a tool in a policy of "relocating non-Serb groups", whether of Croatian, Bosnian or Yugoslav origin. It was, in the view of the Commission of Experts, therefore an intermediate station and in some cases also the final destination for non-Serbs ethnically cleansed from their homes in Bosnia and Herzegovina and other parts of the former Yugoslavia.

456. One of the Muslims detained in the camp was the leader of the Bosnian Party for Democratic Action (SDA) in Bosanski Šamac, Sulejman Tihić. During his stay in Sremska Mitrovica, Tihić prominently figured on Belgrade television, on a news programme which showed not only pictures of the camp and its prisoners, but also a recorded statement Tihić had been forced to give. The news programme was broadcasted shortly after the fall of Bosanksi Šamac in April or May 1992. The transcript of the programme reads as follows:

> "[voice-over:] The Visnews team visited and filmed the prison in Sremska Mitrovica. We are showing its coverage on a whole.
>
> [newsreader:] More than 400 detainees, members of different Croat formations (National Guard, Ministry of Interiors, HOS), mainly from Vukovar, are presently held in the prison in Sremska Mitrovica. *A group of Muslims is among them. We record the statement of Sulejman Tihić, now prisoner, former president of SDA of Bosanski Samac.*
>
> [Tihić:] *A group of captives from BH, some 40 of us, turned to the BH authorities with request, with urgent request, to consider our status and our problem in such a way as to release from military prisons or wherever the JNA captives are detained, to release around 25 soldiers, and after that JNA would release us from Bosnia who are presently in military prison of Sremska Mitrovica.* I have already sent the letter, in my capacity as the president of a party branch to Alija Izetbegovic, as the president of SDA BH and I use this opportunity to appeal once again to resolve

> both our problem and the problem of those soldiers because both the soldiers and us, all have their parents, children, brothers, sisters, and everybody is waiting for us to be released from this detention. I think that our exchange should not be a problem". [Transcript of Belgrade TV News, April/May 1992, Annex 263].

The text of the programme broadcasted by Belgrade television confirms that inhabitants of Bosanski Šamac were indeed taken to Serbia. The visit of the television crew to the camp was also reported by the Commission of Experts [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 443, para. 3645]. The number of detainees mentioned by the announcer, "more than 400", is much too low. In fact, the number of prisoners was in the range of 3,000 to 4,000 [*ibidem*, p. 432, para. 3559]. Not all of these were men, women were also reported to be kept in the camp [*ibidem*, p. 436, para. 3589; p. 438, para. 3606; pp. 440-441, paras. 3637-3629].

457. The camp fell under the command of the JNA. This also became clear in the above quoted television programme. In his forcibly extracted statement, SDA leader Sulejman Tihić asked for the return of JNA soldiers, after which the "JNA would release us from Bosnia who are presently in military prison in Sremska Mitrovica". The JNA obviously had the power to imprison and discharge detainees. The guards at the camps were also primarily JNA soldiers. Sometimes, members of Serbian paramilitary organizations were seen on the premises as well. The Commission of Experts reported as follows:

> "3550. The JNA appeared to be in control of the KPD. This was substantiated by several prisoner statements claiming both the presence of the JNA at the detention facility and apparent custody of prisoners by the same. Also, prisoners compared treatment at the hands of the paramilitary members and JNA personnel, both of which had access to the detainees. An article in the Belgrade daily Borba quotes at length a civilian held at Srermska Mitrovica attributing his survival to the fact that he was held in a JNA prison. Further, several reports indicate lists of prisoners were supplied to the prison personnel by the Yugoslav Federal Police (SDS). In a letter to Human Rights Watch, the Serbian Government clearly admitted to having held individuals from Ovcara.
>
> 3551.The commander of the military guards at the KPD was called KOS by the prisoners, which is an acronym for counter intelligence agency. The guards referred to him by a code name. He participated in the beating of prisoners. Another document alleged that the camp was run by a JNA Captain. It is likely that they are the same individual as they are both referred to by the guards by the same code name and were at the KPD during the same time period.
>
> 3552. Some of the guards at the KPD were identified by name in various reports. Three were transferred from their positions at Begejci [another notorious camp in Vojvodina] to the KPD around 25 December 1992. Five prison guards, all about 18 to 20 years-old and JNA privates, were

> at the KPD for military police training. They regularly tortured prisoners and were responsible for the deaths of at least 18 prisoners. Another guard was identified only by nickname.
>
> 3553. Sources identify seven others who were not prisoners and who were present during the beatings at the KPD. A lance corporal was present at the camp from 24 September 1991 to 3 October 1991 and beat at least one prisoner repeatedly.
>
> 3554. A captain, an investigating officer, interrogated prisoners at KPD and apparently supported the methods used by an investigating officer from Begejci - an ensign 1st class. One report indicates that prisoners were being forced to sign confessions written by the captain.
>
> 3555. In November 1991 detainees were beaten by JNA soldiers, JNA military police, and bus drivers of Serb nationality. Paramilitary units and civilians participated in the beatings and killings [in] the KPD along with the JNA military personnel. Multiple reports indicate that military police and Serbian policemen beat prisoners on arrival at the KPD. One report in particular indicated a military police private first class took part in the beatings. A number of reservists acted as guards and apparently treated the prisoners more humanely." [*ibidem*, p. 431, paras. 3550-3555].

The JNA was thus in command of the camps and JNA personnel condoned or participated in the regular maltreatment of the prisoners.

458. The treatment of the detainees at Sremska Mitrovica did not differ from the camps in the territory of Bosnia and Herzegovina under Serb control [see, Reply, Chapter 5, Section 5]. Like in the Serb controlled areas across the border prisoners were regularly subjected to various forms of torture:

> "3581. Prisoners were beaten severely on a regular basis. Several detainees were allegedly beaten so severely that they suffer from permanent damage. Some were beaten until they passed out and were revived with water so that the prison authorities did not have to take them to the Novi Sad [Serbia] hospital. One source claims he was beaten unconscious four or five times; he was beaten on the head, they broke his teeth, wounded his chest and he still has kidney pains. Another witness claims he was only beaten once and that he was kicked and beaten on the soles of his feet. Other prisoners were also beaten on their feet.
>
> 3582. Prisoners were also forced to eat pepper and salt, had pistols shoved in their mouths, and one individual had his jaw broken and was unable to lie down due to his beating. Many prisoners were beaten during their exercise period.
>
> 3583. The beatings were perpetrated by the guards at the KPD and drunken paramilitary members. The latter encouraged younger JNA soldiers to take part. The prisoners were beaten with bare hands and various instruments; truncheons, rubber hammers, blackjacks, mace type objects, baseball bats, clubs, and iron rods. The guards unleashed trained dogs upon the detainees." [*ibidem*, p. 435, paras. 3581-3583].

Sometimes, the prisoners were beaten until dead:

> "3586. An undetermined number of prisoners were beaten until dead. One detainee claimed that two prisoners died as a consequence of beatings and were left to lie for 20 hours next to those still alive. There is another report of a detainee witnessing the death of two prisoners. It is unclear as to

> whether these reports refer to the same incident. A woman claims that her brother-in-law from Lovas died in Sremska Mitrovica on 20 December 1992 due to maltreatment. Allegedly the beatings which accompanied the interrogations often resulted in death. At least 18 prisoners were tortured to death according to one source. In contradiction, another source claims that people were killed but never in front of witnesses". [*ibidem*, p. 436, para. 3586].

The female detainees were beaten and interrogated as well. Many women in the KPD camp were also raped by the guards, visiting paramilitaries or other prisoners. [*ibidem*, pp. 440-441, paras. 3626-3630].

459. The SDA leader from Bosanski Šamac, Sulejman Tihić, who was mentioned above, was once forced to be the judge in a mock trial staged by the camp guards. This "trial" is also mentioned by the Commission of Experts, which briefly described the developments in "court" and the tragic outcome:

> "During the trial the accused prisoner was beaten severely and forced to confess to killing Serbs. The morning after the trial he was found dead." [*ibidem*, p. 443, para. 3646].

460. The Croat and Muslim prisoners of the KPD camp were deliberately targeted for maltreatment because of their ethnicity. The camp was, after all, used primarily to imprison Croats and Muslims "as part of FRY's domestic policy of relocating non-Serb groups" [*ibidem*, p. 432, para. 3558]. This policy of relocation is commonly referred to as ethnic cleansing. During their forced stay in Sremska Mitrovica, Croats and Muslims were, for example, forced to sing Serbian songs [*ibidem*, p. 435, para. 3584], obliged to sign "prepared confessions denouncing their nationality, religion and right to land" [*ibidem*, p. 437, para. 3597] or forced "to read a cyrillic bible". [*ibidem*, p. 442, para. 3636].

The ICRC's visits to the KPD camp

461. The International Committee of the Red Cross visited the camp at Sremska Mitrovica several times. The reports of these visits remain confidential, but the Commission of Experts included its findings on these ICRC investigations in their Report. Their account of the events is particularly interesting since it clearly shows the way the Yugoslav authorities tried to delude the Red Cross representatives:

> "3650. The role of the ICRC in relation to the KPD was three-fold: register detainees, monitor their treatment, and observe the exchange of prisoners. *Apparently the KPD personnel expended a considerable amount of energy to deceive the ICRC.*

> 3651. For the first two months, December and January, the camp personnel would not allow the Red Cross access to the prison. In January 1992, the ICRC requested admission to hall number 3 but was told that there was no one there. All the prisoners, who were in fact in that room, were moved out and shortly thereafter, the Red Cross was permitted to enter the emptied hall. On a second visit, the ICRC was allowed to see the prisoners.
>
> 3653. Once the ICRC had gained permission to enter the camp, representatives interviewed the prisoners and took written statements; but the JNA officers were very successful in hiding some prisoners and misleading the representatives. For example, some of the prisoners were forced to dress in military uniforms over their civilian clothes to enable the JNA to present them as POWs rather than civilians to the ICRC and other international organisations. The ICRC sent inspectors to the facility every 30 days which temporarily improved the lot of the prisoners. About 125 prisoners who were not included on the list given to the ICRC were hidden by prison officials in cellars and attics during the Red Cross visits.
>
> 3654. In addition, prisoners were given soap and toilet paper only when a commission was expected, but these were taken away the moment the commission left. At all other times hygiene was kept at a minimum. In March, though, the guards were changed and the food improved on the request of the ICRC." [*ibidem*, p. 443-444, paras. 3650-3654, emphasis added].

The JNA officers in charge of the camps thus successfully succeeded in hiding certain prisoners and misleading the Red Cross representatives. Those prisoners the ICRC managed to visit understandably were very careful not to reveal anything that could subsequently endanger their lives. Sometimes, inmates refused to talk to the Red Cross' representatives entirely, for fear of being killed afterwards [*ibidem*, p. 443, para. 3645].

462. The foregoing extract from the Commission of Experts' Report is very illustrative, as it clearly demonstrates the Respondent's outright misleading attitude towards the international community. If international observers were permitted to visit the country at all, they were only allowed to see what the Yugoslav authorities wanted them to see and that was most certainly not a reflection of the truth.

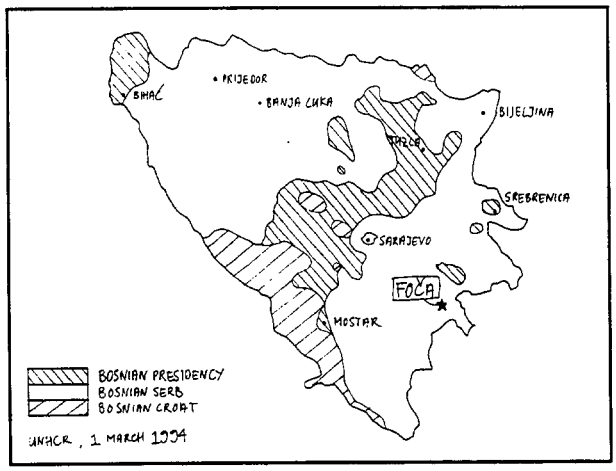
463. This deceiving behaviour to a great extent explains the results of the CSCE mission to Yugoslavia in January 1993. They also visited two detention facilities in Sremska Mitrovica, probably including the KPD camp described in the foregoing pages. At the time the CSCE rapporteurs visited the site of the camp, in January 1993, most of the prison population had left the camp as part of one of the prisoner exchanges organised by the Yugoslav authorities. The majority of the inmates was released from the KPD on 14 August 1992, when the last major exchange took place [*ibidem*, pp. 444-445, paras. 3658-3667]. Five months later - that is, in January 1993 - the CSCE representatives spoke to a prison warden:

> "At the penitentiary, the Rapporteurs were informed by the warden that the prison had previously been used as a place of detention for 'prisoners of war' from Croatia but that a complete exchange of the detainees had taken place. Through interviews with Muslim prisoners who had been convicted of common crimes prior to the outbreak of the Yugoslav war, the Mission gained the impression that there were presently no prisoners of war or other such detainees." ["Report of the CSCE Mission to Inspect Alleged Places of Detention in the Republics of Serbia and Montenegro", *CSCE*, 13-18 Jan. 1993, p. 9, para. 26, as reproduced in the Counter-Memorial, Annexes to Chapter I, Vol I, pp. 21-26].

The prison warden admitted that the camp had been used as a detention facility, although he failed to mention that Bosnian citizens had been imprisoned as well. His remark that the KPD had been used to house "prisoners of war", was put between inverted commas by the CSCE rapporteurs.

Bosnians arrested in Yugoslavia and handed over to the Bosnian Serbs

464. In addition to the above mentioned camps, Yugoslav authorities used existing detention facilities for other purposes as well. Bosnians who had fled the war in Bosnia and Herzegovina in the first months of the armed conflict were imprisoned for a short time, before being handed over to the Bosnian Serbs.



465. Many Bosnian Muslims from the area around Foča, for example, fled to Montenegro, when the city was ethnically cleansed by the Serbs in April 1992. Foča is a relatively large city in the southeast of Bosnia and Herzegovina, not far from the Montenegrin border. In its Report on prison camps, the Commission of Experts reported the following:

> "In March and April 1992, Bosnian Muslims fled from the hostilities in the Foča area to Montenegro, which they believed was safe due to programs authorities in Serbia broadcasted. These programs indicated that Muslims were safe in Serbia. In July 1992, at least 30 Muslim refugees in Herceg-novi [Montenegro] were apprehended by the city police and detained in the city jail. They were held until unidentified police personnel and Miso Stevanocić arrived in Foca police vehicles and transported them to the Foča prison." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2, (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", p. 411, para. 3397].

The prison of Herceg Novi in Montenegro was only one of the centres used to detain Muslim refugees from Bosnia and Herzegovina. Others were imprisoned in the Montenegrin cities of Podgorica [*ibidem*, p. 411, para. 3402,] and Pljevlja:

> "Pljevlja, in northern Montenegro, was also a site where Muslims took refuge from the hostilities in the Foca area around March and April 1992. In July 1992 Muslim refugees were rounded up and held in jails in several cities, one of which was Pljevlja, until they were picked up by Foca police personnel. All the refugees were taken to Foca prison and detained until they were sent to unidentified locations." [*ibidem*, p. 411, para. 3401].

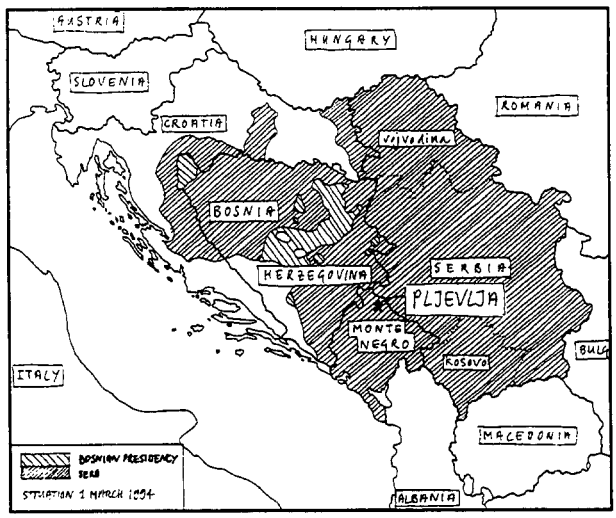
The above shows that the Federal Republic of Yugoslavia was actively engaged in the ethnic cleansing campaign carried out in the Foča area. The authorities in Montenegro and the Republika Srpska actively cooperated in the process, which is illustrated by the fact that the detained Muslims were picked up in Montenegro by Bosnian Serb police officers.

466. The Muslims arrested in Montenegro were taken to the prison camp in Foča, where they were detained "until they were sent to unidentified locations" [*ibidem*, p. 411, para. 3401]. The prison in Foča, the Kazneno Popravni Dom, KP Dom, was one of the most notorious camps run by the Serbs in Bosnia and Herzegovina [Reply, Chapter 5, Section 5]. There, many detainees were tortured and killed [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2, (Vol. IV), 28 Dec. 1994, Annex VIII, "Prison Camps", pp. 128-132, paras. 1048-1078].

467. At the date of submission of this Reply, the fate of the deported refugees remains unknown. The ICRC has listed many of these non-Serbs as missing:

- Enver Mujcic, for instance, was arrested on 25 February 1992 in Montenegro. According to the information available to the ICRC, he was taken to Foča KP Dom two days later, by Bosnian Serb police officers [ICRC, Information requests for

persons unaccounted for in Bosnia and Herzegovina, BAZ-243906/01, February 1996, Annex 264].
- Suvad Topalovic suffered the same fate on 27 May 1992 [ICRC, Information requests for persons unaccounted for in Bosnia and Herzegovina, BAZ-104439/01, February 1996, Annex 264].
- Bego Jahic was also captured in Montenegro on 25 May 1992 and subsequently deported to the KP Dom. The Bosnian authorities in charge of the camp in Foča informed the ICRC that Jahic had arrived at the facility. However, when ICRC delegates visited the KP Dom camp several months later, Jahic was not there anymore [ICRC, Information requests for persons unaccounted for in Bosnia and Herzegovina, BAZ-910778/03, 27 May 1997, Annex 264].
- Edhem Kafedzic was arrested in Pljevlja, on the territory of Yugoslavia, by the JNA, on 24 April 1992. He was separated from his fellow travellers and sent to Foča, together with three unidentified persons. From there, he was later taken to an unknown camp with thirty other prisoners [ICRC, Information requests for persons unaccounted for in Bosnia and Herzegovina, BAZ-103692/01, February 1996, Annex 264].



- Salih Colak was caught on 20 May 1992 near the town of Pljevlja. He was arrested by the Bosnian Serb police on Montenegrin territory and taken to an unknown destination [ICRC, Information requests for persons unaccounted for in Bosnia and Herzegovina, BAZ-107494/01, 30 September 1996, Annex 264].

- Fehim Colak was also arrested on 20 May 1992, at the same occasion [ICRC, Information requests for persons unaccounted for in Bosnia and Herzegovina, BAZ-107494/02, 30 September 1996, Annex 264].
- Amer Prelo was captured 26 May 1992, near Herceg Novi, in Montenegro. According to information the ICRC received from the General Secretariat of the President of Montenegro, Prelo was later handed over to the (Serb) police in Srebrenica [ICRC, Information requests for persons unaccounted for in Bosnia and Herzegovina, HRZ-020314/01, February 1996, Annex 264].
- Smail Hasanbegovic was arrested on 26 May 1992 as well. According to the Montenegrin authorities, he was later transferred to Bosnia and Herzegovina, where he was last seen by an ex-detainee in September 1992 [ICRC, Information requests for persons unaccounted for in Bosnia and Herzegovina, HRZ-020315/01, February 1996, Annex 264].

The whereabouts of those non-Serbs arrested in the Federal Republic of Yugoslavia remains unknown. The Applicant fears they are no longer alive.

468. The arrest and deportation of the Muslim refugees from east Bosnia in Montenegro was, in the spring of 1994, also described by the independent Serbian newspaper *Vreme* in a series of articles on the topic. These included a list of deportees, which was also read in Denmark by a Bosnian refugee, Fahrudin Cengić. Cengić recognised the names of several family members and decided to address *Vreme* hoping that it would be able to give more information on their whereabouts:

> "In your newspaper of April 22 and May 6, 1994, I have read the list of deported refugees from Montenegro. My son Cengić Himzo, born in 1958, my grandson Prelo Amer, born in 1973, and my son-in-law Hasanbegovic Smail, born in 1949, are on the list. All of them are from Gorazde.
> We have escaped from Gorazde on 14.04.1992 into my weekend house in the place of Baosići near Herceg Novi [Montenegro]. On 26.05.1992, around 11 hours, two policemen came in front of my house and said: 'All men to give their identification cards and go out for an informative conversation'. At that very moment I understood that we were arrested and as soon as we went into the street they put us into the closed police car and direction was Herceg Novi ... They took six of us into the SUP [police station] in Herceg Novi:
> I, Cengić (father's name Himza) Fahrudin, born in 1927; my son Cengić (father's name Fahrudin) Himzo, born on 4.08.1958, completed the Faculty of Political Sciences; my grandson Prelo (father's name Asim) Amer, born on 18.9.1973, a pupil; Hasanbegovic (father's name Semso) Smail, born in 1949, employed in the Svjetlost' Sarajevo; Prutina Alija from Gorazde and Bihorac Hajrudin from Visegrad and Buljubasic Safet from Gorazde.
> After several hours spent in the prison, they took me out and told me to wait in front of the office of the police commander who was supposed to give me my ID. I was waiting for several hours being able to see who is going into and out of the office.
>
> In Baosići my neighbours, the Serbs from Gorazde, Vuković Momir, a.k.a. 'Moso', and Veljović Ljubo, a lawyer in the Health Centre in Gorazde, were with policemen. They sat next to the driver.

When we all went out from the car in front of the SUP Herceg Novi, we were taken into the prison while they went straight to the office of the police commander and they were not arrested at all but were accomplices in our arrest.
Please find enclosed the written answer of the president of Montenegro and I kindly ask you and all others to inform me on any piece of information about my son, grandson and son-in-law, as I have been asking all around, writing to many addresses, and I don't know whom to turn on any more. I was expelled from Baosići on 8.06.1992, and I went to Bijelo Polje [Montenegro] and from Bijelo Polje I came to Denmark on 30.06.1993 where I live now.

Cengić Fahrudin" [Fahrudin Cengić, letter published in *Vreme*, May 1994, Annex 265].

The six Muslim men mentioned in the letter above were refugees from east Bosnia, Gorazde and Višegrad. All were arrested by the Montenegrin police on the directions of Serbs from their home town. Fahrudin Cengić was later released, for unknown reasons. The others were not.

469. In his letter to *Vreme*, Cengić enclosed a "written answer" from the President of Montenegro. Cengić's Muslim companions had been handed over to the Bosnian Serbs, shortly after their arrest:

"Republic of Montenegro
GENERAL SECRETARIAT OF
THE PRESIDENT OF THE REPUBLIC
-Commission for requests and proposals-
Number: 07-194/7
Podgorica [capital of Montenegro]: 14.04.1993

CENGIC FAHRUDIN
At Hodzić Zuhdo

BIJELO POLJE [Montenegro]
Potkrajci

On the occasion of your addressing to the General Secretariat of the president of the Republic of Montenegro we inform you that we have received from the Ministry of Internal Affairs of Montenegro the answer with the following content:

Upon the claim of the public security station of the Srebrenica SUP [Secretariat of Internal Affairs], the following persons, being the Muslims and Serbs, were arrested, transferred to and handed over to the workers of the Srebrenica SUP.

Among the mentioned persons are also Cengić (father's name Fahrudin) Himzo, Prelo (father's name Asim) Amer and Hasanbegović (father's name Semso) Smail.

Due to war activities in that region and break of communications in police co-operation, the Ministry of Internal Affairs is not able to find out in which way the persons, who had been handed over by the MUP [Ministry of Interior] of Montenegro upon its claim, were treated.

[Seal]
Republic of Montenegro
General Secretariat of the President

ADVISER
[signed]
Ljiljana Ivanocić

> of the Republic
> Podgorica" [General Secretariat of the President of the Republic of Montenegro, letter to Cengić Fahrudin, signed: Ljiljana Ivanović, 14 Apr. 1993, Annex 266].

The letter above shows that Cengić's arrested family members were eventually handed over to the Bosnian Serb authorities in the Srebrenica area. This was done "upon the claim of the public security station of the Srebrenica SUP". Apparently, the cooperation between the two Serb entities was so close that a mere "claim" was sufficient to deport or hand over innocent Bosnian civilians.

470. A letter similar to the one cited above was also sent to Suada Cardaklija, a Bosnian Muslim, after she had asked the authorities of Montenegro about the whereabouts of her husband arrested in Montenegro. It turned out that Suada Cardaklija's husband had been transferred to the camp in Foča as well. The transport had taken place under the command of the Montenegrin Ministry of Interior on 25 May 1992. The authorities in Montenegro failed to mention the reason for his arrest, but informed Suada Cardaklija that the fate of her husband was not known,

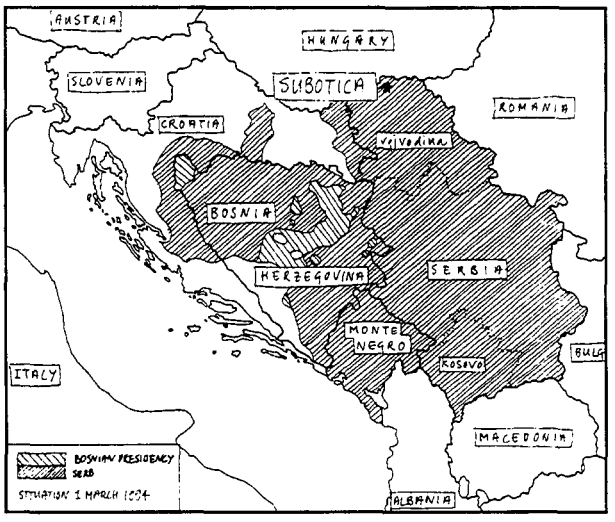
> "due to the main reason which is that the civil war, which caused a total break of police co-operation and gathering of pieces of information on the fate of person handed over." [General Secretariat of the President of the Republic of Montenegro, letter to Cardaklija Suada, signed Ljiljana Ivanovic, 5 July 1993, Annex 267].

This explanation for the lack of information on the whereabouts of the arrested refugees is in sharp contrast with the truth [see also Chapter 8, Section 6]. During the years of the armed conflict, the Republican Ministries of Interior in Yugoslavia and the "Republika Srpska" continued to cooperate with each other on a day-to-day basis, which is also evidenced by the fact that the Bosnians civilians involved were handed over to the Bosnian Serbs in the spring of 1992, well after the fighting or so-called "civil war" in Bosnia and Herzegovina had erupted. This "civil war" apparently did not form any obstacle at all to the deportation of non-Serbs to Bosnia and Herzegovina and an almost certain death in a Bosnian Serb prison camp.

Yugoslav camps used to extradite Bosnian refugees to third countries

471. Yugoslav authorities also established camps where refugees from Bosnia and Herzegovina were detained before being expelled to third countries. Several camps

were located in or around the city of Subotica, in Vojvodina, near the Hungarian border.



472. These camps were, for example, used for Muslims expelled from Zvornik, a town ethnically cleansed in April 1992 [Reply, Chapter 5, Section 6]. The fact that refugees from Zvornik were held in the Subotica area is not denied by the Respondent. In its Counter-Memorial, the Federal Republic of Yugoslavia explained the presence of these Zvornik refugees as follows:

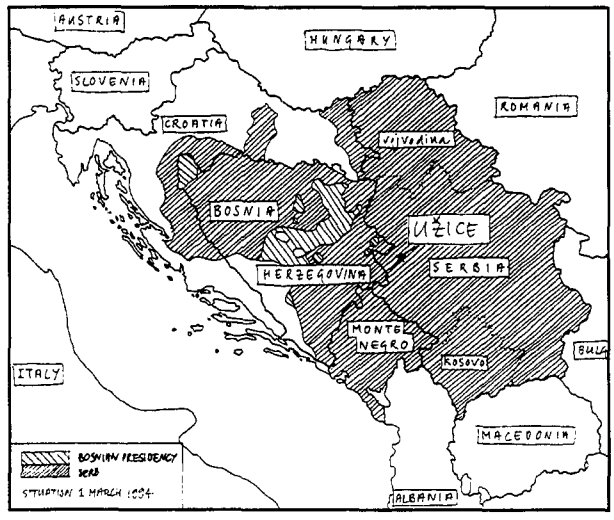
> "The Muslim population from Zvornik expressed the wish to be allowed the transit on their way to the Western Europe. However, the Hungarian authorities stopped the convoy because the refugees had no travel documents. The only way to deal with the situation was to put the refugees up at the temporary reception center at Palić, Subotica, until their travel documents were issued.
>
> The refugees stated that they wanted to leave Zvornik because of the outbreak of war, for personal security reasons and to evade mobilization by the authorities of Alija Izetbegović.
> (...)
> The temporary transit reception centre at Palić was organized in accordance with the principles of the Red Cross and those of humaneness and neutrality. It was intended for all refugees who were passing through the FR of Yugoslavia while waiting for travel documents to be issued, regardless of their religion or nationality, but who could not afford hotel accommodation and other similar amenities. The center was an open establishment, the refugees moved freely and could use all Lake Palić recreational complex facilities. Food, accommodation and medical care were at a satisfactory level, of which concrete evidence is contained in refugee statements and other relevant documents as they display no complaint by any refugee with respect to the stay at Palić. The only check-point was at the reception desk, and a book of duty was also kept. During the operation of the centre no refugee was hurt or arrested." [Counter-Memorial, p. 67-68, paras. 1.3.5.19, 1.3.5.20 and 1.3.5.23.].

473. The picture of hospitality sketched by the Federal Republic of Yugoslavia seriously bends the truth. The Respondent failed to mention, namely, that it first *forced* the refugees from Zvornik to leave their home town, which was brutally attacked in April 1992 by a combined force of JNA troops and Serbian paramilitary [see also Reply, Chapter 8, Section 3]. It also failed to report that the refugees never wanted to be sent to third countries, such as Hungary, Austria or Germany. They were never *asked* whether they preferred going back to Bosnia and Herzegovina, nor were they *invited*, let alone *allowed* to do so. In February 1993, Special Rapporteur Tadeusz Mazowiecki gave the following account, which was also referred to in the Applicant's Memorial [Memorial, p. 51, para. 2.2.5.9]:

> "In June 1992 deportees from Kozluk and Zvornik, towns which had a Muslim majority, gave the following account of their forced deportation to Hungarian border guards. The towns were sealed by Serb forces. Muslim families were told they had six hours to pack their belongings and go to a certain gathering point. In the case of Zvornik, it was a farmyard. At these gathering points, the names of the deportees were put on a list, and everyone was individually ordered to sign this list. They were informed that by their signature they 'voluntarily' gave up all their belongings. The deportees were then ordered, some at gunpoint, to board buses and trucks and later trains until they arrived at Palic (Vojvodina) [near Subotica] where they were put up at the local camp site. Although the deportees apparently did not so request, they were provided with Yugoslav passports after photographers came to the camp site for this purpose. For some deportees, the issuing authority of their Yugoslav passport was 'MUP Subotica'. Deportees reported that between 26 June and 1 July 1992 there were about 1,200 persons from Kozluk and another 1,800 from Zvornik at the Palic campsite. After being taken to the border, these persons were admitted to Hungary as refugees." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 10 Feb. 1993, p. 22, para. 99].

This so-called "refugee" camp near Subotica and the bureaucracy established to supply all the refugees with the necessary papers made it possible to cleanse the Zvornik area of its undesired Muslims. The camp in the Subotica area was thus one of the final links in the long chain of ethnic purification. The existence of this chain and the way the different links were connected was also described by the Ludwig Boltzmann Institute of Human Rights in Vienna in their Report on the ethnic cleansing of Zvornik [Tretter e.a., "Ethnic Cleansing Operations in the northeast-Bosnian City of Zvornik from April through June 1992", *Ludwig Boltzmann Institute of Human Rights*, Vienna, 1994, pp. 28-29, 35-36, Annex 48].

474. The expulsion of the Zvornik refugees via Subotica was also discussed in Chapter 5, in the Section entirely devoted to the ethnic cleansing of that area [Reply, Chapter 5, Section 6].



475. The use of "refugee" camps to extradite non-Serbs to third countries continued throughout the war. In April 1996, a delegation of the government of Bosnia and Herzegovina was allowed to visit the Šljivovica camp near Užice in Serbia. The authorities of the Federal Republic of Yugoslavia used the camp to imprison refugees from the former east-Bosnian safe haven of Žepa, which fell shortly after the capture of Srebrenica in July 1995. It was the first time a Bosnian delegation was allowed to inspect a detention centre on Yugoslav territory. At the time the delegation was let in, many Muslim refugees from Žepa had been deported to third countries, often against their will. None was allowed to return to Bosnia and Herzegovina. Many others were awaiting deportation. The camp was surrounded by barbed wire and trenches and was guarded by armed policemen with dogs. At least two of the inmates were killed during their eight months' stay in the camp. It is important to note that the visit took place on 9 April 1996, almost half a year after the Dayton Peace Accords were signed. After their visit, the delegation presented a written Report to the President of Bosnia and Herzegovina [Report of the State Commission for search of missing persons, number 06/5-43/96, 9 April 1996, Annex 268].

476. Some of the non-Serb refugees from the former enclave of Žepa were captured by the Yugoslav authorities and subsequently handed over to the Bosnian Serbs [see e.g. ICRC, Information request for person unaccounted for on the territory of Bosnia and Herzegovina, BAZ-106681/01, 31 August 1996, Annex 269].

The Sandžak Muslims

477. In the above passages, special emphasis was placed on the fate of Bosnian refugees in Yugoslavia. They were, however, not the only ethnic or religious minority which suffered at the hands of the Yugoslav authorities. As mentioned above, genocidal acts were also committed against minorities living on the territory of the Federal Republic of Yugoslavia: Hungarians and Croats in Vojvodina, in the north of Serbia, the Albanians in Kosovo and the Muslims in the Sandžak area, close to the border with Bosnia and Herzegovina [See e.g.: United Nations, *Situation of Human Rights in the territory of former Yugoslavia, Periodic report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1997/8, 25 Oct. 1996, pp. 7-26, paras. 17-100]. In the following, the Applicant will fully concentrate on the fate of the Muslim inhabitants of the Sandžak region.

478. In September 1995, Elisabeth Rehn succeeded Tadeusz Mazowiecki as the new Special Rapporteur of the Commission on Human Rights. One year later, in October 1996, Rehn published her *Special report on minorities*, in which she devoted a number of pages to the plight of the Sandžak Muslims and to the serious human rights abuses that occurred in the region after the break up of the former Yugoslavia:

> "76. Political tensions have persisted in the Sandzak region since the break-up of the former Yugoslavia. The situation turned increasingly precarious in October 1991, when the Muslim Party of Democratic Action (SDA) of Sandzak organized an unofficial referendum on autonomy for the region. According to SDA sources, 98,8 per cent of the votes cast were in favour of an autonomous Sandzak.
> (...)
> 77. The FRY authorities have responded to the volatile situation in Sandzak by strongly increasing the presence of military and police units in the region. *In the last several years there have been continued reports of serious human rights abuses perpetrated both by the Yugoslav authorities and by Bosnian Serb paramilitary forces crossing into Sandzak from the Republika Srpska.* With the declared aim of looking for hidden arms, the police have carried out systematic searches of Muslim homes in locations throughout the region. *Numerous cases of arbitrary arrests, interrogations and ill-treatment or torture have been reported and documented in connection with these raids, in which members of the SDA, other political activists and journalists appear to have been particularly targeted. The authorities have reportedly taken little or no action to investigate or put a stop to these abuses.* The situation has now calmed down somewhat with only sporadic incidents reported in the last year. *It is nevertheless clear that the Government of the Federal Republic of Yugoslavia continues to bear responsibility for investigating past abuses in order to bring the persons responsible to justice.*
> (...)
> 78. Harassment, intimidation and violence against the local Muslim population were reportedly particularly intense in the Sjeverin-Bukovica area near the Bosnian border from 1992 to 1994. Bosnian Serb irregulars and paramilitary units are believed to have been responsible for most of these abuses, but it appears that the Yugoslav army and police did little to stop the incursions and protect the population. It has also been alleged in some cases that members of the military and police of the Federal Republic of Yugoslavia have participated in violent attacks." [United Nations, *Situation of Human Rights in the territory of former Yugoslavia, Periodic report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the*

Commission on Human Rights, E/CN.4/1997/8, 25 Oct. 1996, p. 20, paras. 76-78, emphasis added].

The campaign of terror in the Sandžak region was exclusively aimed at the Muslim population, their political and cultural leaders in particular. For this campaign the Yugoslav authorities bear full responsibility.

479. The foregoing Special Rapporteur's conclusions were confirmed by the findings of those few non-governmental organisations which succeeded in gaining access to the region, such as Human Rights Watch/Helsinki. In May 1994, Human Rights Watch/Helsinki published its findings in a report on human rights abuses of non-Serbs in the Federal Republic of Yugoslavia. In the introduction to this reports the authors clearly established Yugoslavia's responsibility for the atrocities committed against the Sandžak Muslims in the period preceding the publication of the report:

> "*With the world's attention distracted by events in Bosnia-Hercegovina, Serbian and Montenegrin authorities have stepped up oppression of non-Serbs in Serbia and Montenegro.* In particular, incidents of police abuse, arbitrary arrests and abuse in detention have been prevalent in the three regions of Serbia and Montenegro in which non-Serbs constitute a majority or significant minority: Kosovo (a province of Serbia which is 90 percent ethnic Albanian), Sandzak (a region of Serbia and Montenegro which is over 50 percent Muslim) and Vojvodina (a province of Serbia which is approximately 19 percent ethnic Hungarian, 5,4 percent Croat and 3,4 percent Slovak).
>
> *The governments of the Federal Republic of Yugoslavia and Serbia have done little or nothing to curb human rights abuses in their territory. Instead, the authorities have at times directly participated in the abuse - through direction, control and support of the police, army, paramilitary, and judiciary - and, at other times, condoned the abuse by failing to investigate and prosecute cases of abuse by armed civilians and paramilitary squads.*" ["Human Rights Abuses of Non-Serbs in Kosovo, Sandžak and Vojvodina", *Human Rights Watch/Helsinki*, May 1994, Vol. 6, Issue 6, pp. 1-2, emphasis added, Annex 270].

480. The developments in the Sandžak region were an exact replica of the events across the border. As in Bosnia and Herzegovina, the Yugoslav authorities armed the local Serb population before the conflict actually erupted. When the fighting subsequently started, Serb paramilitary units, supported by the Yugoslav Army, distinguished themselves for their cruelty:

> "Inter-ethnic relations in Sandzak deteriorated when the war in Bosnia erupted in mid-1992. *By that time, Yugoslav police and military authorities had armed members of the Serbian and Montegrin populations in Sandzak* (The same is true for Kòsovo, as well as for some other regions of former Yugoslavia.) *Serbian irregulars have frequently attacked Muslim civilians in Sandzak.*
>
> Some of the incidents are attributable to Serbian and, to a lesser extent, Montenegrin paramilitary bands that are based in, or pass through, Sandzak on their way to eastern Bosnia (where some of

> the bloodiest fighting of the war has taken place). En route, the paramilitaries shot at mosques and Muslim-owned shops and homes and harassed the non-Serbian population in Sandzak. *The paramilitaries were often joined by reserve soldiers of the Yugoslav Army, which at that time overtly participated in the war in Bosnia.* The Montenegrin town of Pljevlja was among the hardest hit - over forty Muslim shops were destroyed in less than one year." [*ibidem*, p. 8, emphasis added, Annex 270].

Genocidal acts were not only committed by paramilitary troops based in Serbia and Montenegro. The Yugoslav authorities also permitted armed Bosnian Serbs to freely cross the border:

> "*Bosnian Serb troops began crossing the border from Bosnia into Sandzak to raid Muslim villages in early 1993.* In each attack, the troops beat villagers and looted and burned homes. On February 16, 1993, in an attack on the village of Ravne, Montenegro, Bosnian Serb militiamen abducted six villagers from sixty-two to eighty-one years of age, and killed a ninety-year old man. The troops brought the captured villagers back across the border to the Bosnian Serb-held town of Cajnice and released them a month later. During the same period, the Bosnian Serbs abducted two other women and three children from the Sandzak village of Mocavići. Months later, they exchanged them for Serbian soldiers held prisoner in Gorazde.
>
> According to interviews conducted by Human Rights Watch/Helsinki, members of the Yugoslav army and police have allowed Bosnian Serb irregulars to enter the territory of Sandzak and have made no attempts to protect the non-Serbian villagers. *Numerous survivors have testified that regular Yugoslav army troops and reservists abetted the Bosnian Serb paramilitaries, and in some cases participated themselves in the raids. Human Right Watch/Helsinki is concerned that these activities were coordinated by Belgrade authorities in order to 'cleanse' Muslims from Sandzak's border region with Bosnia.*" [*ibidem*, p. 9, emphasis added, Annex 270].

The aim of the policy pursued by the Belgrade authorities was thus "to 'cleanse' Muslims from Sandžak's border region with Bosnia".

481. The participation of the Yugoslav police became more overt as the conflict progressed. The Human Right Watch/Helsinki report describes their role in detail:

> "In late 1993, police violence against Muslims elsewhere in Sandzak intensified. Police in Serbia and Montenegro now raid Muslim villages daily under the pretext of weapon searches, harassing the women and children and beating the men. Human Rights Watch/Helsinki has interviewed scores of witnesses and victims of such abuse during recent visits to the area and has found evidence that police routinely use unjustifiable force during these so-called weapons searches. Witnesses testify that police beat them with rifle butts and clubs over their entire bodies and heads, mostly on their hands and the soles of their feet. After such torture, many victims were unable to walk; few received proper medical aid. When the villagers have no guns to surrender, police threaten them with further beatings unless they deliver weapons to the police by a certain date. Police thus coerce them into selling their meagre property, usually a cow or a few sheep, to buy a gun in the hope that they will be spared additional abuse.
>
> After protests by local human rights groups, the Yugoslav Interior Ministry formed a commission to investigate allegations of police abuse in the town of Prijepolje. The commission interviewed

witnesses in the same building where they were perviously beaten, frequently in the presence of the police officers who allegedly had beaten them." [*ibidem*, pp. 9-10, Annex 270].

As in Bosnia and Herzegovina, the Yugoslav authorities tried to "decapitate" the Muslim community by targeting their political leaders:

"Also in 1993, authorities clamped down on the predominantly Muslim political party, the Party of Democratic Action (Stranka Demokratske Akcije - SDA), arresting dozens of SDA activists. In September 1993, the authorities issued an arrest warrant for SDA President Sulejman Ugljanin, who was visiting Turkey, where he remains at present. Twenty-five senior SDA activists were charged with undermining rump Yugoslavia's territorial integrity and are still awaiting trial in Novi Pazar. Montenegrin authorities unleashed a similar campaign late last year. By January 31, 1994, two dozen SDA leaders had been arrested. They are being held in the Bijelo Polje prison, awaiting trial." [*ibidem*, p. 10, Annex 270].

Soon after their arrest, the Yugoslav police transported several SDA leaders across the border. There they were subjected to torture, before returning to jail in Montenegro:

"Lawyers of all the accused contend that their clients have been subjected to severe psychological and physical torture. Local police allegedly insulted, threatened and beat those in detention. *Montenegrin police took several of the defendants across the border to the Bosnian Serb-held towns of Foca and Cajnice, where they tortured the prisoners until they signed 'confessions' stating that they were planning an armed rebellion. Authorities continued to violate basic due process guarantees after they returned these defendants to jail in Montenegro.* In particular, for weeks authorities refused to grant the prisoners access to either defense counsel or medical treatment, although they all had serious wounds from the beatings. The defense has been hampered by the investigative judge's refusal to allow review of all relevant court documents."
[*ibidem*, p. 10, Annex 270].

The above, again, shows that the police authorities in Yugoslavia and the "Republika Srpska" closely cooperated in the persecution of the Sandžak Muslims.

482. The results of the campaign of terror in the Sandžak region are fundamental. The Human Right Watch/Helsinki report shows that the policy of ethnic cleansing pursued by the Yugoslav authorities in the Sandžak region is beginning to bear fruit:

"*As of this date [May 1994], more that fifty Sandzal Musims have been murdered or are missing, hundreds have been displaced, and thousands have fled the country.* More than fifty are awaiting trial on spurious charges. Through these repressive practices in Sandzak, the Yugoslav authorities have accomplished several goals: the SDA, the only representative of the Sandzak Muslims, has been effectively crushed. Once peace accords are signed in Bosnia and Croatia and international attention shifts to the burning issue of minority rights in rump Yugoslavia, the Sandzak Muslims will have no voice. More ominously, *the Milosević regime appears determined to encourage the*

flight of the Sandzak Muslims through deliberate repression." [*ibidem*, pp. 10-11, emphasis added, Annex p. 270].

To escape new waves of persecution, thousands of Muslims, including entire families, have emigrated to Western Europe, the United States and Canada. In her above mentioned Report, Special Rapporteur Elisabeth Rehn stated that "as a result of the violence, an estimated 60,000 to 80,000 Muslims have left the Sandžak region since 1992 and found refuge in various Western European countries" [United Nations, *Situation of Human Rights in the territory of former Yugoslavia, Periodic Report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1997/8, 25 Oct. 1996, p. 21, para.79].

483. The fate of the Muslims in the Sandžak region epitomises Belgrade's policy towards ethnic and religious minorities on the territory of the Federal Republic of Yugoslavia. The policy of "relocation of non-Serbs" pursued by the Yugoslav authorities was in fact a true copy and extension of the genocidal campaign as carried out in Bosnia and Herzegovina.

CHAPTER 9

LEGAL PRINCIPLES OF STATE RESPONSIBILITY APPLICABLE TO VIOLATIONS OF THE GENOCIDE CONVENTION

1. In its Counter-Memorial, the Respondent seeks to exempt itself from responsibility for genocide by contending that acts constituting genocide established by Bosnia and Herzegovina cannot be attributed to Yugoslavia. This allegation takes no less than one third of the Counter-Memorial, specifically:

- pp. 13 to 17, where Yugoslavia asserts that "The Acts described by the Applicant cannot be attributed to the Federal Republic of Yugoslavia";
- pp. 90 to 110, where it tries to deny the findings made by various organs of the United Nations and other reliable international bodies regarding the existence of a campaign of genocide on the part of Yugoslavia and its prolonged participation in the genocide;
- pp. 245 to 296, where it exposes its self-serving views of the policy of the Federal Republic of Yugoslavia toward the "Republika Srpska" and the whole of Bosnia and Herzegovina; and

- pp. 321 to 340, where it discusses "Attribution of acts of the State".

Moreover, many other passages of the Counter-Memorial attempt to demonstrate that the "Republika Srpska" is a sovereign State whose responsibility in the acts of genocide would exempt the Federal Republic of Yugoslavia of its own responsibility.

2. In spite of some misplaced irony used by Yugoslavia in its Counter-Memorial to probably inrtoduced to conceal its embarrassment on the substance of this case [see for example, Counter-Memorial, para. 1.1.4.14, or para. 5.1.1.5.], the Parties have no strong differences concerning the applicable law which will be exposed briefly in each of the following sections. However, on at least one point Yugoslavia errs seriously. In paragraph 5.1.1.3 of its Counter-Memorial, it accuses the Applicant of confusing the general customary rules on the attribution of acts to a State "with the rules from Article III of the Genocide Convention". The feeling of the Applicant is that only Yugoslavia is confused. However, it might be helpful to clarify this point *in limine.*

3. As the Court has recently recalled:

> "It is (...) well established that, when a State has committed an internationally wrongful act, its international responsibility is likely to be involved whatever the nature of the obligation it has failed to respect (cf. *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase, Advisory Opinion, ICJ Reports 1950*, p. 228; and see Article 17 of the Draft Articles on State Responsibility provisionally adopted by the International Law Commission on first reading, *Yearbook of the International Law Commission*, 1980, Vol. II, Part 2, p. 32)" [ICJ, Judgment of 25 Sep. 1997, *Gabcikovo-Nagymaros Project*, para. 47, emphasis added].

4. In the present case, by its Judgment of 11 July 1996, the Court has found that the Application filed by Bosnia and Herzegovina on 20 March 1993 is admissible and that it has jurisdiction to adjudicate upon the dispute on the basis of Article IX of the Convention. Moreover, the Court has expressly rejected the rather peculiar allegation of the Federal Republic of Yugoslavia according to which "the responsibility of a State for an act of genocide perpetrated by the State itself would be excluded from the scope of the Convention" [see, ICJ, *Judgment of 11 July 1996*, para. 32]. In this respect, the Court has observed:

> "that the reference in Article IX to 'the responsibility of a State for genocide or for any of the other acts enumerated in Article III' does not exclude any form of State responsibility.
> Nor is the responsibility of a State for acts of its organs excluded by Article IV of the Convention, which contemplates the commission of an act of genocide by 'rulers' or 'public officials'" [*ibid.*].

5. Moreover, the General Assembly clearly recalled, in the context of "ethnic cleansing" in the former Yugoslavia, that:

> "States are to be held accountable for violations of human rights which their agents commit on their own territory or on the territory of another State." [United Nations, *General Assembly Resolution 48/153 (1993)*, 20 Dec. 1993, para. 12].

6. It has been shown in Part 5 of the Memorial of Bosnia and Herzegovina and in Part II of the present Reply that genocide has been committed against the non-Serb population of Bosnia and Herzegovina. It remains to be shown that this crime *juris gentium* has been committed by Yugoslavia. But there are three further elements of complexity.

7. *First,* according to the general principles of State responsibility in international law, a State is responsible not only for the conduct of its own organs [I.L.C. Draft Articles on State Responsibility, Article 5, see, *Report of the I.L.C. on the Work of its 48th Session,* 1996, General Assembly, Official Records, 51st session, Supplement No. 10, A/51/10, p. 126], whatever the position of the organ in the structure of the State [Article 6, *ibid.*], but also for the internationally wrongful acts which can be attributed to it and committed either by entities empowered to exercise elements of State authority [Article 7, *ibid.* p. 127] or by persons acting in fact on behalf of the State [Article 8, *ibid.*] or by organs placed at its disposal by another State [*ibid.*].

8. *Secondly,* the 1948 Convention on the Prevention and Punishment of the Crime of Genocide does not restrict itself to prohibiting genocide as such. In its Article III it also declares punishable:

> "(b) conspiracy to commit genocide;
> "(c) direct and public incitement to commit genocide;
> "(d) attempt to commit genocide;
> "(e) complicity in genocide.".

9. It goes without saying that a State can bear responsibility for these acts [see ICJ, *Judgment of 11 July 1996*, prec. para. 5], but, here again, Bosnia and Herzegovina must prove that the Federal Republic of Yugoslavia has committed these acts or that they are attributable to it.

10. *Thirdly,* one of the main purposes of the 1948 Convention is to prevent and punish the crime of genocide. This obligation is incumbent exclusively upon the Contracting Parties which, in Article I of the Convention:

> "confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish".

Regarding punishment, this commitment is made explicit in Articles IV, V, VI and VII of the Convention. Here again, Bosnia and Herzegovina must establish that these obligations have not been fulfilled by the Federal Republic of Yugoslavia and/or that breaches of these commitments can be attributed to this State.

11. It goes without saying that the burden is on the Applicant to provide evidence of the breaches of the Convention it invokes - the extent of this obligation has been set out in Chapter 3 of the present Reply -, but the Applicant State must also show that the Federal Republic of Yugoslavia is responsible for these breaches or that they can be attributed to it according to the general principles governing State responsibility under general international law. This is the purpose of the two following Chapters, which, in light of the facts described in Chapter 8, show that:

- Yugoslavia is responsible for having committed genocide and related acts as defined in Articles II and III of the Convention, both through its organs and through its surrogates, including the "Republika Srpska" [Chapter 10]; and that
- Yugoslavia is responsible, under Article I of the Convention, for its failure to prevent acts of individuals and groups constituting genocide and, under Articles I, IV, V and VI of the Convention, for its failure to punish the perpetrators of the genocide [Chapter 11].

CHAPTER 10

THE FEDERAL REPUBLIC OF YUGOSLAVIA IS RESPONSIBLE FOR HAVING COMMITTED GENOCIDE AND RELATED ACTS

1. The commission of genocidal acts by Yugoslav State organs

1. Article III (a) of the Genocide Convention states that genocide is a "punishable act". This act is defined in Article II and Bosnia and Herzegovina has shown in Part II of the present Reply that genocide has indeed been committed against the non-Serb population of the former Yugoslavia and in particular on the territory of Bosnia and Herzegovina. Acts constituting genocide can be attributed to the Federal Republic of Yugoslavia, both because they have been committed by its own organs [Section 1] and because they have been carried out by individuals or groups acting on its behalf, including the "Republika Srpska" [Section 2]. Moreover, this responsibility is not confined to breaches of Article III (a); it also derives from violations of Articles III (b), (c), (d) and (e) which also define as "punishable" conspiracy, direct and public incitement and attempt to commit genocide and complicity in genocide [Section 3].

2. In its Counter-Memorial, the Respondent stresses that the Yugoslav People's Army (JNA) had withdrawn from Bosnia and Herzegovina by 19 May 1992 [see *e.g* Counter-Memorial, pp. 246-251, para. 3.2.1.], thus clearly implying that, from this date on, no genocidal act can be attributed to the Federal Republic of Yugoslavia. Such an allegation is doubly erroneous. Firstly, the JNA has never effectively withdrawn from Bosnia and Herzegovina and, secondly, the Federal Republic of Yugoslavia has not acted only through its Army, nor exclusively on Bosnian territory.

3. This is an important point to keep in mind since, as explained by the International Law Commission, in Article 6 of its Draft Articles on State Responsibility:

> "The conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinate position in the organisation of the State." [*Report of the ILC on the Work of its 48th. Session*, 1996, General Assembly, Official Records, 51 st. session, Supp. No. 10, A/51/10, p. 126; see also *ILC Yearbook*, 1973, Vol. II, pp. 193-198].

4. This makes clear:

- that not only the Yugoslav Army as such and its commanding officers entail Yugoslavia's responsibility when they commit internationally wrongful acts, but that it is also the case for low level officers or soldiers (who are organs holding a "subordinate position in the organisation of the State"), and
- that not only the JNA, but all Yugoslav organs, including Yugoslavia's judiciary and its various Ministries, such as the Ministries of the Interior or of Finance, entail the Respondent's international responsibility.

5. Moreover, as also specified in Article 7 of this same ILC draft:

> "The conduct of an organ of a territorial governmental entity within a State shall also be considered as an act of that State under international law, provided that organ was acting in that capacity in the case in question." [*ibid.*, p. 127, para. 7; see also: *ILC Yearbook*, 1974, Vol. II, Part 1, pp. 277-283].

6. This is an important clarification since Yugoslavia is a federal State. It shows clearly that the Respondent's responsibility is entailed by the internationally wrongful acts committed by the federal Government as well as by its constituent elements, that is the Republic of Montenegro and the Republic of Serbia.

7. With this in mind, it is proper to make a distinction between acts of genocide committed by the Yugoslav Army (JNA or VJ) before and after 19 May 1992. Moreover, other Yugoslav organs have been directly involved in the commission of genocidal acts. Each of these distinctions will be elaborated upon below.

Before 19 May 1992

8. The Federal Republic of Yugoslavia does not deny that until 19 May 1992 the JNA was occupying Bosnian territory, nor that its command and seat of decision-making were situated in Belgrade. Moreover, it expressly accepts that not only JNA troops traditionally barracked in Bosnia and Herzegovina remained there until 19 May 1992, but also that part of the JNA units from Slovenia and Croatia were "relocated in the Republic of Bosnia and Herzegovina" [Counter-Memorial, p. 246, para. 3.1.1.5.]. As shown in the Memorial of Bosnia and Herzegovina, and never refuted by the Federal Republic of Yugoslavia, this "relocation" resulted in the presence of some 90,000 to 100,000 men on the territory of Bosnia and Herzegovina [Memorial, p. 66, para.

2.3.3.2 and p. 247, para. 6.2.1.3]. This relocation was part of the general framework of RAM, a vast covert operation aimed at arming the Serbian population in Bosnia and Herzegovina and Croatia and promoting ethnic violence [*ibid.*, Section 2.3.4, pp. 66-71].

9. The Respondent argues that "at that time [Bosnia and Herzegovina] was an integral part of the SFRY" [Counter-Memorial, p. 246, para. 3.1.1.5.]. This is only partially true: as explained by the Arbitration Commission of the International Conference for Peace in Former Yugoslavia (the "Badinter Commission"), "the dates upon which the States stemming from the Socialist Federal Republic of Yugoslavia succeeded the Socialist Federal Republic of Yugoslavia are (...) 6 March 1992 in the case of the Republic of Bosnia and Herzegovina" [32 *I.L.M.* 1993, p. 1589]. From this date on, the stationing of Yugoslav troops in Bosnia and Herzegovina can only be seen as a military occupation.

10. As noted by the Court itself, in its Judgment of 11 July 1996, "the obligation each State (...) has to prevent and to punish genocide is not territorially limited by the Convention" [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 14, para. 31]. This holds true *a fortiori* for the obligation not to commit genocide, which the Court has recognised in the same Judgment as being embodied in the Convention, Article IX of which "does not exclude any form of State responsibility" [*ibid.*, para. 32; see also Chapter 9]. In other words, whether committed in the Federal Republic of Yugoslavia, in Bosnia and Herzegovina or anywhere else, genocide is prohibited and this prohibition is not territorially limited. Therefore, the capacity in which the JNA or other Yugoslav authorities have committed genocidal acts does not matter; nor does it matter whether these acts have been committed in Bosnia and Herzegovina or on Yugoslav territory itself. One of the consequences of this principle is that the Yugoslav allegation according to which "all places of alleged particular [genocidal] acts (...) are on the territory of Bosnia and Herzegovina" [Counter-Memorial, p. 17, para. 1.1.5.1.] cannot be seen as a defence, whatever the dates of said acts.

11. Consequently, no serious problem of attributability can be raised as for the period prior to 19 May 1992, a period which is very important in two respects:

- firstly, the "ethnic cleansing" of non-Serb populations was planned, ordered and organised by the Yugoslav authorities in Belgrade;

- secondly, genocidal acts were overtly committed on a large scale by the JNA, mainly on Bosnian territory.

The Yugoslav authorities planned, prepared and organised the genocide

12. Yugoslav authorities drafted the RAM plan and organised as early as 1990 the transfer of armaments to Serbian populations in areas which were to become part of Greater Serbia [see Reply, Chapter 8, Section 2]. This is evidenced by talks and meetings between high-level officials in Belgrade and local Bosnian Serb leaders. The police and the Ministry of Interior of Yugoslavia and Serbia played a prominent role in the implementation of the plan.

13. Commenting on the RAM plan, the existence of which it does not deny, the Respondent asserts that it does not amount to planning genocide since it involves "*only* incitement to national and religious hatred" [Counter-Memorial, p. 104, para. 1.3.17.9., emphasis added]. This defence is left to the appreciation of the Court. The preparation and execution of the plan was enabled by the transformation of the JNA into an instrument of the nationalist policy of Belgrade [see above, Chapter 8, Section 3]. General Veljko Kadijević, former Federal Secretary of National Defence and Chief of Staff of the Supreme Command of the JNA, explained in this book published in Belgrade in 1993 that since the spring of 1991, the JNA had been utilised in order to protect and defend "the Serb people outside of Serbia" and to assemble the JNA "within the borders of the future Yugoslavia [Greater Serbia]" [Veljko Kadijević, *My View of the Break-up, An Army Without a State,* Belgrade, 1993, p. 121, Annex 271]. The same General Kadijević describes the goals of the JNA after the independence of Slovenia and Croatia as follows:

> "1) defend the Serb nation in Croatia and its national interest; 2) pull JNA garrison out of Croatia; 3) *gain full control of Bosnia and Hercegovina, with the ultimate aim of defending the Serb nation and its national rights when the issue arose*; 4) create and defend the new Yugoslav state of those Yugoslav nations that desire to be a part of it, meaning in this phase the Serb and Montenegrin nations. *The basic concept for deployment of the armed forces was thus adjusted to this modified task.*" [*ibid.*, p. 97, emphasis added, Annex 271].

14. In this respect, a close cooperation between the authorities in Belgrade, the JNA and the nationalist leaders of the Serbs of Bosnia and Herzegovina (SDS) was necessary:

> "Since the JNA failed in its efforts to steer the Muslim part of Bosnia and Herzegovina's leadership toward a new Yugoslav state of those nations which so desired, we had to orient ourselves toward more concrete cooperation with representatives of the Serbs and with the Serb

> nation as such." [*ibid.*, p. 159; see also ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, pp. 26-27, para. 53ff.; quoted above, Chapter 8, Section 3].

15. The tight links between the SDS and Belgrade are illustrated by a confidential note addressed to Radovan Karadžić by Velibor Ostojić, an SDS leader, about a conversation Ostojić had had with high ranking officials of the Government of the Republic of Serbia on 3 September 1991 about supplying arms and communications material to the SDS in Bosnia and Herzegovina. This note is referred to by the Trial Chamber at the ICTFY in the Karadžić and Mladić case [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 27, para. 54; quoted above, Chapter 8, Section 2]. Moreover, President Slobodan Milošević himself recognised in an official statement of May 1993 that:

> "In the past two years, the Republic of Serbia - by assisting Serbs outside Serbia - has forced its economy to make massive efforts and its citizens to make substantial sacrifices ... Serbia has lent a great deal of assistance to the Serbs in Bosnia. Owing to the assistance they have achieved most of what they wanted." [Memorial, p. 90, para. 2.3.8.4].

16. According to the Trial Chamber in the Karadžić and Mladić case:

> "(...) by the fall of 1991, the SDS was in contact with the federal authorities dominated by the Republic of Serbia and the Yugoslav Peoples Army (JNA). By arming the Serbian population and organising a more direct JNA intervention, the contacts permitted the SDS to take power in the territory of Bosnia and Herzegovina." [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 28, para. 55].

17. This opinion was supported by testimonies of high ranking officers of the JNA in the Tadić case. Troops of the JNA were constantly relocated in order to enable the SDS to seize power in those parts of Bosnia and Herzegovina where it was in a position to do so [see Chapter 8, Section 3]. All of these areas were subsequently "ethnically cleansed".

18. During the year 1991, units of the Territorial Defence in Muslim or Croat majority areas of Bosnia and Herzegovina were obliged to surrender their arms to the JNA in order to deprive non-Serb populations of having a means of defence [see Chapter 8,

Section 2]. The JNA then supplied these arms to other Territorial Defence units dominated by Serbs. All of these transfers of weapons were organised by Belgrade, first through the Federal and Serbian Ministries of Interior, then through the JNA. It is worth noting General Kadijević's analysis of the process. According to him, the goal was:

> "to paralyse territorial defense in those parts of the country where it might provide a basis for creating the armies of secessionist republics (...) accordingly, all territorial defense units were disarmed prior to the outbreak of fighting in Yugoslavia (...) Naturally, we used the territorial defense of Serb regions in Croatia and Bosnia and Herzegovina in tandem with JNA." [Veljko Kadijević, *My View of the Break-up, An Army Without a State,* Belgrade, 1993, pp. 98-99].

The disarmament of certain Territorial Defense units and the re-armament of others indeed followed a discriminatory policy drawn up in Belgrade.

19. Thereafter, the JNA and the SDS operated jointly in the spring of 1992 to take control over large portions of Bosnian territory. This was found by the Trial Chamber of the ICTFY in the Karadžić and Mladić case:

> "The material tendered to the Trial Chamber by the Prosecutor justifies the finding that between March and May 1992, SDS forces, with wide-ranging military support from the JNA, engaged in attacks against certain strategic points of Bosnia and Herzegovina, in particular at Foča, Bosanski Šamac, Vlasenica, Brčko, and Prijedor, where the majority of the population was non-Serb. These large-scale military offensives were usually conducted in collusion with paramilitary units, such as the groups led by Željko Ražnjatović, alias 'Arkan', Vojislav Šešelj, the 'White Eagles' at Foča, and the 'Grey Wolves' at Bosanski Samac, and had the support of SDS members. These offensives gave the SDS control over the peripheral territory of Bosnia and Herzegovina. During the same period, the JNA initiated the military preparations for the siege of Sarajevo." [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Case No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 29, para. 56].

20. It must also be stressed that Serbian paramilitary groups were trained in JNA training centres, and would then operate in conjunction with the JNA in Bosnia and Herzegovina with the same purposes and tactics [see Reply, Chapter 8, Section 7]. Vojislav Šešelj, one of the most notorious paramilitary leaders, acknowledged that he used helicopters supplied by the JNA and that many operations, executed by the JNA as well as by paramilitary groups, had been prepared in Belgrade [ibid.].

Genocidal acts committed by the JNA in Bosnia and Herzegovina

21. The actions of the JNA in Bosnia and Herzegovina were far from being pure military operations. In its Memorial, Bosnia and Herzegovina listed several examples of atrocities committed by JNA forces prior to 19 May 1992:

- on 5 May 1992, Serb paramilitaries and the JNA ordered all residents in the area near Sarajevo Airport to get out of their homes and to stand in separate lines according to their ethnic belonging; a Serb who had refused to be separated from his Muslim neighbours was beaten until he was dead [Memorial, p. 35, para. 2.2.2.16];
- in late April and early May 1992, Serb forces attacked the city of Mostar, destroyed at least 13 mosques and forced the civilian population to flee; this was a joint operation of the JNA and Serbian paramilitary forces [Memorial, p. 48, para. 2.2.5.3];
- the JNA was clearly involved in the take-over of Višegrad in April 1992, which resulted in many atrocities [Memorial, pp. 49-50, paras. 2.2.5.4 and 2.2.5.5].

22. By way of response, the Federal Republic of Yugoslavia denies, without offering any evidence whatsoever, the truth of these acts and endeavours to challenge the contention that they are attributable to it by alleging that the JNA was not involved [Counter-Memorial, p. 269, para. 3.1.6.2.], for example:

- because paramilitary groups were reported to participate in these acts [*ibid.*, p. 270, para. 3.1.6.3.; *ibid.*, p. 271, para. 3.1.6.6.; *ibid.*, p. 272, para. 3.1.6.9.];
- because these acts do not constitute acts of genocide since they are related to military operations [*ibid.*, p. 270, 3.1.6.5.];
- because they do not amount to genocidal acts [*ibid.*, p. 270, para. 3.1.6.4.]; or
- because similar acts were also directed against Serb people [*ibid.*, p. 272, para. 3.1.6.9.].

It goes without saying that none of these defences are admissible.

23. As already shown in this Reply, the fact that atrocities were committed against people belonging to several human groups by no means implies that they are not genocidal acts [see Reply, Chapter 2].

24. In its Counter-Memorial, the Respondent refers to one of the cases mentioned above, in which a witness described how the Serb forces executed a Serb civilian in

Sarajevo on 9 or 10 May 1992 [United Nations, *Letter Dated 7 Dec. 1992 from the Deputy Representative of the United States of America to the United Nations adressed to the Secretary-General*, S/24918, 8 Dec. 1992, para. 3, p. 10]. They neglect to mention that the civilian was executed because he refused to be separated from his Muslim neighbours, a "detail" that the Counter-Memorial fails to recall [Counter-Memorial, p. 272, para. 3.1.6.9.]. This execution, of course, had no military purpose.

25. In this same paragraph the Federal Republic of Yugoslavia tries to cast doubt on the reliability of the witness by pointing out that she spoke of "persons wearing the insignia of the Chetniks and the Yugoslav Army. It was quite possible for persons not belonging to the JNA to have worn the JNA insignia" [*ibid.*, see also p. 15, para. 1.1.4.9.]. This is clearly a bad faith argument when one recalls that the JNA was still officially omni-present in Bosnia and Herzegovina at the time and that this group of soldiers committed several other atrocities against a group of about forty Muslims, including using them as human shields forced to march "through a heavily contested combat zone to waiting *Serb vehicles* some 300 meters away" [United Nations, *Letter dated 7 Dec. 1992 from the Deputy Representative of the United States of America to the United Nations adressed to the Secretary-General*, S/24918, 8 Dec. 1992, para. 3, p. 10, emphasis added].

26. There is, of course, no validity to the contention that the presence of paramilitary forces precludes participation of the JNA itself in genocidal acts. On the contrary, as was shown earlier in this Reply [Reply, Chapter 8, Section 7], these paramilitary forces were formed and organised by Belgrade which, in any case, bears responsibility for their acts. Moreover, there is ample evidence of co-ordination between these paramilitary forces and the JNA. Such co-ordination was flagrant during the spring offensive of 1992, as was explained by the Prosecution at the opening of the Tadić trial before the ICTFY on 7 May 1996:

> "The military operations by the JNA and the pro-Serb paramilitary groups followed in a consistent pattern. Excessive amounts of artillery was used in the initial stages to shell non-Serb neighbourhoods in order to discourage resistance, non-Serbs were expelled from the area and where resistance occurred it was ruthlessly crushed. The artillery attack by the JNA was usually co-ordinated with the street fighting by the paramilitary groups who were assisted by Serb irregulars in street fighting and the rounding up of the non-Serbs of the district. The paramilitary group operated right across Bosnia. The rounding-up of the non-Bosnian-Serb population was a systematic and thorough operation, with the paramilitary groups relying on local information and identification of the non-Serbs by the local irregulars.

> "Once the non-Serb population had been collected together, they were then sorted: Women, children and elderly men were separated from the men of military age, although at times and in some places all men were separated from the women and children, making the women much more vulnerable to rape and mistreatment. Terror tactics such as killings, rapes and tortures, were used apparently condoned by the paramilitary commanders. The JNA, and the paramilitary commanders during the sweeps through non-Serbs neighbourhoods participated in this activity. The terror served to intimidate and discourage resistance and to compel non-Serbs to leave the area." [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Transcripts, 7th May 1996, p. 16, Annex 272].

27. A very serious incident, reported in the Memorial of Bosnia and Herzegovina, which took place in Mostar on May 1, 1992, bears witness to this collusion [Memorial, pp. 48-49, para. 2.2.5.3], since it shows that the JNA, by first intimidating Muslim residents and then calling the paramilitaries, deliberately paved the way for atrocities to be committed by paramilitary forces which operated with the JNA. Here again, the analysis of this episode provided in the Counter-Memorial clearly shows the bad faith of the Respondent since, while admitting implicitly that the acts committed by the paramilitary Serbian forces constitute acts of genocide, it endeavours to distinguish them from the acts committed by the JNA itself, which they claim, do not "point to an act of genocide or some other act prohibited under the Genocide Convention" [Counter-Memorial, p. 270, para. 3.1.6.3.].

28. However, in several cases, there cannot be the slightest doubt that the JNA itself was not only implicated in genocidal acts (as in the incident in Mostar cited above) but that it also committed these acts directly. For example, the Federal Republic of Yugoslavia has not refuted the Report issued by Special Rapporteur Tadeusz Mazowiecki, which states that on 9 May 1992, 500 to 600 Muslims were detained and tortured in Bratunac and thirty to fifty among them died from injuries, while, after three days of beatings, the rest of the group was transferred to Pale, where the ill-treatment continued [Memorial, p. 41, para. 2.2.3.8; and Annexes, Part II, vol. 1, Annex 24].

29. The same remark holds true for other examples given in the Memorial of Bosnia and Herzegovina:

- in April 1992, the JNA jailed 120 Muslim civilians from Gornja Bioca and a village called Kralupa, in the Sarajevo area, in the Gornja Bioca School; thirty men who refused to be separated from women and children were kept in a separate group, taken to Ilijas Forge, and killed there; these events were reported by a JNA soldier, Borislav Herak, during his trial in Sarajevo; he

confessed to having raped four women and declared that he was encouraged to rape them by his commanding officer in the JNA [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol.4), 27 May 1994, Annex VIII, "Prison Camps", p. 291, paras. 2446-2447];

- in late April and May 1992, 5,000 civilians from Brčko were deported to the Luka camp by JNA forces and Serb paramilitaries [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol.I), 27 May 1994, Annex III.A, "Special Forces", p. 142, para. 394].

30. In this Reply, the Applicant listed many other serious atrocities committed by the JNA during the military operations which took place before 19 May 1992 [see above, Chapter 8, Section 3]. JNA officers also played an active role in the Crisis Staffs which were responsible for the ethnic cleansing and for the creation of detention facilities [*ibid.*]. Some of the camps were directly run by the JNA.

31. This clear pattern of facts shows beyond any doubt that:

- the Government in Belgrade directly planned and organised the genocide against the non-Serb population in Bosnia and Herzegovina well before it supposedly withdrew from this country;
- the JNA committed a long series of genocidal acts in Bosnia and Herzegovina before 19 May 1992;
- this occurred during a period when it is not disputed that the JNA was still present in Bosnia and Herzegovina and was taking its orders from Belgrade.

32. It cannot be denied that both the Yugoslav Government itself and the JNA are organs of the Federal Republic of Yugoslavia "having that status under the internal law of that State" and that these organs were "acting in that capacity" in the present case. Therefore, the genocidal acts committed by these organs must be considered as internationally wrongful acts entailing the international responsibility of the Federal Republic of Yugoslavia under Articles II and III (a) of the Genocide Convention [ILC, Draft Articles on State Responsibility, Articles 1 and 5, see *Report of the ILC on the Work of its 48th. Session*, 1996, General Assembly, Official Records, 51st. session, Supplement No. 10, A/51/10, pp. 125-126].

After 19 May 1992

33. The Respondent places high value on the fact that the Presidency of Yugoslavia decided on 4 May 1992 that "all the remaining citizens of the Federal Republic of Yugoslavia in employ with JNA in Bosnia-Herzegovina should quickly return to the territory of Yugoslavia, within 15 days at the latest" [Counter-Memorial, p. 248, para. 3.1.2.4. quoting Annexes 129 and 292] and insists on the relevance of a report by the Secretary General of the United Nations, long extracts of which are extensively (mis)quoted [see above, Chapter 8, Section 5] no less than *five times* in the Counter-Memorial [Counter-Memorial, pp. 129-130, para. 2.6.1.2.; pp. 249-251, para. 3.1.2.8; pp. 264-265, para. 3.1.5.16; pp. 265-267, para. 3.1.5.19, and pp. 331-332, para. 5.4.1.12]. The report mentions difficulties having occurred with respect to this withdrawal [Counter-Memorial, Annex No. 129]. Three conclusions can be drawn from the Secretary General's report:

- it reconfirms that, prior to 19 May 1992, the JNA, directed from Belgrade, was in control of many parts of Bosnia and Herzegovina;
- it shows that, whatever the reasons, the withdrawal was not yet completed at the date of the drafting of the report, dated 30 May 1992;
- it also shows that, at this date, the Secretary General was basing his statements on information officially given by the Yugoslav Government [see below, paras. 117-118].

34. However, the information contained in the report has been contradicted by the facts:

- important elements of the JNA itself have remained on Bosnian territory;
- acts of genocide have also been committed by the Federal Republic of Yugoslavia through channels other than the JNA and, in particular,
- through the authorities of the so-called "Republika Srpska", a "puppet Government" which was controlled by the Yugoslav Government,
- and through Serbian paramilitary units.

Bosnia and Herzegovina will address these last two points in Section 2 of the present Chapter and will first limit itself to recalling the genocidal acts committed by the Yugoslav Army and other Yugoslav organs after 19 May 1992.

35. On 4 May 1992, the JNA announced that it would withdraw from Bosnia and Herzegovina by 19 May 1992. In reality, this "withdrawal" was only an attempt to deceive the international community [see above, Chapter 8, Section 4], as Borisav Jović, former Serb Representative to the Yugoslav Federal Presidency and close

associate of President Slobodan Milošević, recognised in his recently published *memoirs* [*ibid.*]. Not only was the army of the "Republika Srpska" a creation and extension of the JNA, as explained by General Kadijević in his book [Veljko Kadijević, *My View of the Break-up, An Army Without a State,* Belgrade, 1993, p. 160, Annex 102], not only did Belgrade provide massive aid as well as instructions to this army [see below, paras. 126ff.], but also, the new Yugoslav Army itself, the VJ, stayed in Bosnia and Herzegovina and "went on providing material and equipment as well as also intervening directly in Bosnia and Herzegovina after May 1992" [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 30, para. 58].

36. Some of these genocidal acts directly committed by the VJ after 19 May 1992 are listed in the Memorial of Bosnia and Herzegovina [see e.g. p. 35, para. 2.2.2.15; p. 36, para. 2.2.2.18; p. 48, para. 2.2.5.3; p. 52, para. 2.2.5.12 or p. 53, para. 2.2.5.14]. Actually, the presence of the VJ in Bosnia and Herzegovina after this date is confirmed by the Federal Republic of Yugoslavia itself in its Counter-Memorial since it denies, from time to time, "the participation of the JNA in any illegal activities" but does not deny its presence there [see e.g. p. 273, para. 3.1.6.12.]. In other parts of its Counter-Memorial, the Federal Republic of Yugoslavia uses another method of defence by simply asserting that the JNA or the VJ are not responsible for genocidal acts since they were not in Bosnia and Herzegovina at the time [see e.g.: pp. 272-273, paras. 3.1.6.10. or 3.1.6.13]. This is merely a self-serving assertion which is contradicted by the facts.

37. Participation of the VJ in other genocidal acts has been reported by many objective and neutral sources. The Yugoslav Army was responsible for the cleansing campaign in Sanski Most and in areas near the border with the Federal Republic of Yugoslavia [see Reply, Chapter 8, Section 5]. The VJ and the Bosnian Serb Army (VRS) also cooperated in military operations against the safe areas proclaimed by the United Nations [*ibid.*]. In flagrant contradiction to what Yugoslavia asserts in its Counter-Memorial [Counter-Memorial, p. 274, para. 3.1.6.15.], the presence of VJ units during the brutal take-over of Srebrenica, which resulted in the murder or disappearance of several thousand Bosnian Muslims, was emphasised by Judge Fouad Riad while confirming the indictment of Radovan Karadžić and Ratko Mladić by the Prosecutor of the ICTFY [see Reply, Chapter 8, Section 5]. Moreover,

- the Yugoslav Army was involved in a large-scale attack against the enclave of Srebrenica in January 1993 [see Reply, Chapter 8, Section 5]; on this occasion, Yugoslav Army units came from Užice, in Serbia;
- the Yugoslav Army also took part in an attack against Gorazde in April 1994 [*ibid.*];
- VJ General Nikola Mandarić admitted in an interview with the Belgrade daily *Politika*, dated 27 January 1993, that Yugoslav forces were still helping Bosnian Serbs [*ibid.*];
- the continuing support by Yugoslav armed forces for Bosnian Serbs engaged in ethnic cleansing has been asserted by Special Rapporteur Tadeusz Mazowiecki in his report dated 21 February 1994 [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Sixth Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN4/1994/110, 21 Feb. 1994, p. 26, para. 154];
- the VJ supported the VRS during operation Vihor, the large and massive attack on the Goražde enclave in the spring of 1994 [see above, Chapter 8, Section 5].

38. Moreover, according to reliable independent sources, the final assault against the protected enclave of Srebrenica was discussed and prepared by General Ratko Mladić and General Momčilo Perišić of the Yugoslav Army [see Reply, Chapter 8, Section 5]. Concentration of Yugoslav military forces at the border was witnessed just before the attack [*ibid.*] and by an information officer of the UN commenting on the Srebrenica massacres: "le général de Belgrade Momčilo Perišić a suivi en compagnie de Mladić l'assaut de Srebrenica depuis le QG du mont Tara" [quoted by Florence Hartmann, "Chronologie d'une négligence criminelle", in *L'ex-Yougoslavie en Europe*, Paris 1997, p 117, Annex 273]. Mount Tara is situated in Serbia, some thirty kilometres from Srebrenica.

39. The Yugoslav armed forces also committed genocidal acts in other parts of the former Yugoslavia. Many non-Serb civilians were transferred from Bosnia and Herzegovina to camps in the Federal Republic of Yugoslavia, some of which were run by JNA officers. In such camps, both VJ personnel and visiting paramilitaries participated in the beating and killing of prisoners [see Reply, Chapter 8, Section 12]. Also, the Yugoslav Army supported the ethnic cleansing campaign against non-Serbs in the Sandžak region of Serbia, by allowing Bosnian Serb paramilitary forces to cross the border and by participating in violations together with them [*ibid.*].

40. The direct responsibility of the Federal Republic of Yugoslavia and, in particular, of the Yugoslav Army in genocide has been universally recognised and condemned.

41. On 7 April 1993, almost a year after the official "withdrawal" of the JNA, the United Nations General Assembly strongly condemned the continued involvement of forces from Serbia and Montenegro in the genocide committed in Bosnia and Herzegovina:

> "The General Assembly,
> (...)
> Gravely concerned about the deterioration of the situation in the Republic of Bosnia and Herzegovina owing to intensified aggressive acts by the Serbian and Montenegrin forces to acquire more territories by force, characterized by a consistent pattern of gross and systematic violations of human rights, a burgeoning refugee population resulting from mass expulsions of defenceless civilians from their homes and the existence in Serbian and Montenegrin controlled areas of concentration camps and detention centres, in pursuit of the abhorrent policy of 'ethnic cleansing', which is a form of genocide,
> (...)
> Deeply regretting that the sanctions imposed by the Security Council have not had the desired effect of halting the aggressive acts by Serbian and Montenegrin irregular forces and the direct and indirect support of the Yugoslav People's Army for the aggressive acts in the Republic of Bosnia and Herzegovina, (...)." [United Nations, *General Assembly Resolution 47/121*, A/RES/47/121, 18 Dec. 1992, preamb., emphasis added].

42. In the special Resolution it adopted on Bosnia and Herzegovina on 24 June 1993, the World Conference on Human Rights noted that:

> "(...) the practice of ethnic cleansing resulting from Serbian aggression against the Muslim and Croat population in the Republic of Bosnia and Herzegovina constitutes genocide in violation of the Convention on the Prevention and Punishment of the Crime of Genocide.
> (...)
> The World Conference strongly condemns Serbia-Montenegro, the Yugoslav National Army, the Serbian militia and the extremists elements in the Bosnian Croatian militia forces as perpetrators of these crimes." [United Nations, *Resolution of the World Conference on Human Rights*, A/CONF. 157/24 (Part 1), 24 June 1994, pp. 47-48].

43. In the following years, the General Assembly continued to severely criticise the Respondent's involvement in ethnic cleansing. On 20 Dec. 1993, it condemned

> "(...) vigorously the violations of human rights of the Bosnian people and of humanitarian law committed by parties to the conflict, especially those committed as policy *by Serbia and Montenegro* and the Bosnian Serbs, who have done so flagrantly and on a massive scale." [United Nations, *General Assembly Resolution 48/88*, A/RES/48/88, 20 Dec. 1993, para 14, emphasis added];

Almost one year later, on 3 November 1994, it again condemned

> "(...) vigorously all violations of human rights and international humanitarian law committed by parties to the conflict, especially those violations committed as policy by Serbia and Montenegro and the Bosnian Serbs, who have done so systematically, flagrantly and on a massive scale against the people of Bosnia and Herzegovina." [United Nations, *General Assembly Resolution 49/10*, A/RES/49/10, 3 Nov. 1994, para. 11].

Subsequently, the General Assembly listed the "political and military leaders in the Federal Republic of Yugoslavia (Serbia and Montenegro)", among those who "bear primary responsibility" for most violations of human rights and international humanitarian law in the former Yugoslavia [United Nations, *General Assembly Resolutions 49/196 and 50/193*].

44. On 30 May 1992, the Security Council adopted Resolution 757 (1992), in which it condemned the Federal Republic of Yugoslavia for not complying with the demands set out in Resolution 752 (1992):

> "The Security Council,
> (...)
> Deploring the fact that the demands in resolution 752 (1992) have not been complied with, including its demands that:
> - All parties and others concerned in Bosnia and Herzegovina stop the fighting immediately,
> - All forms of interference from outside Bosnia and Herzegovina cease immediately,
> - Bosnia and Herzegovina's neighbours take swift action to end all interference and respect the territorial integrity of Bosnia and Herzegovina,
> - Action be taken as regards units of the Yugoslav People's Army in Bosnia and Herzegovina, including the disbanding and disarming with weapons placed under effective international monitoring or any units that are neither withdrawn nor placed under the authority of the Government of Bosnia and Herzegovina,
> (...)
> *Condemns* the failure of the authorities in the Federal Republic of Yugoslavia [Serbia and Montenegro], including the Yugoslav People's Army, to take effective measures to fulfil the requirements of resolution 752 (1992);" [United Nations, *Security Council Resolution 757 (1992)*, S/RES/757, 30 May 1992].

In the same Resolution, the Security Council imposed its first sanctions on the Federal Republic of Yugoslavia. On June 1992, the Security Council adopted its Resolution 762 (1992). Again it urged the remaining units of the Yugoslav Army to withdraw from the territory of Bosnia and Herzegovina. The Federal Republic of Yugoslavia's involvement was again condemned on 10 June 1993, in Resolution 838 (1993).

45. The fact that sanctions against the Federal Republic of Yugoslavia were not removed until the Dayton Accords demonstrates the continued and direct involvement of Belgrade in genocide committed against non-Serbs in Bosnia and Herzegovina and in other parts of the territory of the former Yugoslavia.

Genocidal acts committed by other Yugoslav organs

46. Even though the Yugoslav armed forces are also directly responsible for genocidal acts on the territory of Bosnia and Herzegovina, as well as in Croatia and the Federal Republic of Yugoslavia itself, these are not the only instances of the participation of Yugoslav organs in genocide.

47. Detention facilities in Serbia and Montenegro were for example largely used to illegally detain non-Serb civilians, thus forming part of the system of ethnic cleansing carried out in areas of Croatia and Bosnia and Herzegovina occupied by Serb forces [see Reply, Chapter 8, Section 12]. Such illegal detention occurred before and after 19 May 1992 [*ibid.*].

48. In addition to the prisoners transferred from camps in Bosnia and Herzegovina to detention facilities in the Federal Republic of Yugoslavia, Yugoslav authorities also used existing detention facilities in Serbia and Montenegro to imprison Bosnians who had fled the war [see Reply, Chapter 8, Section 12]. Many detainees were tortured and killed; some were handed over to the Bosnian Serbs. For example, after the fall of Žepa in 1995, several hundred Muslim civilians fled to Serbia. They were imprisoned in camps where they were routinely abused [see above, Chapter 8, Section 12]. The Commission of Experts also reports many other cases of rapes and sexual assaults committed against Muslim and Croat women by guards in refugee camps on the territory of the Federal Republic of Yugoslavia [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol.V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", pp. 59-60, paras. 288-294; and Reply, Chapter 8, Section 12].

49. The above was acknowledged by the General Assembly, on 20 December 1993, when it urged "the immediate, internationally supervised release of all persons arbitrarily or illegally detained in (...) the Federal Republic of Yugoslavia (Serbia and Montenegro)" [United Nations, *General Assembly Resolution 48/153*, A/48/153, 20 Dec. 1993, para. 14]; it is clear from the context that this applies to acts committed in the Federal Republic of Yugoslavia itself in the context of "ethnic

cleansing" [*ibid.*, *Resolution 49/196*, A/RES/49/196, para. 2]. Similarly, on 29 December 1993, the General Assembly:

> "20. *Requests* that the International Committee of the Red Cross be granted free access to all detention camps established by the Serbs *in Serbia and Montenegro* and in Bosnia Herzegovina, and to all prisoners in those camps, and that all prisoners be notified of this action without delay;
>
> "21. *Requests* the Security Council to act immediately to close all detention camps in Bosnia Herzegovina and further to close concentration camps established by the Serbs *in Serbia and Montenegro* and in Bosnia and Herzegovina and, until implementation, to assign international observers to those camps;" [United Nations, *General Assembly Resolution 48/88*, A/RES/48/88, 20 Dec. 1994, paras. 20-21, emphasis added].

50. Even though the Yugoslav Army participated in countless atrocities, other Yugoslav and Serbian authorities were also involved in genocidal acts committed in Croatia and Bosnia and Herzegovina. This especially includes the Serbian police, which took part in military operations together with Serb military forces, organised as police combat battalions [see above, Chapter 8, Section 6].

51. The Ministry of Interior forces of Yugoslavia and Serbia were also largely responsible for the creation and the activities of the most important Serbian paramilitary units operating in Bosnia and Herzegovina [see below, paras. 71-72]. Serbia's Defense Minister himself stated that Arkan was protected by Interior Ministry officials [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 27 May 1994, Annex III.A, "Special Forces", p. 24, para. 94]. Moreover, Vojislav Šešelj publicly declared during his parliamentary campaign in the fall of 1993 that members of the Milošević government were involved in paramilitary operations [*Ibid.*, Annex III.A, p. 24, para. 93].

2. The responsibility of the Federal Republic of Yugoslavia for the genocidal acts committed by the "Republika Srpska" and other Yugoslav surrogates in Bosnia and Herzegovina

52. In its Counter-Memorial, the Federal Republic of Yugoslavia relates the general principles of customary international law relating to the responsibility of States [Counter-Memorial, Chapter V, pp. 321-340]. Even though there is no strong disagreement between the Parties in this respect, it is necessary to return briefly to this point, since the defendant State omits to draw certain legal conclusions from these principles which it presents only partially. Moreover, the application it makes of the said principles in the present case is entirely erroneous. Each of these points will be addressed separately below.

The applicable law

53. In its Counter-Memorial, the Respondent recognises that "acts of persons who are not State organs can also be considered acts of the State if they are committed under instructions from the State" [Counter-Memorial, p. 324, par. 5.3.1.3.]. This reflects the general law in force and is clearly expressed in Article 6 of the ILC Draft Articles on State Responsibility:

> "The conduct of a person or group of persons shall also be considered as an act of the State under international law if:
>
> (a) it is established that such person or group of persons was in fact acting on behalf of that State." [*Report of the I.L.C. on the Work of its 48th. Session,* 1996, General Assembly, Official Records, 51st. session, Supplement No. 10, A/51/10, p. 127, para. 10.28].

54. As an illustration of this rule, in its commentary, the International Law Commission gave some classic examples from a number of cases of international arbitration [see e.g. the *"Zafiro"* Case, England v. U.S., 30 Nov. 1925, *R.I.I.A.*, Vol. VI, pp. 160 *et sequitur*; the *"Stephens"* Case, Mexico v. U.S., 15 July 1927, *ibid.*, Vol. IV, p. 267; or the *"Sabotage Claims"* Case (Mixed Claims U.S./Germany Commission, 16 Oct. 1930 and 15 June 1939), *ibid.*, Vol. VIII, pp. 84ff., 458-459]. This rule is so well established that the Commission concluded:

> "It does not seem necessary to dwell on further specific examples of the application of the principle stated in sub-paragraph (a) of the present article, since this principle is practically undisputed" [*ILC Yearbook,* 1974, Vol. II, 1st part, p.284, Commentary of Article 8, para. 7].

55. Since then, the Court itself has had two opportunities to apply this undisputed principle: in the Hostages case on the one, and in the Nicaragua case on the other hand. Both judgments are quoted - but partly misinterpreted - by the Respondent State [Counter-Memorial, pp. 324-327, paras. 5.3.1.4-5.3.1.7 and 5.3.1.13-5.3.1.15, and pp. 329-331, 333-334, paras. 5.4.1.7-5.4.1.11 and 5.4.1.17].

56. It is worthwhile to recall that, in the Hostages case, the Court made a distinction between two different phases that it deemed convenient to examine separately [*ICJ Rep.* 1980, Case concerning *United States Diplomatic and Consular Staff in Tehran,*

Judgment of 24 May 1980, p. 29]. Concerning the first phase, which covered "the armed attack on the United States Embassy by militants on 4 November 1979, the overrunning of its premises, the seizure of its inmates as hostages, the appropriation of its property and archives" [*ibid.*], the Court concluded that the conduct of the "militants" could not be regarded as imputable to the Iranian State:

> "Their conduct might be considered as itself directly imputable to the Iranian State only if it were established that, in fact, on the occasion in question the militants acted on behalf [of] the State, having been charged by some competent organ of the Iranian State to carry out a specific operation. The information before the Court does not, however, suffice to establish with the requisite certainty the existence at that time of such a link between the militants and any competent organ of the State" [*ibid.*].

However, even concerning this phase, the Court adds, in a passage which is carefully omitted from the Yugoslav Counter-Memorial:

> "The conclusion just reached by the Court, that the initiation of the attack on the United States Embassy on 4 November 1979, and of the attacks on the Consulates at Tabriz and Shiraz the following day, cannot be considered as in itself imputable to the Iranian State does not mean that Iran is, in consequence, free of any responsibility in regard to those attacks; for its own conduct was in conflict with its international obligations" [*ibid.*, p. 30],

In this case, the reference is being made to Iran's obligations under the Vienna Conventions of 1961 and 1963 on diplomatic and consular relations.

57. Regarding the second phase of the events which were the subject of the United States' claims, that is "the whole series of facts which occurred following the completion of the occupation of the United States Embassy by the militants, and the seizure of the Consulates at Tabriz and Shiraz" [*ibid.*, p. 33], the Court noted that

> "[the] approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated continuing occupation of the Embassy and detention of the hostages into acts of that State. The militants, authors of the invasion and jailers of the hostages, had now become agents of the Iranian State for whose acts the State itself was internationally responsible." [*ibid.*, p. 35].

58. In the Nicaragua case, the Court asked itself,

> "whether or not the relationship of the *contras* to the United States Government was so much one of dependence on the one side and of control on the other that it would be right to equate the *contras* for legal purposes, with an organ of the United States Government, or as acting on behalf of that Government." [Judgment of 27 June 1986, Case concerning *Military and Paramilitary Activities in and against Nicaragua, ICJ Rep.* 1986, p. 62],

and it concluded that,

> "the evidence available to the Court indicates that the various forms of assistance provided to the *contras* by the United States have been crucial to the pursuit of their activities, but is insufficient to demonstrate their complete dependence on the United States aid." [*ibid*].

However, the Court, in a further passage which, once again, the Respondent carefully avoids to quote or cite, added:

> "This conclusion, however, does not of course suffice to resolve the entire question of the responsibility incurred by the United States through its assistance to the *contras*" [*ibid.*, p. 63].

In this respect, it took the view that, if "the *contras* remain responsible for their acts", the United States is responsible "for its own conduct vis-à-vis Nicaragua *including conduct related to the acts of the contras*" [*ibid.*, p. 65, emphasis added]. And the Court, having investigated "unlawful acts for which the United States may be responsible directly in connection with the activities of the *contras*" [*ibid.*], concluded that acts of the U.S. had entailed its international responsibility

> "by training, arming, equipping, financing and supplying the *contra forces* and otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua" [*ibid.*, p. 146].

59. In light of this brief exposition of the applicable law, the following conclusions may be drawn:

- firstly, the Federal Republic of Yugoslavia is responsible for the acts of individuals or of groups of individuals who have committed genocidal acts "on its behalf";
- secondly, this implies that these individuals or groups were "dependent" on Yugoslavia or received their orders from its Government or official authorities; and
- thirdly, even if this were not the case, Yugoslavia would remain responsible for its own conduct in relation to genocidal acts committed by these individuals or groups.

60. This last question will be examined later, in Section 3 of the present Chapter and in Chapter 11, where the Applicant will show that the Federal Republic of Yugoslavia has failed to comply with its duty to prevent the commission of genocide by individuals and groups and to punish the perpetrators of these acts. In the next sub-section of the present Section it will demonstrate that many atrocities amounting to genocidal acts have been committed by individuals and groups acting on behalf of the Respondent, including acts by the "Republika Srpska".

The attributability to the Federal Republic of Yugoslavia

61. The Respondent protests, in its Counter-Memorial, against the use of the term "surrogates" in the Memorial of Bosnia and Herzegovina since, it claims, such a term is "unknown in legal practice and theory" [Counter-Memorial, p. 321, para. 5.1.1.4.]. Yugoslavia should certainly also complain to the General Assembly of the United Nations since this organ too has not hesitated to strongly condemn "Serbia and Montenegro *and their surrogates* in Bosnia and Herzegovina [United Nations, *General Assembly Resolution 47/121*, A/RES/47/121, 18 Dec. 1992, preamb.], clearly designating this term to mean all "Serbian forces in the Republic of Bosnia and Herzegovina" [*ibid.*, para. 2 and 3]. This includes both the Serbian paramilitary forces in Bosnia and Herzegovina and the "Republika Srpska".

The Serbian paramilitary forces

62. By way of a mere general assertion that it did "not have effective control of military and paramilitary forces at the time of the operations in the course of which the alleged violations were committed" [Counter-Memorial, p. 335, para. 5.4.1.22.], the Respondent attempts to deny its responsibility for the genocidal acts committed by these military and paramilitary forces. In particular, every time the Applicant had mentioned that an act had been committed by paramilitary Serbian forces, whether alone or in coordination with the Yugoslav armed forces, the Respondent simply asserts: "(...) these acts cannot be attributed to the Respondent and it cannot be held responsible for them" [see among dozens of examples Counter-Memorial, p. 20, para. 1.2.1.11.; p. 21, para. 1.2.1.13.; p. 22, para. 1.2.1.20.; p. 26, para. 1.2.1.29.; p. 51, para. 1.3.2.52.; p. 55, para. 1.3.2.65.; p.59, para. 1.3.3.17.; p. 63, para. 1.3.4.12.; p. 72, para. 1.3.5.38.; p. 72, para. 1.3.5.40., etc.].

63. In its Counter-Memorial, the Respondent also attempts to dismiss the Applicant's "absurd theory of agency according to which all Serbs in the Republic of Srpska are

'agents' or 'surrogates' of the Respondent" [*ibid.*, p. 14, para. 1.1.4.7.]. This is just a caricature of the Applicant's case: Bosnia and Herzegovina does not suggest that "all Serbs in Bosnia and Herzegovina" are agents and surrogates of Yugoslavia. What it does write and maintain is that Serbian paramilitary forces in Bosnia and Herzegovina (and in Croatia) are, indeed, agents and surrogates of Yugoslavia and that, consequently, in accordance with the general principles applying to the responsibility of States in international law elaborated upon above, their internationally wrongful acts, including, of course, their genocidal acts, entail the international responsibility of the Respondent.

64. The following facts make clear that Serbian paramilitary forces have acted on behalf of the Federal Republic of Yugoslavia and were dependent on this State:

- these paramilitary units were created by Belgrade;
- they were armed and equipped by Yugoslavia;
- they were trained in Serbia or in military camps of the JNA or the VJ in other parts of the former Yugoslavia;
- they used military facilities of the JNA and VJ;
- they were rewarded by Yugoslav authorities;
- they took part in ethnic cleansing in close coordination with the JNA, then the VJ, before and after 19 May 1992;
- they were acting under direct command of the JNA, then the VJ, and under the umbrella of prominent political leaders of Yugoslavia and the Federal and Serbian Ministries of Interior.

Isolated, each of these elements, which are reviewed more precisely hereinafter, would be enough to consider Serbian paramilitaries operating in Bosnia and Herzegovina as agents and surrogates of the Federal Republic of Yugoslavia. Taken together, they constitute a legal pattern which cannot leave room for any doubt concerning the attributability of their acts to the Respondent.

65. The most important paramilitary units were set up by Belgrade. Their activities began before the outbreak of the conflict in the Republic of Serbia and in Kosovo and Vojvodina, between 1987 and 1991. The Interior Ministry and the Ministry of Defense of Serbia took a large part in the creation of these units in, as well as outside, Serbia [Reply, Chapter 8, Section 7].

66. As was demonstrated above, arms, ammunition, clothes and food were provided to paramilitary units by Belgrade [see Reply, Chapter 8, Section 7].

67. On 16 April 1993, the Security Council strongly condemned this support in its Resolution 819 (1993), stating that it:

> "*Demands* that the Federal Republic of Yugoslavia [Serbia and Montenegro] immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina." [United Nations, *Security Council Resolution 819 (1993)*, S/RES/819, 16 Apr. 1993, emphasis added]

This demand was endorsed by the General Assembly in its Resolution 48/88 of 20 December 1993 [United Nations, *General Assembly Resolution 48/88*, A/48/88, 20 Dec. 1993, para. 5; see also *ibid.* 49/10, 3 Nov. 1994, para. 13].

68. Serbian paramilitary units were also trained in camps located in, as well as outside, the Federal Republic of Yugoslavia [see Reply, Chapter 8, Section 7]. The provisional location in the Federal Republic of Yugoslavia of many paramilitary units, which moved very often during the war, is ascertained by the fact that large attacks against Bosnia and Herzegovina were launched from the Federal Republic of Yugoslavia's territory [see e.g. Reply, Chapter 5, Section 7]. Serbian paramilitary units also used military camps of the JNA in Bosnia and Herzegovina for training. Thus, in the Karadžić and Mladić case, the ICTFY noted that "several testimonies in the case-file give credence to the thesis that paramilitary groups were trained *by* the JNA" [ICTFY, Trial Chamber I, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karazdic and Ratko Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 28, para. 55].

69. Paramilitary units were allowed to use JNA equipment, such as helicopters and planes, when being deployed. Some of the paramilitary units were even provided with facilities in Belgrade, used as headquarters for their agents working with the police and government officials [see Reply, Chapter 8, Section 7].

70. From the very beginning of the war, the JNA and paramilitary units from Serbia acted in close cooperation. Thus, according to the Trial Chamber at the ICTFY:

> "Starting on 25 August 1991, the city of Vukovar was subjected to a violent offensive led by the Yugoslav People's Army (JNA) which deployed a huge military arsenal against it. In the JNA's ranks were conscripts and Serbian nationalist volunteers. The JNA was apparently responsible for coordinating the activities of various paramilitary groups, such as Arkan's "Tigers", some of which

> were local and some of which had come from the Serbian Republic." [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Mile Mrksic, Miroslav Radic, Veselin Sljivancanin ["Vukovar Hospital"]*, Case No. IT-95-13-R61, 3 Apr. 1996, p. 3, para. 4].

JNA and Serbian paramilitary forces also coordinated their activities in Bosnia and Herzegovina. First,

> "Zvornik was attacked on 8 April 1992. Arkan's troops reportedly led the attack. They were aided by JNA forces, Šešelj's, and Arkan's men. Identified perpetrators included regular JNA troops, paramilitaries and special police (...)." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 27 May 1994, Annex III.A, "Special Forces", p.166, para. 569; see also Reply, Chapter 8, Section 7].

Thereafter, the same occurred in many other places in Bosnia and Herzegovina. Paramilitary units were enabled to commit massacres by the logistic and artillery support of the JNA. On some occasions, Arkan was the leader of the whole joint operation with the JNA [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 27 May 1994, Annex III.A, p. 25, para. 94, quoted above, Chapter 8, Section 7].

71. Paramilitary units were under the direct control of the Federal and Serbian Interior Ministries [Reply, Chapter 8, Section 7]. Vojislav Šešelj, one of the infamous paramilitary leaders, admitted that paramilitary units were armed and supervised by Milošević's police [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 27 May 1994, Annex III.A, "Special Forces", p. 29, para. 118]. He named members of the government of Serbia who were responsible for the supervision, and especially the Interior Minister of Serbia, as well as individual police officials who commanded his units [*ibid.*, p. 29, para. 119; see also Reply, Chapter 8, Section 7]. The Trial Chamber at the ICTFY also noted that:

> "(...) evidence was (...) presented that the Serbian Security Service has been directing at least one paramilitary leader, Vojislav Šešelj, in the disposition of his forces in 1991 and 1992." [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 219, para. 593, quoted above, Chapter 8, Section 7].

72. The paramilitary leaders Vojislav Šešelj and "Arkan" explained that they were under the direct command of Belgrade. Both of them have in the meantime had a very successful political career in Serbia, sponsored by President Slobodan Milošević. In March 1998, Vojislav Šešelj became Deputy Prime Minister of the Serbian Government [see above, Chapter 8, Section 7].

73. This tight collusion between Serbian paramilitary forces operating in Bosnia and Herzegovina and the authorities, whether Serbian or Yugoslav, in Belgrade has been ascertained on several occasions by the General Assembly which, in particular, recalled, both in 1993 and 1994,

> "the report of the Committee on the Elimination of Racial Discrimination [A/48/18, *Official Records of the General Assembly*, 48 th. Session, Suppl. n° 18, A/48/18] in which the Committee 'notes with great concern that links existed between the Federal Republic of Yugoslavia [Serbia and Montenegro] and Serbian militias and paramilitary groups responsible for massive, gross and systematic violations of human rights in Bosnia and Herzegovina and in Croatian territories controlled by Serbs'." [United Nations, *General Assembly Resolution 48/88*, A/48/88, 20 Dec. 1993, preamb.; *ibid.*, *Resolution 49/10*, A/49/10, 3 Nov. 1994, preamb.].

74. For its part, in its Opinion and Judgment of 7 May 1997 in the Tadić case, the Trial Chamber at the ICTFY noted that one of the consequences of the independence of Croatia and Slovenia and of the purging of non-Serb elements from the JNA

> "(...) was that the JNA experienced a shortage of manpower, especially when it came to play the role of an occupying force in hostile territory, as was the case in Croatia and, during 1992, in non-Serb parts of Bosnia and Herzegovina. In consequence, increasing reliance was placed on Serbian paramilitary forces, recruited in Serbia and Montenegro and much employed in control of non-Serb communities in Bosnia and Herzegovina. [...] These paramilitary forces, operated in conjunction with the JNA and were used as infantry shock troops to make up for declining numbers in the regular army. They included Zeljko Raznjatovic's Serbian Volunteer Guard [later known as "Arkan's Tigers"] and Vojislav Seselj's Chetniks, both of which came to be particularly feared by the Muslim population for their brutality and indiscipline. The JNA and in particular its air force arm actively cooperated with and assisted these paramilitary units during 1991 and 1992 in operations in Croatia and Bosnia and Herzegovina and liberally supplied them with arms and equipment." [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 40, para. 110].

75. It therefore appears that these groups have been ordered by the JNA not only "to carry out a specific operation" but with a general mission of assisting the JNA in implementing ethnic cleansing. This entirely meets the test defined by the Court in the Hostages and Nicaragua cases [see above, paras. 55-58].

76. The Federal Republic of Yugoslavia contends that this is not so since, whether concerning the paramilitary forces or the "Republika Srpska" itself, Yugoslavia's responsibility would only be entailed on a case by case basis, for those cases when specific acts have been committed under instructions of the State or have been endorsed by it [see e.g. Counter-Memorial, p. 324, paras. 5.3.1.3, 5.3.1.5 or p. 326, para. 5.3.1.12]; it adds that "such endorsement must be explicit or must refer to specific acts" [Counter-Memorial, p. 327, para. 5.3.1.14.] and that:

> "[f]or a specific act in such a situation to be attributed to a State it would have to be proved that that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed." [Counter-Memorial, p. 335, para. 5.4.1.22.].

77. The Respondent misinterprets the applicable law in this respect: neither in the Hostages case nor in the Nicaragua case has the Court defined a single test. In both cases, it has decided that Iran or the United States would be deemed responsible for the internationally unlawful acts of the "militants" or the *contras, either* if they were under the control of the Defendant and acted globally on its behalf, *or*, if this were not so, if and when specific acts have been committed under instructions. This is made extremely clear in Judge Ago's separate opinion under the Nicaragua case:

> "It would indeed be inconsistent with the principles governing the question to regard members of the *contra* forces as persons or groups acting in the name or on behalf of the United States of America. Only in cases where certain members of those forces happened to have been specifically charged by the United States authorities to commit a particular act, or carry out a particular task of some kind on behalf of the United States, would it be possible so to regard them. Only in such instances does international law recognize, as a rare exception to the rule, that the conduct of persons or groups which are neither agents nor organs of a State, nor members of its apparatus even in the broadest acceptation of that term, may be held to be acts of that State" [*ICJ Rep.* 1986, para. 16, pp. 188-189; concerning Judge Ago's analysis of the *Hostages* case, see *ibid.*, para. 18, p. 190; see also Judge McDonald in ICTFY, Trial Chamber II, Opinion and Judgement, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, paras. 16-25].

78. The ILC commentary on its Draft Article 8 on State responsibility [*ILC Yearbook*, 1974, Vol. II, Part I] makes clear that both situations were present in the mind of its Members when they adopted this provision:

> "The hypothesis contemplated in sub-paragraph [a] was intended by the Commission mainly to cover cases in which the organs of the State supplement their own action and that of their subordinates by the action of private persons or groups who act as 'auxiliaries' while remaining

> outside the official structure of the State. In the same context the Commission wished to deal with the familiar cases in which the organs of the State or of one of the other entities empowered by internal law to exercise elements of the governmental authority prefer, for varied and in any case self-evident reasons, not to undertake certain duties directly or not to carry out certain tasks themselves. They then make use of persons who are not formally part of the State machinery of any of the other entities mentioned; they call upon private individuals or groups of private individuals to take on the duties and tasks in question, although here again these individuals or groups are not thereby formally attached to the structures in question and do not, in other words, thereby become *de jure* organs of the State or of the other entities mentioned. The Commission, also bearing in mind the important role played by the principle of effectiveness in the international legal order, considered that that order must of necessity take into account, in the cases contemplated, the existence of a real link between the person performing the act and the State machinery rather than the lack of a formal nexus between them. The conduct in which the persons or groups in question thus engage in fact on behalf of the State should therefore be regarded under international law as acts of the State: that is to say, as acts which may, in the event, become the source of an international responsibility incumbent on the State" [*ILC Yearbook*, 1974, Vol. II, Part I, p. 283, para. 2 of the commentary of Article 8].

79. As shown above, there can be no doubt that in many specific cases, some of which have been listed above [para. 70], genocidal acts have been committed by paramilitary forces acting under direct instructions of Belgrade. Moreover, the whole pattern of facts recalled in Section 7 of Chapter 8 and in this Chapter [paras. 68-72], shows that these paramilitaries were, globally, under the direct control of the Yugoslav and Serbian authorities, not simply through the "Republika Srpska". Therefore, they must be considered as agents of the Federal Republic of Yugoslavia on behalf of which they have acted. Bosnia and Herzegovina has offered much more than pure *prima facie* evidence, and it is for the Respondent to rebut it, not only on a case by case basis, but also and primarily, globally [see Reply, Chapter 3].

The "Republika Srpska"

80. The main defence offered by the Federal Republic of Yugoslavia consists of a plea of non-responsibility for the genocidal acts committed against the non-Serb population of the former Yugoslavia and in particular in Bosnia and Herzegovina since these acts would have been committed by Serbs under the leadership and command of the "Republika Srpska". This is not an admissible defence, since this entity is not and has never been a State in the meaning generally accepted in international law, but an artificial entity subordinate to the Federal Republic of Yugoslavia. Moreover, even if the "Republika Srpska" were a State (*quod non*), the Respondent would, nevertheless, bear responsibility for the genocidal acts committed by this so-called "State" and for the acts of its "army", the VRS, since these entities would have amply met the "agency test" recognized by general principles of the law

of State responsibility applied by the Court [see above, paras. 53-57]. Each of these points will be addressed separately below.

The "Republika Srpska" is not and has never been a State

81. As a *leitmotif*, the Federal Republic of Yugoslavia asserts in its Counter-Memorial that "the Republic of Srpska has existed as a State in the territory of the former Yugoslav Republic of Bosnia and Herzegovina ever since April 1992" [Counter-Memorial, p. 243, para. 2.21.1.1.; see also, e.g. p. 129, para. 2.6.1.1.; p. 244, para. 2.21.1.4, or p. 1080, paras. 8.10 and 8.12] and goes as far as alleging that "[t]he Republic of Bosnia and Herzegovina and the international community have recognized the legitimacy and legality of the creation of the Republic of Srpska" [*ibid.*, p. 132, para. 2.7.1.1.; see also p. 243, para. 2.21.1.1.]. The reason for these clearly erroneous allegations are obvious. Yugoslavia wishes to prove that, "consequently", it "did not exercise any sovereignty nor any control over the territory controlled by the Republic of Srpska in the former Yugoslav Republic of Bosnia and Herzegovina" [*ibid.*, p. 244, para. 2.21.1.5.; see also, e.g. p. 295, para. 3.11.1.1.; p. 340, para. 5.8.1.4. or p. 1080, paras. 8.8 and 8.13].

82. Two main reasons clearly contradict the Yugoslav claim that the "Republika Srpska" is or was a State. In the first place, this entity has been created contrary to peremptory norms of international law (*jus cogens*) and, in the second place, being entirely *de facto* dependent on Yugoslavia but *de jure* part of Bosnia and Herzegovina, it has never enjoyed sovereignty, which is the criterion defining a State in international law.

The creation of "Republika Srpska" has been imposed through the use of force and genocide.

83. The creation of the "Republika Srpska" resulted from the use of force and its population has been made "ethnically homogeneous" through genocide. Such a situation cannot have any legal validity.

84. The "independence" of the "Republika Srpska" was proclaimed on 28 February 1992 by the "Assembly of the Serb People in Bosnia-Herzegovina". At this date, the Yugoslav Army (JNA) was still occupying the territory of this so-called "new State",

as Yugoslavia itself recognises, although the Respondent is extremely reticent on the precise date of the effective "withdrawal" of its troops [see e.g. Counter-Memorial, pp. 245-258, Sections 3.1.1. to 3.1.3.]. And, in fact, only the massive presence of the JNA on the territory of Bosnia and Herzegovina and the use of force by this army had made this proclamation possible.

85. The Respondent is also particularly reticent about the effect of what it modestly calls the "relocation" of the JNA [Counter-Memorial, Section 3.1.1, pp. 245-246]. In fact, this was just a massive occupation of the Bosnian territory by an exclusively Serb army. This has been acknowledged by the International Criminal Tribunal for the Former Yugoslavia. In its Judgment in the Tadić case, the Trial Chamber noted that the JNA "remained in substantial force in Bosnia and Herzegovina, despite the secession of that Republic" [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, para. 113], and that,

> "By early 1992, there were some 100,000 JNA troops in Bosnia and Herzegovina with over 700 tanks, 1,000 armoured personnel carriers, much heavy weaponry, 100 planes and 500 helicopters, all under the command of the General Staff of the JNA in Belgrade" [*ibid.*, para. 124; see also Reply, Chapter 8, Section 4].

86. The Security Council was well aware of this situation when, by its Resolution 752 (1992) of 15 May 1992, it stated that it:

> "*Demands* that all forms of interference from outside Bosnia-Herzegovina, including by units of the Yugoslav People's Army [JNA] as well as elements of the Croatian Army, cease immediately, and that Bosnia-Herzegovina's neighbours take swift action to end such interference and respect the territorial integrity of Bosnia Herzegovina.
>
> *Demands* that those units of the Yugoslav People's Army [JNA] and elements of the Croatian Army now in Bosnia-Herzegovina must either be withdrawn, or be subject to the authority of the Government of Bosnia-Herzegovina, or be disbanded and disarmed with their weapons placed under effective international monitoring(...)." [United Nations, *Security Council Resolution 752 (1992)*, S/RES/752, 15 May 1992].

None of these three options were effectively complied with as far as the JNA is concerned, as will be shown below.

87. The logic of the conflict in the former Yugoslavia is described by Professor Paul Garde in the following words:

> "Il s'agit d'une guerre de conquête visant à réaliser la double formule (...): 'tous les Serbes dans un seul Etat, dans cet Etat rien que des Serbes.' Donc des fragments des Républiques voisines, Croatie

> puis Bosnie, qui sont censés constituer le 'territoire ethnique serbe' sont conquis par les armes en 1991-1992 [...] Et c'est sur ce territoire que s'exerce le nettoyage ethnique, c'est à dire l'élimination systématique de toute population non serbe." ["La logique du conflit", in *L'ex-Yougoslavie en Europe*, L'Harmattan, Paris, 1997, p 21, Annex 273].

88. The Yugoslav forces were massively engaged in the military operations and the ethnic cleansing against the non-Serb population in Bosnia and Herzegovina. As explained again by the Trial Chamber of the ICTFY, "the formation of Serb Autonomous Regions and all that followed was only possible because of the military power of Serbia." [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 44, para. 122] and,

> "On 19 May 1992 the withdrawal of JNA forces from Bosnia and Herzegovina was announced but the attacks were continued by the VRS." [*ibid.*, p. 46., para. 125].

This is also noted by the Trial Chamber in its decision in the Karadžić and Mladić case:

> "By arming the Serbian population and organising a more direct JNA intervention, the contacts [between the JNA and the SDS] permitted the SDS to take power in the territory of Bosnia and Herzegovina." [ICTFY, Trial Chamber I, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 28, para. 55].

89. The Trial Chamber clearly explains how the SDS seized power on the territory of the future "Republika Srpska":

> "1) The seizure of power by the SDS
>
> The material tendered to the Trial Chamber by the Prosecutor justifies the finding that, between March and May 1992, SDS forces, with wide-ranging military support from the JNA, engaged in attacks against certain strategic points of Bosnia and Herzegovina, in particular at Foca, Bosanski Samac, Vlasenica, Brcko, and Prijedor, where the majority of the population was non-Serb. These large-scale military offensives were usually conducted in collusion with paramilitary units, such as the groups led by Zeljko Raznjatovic, alias "Arkan", Vojislav Seselj, the "White Eagles" at Foca, and the "Grey Wolves" at Bosanski Samac, and had the support of SDS members. These offensives gave the SDS control over the peripheral territory of Bosnia and Herzegovina. During the same period, the JNA initiated the military préparations for the siege of Sarajevo.
>
> A series of maps produced at the hearing showed that the zones held in November 1992 by the military forces and the SDS administration in Bosnia and Herzegovina corresponded to a large

> extent to the territories which had been declared autonomous by the SDS as specified by the "Assembly of the Serbian people in Bosnia and Herzegovina" on 21 November 1991. Some zones were taken though they were not among the autonomous territories; thus for instance the town of Brcko and the municipalities in the Drina valley, including Bratunac and Srebrenica. According to Professor Paul Garde, "the additional advances were, especially "bloody" since it was in those areas that the policy of persecution was the most violent." [*Ibid.*, p. 29, paras. 56 and 57].

90. Examples of the decisive participation of the JNA in the military operations which resulted in the control of important parts of Bosnia and Herzegovina by Yugoslavia are countless; some have been detailed earlier in this Reply [Reply, Chapter 8, Section 3]. In this respect, it is also significant that, whenever "Crisis Staffs" were formed by Serbs in Bosnia and Herzegovina, the JNA Commander of the area was always a member of the Crisis Staff [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 37, para. 103; see also Reply, Chapter 8, Section 3].

91. These military operations were not aimed at the creation of a "State", but at the creation of an entity which was to join the future "Greater Serbia". This is made very apparent, for example, by a proclamation of the "Assembly of the Serbian People in Bosnia and Herzegovina" which, as early as 11 December 1991, asked the JNA:

> "(...) to, by all means it has on disposal, defended the territories of Bosnia and Herzegovina as part of Yugoslavia on which the plebiscite of the Serbian people and other citizens was held in order to stay in the mutual State of Yugoslavia and on which the Decision of the Assembly of the Serbian people in Bosnia and Herzegovina on territories of the municipalities, local communities and other inhabited places in Bosnia and Herzegovina which are considered the territories of the Federal State Yugoslavia, was made." [Annex 274; see also ICTFY, Trial Chamber II, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, pp. 27-28, para. 54].

92. As noted by Judge McDonald in her joint and dissenting opinion in the Tadić case, before as well as after 19 May 1992,

> "(...) the objective remained the same: to create an ethnically pure Serb State by uniting Serbs in Bosnia and Herzegovina and extending that State from the Federal Republic of Yugoslavia (Serbia and Montenegro) to the Croatian Krajina along the important logistics and supply line that went through opstina Prijedor, thereby necessitating the expulsion of the non-Serb population of the opstina." [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 5 , para. 7].

93. In other words, this international armed conflict was also an ethnic war, genocide being the means to obtain an "ethnically clean" country. The fact is that "military operations" were inseparable from "ethnic cleansing" and, more often than not,

focused on this dirty work. As noted by the first Special Rapporteur of the United Nations Commission on Human Rights, "the military conflict in Bosnia and Herzegovina (...) is aimed at achieving 'ethnic cleansing'" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1992/S.1/10]. The Trial Chamber at the ICTFY, quoting the Special Rapporteur, concluded too that "'ethnic cleansing' seems to be not a *by-product* of the war initiated by the SDS and its military allies, but rather its *aim*" [ICTFY, Trial Chamber, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 35, para. 64].

94. Operations of "ethnic cleansing" were described generally by the Trial Chamber as follows:

> "In general, the military take-overs involved shelling, sniping and the rounding up of non-Serbs in the area. These tactics often resulted in civilian deaths and the flight of non-Serbs. Remaining non-Serbs were then forced to meet in assembly areas in towns for expulsion from that area. Large numbers of non-Serbs were imprisoned, beaten and forced to sing Chetnik songs and their valuables seized. This was accompanied by widespread destruction of personal and real property." [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, p. 46, para. 126].

95. This policy can be illustrated by the occupation of the city of Vlasenica as described by the ICTFY:

> "The Muslim population of Vlasenica was systematically disarmed and it does not appear that there was any resistance movement in the region.
> (...)
> The relevant parts of the record tend to show that JNA forces from Novi Sad, under the control of the government in Belgrade, took part in the occupation of Vlasenica after the Republic of Bosnia and Herzegovina had been recognised as an independent State" [ICTFY, Trial Chamber I, Review of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolic a/k/a "Jenki"*, Case No. IT-94-2-R61, 20 October 1995, p. 17, para. 30; emphasis added].

This deliberate policy has been described in detail above [Reply, Chapter 8, Section 3].

96. It appears clearly that the "Republika Srpska" is the product of both an unlawful use of force and genocide, that is, clearly contradicting the principles prohibiting both the use of force in international relations and genocide. These principles are universally recognised as being typical peremptory rules of general international law (*jus cogens*).

97. This point probably does not deserve a long demonstration. Suffice it to say that:

- in its commentary of Article 50 of its Draft Articles Relating to the Law of Treaties (which was to become Article 53 of the 1969 Vienna Convention), the ILC suggested that both "un traité qui envisage un emploi illicite de la force contraire aux principes de la Charte" and "un traité qui envisage ou tolère l'accomplissement d'actes tels que (...) le génocide" would contradict a peremptory rule of general international law and, therefore, be null and void [*ILC Yearbook*, 1966, Vol. II, p. 270, para 3 of the commentary on Art. 50];
- the Court mentioned both "the outlawing of acts of aggression, and of genocide" as creating "obligations of a State towards the international community as a whole", which, "[b]y their very nature (...) are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection, they are obligations *erga omnes*" [Judgment of 5 February 1970, case concerning the Barcelona Traction, Light and Power Company Ltd., *ICJ Rep.* 1970, p. 32]; and
- similarly, in Article 19 of its Draft articles on the Responsibility of States, the ILC notes that:

> "an international crime may result, *inter alia,* from:
>
> (a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression; (...)
>
> (c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting genocide (...)." [*ILC Report, op. cit.* para. 52, p. 131].

98. One of the consequences of the contradiction of the process of creation of the "Republika Srpska" with these well established rules of *jus cogens* is that this entity cannot be recognised as having the legal status of a State.

99. As Dr. Doehring aptly explained:

> "(...) effectiveness is only relevant insofar as the legal system permits it. Effectiveness alone as a consequence of a mere factual event does not create rights." ["Effectiveness", in R. Bernhardt ed., *Encyclopedia of Public International Law*, North Holland Pub., Amsterdam, 1984, p. 70].

In conformity with the traditional adage according to which *ex injuria jus non oritur*, "the law will always lean towards the principle that a wrongful act must be ineffective to change or to create legal rights" [Sir Robert Jennings, "Nullity and Effectiveness in International Law", *Cambridge Essays in International Law - Essays in Honour of Lord McNair,* Stevens, London, 1965, p. 72].

100. This is even more so when the rule violated is a norm of *jus cogens*:

> "An act or omission which is contrary to a *jus cogens* rule is devoid of any legal effect. It cannot give place through recognition, acquiescence or prescription to a new legal regime as would violations of other rules of international law." [Georges Abi-Saab in Lagonissi Conference, pp. 10-11 as quoted in Vera Gowlland-Debbas, *Collective Responses to Illegal Acts in International Law - United Nations Action in the Question of Southern Rhodesia,* Nijhoff, Dordrecht, 1990, p. 250, fn. 1; see also e.g., Roger Pinto, "La prescription en droit international", 87 *Recueil des cours,* 1955, p. 246 or Ian Brownlie, *International Law and the Use of Force by States,* Clarendon Press, Oxford, 1963, p. 500].

101. The Security Council and the General Assembly have consistently applied this principle:

- in its Resolution of 24 October 1970, "Declaration on principles of international law concerning friendly relations and co-operation among States in conformity with the Charter of the United Nations", the General Assembly declares that "no territorial acquisition resulting from the threat of use of force shall be recognised as legal" [United Nations, *General Assembly Resolution 2625 (XXV)*, 24 Oct 1970];
- and, in concrete cases, both the Security Council and the General Assembly have constantly reaffirmed "that acquisition of territory by force is inadmissible" [see e.g. United Nations, *Security Council Resolutions* 242 (1967), 22 Nov. 1967; *252 (1968)*, 21 May 1968 (occupied territories by Israel); *476 (1980)*, 30 June 1980 (annexation of Jerusalem by Israel); *497*

(1981), 17 Dec. 1981 and United Nations, *General Assembly Resolution ES-9/1*, (Syrian Golan Heights)];

- similarly, they have condemned acquisitions of territories in contradiction with other norms of *jus cogens* such as the principle of self-determination [see e.g.: United Nations, *Security Council Resolutions 264 (1969)*, 20 Mar. 1969; *276 (1970)*, 30 Jan. 1970; *384 (1975)*, 22 Dec. 1975; *389 (1976)*, 22 Apr. 1976 and *General Assembly Resolutions 2145 (XXI)*, 27 Oct. 1966 (Namibia); *3485 (XXX)*, 12 Dec. 1975; *31/53*, 1 Dec. 1976; *36/50*, 24 Nov. 1981 (East Timor)].

102. Both organs have applied the same principles when a new State has supposedly been created in contradiction to a peremptory norm of general international law:

- in the case of Southern Rhodesia, the Security Council condemned "the usurpation of power by a racist settler minority in Southern Rhodesia and [regarded] the declaration of independence by it as having no legal validity" [United Nations, *Security Council Resolution 217 (1965)*, 20 Nov. 1965; see also *Security Council Resolutions 216 (1965)*, 12 Nov. 1965; 277 (1970), 18 Mar. 1970 or *General Assembly Resolutions 2379 (XXIII)*, 25 Oct. 1968 and 2508 (XXIV), 21 Nov. 1969];
- similarly the Security Council condemned successively the proclamation of the Northern part of Cyprus as "a Federated State" [United Nations, *Security Council Resolution 367 (1975)*, 12 Mar. 1975] and the attempt to create a "Turkish Republic of Northern-Cyprus" [United Nations, *Security Council Resolution 541 (1983)*, 18 Nov. 1983],
- and again, both the General Assembly and the Security Council have rejected the "proclamation d'indépendance du Transkei" and of other "Bantustans" created by South Africa,

> "comme étant une mesure destinée à consolider la politique inhumaine d'*apartheid*, à détruire l'intégrité territoriale du pays, à perpétuer la domination de la minorité blanche et à déposséder la population africaine d'Afrique du Sud de ses droits inaliénables" [United Nations, *General Assembly Resolution* 31/6A, 26 Oct. 1976; see also *ibid.*, 32/105N, 14 Dec. 1977 or United Nations, *Security Council Resolutions* 402 (1976), 22 Dec. 1976 and 556 (1984), 23 Oct. 1984].

103. The Security Council reacted similarly in the case of Bosnia and Herzegovina. In its Resolution 757 (1992) of 30 May 1992, it recalled "that no territorial gains or changes brought about by violence are acceptable and that the borders of Bosnia and Herzegovina are inviolable" [United Nations, *Security Council Resolution 757*

(1992), S/RES/757, 30 May 1992; see also United Nations, *General Assembly Resolution* 46/242, 25 Aug. 1992, para. 8]. Then, on 16 November 1992, the Council strictly reaffirmed its call for the territorial integrity of the Republic of Bosnia and Herzegovina and affirmed, "that *any entities unilaterally declared* or arrangements imposed in contravention thereof will not be accepted" [United Nations, *Security Council Resolution 787 (1992),* S/RES/787, emphasis added; see also *ibid., 836 (1993)* of 4 June 1993]. Similarly, the General Assembly reaffirmed on 29 December 1993, "that the consequences of 'ethnic cleansing' will not be accepted by the international community" [United Nations, *General Assembly Resolution 48/88*, 29 Dec. 1992, para. 3; see also *ibid., 49/10* of 3 Nov. 1994, para. 8].

104. This is indeed a clear condemnation of the very existence of the "Republika Srpska" as a subject of international law. Knowing this, the Respondent stresses that "the Republic of Srpska" was recognised "as a Party to the conflict" [Counter-Memorial, Section 2.5, pp. 125-129] since "the Bosnian Serbs" are mentioned in several resolutions of the Security Council [*Ibid.*, p. 125, para. 2.4.1.13] and participated in negotiations with other "parties" to the conflict [*ibid.*, pp. 125-129, paras. 2.4.1.14-2.5.1.12]. This calls for several brief remarks:

- *None* of the resolutions of the Security Council mention the "Republika Srpska", thus showing clearly its conviction that this unlawfully and "unilaterally declared entity" was not a State;
- this recognition of the Bosnian Serbs as a "party" was intended (and indeed necessary) only in order to force them to comply with the provisions of the 1977 Protocol II on the law of non-international armed conflicts;
- the "Republika Srpska" has never been recognised as a State by any other State, including by the Federal Republic of Yugoslavia itself, which clearly considered it as an agent and a surrogate, not an equal;
- far from recognising "the legitimacy and legality of creation of the Republic of Srpska" [Counter-Memorial, Section 2.7, pp. 132-134], the Dayton-Paris Agreement of 21 November and 14 December 1995 reaffirms "the territorial integrity [and] political independence of Bosnia and Herzegovina" [Article 1 of the General Framework Agreement]; according to the Constitution, Bosnia and Herzegovina "shall *continue* its legal existence under international law as a State" [Article I.1], while the Republika Srpska is designated an "entity" [Article I.3] whose international jurisdiction is strictly limited and is to be

"consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina" [Article III.2 (a)];

- very significantly, the "Republika Srpska" did not take part in the negotiations and was represented as an "entity" by "Slobodan Milošević, the President of the Republic of Serbia, as the head of the delegation of the Federal Republic of Yugoslavia".

105. By Article II of the Dayton Accords on signing the General Framework Agreement for Peace in Bosnia and Herzegovina and the letters sent on 21 November 1995 by Slobodan Milošević to the Ministers of Foreign Affairs of France, Germany, Russia, the United Kingdom and the United States, the Serbian President pledges:

> "On behalf of the Federal Republic of Yugoslavia, I wish to assure you that the Federal Republic of Yugoslavia shall take all necessary steps, consistent with the sovereignty, territorial integrity and political independence of Bosnia and Herzegovina, to ensure that the Repubika Srpska fully respects and complies with the provisions of the aforementioned Annexes." [United Nations, Letter dated 29 Nov. 1995, from the Permanent Representative of the United States of America, S/1995/999, 30 Nov. 1995, p. 147].

106. This is a clear recognition, in an international agreement, by the plenipotentiary of a State, that this State is in a position to have the entity it represents internationnally comply with the said agreement. Once more, Yugoslavia behaved as if the "Republika Srpska" were part of itself.

107. According to the Respondent, "the Republic of Srpska has its territory, population and a stable government. It manifested all attributes of sovereignty and independence" [Counter-Memorial, p. 244, para. 2.21.4; see also p. 125, para. 2.4.1.12]. Although it cannot be denied that it had a certain formal existence, this entity is by no means, and has never been, a State in the sense of this term in international law. It owes its existence to the illegal use of force by the Federal Republic of Yugoslavia and its population has been demographically altered through genocide. Moreover, being a pure surrogate of Yugoslavia, it has never enjoyed sovereignty, which is the very criterion of a State in international law.

The "Republika Srpska" has never enjoyed sovereignty and independence and was merely a tool of the Yugoslav authorities

108. Not only was the "Republika Srpska" an illegal and unilaterally declared entity in contradiction to norms of international *jus cogens*, but it also does not meet the

requirement to be a State according to international law. As recalled by the Arbitration Commission of the Conference for Peace in Former Yugoslavia,

> "(...) the State is commonly defined as a community which consists of a territory with a population subject to an organised political authority; (...) *such a State is characterised by sovereignty.*" [Opinion No. 1, 19 Mar. 1991, *I.L.M.* 1992, Vol. XXXI, p. 1495, emphasis added].

And, according to the classical definition by Max Huber in the Island of Palmas case:

> "Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State." [P.C.A., Award of 4 April 1928, *RIIA* II, p. 868].

Beside the fact that its population was made "ethnically clean" through genocide [see above, paras. 87-89], the "Republika Srpska" has, by no means, met this requirement since it exercised its power solely as a result of the support it has received from the Federal Republic of Yugoslavia.

109. Furthermore, the "Republika Srpska" never pretended to be a State. On the contrary, its political organisation has been an integral part of the Federal Republic of Yugoslavia. On 24 October 1991, after the vote by the Parliament of Bosnia and Herzegovina in favour of the withdrawal of Bosnia and Herzegovina from the Yugoslav Federation, the "Assembly of the Bosnian Serbs", presided by Momcilo Krajisnik, a prominent SDS member, decided that the Serbian people had to remain in the joint State of Yugoslavia:

> "Pursuant to the right to self-determination and for the purpose of the full and permanent protection of the rights and interests of the Serbian people, the Serbian people in Bosnia and Herzegovina determines that the Serbian people in Bosnia and Herzegovina remain in the joint State of Yugoslavia, with Serbia, Montenegro, SAO (Serbian Autonomous District) Krajina, SAO Slavonija, Baranja and Western Srem, and others who have expressed the same wish." [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 23, para. 49].

110. In its decision in the Karadžić and Mladić case, the Trial Chamber, after having examined the preparatory documents to the development of the Serbian "institutional

structure parallel to the legal central power" in Bosnia and Herzegovina and quoting partially the original documents, noted:

> "On 24 October 1991, the 'Assembly of the Serbian People in Bosnia and Herzegovina' decided that it would authorise several people as its representatives 'in the agencies of the Federation' (...). Radovan Karadžić, president of the SDS, was given the responsibility of representing the 'Assembly' at the presidency of the Socialist Federative Republic of Yugolsavia" [*ibid.*, p. 23, para 50].

Thus, Radovan Karadžić appears as a Minister of Yugoslavia. His position in the Federal Presidency has been described as follows by Professor Paul Garde, testifying before the Trial Chamber at the ICTFY:

> "So at this stage, where the aim of the Serbs in Bosnia is to remain within the Yugoslav federation, Karadžić is in charge of the functions which at that point in time are the most important, that is to say, links with the federal Presidency. He cannot be made a member of the federal Presidency officially, but he is in charge of the relations with it, which is just about the same thing." [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, Testimony Garde, 28 June 1996, p. 18, Annex 275]

111. Similarly, the Serbs in Bosnia and Herzegovina considered the JNA, as an organ of the Yugoslav State they pretended to belong to and thus as their legitimate protector. On 11 December 1991, the "Assembly of the Serbian People in Bosnia and Herzegovina" asked the JNA to use whatever means it had available to it to protect the territories of Bosnia and Herzegovina considered Serbian as part of the State of Yugoslavia [quoted in ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61,11 July 1996, p. 26, para. 53]. And indeed, the JNA quite openly assumed this part, as was demonstrated earlier in this Reply [Reply, Chapter 8, Section 3].

112. This institutional unity was maintained when the "Republika Srpska" was proclaimed. In this context, "independence" of this Republic only meant its separation from Bosnia and Herzegovina and its grouping with Yugoslavia. Thus, the "Republika Srpska" was institutionally conceived as a member of the new Yugoslav Federation, as made apparent by Article 2 of the proclamation of the "Republic of the Serbian people in Bosnia and Herzegovina" of 9 January 1992 which states that "the Republic" shall remain within "the Yugoslav Federal State". Accordingly, Article 3 of the "Constitution of the Serbian Republic of Bosnia and Herzegovina", adopted on

28 February 1992 (and amended on 14 September 1992), declared that: "*The Republic is part of the federal State of Yugoslavia*". Article 6 provided that "the citizens of the Republic shall hold the citizenship of the Republic *and the citizenship of Yugoslavia*" ["Constitution of the Serbian Republic of Bosnia and Herzegovina", emphasis added]. The ICTFY has also quoted this most unusual provision when it described the "institutional preparations for taking power in Bosnia and Herzegovina" [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Karadžić and Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, p. 24, para. 50].

113. The Respondent itself has constantly behaved as if the "Republika Srpska" were part of a single State together with Serbia and Montenegro. The present proceeding demonstrates this once more since, with its counter-claims, the Respondent acts as "protector" of the Serbs who were supposedly the victims of genocide, during the war in Bosnia and Herzegovina.

114. The integration of the "Republika Srpska" into Yugoslavia is also made apparent by the organisation of the monetary system of the "new entity". The documents quoted earlier [Reply, Chapter 8, Section 9] demonstrate unambiguously that the "national banks" of the "Republika Srpska" and the "Republika Srpska Krajina" were fully integrated, as branches of a coordinated system of Yugoslav banks, under the supervision of the Yugoslav central bank. Such a system enabled Yugoslavia to control the monetary policy and the credit granted to the "Republika Srpska", to supervise the activities of the commercial banks in "Republika Srpska", and to finance the budget deficits of the "Republika Srpska" and the "Republika Srpska Krajina". This system, actually, goes much further than other examples of monetary unions, as forseen for example in the European Union. The model is much closer to the monetary system of a *federal* entity [see Reply, Chapter 8, Section 9]. But, of course, this "federal entity" is not composed of several federated states, but of one sovereign state (the Federal Republic of Yugoslavia, which is also itself a federation) and two entities controlling *de facto* a part of the territory of two other sovereign states.

115. It is noteworthy that, at the time, the Serbs did not even try to conceal their endeavour to promote complete political and organisational unity, as is usually the case when a "puppet" State is created, the very purpose of the creation of such a

"State" being frequently to try to prevent the attribution to the "dominant" State of internationally unlawful acts [see below, para. 124].

116. Having been established as part of Yugoslavia by way of foreign military intervention [see above, paras. 87-90], which resulted in genocide [paras. 91-92], the "Republika Srpska" kept on existing only because it received strong and steadfast support from the Federal Republic of Yugoslavia.

117. The Federal Republic of Yugoslavia sees "convincing signs and manifestations of the independence of the Republic of Srpska" [Counter-Memorial, p. 129, para. 2.6.1.1] in the "handy report" of the Secretary General of 30 May 1992, which it erroneosly quotes a great number of times [see Reply, Chapter 8, Section 5 and this Chapter, para. 33]. According to the Respondent:

> "The said report of the Secretary General is of the greatest importance to this Case. It is stated in it that General Mladić, the commander of the army of the Serbian Republic of Bosnia and Herzegovina (name changed into the Republic of Srpska), left the Yugoslav People's Army and is not under the military and political control of the authorities of the Federal Republic of Yugoslavia. It is also stated that he was under the political control of the authorities of the Serbian Republic of Bosnia and Herzegovina." [Counter-Memorial, p. 251, para. 3.1.2.9.; see also *ibid.*, p. 130, para. 2.6.1.3].

118. It is worth noting in this respect that:

- the last sentence of the quoted passage is pure sophism: even if General Mladić was under the control of the Serbian Republic of Bosnia and Herzegovina (in fact, the opposite is more likely the case), he would still be under the control of the Federal Republic of Yugoslavia since the "Republika Srpska" is but an agent of the Federal Republic of Yugoslavia;
- there is no doubt that, in the very complex circumstances of the case, the chain of command was not entirely clear and that, in some cases, individual actors may have performed acts of insubordination, but this certainly does not change the general picture: legally, General Mladić is no more an independent actor than the "Republika Srpska" itself; it is noteworthy in this respect that the Trial Chamber at the ICTFY presented the same facts in quite a different light:

> "Once the official withdrawal of the JNA took place, Ratko Mladić, *in all likehood in close liaison with the Belgrade authorities*, began setting up an autonomous command structure for Bosnia and Herzegovina. He himself apparently described this process in detail in an interview with the magazine '*Nin*' of Belgrade." [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and

Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, p. 43, para. 76; emphasis added];

- it is apparent from the report of the Secretary General that he took his information from the Yugoslav authorities in Belgrade and was extremely cautious in referring to them: "Those who are not citizens of Bosnia and Herzegovina *are said by the Belgrade authorities...*"; "Most of these *are believed (...)*"; etc. [Counter-Memorial, Annex to Chapter II, Vol. 6, Annex 129, p. 1045, emphasis added];
- contrary to what is asserted by the Respondent, and as shown above, this report is far from acknowledging the complete withdrawal of the JNA from Bosnia and Herzegovina; to the contrary, it shows clearly that JNA troops "remain at various garrisons in Bosnia and Herzegovina, especially in Serb controlled areas, including two installations on the outskirts of Sarajevo" [Reply, Chapter 8, Section 5].

119. The Security Council was not fooled. In Resolution 752 (1992), on 15 May 1992, it demanded "that all forms of interference from outside Bosnia-Herzegovina, *including by units of the Yugoslav People's Army (JNA)* (...) cease immediately" and "that *those units of the Yugoslav People's Army (JNA)* (...) must either be withdrawn, or be subject to the authority of the Government of Bosnia and Herzegovina, or be disbanded and disarmed (...)" [United Nations, *Security Council Resolution 752 (1992)*, S/RES/752, 12 May 1992, emphasis added]. This also makes apparent how extravagant is the assertion that paragraph 6 of this same Resolution calling "upon all parties and others concerned" to cease ethnic cleansing "[e]vidently is not addressed to the Yugoslav People's Army" [Counter-Memorial, p. 265, para. 3.1.5.17]. Quite evidently, it is one of the "parties and others concerned", and all the more so as this same paragraph specifies that this call is to be complied with "anywhere in the Former Republic of Yugoslavia". Then, by its Resolution 757 (1992), on 30 May 1992, it again condemned "the failure of the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro), *including the Yugoslav People's Army (JNA)* to take effective measures to fulfil the requirements of Resolution 752 (1992)" and decided to impose sanctions on Yugoslavia [United Nations, *Security Council Resolution 757 (1992)*, S/RES/757, 30 May 1992, emphasis added].

120. The Respondent places high value on the fact that the Report of the Secretary General of 30 May 1992 "had not been submitted to members of the Security Council when they were deciding on the introduction of coercive measures against Yugoslavia, i.e. when they were adopting Resolution 757 (1992) of 30 May 1992" [Counter-Memorial, p. 268, para. 3.1.5.19]. This is probably true since the Resolution, adopted the very day the report was published, does not mention it. But this was indeed not true in the case of the Resolutions adopted subsequently and condemning the Respondent for the non-withdrawal of its troops from Bosnia and Herzegovina and its interventions on its territory, such as Resolutions 762 (1992) of 30 June 1992; 787 (1992) of 16 November 1992; 819 (1993) of 16 April 1993 or 838 (1993) of 10 June 1993. Similarly, by its Resolution 46/242 of 25 August 1992, the General Assembly demanded

> "(...) that those units of the Yugoslav People's Army and elements of the Croatian Army now in Bosnia and Herzegovina must either be withdrawn, or be subject to the authority of the Governments of Bosnia and Herzegovina, or be disbanded and disarmed with their weapons placed under effective international monitoring(...)." [United Nations, *General Assembly Resolution 46/242*, A/46/242, 25 Aug. 1992, para. 3].

121. Four months later, on 18 December 1992, the General Assembly stated that:

> "*Taking note* of the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia dated 6 November 1992, (A/47/635-S/24766, annex.) in which he stated, *inter alia*, that 'ethnic cleansing' did not appear to be the consequence of the war, but rather its goal,
>
> *Taking note also* of the report of the Special Rapporteur dated 17 November 1992, (A/47/666-S/24809, annex.) in which he stated, *inter alia,* that another factor which had contributed to the intensity of 'ethnic cleansing' in areas under Serbian control was the marked imbalance between the weaponry in the hands of the Serbian and the Muslim population of Bosnia and Herzegovina,
>
> *Gravely concerned* about the deterioration of the situation in the Republic of Bosnia and Herzegovina owing to intensified aggressive acts *by the Serbian and Montenegrin forces* to acquire more territories by force, characterised by a consistent pattern of gross and systematic violations of human rights, a burgeoning refugee population resulting from mass expulsions of defenceless civilians from their homes and the existence in Serbian Montenegrin controlled areas of concentration camps and detention centres, in pursuit of the abhorrent policy of "ethnic cleansing", which is a form of genocide,
>
> *Strongly condemning Serbia and Montenegro and their surrogates in the Republic of Bosnia and Herzegovina* for their continued non-compliance with all relevant United Nations resolutions,
> (...)
> *Reaffirms* its support for the Government and people of the Republic of Bosnia and Herzegovina in their just struggle to safeguard their sovereignty, political independence, territorial integrity and unity;

> *Strongly condemns Serbia, Montenegro and Serbian forces in the Republic of Bosnia and Herzegovina* for violation of the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina, and their non-compliance with existing resolutions of the Security Council and the General Assembly, as well as the London Peace Accords of 25 August 1992,
>
> *Demands* that Serbia and Montenegro and Serbian forces in the Republic of Bosnia and Herzegovina immediately cease their aggressive acts and hostility and comply fully and unconditionally with the relevant resolutions of the Security Council, in particular resolutions 752 (1992) of 15 May 1992, 757 (1992) of 30 May 1992, 770 (1992) and 771 (1992) of 13 August 1992, 781 (1992) of 9 October 1992, and 787 (1992) of 16 November 1992, General Assembly resolution 46/242 and the London Peace Accords of 25 August 1992;
>
> *Demands* that, in accordance with Security Council resolution 752 [1992], *all elements of the Yugoslav People's Army still in the territory of the Republic of Bosnia and Herzegovina* must be withdrawn immediately, or be subject to the authority of the Government of the Republic of Bosnia and Herzegovina, or be disbanded and disarmed with their weapons placed under effective United Nations control; (...)." [United Nations, *General Assembly Resolution*, A/RES/47/121, 18 Dec. 1992, emphasis added; see also *ibid.*, *Resolution 47/147*, para. 3].

122. It is therefore clear that the "Republika Srpska" has always been under the strict supervision of Belgrade, whose army has never left the territory of this so-called "State". Moreover, as shown above [paras. 8ff.], the chain of military command and the general political directives to the "Bosnian Serbs" came from Belgrade and were faithfully executed.

123. The Respondent tries to deny these obvious facts by stressing the only case, the rejection of the "Vance-Owen Plan" during the spring of 1993, when the "Republika Srpska" did not comply with directions coming from Belgrade [see Counter-Memorial, Section 3.6, pp. 287-290], a fact which, in its views, "testifies to a high degree of independence of the authorities of the Republic of Srpska in decision making, as well as the impossibility of the FRY of influencing the behaviour of the Republic of Srpska" [*ibid.*, p. 289, para. 3.6.1.3] and resulted in a decision to break relations with the authorities in Pale [see also *ibid.*, pp. 130-132, para. 2.6.1.4 to 2.6.1.11]. This argument calls for several remarks.

124. Firstly, the demands of the Federal Republic of Yugoslavia addressed to the authorities in Pale clearly show that this country felt free to intervene in the decision-making process inside this so-called "independent State"; for example, the message sent on 26 April 1993 by the Presidents of Serbia and Montenegro to the

"Assembly of the Republic of Srpska" presents itself as a blatant instruction, not as a recommendation or friendly advise:

> "(...) we therefore *demand* that you take our categorical position into consideration and accept the Plan." [as quoted in the Yugoslav Counter-Memorial, p. 285, para. 3.5.1.1, Annex 322, emphasis added].

This is, to say the least, unusual in relations between sovereign States, while it can square with the usual internal practice concerning the relations between the executive branch and the Parliament inside a (not really democratic) State.

125. Moreover, the Yugoslav leaders acknowledged by way of the communication that the Bosnian Serbs on the one hand and the Federal Republic of Yugoslavia on the other, were simply one and the same "party" or "side". And, as explained by Bosnia and Herzegovina in its Memorial [Memorial, Section 2.3.8, pp. 85-93], this is also a public and clear confirmation of the Federal Republic of Yugoslavia's involvement in the "Republika Srpska". The following statements are noteworthy:

> "The citizens of Yugoslavia, Serbia and Montenegro, have demonstrated the highest degrees of solidarity with you, going even beyond their means. They will continue to demonstrate this solidarity in spite of all threats, as has been confirmed by the FRY Assembly resolution" [FRY Assembly Resolution, Message of the Serbian and Montenegrin Presidents, Curiously enough, the text of the resolution is not annexed to the Yugoslav Counter-Memorial, see annex 143],

and,

> "Firmly believing that a just battle for freedom and the equality of the Serbian people is being conducted in the Serb Republic, the Republic of Serbia has been unreservedly and generously helping the Serb Republic, in spite of the enormous problems it had to face due to the sanctions introduced by the Security Council." [Communiqué of 11 May 1993 reproduced in the Request for Provisional Measures of 27 July 1993, p. 43]

and also,

> "Serbia has lent a great deal of assistance to the Serbs in Bosnia. Owing to that assistance they have achieved most of what they wanted" [Statement of Slobodan Milošević to Tanjug, the Yugoslav press agency, 11 May 1993, see Memorial, p. 91, para. 2.3.8.4];

126. Secondly, in spite of the threats made in these statements to suspend the considerable aid given to the "Republika Srpska" if it did not accept the Vance-Owen Plan, this

aid continued massively during the following months. Actually, international observers were not allowed to survey the border in sufficient number, nor were they able to control border traffic effectively [Reply, chapter 8, Section 10]. But even in such circumstances, "international observers, whose task was to check the JNA borders, reported to the Security Council that all sorts of military equipment and soldiers were transported over the Serbian border into Bosnia. By night VJ soldiers built pontoon bridges to make the transport possible over the Drina. The number of these activities were more intensive just before the battle of Bihac and Srebrenica" [Ed Vulliamy, *The Guardian*, 1 March 1996, Annex 276].

127. The Federal Republic of Yugoslavia could easily exercise its control over the military apparatus of the "Republika Srpska" through the latter's dependence on it for armament, ammunition, logistic materials, and new recruits. Thus, the Trial Chamber at the ICTFY explained in its Tadić Judgment that:

> "The weapons and equipment with which the new VRS was armed were those that the units had had when part of the JNA. After 18 May 1992 supplies for the armed forces in Bosnia and Herzegovina continued to come from Serbia." [ICTFY, Trial Chamber, Opinion and Judgement, Prosecutor v. Duško Tadić, Case No. IT-94-1-T, 7 May 1997, p. 143, para. 114].

Such supplies continued throughout the war [Reply, Chapter 8, Section 10]. The Bosnian Serb Army (VRS) needed the VJ's help and authorization to obtain and to test new weapon systems, as well as for the maintenance of other materials. Most notably, forced recruitment of Bosnian Serb refugees occurred on the territory of the Federal Republic of Yugoslavia in order to fill up the ranks of the VRS. This was organised by the Serbian Ministry of Interior in Belgrade [Reply, Chapter 8, Section 11]. All important campaigns of mobilization took place just before an important attack was launched by the VRS. Such coordinated actions necessitated the use of a direct line of communication between the military leaders of the VRS and the VJ [*ibid.*] and the creation of a "bureau" of the "Republika Srpska" in Belgrade. Such supplies were actually used as a tool to control military operations of the VRS.

128. Moreover, other elements demonstrate direct subordination of the VRS to Belgrade:

- Political control of the VRS was exercised by Belgrade thanks to the presence of many officers who were at the same time officers in the VRS *and* the VJ,

and who under the authority and jurisdiction of Belgrade [Reply, Chapter 8, Section 8]. This was the case of, for example, General Djordje Djukić, who was the Assistant Commander for Logistics to Ratko Mladić, the Commander of the Bosnian Serb armed forces. When arrested near Sarajevo in early 1996, he was however, also carrying a recent military pass, issued by the General Staff in Belgrade [Reply, Chapter 8, Section 8]. According to the Prosecutor at the ICTFY, "he permanently resides in Belgrade, Bulevar Lenjina 151" [ICTFY, Indictment, Prosecutor v. Djordje Djukić, Case No. IT-96-20-I, 29 Feb. 1996]. He died in Yugoslavia, shortly after his release by the ICTFY for medical reasons.

- The General Staff in Belgrade was still able to organise the transfer of military officers active on the territory of Bosnia and Herzegovina [Reply, Chapter 8, Section 8].
- A regular air service was set up on 2 June 1992 between Banja Luka and the Federal Republic of Yugoslavia for Yugoslav officers posted in Bosnia and Herzegovina. This service was supplemented or replaced one year later by a bus line, organised because of the "increased needs and requests by military officers to travel to FR Yugoslavia" [Order, Command of the 2nd Krajina Corps, class. no. 21-70/1, addressed to all units, signed General Major Grujo Borić, 31 May 1993, quoted above, Reply, Chapter 8, Section 8].

These are just a few examples.

129. Very significantly, the VRS was directly financed by Belgrade, as salaries of all its officers were paid by Belgrade. This was decided by the Yugoslav authorities before the official "withdrawal" of the JNA in May 1992, as was reported by Borisav Jović in his diary [see above, Chapter 8, Section 8]. This diary also shows that the new military structure was organised by the highest governmental officials of the Federal Republic of Yugoslavia. After the "withdrawal" of the JNA, the Yugoslav authorities honoured their financial commitments [Reply, Chapter 8, Section 8].

130. The continuing and massive involvement of the Federal Republic of Yugoslavia in the "Republika Srpska" and its decisive influence over the authorities in Pale have been recognised by the international community. Thus, in its Resolution of 20 December 1993, the General Assembly urged:

> "(...) that an immediate end be brought to the continuing practice of 'ethnic cleansing', and in particular that the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) use their influence with the self-proclaimed Serbian authorities in Bosnia and Herzegovina and Croatia

> to bring the practice of 'ethnic cleansing' to an immediate end and to reverse the effects of that practice." [United Nations, *General Assembly Resolution 48/153*, A/48/153, 20 Dec. 1992, para. 10].

And, one year later, by its Resolution 49/10, the General Assembly condemned the *de facto* integration of the Serb controlled territories into Yugoslavia. The General Assembly

> "*Calls upon* all parties, and in particular the Federal Republic of Yugoslavia (Serbia and Montenegro), to fully comply with all Security Council resolutions regarding the situation in the Republic of Bosnia and Herzegovina, and to strictly respect its territorial integrity, and in this regard concludes that their activities aimed to achieve integration of the occupied territories of Bosnia and Herzegovina into the administrative, military, educational, transportation and communication systems of the Federal Republic of Yugoslavia (Serbia and Montenegro) leading to a de facto state of occupation are illegal, null and void, and must cease immediately." [United Nations, *General Assembly Resolution 49/10*, A/48/153, para. 15].

In this context, it is worth noting once again that Serbian President Slobodan Milošević was recognised as the representative of the "Republika Srpska" during the Dayton negotiations [see this Chapter, para. 104], and that article 6 of the "Constitution" of the "Republika Srpska" quoted above [*ibid.*, para. 112] recognises that its "nationals" enjoy the citizenship of the Federal Republic of Yugoslavia.

131. *Lastly,* it may be true that Yugoslavia has not always been successful in its endeavours to make "Republika Srpska" agree with it, even though the non-acceptance of the Vance-Owen Plan seems to be its only failure in this respect. As explained earlier, however, covert actions by the Yugoslav authorities contradict their public declaration in this particular case [see Reply, Chapter 8, Section 10]. The supposed "disagreement" on the Vance-Owen plan is certainly not enough to deny that the general policy of the "Republika Srpska" was performed on behalf of the Federal Republic of Yugoslavia and that its internationally unlawful acts must be attributed to it and entail its international responsibility.

132. As shown above [this Chapter, paras. 83ff.], the creation of the "Republika Srpska" was only made possible by the actions of the JNA during the spring of 1992. Its survival as an entity was only made possible by the constant and massive presence of Yugoslav military forces on its territory and the extensive aid it received from Belgrade, as the Yugoslav and Serbian leaders themselves have repeatedly acknowledged [see above, this Chapter, para. 125]. Under such circumstances, the

Respondent cannot now claim that it is not responsible for the unlawful acts of its very own creation, which has consistently, with the possible exception of the Vance-Owen plan incident, applied the genocidal policy conceived in Belgrade [see above, this Chapter, paras. 12ff.].

133. In her separate and partly dissenting opinion joined to the Opinion and Judgment in the Tadić case, Judge McDonald has shown, beyond any doubt, that

> "The evidence proves that the creation of the VRS was a legal fiction. The only changes made after the 15 May 1992 Security Council resolution were the transfer of troops, the establishment of a Main Staff of the VRS, a change in the name of the military organisation and individual units, and a change in the insignia. There remained the same weapons, the same equipment, the same officers, the same commanders, largely the same troops, the same logistics centres, the same suppliers, the same infrastructure, the same source of payments, the same goals and mission, the same tactics, and the same operations. Importantly, the objective remained the same: to create an ethnically pure Serb State by uniting Serbs in Bosnia and Herzegovina and extending that State from the Federal Republic of Yugoslavia (Serbia and Montenegro) to the Croatian Krajina.
> (...)
> The VRS Main Staff, the members of which had all been generals in the JNA and many of whom were appointed to their positions by the JNA General Staff, maintained direct communications with the VJ General Staff via a communications link from Belgrade. Colonel Selak, commander of the logistics platoon that provided logistical support to units in the Banja Luka area [both before and after 19 May 1992], stated: "Some officers had been given direct [telephone] lines, Belgrade/Pale. There was a link there and it was used in everyday communication because there was a need for direct communication between the Chief of Staff of the Army of *Republika Srpska* with the Army of Yugoslavia." Moreover, the VRS continued to receive supplies from the same suppliers in the Federal Republic of Yugoslavia (Serbia and Montenegro) who had contracted with the JNA, although the requests after 19 May 1992 went through the Chief of Staff of the VRS who then sent them onto Belgrade. The ties between the military in Bosnia and Herzegovina and the SDS political party, which advocated a Greater Serbia, similarly remained unchanged after the redesignation.
> (...)
> All of this, including the evidence referred to by the majority makes obvious that the re-designation was motivated only by the desire of the Federal Republic of Yugoslavia [Serbia and Montenegro] to avoid offending the international community by violating the Security Council resolution ordering the JNA to cease involvement in Bosnia and Hezegovina." [ICTFY, Trial Chamber, Opinion of Judge McDonald, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 5-7, paras. 7-8, 10; see also ICTFY, Trial Chamber I, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 & IT-95-18-R61, 11 July 1996, pp. 29-30, 43-44, paras. 58 and 77].

134. As noted by Judge McDonald, "if effective control is the degree of proof required to establish agency under the Nicaragua case", and indeed it is [see above, this Chapter, para. 58], the only possible conclusion is that "this standard has been met" [ICTFY, Trial Chamber, Opinion of Judge McDonald, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, 7 May 1997, pp. 8-9, para. 15 and p. 50, para. 133]. As very aptly concluded by Judge McDonald, "the very establishment and continued existence of

the VRS is evidence of such control" [*ibid.*, p. 16, para. 32]. This is all the more true since the factual circumstances of this case, as compared with those of Nicaragua, are all in favour of the "agency test":

- in the Nicaragua case, the Americans were foreigners with respect to the *contras* and might have been unaware of what the *contras* were doing; the Serbs from Yugoslavia and from Bosnia and Herzegovina were fully integrated;
- the *contras* were "a raiding army"; the JNA (and later the VJ), through the VRS, were an occupying force [see *ibid.*, para. 19];
- the VRS has been, from the very beginning of the war, part of the Yugoslav military machinery; therefore, what the Respondent should do - and fails to do - is demonstrate that the links between the VRS and the JNA were severed; in the case of the *contras*, the problem for the Applicant (Nicaragua) was to prove that such links had been created;
- the *contras* had been created independently of the United States [see *ibid.*, para. 19 and 30 and ICJ, Judgment of 26 June 1986, prec. para. 58, *ICJ Rep.* 1986, para. 108, p. 61]; the VRS was a pure emanation of the JNA;
- the United States did not give "direct and critical support" to the *contras* [*ibid.*, para. 108, p. 62]; the whole strategy and tactics of the VRS were dictated from Belgrade, which exercised full effective control over this "army";
- the *contras* were aimed at changing the Nicaraguan regime; the "Republika Srpska" was an aim *per se*, and was created in order to become a component of Yugoslavia, thus transformed into "Greater Serbia".

135. Independent of the purely military aspects (which, in any case, would be enough to deny statehood to the "Republika Srpska") the creation of this entity was decided in and organised by Belgrade and was aimed at enabling the integration of Serb-controlled areas of Bosnia and Herzegovina into a new federal Yugoslavia. This goal was clearly reflected in the question asked in the plebiscite organised by the "Assembly of the Serbian People in Bosnia and Herzegovina" on 9 and 10 November 1991, which formed the basis of the creation of the "Republika Srpska":

> "Do you agree with the decision of 24 October 1991 by the Parliament of the Serbian Parliament of the Serbian People in Bosnia and Herzegovina for the Serbian people to remain in a common State of Yugoslavia with Serbia, Montenegro, SAO Krajina, SAO Slavonia, Baranja and Western Srem and all others wishing the same?" [United Nations, *Final Report of the United*

> *Nations Commission of Experts*, S/1994/674/Add.2 (Vol.I), 28 Dec. 1994, Annex V, "The Prijedor Report", p. 24, para. 99].

Moreover, the policy of "Republika Srpska" was decided in Belgrade and its international representation was assumed by Belgrade. The "Republika Srpska" was entirely dependent on the Federal Republic of Yugoslavia for its survival.

136. The so-called "Republika Srpska" was not only militarily and politically, but also economically dependent on Yugoslavia. "Republika Srpska" was heavily financed by Yugoslavia through the system of national central banks [see Reply, Chapter 8, Section 9] and through the salaries of the officers of the VRS [see Reply, Chapter 8, Section 8]. Before, as well as after, Yugoslav authorities officially announced they would close the borders with "Republika Srpska", there was a constant flow of goods and military armaments [see Reply, Chapter 8, Section 10]. Moreover, the former Yugoslav military complex still worked perfectly in the Federal Republic of Yugoslavia, as well as in the Serb-controlled areas of Bosnia and Herzegovina, thus creating an intermingled war economy [Reply, Chapter 8, Section 10]. The Bosnian Serbs remained to the end heavily dependent on Belgrade for financing, fuel, and food, as well as for military and diplomatic support. Belgrade controlled all the lines of communication and media links to the outside world. Such an entity cannot be considered a State.

137. The same problem was also dealt with by the International Military Tribunal of Tokyo with respect to "Manchukuo", the so-called "State" created by Japan in Manchuria in 1932. Although the circumstances were different (despite the very repressive nature of the regime, Japan did not promote a genocidal policy in the new "entity"), the analogies with the present case are striking:

- in both cases, the "dominant" State (Japan or Yugoslavia) created a "State" in order to deceive the international community and to try to escape international condemnation; as for Machukuo, the Tokyo Tribunal noted:

> "In short, the [Japanese] Cabinet (...) was trying to evolve a plan whereby the reality of the breach could be concealed by an appearance of compliance with the obligations." [*The Tokyo Judgment, The IMT for the Far East [IMTFE]*, 29 Apr. 1946- 12 Nov. 1948, APA University Press Amsterdam BV, Amsterdam, 1977, Vol. I, p. 223; see also p. 230].

- in both cases, the *fait accompli* has been refused by the international community [see the IMTFE Judgment, *ibid.*, pp. 224-225 and 233, and above para. 103];
- in both cases, the army of the "dominant" State has been the only real ruler of the country and the policy of the so-called "State" was decided by it [see IMTFE Judgment, *ibid.*, pp. 225-226 and 236 *et sequitur*, and above, *passim*];
- in both cases, the creation of these so-called "States" has been part of the expansionistic policy of the "dominant" State.

138. The Tokyo Tribunal concluded that:

> "Manchukuo was constructed and operated as a puppet" [*ibid.*, p. 225].

The same holds true for the "Republika Srpska", which must therefore be considered as an agent of Yugoslavia entailing the international responsibility of the latter for its internationally wrongful acts, including, of course, its genocidal acts.

Even if the "Republika Srpska" were a State, its genocidal acts would entail the Federal Republic of Yugoslavia's international responsibility

139. The long discussion which the Federal Republic of Yugoslavia has devoted to the so-called "statehood" of the "Republika Srpska" has in fact been done in vain since, in any case, the genocidal acts committed by this entity, even if it were a State, quod non would entail Yugoslavia's responsibility. This is so for at least three main reasons:

- in such a case, Yugoslavia would remain responsible for its assistance in the commission of genocidal acts carried out by the "Republika Srpska" [see Section 3, below];
- it would also be responsible for the acts committed by the latter as the "Republika Srpska" was subject to Yugoslavia's power of direction and control; and
- the genocidal acts committed by the VRS (the "army" of this alleged "State") would entail its responsibility for reasons linked to indisputable principles of contemporary humanitarian law.

The "Republika Srpska" was subject to the power of direction and control of the Federal Republic of Yugoslavia

140. As recognised by the International Law Commission in Article 27 of its Draft Articles on State responsibility:

> "Aid or assistance by a State to another State, if it is established that it is rendered for the commission of an internationally wrongful act carried out by the latter, itself constitutes an internationally wrongful act, even if, taken alone, such aid or assistance would not constitute the breach of an international obligation" [Report of the ILC on the work of its 48th. session, prec. para. 52, p. 134].

This means that, at the very least, Yugoslavia is responsible for its own acts in relation to the genocidal acts committed by the "Republika Srpska", which amounts at the very least to complicity in genocide; Bosnia and Herzegovina will come back to addressing this aspect below [Section 3].

141. Moreover, as also explained by the ILC, in paragraph 1 of Draft Article 28:

> "An internationally wrongful act committed by a State in a field of activity in which that State is subject to the power of direction or control of another State entails the international responsibility of that other State" [*ibid.*, p. 135].

This is different from complicity: complicity implies direct responsibility of the State for its own behaviour while in the hypothesis envisaged here, State A (here Yugoslavia) is responsible for acts formally committed by State B (here the "Republika Srpska" - proposing for the sake of discussion that it is a State, *quod non*), because the latter is acting as an agent of State A.

142. Discussing briefly this principle, which it presents as relating to "indirect responsibility", the Respondent indicates that it "feels that this rule (...) is more a rule *de lege ferenda* than a valid one" [Counter-Memorial, p. 339 para. 5.7.1.4]. This "feeling" is erroneous.

143. This situation, which has been taken into consideration by the International Law Commission in drafting Article 28, has been described as:

> "that of a State which, having in some capacity direction or control over a more or less extensive field of activity of another State, would be held internationally responsible for a wrongful act

committed by the other State in the field subject to such direction or control" [*ILC Yearbook*, 1979, vol. II, Part 2, p. 97, para. 10 of the commentary of Art. 28].

Such a situation would occur, in particular, in the case of partial or total occupation of a State by another State; there, the practice is abundant and clear [see *ibid.*, pp. 99-101, para. 19-23].

144. In view of numerous carefully studied precedents, the conclusions of the Commission, adopted by unanimity minus one Member, are unusually categorical, contrary to what is asserted by the Federal Republic of Yugoslavia:

> "It will readily be seen that the first case for which this article establishes application of the exceptional principle of attribution of responsibility for an internationally wrongful act to a State other than the State which has committed the act is that defined in *paragraph 1* of the article, namely, the case in which the first State has, *de jure* or *de facto*, the power of direction or control over the second State in the field of activity in which the internationally wrongful act has been committed. This situation has been so amply illustrated by various examples in the preceding paragraphs of this commentary that there is no need to dwell at this stage on why the Commission regarded it as the main instance of responsibility for the act of another in international law. As a result, therefore, of the first clause of article 28, if, regardless of the type of relations existing between two States, an internationally wrongful act occurs in a field of activity of a State which is subject to the direction or control of another State, that other State will incur international responsibility [footnote omitted]; it is not necessary for the latter State actually to have used its power in the specific case in question, in other words, for it actually to have given the instructions to commit the offence, or, in exercising its power of control, for it to have 'permitted' the offence which the 'controlled' State was going to commit. For article 28, paragraph 1, to apply, it is likewise of no importance whether the relationship between the two States which lies at the basis of the power of direction or control exercised by one over the other is a relationship established in law or purely a matter of fact, or whether it is lawful or unlawful" [*ibid.*, p. 105, para. 33; see also *ibid.*, pp. 98-99, para. 15].

145. It goes without saying that the facts presented above do not leave a shadow of a doubt that the "Republika Srpska" was subject to the power of direction and control of the Federal Republic of Yugoslavia, at least in the field covered by the Application of Bosnia and Herzegovina. In this respect, it should be kept in mind that the only alleged proof of "independence" demonstrated by this so-called "State" has been its refusal of the Vance-Owen Plan in May 1993 [see above, para. 123ff.]. This can hardly be seen as evidence of sovereignty of this entity. Moreover, the object of the disagreement was mainly the territorial scope of the "Republika Srpska" [Reply, Chapter 8, Section 8]. But concerning genocide, the "Republika Srpska" has always faithfully and zealously executed the plans established in Belgrade [see above, this Chapter, paras. 12ff.] and, it was entirely submitted to the direction given

from Belgrade [see above, paras. 109-122]. In particular, its military forces were under the command of the General Staff of first the JNA, then the VJ, in Belgrade [see above, paras. 127-128 and 133]. Thus, even if "Republika Srpska" were a State - which it is not - the Federal Republic of Yugoslavia would be held responsible for its wrongful acts, as this *de facto* entity was under its direction and control while committing genocide.

The Bosnian Serb Army (VRS)

146. Bosnia and Herzegovina has shown that all Serb forces operating in Bosnia and Herzegovina, whether from the Federal Republic of Yugoslavia or the "Republika Srpska", must be considered as *de facto* organs of Yugoslavia, which created them, financed them, supported them with all necessary armaments, ammunition and training, and which coordinated their operations with those of its official army [see above, this Chapter, paras. 127-130]. Consequently, these military and paramilitary forces are to be considered as agents of the Federal Republic of Yugoslavia, and the responsibility of the Respondent State is entailed,whether these forces operate in Yugoslavia proper or in Bosnia and Herzegovina, whether they pretend to be part of the VJ or of the "Army of the Republika Srpska" [VRS], or whether they are comprised of regular or irregular troops.

147. Reference must be made in this respect to Articles 43 and 91 of the First 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflict, to which both Yugoslavia and Bosnia and Herzegovina are parties.

148. According to Article 43 ("Armed Forces"):

> The armed forces of a Party consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.".

It cannot be disputed that the VRS and Serbian paramilitary units can be qualified as "organized armed forces, groups and units" and that they were "subordinated" to the Federal Republic of Yugoslavia.

149. As for Article 91 ("Responsibility") of the First Additional Protocol, it provides for the principle of State responsibility:

> "A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.".

As Serbian paramilitary units and the VRS were part of the Yugoslav forces in accordance with the definition given in Article 43, all of their acts are attributable to the Federal Republic of Yugoslavia and their internationally wrongful acts entail the responsibility of the latter.

150. These two provisions reflect the general principles of State responsibility relating to the issue of attributability of the acts of military forces [Luigi Condorelli, "L'imputation à l'État d'un fait internationalement illicite: solutions classiques et nouvelles tendances", *Recueil des cours*, 1984-VI, Vol. 189, pp. 145-149]. Article 91 of the First Protocol Additional to the Geneva Conventions restates a principle included in Article 3 of the Fourth Convention of The Hague of 18 October 1907, on the laws and customs of war. Its general character has been ascertained by Max Huber on 23 October 1924:

> "Le Rapporteur ne saurait être d'avis que les actes commis par la troupe ou par des soldats isolés ne puissent en aucun cas engager la responsabilité internationale de l'Etat. L'article 3 de la Convention du 18 octobre 1907 relative aux lois et coutumes de la guerre sur terre établit le principe de pareille responsabilité précisément pour l'éventualité la plus importante. Sans doute cette convention n'est directement applicable à aucune des situations dont le rapport doit s'occuper, mais le principe qu'elle établit mérite d'être retenu également en ce qui concerne l'éventualité d'une action militaire en dehors de la guerre proprement dite." ["Réclamations britanniques dans la zone espagnole du Maroc", *RIAA*, Vol. II, p. 645].

151. If it was deemed possible to apply this principle for attributing to Spain some relatively benign acts committed in the Spanish Zone of Morocco, this principle is *a fortiori* applicable concerning the attribution of genocidal acts. This is all the more certain in the present case, in which the VRS was not comprised of, as in the case of the Spanish soldiers, isolated men but of organised military forces, controlled by Belgrade.

152. Moreover, the armed forces which were subordinated to Yugoslavia took control of large territories in Croatia and Bosnia and Herzegovina. Thus, in the case of Bosnia and Herzegovina, the Trial Chamber at the ICTFY ascertained that "a state of armed conflict and partial occupation existed in the Republic of Bosnia and Herzegovina" and this occupation was due to Yugoslavia [ICTFY, Indictments, *Karadžić and*

Mladić, Case No. IT-95-18-I, 16 Nov. 1995, p. 9, para. 41], through the coordinated activities of the Serbian forces and the VRS. In this respect, it might be recalled that the Court stated in its 1971 Opinion on *Namibia* that "physical control of a territory and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States" [*ICJ Rep.* 1971, p. 54]. This is all the more true in the present case since Yugoslavia controlled not only the VRS, but also the "Republika Srpska" as a whole.

153. Whether the "Republika Srpska" is seen as an independent State (which seems difficult, to say the least) or simply as an agent and surrogate of the Federal Republic of Yugoslavia, its genocidal acts have been committed under the direction and command of the latter, whose international responsibility is, therefore, entailed by these acts. The same holds true for the Serbian paramilitary forces operating in Bosnia and Herzegovina: in addition to assisting "Republika Srpska", Yugoslavia also directly controlled paramilitary forces which also acted as its surrogates and were very actively involved in genocidal acts.

3. The responsibility of the Federal Republic of Yugoslavia under Article III (b), (c), (d) and (e) of the Genocide Convention

154. Article III of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide states:

> "The following acts shall be punishable:
> [a] genocide;
> [b] conspiracy to commit genocide;
> [c] direct and public incitement to commit genocide;
> [d] attempt to commit genocide;
> [e] complicity in genocide".

155. In its Memorial, Bosnia and Herzegovina has shown that all these acts were indeed committed by Yugoslavia [Memorial, Chapter 5.4, pp. 231-235]. The Respondent does not take great pains to refute these allegations, probably because it holds that "[a]ccording to the 1948 Genocide Convention a State cannot commit genocide and other punishable acts" [Counter-Memorial, Section 4.10, pp. 308-312], a contention which has been clearly rejected by the Court in its Judgment on the Preliminary Objections and which is obviously untenable [see Reply, Chapter 2 and Chapter 9].

156. This being said, it is also obvious that, as Yugoslavia is, either directly or through its agents, the "Republika Srpska" and the Serbian paramilitary forces, the perpetrator of

the actual genocide of non-Serb populations in Bosnia and Herzegovina, it does not make much sense to speak of an "attempt to commit genocide", which would imply that genocide has not been effectively committed. Nor does it make much sense in the present case to speak of "conspiracy to commit genocide" or "complicity in genocide" since Yugoslavia has been much more than an accomplice. However, Bosnia and Herzegovina will show that even if the Respondent were not to be held responsible as the author of genocide, at least in part, its complicity and participation in a conspiracy to commit genocide would, in any case, be averred. Moreover, it cannot be denied that it is responsible for having directly and publicly incited the commission of genocide. Each of these points will be addressed separately below.

Direct and public incitement to commit genocide

157. The Federal Republic of Yugoslavia makes a pretext of the discussions in the International Law Commission on Article 27 of its Draft on the Responsibility of States, in order to deny that "incitement of one State by another to commit an internationally wrongful act" can entail the international responsibility of the latter State [Counter-Memorial, Section 5.5, pp. 335-336]. This contention is doubly erroneous.

158. Firstly, in making the above statement, Yugoslavia clearly has in mind a purely "State to State" relationship and, *a contrario*, in denying that such a relationship can entail its responsibility, it implicitly recognises that it has incited the "Republika Srpska" to commit genocide. Moreover, in the present case, this reprehensible incitement was a public call to genocide, not addressed exclusively to the "Republika Srpska", which, in any case, has never been a State [this Chapter, paras. 81-122].

159. Secondly, it is rather ludicrous for Yugoslavia to take such a position which rests on a clear confusion between the general rules concerning the attribution of acts to a State and the particular rules from Article III of the Genocide Convention, a confusion it harshly reproaches Bosnia and Herzegovina for supposedly creating [see Reply, Chapter 9].

160. It is highly doubtful that, under general international law, incitement does not entail the responsibility of the "inciting" State. In the Nicaragua case, the Court has noted that "the United States is (...) under an obligation not to encourage persons or groups

engaged in the conflict in the Nicaragua case to act in violation of the provisions of Article 3 common to the four 1949 Geneva Conventions" [*ICJ Rep.*, 1986, p. 114].

161. It is all the more so in the present case that the 1948 Convention expressly sets out incitement to commit genocide as a "punishable act". Since Article IX expressly mentions, "[d]isputes between the Contracting Parties relating (...) to the responsibility of a State for genocide or *for any of the other acts enumerated in Article III*" [emphasis added], a formula which "does not exclude any form of State responsibility" [I.C.J., Judgment of 11 July 1996, para. 32], a State may, very evidently, be held responsible for having incited the commission genocide. And there can be no doubt that Yugoslavia has directly and publicly incited the Serb population in the former Yugoslavia to commit genocide against the non-Serb population in Serb-controlled areas in Bosnia and Herzegovina and Croatia, as well as in the Federal Republic of Yugoslavia itself.

162. Bosnia and Herzegovina does not contend that the "Greater Serbia" ideology necessarily constitutes in and of itself incitement to genocide, however reprehensible such an ideology may be. What it does contend is that the deliberate dissemination of this ideology paved the way to the genocide committed against the non-Serb population in Bosnia and Herzegovina and other parts of the former Yugoslavia [see Memorial, Section 2.3.1., pp. 59-61]. Of course, Yugoslavia has not openly called for genocide (while its surrogates in Bosnia and Herzegovina have - see below, para. 164), but its incitement to racial hatred must be put in perspective and analyzed in the proper context: by calling for the creation of a large, exclusively Serb State, President Slobodan Milošević clearly incited "ethnic cleansing", which is a form of genocide, as shown in other parts of this Reply [Reply, Chapter 6]. Moreover, as shown in Chapter 4 of the present Reply, the general process is self-explanatory: from a call for a "Greater Serbia", Yugoslav leaders and their surrogates in Bosnia and Herzegovina and Croatia have forged a general spirit of ethnic hatred; after creating this general frenzy, they have called the Serbs to engage in ethnic warfare; and from ethnic warfare, there was only a tiny step to genocide, a step which has been made, both in word and action.

163. This process has been described by the Trial Chamber at the ICTFY in the Tadić case, in a unanimous finding which has been quoted at length above [Chapter 4]. The Trial Chamber demonstrated clearly how the Serb propaganda diffused the ideology of Greater Serbia together with "ethnic cleansing" as the means to achieve this goal [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T,

7 May 1997, pp. 30-35, paras. 84-96; see also Trial Chamber I, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, pp. 25-26, para. 52].

164. The logical evolution of such discourse, from Serbian ultra-nationalism to calls for genocide, is illustrated by declarations of Bosnian Serb leaders such as Radovan Karadžić and Ratko Mladić. For instance, Radovan Karadžić clearly called for genocide against Muslims in his speech of 14-15 October 1991 before the Assembly of Bosnia and Herzegovina, as a caution to deputies who might vote in favour of the independence of Bosnia and Herzegovina:

> "'You want to take Bosnia and Herzegovina down the same highway of hell and suffering that Slovenia and Croatia are travelling. Do nothing that will lead Bosnia to hell and do nothing that may lead the Muslim people to their annihilation because the Muslim cannot defend themselves if there is war. How will you prevent everyone from being killed in Bosnia?'" [quoted in ICTFY, Trial Chamber I, Review of the Indictments pursuant to Rule 61, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 21, para. 48].

As Karadžić was the leader of the SDS, the Bosnian Serb nationalist party, such a statement is to be understood as a clear threat, and proves that Serbian extremists were prepared for the worst. On 16 July 1996, Karadžić again revealed his intent concerning the population of the Bosnian enclaves when stating,

> "The Muslim enclaves in Bosnia are not viable and must disappear. Otherwise, we will make them disappear by force. (...) The Muslims and the international community must accept the reality that this country is totally Serbian." [Interview of Radovan Karadžić in *El Païs*, as quoted in ICTFY, Trial Chamber I, Review of the Indictments pursuant to Rule 61, *Prosecutor v. Radovan Karadžić and Ratko Mladić,* Cases No. IT-95-5-R61 and IT-95-18-R61, 11 July 1996, p. 32, para. 61].

When entering Srebrenica, General Ratko Mladić also manifested before the press his hatred against Muslims, which he equated with the Turks of the early nineteenth century:

> "That's it. As of 11 July 1995, Srebrenica is Serb. On the eve of another great Serbian feast day, we are offering the city to the Serbian people. Finally, after the rebellion against the Dahijas, the moment has arrived for us to take vengeance on the Turks in this region" [as quoted *ibidem*, p. 16, para. 39].

The announced "vengeance" was executed with terrifying efficiency.

165. As explained at length in an important expert report established by the International Centre Against Censorship in 1995, all important media - and, primarily television broadcasts - were in the hands of the Yugoslav Government and its surrogates; this included radio and television broadcasts which could be heard in all parts of the Federal Republic of Yugoslavia, and Serb-controlled areas in Bosnia and Herzegovina and Croatia, as well as the main newspapers. All of these media channels were purged early on and their journalists were in the hands of the Government in Belgrade [see Article 19, *Forging War*, "the Media in Serbia, Croatia and Bosnia-Hercegovina", May 1994].

166. Referring to the situation in Serbia and Serb-controlled areas outside of Serbia, Special Rapporteur Tadeusz Mazowiecki stated:

> "The Government-controlled electronic media and press have been engaged in a one-sided and nationalistic propaganda campaign. The official media have done nothing to distance themselves from the politics of intolerance and, as a result, have fed the fires of hatred. In doing so, they blatantly disregard a well-established rule of international human rights law which prohibits advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. It is to be recalled that in developments leading up to the bloodshed in that region, neutral television stations, such as the 'Jutel', were silenced in both Croatia and Serbia, while in other instances some journalists were dismissed and others put in their place." [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Report Submitted by Mr. Tadeuz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1993/50, 17 Nov. 1992, p. 28, para. 95]

Control over the media was also assured in the Serb-held areas of Bosnia and Herzegovina through military intervention linked with activities of local Serb extremists. For the Prijedor area, this was described by the Tribunal during the Tadić trial for the Prijedor area [ICTFY, Trial Chamber II, *Prosecutor v. Duško Tadić*, Case No. IT-94-I-T, 7 May 1997, p. 48, para. 130 and pp. 52-53, para. 137].

167. Consequently, the Parliament of the European Union adopted, on 19 January 1995, a Resolution expressing its concern over the monopoly of opinion in Serbia through the direct and indirect control of the government [European Community, Official Journal, 19 Jan. 1995, No. C43, p. 89].

168. As explained by Trial Chamber of the ICTFY in the Karadžić and Mladić case:

> "The importance of controlling the media is illustrated by Radovan KARADŽIĆ in [a] November 1991 speech. In it he said:
>
> 'We cannot have a radio chairman or a newspaper editor-in-chief who does not implement the policy of the party in power. Those are the functions of a State ... I am, therefore, asking you to oust this week, through an executive committee decision, all radio chairmen and editors-in-chief who do not listen to you and do not respect the official policy, or for some other reason. In all municipalities where we have the radio, we have power'." [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, IT-95-5-R61 and IT-95-18-R61, 11 July 1996, pp. 25-26, para. 52].

169. This can leave no doubt that the Federal Republic of Yugoslavia and its surrogates in Bosnia and Herzegovina have systematically used the media as an efficient tool to promote their policy of ethnic cleansing, thus clearly, directly and publicly inciting to genocide.

Conspiracy to commit genocide

170. As shown above, the Federal Republic of Yugoslavia is responsible for genocide committed against the non-Serb population in the former Yugoslavia and particularly in Bosnia and Herzegovina, both because its organs directly committed genocidal acts [Section 1], and because the genocidal acts of the "Republika Srpska" and of the Serbian paramilitary forces, which acted under its control, must be attributed to it [Section 2]. Hence, in principle, no problem of complicity or conspiracy arises. However, as a matter of judicial precaution, Bosnia and Herzegovina will show briefly that, even if the "Republika Srpska" on the one hand and the Serbian paramilitary forces on the other hand could be seen as autonomous actors in the genocide, as distinct from the Federal Republic of Yugoslavia, the latter would, nevertheless, be responsible for its own acts, which, at least, amount to conspiracy and complicity, both being punishable acts under Article III of the 1948 Convention [see above, this Chapter, para. 154].

171. Prudently and rather evasively, the Federal Republic of Yugoslavia claims that "acts preparatory to genocide do not fall within punishable acts" [Counter-Memorial, p. 305, para. 4.7.1.1.]. It invokes the *travaux préparatoires* to the Convention and the rejection of an amendment of a general nature proposed by the U.S.S.R. aiming at including, under Article III, a general provision providing that "preparatory acts should be punished" [*ibid.* and Annex No. 344, p. 2116]. However, it "forgets" to

recall that the reason why this amendment was rejected was that a majority of delegations considered that punishable preparatory acts were covered by paragraphs (b) and (c) relating to incitement and conspiracy. As was explained in the Report of the *Ad hoc* Committee on Genocide, "[t]he preparation of genocide should not be left unpunished" [Commentary on the Articles adopted by the Committee, E/AC.25/W.1/Add.1, 27 Apr. 1948, p. 2; see Counter-Memorial, Annexes to Chapters III-VI, Vol. 9, p. 2109]. A majority in the Committee, however,

> "stressed the difficulty in defining the notion of preparatory acts (...). Furthermore, in the most serious cases where it would be desirable to punish the authors of preparatory acts, that could be effected either under the clause 'conspiracy to commit genocide' or the clause 'complicity'.(...) [S]uch acts requiring the co-operation of a certain number of persons, would accordingly come under the heading of 'conspiracy to commit genocide' even if genocide were not finally committed, and under the heading of 'complicity' if genocide were committed" [*ibid.*, p. 3].

172. Although borrowed from the penal law of common law countries, where it means "the agreement between two or more persons to commit an unlawful act" [General Assembly, Third Session, Sixth Committee, Eighty-Fourth meeting, 26 October 1948, Summary Records, p. 212 - Memorial, Annexes, Part 5, vol. II, annex 76], the concept of "conspiracy" was accepted without opposition by the drafters of the Convention under the condition that the word not be interpreted as referring to a particular legal system [*ibid.*, pp. 211-212].

173. The Nürnberg Tribunal had taken the same view when it interpreted the word "conspiracy" (in French: "*complot*"), included in Article 6 of its Statute. The Tribunal held that, even though "le complot doit être nettement défini dans son but criminel", a conspiracy "pour l'accomplissement d'une guerre d'agression" was averred since

> "'Les buts des dirigeants nazis étaient clairs dès l'origine: c'était, en vue de dominer le continent européen, l'incorporation au Reich des éléments de langue allemande, puis l'expansion territoriale sous le couvert du slogan *Lebensraum*. Mais l'exécution de ces projets essentiels fut improvisée. Les mesures qui s'ensuivirent furent dictées par les évènements; mais toutes étaient conformes aux buts que nous venons de rappeler'" [quotation from Paul Schmidt, official interpreter from the German Ministry of Foreign Affairs, the Nürnberg Tribunal, 1946].

> "Ce plan, un seul l'a peut-être conçu. D'autres en sont devenus responsables en prenant part à son exécution (...). Quand ceux-ci, en pleine connaissance de cause lui ont offert leur assistance, ils sont devenus parties au complot qu'il avait ourdi (...)." [Proces de Grand Criminale de Guerre devant le Tribunal Militaire Internationale, Nürnberg, 14 Nov. 1945-1 Oct. 1946, text officiele en langue Française, tome 1, p. 247].

"Conspiracy" can, therefore, in international law be equated with "planning" and "participating in a concerted plan" to commit an internationally unlawful act.

174. This is also confirmed by the drafting of Article 2, paragraph 3 (e) of the ILC Draft Code of Crimes against the Peace and Security of Mankind, which provides that:

> "3. An individual shall be responsible for a crime set out in Articles 17 [relating to genocide], 18, 19 or 20 if that individual:
>
> "(e) directly participates in planning or conspiring to commit such a crime which in fact occurs" [*Report of the I.L.C. on the Work of its 48th. Session*, p. 18, para. 10.42].

In its commentary, the ILC recalls that:

> "The principle of individual criminal responsibility for formulating a plan or participating in a common plan or conspiracy to commit a crime was recognized in the Nürnberg Charter (article 6), the Genocide Convention (article III, paragraph (b)) and the Statutes of the International Criminal Tribunals for the former Yugoslavia (article 7, paragraph 1 (planning)) and Rwanda (article 6, paragraph 1 (planning)). The Commission also recognized conspiracy as a form of participation in a crime against peace in the Nürnberg Principles (Principle VI) and more generally in the 1954 draft Code (article 2, paragraph 13 (i))." [*ibid.*, p. 26].

175. *Mutatis mutandis*, the same interpretation must be accepted when the author of the punishable act is not an individual, but a State. This can entail its responsibility for all the punishable acts defined in the Convention. [see this Chapter, para. 155].

176. As explained above [this Chapter, paras. 11-20], the Yugoslav authorities planned, ordered and organised genocide. Moreover, they put it into operation either directly through the organs of the Federal Republic of Yugoslavia or through their agents and surrogates in Bosnia and Herzegovina and in Croatia. However, even if it were established that the latter two were not acting exclusively on behalf of their masters in Belgrade, it would be undeniable that Yugoslavia acted jointly and in tight cooperation with them both to plan the genocide and to put it into operation.

177. This has been clearly recognised by the Trial Chamber at the ICTFY in its decision of 11 July 1996 in which it reviews the indictments for genocide of Radovan Karadžić and Ratko Mladić pursuant to Rule 61 of its Rules of Procedure and Evidence:

"83. The Trial Chamber does consider, however, that the type of responsibility incurred is better characterised by Article 7(1) of the Statute. The evidence and testimony tendered all concur in demonstrating that Radovan KARADŽIĆ and Ratko MLADIĆ would not only have been informed of the crimes allegedly committed under their authority, but also and, in particular, that they exercised their power in order to plan, instigate, order or otherwise aid and abet in the planning, preparation or execution of the said crimes.

On account of his position as leader of the Serbian Democratic Party, and as often elucidated in his speeches, the very conception of the policy of "ethnic cleansing" must be attributed to Radovan KARADŽIĆ, *probably in collusion with others not accused in the indictment.* The fact that he has always held key posts in the parallel power structures attests to his central role in the SDS's plans to seise power in Bosnia and Herzegovina and the institutional organisation towards that end. His position of authority after taking power within the self-proclaimed Serbian Republic of Bosnia and Herzegovina, the effective exercise of his functions in the political as well as the military sphere, and his own public statements show that he also ordered, and aided and abetted in, the preparation and execution of the policy of "ethnic cleansing" and, in particular, the crimes with which he is charged. The Trial Chamber considers that, on the basis of the material tendered by the Prosecutor, that responsibility is also incurred for the crimes committed in July 1995 during the take-over of Srebrenica.

Ratko MLADIĆ was in full command of the army of the Serbs of Bosnia and Herzegovina over the whole period covered by the two indictiments. His statements and the way he exercised his powers not only in the military but also in the political domain show that he fully subscribed to the policy of "ethnic cleansing" pursued by the Bosnian Serb Administration and became one of its main protagonists. It appears that, from his position of authority at the head of the entire military structure, he planned and organised the crimes described in the indictments committed by troops under his command. Further, corroborated testimony permits the assertion that his role was not restricted to planning an overall strategy, but also that Ratko MLADIĆ was present on the scene where some of the crimes were committed and that he personally supervised some operations, including the take-over of Srebrenica and the ensuing atrocities, down to the last detail.

84. Moreover, very careful consideration should be given to the individual criminal responsibility for the crime of genocide as described in count 1 of the indictment of 25 July 1995. The Trial Chamber is of the view that the evidence and testimony submitted suffice at this stage to demonstrate the active participation of the highest political and military leaders in the commission of the crimes by Bosnian Serb military and policy forces in the detention facilities. The uniform methods used in committing the said crimes, their pattern, their pervasiveness throughout all of the Bosnian Serb-held territory, the movements of prisoners between the various camps, and the tenor of some of the accused's statements are strong indications tending to show that Radovan KARADŽIĆ and Ratko MLADIĆ planned, ordered or otherwise aided and abetted in the planning, preparation or execution of the genocide perpetrated in the detention facilities.

Accordingly, the Trial Chamber considers that count 1 [genocide] of the indictment of 25 July 1995 should be supplemented in order to emphasise the individuel criminal responsibility of the two accused pursuant to Article 7(1) of the Statute.

85. Lastly, the Trial Chamber, in thus determining the type of responsibility incurred by the accused, namely governmental or military-command responsibility, can but invite the Prosecutor's office to investigate decision-making responsibility *at the same - or higher - echelons.*" [ICTFY, Trial Chamber I, Review of the Indictments pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Cases No. IT-95- 5-R61 and IT-95-18-R61, 11 July 1996, pp. 47-48, paras. 83-85, emphasis added].

178. These important findings call for several remarks:

- Firstly, they confirm that the terms "planned, instigated, ordered..." or "planning, preparation..." which are used in Article 7, paragraph 1, of the Statute of the Tribunal instead of "conspiracy" [see above, this Chapter, para. 174] must be interpreted in a wide and general sense. They imply that what is important is the participation in a common plan; this also holds true for the word "conspiracy" in Article III (b) of the 1948 Convention.
- Secondly, Bosnia and Herzegovina is conscious of the fact that the functions of the Court and of the ICTFY are distinct. While the latter has "the power to prosecute [see Article 6 of the Statute] persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991", including genocide [Statute, Articles 1 and 4], the World Court is called, in the present case, to determine the responsibility of one State, the Federal Republic of Yugoslavia, for this same genocide. However, the functions and responsibilities of the two Courts are not mutually exclusive; on the contrary, a State can be responsible for genocide and the members of its Government be judged for this same genocide as well: "The official position of any accused person, whether as Head of State or Government or as responsible governmental official, shall not relieve such person of criminal responsibility nor mitigate punishment [Article 7, paragraph 2, of the Statute of the ICTFY]. Similarly, the individual penal responsibility of Governmental officials certainly does not relieve the State from its international responsibility. If, when acting in their official capacity, these Governmental officials, including the Heads of State or of Government are held guilty (or, at the stage of the indictment, possibly guilty) of genocide, or conspiracy in genocide, according to international law, their acts also involve a responsibility for genocide, or conspiracy in genocide for the State they represent. This is all the more so since, as shown in Chapter 3 of the present Reply, the burden of proof and the rules regarding the evidence are more stringent in penal law than in international law.
- Thirdly and lastly, the passages in italics in the above quotation show clearly that the Trial Chamber at the ICTFY shares the conviction that the accused Karadžić and Mladić were not acting alone - which is, indeed, self-evident [see above para. 173] - but that the conception and planning of the genocide must be attributed to them "probably in collusion with others not accused in the indictment", "at the same - *or higher* - echelons", a formula which clearly

alludes to Serbian President Slobodan Milošević and other high ranking officials in the Federal Republic of Yugoslavia (not being seized of a public indictment against those persons, the Trial Chamber could, evidently, not go any further).

179. It is most revealing in this respect that the General Assembly has condemned the violations committed by "*Serbia and Montenegro* and the Bosnian Serbs", "*systematically*, flagrantly and on a massive scale", "against the people of the Republic Bosnia and Herzegovina", "as *policy*" [United Nations, *General Assembly Resolution 49/10*, A/49/10, 3 Nov. 1994, para. 11, emphasis added; see also *ibid.*, Resolution 48/88, A/48/88, 29 Dec. 1993, para. 14], a formula in which one can read the exact legal definition of "conspiracy" in international law. Also very significantly, the Assembly has designated "the leadership in territories under the control of Serbs in the Republic of Bosnia and Herzegovina and the Republic of Croatia, the commanders of Serb paramilitary forces and political and military leaders in the *Federal Republic of Yugoslavia (Serbia and Montenegro)*" as being, *together*, those who "bear primary responsibility" for these same violations [United Nations, *General Assembly Resolution 49/196*, A/49/196, 23 Dec. 1994, emphasis added; see also *ibid.*, Resolution 50/193, A/50/193, 22 Dec. 1995 and this Chapter, para. 43].

180. More generally, the conspiracy between Belgrade, the Serb paramilitaries and the authorities in Pale in planning and implementing genocide is evident from the facts described at length in this Section, whether the Serbian paramilitary forces, the "Republika Srpska" and the VRS are seen as agents and surrogates of the Federal Republic of Yugoslavia, or not.

Complicity in genocide

181. Here again, Bosnia and Herzegovina wishes to make very clear that, from its considered point of view, the Federal Republic of Yugoslavia is responsible for genocide committed against the non-Serb population in Bosnia and Herzegovina and in other parts of the former Yugoslavia, mainly in Serbia and its (former) autonomous provinces and in Croatia. Paraphrasing the Court in the Nicaragua case, "if such a finding of imputability of the acts of [the "Republika Srpska" and of the Serbian paramilitary forces is] to be made, no question [will] arise of mere complicity in those acts..." [see *ICJ Rep.* 1986, p. 64]. It is therefore only very subsidiarily that the Applicant will show that, if, by some remote chance, the Court

would find that genocide as such could not be attributed to the Respondent State, it would, nevertheless be responsible for its complicity in genocide as committed against these populations, this claim being without prejudice to the evident attributability to the Federal Republic of Yugoslavia of the genocidal acts committed by its organs and agents.

182. "Complicity in genocide" is defined as a "punishable act" by Article III (e) of the 1948 Convention. Yugoslavia recognises that "complicity includes the extension of aid and the provisions of means for the commission of genocide" [Counter-Memorial, p. 305, para. 4.6.1.4.]. There is no difference between the Parties in this respect.

183. However, it is worth noting that, even if the Genocide Convention had not expressly provided for such a punishable act, it would, in any case, entail Yugoslavia's responsibility since, according to a general and well established principle of the international law of State responsibility, "the idea of participation in the internationally wrongful act of another by providing 'aid or assistance' - and thus, in this sense, of 'complicity'- has now gained acceptance in international law" [ILC, commentary of Article 27, Draft Articles on State responsibility, *ILC Yearbook*, 1978, Vol. II, part 2, p. 103]. "What [the State] does is to facilitate, by its own action, the commission by the other State of the international wrongful act in question. Cases such as this can be defined as ones of 'complicity'(...)" [*ibid.*, p. 102].

184. Moreover, in the Nicaragua case, this Court has clearly recognised that a State entails its responsibility by "training, arming, equipping, financing and supplying" paramilitary forces "or otherwise encouraging, supporting and aiding (...) paramilitary activities in and against" a foreign State [*ICJ Rep.* 1986, p. 146 - see above, para. 58 and Luigi Condorelli, "L'imputation à l'État d'un fait internationalement illicite: solutions classiques et nouvelles tendances", *Recueil des cours*, 1984-VI, Vol. 189, pp. 98-99]. In the Hostages case, it considered that a State can be held responsible for its own internationally wrongful acts related to acts of its own nationals, even when committed on its own territory [*ICJ Rep.* 1980, p. 30 - see above, para. 56 and L. Condorelli, "L'imputation à l'État d'un fait internationalement illicite: solutions classiques et nouvelles tendances", *Recueil des cours*, 1984-VI, Vol. 189, pp. 111ff.].

185. These precedents are fully relevant in the present case where, in addition to other genocidal acts committed by its own organs, Yugoslavia has trained, armed, equipped, financed and supplied both its "puppet" State, the "Republika Srpska", and the Serbian paramilitary forces which have committed genocidal acts on its own territory and on the territories of Bosnia and Herzegovina and Croatia [as shown in Chapter 8, and this Chapter, Section 2] This is clearly (and at the very least) complicity in genocide. It can be added that since, in the present case, genocide has effectively been committed, according to the position expressed by the *Ad hoc* Committee on Genocide during the *travaux préparatoires* of the Genocide Convention, the conspiracy constituted by the plans to commit genocide has degenerated into complicity [see above, para. 171].

186. The Federal Republic of Yugoslavia insists that complicity "involves premeditation as a rule" [Counter-Memorial, p. 305, para. 4.6.1.4]. Once again, this is an inaccurate representation of the law in force.

187. The Respondent stresses [*ibid.*] that Mr. Fitzmaurice, the Representative of the United Kingdom, withdrew "the part of its amendment concerning the addition of the word 'deliberate' since it was understood that, to be punishable, complicity in genocide must be deliberate" [General Assembly, 3rd Session, 6th Committee, *Official Records*, Summary Records of Meetings, 21 Sept.-10 Dec. 1958, p. 259; see Counter-Memorial, Annexes to Chapters III-VI, Vol. 9, p. 2114]. But, once again, it "forgets" to recall that this same Representative had very clearly also observed that, some days earlier, "the Representative of Venezuela had taken the English word 'deliberate' to mean in French *préméditée* [84th meeting]; that interpretation was incorrect, the correct translation being *intentionnelle*" [*ibid.*, p. 255, emphasis added see Memorial, Annexes, Part 5, Vol. II, annex 85].

188. In other words, complicity implies, indisputably, an element of "intent", in that the aid given to the author of the crime must be "deliberate" (*intentionnelle*); but this does not mean that it must be given with the will to participate in the crime itself - in which case it would be necessary to speak of "premeditation". It suffices that it be given "deliberately" in a situation where this aid can be suspected by an impartial external observer as being possibly used to commit genocide. Interestingly enough, this was precisely the position taken by the Representative of Venezuela when he suggested to replace, in the amendment presented by the United Kingdom, "deliberate complicity" by "intentional complicity" "since", he said, "it was intent, rather than premeditation, which rendered the complicity a punishable offense" [*ibid.*,

p. 209; see Counter-Memorial, Annexes to Chapters III-VI, Vol. 9, p. 2140]. Moreover, this remark holds true for the definition of genocide itself: after a lengthy discussion on Draft Article I, Mr. Spiropoulos, Rapporteur, "noted that it appeared very clearly that the majority was opposed to including the concept of premeditation..." [*ibid.*, p. 88, Memorial, Annexes, Part 5, vol. II, Annex 60].

189. This has been confirmed by the Court in the Nicaragua case. In its Judgment of 27 June 1986, the Court has specified that, when considering whether an unlawful act consisting of encouragement to commit an unlawful act had been committed "it is material to consider whether that encouragement was offered to persons in circumstances where the commission of such acts was likely or foreseeable" [*ICJ Rep.* 1986, p. 130].

190. In the present case, there cannot be a shadow of doubt that, in aiding and abetting the "Republika Srpska" and Serbian paramilitary forces, the Federal Republic of Yugoslavia could not have been unaware of the strong probability that this aid would be used to commit genocide. The atrocities committed by these groups had been extensively presented in the media throughout the world and condemned by the General Assembly and the Security Council, which, from September 1991, had imposed an embargo on all deliveries of weapons and military equipment to Yugoslavia [Resolution 713 (1991)], in May 1992, had expressly demanded that Yugoslavia cease its intervention in Bosnia and Herzegovina [Resolution 752 (1992)], and from 30 May 1992 onward expressly imposed sanctions on the Federal Republic of Yugoslavia for its participation in the "ethnic cleansing". The Federal Republic of Yugoslavia's complicity in genocide is therefore averred.

191. However, Bosnia and Herzegovina wishes to stress once more that, in its opinion, the participation of the Federal Republic of Yugoslavia in the genocide against the non-Serb populations in the former Yugoslavia, and more specifically, on the territory of Bosnia and Herzegovina, has been much more direct than what can be inferred from the words "conspiracy" or "complicity":

- it has planned and organised genocide;
- it has incited the commission of genocide;
- its own organs have committed numerous specific genocidal acts;
- it has exercised, at least during the worst period when the most atrocious acts were committed on a very large scale, control over its surrogates: the

"Republika Srpska", which was created and maintained exclusively owing to its will and aid and must be considered a "puppet State" without any legal existence, and the Serbian paramilitary forces, which were composed of Yugoslav nationals and created by Yugoslavia, which had full control over them; and

- it cannot take shelter behind the fact that, on very rare occasions - indeed only one, according to the Respondent itself, which only mentions (though repeatedly) the refusal of the Vance-Owen Plan by the "Republika Srpska" - its surrogate has shown some reluctance in complying with its orders. When one has deliberately played the part of the "sorcerer", it cannot escape responsibility when its creature escapes its power, all the more so since this happened only once.

CHAPTER 11

THE FEDERAL REPUBLIC OF YUGOSLAVIA IS RESPONSIBLE FOR ITS FAILURE TO PREVENT AND TO PUNISH GENOCIDE AND RELATED ACTS

1. Introduction

1. In clear contradiction to the *res judicata* of the ICJ Judgment of 11 July 1996 [*e.g.*: para. 32] the Respondent continues to allege that the Court has no jurisdiction to determine its responsibility for genocide and for related acts committed by its organs, by its agents and by the persons or groups acting on its behalf or under its control [Counter-Memorial, Section 4.10., pp. 308-312; see above, Chapter 10]. Nevertheless, the Respondent seems to accept that it has some legal obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the violations of which entail its international responsibility.

2. The Federal Republic of Yugoslavia sums up the obligations it "accepts" in this respect in the following terms:

> "The 1948 Convention on the Prevention and Punishment of the Crime of Genocide establishes several international obligations for the Contracting Parties. Pursuant to Article I of the Convention, the Contracting Parties are obliged to prevent and punish the crime of genocide. Under Article V of the Convention the Contracting Parties have undertaken to pass the necessary legislation to give effect to the provisions of the Convention and, in particular, to provide for effective punishment of persons guilty of genocide or any other act enumerated in Article III. Pursuant to Article VI of the

> Convention the State in the territory of which the act was committed is obliged to try persons charged with genocide." [Counter-Memorial, p. 312, para. 4.11.1.2.].

However, the Respondent appears anxious to limit these obligations by alleging that their violation only entails "civil" responsibility of the State [Counter-Memorial, p. 313, para. 4.11.1.4] and that they are "territorially limited" [Counter-Memorial, Section 4.12., pp. 314-315].

3. As shown in Chapter 2, there is no real difference between the Applicant and the Respondent with respect to the first allegation: the responsibility of the State in international law, at least before this Court, is certainly not criminal liability, even though it can be sustained that it is neither civil nor penal, but simply international [see *e.g.* Gaetano-Arangio-Ruiz, *Fifth Report on State Responsibility to the I.L.C.*, A/CN.4/453/Add.3, para. 148; Alain Pellet, "Vive le crime! Remarques sur les degrés de l'illicite en droit international", in ILC, *International Law on the Eve of the Twenty-First Century*, United Nations, p. 302]. Bosnia and Herzegovina also agrees with Manley Hudson's view, as quoted by the Federal Republic of Yugoslavia [Counter-Memorial, p. 313, para. 4.11.1.4.], that "such responsibility is governed (...) by general international law" ["The Twenty-Ninth Year of the World Court", *A.J.I.L.*, 1951, p. 34], but only insofar as the Convention itself does not prescribe or imply a special regime. In any case, the obligations which entail the Respondent's responsibility are those defined by the Convention.

4. It is precisely for this reason that Bosnia and Herzegovina is unable to agree with the Respondent regarding the territorial scope of the Convention.

5. Although recognizing that "it does not mean that a State is allowed to commit genocide outside its territory", the Respondent contends that its obligations to prevent and punish genocide is limited to its own territory [see Counter-Memorial, p. 315, Section 4.13.]. Such a contention adds a territorial limitation to the application of the Convention which is inconsistent with its object and purpose. In spite of the legal doctrine of a "*devoir d'ingérence*", sometimes asserted by accademics or politicians, it might be true that there does not exist a duty to intervene supported by individual States [see discussion in Memorial, p. 289, para. 6.4.2.9]; but this does not mean that each and every State party to the Convention is not under a strict obligation to prevent and punish genocide wherever it takes place - and certainly not limited to its own territory - with all legal means at its disposal.

6. It must be recalled in this respect [see also Chapter 10, Section 2] that, as the Court explained in its 1971 Opinion on Namibia, "physical control of a territory and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States" [*ICJ Rep.*, 1971, p. 54]. It follows thus that the Respondent, being in control of "Republika Srpska", must, in any case, be held responsible for its violation of the Convention, including its failure to prevent and punish genocide, whether committed on its territory or on the territory of "Republika Srpska" or of other self-proclaimed entities which it controlled.

7. This clearly means that the Respondent has a duty:

I: to prevent and punish genocide on its own territory, as well as
II: on territories over which its has *de facto* control, in particular "Republika Srpska"; and
III: to punish perpetrators who are found on its territory or on territories it controls, regardless of where the genocidal acts have been committed.

8. Moreover, it can be inferred from the Respondent's Counter-Memorial that the Federal Republic of Yugoslavia, in its own practice, does not hold that the obligation to punish is territorially limited:

- Article 141 of its Penal Code contains no such limitation; and
- Yugoslav judges have investigated "genocide", even though the proceedings were limited to two cases of "genocidal" acts which were allegedly committed by Croats and Muslims abroad (in Bosnia and Herzegovina - or, more precisely, in "Republika Srpska"); consistent with the Respondent's theory that the obligation to punish would be territorially limited, another explanation for the basis of its jurisdiction over/in these cases would be that, definitely, it considers "Republika Srpska" as part of the Federal Republic of Yugoslavia [see Counter-Memorial, Annex No. C 123: Witness statement made before "the investigative judge of the Basic Court in Herceg Novi" (Montenegro); or Counter-Memorial, Annexes 300 and C 257: Witness statements made before the investigative judge of the District Court in Belgrade].

9. This territorial scope of the duty to prevent and punish genocide under the Convention has been made perfectly clear by the Court in its Judgment of 11 July 1996, rejecting the preliminary objections raised by the Respondent:

"(...) Lastly, as to the territorial problems linked to the application of the Convention, the Court would point out that the only provision relevant to this, Article VI, merely provides for persons accused of one of the acts prohibited by the Convention to 'be tried by a competent tribunal of the State in the territory of which the act was committed (...)'. It would also recall its understanding of the object and purpose of the Convention, as set out in its Opinion of 28 May 1951 (...):

'The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations [Resolution 96 [1] of the General Assembly, December 11th 1946]. The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such an odious scourge.' [Preamble to the Convention, *I.C.J Reports 1951*, p. 23].

It follows that the rights and obligations enshrined by the Convention are rights and obligations erga omnes. The Court notes that the obligation *each State thus has to prevent and to punish the crime of genocide is not territorially limited by the Convention.*" [para. 31, emphasis added].

10. In light of this finding, Bosnia and Herzegovina will show that, in spite of its denials, the Federal Republic of Yugoslavia has not complied with its conventional obligations to prevent [Section 2] and to punish [Section 3] genocide and related acts.

2. The Respondent's failure to prevent genocide and related acts

Meaning and scope of the duty to prevent genocide according to Article I of the Genocide Convention

11. Article I of the 1948 Convention, which defines its very object and purpose [see Bosnia and Herzegovina's Memorial, para. 6.5.1.2, pp. 283-284], provides:

"The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent (...)." [United Nations, *1948 Convention*, Art. I].

12. This obligation has been stressed by the Court in its Order indicating provisional measures of 8 April 1993:

"(...) in the view of the Court, in the circumstances brought to its attention and outlined above in which there is a grave risk of acts of genocide being committed, Yugoslavia and Bosnia and Herzegovina, whether or not any such acts in the past may be legally imputable to them, are under

> a clear obligation to do all in their power to prevent the commission of any such acts in the future." [*ICJ Rep.*, 1993, p. 22, para. 45; see also *ICJ Rep.*, Order of 13 Sept. 1993, 1993, p. 347, para. 46 and p. 348, para. 50].

13. The International Law Commission has devoted two special provisions of its draft Articles on State responsibility to obligations of this kind: Article 23 and Article 26. According to Article 23, entitled "Breach of an obligation to prevent a given event":

> "When the result required of a State by an international obligation is the prevention, by means of its own choice, of the occurrence of a given event, there is a breach of that obligation only if, by the conduct adopted, the State does not achieve that result." [ILC, *Report on the Work of its 48th Session*, 6 May-26 July 1996, General Assembly, Official Records, 51st Session, Suppl. No. 10, A/51/10, p. 133].

Article 26 relates to the "moment and duration of the breach of an international obligation to prevent a given event" and is not of direct relevance in the present case.

14. Commenting on Article 23, the Commission noted that such a breach has a double character: *first*, the breach consists of the realisation of the event that the State had the obligation to prevent; *second*, the State bound by such an obligation is to be in a position to prevent effectively this said event. It explained:

> "It is quite clear that the obligations of which examples have been given all fall within the category referred to in article 21, because they are obligations whose fulfilment, like that of others of the same category (obligations of result), takes place only if the result that they require can be seen to have been ensured, and whose breach similarly takes place only if that result be seen not to have been ensured. However, it would be wrong to believe that the general provision formulated in article 21 in order to define the conditions for the existence of a breach of an obligation of result suffices, by itself, to resolve the questions arising in cases where the result aimed at by the obligation is the prevention by the State of an event caused by factors in which it plays no part. The conditions for the breach of an obligation requiring a result of this kind need a different kind of definition from those that apply to an obligation requiring a result in whose achievement or non-achievement only action by the State is involved. To ensure the result of preventing individuals or third parties from committing certain acts, or of preventing disasters, whether naturally or artificially caused (such as flooding or pollution), from taking place, is something quite different from ensuring, for example, the result that nationals of a given foreign country be allowed to practise, within the State, an occupation or other activity on an equal footing with nationals. The characteristic feature of the case taken into consideration by the Commission here is precisely the notion of an event, i.e. an act of man or of nature which, as such, involves no action by the State. Consequently, if the result which the obligation requires the State to ensure is that one or another event should not take place, the key indication of breach of the obligation is the occurrence of the event, just as the non-occurence of the event is the key indication of fulfilment of the obligation. (...) In other words, the non-occurence of the event is the result that the State is required to ensure, and it is the occurrence of the event that determines that the result has not been achieved.
>
> (...)

> However, the occurrence of the event is not the only condition specifically stipulated for the existence of a breach of an international obligation requiring the State to achieve the result of preventing the occurrence of that event. In assuming obligations of this kind, States are not underwriting some kind of insurance to cover co-contracting States against the occurrence, whatever the conditions, of events of the kind contemplated, i.e. against the occurrence of the event even regardless of any material possibility of the State's preventing it from occurring in a given case. The State can obviously be required only to act in such a way that the possibility of the event is obstructed, i.e. to frustrate the occurrence of the event as far as lies within its power. Only when the event has occurred because the State has failed to prevent it by its conduct, and when the State is shown to have been capable of preventing it by different conduct, can the result required by the obligation be said not to have been achieved. Consequently, for these to be a breach of the obligation, a certain causal link - indirect, of course, not direct - must exist between the occurrence of the event and the conduct adopted in the matter by the organs of the State. It is hardly necessary to add that the objective of each obligation and the more or less essential character of the prevention of this or that type of event must also be taken into account, once the event to be prevented has occurred, in comparing the conduct actually adopted by the State and the conduct that it might reasonably have been expected to adopt to prevent the event from occurring" [*ILC Yearbook 1978*, Vol. II, Part 2, pp. 82-83, paras. 4 and 6 of the commentary of Article 23].

15. It goes without saying that, in the present case, genocide constitutes an event of an absolutely essential character, which makes the obligation to prevent all the more essential and implies that all States Parties have an absolute legal duty to comply strictly with their obligation of prevention.

16. This is confirmed by the *travaux préparatoires* of Article I of the 1948 Convention. While the obligation to prevent genocide had not been included in the draft adopted by the *Ad hoc* Committee on Genocide, it was introduced during the debate in the Sixth Committee of the General Assembly on the initiative of the Yugoslav Representative, Mr. Bartos [United Nations, *G.A.O.R.*, Sixth Committee, Sixty-third meeting, 30 Sept. 1948, p. 10, see also United Nations, *G.A.O.R.*, Sixty-Seventh meeting, 5 Oct. 1948, p. 40] and a formal proposal made by the Belgian Representative, Mr. Kaeckenbeeck [*ibid.*, p. 38]. It is worth noting that, while several elements of the drafting of Article I have been contested, the States participating in the discussion have been unanimous in agreeing on the obligation to prevent genocide [see *ibid.*, pp. 38-53].

17. When tested against the obligation to prevent, as accepted by States Parties under Article I of the Convention and thus interpreted, the facts can leave no doubt regarding the breach of this provision by the Federal Republic of Yugoslavia: genocide has, indeed, been committed [see Chapter 6 of this Reply], while the Respondent had the "material possibility (...)[to prevent] it from occurring" [see this Chapter, para. 14], as Bosnia and Herzegovina will recall hereinafter.

18. However, the Applicant wishes to stress the point, which was made clear by the International Law Commission in the previously cited commentary [*ibid.*]: when an obligation of prevention is at stake, the "event" which must be taken into consideration is, as a matter of definition, "an act (...) which, as such, involves no action by the State" [*ibid.*]. In other words, the very fact that genocide has been committed creates at least a presumption that the "duty to prevent" has not been respected, since the Respondent was in a position to, in fact, prevent it. In this respect, it is worth noting that, as recalled by the Court in its Judgment on the Preliminary Objections [para. 32], the first and fundamental duty of the States Parties is not-to-commit genocide [see *e.g.* Memorial, Section 5.2.2, pp. 200-204]. The Federal Republic of Yugoslavia has committed genocide both through its own organs and through its surrogates acting on its behalf and controlled by it, as shown in Chapter 10 of the present Reply. Its failure to prevent genocide is thus clearly in addition to its main violation of the Convention, in the same way as is its complicity in genocide [see: Chapter 10, Section 3]. Bosnia and Herzegovina is invoking these additional breaches of the Convention without prejudice to the obvious responsibility of the Federal Republic of Yugoslavia for its *commission* of genocide.

The Federal Republic of Yugoslavia has not complied with its duty to prevent under Article I of the Genocide Convention

19. This commission of genocide is an asserted fact and makes all the more clear that, *a fortiori*, the Respondent was in a position to prevent the genocide committed against the non-Serb populations in the former Yugoslavia and in particular, in Bosnia and Herzegovina.

20. A first element to be taken into consideration in this respect is the Federal Republic of Yugoslavia's geographical situation in relation to the territories on which genocide has been essentially committed (though not exclusively, since genocidal acts have also been committed on the territory of the Federal Republic of Yugoslavia itself), that is, in Bosnia and Herzegovina and in Croatia. It must, in effect, be kept in mind that the Respondent enjoys a hundreds of kilometers long common border with Croatia and with Bosnia and Herzegovina.

21. Indeed a mere geographical proximity would not be enough to attribute responsibility to the Respondent; but it has a role to play in this respect. As the ICJ has noted in the Corfu Channel case:

> "(...) it cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves *prima facie* responsibility nor shifts the burden of proof.
>
> On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading to a single conclusion." [*I.C.J. Rep.*, Judgment of April 9th. 1949, p. 18].

22. *Mutatis mutandis*, the same holds true in the present case: due to its specific geographical situation, the Respondent had a special duty of diligence in preventing genocide and the proof of its lack of diligence can be inferred from fact and circumstantial evidence.

23. Even more integral to the Federal Republic of Yugoslavia's duty to prevent genocide is the control that this State exercised over the "Republika Srpska" [see: this Chapter, para. 6]. As has been shown in Chapter 10 of the present Reply, this so-called "State" has been created by Belgrade [see: Chapter 10, Section 2]; its "government" has been able to exercise its power only because of the support it has received from the Federal Republic of Yugoslavia; it has been entirely dependent on the aid it received from the Respondent both militarily and economically; and it has always complied with the injunctions and demands it has received from Belgrade, except perhaps on the single occasion of its disagreement with Belgrade over the "Vance-Owen Plan" (and even in this case, the possibility of a covert agreement with Belgrade cannot be excluded) [*ibid.*, Section 2].

24. Similarly, as also shown in the previous Chapter of this Reply [*ibid.*, Section 2], the Federal Republic of Yugoslavia had full control over the paramilitary forces which have been so active in the genocide: they were created by the authorities in Belgrade; the Respondent armed and equipped them; they were trained by the JNA; and they were under the direct command of Serbian and Yugoslav officials.

25. These established facts are relevant not only in showing that both "Republika Srpska" and the Serb paramilitary forces were mere surrogates of the Respondent, whose acts entail the responsibility of the latter; they also show that the Respondent

has not used its crucial and decisive influence on these groups to prevent them from committing genocide. It would be superfluous and repetitive to repeat here the evidence presented in Chapter 10. Suffice it to recall that, far from preventing genocide, the Federal Republic of Yugoslavia has incited the commission of genocide, conspired in organizing genocide and has directly participated in and been an accomplice to genocide. At a minimum, this, indeed, amounts to a breach of its imperious duty to prevent genocide by all means available to it. "Prevention" implies that States must take positive actions to preclude; instead, the Respondent has acted in such a way as to facilitate genocide and through its acts and behaviours.

26. A number of facts are of particular relevance to the establishment of these breaches of the Convention. This is the case, for example, of:

- the opening of the Federal Republic of Yugoslavia's borders to arms traffic [see: Chapter 8, Section 7 and Section 10] and passage of troops and paramilitary forces [see: Chapter 8, Section 5; Section 7 and Section 12], in clear contradiction not only of the Respondent's obligations under the 1948 Convention, but also with its formal condemnation by the Security Council [see below]; moreover, the Respondent expressly states, in its Counter-Memorial, that "it is capable of controlling the border itself" [Counter-Memorial, p. 80, para. 1.3.7.1.]; it, therefore, cannot contend that these evident violations of its duty to prevent genocide were beyond its control;
- the armament of Serb population and militias in contrast to the disarmament of non-Serb, particularly Muslim population of Bosnia and Herzegovina [see: Chapter 8, Section 2, and Chapter 10];
- the massive financial and economic aid given to the "Republika Srpska" by the Federal Republic of Yugoslavia [see: Chapter 8, Section 9];
- the wholesale tolerance, if not sponsorship of public discourse, including radio and T.V. broadcasts, inciting to racial hatred in the Yugoslav media [see: Chapter 4; Chapter 8, Section 7, and Chapter 10];
- Belgrade's inertia in punishing the individual perpetrators of genocidal acts which, on the contrary, have found protection and shelter in the Federal Republic of Yugoslavia; etc.

The Federal Republic of Yugoslavia has been repeatedly condemned by the international community for not having prevented genocide

27. Non-compliance by the Federal Republic of Yugoslavia with its duty to prevent genocide has been pointed out and condemned by objective international bodies.

28. In the first place, the Court itself has shown, in its Orders of 8 April 1993 and 13 September 1993, that it clearly was of the opinion that the Federal Republic of the Respondent did not comply with its duty to prevent genocide under Article I of the 1948 Convention. Bosnia and Herzegovina does not contend that these orders must be seen as definitive statements; they are, however, authoritative *prima facie* findings by the "principal judicial organ of the United Nations", the highest judicial body at world level.

29. In its first Order, the Court ordered the Respondent and Bosnia and Herzegovina "not to take any action" and to "ensure that no action is taken which may aggravate or extend the existing dispute" [*ICJ Rep.*, 1993, para. 52B, p. 24]. But, significantly, while this measure was indicated to both Parties, it also decided *only* vis-à-vis the Respondent that:

> "A. [1] Unanimously,
>
> The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide;
>
> [2] By 13 votes to 1,
>
> The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organisations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group." [*ibid.*].

30. Again, in its second Order of 13 September 1993, the Court reaffirmed all three provisional measures indicated five months earlier [*ICJ Rep.* 1993, para. 61, pp. 349-350]. The main points of its reasoning are as follows:

> "52. Whereas, since the Order of 8 April 1993 was made, and despite that Order, and despite many resolutions of the Security Council of the United Nations, great suffering and loss of life has been sustained by the population of Bosnia-Herzegovina in circumstances which shock the conscience of mankind and flagrantly conflict with moral law and the spirit and aims of the United Nations;

> 53. Whereas, since the Order of 8 April 1993 was made, the grave risk which the Court then apprehended of action being taken which may aggravate or extend the existing dispute over the prevention and punishment of the crime of genocide, or render it more difficult of solution, has been deepened by the persistance of conflicts on the territory of Bosnia-Herzegovina and the commission of heinous acts in the course of those conflicts;
>
> 54. Whereas the Security Council of the United Nations in resolution 819 (1993) of 16 April 1993 took note of the Court's Order of 8 April 1993 in which the Court indicated that the Federal Republic of Yugoslavia [Serbia and Montenegro] should take all measures within its power to prevent the commission of the crime of genocide, and whereas the Security Council in that resolution reaffirmed its condemnation of all violations of international humanitarian law, in particular the practice of 'ethnic cleansing',
> (...)
> 57. Whereas the Court, while taking into account, *inter alia,* the replies of the two Parties to a question put to them at the hearings as to what steps had been taken by them 'to ensure compliance with the Court's Order of 8 April 1993', is not satisfied that all that might have been done has been done to prevent commission of the crime of genocide in the territory of Bosnia-Herzegovina (...)." [*ibid.*, pp. 348-349].

Consequently, the Court by a majority of 13 votes to 2 reaffirmed the provisional measures indicated in paragraphs 52 A (1) and (2) of its Order of 8 April 1993, which were addressed *exclusively* to the Respondent.

31. This shows clearly that, at the date of its second Order, the Court was not convinced that the Federal Republic of Yugoslavia had taken all the measures within its power to prevent the commission of the crime of genocide, in particular on the territory of Bosnia and Herzegovina.

32. To make these findings, the Court relied in part on several resolutions of the Security Council which had, at the time, already sanctioned the Respondent for its violations of international humanitarian law, in particular the abhorrent practice of "ethnic cleansing".

33. In effect, on many occasions, the Security Council has called upon the Federal Republic of Yugoslavia to prevent genocide and has clearly condemned both its active involvement in the genocide [see: Chapter 10] and its passivity, that is, its non-compliance with its duty to prevent it.

34. Thus, in a series of resolutions beginning with Resolution 752 (1992) of 15 May 1992, the Council demanded that "all irregular forces in Bosnia-Hercegovina be disbanded and disarmed" [United Nations, *Security Council Resolution 752 (1992)*, S/RES/752, 15 May 1992, para. 5] and called upon "all parties [which clearly includes the Respondent] and others concerned to ensure that forcible expulsions of persons from the areas where they live and any attempts to change the ethnic

composition of the population, anywhere in the former Socialist Federal Republic of Yugoslavia, cease immediately" [*ibid.*, para. 6]. Fifteen days later, it condemned "the failure of the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro), including the Yugoslav People's Army (JNA), to take effective measures to fulfill the requirements of Resolution 752 (1992)" [*ibid.*, para. 1].

35. Significantly, in this same resolution, the Security Council imposed sanctions on the Federal Republic of Yugoslavia until it would decide "that the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro), including the Yugoslav People's Army (JNA) have taken effective measures to fulfil the requirements of resolution 752 (1992)" [*ibid.*, para. 3]. It was not until 13 September 1994 that, by its Resolution 943 [United Nations, *Security Council Resolution 943 (1993)*, S/RES/943, 23 Sept. 1993], the Council decided to partially suspend these measures in view of "the decision by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) to close the border between the Federal Republic of Yugoslavia and the Republic of Bosnia and Herzegovina", thus clearly implying that, until that date at least, the Respondent had not complied with the requirements of the resolution and, indeed, as was demonstrated in Chapter 8, it did actually continue in failing to comply even after that date.

36. Generally speaking, it is also significant that the Council decided to impose sanctions *on the Respondent* in response to "ethnic cleansing" that was mainly perpetrated in Bosnia and Herzegovina. Thus, by its Resolution 819 (1993) of 16 April 1993, the Security Council reaffirmed its "condemnation of (...) the practice of 'ethnic cleansing'" [United Nations, *Security Council Resolution 819 (1993)*, S/RES/819, 16 Apr. 1993, preamble, para. 5] and demanded "that the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina" [*ibid.*, para. 3], a demand formally reiterated by the General Assembly [United Nations, *General Assembly Resolution 48/88*, 20 Dec. 1993, para. 5]. Then, in its resolution 820, it reaffirmed that "any practice of 'ethnic cleansing' is unlawful and totally unacceptable" [United Nations, *Security Council Resolution 820 (1993)*, S/RES/1993, preamble, para. 4] and expressed "its condemnation of all the activities carried out in violation of resolutions 757 (1992) of 30 May 1992 and 787 (1992) of 16 November 1992 between the territory of the Federal Republic of Yugoslavia and Serb-controlled areas in the Republic of Croatia

and the Republic of Bosnia and Herzegovina" [*ibid.*, preamble, para. 7] and imposed new sanctions on the Respondent.

37. This shows that the Security Council considered that, in not using its influence on the perpetrators of the "ethnic cleansing", the Respondent had clearly violated its obligation to prevent genocide and consequently sanctioned it.

38. The General Assembly made the same assessment. Although it clearly considered the Respondent and its surrogates as being mainly responsible for the genocide, it also condemned the Respondent for not using its influence on these "surrogates" [see: United Nations, *General Assembly Resolution 47/121*, 18 Dec. 1992, preamble, para. 10; see also Chapter 10, Section 2]:

> "The General Assembly:
> (...)
> *Demands* an immediate end to the practice of 'ethnic cleansing', and in particular that the Government of the former Federal Republic of Yugoslavia (Serbia and Montenegro) *use its influence with the self-proclaimed Serbian authorities in Bosnia and Herzegovina* and Croatia to bring the practice of 'ethnic cleansing' to an immediate end and to reverse the effects of this practice" [United Nations, *General Assembly Resolution 47/147*, 18 Dec. 1992, para. 9; emphasis added].

39. Again, by its Resolution of 3 November 1994, the General Assembly demanded that

> "the Federal Republic of Yugoslavia (Serbia and Montenegro) uphold its commitment and obligation to comply with the relevant Security Council resolutions, including resolution 752 (1992) of 15 May 1992, to cease any military and logistic support to the Bosnian Serbs, and supports the decision of the Council to automatically terminate the partial suspension of sanctions in the event that the Federal Republic of Yugoslavia is found not to effectively implement its decision to close the border between the Republic of Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) in accordance with Security Council resolution 943 (1994) of 23 September 1994." [United Nations, *General Assembly Resolution 49/10*, 3 Nov. 1994, para. 13].

It shows clearly that, at least until that date, the General Assembly was convinced that Respondent had not complied with its legal duty to prevent genocide.

40. It has already been demonstrated that the JNA took a direct part in many genocidal acts both before and after 19 May 1992. Moreover, when it did not act by itself, it was generally in a position to prevent genocidal acts committed by paramilitary forces and other Serb forces. As noted by the Commission of Experts:

> "The JNA (...) has at least tacitly permitted paramilitary units and special forces to engage in conduct that resulted in grave breaches of the Geneva Conventions and other violations of international humanitarian law. In many instances, the JNA was on scene and militarily supported these activities and these violations. A purposeful failure to act was therefore evident in many cases." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 27 May 1994, Annex III, "The Military Structure, Strategy and Tactics of the Warring Factions", p. 10, para. 34].

41. The Respondent committed itself, in the second declaration adopted during the London Conference of 25 to 27 August 1992, to preventing Bosnian Serbs from seizing territory and expelling people [Bulletin of the European Community, Vol. 7/8, 1992, p. 82, para 1.4.17, Annex 277]. Such a committment was clearly not put into effect, which was described as an "unacceptable fact" by the European Council [Bulletin of the European Community, Vol. 10, 1992, Annex II, p. 10, para 1.9, Annex 278].

42. In its Helsinki Declaration of 9 July 1993, the CSCE Parliamentary Assembly, after deploring the "organized, systematic, and pre-meditated war crimes and genocide" in Bosnia and Herzegovina and noting that

> "Serbia and Bosnian Serbs bear primary responsibility" for violations of CSCE basic principles, took the view that "the sanctions imposed against Serbia by the UN Security Council must be maintained with a view to achieving further international isolation of the Serbian aggressors and to motivating them to make concessions in the peace negotiations" [paras. 2, 3, and 7,].

It is then clear that, according to the Parliamentary Assembly of the CSCE, Serbia was - to say the least - in a position to put an end to the crimes committed in Bosnia and Herzegovina at that date. Moreover, the Yugoslav authorities refused to allow the CSCE long-term Missions in Kosovo, Sandjak and Vojvodina to continue their work after July 1993. As was recognized by the Security Council in its resolution 855 (1993), these missions were essential to prevent violence against non-Serbs on the territory of the Respondent [Chapter 8, Section 12, para. 7].

43. It can be inferred from the Respondent's Counter-Memorial [see in particular Counter-Memorial, Sections 1.3.7. to 1.3.13.] that it takes for granted that the whole international community was wrong, that the Security Council, the General Assembly, the Commission of Human Rights, its Sub-Commission, the Special Rapporteur on Human Rights in the Former Yugoslavia, the Vienna World Conference on Human Rights, the Committee on Human Rights and the Committee on the Elimination of Racial Discrimation, the European Union and the C.S.C.E., all

erred in their denunciation of the genocide committed against the non-Serb population of Bosnia and Herzegovina and the Respondent's responsibility for it, in particular since it had done nothing to prevent it. Unfortunately, as shown above, the converging analysis of all these bodies, as well as the apprehensions of the Court in its 1993 Orders, have been confirmed by the facts.

44. Indirectly, the Respondent's Counter-Memorial appears as an admission of these facts. In effect, it devotes only one page to examining "the obligation of the State to prevent genocide" [Counter-Memorial, p. 315] and this single page is entirely devoted to contending [erroneously - see above, this Chapter, para. 5] that a State Party to the Genocide Convention "is obliged to prevent the commission of acts of genocide *in its territory*" [Counter-Memorial, p. 315, para. 4.13.1.3.]. Therefore, it seriously misses the point and shows its incapacity to establish that it *has* complied with its duty to prevent genocide as embodied in the 1948 Convention.

The Federal Republic of Yugoslavia cannot invoke any excuse or circumstance precluding wrongfulness

45. The Respondent takes care not to invoke expressly extenuating circumstances precluding or mitigating wrongfulness which would be an ever clearer admission of responsibility for its failure to comply with its duty of prevention. However, in fact, it tries indirectly to offer some explanation for this failure. This is indeed the apparent main legal purpose of Chapter 3 of its Counter-Memorial where it contends *inter alia* that:

- it has "condemned publicly acts of violence in Bosnia and Herzegovina" [Counter-Memorial, Section 3.4.];
- it has, in particular, tried to convince "Republika Srpska" to accept the Vance-Owen plan [ibid., Section 3.5.];
- it has "taken measures" vis-à-vis "Republika Srpska" [ibid., Section 3.6.];
- it has offered shelter to Muslim refugees from Bosnia and Herzegovina [ibid., Section 3.8.]; and
- it has enabled the transport of humanitarian relief for the population of the Republic of Bosnia and Herzegovina through its territory [ibid., Section 3.9.].

46. These allegations have already been dealt with in other parts of this Reply [see: Chapter 10, Sections 1, 2 and 3]. Suffice it to show briefly here that none of these

"defences" amount to prevention of genocide, nor to circumstances precluding wrongfulness.

47. In Section 3.4. of its Counter-Memorial [pp. 277-282], the Respondent extensively quotes statements made by Yugoslav or Serbian officials condemning acts of violence in Bosnia and Herzegovina and inviting all "warring parties" to suspend hostilities. This calls for three main remarks:

- *Firstly*, most of these statements are directed at "armed hostilities" much more than at "ethnic cleansing" as such; it can be expected that the drafters of the Counter-Memorial have searched extensively for all existing documents of relevance to this point and it is revealing that only three appear to condemn explicitly "ethnic cleansing" [Counter-Memorial, paras. 3.4.1.1., 3.4.1.2., and 3.4.1.5. to 3.4.1.9.; see below, Chapter 16].
- *Secondly*, many of the allegations made by the Respondent in this passage are erroneous or misleading. Thus, it affirms that "the FRY accepted the observers at its airfields in Batajnica, Kraljevo, Podgorica, Pristina, Surcin, Nis, Ponikve and Berane, as well as other airfields to which UNFROPOR requested access" [Counter-Memorial, para. 3.4.1.5., p. 278]; what it omits to recall is that international observers were not allowed to survey the border in sufficient number, and that, consequently, the supplies continued massively [see Chapter 10, Section 2]. Moreover, the Security Council has continuously condemned the Respondent for its non-compliance with its Resolution 752 (1992) and its subsequent resolutions demanding the immediate cessation of all outside interferences in Bosnia and Herzegovina and for any support to Serb paramilitary forces [see: this Chapter, paras. 34-37]; in particular, in a statement made on 17 March 1993, the President of the Security Council noted that since the prohibition of flights over Bosnia and Herzegovina by its resolution 781 (1992), no less than 465 violations of the no-fly zone had been reported and indicated that:

> "The Council has mandated its President to convey *to the Minister for Foreign Affairs of the Federal Republic of Yugoslavia (Serbia and Montenegro)* and to the leader of the Bosnian Serbs its deepest concern about the above-mentioned developments, and its demand that they take *immediate action to prevent* any repetitions of these attacks." [United Nations, *Statement by the President of the Security Council*, S/25426, 17 Mar. 1993, emphasis added].

- *Thirdly*, in any case, the mere fact that, from time to time, officials in Belgrade have paid lip service to condemnation of ethnic cleansing in order to please international public opinion certainly cannot be seen as a defence, since these statements are clearly contradicted by *the facts*: not only has the Federal Republic of Yugoslavia not prevented genocide [see above in this Chapter], but it has incited to the commission of genocide [see Chapter 10] and has committed genocide itself, both directly through its organs and through its surrogates [*ibid.*, Sections 1 and 2], or by aiding and abetting its perpetrators [*ibid.*, Section 3].

48. Moreover, the duty to prevent genocide cannot be equated with a mere duty to condemn genocide verbally. As recalled by the Court in its Order of April 8, 1993, States Parties to the 1948 Convention "are under a clear obligation *to do all in their power* to prevent" acts of genocide [*ICJ Rep.*, 1993, para. 45, p. 22; emphasis added; see also this Chapter para. 13]. In the circumstances of the present case, the Federal Republic of Yugoslavia indeed had the power to do much more to prevent genocide than merely issuing sparse and qualified statements condemning "ethnic cleansing". However, the Court deemed it necessary to reiterate its indication that the Respondent must "take all measures within its power to prevent commission of the crime of genocide" [*ICJ Rep.*, 1993, p. 24] and to require effective implementation of the measures by the Respondent in its second Order of 13 September 1993 [*ICJ Rep.* 1993, p. 24].

49. As for the Vance-Owen Plan episode [see: Counter-Memorial, Section 3.5., pp. 282-287], Bosnia and Herzegovina has shown in the previous Chapter of this Reply:

I: that the Federal Republic of Yugoslavia in fact exerted a decisive influence over "Republika Srpska";
II: that this episode was indeed entirely unique, in the fact that the Respondent failed to direct its surrogates to act in conformity with its views; and
III: that it is far from certain that the Yugoslav Government had not, behind the scenes acted contrary to its public declarations [see Chapter 10, Section 2].

Moreover, and in any event, the Respondent's aid to "Republika Srpska", and to Serb paramilitaries in Bosnia and Herzegovina and Croatia, did not cease after Pale supposedly refused to comply with Yugoslav "demands" [*ibid.*, paras. 127-130], which shows clearly that the argument is devoid of any merit [if it must be seen] as a defence against the accusation of non-prevention.

50. The Federal Republic of Yugoslavia also prides itself on having offered shelter to Muslim refugees from Bosnia and Herzegovina [Counter-Memorial, Section 3.8, pp. 291-292]. This assertion calls for only very brief remarks:

- *firstly*, the figures are modest compared to the scale of the tragedy (according to the Respondent, there have been 18,333 Muslim refugees from Bosnia and Herzegovina in Serbia) [see: Counter-Memorial, p. 291, para. 3.8.1.1.];
- *secondly*, such offer of shelter might be seen as an attempt to "cure" the effects of genocide but not to prevent it, while it must be stressed again that the Respondent was in a position to do so;
- thirdly and most importantly, it very unfortunately appears that the people which had hoped to escape genocide in Serb-controlled areas in Bosnia and Herzegovina and to find shelter in Serbia have been dramatically disappointed.

51. As a matter of fact, these so-called "refugees" were packed in camps where they were ill-treated and sometimes killed. Thus, the Humanitarian Law Center, a respected Yugoslav citizens' organisation based in Belgrade, concludes a very documented and carefully drafted study devoted to "Violations of Refugee Rights in Serbia and Montenegro", by writing: "[t]he Humanitarian Law Center has on record, especially for Serbia, many cases of serious violations of refugee rights. Among the gravest are the massive return of refugees from the border, expulsions, including unlawful deportations, and arrests and trials" [*Spotlight Report*, No. 20, Oct. 1995, p. 14, Annex 279] as is clear from the text, these conclusions apply mainly to Muslim refugees [see also "Harassment of Moslems in Serbia and Montenegro", *Spotlight Report*, No. 4, 10 May 1993, Annex 280]. This was, for instance, the case for the refugees from east Bosnia and Herzegovina in Montenegro, who were illegally arrested and taken back to Bosnia, to a prison camp in Foča [see: Chapter 8, Section 12]. Moreover, camps in the Federal Republic of Yugoslavia were, throughout the war, used to expel non-Serbs to third countries [ibid.]. This, indeed, has nothing to do with preventing genocide; on the contrary, it is part of the whole pattern of genocide committed by the Federal Republic of Yugoslavia.

52. It is quite extraordinary for the Respondent to allege that "[t]he FR of Yugoslavia [has enabled] the transport of humanitarian relief for the population of the Republic of Bosnia and Herzegovina through its territory" [Counter-Memorial, Section 3.9., pp. 292-293]. In reality, the Respondent has been repeatedly and strongly condemned by the Security Council for its prevention, both directly and through its surrogates in Bosnia and Herzegovina and in particular through the Serb paramilitary forces, of

humanitarian relief being conveyed to Muslim populations in Bosnia and Herzegovina [see *e.g.*: United Nations, *Security Council Resolution 770 (1992)*, S/RES/770, 13 Aug. 1992; or *Resolution 819 (1993)*, S/RES/819, 16 Apr. 1993; and United Nations, *Statement by the President of the Security Council*, S/25162, 25 Jan. 1993; S/25302, 17 Feb 1993; S/25334, 25 Feb. 1993; S/25302, 26 Feb. 1993; S/25520, 3 Apr. 1993; S/26134, 22 July 1993; etc.].

53. The fact is that, in spite of its denials, the Federal Republic of Yugoslavia has not made the slightest effort to prevent genocide. This is only logical: one cannot at the same time commit genocide and prevent it. It appears, therefore, with stark clarity that the Respondent has failed to comply with one of the most important duties incumbent upon States Parties to the Genocide Convention and is fully responsible for this undeniable failure.

3. The Federal Republic of Yugoslavia's failure to punish genocide and related acts

54. As recalled above [Section 1, para. 2], the Respondent seems to accept that it has a duty, under the 1948 Convention, to punish the crime of genocide. However, here again, it endeavours to interpret this duty in the most narrow sense. It therefore seems indispensable to ascertain the meaning and scope of this obligation before showing that the Federal Republic of Yugoslavia has not complied with it.

Meaning and scope of the duty to punish genocide under the 1948 Convention

55. As a matter of principle, the obligation to punish the crime of genocide is provided for in a general form by Article I of the Convention:

> "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake (...) to punish." [Genocide Convention, Art. I].

However, while the duty to prevent genocide is not specified by the Convention, the duty to punish is explained and elaborated upon in Articles IV, V and VI.

56. Curiously, the Respondent mentions Articles V and VI [see: Counter-Memorial, para. 4.11.1.2., p. 312; and Counter-Memorial, Sections 4.15 and 4.16, pp. 316-317] but is mute regarding Article IV of the Convention. This muteness is highly surprising

since this provision is so evidently relevant to the interpretation of the duty to punish.

57. Article IV of the Convention provides that:

> "Persons committing genocide or any other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

58. Article IV is important since it makes clear that as the Court recalled, it "contemplates the commission of an act of genocide by 'rulers' or 'public officials'" [Judgment of 11 July 1996, para. 32], who must be punished as well as private persons. Moreover, the expression "responsible rulers" was discussed during the *travaux préparatoires* and it must be inferred from the debate in the Sixth Committee of the General Assembly, that it must be interpreted in a broad sense [see *e.g. G.A.O.R.*, Sixth Committee, Ninety-second and Ninety-third meetings, 5 and 6 November 1948, pp. 301-322]. It appears, therefore, that it is incumbent upon the Federal Republic of Yugoslavia not only to punish private individuals who have committed genocide and related acts, but also "responsible rulers" in the broad sense, including its own Head of State, the Serbian President or other officials, such as Ministers or Members of Parliament, who as shown in Chapter 10 of this Reply, have incited to genocide and/or have been accomplice to genocidal acts [see Chapter 10, *e.g.* paras. 12, 15, 31, 35, 51, 65, 66, 71ff., 132]. Similarly, this provision makes it clear that the Respondent cannot allege that it cannot punish members of the so-called "government" in Pale under the fallacious pretext that "Republika Srpska" is a sovereign State (*quod non*) [see: Chapter 10, paras. 81ff.]: whatever the legal status of these "officials", the Respondent was and is under a duty to punish them if they are responsible for acts listed in Article III and if it is in a position to to do so.

59. This raises, however, a more general question. Commenting on Article VI of the Convention, the Respondent repeatedly asserts:

- that a State Party to the Genocide Convention must "try punishable acts committed *in the territory of that State*" [Counter-Memorial, para. 4.14.1.2., p. 316, emphasis added], or
- that "the State on the territory of which a punishable act has been committed is obliged to punish the perpetrators" [*ibid.*, para. 4.15.1.2.], thus clearly implying

that a State has no duty to punish the authors of genocidal acts committed outside its territory.

60. To support this assertion, which has already been commented upon above [paras. 4 to 9] with regard to both its duty to prevent and to punish genocide, the Respondent invokes the rejection in the Sixth Committee of the General Assembly in 1948 of an amendment proposed by Iran instituting the principle of universal punishment [Counter-Memorial, para. 4.15.1.3., p. 317]. This is quite a distinct question which, in fact, is essentially dealt with in the second paragraph of Article VII.

61. Indeed, as the Court has noted, "as to the territorial problems linked to the application of the Convention, (...) the only provision relevant to this, Article VI, merely provides for persons accused of one of the acts prohibited by the Convention to 'be tried by a competent tribunal of the State in the territory of which the act was committed'(...)" [Judgment of 11 July 1996, para. 31]. But this is the only provision which, so, restricts the territorial scope of the obligation to punish genocide.

62. Neither,

- Article I, which imposes upon the Contracting Parties a very general duty to punish,
- nor Article V, which provides that the Contracting Parties must enact "the necessary legislation (...) to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III",
- nor the other element of Article VI, which contemplates trial of persons charged with these same acts "by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction",
- nor the second paragraph of Article VII according to which "[t]he Contracting Parties pledge themselves (...) to grant extradition in accordance with their laws and treaties in force", are thus territorially limited.

There is no doubt that they must not be construed as being thus limited.

63. Bearing in mind the object and purpose of the Convention, the Court has recalled that

> "the rights and obligations enshrined by the Convention are rights and obligations *erga omnes*. The Court notes that the obligation each State thus has to prevent *and to punish* the crime of genocide

> is not territorially limited by the Convention." [Judgment of 11 July 1996, para. 31, emphasis added].

64. This clearly means that even if the Respondent is not obligated to have its own courts judge persons guilty of genocide if the acts and related acts have not been committed in its territory (but it has such an obligation for the acts that have been committed in its territory - and many have been) [see *e.g.* Chapter 8, Section 12, and Chapter 10, paras. 46-49], it is certainly not prevented from doing so. Furthermore, even if it does not prosecute perpetrators in its own courts, it nevertheless has a strict obligation to punish them either by extraditing them or by transferring them to the International Criminal Tribunal for Former Yugoslavia established by Resolutions 808 (1993) and 827 (1993) of the Security Council.

65. It must be recalled in this respect that according to Article 4, paragraph 1, of its Statute, the International Tribunal has "the power to prosecute persons committing genocide" as defined in the two subsequent paragraphs which reproduce *verbatim* the provisions of Articles II and III of the 1948 Convention. The Tribunal therefore appears as the "international penal tribunal" provided for in Article VI of this same Convention.

66. The Respondent does not appear to deny this last point since it prides itself on having deferred one individual to the ICTFY upon request of Trial Chamber I [see: Counter-Memorial, Section 3.10., pp. 293-294]. Although this person was charged with serious violations of humanitarian law and not with genocide, this seems to imply that the Respondent accepts that it is under a duty to defer persons charged with any of the offenses provided for in Articles 2 to 5 of the Statute of the Tribunal, all the more since the Tribunal is free to change the terms of the indictment, i.e., in particular, to sue an individual charged with crimes against humanity or serious violations of humanitarian law for a crime of genocide [see *e.g.*, ICTFY, Trial Chamber I, Review of the Indictement Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Dragan Nikolić*, Case No. IT-94-2-R61, 20 Oct. 1995, p. 20, para. 34 *in fine*; ICTFY, Trial Chamber I, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5-R61 & No. IT-95-18-R61, 11 July 1996, paras. 92-95].

67. In short:

I: the obligation to punish is not territorially limited by the Convention and the Federal Republic of Yugoslavia has a duty to punish all the authors of genocidal or related acts, whether these acts have been committed in its territory or abroad, whether they are its nationals or not, and whether they are public officials or private individuals;

II: one means of punishing these persons is to have them tried by Yugoslav courts; such trials are compulsory if genocide or the other enumerated acts have been committed in the territory of the Federal Republic of Yugoslavia (except if the accused is transferred to the ICTFY upon its request);

III: however, if the persons charged with these acts are not tried by a national tribunal, the obligation to punish them does not disappear and the Respondent is bound either to extradite them or to defer them to the ICTFY.

68. It is crystal clear that the Respondent has not complied with its obligation to punish incumbent on it by the Genocide Convention.

The Respondent has not complied with its duty to punish

69. It is apparent from the record that the Federal Republic of Yugoslavia has not punished the authors of acts of genocide and other acts enumerated in Article III of the 1948 Convention, such as conspiracy to commit genocide, incitement to genocide or complicity in genocide, even when these acts have been committed in its territory. Nor has it punished the persons who have committed these acts abroad, in particular in the territory of Bosnia and Herzegovina, when it has been in a position to do so. Nor has it cooperated with the International Criminal Tribunal in The Hague.

70. It is highly revealing that the Yugoslav Counter-Memorial does not mention any trial against an alleged perpetrator of genocidal acts conducted in a Yugoslav court. And, indeed, very few sources have reported about prosecution in the Federal Republic of Yugoslavia of crimes related to genocide against non-Serbs [see Chapter 16].

71. The most important source in this respect is the report by *Human Rights Watch/Helsinki* on "War Crimes Trials in the Former Yugoslavia", dated June 1995 ["Former Yugoslavia, War Crimes Trials in the Former Yugoslavia", *Human Rights Watch/Helsinki*, Vol. 7, No. 10, Annex 281]. Firstly, this neutral source explains that "the government of the Federal Republic of Yugoslavia and the government of the Republic of Serbia have held few war crimes trials of 'enemy forces', members of the Yugoslav Army Serbian paramilitaries or Bosnian and Croatian Serb soldiers

transiting through or visiting the FRY" [*Ibid.*, p. 38, Annex 281]. Secondly, the report describes the rare cases concerning crimes against non-Serbs, which are never qualified as genocidal acts.

72. Only two such cases are mentioned: the Lukić case and the Dušan Vučković case. Both cases reveal the artificial character of the "prosecution".

73. Milan Lukić was a volunteer soldier in a paramilitary group, allegedly responsible for an attack against non-Serb civilians travelling by train from Belgrade to the Montenegrin port of Bar, passing through a portion of Bosnian territory. As the attack, according to Serbian authorities, took place on the territory of Bosnia and Herzegovina, he was "extradited" to the "Republika Srpska". He was never taken into custody by the Bosnian Serb authorities and, reportedly, now owns a cafe in Višegrad, where he was also responsible for the rape of women in the Vilina Vlas Hotel. *Human Rights Watch/Helsinki's* report concludes that "the Serbian government's arrest and subsequent extradition of Lukić is a sham and a mockery of judicial process" [*Ibid.*, p. 40, Annex 281].

74. Dušan Vučković was the first Serbian soldier to be tried in the Federal Republic of Yugoslavia for war crimes. He was indicted for killing sixteen civilians and wounding another twenty in June 1992 in Čelopek (in Bosnia and Herzegovina), and for raping a woman living near Mali Zvornik, in Serbia. His trial began on 22 November 1994 in the town of Sabac, Serbia. According to a neutral observer sent by Human Rights Watch, "the prosecutor's questions were formulated in such a way so that the answers were more valuable for the defense than for the prosecution's case" and "[t]he feeble presentation of his case was so blatant that even the defense attorneys began to laugh" [*Ibid.*, p. 43, Annex 281]. The trial was postponed a first time, resumed in February 1995, and was then postponed indefinately.

75. Other sources mention only one other case, the trial of Milika Ceko Dačević. He was a leading member of the ultra-nationalist Serbian Radical Party and participated in ethnic cleansing operations in Serbia, Montenegro and Bosnia. He was tried only when the relations of his party with President Milosevic started to sever. He was found guilty of staging an armed rebellion in Sandžak (a region in Serbia densely populated by Muslims) but the year-long sentence was commuted by a district court judge in order to allow him to take a seat in the Federal Parliament [Patrick Bishop, *The Telegraph*, 27 Feb. 1993, Annex 282].

76. Similarly, the Federal Republic of Yugoslavia has neither prevented [see above, para. 26] nor punished public incitement to hatred against non-Serbs, while Yugoslav law forbids incitement to racial or national hatred. As noted by Special Rapporteur Tadeusz Mazowiecki, "prosecutions are not normally brought against the authors of writings and speeches which incite national or racial hatred" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, Fifth Periodic Report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/47, 17 Nov. 1993, p. 26, para. 179]. Conversely, investigations were conducted against journalists who reported on violence against non-Serbs, such as Haroun Hadžic, former President of the Sandzak Committee for the Defense of Human Rights [*ibid.*].

77. It almost goes without saying that *a fortiori* genocidal acts committed by "responsible rulers" and "public officials" of "Republika Srpska" or by members of Serbian paramilitary units in Bosnia and Herzegovina still go unpunished, even though these individuals regularly visit or reside in the Federal Republic of Yugoslavia itself [see below paras. 81-82].

78. As explained by Judge Hanne Sophie Greve in her report about the Prijedor area:

> "Numerous reports relate to violence and abuses committed by paramilitary or irregular military units or armed bandits. Local Serbian authorities time and again emphasize that these groups are not under their command or control. However, the said groups are only uncontrolled in that they do not attack Serbs without facing charges and trials. On several occasions, it has been reported that Serbian police, when called upon during and after incidents where the victims are non-Serbs, have done nothing to stop the perpetrators or to secure any evidence. The police have only told the victims that they must understand that there is no protection for non-Serbs in the Serbian-controlled community and that they had better leave it as soon as possible. Sometimes the perpetrators are said to be Serbian policemen. Whether premeditated or tacitly tolerated, the Serbian leaders de facto accept the activities of the groups as an instrument to further some overall Serbian ambitions. The same is reportedly the case when individual Serbs commit crimes against non-Serbs."
> [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. I), 28 December 1994, Annex V, "The Prijedor Report", p. 118, para. 623].

Such discrimination between Serbs and non-Serbs characterises the genocidal intent.

79. Impunity is part of the strategy aimed at encouraging all types of crimes, including rape. According to the American citizens' organisation *Human Rights Watch/Helsinki*, "the failure to punish rapists appears to be as consistent and widespread as the act of rape itself" ["Bosnia-Herzegovina, Sarajevo", *Human Rights Watch/Helsinki*, Vol. 6, No. 15, Sarajevo, Oct. 1994, pp. 12-13, Annex 137]. The

same citizens' organisation, in a report describing atrocities committed in Bosanski Samac, concludes:

> "The public nature of the abuses, and the frequency with which they take place indicates that soldiers and military units do not anticipate disciplinary action either from the international community or by their superiors. The lack of punishment of Serbian soldiers for their abuses in Bosanski Samac and other areas of Bosnia-Hercegovina implies complicity on the part of the civilian, military and police authorities of the self-proclaimed 'Republika Srpska' *as well as the military and civilian authorities in Serbia proper*. Human Rights Watch/Helsinki is not aware of any case in which Serbian forces guilty of abuses have been punished by their superiors for their crimes carried out against non-Serbs." ["War Crimes in Bosnia-Herzegovina: Bosanski Šamac", *Human Rights Watch/Helsinki*, Vol. 6, No. 5, Apr. 1994, p. 2, emphasis added, Annex 28].

According to the Commission of Experts, throughout the "Republika Srpska" the police has apparently never investigated cases of rape reported by victims [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add.2 (Vol. V), 28 Dec. 1994, Annex IX, "Rape and Sexual Assault", p. 33-34, para. 143; *ibid.*, p. 27, para. 109].

80. It is important to note here that the "Republika Srpska" was entirely in the hands of the Federal Republic of Yugoslavia [see Chapter 10, Section 2]. From this point of view, the Respondent must be held responsible for the failure of this "entity" to punish the authors of genocidal and related acts committed in the Serb-controlled areas in Bosnia and Herzegovina.

81. Moreover, Serbian paramilitary forces were based in the Respondent and their members travelled freely across the border [see Chapter 8, Section 7 and Chapter 10, paras. 65-68]. It is therefore clear that these individuals could easily have -and should have- been arrested and tried by the authorities of the Federal Republic of Yugoslavia, which could have easily done so but consistently abstained from taking such steps. Thus, to take only a few examples:

- Arkan, the notorious paramilitary leader, is a Yugoslav citizen and lives in the Belgrade area. He was formerly a member of the Serbian Parliament and he is still politically active in the Federal Republic of Yugoslavia [see above, Chapter 8, Section 7];
- Vojislav Sešelj, whose sinister paramilitary activities are also detailed above, has been a member of the Serbian Parliament since 1991 and after

unsuccessfully campaigning for the seat of President of the Republic of Serbia, was finally made the Deputy Prime Minister of Serbia in March 1998 [see Chapter 8, Section 7].

- many paramilitary units operated in the Respondent proper, in Vojvodina and Kosovo [see Chapter 10, para. 65; and Chapter 8, Section 12], and in the Sandžak [see Chapter 8, Section 12], all areas with either substantial non-Serb minorities or outright majorities.

82. Similarly, it is public knowledge that the "officials" of the "Republika Srpska" themselves have constantly travelled to and from the Respondent without being arrested or perceiving threat of arrest. Thus, the ICTFY established that both Radovan Karadžić and Ratko Mladić, respectively the so-called "President" of "Republika Srpska" and the "Commander in Chief" of its "army" have stayed in the Federal Republic of Yugoslavia on several occasions [see this Chapter, para. 88]. They were neither arrested nor tried, nor deferred to the ICTFY on these numerous occasions. For example, Ratko Mladić visited the Federal Republic of Yugoslavia in June 1997 for his son's wedding [*Agence France Presse*, June 16, 1997]. His presence was confirmed by Montenegrin Interior Minister Filip Vujanovic in a *New York Times* interview [Jane Perlez, *New York Times*, 3 Aug. 1997, pp. 2-3, Annex 283]. He returned without having been arrested.

83. Considering such a general pattern of impunity, it must be admitted that Bosnia and Herzegovina has complied with its duty to place before the Court the evidence showing the Respondent's failure to punish genocide [see: Chapter 3]. It is all the more so because:

- *firstly*, the evidence is mainly in the hands of the Federal Republic of Yugoslavia and the "Republika Sprska" authorities; the Applicant has no access to it; and
- *secondly*, it is, indeed, very difficult to prove "negative facts" (here, that the Respondent has *not* punished the authors of genocide); as has been explained, "*la preuve d'un fait négatif ne peut se faire directement: elle se ramène nécessairement à la démonstration de faits positifs*" ("It is impossible to prove directly a negative fact: such a proof necessarily amounts to establishing positive facts") [Jean Larguier, "La preuve d'un fait négatif", *Revue trimestrielle de droit civil*, 1953, p. 28].

The burden rests on the Federal Republic of Yugoslavia to prove that it has punished the authors of genocide who were within its reach. This it has not done.

84. Not only has the Federal Republic of Yugoslavia not punished genocide itself, but it has also consistently failed to cooperate with the ICTFY, thus infringing upon its obligations under Article VI of the Convention [see above, para. 65].

85. It is well-known that the Federal Republic of Yugoslavia refuses to arrest or transfer to The Hague persons indicted by the ICTFY, when they are present on its own territory.

86. The sole exception (invoked in the Respondent's Counter-Memorial under Section 3.10, pp. 293-294) is Dražen Erdemović, a soldier of the Bosnian Serb Army involved in mass killings during the fall of Srebrenica. As he was seriously wounded in Bosnia and Herzegovina, he was transferred to a hospital in Belgrade (which again reveals the logistic links between Belgrade and Pale) and then ceded by the Serbian authorities to the Tribunal. This case is absolutely unique and far from significant, since Drazen Erdemovic is actually a Croat from Bosnia and Herzegovina and had a minor position in the military hierarchy [see ICTFY, Trial Chamber I, Sentencing Judgment, *Prosecutor v. Dražen Erdemović*, Case No. IT-96-22-T, 29 Nov. 1996, paras. 92-95; and ICTFY, Trial Chamber II, Sentencing Judgment, *Prosecutor v. Drazen Erdemovic*, 5 Mar. 1998, para. 16].

87. The Federal Republic of Yugoslavia's failure to cooperate with the International Tribunal has been condemned on several occasions by the ICTFY itself, as well as by other international bodies.

88. Having recourse to the well-known "Rule 61" procedure, the ICTFY made this failure particularly apparent in the Karadžić and Mladić case. According to Trial Chamber I:

> "The Trial Chamber believes that Radovan KARADŽIĆ and Ratko MLADIĆ were in the Federal Republic of Yugoslavia on several occasions. The Prosecutor produced four letters sent by Judge Antonio Cassese, President of the International Tribunal, to Mr. Slobodan Milosevic, President of the Republic of Serbia. In those letters, on the several occasions when the accused were on the territory of the Federal Republic of Yugoslavia, President Antonio Cassese requested the assistance of the Yugoslav authorities in order to execute the warrants of arrest issued by the Tribunal. The letters related in particular to:

> - Ratko MLADIĆ's stay in Belgrade for medical attention during the second half of September 1995 [letter of 18 September 1995];
> - Radovan KARADŽIĆ's presence at Belgrade on 23 September 1995 [letter of 27 September 1995];
> - Radovan KARADŽIĆ's trip to Belgrade for official talks with President Milosevic on 24 October 1995 [letter of 23 October 1995];
> - Ratko MLADIĆ's stay in Belgrade for medical attention at the end of November 1995 [letter of 29 November 1995];
>
> The Federal Republic of Yugoslavia has never provided the requested assistance as required according to the terms of Article 29 of the Statute. In addition, the Prosecutor has noted the presence of the accused in Belgrade on several occasions, particularly, during high level meetings on 3 August 1995, 29 August 1995, and 7 February 1996. Furthermore, on 22 May 1996, President Cassese sent a letter to the President of the United Nations Security Council in which he indicated that, despite the presence of Ratko MLADIĆ in Belgrade on 21 May 1996 for the funeral of General Dorde Dukic, the authorities of the Federal Republic of Yugoslavia did not execute the warrants of arrest." [ICTFY, Trial Chamber I, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5-R61 & No. IT-95-18-R61, 11 July 1996, para. 99].

It has to be recalled that both Ratko Mladić as well as Radovan Karadžić are charged with *genocide*.

89. In other cases too, the ICTFY has clearly denounced the refusal of the authorities in Belgrade to cooperate. Thus, in the case of Mrkšić, Radić and Šljivančanin, Trial Chamber I has noted that "the evidence produced during the hearings (...) brought out the fact that the military and political responsibilities of the operation derive from very high level of authority" [ICTFY, Trial Chamber I, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Mile Mrksic, Miroslav Radic, Veselin Sljivancanin ("Vukovar Hospital")*, Case No. IT-95-13-R61, 3 Apr. 1996, p. 14, para. 35]. In the same decision, the Trial Chamber has taken note of the Prosecutor's assertion according to which: "when a Government gives refuge and support to criminals, in the eyes of the world, that Government too becomes a criminal, and that is exactly what the Belgrade Government has done in this case" [*ibid.*, p. 16, para. 40]. In its third annual Report [A/51/292, S/1996/665, 16 Aug. 1996], the ICTFY listed in Annex II all cases of non-cooperation of the Federal Republic of Yugoslavia with the ICTFY.

90. Moreover, the circumstances of the arrest of Slavko Dokmanovic illustrate the constant failure of the Federal Republic of Yugoslavia to cooperate with the ICTFY. In its decision dated 22 October 1997 on a motion for release of the accused, the Trial Chamber II made clear that:

> "The FRY has failed to pass implementing legislation that would permit it to fulfil its obligations under Article 29. It has taken the position that its constitution bars the extradition of its nationals to the Tribunal, and thus legislation which provides for the surrender of Yugoslav nationals would be unconstitutional. However,
>
> there exists in international law a universally recognized principle whereby a gap or deficiency in municipal law, or any lack of the necessary national legislation, does not relieve States and other international subjects from their international obligations; consequently, no international legal subject can plead provisions of national legislation, or lacunae in that legislation, to be absolved of its obligations; when they do so, they are in breach of those obligations.
>
> The approach taken by the FRY is also in direct conflict with Rule 58 of the Rules, which provides that the obligation to surrender accused persons shall prevail over any national legislation." [ICTFY, Trial Chamber II, Decision on the Motion for Release by the Accused Slavko Dokmanovic, *Prosecutor v. Slavko Dokmanovic*, Case No. IT-95-13a-PT, 22 Oct. 1997, pp. 18-19, para. 39].

Consequently, it was not possible to arrest the accused, who moved from Eastern Slavonia in Croatia to Sombor in Serbia between April and July 1996, most likely to escape arrest by United Nations forces. They could only arrest him when Mr. Dokmanovic re-entered the area under its administration. The ICTFY thus recognized that Rule 59 bis "was appropriate" for the arrest [*ibid.*, p. 21, para. 42], even if Rule 55, which provides for transmission to the "authorities of the State in whose territory or under whose jurisdiction or control the accused resides", has not been used before. According to Trial Chamber II, transmission of the arrest warrant to Yugoslav authorities would not have been useful anyway:

> "Furthermore, the FRY has failed or refused to execute the warrants which remain outstanding for the arrest of the three co-accused in the Indictment against Mr. Dokmanovic. Considering this failure, the utilisation of the procedure for arrest contemplated by Rule 55 would very well have been an exercise in futility." [*ibid.*, pp. 20-21, para. 42].

It is worth stressing that the failure of the Yugoslav authorities to cooperate with the Tribunal is so well-known that the transmission of an arrest warrant to them is considered as an "exercice in futility"!

91. The French newspaper *Le Monde* published on 19 December 1997 a list of all persons indicted by the ICTFY, along with their names and adresses [*Le Monde*, 19 Dec. 1997, Annex 284]. Most of them were living in the Federal Republic of Yugoslavia or in Serb-controlled areas of Bosnia and Herzegovina.

92. It must also be noted that, during the Dayton negotiations, the Respondent committed itself internationally by saying it would "ensure that the 'Republika Srpska' fully respects and complies with the provisions of the aforementioned annexes (Annex 1-A and 2)", i.e. the annexes concerning cooperation with the ICTFY [Letters of 21 November 1995, signed by Milan Milutinovic, Minister of Foreign Affairs of the FRY, addressed to the Ministers of Foreign Affairs of the Contact Group: Klaus Kinkel, German Minister of Foreign Affairs; Hervé de Charette, French Minister of Foreign Affairs; Andre Kozyrev, Russian Minister of Foreign Affairs; Malcolm Rifkind, British Minister of Foreign Affairs; Warren Christopher, US Secretary of State]. This unilateral act on the part of the Federal Republic of Yugoslavia constitutes an explicit recognition of the fact that the "Republika Srpska" is its surrogate [see above, Chapter 10, paras. 80ff.]. It also makes clear that the "Republika Srpska's" acts, at least in the matter of cooperation with the International Tribunal, are to be attributed to the Federal Republic of Yugoslavia. Indeed, the ICTFY emphasised in the Karadžić and Mladić case that:

> "Republika Srpska has not honoured its obligations to the Tribunal which also implies the failure of the Federal Republic of Yugoslavia." [ICTFY, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5-R61 & No. IT-95-18-R61, 11 July 1996, para. 100].

Consequently, the Federal Republic of Yugoslavia is responsible for its direct failure to refer to the ICTFY individuals responsible of acts of genocide and related acts; it must also be held responsible for the failure of "Republika Srpska" to cooperate with the ICTFY.

93. On many occasions, the ICTFY has vehemently complained about the total lack of cooperation on the part of the Respondent.

94. Thus, in his second annual Report, the President of the ICTFY noted that:

> "Malheureusement, certains États ont refusé toute coopération. À cet égard, il convient de mentionner en particulier certains la République fédérative de Yougoslavie [Serbie et Monténégro] ainsi que certaines autorités de facto telles que celles des Républiques auto-proclamées de Krajina et de Srpska" [ICTFY, Second Annual Report, A/50/365; S/1995/728, 23 Aug. 1995, para. 191].

In his address to the General Assembly on 19 November 1996, President Cassese again stressed that:

> "(...) some Parties to that Agreement [Dayton] have simply failed to implement it in a crucial area: the apprehension of persons indicted by the Tribunal, and their surrender to The Hague. This applies, in particular, to the Federal Republic of Yugoslavia [Serbia and Montenegro] and Republika Srpska." [United Nations, *Report of the Secretary General*, A/51PV.59, quoted by the ICTFY, in its Decision on the Motion for Release by the Accused Slavko Dokmanovic, *op.cit.* above para. 86, p. 19, footnote No. 42].

95. In its fourth Report, President Cassese has devoted several paragraphs to the problem of the non-cooperation of the Federal Republic of Yugoslavia and its surrogates with the ICTFY. After a vehement denunciation of the negative attitude of "Republika Srpska" [United Nations, *Report of the Secretary-General*, A/52/375; S/1997/729, 18 Sep. 1997, paras. 185-187], he noted:

> "De son côté, la République fédérative de Yougoslavie ne fait rien pour obliger la Republika Srpska à honorer les obligations de l'Accord de Dayton, ce à quoi elle s'était engagée et obligée, et elle n'a pas adopté de loi d'exécution en vue de coopérer avec le Tribunal. En outre, elle a fait savoir qu'elle n'en avait nullement l'intention. Elle a ostensiblement négligé d'arrêter trois officiers supérieurs qui se trouvent sur son territoire - Mrksic, Radic et Sljivancanin - tous accusés par le Tribunal en novembre 1995 d'être impliqués dans la destruction de Vukovar et le meurtre de 261 hommes non armés après la chute de la ville, et visés par des mandats d'arrêt internationaux transmis à tous les États. Les autorités serbes ont également laissé des accusés serbes de Bosnie comme Ratko Mladic, qui fait aussi l'objet d'un mandat d'arrêt international, se déplacer en toute liberté sur leur territoire, sans craindre d'être appréhendés.
>
> "En fait, tout comme la Republika Srpska, la République fédérative de Yougoslavie refuse explicitement d''extrader' de son territoire vers La Haye les personnes accusées par le Tribunal, prétendant qu'une telle 'extradition' est contraire à sa constitution et que les personnes soupçonnées de crimes de guerre seront jugées sur son territoire plutôt qu'à La Haye. Inutile de répéter qu'en invoquant sa constitution, la République fédérative de Yougoslavie ne peut s'exonérer d'un tel manquement à ses obligations, y compris les obligations conventionnelles auxquelles elle a souscrit solennellement devant la communauté mondiale à Dayton." [*ibid.*, paras. 188-189].

96. The General Assembly and the Security Council have also firmly condemned the refusal of the Federal Republic of Yugoslavia and its surrogates to cooperate with the ICTFY and, more generally, its failure to punish the authors of the genocide.

97. Thus, in its Resolution of 23 December 1994, the General Assembly both "*condemns* the continued refusal of the Federal Republic of Yugoslavia and the Bosnian Serb authorities to permit the Special Rapporteur to conduct investigations in territories under their control" [United Nations, *General Assembly Resolution*, 49/196, 23 Dec. 1994, para. 5] and "*requests* all States, in particular the Federal Republic of the Respondent, to cooperate as required under Security Council resolution 827 (1993)

with the International Tribunal in providing evidence for investigations and trials and in surrendering persons accused of crimes within the juridiction of the Tribunal" [*ibid.*, para. 10; see also United Nations, *General Assembly Resolutions*, 50/193 and 51/203].

98. The Security Council also demanded that the Respondent comply with its obligation to punish the perpetrators of genocide and to cooperate with the International Tribunal [see *e.g.* United Nations, *Security Council Resolutions 1019 (1995)*, S/RES/1019, 9 Nov. 1995, para. 8; S/RES/1034, 21 Dec. 1995, para. 12]. In particular, its President declared, on 8 May 1996 that the Council was:

> "profondément préoccupé par les refus récents de coopérer avec le Tribunal international créé en application de la résolution 827 (1993) du 25 mai 1993, en particulier par le refus de coopérer de la République fédérative de Yougoslavie décrit dans la lettre du 24 avril 1996 que le Président du Tribunal a adressée au Président du Conseil (S/1996/319)" [S/PRST/1996/23].

99. Recently, the Ministers of Foreign Affairs of the Contact Group on the former Yugoslavia (that is, the Ministers of France, Germany, Italy, the Federation of Russia, the United Kingdom and the United States) have asked:

> "instamment à la Croatie ainsi qu'à la République fédérale de Yougoslavie de respecter pleinement leurs engagements aux termes des accords internationaux et en tant que garants de l'Accord de paix de Dayton. Leur refus permanent de coopérer pleinement à la remise des personnes accusées de crimes de guerre au Tribunal de La Haye est un grave motif d'inquiétude" [New York, 24 Sep. 1997, *Documents d'Actualité Internationale,* 1997, No. 22, p. 802, Annex 285].

100. In the present Chapter, Bosnia and Herzegovina has made clear that:

- the Federal Republic of Yugoslavia is under a strict obligation to prevent and punish genocide wherever it takes place with all legal means at its disposal;
- despite this obligation, the Federal Republic of Yugoslavia failed to prevent genocide whereas it was in a position to do so, considering both its geographical position and its control over "Republika Srpska" and over the Serbian paramilitary forces;
- the Federal Republic of Yugoslavia's failure to prevent genocide has been recognized and condemned by the international community;
- the Federal Republic of Yugoslavia cannot invoke any excuse or circumstance precluding wrongfulness;

- the Federal Republic of Yugoslavia also consistently failed to punish genocide, both by its refusal to prosecute persons allegely responsible for genocidal acts, and by its lack of cooperation with the ICTFY;
- the Federal Republic of Yugoslavia is also responsible for the failure of the "Republika Srpska" to prosecute these same persons and to cooperate with the ICTFY;
- the failure on the part of both the Federal Republic of Yugoslavia and the "Republika Srpska" to punish genocide has been recognized and condemned by the international community.

PART IV

REMEDIES

CHAPTER 12

INTRODUCTORY AND PRELIMINARY OBSERVATIONS

1. Introduction

1. In the submissions presented in the Memorial, Bosnia and Herzegovina has described the remedies sought before the Court [Memorial, p. 293-295].

2. In this Part, the Applicant will thoroughly analyze these remedies and establish their legal basis. As it will be hereinafter explained, Bosnia and Herzegovina seeks a primary means of satisfaction in a declaration from the Court that the Respondent by its conduct as described in the previous pages, has violated and, in some respects, continues to violate its legal obligations under the Genocide Convention. However, in as much as the Respondent has caused enormous material and immaterial damages to the people and the State of Bosnia and Herzegovina and is continuing, in some respects, its unlawful conduct, the Applicant also respectfully requests the Court to adjudge and declare that the Federal Republic of Yugoslavia has the obligation to make full reparation to Bosnia and Herzegovina for all injury caused by its illegal acts and to cease its violations of the Convention.

3. The Applicant reiterates its request, contained in submission No. 7 of the Memorial [Memorial, p. 294], to reserve to a subsequent phase of the proceedings the determination of the exact amount of the reparations owed by the Respondent as a result of the international responsibility incurred for its violations of the Genocide Convention. In the *Fisheries Jurisdiction* case, the Court stated that:

> "[i]t is possible to request a general declaration establishing the principle that compensation is due, provided the claimant asks the Court to receive evidence to determine, in a subsequent phase of the same proceedings, the amount of damage to be assessed." [*Fisheries Jurisdiction (Federal*

Republic of Germany v. Iceland), Merits, Judgement, ICJ Reports 1974, p. 204].

4. This way of proceeding has already been followed by the Court in several cases [see, for example: *Corfu Channel, Judgement of April 9th, 1949, ICJ Reports, 1949,* p. 26; *United States Diplomatic and Consular Staff in Teheran (United States of America v. Iran), Merits, Judgement, I.C.J. Reports 1980,* p. 46; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgement, I.C.J. Reports 1986,* pp. 142-143 and 149]. The Applicant considers this also to be the most appropriate in the present instance.

2. General international law is applicable for the determination of the legal consequences of the internationally wrongful acts committed by the Respondent

5. The Genocide Convention contains no provision concerning the consequences of its violation by the High Contracting Parties. This must obviously not be read as excluding State responsibility for breaches of the Convention. It is self-evident that a State continuously violating a norm has the obligation to cease its illegal conduct. Moreover, as was established by the Permanent Court of International Justice:

> "the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself." [*Factory at Chorzów, Jurisdiction, Judgement No. 8, 1927, P.C.I.J., Series A*, No. 9, p. 21].

6. In deciding the legal consequences of the wrongful acts committed by the Respondent, the norms of general international law concerning State responsibility are to be applied. As the Court itself has recently stated:

> "an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of State responsibility. (...) It is moreover well established that, when a State has committed an internationally wrongful act, its international responsibility is likely to be involved whatever the nature of the obligation it has failed to respect (...)." [*Gabcíkovo-Nagymaros Project (Hungary v. Slovakia), Judgement, 25 September 1997,* para. 47].

7. Similarly, in a case opposing New Zealand and France on the alleged violation by France of an Agreement concluded after the well-known *Rainbow Warrior* incident, the Arbitral Tribunal had to decide *inter alia* on a dispute concerning the law applicable to the case, whether the law of treaties or the law concerning State

responsibility. In affirming that both were relevant in that specific case, the Tribunal noted that:

> "the legal consequences of a breach of a treaty, including (...) the appropriate remedies for breach, are subjects that belong to the customary Law of State Responsibility.
> The reason is that the general principles of International Law concerning State responsibility are equally applicable in the case of breach of treaty obligation, since in the international field there is no distinction between contractual and tortious responsibility, so that any violation by a State of any obligation, of whatever origin, gives rise to State responsibility and consequently, to the duty of reparation." [*Rainbow Warrior case (New Zealand v. France), Arbitral Award, 30 April 1990*, in *International Law Reports (Cambridge), Vol. 82 (1990), p. 499*, para. 75].

8. The norms concerning State responsibility have been developed by numerous judicial decisions, including some very important ones issued by this Court, and by an extensive legal literature. In the Applicant's opinion, special reference ought to be made to the relevant works by the International Law Commission which have led to the provisional adoption, on first reading in 1996, of Draft Articles on State Responsibility, which essentially intend to codify general international law in this field [United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, pp. 125-151]. The Court itself, in the recent *Gabcíkovo-Nagymaros Project* case, has made extensive reference to the aforementioned Draft Articles [*Gabcíkovo-Nagymaros Project (Hungary v. Slovakia), Judgement, 25 September 1997,* for example at paras. 47, 50, 51, 52, 54, 57, 79, 83].

3. Genocide is a particularly serious internationally wrongful act which entails a special regime of State responsibility

9. It is important for the Applicant to recall, at this stage, the gravity of the international wrongful acts committed by the Federal Republic of Yugoslavia. Genocide aims at the destruction of entire human groups and, as such, it

> "shocks the conscience of mankind, results in great losses to humanity (...) and is contrary to moral law and to the spirit and aims of the United Nations" [United Nations, *General Assembly Resolution 96 (I) of 11 December 1946, Resolutions Adopted by the General Assembly during the Second Part of its First Session, 23 October-15 December 1946,* pp. 188-189; see also the Preamble of the Genocide Convention and the *dicta* by this Court in *Reservations to the Genocide Convention, Advisory Opinion, I.C.J. Reports 1951,* p. 23, also cited in this case: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*

(Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgement, 11 July 1996, para. 31].

The International Law Commission has expressly qualified genocide as an "international crime of State" in Article 19, paragraph 3 (c) of the Draft Articles on State Responsibility to denote its particular gravity as an internationally wrongful act which "results from the breach by a State of an international obligation (...) essential for the protection of fundamental interests of the international community" [see *Yearbook of the International Law Commission, 1976, Vol. II, Part 2*, pp. 95 and 121]. It must be noted that, in so doing, the Commission intended to *codify* the existing general international law on State responsibility [*ibid.*, especially at p. 121]. Moreover, by its very own nature and as another indication of its gravity, genocide causes enormous damages to the victims, individuals and States: as it has been proven in the previous Chapters, this was also the case for the illegal acts committed by the Respondent.

10. The aforementioned repeated declarations on the gravity of genocide cannot go unheeded. They must be reflected in the regime of responsibility applied to a State having committed such horrendous acts. As the International Law Commission recently stated, concerning the "international crimes of State", of which genocide is a prime instance:

> "The effect of the introduction of article 19 of Part One has been to recognize a category of wrongful acts to which, because of their seriousness, special consequences should attach. Whether that category is called 'crimes', or 'exceptionally grave delicts' is immaterial in the sense that, however termed, special consequences should attach: otherwise there is no point in distinguishing this category from other internationally wrongful acts." [United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 165].

11. Therefore, the Applicant considers that the gravity of the unlawful acts committed by the Federal Republic of Yugoslavia should be reflected in the amount of the damages to be paid. That gravity should also ensure that the Respondent not be allowed to avail itself of certain limitations to its responsibility; on the contrary, the Respondent should, as far as possible and without restrictions, remove all the consequences of its internationally wrongful acts [see below, Chapters 13 and 14 and articles 51 and 52 of I.L.C.'s Draft Articles on State Responsibility, in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 146].

12. The Applicant also wishes to point out that this conclusion does not in any way modify its previous statement that the current proceeding is *not* a criminal trial and that the responsibility of a State for an exceptionally grave breach such as genocide is *not* criminal responsibility, but a "special form" of international responsibility [Memorial, Section 5.3.2., pp. 209-213, and particularly I.L.C.'s Special Rapporteur, Roberto Ago's statement reproduced *ibid.*, p. 211; see also above, Part I, Chapter 2].

CHAPTER 13

SATISFACTION

1. The judgment of the Court as a primary means of satisfaction

1. In submissions No. 1 to 4 of its Memorial, the Applicant requested the Court to adjudge and declare that the Respondent by its conduct has violated and, under some aspects, continues to violate its legal obligations under the Genocide Convention. Specifically, the Applicant requested the Court to adjudge and declare:

> "1.That the Federal Republic of Yugoslavia (Serbia and Montenegro), directly, or through the use of its surrogates, has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide, by destroying in part, and attempting to destroy in whole, national, ethnical or religious groups within the, but not limited to the, territory of the Republic of Bosnia and Herzegovina, including the Muslim population, by:
>
> killing members of the group;
> causing deliberate bodily or mental harm to the members of the group;
> deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> imposing measures intended to prevent births within the group;
>
> 2. That the Federal Republic of Yugoslavia (Serbia and Montenegro) has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by conspiring to commit genocide, by complicity in genocide, by attempting to commit genocide and by incitement to commit genocide;
>
> 3. That the Federal Republic of Yugoslavia (Serbia and Montenegro) has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by aiding and abetting individuals and groups engaged in acts of genocide;
>
> 4. That the Federal Republic of Yugoslavia (Serbia and Montenegro) has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by virtue of having failed to prevent and to punish acts of genocide" [Memorial, pp. 293-294].

2. The Applicant fully maintains that such a declaration by the Court of the wrongfulness of the acts committed by the Respondent, as precisely described above in the present Reply, will remove any uncertainty as to the legal status of this conduct and consequently will serve as a primary means of satisfaction. The value of a declaration of this kind was recognised by the Court itself in the *Corfu Channel* case:

> "THE COURT, (...) Gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction." [*Corfu Channel case, Judgment of April 9th, 1949, ICJ Reports, 1949,* p. 36].

3. It was also pointed out by the arbitral tribunals in the *Carthage* and *Manouba* cases:

> "pour le cas où une Puissance aurait manqué à remplir ses obligations, soit générales, soit spéciales, vis-à-vis d'une autre Puissance, la constatation de ce fait, surtout dans une sentence arbitrale, constitue déjà une sanction sérieuse" [*Carthage* and *Manouba* cases, *United Nations Reports of International Arbitral Awards*, Volume XI, p. 460 and *ibid.*, p. 475];

and in the *Rainbow Warrior* case, where the arbitral tribunal, after referring to the two above mentioned precedents, reached the following conclusion:

> "For the foregoing reasons the Tribunal:
>
> declares that the condemnation of the French Republic for its breaches of its treaty obligations to New Zealand, made public by the decision of the Tribunal, constitutes in the circumstances appropriate satisfaction for the legal and moral damage caused to New Zealand." [*Rainbow Warrior case (New Zealand v. France), Arbitral Award, 30 April 1990*, in *International Law Reports (Cambridge), Vol. 82 (1990), p. 499*, para. 123].

4. The Applicant is of the opinion that such a declaration by the Court would also serve other purposes, from a historic point of view and as a valuable contribution to the reconciliation process in the region; in addition, by clarifying the normative value of the Convention, it will be extremely helpful *in futuro* in the prevention of genocide [see also above, Chapter 1, Section 1].

5. However, it is necessary in this case to achieve more than these precedential effects. The acts committed by the Federal Republic of Yugoslavia constitute exceptionally serious violations of the Genocide Convention; under some aspects, they are

continuing and in any case they have caused considerable material and immaterial damage to Bosnia and Herzegovina and its nationals. In this sense, the present case is different notably from the *Corfu Channel* case, where the violation by the United Kingdom of Albanian territory and sovereignty had caused no material loss [*Corfu Channel case, Judgment of 9 April 1949, ICJ Reports, 1949,* pp. 32-35]. For these reasons, the requests contained in the following section and in Chapters 14 and 15 are to be considered as an integral part of the Applicant's submissions.

2. Other means of satisfaction

6. The judgment on the wrongfulness of the acts committed by the Federal Republic of Yugoslavia, as requested from the Court in the previous Section, would not exhaust all the means of satisfaction the Applicant considers to be entitled to receive.

7. Indeed, as it will be precisely demonstrated in the following Chapter, there can be absolutely no doubt that, as a consequence of the illegal acts of the Respondent, the Applicant has the right to obtain full reparation for the damages caused. However, such a reparation, under the forms of a restitution in kind and of a compensation [as requested below in Chapter 14, Section 3 respectively Section 4] would never "wipe out all the consequences of the illegal act" [in the words of the Permanent Court of International Justice in *Factory at Chorzów, Judgment of 13 September 1928, P.C.I.J., Series A*, No. 17, p. 47; see further Chapter 14, Section 2] if the moral and legal damage suffered by Bosnia and Herzegovina were not taken in full consideration.

8. The principle according to which reparation may include satisfaction for the moral and legal damage suffered by the injured State has been applied several times by arbitral tribunals [see, for instance, the famous *I'm Alone* case (Canada v. United States of America), Decisions of 30 June 1933 and 5 January 1935, in *United Nations Reports of International Arbitral Awards, Volume III, p. 1609*, especially at p. 1618] and in State practice [see, for example, the Ruling by the Secretary-General of the United Nations, on 6 July 1986, in the first phase of the *Rainbow Warrior* case, in *United Nations Reports of International Arbitral Awards, Volume XIX, p. 197*]. It has also been recently recognised by the International Law Commission in its Draft Articles on State Responsibility:

> "Article 45 - Satisfaction

> 1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act satisfaction for the damage, in particular moral damage, caused by that act, if and to the extent necessary to provide full reparation.
>
> 2. Satisfaction may take the form of one or more of the following:
>
> a) an apology;
> b) nominal damages;
> c) in cases of gross infringement of the rights of the injured State, damages reflecting the gravity of the infringement;
> d) in cases where the internationally wrongful act arose from the serious misconduct of officials or from criminal conduct of officials or private parties, disciplinary action against, or punishment of, those responsible." [Article 45, paras. 1 and 2, in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 143; see also its commentary containing a thorough research on the topic, in *Yearbook of the International Law Commission, Volume II, Part Two, 1993*, pp. 76-81].

9. The wrongful acts of an exceptionally serious character, committed by the Federal Republic of Yugoslavia, have undermined the honour, the dignity and the prestige of the State of Bosnia and Herzegovina. For years, and even after this case was submitted to the Court and after the Court had issued two Orders containing *interim* measures, the Respondent has repeatedly violated the Genocide Convention on the territory of Bosnia and Herzegovina, challenging Bosnia and Herzegovina's sovereignty over that territory and scorning its authorities and its people. Moreover, in failing to prevent the commission of genocide, in failing to punish its authors and by committing itself -directly and through its agents- genocidal acts, the Federal Republic of Yugoslavia has acted in complete disregard of its engagements towards all the Parties to the Genocide Convention and the International Community as a whole, and specifically towards Bosnia and Herzegovina as a Party to the Convention and as a member of the International Community. The result is overwhelming: the worst atrocities Europe has witnessed since the Second World War.

10. Consequently, in addition to the judgment on the wrongfulness of the acts committed by the Respondent [see above, Section 1] the Applicant requests the Court to take into account Bosnia and Herzegovina's right to obtain satisfaction for the moral and legal damage suffered, also under the following forms.

11. First, in as much as the illegal conduct of the Respondent has resulted in a gross infringement of the rights of Bosnia and Herzegovina, the Court should recognise that Bosnia and Herzegovina has the right to obtain payment by the Respondent of damages reflecting the gravity of this infringement [see Article 45, paragraph 2, (c)

in I.L.C.'s Draft Articles on State Responsibility, quoted above]. It must be stressed that such damages would not be a compensation for the material prejudice caused, but would have a symbolic nature both in connection with, and as a direct consequence of the declaration by the Court that the Respondent has violated -and continues to violate- the Genocide Convention [as outlined in the previous Section], would serve as an appropriate means of satisfaction. As was clarified by the International Law Commission, this kind of satisfaction is given to the injured party:

> "over and above the actual loss, when the wrong done was aggravated by circumstances of violence, oppression, malice, fraud or wicked conduct on the part of the wrongdoing party" [*Yearbook of the International Law Commission, Volume II, Part Two, 1993*, p. 79].

12. The Applicant is convinced that this description by the International Law Commission corresponds exactly to the present case, considering the uninterrupted repetition of genocidal acts over many years until December 1995, given the clear pattern of the atrocities committed, and the fact that genocide is qualified as one of the gravest breaches of international law, shocking the conscience of mankind and contrary to moral law and to the spirit and aims of the United Nations, and considering furthermore that Bosnia and Herzegovina has been the direct victim of these violations and that its rights under the Convention have been grossly infringed by the Respondent.

13. Secondly, the Respondent should punish all its agents (including constitutionally responsible rulers and the highest ranked public officials) and all the private individuals under its jurisdiction who have committed genocide or other corollary crimes in the territory of Bosnia and Herzegovina [see Article 45, paragraph 2, (d) in I.L.C.'s Draft Articles on State Responsibility, quoted above]. The Applicant wishes to point out that simple disciplinary measures taken against the officials responsible would not be enough, as the illegal conduct attributable to those individuals is of a *criminal* character. Moreover, Yugoslavia has the means of implementing such an obligation: its Criminal Code not only criminalises genocide [see Institute of Comparative Law, *Collection of Yugoslav Law*, Criminal Code (Beograd: 1964), Chapter 11, Art. 124, p. 75], but also provides that a citizen of Yugoslavia may be punished "when he commits abroad a criminal offence" [*Ibid.*, Chapter 8, Art. 93, pp. 62-63]. Such a punishment would not only be the clearest form of disavowal of the actions of these individuals, but would also be a re-affirmation of the normative value of the provisions of the Genocide Convention.

14. In this respect, it must be highlighted that the duty of the Respondent to punish the individuals responsible of genocide and corollary crimes does not only find its source in the Genocide Convention [as was shown above in Chapter 11, but also, as shown here, in the *secondary norm* of international customary law concerning State responsibility which establishes a new legal relation between the State having committed an internationally wrongful act and the injured State. In other words, such a punishment would not only be a way of ensuring full compliance with the obligations of the Genocide Convention -as requested by the Applicant in its submission No. 5 [Memorial, p. 294]- but it would also be the fulfilment of the obligation to provide appropriate satisfaction for the damage caused to Bosnia and Herzegovina.

15. Furthermore, in as much as there are today judicial instances charged, at the international level, of prosecuting the individuals responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia, i.e. the ICTFY, the Applicant is of the opinion that the Respondent should implement the latter obligation by delivering the criminals within its jurisdiction or control to that judicial instance.

16. The Respondent could not invoke any justification for the failure to provide satisfaction to Bosnia and Herzegovina in the forms described above. Notably, satisfaction could not be dismissed alleging that they "impair the dignity of the State" [see Article 45, paragraph 3 in I.L.C.'s Draft Articles on State Responsibility]. In the words of the International Law Commission, by reason of its illegal acts of an exceptionally serious character, "the wrongdoing State has itself forfeited its dignity" [United Nations, *Report of the International Law Commission to the General Assembly*, 1996, Doc. A/51/10, p. 168; see also Article 52, (b) of the I.L.C.'s Draft Articles on State Responsibility, in *ibid.*, p. 146].

CHAPTER 14

THE DUTY TO REPAIR THE DAMAGES AND LOSSES CAUSED

1. Introductory remarks

1. In submissions No. 6 and 7 of its Memorial, the Applicant requests the Court to adjudge and declare:

> "6. That the Federal Republic of Yugoslavia (Serbia and Montenegro) must wipe out the consequences of its international wrongful acts and must restore the situation existing before the violations of the Convention on the Prevention and Punishment of the Crime of Genocide were committed;
>
> 7. That, as a result of the international responsibility incurred for the above violations of the Convention on the Prevention and Punishment of the Crime of Genocide [see submissions 1 to 4], the Federal Republic of Yugoslavia (Serbia and Montenegro) is required to pay, and the Republic of Bosnia and Herzegovina is entitled to receive, in its own right and as *parens patriae* for its citizens, full compensation for the damages and losses caused, in the amount to be determined by the Court in a subsequent phase of the proceedings in this case." [Memorial, p. 294].

2. The Applicant fully maintains its request for full reparation by the Respondent for all material and immaterial damages and losses caused by the violations of the Genocide Convention. In the words of article 42, paragraph 1 of the International Law Commission's Draft Articles on State Responsibility:

> "The injured State is entitled to obtain from the State which has committed an internationally wrongful act full reparation in the form of restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, either singly or in combination." [United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 141].

Thus, this reparation should assume different forms, as was requested above in Chapter 13 and as will be described below.

2. The Respondent is obliged to make reparation for all damages caused

3. As was stated by the Permanent Court of International Justice (and recently recalled by this Court in the *Gabcíkovo-Nagymaros Project* case, para. 149):

> "The essential principle contained in the actual notion of an illegal act -a principle which seems to be established by international practice and in particular, by the decisions of arbitral tribunals- is that reparation must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed." [*Factory at Chorzów, Judgment of 13 September 1928, P.C.I.J., Series A*, No. 17, p. 47]

4. It ensues from the principle recognised by the Court in this famous *dictum* that the wrongdoing State has the obligation to make -and the injured State is entitled to receive- reparation for *all the damages* caused by its internationally wrongful acts, *and only for those*. In other terms, for an injury to be repaired, it must have a *causal link*, a "clear, unbroken connection" [in the words of the Umpire of the Mixed Claims Commission United States-Germany, see *Administrative Decision No. II (November 1, 1923),* in *United Nations Reports of International Arbitral Awards, Volume II,* p. 29] with the illegal acts committed. According to the International Law Commission:

> "For injury to be indemnifiable, it is necessary for it to be linked to an unlawful act by a relationship of cause and effect and an injury is so linked to an unlawful act whenever the normal and natural course of the events would indicate that the injury is a logical consequence of the act or whenever the author of the unlawful act could have foreseen the damage it caused." [see *Yearbook of the International Law Commission, 1993, Volume II, Part Two,* p. 69].

5. The existence of such a causal link for each of the single damages will have to be determined in the subsequent phase of the evaluation of the exact amount of compensation. However, at the present stage, it is already possible for the Court to give general guidelines, declaring which damages the Respondent ought to repair, and which kind of reparation the Applicant is entitled to receive.

6. Notably, the unlawful acts described in Part II of this Reply (and in Part 2 of the Memorial), i.e. the killing of civilians, more specifically the killing of men and of the elite, the causing of serious bodily and mental harm to individuals through, among other things, encirclement, shelling, starvation, deportation and expulsion, the imprisonment and related cruel treatment in concentration camps, the destruction of religious and cultural property, the imposing of measures intended to prevent births,

the forcibly transferring children, the rape and sexual assault, and in general the overall policy of "ethnic cleansing", as well as the failure to preventing the genocide and the failure to punish its authors, have caused considerable material and immaterial damages and losses to Bosnia and Herzegovina and its nationals. Moreover, it has been demonstrated that these acts were *aimed at causing such damages* and that these damages were *their logical consequence in the normal and natural course of the events.*

7. In addition, as was demonstrated in Part III of this Reply (and in Part 6 of the Memorial), all these acts, including the relevant intent, are attributable to the Federal Republic of Yugoslavia, as they were committed by its State organs or by persons or groups acting on its behalf.

8. Consequently, there can be no doubt that the Respondent has the legal obligation to make full reparation to Bosnia and Herzegovina for all the damages caused by these acts to its nationals and directly to the State.

9. Subsidiarily, the Applicant also wishes to point out that, even if the genocidal acts perpetrated by the "Republika Srpska" and/or the Bosnian Serb Army and/or the other armed forces fighting on the Serb side in the territory of Bosnia and Herzegovina were not to be attributed to the Respondent -which, in the view of the Applicant, is definitely not the case- the Federal Republic of Yugoslavia would still be under the obligation to make full reparation for all damages caused to Bosnia and Herzegovina and its nationals by these genocidal acts, as a consequence of its conspiracy, incitement, complicity in genocide and of its aid and encouragement to the perpetrators of genocidal acts [see above, Chapter 10, Section 2].

10. In this hypothesis the Respondent would still be responsible for its own illegal acts, especially for the indisputable aid and encouragement it has given to the "Republika Srpska", and would be under the duty to make reparation for all damages caused by these unlawful acts, i.e. for all damages which have a clear and unbroken causal link with them. This would be no more than the logical consequence of a general principle applied by the Court many times [and especially in the *Nicaragua* case: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986,* p. 65, and para. (13) of the pronouncement, in *ibid.*, p. 139; see also above, Chapter 10, 2].

11. Now, all the evidence previously presented to demonstrate that the genocidal acts are indeed attributable to the Respondent [see above, Chapters 8 and 10; Memorial, Section 6.4.2], shows without any doubt, at least, that the aid and encouragement was the implementation of a plan, aiming at the constitution of a Greater Serbia through genocide. Moreover, it demonstrates that the "Republika Srpska", the Bosnian Serb Army and the other armed forces fighting on the Serb side in the territory of Bosnia and Herzegovina would *never* have been able to achieve their genocidal purposes without the Respondent's massive aid and encouragement: this aid was not a mere concomitant factor of the enormous damages and losses suffered by Bosnia and Herzegovina and its nationals, but their decisive cause. In other words, all the injury caused by the genocidal acts committed by the "Republika Srpska", the Bosnian Serb Army and the other armed forces fighting on the Serb side in the territory of Bosnia and Herzegovina were both a logical consequence, in the normal and natural course of the events, of the aid and encouragement provided by the Federal Republic of Yugoslavia and were foreseeable (and even intended) by the Federal Republic of Yugoslavia.

12. The jurisprudence of the International Court of Justice gives striking demonstrations of the principle that a State is obliged to make reparation for all damages caused by acts which cannot be attributed to it, when those damages can still be qualified as a direct consequence of its wrongful acts.

13. In the *Corfu Channel* case, the Court found that Albania had known about the existence of a minefield in the Channel and that it had violated its obligation to warn the British warships of the danger before the explosions occurred, but could find no evidence that proved that the minefield was laid by Albania or with its connivance [*Corfu Channel, Judgment of 9 April 1949, ICJ Reports, 1949,* pp. 15-23]. However, the Court reached the conclusion that:

> "Albania is responsible under international law *for the explosions* which occurred on October 22nd, 1946, in Albanian waters, *and for the damage and loss of human life that resulted therefrom*" [emphasis added, *ibid.*, p. 36].

14. Similarly, in the *Hostages* case, the Court found that the armed attack on the United States Embassy by militants on 4 November 1979 could not be considered as in itself imputable to Iran [see *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Merits, Judgment, I.C.J. Reports 1980,* pp. 29-30], but also declared that, by failing, on that same day, to take the appropriate steps

to protect the Embassy and its staff, Iran had violated its international legal obligations [*Ibid.*, pp. 32-33]. In its pronouncement, the Court decided that:

> "the Government of the Islamic Republic of Iran is under an obligation to make reparation to the Government of the United States of America *for the injury caused to the latter by the events of 4 November 1979* and what followed from these events" [emphasis added, paragraph (5) of the pronouncement, *ibid.*, p. 46].

15. The only logical way of reading these decisions is that the State's obligation to make reparation for the injury caused by acts that were not committed by its agents (the laying of the minefield, in the first case, the attack of the Embassy by students, in the second) was an application of the principle according to which "reparation must, so far as possible, wipe out all the consequences of the illegal act": those damages were both foreseeable and the normal consequence of the State's internationally wrongful acts (Albania's failure to notify the existence of the minefield or Iran's failure to protect the Embassy and its staff). As in the present case, they would never have been caused without the State's illegal conduct.

16. Finally, the Applicant wishes to point out that the aforementioned *dictum* of the Permanent Court of International Justice in the *Factory of Chorzów* case also implies that the wrongdoer's duty to eliminate all the consequences of its unlawful acts is unamenable to restriction (as it clearly stems from the expression "so far as possible"). Notably, the State which has committed the internationally wrongful act cannot invoke either the provisions of its internal law [see Article 42, paragraph 4 of the I.L.C.'s Draft Articles on State Responsibility and the commentary in *Yearbook of the International Law Commission, 1993, Volume II, Part Two,* pp. 60-61] or the excessive burden such a reparation would cause to it [the only "extreme case" the International Law Commission has considered as constituting an exception to this principle being the one in which reparation would result "in depriving the population of a State of its own means of subsistence", see Article 42, paragraph 3 of the I.L.C. Draft Articles, introduced in 1996, in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, pp. 141-142] as justification for the failure to provide full reparation. This must be specially taken into consideration in the present instance because of the exceptional gravity of genocide as an internationally wrongful act [see above, Chapter 12].

17. Having shown its right to obtain full reparation for the damages caused, the Applicant will now describe the different forms this reparation should assume.

3. Restitution in kind

18. The Applicant requests the Court to adjudge and declare that, in principle, it is entitled to obtain from the Respondent restitution in kind for all damages caused by the genocidal acts in the territory of Bosnia and Herzegovina.

19. In the *Factory at Chorzów* case, the Permanent Court of International Justice stated that restitution in kind should consist in the re-establishment of "the situation which would, in all probability, have existed if the act had not been committed" [*Factory at Chorzów, Judgment of 13 September 1928, P.C.I.J., Series A*, No. 17, p. 47]. More recently, the International Law Commission has preferred a narrower definition as "the re-establishment of the situation that existed before the wrongful act was committed" [see Article 43 of its Draft Articles on State Responsibility in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 142], pointing out that:

> "the purely restitutive concept of restitution in kind (...), aside from being the most widely accepted in doctrine, has the advantage of being confined to the assessment of a factual situation involving no theoretical reconstruction of what the situation would have been if the wrongful act had not been committed" [commentary to Article 43, in *Yearbook of the International Law Commission, Volume II, Part Two, 1993*, p. 62].

20. Consequently, this latter definition is the one taken up by the Applicant in submission No. 6 of its Memorial [Memorial, p. 294].

21. The International Court of Justice has granted the right to restitution in kind, for example, in the *Preah Vihear* case, where it found:

> "that Thailand is under an obligation to restore to Cambodia any objects of the kind specified in Cambodia's fifth Submission [i.e.: sculptures, stelae, fragments of monuments, sandstone model and ancient pottery] which may, since the date of the occupation of the Temple by Thailand in 1954, have been removed from the Temple or the Temple area by the Thai authorities" [*Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 15 June 1962: ICJ Reports 1962,* p. 37].

22. However, the Applicant cannot but recognise that implementation of complete restitution in kind would face many obstacles in the present case.

23. Firstly, restitution in kind is often *materially impossible*. The majority of the facts described in Chapters 5 and 7 of this Reply have caused damages and losses that cannot be erased: human beings killed will never be brought to life again; acts of intimidation, torture, rape, sexual assault, imprisonment, deportation, expulsion, measures to prevent births have caused serious material and mental harms that will not disappear; environmental and economic damage to Bosnia and Herzegovina is irreversible; the memory of all the atrocities committed will stay forever.

24. The Applicant wishes to highlight that this impossibility is *not* the consequence of a fortuitous event but is the main object of the commission of genocidal acts -as they are directed to the destruction of specified groups- and that it is to be attributed to the illegal conduct of the Respondent itself. As it will be developed later, the Applicant considers that this finding should not remain without consequence in the determination of the reparation due under other forms (i.e. compensation and satisfaction).

25. Secondly, the majority of the infrastructure damaged by the genocidal acts (for example, buildings) are located in the territory of Bosnia and Herzegovina, i.e. on territory globe where Bosnia and Herzegovina exercises, to the exclusion of any other, the functions of a State. It is not for the Respondent to intervene physically in that territory, even in order to restore the situation which existed prior to the commission of its wrongful acts. Therefore, in many cases, the Government of Bosnia and Herzegovina considers that only the other means of reparation -namely, compensation- are consonant with its territorial sovereignty.

26. For these reasons, the Applicant acknowledges that, in practice, restitution in kind could only be implemented through the return by the Respondent to Bosnia and Herzegovina and its nationals of all the property and the goods stolen in connection with genocidal acts and currently in its possession and in its agents' possession.

27. The Respondent cannot be permitted to invoke any justification for its failure to grant such restitution in kind. Notably, the Respondent cannot be recognised as having the right to allege that restitution in kind would "involve a burden out of all proportion to the benefit which the injured State would gain from obtaining restitution in kind instead of compensation", or that it would "seriously jeopardise the political independence or economic stability" of the State [see Articles 43 and 52 of the I.L.C.'s Draft Articles on State Responsibility, in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc.

A/51/10, pp. 142 and 146]. In the words of the International Law Commission, referring to the category of "international crimes of State":

> "a wrongdoing State ought never to be able to retain the fruits of its crime, or benefit from a wrongdoing that is a crime, however painful or burdensome restoration might be." [Commentary to Article 52, in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 168].

4. Compensation

28. As stated in submission No. 7 of the Memorial, the Applicant considers itself to be entitled to obtain from the Federal Republic of Yugoslavia compensation for all the damages caused by its internationally wrongful acts, including the interests and the loss of profits, to the extent that the damage is not made good by restitution in kind and is "economically assessable" [see Article 44 of I.L.C.'s Draft Articles on State Responsibility, in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 142; reference is also made, especially as regards to the fact that compensation may include interests and *lucrum cessans*, to the commentary to this article in *Yearbook of the International Law Commission, Volume II, Part Two, 1993*, pp. 67-76]. According to the International Law Commission, this should cover both:

> "(a) Damage caused to the State's territory in general, to its organization in a broad sense, its property at home and abroad, its military installations, diplomatic premises, ships, aircraft, spacecraft, and the like (so-called 'direct' damage to the State);
>
> (b) Damage caused to the State through the persons, physical or juridical, of its nationals or agents (so-called 'indirect' damage to the State)." [*Yearbook of the International Law Commission, Volume II, Part Two, 1993*, p. 72].

29. The International Court of Justice has repeatedly granted such a remedy as a consequence of the commission of unlawful acts [see, for example: *Corfu Channel, Judgment of 9 April 1949, I.C.J. Reports, 1949,* pp. 23 and 36; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Merits, Judgment, I.C.J. Reports 1980,* pp. 41-42 and 45; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986,* p. 149] and has recently stated:

> "It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it." [*Gabcíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment,*

25 September 1997, para. 152; see also paragraph (2), D. of the pronouncement].

30. In the present instance, the Applicant has demonstrated that the genocidal acts described above have caused enormous damages directly to Bosnia and Herzegovina. This includes [see above Part II]:

- the loss of the State's property in the territory of Bosnia and Herzegovina, by shelling, destruction and plundering;
- especially, the destruction of Bosnia and Herzegovina's cultural patrimony, by shelling, destruction and plundering;
- irreversible harm to Bosnia and Herzegovina's environment, notably as a direct consequence of shelling; as the Court has stated: "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings including generations unborn" [*Legality of the Threat and the Use of Nuclear Weapons, Advisory Opinion, 11 July 1996,* para. 29; see also *Gabcíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment, 25 September 1997,* paras. 53 and 112];
- enormous damage to the entire Bosnia and Herzegovina's economy through the genocidal acts, including the important *lucrum cessans* caused directly by the destruction or damaging of Bosnia and Herzegovina's factors of production, natural resources and active population, which has limited and will harm for a long time Bosnia and Herzegovina's economic development.

31. Moreover, the Applicant has shown that the genocidal acts committed have caused considerable damages and losses to the people of Bosnia and Herzegovina. As *parens patriae* for its citizens and as a direct consequence of its right to obtain full reparation for the prejudice caused, the Applicant is entitled to receive payment also for those damages.

32. In the first place, this comprises all material loss, that is damage caused to the patrimony of individuals and legal persons. In the present case, reference must be made to all the acts of shelling, destruction and plundering directed against the property of private persons, both physical and juridical, having the nationality of Bosnia and Herzegovina and targeted for their belonging to non-Serb groups.

33. Secondly, compensation is due for all damages caused to the physical and moral integrity of the citizens of Bosnia and Herzegovina. As stated by the International Law Commission, the "indirect" damages caused to the State:

> "embraces both the 'patrimonial' loss sustained by private persons, physical or juridical, and the 'moral' damage suffered by such persons. It also includes, *a fortiori*, the personal injury caused to the said private parties by the wrongful act. This refers, in particular, to such injuries as unjustified detention or any other restriction of freedom, torture or other physical damage to the person, death, and so on." [*Yearbook of the International Law Commission, Volume II, Part Two, 1993*, p. 72].

34. This principle was applied by numerous arbitral decisions [see notably, about the compensation of the "mental suffering or shock" caused by violent deaths of individuals, the *Lusitania* cases, Mixed Claims Commission United States-Germany, Decision of 1 November 1923, in *United Nations Reports of International Arbitral Awards, Volume VII,* p. 35, and the *Di Caro* case, Mixed Claims Commission Italy-Venezuela, *Venezuelan Arbitrations of 1903*, in *United Nations Reports of International Arbitral Awards, Volume X,* p. 598; or, on compensation for a nervous breakdown caused by a cruel and psychological traumatic treatment against an individual by State agents from Mexico, the *William McNeil* case, Claims Commission Great Britain-Mexico, Decision No. 46 of 19 May 1931, in *United Nations Reports of International Arbitral Awards, Volume V,* pp. 164-168] and by the International Court of Justice in the *Corfu Channel* case, where it found that Albania was responsible:

> "for the explosions which occurred (...) in Albanian waters, and for the damage and loss of human life that resulted therefrom" [*Corfu Channel, Judgment of 9 April 1949, I.C.J. Reports, 1949,* p. 36; see also the assessment of the damage in *Corfu Channel, Judgment of 15 December 1949, I.C.J. Reports, 1949,* pp. 249-250].

35. In this case, there can be no doubt that the individual victims of the genocidal acts committed by the Respondent have suffered severe personal and mental harm. This holds true for the victims of killings or mass executions, and their relatives, but also for the victims -and the relatives of the victims- of acts of intimidation, rape, sexual assault, deportation, expulsion, imprisonment, measures to prevent births and to forcibly transfer children from a group to another group.

36. As stated above, the Applicant requests to reserve to a subsequent phase of the proceedings the exact determination of the amount of compensation. However, at this stage, it cannot but stress once again the enormity of the damages and losses here

described, that are the direct consequence of a widespread policy of genocidal acts implemented for years in the territory of Bosnia and Herzegovina. Furthermore, the Applicant recalls that these damages and losses are often irreversible *as a direct and foreseen consequence of the acts of Yugoslavia* and thus that compensation will have to be calculated accordingly: the impossibility to re-establish the *status quo ante*, when imputable to the conduct of the Respondent, will result in an augmentation of the prejudice that the Respondent is bound to compensate.

CHAPTER 15

THE DUTY TO CEASE THE ONGOING VIOLATIONS AND TO TAKE IMMEDIATE AND EFFECTIVE STEPS TO ENSURE FULL COMPLIANCE WITH ITS OBLIGATIONS

1. In submission No. 5 of the Memorial, the Applicant requests the Court to adjudge and declare:

> "That the Federal Republic of Yugoslavia (Serbia and Montenegro) must immediately cease the above conduct [see submissions no. 1 to 4] and take immediate and effective steps to ensure full compliance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide" [Memorial, p. 294].

2. The obligation to cease the illegal conduct is an unrestricted consequence of any internationally wrongful act having a continuing character and stems directly from a determination by the Court of such an act. The Court has expressly stated the duty to cease continuing violations of international law in several cases [see, for example, *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Merits, Judgement, I.C.J. Reports 1980,* pp. 45-46]. As it highlighted in an Advisory Opinion in 1971:

> "A binding determination made by a competent organ of the United Nations to the effect that a situation is illegal cannot remain without consequence. Once the Court is faced with such a situation, it would be failing in the discharge of its judicial functions if it did not declare that there is an obligation, especially upon Members of the United Nations, to bring that situation to an end. As this Court has held, referring to one of its decisions declaring a situation as contrary to a rule of international law: 'This decision entails a legal consequence, namely that of putting an end to an illegal situation' *(I.C.J. Reports 1951*, p. 82)." [*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*

notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 54].

3. In the present instance, the end of the armed conflict -following the signature of the Dayton Accords- has not put an end to all the violations of the Genocide Convention by the Respondent. As was pointed out in the Memorial, and developed in the previous pages [see above, Chapters 10 and 11], the Federal Republic of Yugoslavia continues its breaching of its obligations prescribed by the Convention to punish through its own tribunals and to co-operate with the ICTFY in view of the punishment of the perpetrators of the genocide and corollary crimes.

4. By its persisting illegal conduct, the Federal Republic of Yugoslavia is challenging the superior interests protected by the Convention. This illegal conduct must be put to an end. In the words of the International Law Commission:

> "Cessation is of far greater relevance within the international legal system -given the structure of inter-State society and the role of States in the making, modification and abrogation of rules- than within the legal systems of national societies. Its function is to put an end to a violation of international law which is in progress and to safeguard the continued validity and effectiveness of the infringed primary rule which may suffer in the long run from the continuation of the violation. The rule on cessation thus protects not only the interest of the injured State or States but also the interests of the international community in the preservation of, and reliance on, the rule of law." [Commentary to Article 41 of the I.L.C.'s Draft Articles on State Responsibility, in *Yearbook of the International Law Commission, Volume II, Part Two, 1993*, p. 55].

5. Consequently, the Applicant requests the Court to adjudge and declare that, as a direct application of the principle according to which a State has the duty to cease its continuing unlawful acts, the Respondent is under the obligation to punish all the perpetrators of genocide and other corollary crimes and to cooperate with the ICTFY in view of their punishment. It also recalls its right to obtain the punishment of the perpetrators of genocidal acts and the cooperation with the ICTFY from Yugoslavia, as a general means of satisfaction [see above, Chapter 13, Section 2].

6. In addition, the Applicant considers that the Respondent's duty to take immediate and effective steps to ensure full compliance with the Genocide Convention also implies Bosnia and Herzegovina's right to obtain from Yugoslavia appropriate guarantees and assurances that the violations will never be repeated in the future.

7. As has been highlighted by the International Law Commission, assurances and guarantees of non-repetition perform "a distinct and autonomous function" in the

system of State responsibility in international law, as "they are future oriented" and thus "have a preventive rather than remedial" purpose [see *Yearbook of the International Law Commission, Volume II, Part Two, 1993*, pp. 81-82; see also Article 46 of the I.L.C.'s Draft Articles on State Responsibility, in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 143]. Consequently, they "presuppose a risk of repetition of the wrongful act" and "should not be automatically available to every injured State"; in other words "the injured State demands guarantees against repetition because it feels that the mere restoration of the normal, pre-existing situation does not protect it satisfactorily" [*ibid.*, p. 82]. The International Law Commission also stressed the "special relevance" such assurances and guarantees could assume in the case of "international crimes of State" [see *ibid.*, and *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 168].

8. As a dramatic evidence of the risk of repetition in the present instance, the Applicant cannot but recall once again the continuing violations of the Genocide Convention by the Federal Republic of Yugoslavia (as described above) even after the submission of this case to the Court, after the Court had issued two Orders containing provisional measures with a view to the protection of rights provided by the Convention, and until today.

9. Under this aspect, the Applicant reckons the importance of the signature in Paris, on 14 December 1995, of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton-Paris Agreement), which provides, notably, in Article VII:

> "Recognizing that the observance of human rights and the protection of refugees and displaced persons are of vital importance in achieving a lasting peace, the Parties agree to and shall comply fully with the provisions concerning human rights set forth in Chapter One of the Agreement at Annex 6, as well as the provisions concerning refugees and displaced persons set forth in Chapter One of the Agreement at Annex 7",

and, in Article IX:

> "The Parties shall cooperate fully with all entities involved in implementation of this peace settlement, as described in the Annexes to this Agreement, or which are otherwise authorized by the United Nations Security Council, pursuant to the obligation of all Parties to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law."

However, such an Agreement has proved to be insufficient in assuring the non-repetition of the violations of the Convention, as has been shown above.

PART V

THE COUNTER-CLAIMS

CHAPTER 16

RESPONSE TO ALLEGED FACTS

1. Introductory remarks

General comments

1. Earlier in this Reply some general comments have already been made on the (lack of) quality of the presentation of the counter-claims in the Counter-Memorial [Chapter 1, Section 3]. Most of the allegations on which the counter-claims are presumably based, are not supported by any sort of readily available and verifiable material, let alone by independent and publicly accessible sources. For these reasons, Bosnia and Herzegovina is not able to respond to most of the allegations and will therefore not do so. This, of course, may in no way be explained as any sort of implicit acknowledgement of the validity of these allegations. Quite the contrary: Bosnia and Herzegovina explicitly denies the truth and validity of the allegations contained in the Respondent's counter-claims. Since none of the facts presented by the Respondent are, by any sort of legal standards, sufficiently proven, only facts explicitly accepted by Bosnia and Herzegovina in this Reply may serve as a basis for the adjudication by the Court of the counter-claims.

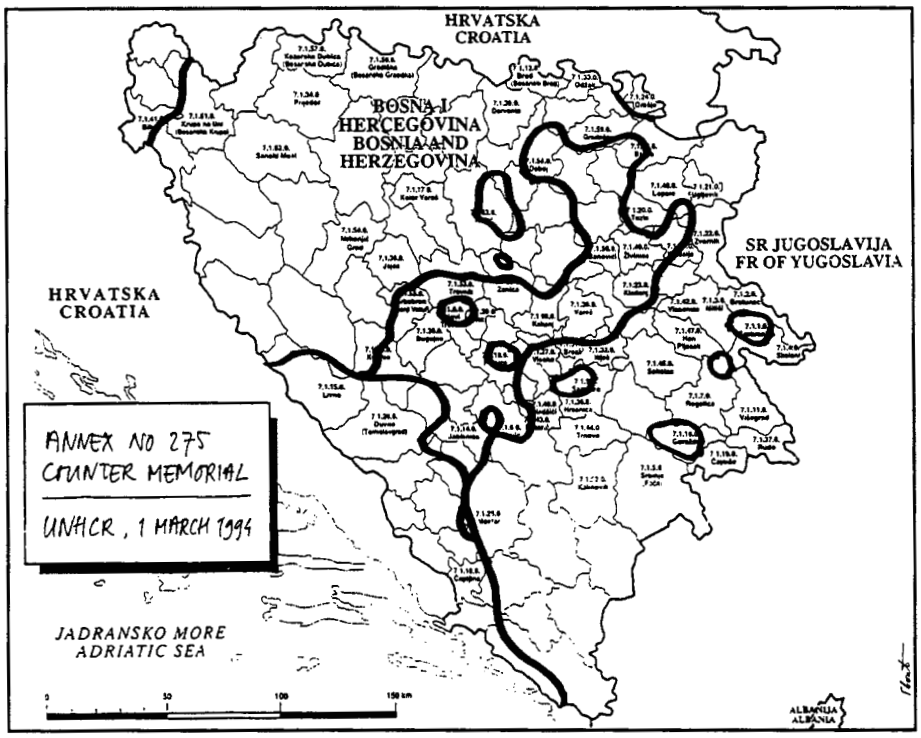
2. In this Chapter Bosnia and Herzegovina will, given the above-mentioned restraints, respond to the counter-claims' factual allegations. In Chapter 17 a legal assessment of the counter-claims will be provided. The conclusions to be drawn will be part of Part VI of this Reply.

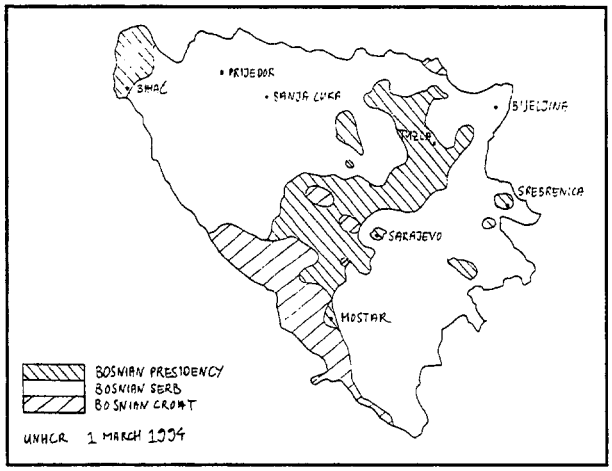
3. When assessing the counter-claims it is useful to keep the general geography of the territory of Bosnia and Herzegovina in mind. During the armed conflict most of the territory became occupied by the JNA, which was later renamed the army of the "Republika Srpska" [Reply, Chapter 8, Section 4]. Most of the substance of the counter-claims seems to refer to facts which allegedly took place in areas under Serb and/or Serbian control, which already makes it difficult to comprehend how exactly Serb people could have become victims of genocidal acts committed by persons

under the control of a Government, which did not exercise any control in these areas in the first place. The Respondent does not provide any explanation for this point.

4. Moreover, many of these very areas were ethnically cleansed and taken over by the JNA and Serbian paramilitary units, most as early as April and May 1992. In almost all of these areas the population was mixed before the Serbian campaign; all of the relevant areas used to have a substantial non-Serb population, if not a non-Serb majority.

Bosnia and Herzegovina invites the Court to, again, have a look at two of the maps produced by the parties earlier in these proceedings: the UNHCR-map of 1 March 1994 [Memorial, p. 16] and the map annexed to the Counter-Memorial [Annex No. 275]. The maps are, superimposed, reproduced here:





This combined map clearly shows how much of the territory, to which the counter-claims refer, was actually controlled by the Serb assailant.

5. Although theoretically possible, it is difficult to conceive that people trying to regain their homeland and hometowns, sometimes indeed by the use of armed force, should be seen as trying to ethnically cleanse these very areas. The same is true for people who might have tried to break into Serb controlled areas looking for food and who, in a struggle against starvation, indeed, if necessary then by the use of armed force, robbed the Serb occupier of cattle and crops. During the armed conflict, the minds of the non-Serb people of Bosnia and Herzegovina were set on surviving, rather than on any sort of struggle for the ethnic homogeneity of their country, let alone that they were engaged in a well-organized campaign to destroy in whole or in part their fellow Serb citizens. To, effectively, argue the contrary it does not suffice for the Respondent to merely provide lists, some of them and randomly annexed with uncorroborated witness statements, of persons allegedly killed or wounded in the relevant period of time.

6. Never has the non-Serb population of Bosnia and Herzegovina strived for an ethnically homogenous State nor has this ever been part of the political programme or actual policy of the Government of Bosnia and Herzegovina. In order to, effectively, argue the contrary, the Respondent needs to provide strong, independent and corroborated evidence. This the Respondent has not done at all. In any event, Bosnia and Herzegovina categorically denies that any ethnic cleansing took place under its control or responsibility.

Military structure

7. When assessing the counter-claims it is also necessary to realise that, especially at the beginning of the armed conflict, there was no such thing as a Bosnian army nor was there an organized structure which could replace the lack of defensive capability [Reply, Chapter 8, Section 2]. The other side was fully aware of this, as Radovan Karadžić made clear in his speech before the Bosnian Parliament on 14 October 1991:

> "Do not think that you will not lead Bosnia-Hercegovina into hell, and do not think that you will not perhaps lead the Muslim people into annihilation, because the Muslim people cannot defend themselves if there is a war." [Sarajevo, 2100 gmt, 14 Oct. 1991, *BBC Monitoring Report* EE/1205 B/9, 17 Oct. 1991, (29), except from report (EE/1204 B/10), Annex 286].

Indeed, the struggle against Serb aggression was usually entirely disorganized and in all cases entirely unequal. The JNA and the Serbs were in possession of complete up-to-date army equipment, including heavy arms, tanks and air-support. The non-Serb side, especially the Muslims, was poorly equipped with an average of one light gun per five men of military capability [see also Reply, Chapter 8, Section 4].

8. It is rather preposterous, in this situation, to allege that the Government authorities were responsible for an organized campaign aimed to destroy in whole or in part the Serb population of Bosnia and Herzegovina.

Political situation

9. From the day of the declaration of independence onward, the Bosnian Government has propagated the idea of Bosnia and Herzegovina as a truly multi-ethnic society. This was not just political rhetoric: in practice, government officers have always been of various ethnic backgrounds. Throughout the armed conflict, Bosnian Croats and Bosnian Serbs participated in the Bosnian Presidency, under the leadership of President Izetbegović. At the same time the Bosnian Army was led by a multi-ethnic group of Generals, among them General Šiber (Bosnian Croat) and General Divjak (Bosnian Serb). Furthermore, several Bosnian Serbs served as Brigadier or as Colonel in high-ranking positions within the hierarchy of the army of the Republic of Bosnia and Herzegovina, some of them serving in highly sensitive positions within the Army Headquarters. Also, at lower levels in the Bosnian Army, Bosnian Croats and Bosnian Serbs occupied important positions. The annexed article,

published in the Bosnian daily newspaper *Oslobodenje* of 9 January 1994, may serve as evidence for that. In this article praise is given to two soldiers of the Army of Bosnia and Herzegovina, who died while defending a multi-ethnic Bosnia. One of them, Igor Pavlović, was a Bosnian Serb, the other one, Samir Beganović was a Bosnian Muslim. The newspaper article, however, does not mention their ethnic background, which further illustrates the true state of matters on the Bosnian side in the middle of the war [*Oslobodenje*, 9 Jan. 1994, Annex 287]. In addition to this specific article, *Oslobodenje*, in general, provides evidence for the continued participation of Bosnian Serbs in the Bosnian Government forces; one needs only to read the obituaries to find that they, too, died in defence of a multi-ethnic Bosnia and Herzegovina.

10. The Bosnian Government was consequent in trying to integrate the various ethnic backgrounds in one State rather than trying to ban a specific ethnic group from societal participation. On many occasions, Bosnian Government representatives, including President Izetbegović, called for unity and for the preservation of a multi-ethnic State:

> "(...) Our joint efforts are necessary for Bosnia and Herzegovina to maintain its existence for the future benefit of its citizens, Moslems, Serbs, Croats and all others.
> Let's decisively confront everything that is against unity, freedom and peace in Bosnia and Herzegovina!
> There can not be any good for one people if it is not good for other peoples! Let's defend our Bosnia and Herzegovina together as our common homeland!" [Proclamation of the Government of Bosnia and Herzegovina, published in *Oslobodenje*, 6 April 1992, Annex 288].

This type of statement has been repeated throughout the armed conflict. Without any further explanation, it is clear that these statements are entirely different from the rhetoric heard from Belgrade and from other Serb leaders, who invariably called for all Serbs to unite, for one State for all Serbs and for Greater Serbia as the common homeland [see also above, Reply, Chapter 4, Section 1].

11. A clear foundation for and confirmation of this consequently followed policy is to be found in an important government document, *Platform for Acting of the Presidency of Bosnia and Herzegovina*, which was adopted by the Bosnian Government on 26 June 1992, in the midst of the armed conflict. This document establishes the policy, which explicitly aims at the continuation of Bosnian multicultural society. Part of the *Platform* states the following:

"1. WHAT KIND OF BOSNIA AND HERZEGOVINA?

Bosnia and Herzegovina is a sovereign and independent State of citizens, constitutional and equal nations: Muslims, Serbs, Croats and the members of other nations living in it. The Republic is constituted on the principles of parliamentary civil democracy, which understands first of all the market economy, party pluralism, human rights and liberty.

Internal organization of Bosnia and Herzegovina, as a multi national and multi confessional community, is based upon regional and local self-rule which respects economic, cultural, historic and ethnic criteria. Local and regional self-rule can not be opposite to the principles of territorial integrity and unity of power functioning in the whole territory of Bosnia and Herzegovina.

2. RELATIONS AND INSTITUTIONS GUARANTEEING NATIONAL EQUALITY

Three constitutive nations (ethnic groups), Muslims, Serbs and Croats in B-H have their national interests, but also the interests originating from tradition of mutual life during many centuries. Political and social life in Bosnia and Herzegovina is based upon the equality of Muslims, Serbs and Croats and of the members of other nations and national minorities in administration in State affairs.

Sovereignty of the State is realized in the whole territory defined by unique borders which have been recognized by the International Community." [Official Gazette, number 8, 2 July 1992, Annex 289].

Two years later, in an interview with the Slovenian newspaper *Delo*, which interview was reproduced in *Oslobodenje*, Mirko Pejanović, *Serb* member of the Bosnian Presidency explicitly confirmed the ever continued adherence to this policy [*Oslobodenje*, 1 March 1994, Annex 290].

12. It is clear that there can be no doubt about the true policies of the Applicant's government. It is also clear, that there exists no evidence whatsoever, which would indicate that the Government of Bosnia and Herzegovina proclaimed any sort of ethnic intolerance, let alone that there would exist any material supporting an allegation that it ever had a policy of achieving an ethnically homogenous State and excluding the Bosnian Serb population.

13. It is also relevant to note that the government authorities have been prepared, throughout the war, to accept all of the peace-plans which were proposed at various stages of the conflict (Vance/Owen, beginning of 1993; Owen/Stoltenberg, June-September 1993; Contact Group Plan, May 1994), while all of these plans were not exactly what the government had in mind when proclaiming independence. However, all these plans had in common that the Serb population of Bosnia and Herzegovina would be an integrated part of the State-structures; this part of these plans had, indeed, precisely been part of the policy of the government all along. The Serb-side,

however, refused to accept these plans because they did not fit into their envisaged plan to become part of one ethnically pure Serb State:

> "Our objective is to unite in one state to have one capital - Belgrade - one assembly, one government and one President. We are not interested in any princedoms. I think that we the Serbs, will unite even before we expect. It seems that a global solution must lead to the creation and recognition of a large Serb state. (...) This war will be brought to an end either at the conference table, like all other wars are, or in a long, silent process of bleeding, in which the Serbs will have to use weapons to fortify the borders they are currently holding." [R. Karadzic, quoted by Tony Barber, *The Independent*, European News Page 13, 22 October 1993, Annex 291].

Only heavy military pressure, including NATO air strikes, made the Serb side accept a peace agreement [Dayton Accords, November 1995].

14. Against this background it is entirely unfounded to assume that the Bosnian government authorities were actively involved in developing and practising a policy aimed at the destruction in whole or in part of an ethnic group, more specifically the Serbs, within the territory of Bosnia and Herzegovina.

Independent observations on the position of the Bosnian Government

15. Independent authoritative observers all confirm that the policy of the Applicant at all relevant times never came close to being a mirror-image of the policies and practices of the Serb-side. The most relevant sources will be presented in the following paragraphs.

16. After noting that the "JNA and the Army of the so-called 'Bosnian Serb Republic' have been involved in carrying out and facilitating the policy and practices of 'ethnic cleansing' in certain parts of the territory;" and after finding that "[t]here is sufficient evidence to conclude that the practices of 'ethnic cleansing' were not coincidental, sporadic or carried out by disorganized groups or bands of civilians who could not be controlled by the Bosnian-Serb leadership" the Commission of Experts reports:

> "148. Bosnian Government forces have also committed the same type of grave breaches of the Geneva Conventions against Serbs and Croats, but not as part of a policy of "ethnic cleansing". The number of these violations, as reported, is significantly less than the reported violations allegedly committed by the other warring factions.
> 149. The Commission is unable to determine the amount of harm and the exact number of violations committed by each of the warring factions. Nevertheless it is clear that there is no

> factual basis for arguing that there is a 'moral equivalence' between the warring factions." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, pp. 36-37, para. 148-149].

17. In the same vein on 9 August 1995 the Deputy Director of Intelligence of the U.S. CIA, who certainly may be considered to be well informed, declared as a witness before the U.S. Senate Committees on Intelligence and on Foreign Relations, after noting that "the apparently systematic, widespread nature of Serb actions strongly suggests that, from the beginning of the conflict, Bosnian Serb political and military leaders have played a central role in the purposeful destruction and dispersal of Bosnia's non-Serb population":

> "Croats and Muslims have also committed atrocities during the Bosnian conflict, but their actions have consisted for the most part of discrete -though sometimes fierce- episodes that lack the sustained intensity, orchestration, and scale of the Bosnian Serbs' effort. The majority of refugee accounts -corroborated by information- indicate that ethnic Serbs are responsible for the overwelming majority of the destruction, displacement, and loss of life associated with ethnic cleansing in Bosnia." [*War Crimes in the Balkan*, Joint Hearing before the Select Committee On Intelligence of the United States Senate and Committee on Foreign Relations of the United States Senate, 104th Congress, 1st session, 9 August 1995, p. 5, Annex 36].

This statement is consistent with an earlier extensive CIA report, the contents of which were made public by the *New York Times*:

> "In the most comprehensive assessment by the United States of the responsibility for atrocities in Bosnia, the Central Intelligence Agency has concluded that 90 percent of the acts of 'ethnic cleansing' were carried out by Serbs and that leading Serbian politicians almost certainly played a role in the crimes. The highly classified CIA report, based on aerial photography and what a senior official called 'an enormous amount of precise technical analysis,' also concludes that while war crimes were by no means committed exclusively by Serbs, they were the only party involved in a systematic attempt to eliminate all traces of other ethnic groups from their territory.
> The report makes nonsense of claims, now consistently put forward by West European governments and intermittently made by the Clinton administration, that the Bosnian conflict is a civil war in which guilt is divided between Serbs, Croats and Muslims rather than a case of Serbian aggression." [*New York Times*, 9 March 1995, Annex 292].

18. At the same U.S. Senate hearing the U.S. Assistant Secretary of State for Human Rights, John Shattuck informed the Committees about his, at the time, recent trip to Bosnia, where he visited Tuzla and Zenica. Among other things he declared:

> "I want to end my opening statement by paying tribute to the people of Tuzla and Zenica, who are committed to maintaining their diverse communities, to receive and help the displaced persons from

> Srebrenica and Žepa and other areas, and to ensure that their Bosnian cities will remain beacons of civilization, where different religions and ethnic groups can leave [sic] in peace as neighbours, side by side. The continued existence of these and similar cities and towns in Bosnia, and the principles for which they stand, is ultimately what is at stake here." [*War Crimes in the Balkan*, Joint Hearing before the Select Committee On Intelligence of the United States Senate and Committee on Foreign Relations of the United States Senate, 104th Congress, 1st session, 9 August 1995, page 74, Annex 36].

19. This position was entirely in line with the positon earlier defined by the U.S. Department of State:

> "I [acting Secretary Eagleburger] recognize that in the ongoing Yugoslav turmoil, crimes have committed on all sides. But it is Serbs, alas, who are most guilty today of crimes which mimic those of their former tormentors, and which violate the sacred memory of ancestors who suffered at their hands. And it is the Serbs who face a spectacularly bleak future unless they manage to change the reckless course their leaders chose for the new nation."
> (...)
> The United States condemns perpetrators of violence in Bosnia on all sides, including the Serbian side and the "Yugoslav" Army, which clearly bear the heaviest blame for continued fighting in Bosnia and have the greatest responsibility for working to obtain a cease-fire." [US Department of State, Bureau of Public Affairs, *Dispatch*, Sep. 1992, Vol. 3, Supp. No. 7, p. 1 and 20, Annex 293].

20. Another independent observer, Michael A. Sells [referred to earlier in this Reply, Chapter 5, Section 4], states in a Chapter on 'Moral equalizing':

> "No party in any war has ever been free of blame. But the blame-on-all-side position falsified important differences between the methodical genocide carried out by Serb nationalists, the predatory aggression of Croat nationalists, and individual crimes committed by Bosnian soldiers, crimes that were not related to any overall criminal policy and that have been punished." [Michael A. Sells, *The bridge betrayed, religion and genocide in Bosnia*, 1996, p. 134, Annex 40].

21. A more in-depth analysis is provided by Noel Malcolm, the authoritative historian, currently a fellow of St. Anthony's College in Oxford, United Kingdom:

> "The two basic failures of Western policy on the Bosnian issue are in fact so closely entwined as to be almost inseparable. One is a failure of policy; the other is a failure of understanding. At no point during the entire Bosnian war have the pronouncements of western statesmen shown any clear understanding of who made this war happen and why. Although commentators and analysts had been accurately charting the political strategy of the Serbian Communist leader, Slobodan Milosevic, since 1988 - the take-over of the political machinery in Montenegro and the Vojvodina, the illegal suppression of local government in Kosovo in 1989, the mobilisation of nationalist feeling in Serbian public opinion, the slow-moving constitutional coup against the federal presidency, the Serbian economic blockade against Croatia and Slovenia in late 1990, the theft by Serbia that year of billions of dinars from the federal budget, thereby destroying the federal

> economic reform programme, and the incitement and arming of Serb minorities in Croatia and Bosnia during 1990 and 1991 - it was as if the western governments could see no pattern in these events whatsoever. When Croatia and Slovenia, losing patience with Milosevic's attempts to manipulate the federal Yugoslav system, voted for independence, the West reacted with incomprehension. Until the last moment, in June 1991, politicians from both the EC and the United States were trying hard to persuade the Yugoslav republics to stay together. Then, not long after the Yugoslav federation had broken apart, they began to comfort themselves instead with the thought that the break-up had been inevitable - something caused not by the particular policies of a man sitting at his desk in Belgrade, but by long-term, impersonal forces of history.
>
> Two theories of historical inevitably were touted, one external, and one internal. The external theory said that the break-up of Yugoslavia had been caused by the collapse of communism in the Soviet Union. Quite how or why events in Moscow should have such dramatic effects on Yugoslavia, which since 1948 had been more free of Russian control than any other country in eastern Europe, was not explained. Nor did the proponents of this theory ever say why it was that Yugoslavia had been plunged into war, while Czechoslovakia, a country so much more directly influenced by the fate of communism in Russia, managed to split itself with all the bloodlessness of a self-dividing amoeba. The main reason for holding this implausible theory about Yugoslavia was not that it rested on historical analysis, but that it carried the comforting (and diplomatically useful) implication that nobody in particular inside the former Yugoslavia was ultimately responsible for the war. And insofar as anyone there was responsible, everyone was equally responsible: they were all merely fulfilling the roles allotted to them by history.
>
> A similar conclusion was drawn from the theory of internal inevitability. This was the theory which said that the driving forces of Yugoslav history were 'ancient ethnic hatreds'. Lazy politicians who dipped into their history books were able to pick out a few examples of wars and massacres, which they flourished at their audiences with the words: 'it was ever thus'. In fact, the examples they offered were from the twentieth century, or at most the late nineteenth; they arose mainly from the most untypical episodes in Balkan history, conflicts introduced or exacerbated by forces (such as the Axis invasion) from outside Yugoslavia itself. For most of the rest of the history of those lands, there are no records of Croats killing Serbs because they were Serbs, or vice-versa. And even though it was of course true that the killing had been severe during the second world war, it was not obvious why, nearly fifty years later, a population the majority of which had no personal memories of that war should spontaneously rise up to re-enact its horrors." [*With no Peace to keep...*, London, 1995, Noel Malcolm, Impartiality & Ignorance, p. 120-121, Annex 294].

22. These examples are nowhere near exhaustive, but do make it sufficiently clear that any theory on some "moral equivalency" between the Applicant and the Respondent lacks any basis whatsoever.

Bosnia and Herzegovina's position towards non-Serb suspects of war crimes

23. As indicated above, many non-Serbs acted on their own in a struggle for survival. Bosnia and Herzegovina does not exclude the possibility of these people having committed crimes, maybe even war crimes, in these situations.
It is relevant to note that the government authorities throughout the war did whatever they could, given the very difficult circumstances, in which the very survival of the non-Serb, especially Muslim, population of Bosnia and Herzegovina was at stake, to

prevent atrocities from occurring, to speak up against them if it became established that they actually did occur and to prosecute the perpetrators whenever that was, again given the circumstances, possible.

24. In the report mentioned above, the Commission of Experts confirms this position of the Applicant. While discussing certain atrocities committed inside Bosnian Government detention centres, the Commission notes that it "has not been able to detect any particular pattern or policy of wrongdoing. The Commission has, however, ascertained that the Government of Bosnia and Herzegovina has expressed its opposition to these individual violations." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674 (Vol. I), 27 May 1994, p. 52, para. 227].

25. Of course, during the war most of the Applicant's government institutions, including the judiciary, were severely hampered in their ability to function. Therefore, the Bosnian authorities have not been able to widely and actively prosecute suspects of serious crimes in this period, regardless of the ethnic background of the perpetrators or, for that matter, of the victims. However, even while the war was going on, the Applicant's authorities have, from the very first day of its establishment, been actively supporting the work of the ICTFY regardless of nationality and/or ethnic background of suspects under investigation. There are many documents, reports and letters demonstrating this. At this point it suffices to reproduce just a few of these. On 10 October 1994 the Prosecutor, Justice Goldstone wrote to the Bosnian Secretary for Foreign Affairs:

> "On my own behalf and on behalf of my delegation, may I thank you and Ambassador Dervisbegovic for meeting with us during our recent visit to Sarajevo. The support offered to our Tribunal by you and your Government is most reassuring and a source of encouragement to us. It is a great hope that the work of the Tribunal will assist in bringing enduring peace and reconciliation to your region. With kind regards." [Justice Goldstone, Letter to Bosnian Secretary for Foreign Affairs, 10 Oct. 1994, Annex 295].

Another example of the full cooperation by the Bosnian authorities is to be found in the handling of the Čelebići case. Within two months after they had been indicted, the Bosnian authorities arrested two Bosnian Muslims suspected of war crimes committed in the Čelebići detention center in Bosnia and Herzegovina. In its press-release of 13 June 1996 the ICTFY announced:

"Hazim Delić and Esad Landzo, two of the accused named in the Ćelebići indictment, issued on 22 March 1996, have been transferred to the ICTY's Detention with the help of IFOR. They will make their initial appearances before Trial Chamber II on Tuesday 18 June 1996.
Hazim Delić and Esad Landzo were arrested on Thursday 2 May 1996 in Bosnia and Herzegovina by the Bosnian authorities, and since then have been detained in custody in Bosnia and Herzegovina.
Their transfer has been arranged jointly by the Bosnian authorities, the Tribunal's Registry and the Multinational Implementation Force (IFOR). Based on the Memorandum of Understanding signed on 9 May 1996 by NATO and the ICTY, the support given by IFOR included military transportation and general security. Hazim Delić and Esad Landzo were moved by IFOR ground transportation to Sarajevo airport, where they departed for the Hague on board a military C-160 aircraft. IFOR troops provided a secure environment along the ground transportation route and at the airport.

BACKGROUND

Arising out of the operation in 1992 of a detention camp known as Ćelebići, located in the Konjic municipality in Central Bosnia and Herzegovina, the indictment alleges that Hazim Delić was deputy commander of Ćelebići Camp between May and November 1992 and, for a brief time, between November and December 1992, its commander. In this capacity, he is charged with both (or in the alternative) individual and command responsibility for violations of the laws and customs of war and grave breaches of the Geneva Conventions. Esad Landzo is charged with individual criminal responsibility for grave breaches and violations of the laws and customs of war, allegedly committed in his capacity as a camp guard at Ćelebići between May and December 1992."
[ICTFY, Press Release CC/PIO/087-E, 13 June 1996, Annex 296].

On 5 May 1996, immediately after the May 2nd arrest of these two suspects, Justice Goldstone, wrote to Judge Vidović, Bosnia's Liaison Officer to the Tribunal:

"I would like to acknowledge with thanks your letter of 2 May 1996, in which your informed me of the arrest of Messrs. Delić and Landzo by the authorities of the Republic of Bosnia and Herzegovina. This is the first time that warrants of arrest against persons indicted by the Tribunal have been executed by any Government in the former Yugoslavia. I sincerely hope that this example by your Government will act as en incentive for other Governments also to comply strictly with their international obligations.
As you are well aware all of us in the Office of the Prosecutor have valued and appreciated the friendly cooperation and assistance we have received for your Government. I would be grateful if the terms of this letter could be conveyed to President Izetbegović and his Cabinet colleagues."
[Justice Goldstone, Letter to Judge Vidović, Bosnia's Liaison Officer to the Tribunal, 5 May 1996, Annex 297].

On 7 May 1996 Justice Goldstone wrote to the Bosnian Prime Minister:

"Thank you for your letter of 1 may, 1996, I am most appreciative of your firm and full reiteration of the support of your Government for the work of this Tribunal. Since writing my letter to H.E. President Alija Izetbegović, your authorities have arrested the two indicted men and there could be no better illustration of your support than that action.
I look forward to further close cooperation with you and your Government in the firm conviction that without bringing a measure of justice to your people no enduring peace can be anticipated in the former Yugoslavia. My colleagues and I are most encouraged that this conviction is shared by

you." [Justice Goldstone, Letter to the Bosnian Prime Minister, 7 May 1996, Annex 298].

With regard to the alleged threatening by Bosnian authorities of a witness in the Tadić case, the Prosecutor conducted intensive investigations in Sarajevo. In her letter to President Izetbegović the Prosecutor, Justice Arbour, not only confirms that the Bosnian authorities have not been involved in any of the alleged conduct, but she also thanks the Bosnian authorities for their assistance and cooperation in this issue:

> "I refer to my letter dated 29 October, seeking your co-cooperation in an investigation of an alleged perjury committed before the International Criminal Tribunal for the former Yugoslavia by Dragan Opacic, a witness in the trial of Dusko Tadic. You will no doubt recall that this witness told one of the Tribunal's Investigators that he, Opacic, had lied in his evidence before the Tribunal and that, while in custody in Bosnia, he was threatened by persons in positions of authority, was induced to give false evidence and was trained on how to deliver the false testimony.
> I would like to thank you for the total co-operation with your authorities extended to our Investigators over the last weeks concerning this investigation. They report that they were given prompt and total access to all relevant material and personnel. As a result, our Investigators were able to follow OPACIC's movements and handling from arrest until he was turned over to the ICTY. Based on our brief, but intensive, investigation, we have not discovered anything that would support OPACIC's allegations that your authorities forced him to give false testimony in the Tadic trial or trained him in delivering the false testimony. To the contrary, the information obtained by our Investigators suggests that Opacic's allegations against your authorities are false.
> The investigation into the extent of Opacic's alleged perjury is still continuing.
> In conclusion, I wish to thank you for your assistance and co-operation in this important and sensitive investigation." [Justice Arbour, Letter to President Izetbegović, Annex 299].

All of this is certainly not supporting the allegations of the Respondent that these government authorities were actively involved in the commission of war crimes, let alone genocide.

The material provided in support of the counter-claims

26. Insofar as any documents are annexed in support of the alleged acts presented to support the counter-claims, they usually contain anonymous witness statements given before a Serb legal authority. The Applicant is not at all able to verify the background of these presumably legal authorities nor is it able to assess the quality of the presumably legal proceedings in the course of which, again presumably, the statements were delivered. The Applicant, therefore, does not accept the validity of any of these witness statements as material to support the Respondent's allegations.

27. The Applicant further notes that, whatever may have been the nature of the mentioned "legal proceedings", according to the verbatim records the witnesses were never cross-examined nor have they been interrogated by any neutral, independent authority. Also for these reasons the Applicant does not accept the validity of any of these "witness" statements as material to support the Respondent's allegations.

28. The Applicant further wishes to draw the attention of the Court to the fact that several of the witness statements were given in the course of proceedings before an "investigative judge" of a "Basic Court" in *Belgrade* "in the criminal proceedings against NN for the criminal act of Article 141, 142, 143 or 144 of the Penal Law of Yugoslavia" [Counter-Memorial 7.1.: Annex No. C 17, para. 7.1.14.1, Annex No. C 34, para. 7.1.9.11.1., Annex No. C 40, para. 7.1.15.5. and Annex No. C 116, para. 7.1.16.1.; Counter-Memorial 7.2.: Annex No. C 28, para. 7.2.1.14.1, Annex No. C 116, para. 7.2.5.4., Annex No. 300, para. 7.2.6.38.1., Annex No. C 66, para 7.2.10.1.4., Annex No. C 248, para. 7.2.25.1., Annex No. C 130, para. 7.2.28.1, Annex No. C 3, para. 7.2.28.2. and Annex No. C 81, para. 7.2.30.25.; and Counter-Memorial 7.3.: Annex No. C 57, para. 7.3.12.1.]. The Respondent fails to clarify whether these investigations cover all possible war crimes and related crimes allegedly committed on the territory of Bosnia and Herzegovina in the relevant period of time or that these investigations are exclusively restricted to cases of Serb victims with non-Serb suspects of the investigated crimes.

29. The Applicant also notes that, according to the verbatim records of the witness statements, the investigative judges from "Republika Srpska" also work on the basis of the Yugoslav Criminal Act, while referring to the same articles as the Respondent judges do. Sometimes reference is made to merely "the Penal Law", sometimes the records explicitly refer to "the Penal Law of Yugoslavia", sometimes reference is made to "the Penal Law of the Republic of Srpska". Although all republics emerging from the former Yugoslavia have copied the former Yugoslav Criminal Code into their own national Criminal Code, at least until the Dayton Accords there was no separate "Republika Srspka" Criminal Code, while Bosnia and Herzegovina had its own Bosnian Criminal Code copied from the SFRY. It is therefore noteworthy that apparently the Bosnian Serbs had organized their judicial system not only separate from that of Bosnia and Herzegovina, but as, alternatively, their own system and as part of the legal system of Yugoslavia. Thus, at least part of the Bosnian Serb legal system functioned as an integrated part of the Federal legal system of Yugoslavia.

30. It is further noteworthy that the Articles referred to -141, 142, 143 and 144- all belong to a chapter in the Criminal Code codifying "Criminal Acts against humanity and international law". This chapter is annexed to this Reply, including a translation into English of the four mentioned Articles [Annex 300]. Most of the 140 witness statements are delivered in the course of investigative proceedings based on Article 142 and 143, sometimes based on Article 144. These three articles deal with war crimes in general. Article 141 explicitly deals with genocide.

31. Only four witness statements referred to in the Counter-Memorial are given in the course of the investigation of allegedly genocidal acts [Annex No. C 123, para. 7.2.1.0.; Annex No. C 257, para. 7.2.4.10.; Annex No. 300, para. 7.2.6.0.; Annex No. C 250, para. 7.2.8.0.]. Presumably, these cases all relate to Serb victims. It is remarkable that the Respondent takes about 650 pages in its Counter-Memorial to demonstrate alleged genocidal acts, that the Respondent needs many hundreds of pages of witness statements, presumably to support these allegations, while, in fact, only four statements in all seem to refer to genocide.

32. This is also remarkable for yet another reason. As has been shown above [Chapter 4, Section 1], the Serb rhetoric usually includes explicit references to "the Genocide", which, allegedly, has always been committed against the Serb people; against this background one would certainly have expected that all of the investigations set up by the Respondent would have explicitly focused on the crime of genocide as codified in Article 141. However, this turns out not to be the case. The Respondent has failed to explain why, then, all the annexed witness statements would serve to support its counter-claims. Bosnia and Herzegovina concludes that also for this reason there does not exist any legally relevant basis for Respondent's counter-claims.

33. The autopsy and medical examination reports annexed to the Counter-Memorial also need some elucidation. With regard to the autopsy reports annexed to the Counter-Memorial the Applicant notes that on some occasions the autopsy reports indicate that they have been produced by the "Military Medical Academy, Pathology and Forensic Institute, Belgrade" [Annex No. C 269, Counter-Memorial para. 7.1.14.1.; Annexes No. C 13 and No. C 268, Counter-Memorial 7.1.23.1.; Annex No. C 157, Counter-Memorial para. 7.1.2.11; Annexes No. C 159 and No. C 158, Counter-Memorial para. 7.1.9.12.]. Pre-printed standard forms were apparently used for these autopsy reports on which "Autopsy requested by" also appears. The annexed reports all relate to cases in which the autopsies were requested by Bosnian Serb authorities and took place on the territory of Bosnia and Herzegovina. This is again another

demonstration of the entirely integrated nature of the structures of the "Republika Srpska" and the Respondent.
For the medical reports the same applies: they have been requested by the Belgrade based Committee for Gathering Evidence on Crimes Committed against Humanity and International Law. These medical examinations were done by doctors on the territory of Bosnia and Herzegovina, which also attests to the entirely integrated structures of the "Republika Srpska" and the Respondent.

34. Finally, regarding the medical examination reports, the following needs to be pointed out. Every medical report contains a section called "Case History" in which the doctor or doctors examining the patient - whose name is not on the reports but is said to be known by the Committee - noted the personal story of the particular patient. These personal stories, or "case histories" many times seem to be copies of related witness statements and, in any case, at best can only serve as evidence of the particular injuries sustained by the patient and the possible physical causes thereof - it cannot serve as proof of the circumstances in which the injuries were sustained nor of the identity of the alleged perpetrator. The photos which accompany these reports are in most instances horrific indeed, but, like the reports themselves, they cannot and do not provide any proof of the existence of an organized campaign aimed against the Serbs as such.

Serb religious holidays

35. Below, the main issues raised in the counter-claims will be discussed section by section. At this stage Bosnia and Herzegovina will respond to a theme repeated many times throughout the Counter-Memorial.
One allegation which comes back many times, apparently to demonstrate alleged religious motives, is that the non-Serbs had a strong preference for Serb religious holidays on which to strike back to the Serb occupier. Without accepting that the incidents mentioned by the Respondent actually did occur at all, or the way they are presented, Bosnia and Herzegovina does admit that sometimes religious holidays were chosen to attack the Serb occupier. However, this was not done to desecrate these holy days, but merely for the well known fact that on these holidays Serb soldiers would have lowered their guard and would, therefore, not be able to react adequately. This is an accepted military tactic. It is clear that these facts do not come close to demonstrating that the Bosnian government authorities in fact practised some ethnic cleansing policy or had a genocidal intent.

2. Incitement [Counter-Memorial 7.0.]

36. In its Counter-Memorial the Respondent alleges that Bosnia and Herzegovina has incited acts of genocide. The Respondent does so by means of an almost casual and in any event not elaborated remark concerning four issues: the "Islamic Declaration", a song published in a magazine, an article in a newspaper, a radio programme broadcasted immediately after the Markale-massacre of February 1994 (not 1993, as the Repondent states) in which 68 persons, a majority but not all of them being Muslims, were killed. The Respondent does not explain why these events (even if true and correctly interpreted by Respondent) would even begin to support the notion that the Bosnian Government authorities have at any relevant point in time incited the Bosnian public to destroy in whole or in part the Serbs living in Bosnia and Herzegovina. The Respondent offers no proof whatsoever to support the idea that the Bosnian Government conducted a policy of ethnic cleansing towards the Bosnian Serbs.

37. It is not the first time in these proceedings that the Respondent embarks on a personal attack on President Izetbegović, referring to one of his pre-Presidential publications, the *Islamic Declaration*, in an attempt to demonstrate that violations of the Genocide Convention were committed by Bosnia and Herzegovina. Exactly the same wording was used in Respondent's Preliminary Objections raised in these proceedings in June 1995 [para 1.6.1.-1.6.8.]. In its Statement of 14 November 1995 Bosnia and Herzegovina already responded to these allegations. Although the Respondent has not rebutted this response it will be repeated here in its entirety:

> "53. The Preliminary Objections refer to the President's writings in 1970, namely a document entitled the *Islamic Declaration* [at Annex Part 1, pages 171-240]. At pages 172-3, an introduction is annexed which is not part of the Declaration and does not emanate from any recognised source The President, a retired lawyer, was sent to prison in a trial during the Communist era, which the introduction itself at page 172 states was rightfully denounced (line 8) and which was assessed as "Stalinist" (line 14).
>
> 54. By taking quotes out of context, and emphasising certain passages, the Preliminary Objections appear to portray the President as a man who is a religious extremist. Taken out of context and read in isolation, such an impression may be created, but would be at opposite ends from the truth.
>
> 55. One merely needs to read the *Islamic Declaration* [even the annexed version [at Annex Part 1, pages 171-240], although the translation is materially inaccurate) to establish this is incorrect. Whilst references are made in the text to various named States, not one reference is made to Bosnia. A few illustrations from the Declaration are given by way of example:
>
> "(THE EQUALITY OF PEOPLE)

> (...) Two facts of paramount importance - the unity of God and the equality of all men - have been laid down by the Koran (the sacred text of Muslims) in such a clear and explicit way that they allow for only one, literal interpretation, there is no divinity but one God; there is no chosen nation, chosen race or chosen class - all men are equal (...) People must be distinguished between - if any distinction is to be made - primarily according to what they really are, meaning according to their spiritual and ethical value (the Koran, suras 49/13)" [page 200, last paragraph].
> (...)
>
> "(FREEDOM OF CONSCIENCE)
>
> (...) However much puritan in morals it may be, Islam is, because of its openness to nature and joy, broad-minded, as testified to by the entire history of Islam. As it recognises God, but does not recognise any dogma or hierarchy, Islam cannot turn into a dictatorship and in it any form of inquisition or spiritual terror has been rendered impossible" [page 207 - 208 12th to 17th line].
> (...)
>
> "(CHRISTIANITY AND JUDAISM)
>
> [Referring to Christianity and Islam] (...) the future could serve as an example of understanding and co-operation between two major religions to the benefit of all people and the human kind, as opposed to the past which witnessed their senseless intolerance and frictions (...) A similar principle underlies the attitude of Islam to Judaism. We have lived with the Jews for centuries and even created a culture, so that in certain cases a distinction between Islamic and Jewish elements in that culture is impossible to make with certainty." [pp. 229-230, p. 230, 12th line to 21st line].

Already in the stage of the Preliminary Objections the Applicant concluded that the Respondent's allegations based on the *Islamic Declaration* are ill-founded, because this publication does not call for genocidal action. Moreover, the *Islamic Declaration* has never been raised to the level of Government policy. The same reasoning applies within this stage of the proceedings.

38. As with the *Islamic Declaration*, the Respondent in its Counter-Memorial bluntly repeats is allegations based on one publication in *Novi Vox* magazine of October 1991 (published before Bosnia and Herzegovina became independent!) [Counter-Memorial para 7.0.1.2.]. Bosnia and Herzegovina has already responded to these allegations in its Statement of 14 November 1995:

> "38. In the Preliminary Objections reference is furthermore made to a periodical called *Novi Vox*, which is presented by Yugoslavia (Serbia and Montenegro) as in some way representing the Bosnian Government's views and policies. The Bosnian Government emphasises that it strives to ensure freedom of the press in Bosnia and Herzegovina and that there has been no relationship between the views and the policies of the Bosnian Government and the conduct of the editors of *Novi Vox*.
> Moreover, only four issues of *Novi Vox* were ever released between the Spring and Winter of 1991, of which only three were distributed by its editors. Of each issue no more than an estimated 12,000 copies were produced. The distribution of the periodical was stopped due to criminal proceedings

against its editors, which proceedings were initiated by the Prosecutor's Office of Sarajevo. Whilst the case was not pursued, the periodical has never been published since." [Statement on the Preliminary Objections, para. 38, pp. 16-17].

The same response applies for these allegations, when presented as part of the counter-claims as they were submitted by the Respondent.

39. It is useful to add that the publication of this issue of *Novi Vox* at the time gave rise to a debate in the Bosnian Parliament (i.e. the pre-independence Parliament). During this debate, which took place on 1 October 1991, all three major political parties condemned this publication in clear language. The Representatives of the SDA, the Muslim dominated Party for Democratic Action, clearly dissociated the SDA from the *Novi Vox* writings, stating that this "story indicates that in the society, there is a seed of fascism and crisis of moral against which it should be fought" [see the report of this Parliamentary debate in the independent Bosnian newspaper *Oslobodenje* of 2 October 1991, Annex 301]. Bosnia and Herzegovina must assume that all of this is known to the Respondent as well, which makes it even more peculiar that the Respondent uses this as one of the few examples to demonstrate incitement by the Government of Bosnia and Herzegovina.
To avoid any misunderstanding, Bosnia and Herzegovina likes to stress here that it never has and does not now, even after all that happened to the non-Serb population of Bosnia and Herzegovina, support any of the awful ideas and suggestions contained in the *Novi Vox* song.

40. The Respondent for the purpose of its allegations regarding "incitement" also refers to an article published in a Tuzla-newspaper published on 1 April 1993 [Counter-Memorial para 7.0.1.3.]. The article itself was not annexed to the Counter-Memorial, but reference was made to it in the Periodic Report of 5 May 1993 of the Special Rapporteur, Mr. Mazowiecki.
It suffices to say that the content of this article does not reflect any of the views nor policies, of the authorities of Bosnia and Herzegovina. Moreover, the Respondent has not even stated, let alone proven, this to be the case. However, Bosnia and Herzegovina notes that the author of the article rightly, and in conformity with the views and policies of Bosnia and Herzegovina, states that "Instinctively every Muslim would wish to save his Serb neighbour instead of the reverse (...)". Bosnia and Herzegovina deplores and refutes the author's calling for Muslims to kill Serbs.

More importantly, the Applicant wishes to draw the Court's attention to a public statement which, indeed, at the time did (and still does) reflect the views and policy of the Bosnian Government:

> "*We have been living together in Tuzla for ages. One nation has never been endangered by another nation. We will not permit things to happen because of which we would be ashamed. All together, Muslims, Croats, Serbs as well as others are endangered from one aggressor. I remind you that during World War II, we preserved the town from nationalism.* The mayor at the time, Hadzi Hasanaga Pasic and the judge Kurt, together with all Tuzla people did not permit neither a genocide over Serbs nor they permitted the Orthodox church and Vladicin dvor to be burnt. When the church was in danger because of settling of the ground, we made a technical wonder and we managed to defeat nature and to save the object. To be honest, we did not save it from the aggressor's grenades, but the aggressor will be punished for this shameful act. Unfortunately, although we have a good control over the town, tonight happened a shameful act of burglary of Vladicin dvor in which unknown burglars spent several hours in searching, drinking and barbecuing. Police inspector crews are investigating on the spot, finding finger prints and other criminal police procedures. I promise to people from Tuzla that we will do everything to catch and punish burglars and vandals with sharp punishments. This is Tuzla and we in Tuzla will not allow any vandalism and barbarism! We will punish every one who wishes to besmirch the face of this town with his act."

The statement speaks for itself. It was delivered on 9 June 1992 by the, then, mayor of Tuzla and is reproduced in his book *The Town and People* [Tuzla, 1997, p. 38 and 39, emphasis added, Annex 302].

41. Finally, the Respondent with regards to the alleged "incitement" refers to the broadcasting of a live-radio programme through *Radio Hayat* during which programme listeners were invited to react on the massacre of 68 people at Markale market which had just taken place before. The Respondent, without providing any material whatsoever, presents as fact that this massacre was "caused by the Muslims". Whatever might have been meant by "caused", Bosnia and Herzegovina herewith reproduces its response to these same allegations put forward in the Preliminary Objections-stage of these proceedings:

> "39. Also irrelevant and erroneous is the annexed account of the two attacks on civilians, which according to Yugoslavia (Serbia and Montenegro) were carried out by Muslim forces (Preliminary Objections, para. 1.6.10). In the first shelling on 27 May 1992, at least sixteen people, while waiting in line to buy bread, were killed near the market on Vase Miskina Street. Bosnian Serbs immediately emphatically claimed that the attack was committed by Muslim or Croatian forces, in order to provoke international military intervention. Even though these claims were later taken up by western newspapers, UN investigators on the spot found no proof of these accusations. On the contrary, according to these investigators:
>
> > 'It appeared that the attack in which three mortar shells fell near a group of Serbs, Croats and Muslims waiting in line at a market to buy bread, was launched by Serbian units in the hills South of Sarajevo. About 12 hours before this mortar

> attack, artillery shells were also apparently fired from the same Southern hill were Serbian gunners had set up batteries, hitting the main maternity hospital near Sarajvo's centre.' (*Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992)*, S/1994/674, 27 May 1994, Annex VI, Study of the Battle and Siege of Sarajevo, para. 275).

40. The second mortar attack, on Markale Market, referred to in the Preliminary Objections (at para. 1.6.10 thereof) killed at least 66 people and wounded at least 197 others. This attack took place on 5 February 1994. Again the Bosnian Serbs claimed that this shell, which incidentally was only one of the 46 mortar shells that hit the city of Sarajevo that day, had been fired by Bosnian forces (*Final Report of the Commission of Experts established pursuant to Security Council Resolution780 (1992)*, S/1994/674, 27 May 1994, and Annexes, Annex VI, Study of the Battle and Siege of Sarajevo, para. 3210 (...)). After a first investigation, a senior US administration official said that Washington had 'very little doubt' that Bosnian Serb forces fired the mortar shell (*ibidem*, para. 3220 (...)). Bosnian Serb commander Manojlo Milovanović, however, denied Bosnian Serb responsibility claiming that "Serb positions are not that close, and we do not possess arms capable of causing such a massacre" (*ibidem*, para. 3212 (...)).

41. The UN set up a special commission to investigate the massacre. Its conclusions were published in the *Final Report of the Commission of Experts*:

> 'Canadian Colonel Michel Gauthier, who headed the UN's five- member commission of inquiry on the market shelling, reported that the mortar bomb which hit the Sarajevo market on 5 February could have been fired by either besieging Bosnian Serbs or defending BiH forces. The five-member investigative team, backed by two technical experts, found that the market blast was caused by a single high-explosive bomb from a conventional, factory made 120 millimetre mortar. The precise location of the weapon that fired the round could not be established... 'The distance or origin of fire overlapped each side of the confrontation line by 2,000 meters', Gauthier said. 'Both parties are known to have 120 mm, and the bombs go along with them. The team has no reason to believe that either party does not have access to this type of ammunition'.' (*Final Report of the Commission of Experts established Security Council Resolution 780* (1992), S/1994/674, 27 May 1994 and Annexes, Annex VI, Study of the Battle and Siege of Sarajevo, para. 3334 (...).

Thus, the investigation of the commission was inconclusive. It has not been possible to attribute the attack to either of the parties involved in the war. In any case, the Yugoslavia (Serbia and Montenegro)'s claims that the attack was carried out by Bosnian forces are not supported by the conclusions of the special UN commission of inquiry. If anything, the conclusion of the commission contradict Milovanović's assertion, that the Bosnian Serbs were not in the possession of the arms capable of such a mortar attack." [Statement on the Prelimanary objection, pp. 17-19, paras 39-41].

In other words here is no material supporting this part of Respondent's allegations.

42. Although Bosnia and Herzegovina acknowledges that a radio-broadcast of the sort described by the Respondent took place, it does not acknowledge that the reproduction of it as Annexed to the Counter-Memorial [Annex 78] is correct, especially because this reproduction also seems to refer to a TV-broadcasting of the same and seems also to be mixed with comments of the Respondent. At the time

(and for that matter also now) Bosnia and Herzegovina fully understood the feelings of anger and the call for revenge from people who eye-witnessed the massacre, which were very strong after this massacre, which took place in the midst of the daily and ongoing shelling of the civilian population of Sarajevo by the Serb side. However, the Bosnian authorities explicitly and publicly denounced these calls for revenge and criticized the program editors. The Director of Radio Hayat was even invited to the Ministry of Interior Affairs to be informed about this position of the Government.

43. Given the utmost unsupported nature of the allegations of the Respondent and given the evidence on the Government policies discussed above [Section 1 of this Chapter], showing that the Government at all relevant times did whatever it possibly could do to support its ideals and policies aimed at the preservation of a truly multi-ethnic State, it must be concluded that there is no basis whatsoever for alleging that Bosnia and Herzegovina incited to the commission of genocidal acts.

3. Deliberate killing [Counter-Memorial 7.1.]

44. In its Counter-Memorial the Respondent devotes an extensive section on providing data which supposedly support the allegation that Bosnia and Herzegovina would be responsible for the deliberate killing of persons of Serb *nationality* with the intent to destroy the Serb people, in whole or in part. As explained above [Section 1 of this Chapter] the Applicant does not deem it necessary nor practically possible to go into any of the allegations which are not supported by any material or only by material which supposedly is to be found in Belgrade.

45. The Respondent devotes paragraphs 7.1.1.0. - 7.1.1.10. to atrocities allegedly committed against Serbs living in the commune of Srebrenica. It is rather appalling that the Respondent has chosen to begin its listings with Srebrenica, since there can be no reasonable doubt about the extent of nor about the legal qualifications of the atrocities committed by the Serb side to the non-Serb population of Srebrenica, not only in 1992, but also all along until the final massacre in July 1995 [for an extensive description of "Srebrenica" see above, Chapter 5, Section 8].

46. Apart from this, in this section, the Respondent only provides for one annexed document to support its allegations: Annex No. C 160, Photos 1-2 [Counter-Memorial para. 7.1.1.9.]. This annex contains two, indeed, horrible pictures, but does not provide any further information. The annex does not clarify nor demonstrate the

background of these pictures, let alone that it would provide for any objective indication that the perpetrator of these atrocities, whoever that may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.

47. A similar comment needs to be made on the section on Bratunac [Counter-Memorial 7.1.2.0.]. A similar conclusion needs to be drawn as to the relevance of this material. In this section only two documents are annexed to support the Respondent's allegations: Annex No. C 157, pp. c1537-c1540/c1541-c1545 and Annex No. C 160, Photo 3 [Counter-Memorial para. 7.1.2.11.]. Regarding the annexed photograph the same comment as made in the preceding paragraph needs to be made.
The other annex contains an autopsy report regarding a person identified in the report. The report was made in March 1993 after the excavation of the body; presumably the killing took place on 25 May 1992, although the report does not contain any reasoned opinion regarding the latter date.
The report further states [similar to what the Respondent states in Counter-Claim para. 7.1.2.11.] that the deceased used to be the Chief of Police in Bratunac. Apparently he died in function, since according to the report the deceased was wearing a "Camouflage police jacket and short sleeves shirt, with the Chief of Police Station Insigna" [Annex No. C 157, p. c1543]. The report does not provide for any objective indication that the perpetrator of these atrocities, whoever that may have been, did commit these acts as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group. It is, however, well known that police forces were used as military forces and were often responsible for the worst genocidal acts [Reply, Chapter 8, Section 6].

48. The section on Milići [Counter-Memorial 7.1.3.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

49. In the section on Skelani [Counter-Memorial 7.1.4.0.] nine documents are annexed: Annex No. C 82, (...), pp. c825-c829/c830-c833 [Counter Memorial para. 7.1.4.1.], Annex No. C 42, (...), pp. c429-c432/c433-c435, Annex No. C 71, (...), pp. c728-c731/c732-c734, Annex No. C 72, (...), pp. c735-c739/c740-c743, Annex No. C 73, (...), pp. c744-c748/c749-c752, Annex No. C 91, (...), pp. c913-c917/c918-c921, Annex No. C 98, (...), pp. c1002-c1005/c1006-c1009 [Counter Memorial para. 7.1.4.2.], Annex No. C 22, (...), pp. c215-c217/c218-c219 and Annex No. C 23, (...), pp. c220-c224/c225-c227 [Counter Memorial para. 7.1.4.3.].

All of these annexes contain anonymous, mostly hearsay witness statements given before an investigative judge (in many cases anonymous) of presumably the "Republika Srpska"; none of the statements provides any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

Paragraph 7.1.4.3 of the Counter Memorial underlines that "Skelani itself is mainly populated by Muslims." The testimony of witness CM [Annex No. C 23, pp. c226-c227] does not provide any basis for the assumption that Muslim forces deliberately targeted Serbs living in this town. The statement does not explain the nature of the fighting that allegedly took place, which explanation seems to be indispensable since Skelani used to be populated mainly by Muslims.

For the information of the Court the Applicant wishes to add that Skelani is situated in the Srbrenica area, on the border with Serbia. It has been the theater of many military exchanges. In May 1992 many non-Serb civilians were killed by Serbian troops coming from across the border; at one occasion 17 civilians were summarily executed on the bridge across the Drina river, their bodies immediately being thrown into the river. It is truly unbelievable that the Respondent merely embarks on all sorts of, mostly unsupported allegations, without providing any relevant background information. Of course, this approach is not unique for this specific Section; it is only a model to the overall approach of the Respondent regarding its presentation of its allegations.

50. The section on Foča (renamed by the Respondent as "Srbinje", which means "*city of Serbs*") [Counter-Memorial 7.1.5.0.] is not supported by any accessible material whatsoever, so this section will not be further discussed in this Reply.

51. In the section on Konjic [Counter-Memorial 7.1.6.0.] only one document is annexed: Annex No. C 76, (...), pp. c769-c775/c776-c785 [Counter Memorial para. 7.1.6.4.]. This document contains an anonymous witness statement presumably given before a "Republika Srpska" legal authority. The witness identifies himself as a leader of the SDS and as a member of a Serb "platoon". The witness extensively declares about the situation in, presumably the Čelebići camp. The witness does not provide for any, let alone independent, material indicating that the atrocities he describes -if true- form part of any well-organised campaign or pattern of conduct. Bosnia and Herzegovina would like to stress that its authorities fully cooperate with the ICTFY, as has been shown in Section 1 of this Chapter. At this particular point in time (March 1998) the ICTFY is trying the suspects of atrocities in this camp, among

whom are a person called Delić, mentioned in the witness statement. This Delić and one other suspect, Landzo, were arrested by the Applicant's authorities and transferred to the ICFTY with their full cooperation.

52. In the section on Rogatica [Counter-Memorial 7.1.7.0.] two documents are annexed: Annex No. C 39, (...) pp. c398-c401/c402-c406 and Annex No. C 160, Photos 4-13 [Counter Memorial para. 7.1.7.15.]. The latter Annex contains ten, indeed, horrible pictures, but does not provide any further information. The Annex does not clarify nor demonstrate the background of these pictures, let alone that it would provide for any objective indication that the perpetrators of these atrocities, whoever they may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group. The other Annex contains an anonymous witness statement presumably given before a "Republika Srpska" legal authority in September 1996; the statement does not provide for any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.
The Respondent, again, fails to provide the Court with any relevant background information. It should, at least, have explained, that this area was the theatre of heavy military exchanges, especially in the summer of 1992. It should also have mentioned, that the Serb forces at a certain point in time had to withdraw. They took many Serb citizens with them and were forced to take a road, which they themselves had mined before. That is the background to the events related in para. 7.1.7.15. of the Counter-Memorial and that, indeed and regrettably, caused the death of many people

53. In the section on Novi Travnik [Counter-Memorial 7.1.8.0.] one document is annexed: Annex No. C 109, (...), pp. c1110-c1114/c1115-c1118 [Counter Memorial para. 7.1.8.3.]. The Annex contains an anonymous witness statement, presumably given before a "Republika Srpska" legal authority in July 1996; the statement does not provide for any proof of the identity of the perpetrators of the atrocities described except that the witness indicates that it could have been "Muslims" or "Croats". The statement does not contain any material showing that the described murder was not an, indeed deplorable, incident but that it was committed as part of a well-organised campaign or pattern of conduct.

54. In the section on Sarajevo [Counter-Memorial 7.1.9.0.] several documents are annexed: Annex No. C 31, (...) pp. c324-c327/c328-c331, [Counter-Memorial para.

7.1.9.4.], Annex No. C 19, (...) pp. c178-c195/c196c202 and Annex No. C 34, (...) pp. c355-c362/c363-c369, [Counter-Memorial para. 7.1.9.11.], Annex No. C 158, Annex No. C 159, Annex No. C 160, Photos 14 and 15, Annex No. C 105, pp. c1070-c1075/c1076-c1081, [Counter-Memorial para. 7.1.9.12.], Annex No. C 93, (...) pp. c933-c937/c938-c942, [Counter Memorial para. 7.1.9.14.], Annex No. C 273, (...) pp. c2346-c2325, [Counter-Memorial para. 7.1.9.15.], Annex No. C 160, Photos 16-25 and Annex No. C 124, (...), pp. c1257-c1259/c1260-c1261, [Counter-Memorial para. 7.1.9.16.].

All of these annexes contain anonymous, mostly hearsay witness statements presumably given before a "Republika Srpska" legal authority; none of the statements provides any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct. The Applicant is able to provide the Court more information on one of the alleged series of incidents in the section on Sarajevo, since this is well known to the Applicant: the Respondent refers to a series of incidents which occurred in the locality of Kazani, in an area of Sarajevo under government control [Counter-Memorial, pp. 422-425, para, 7.1.9.15].

55. The Respondent provides a list of Serbs allegedly killed in Kazani and also the names of the supposed perpetrators of the crimes. Apparently the Respondent presents the Kazani case in support of its allegations regarding an asserted genocidal policy of the Bosnian government. However, the Kazani case proves the exact opposite of what the Respondent claims: during the years of the siege of Sarajevo the Bosnian authorities made every effort to prevent the commission of atrocities by individuals on the territory under their control.

Without elaborating on or admitting any of the incidents listed by the Respondent, the Applicant acknowledges that serious crimes were indeed committed in the Kazani area by members of the rampant "9th (not 10th, as the Respondent claims) mountain brigade". This brigade acted, in fact, completely independently of the Bosnian armed forces and continuously ignored the orders given by Sarajevo. In the autumn of 1993, when the extent of the siege was perhaps at its worst, the Bosnian Army and Sarajevo police forces mounted an operation in the Kazani area to stop the atrocities being committed. During this armed operation, the commander of the "9th mountain brigade", Mušan Topalović or "Caco", died, when offering resistance to his arrest. During the operation, nine police officers were killed by members of the "9th mountain brigade".

56. Not long after concluding the operation, eighteen members of the "9th mountain brigade" were indicted by the public prosecutor for various crimes allegedly committed against several Sarajevan civilians. On 26 September 1996, the Higher Court in Sarajevo found twelve former members of the "brigade" guilty of murder and sentenced four of them to ten year's imprisonment. The others received lighter sentences, as the High Court judged that they had not actively participated in the committed crimes [High Court in Sarajevo, *Kubat Zijo a.o. ("Kazani")*, Case number K 87/96, 26 September 1996, Annex 303]. The Respondent complains about this outcome of the proceedings, and apparently would have preferred much higher sentences [Counter-Memorial 7.2.6.39.2.]. However, the Respondent does acknowledge that, in any event, the Government authorities put an end to the ongoing crimes by arresting and prosecuting the perpetrators. Therefore, the Applicant fails to understand how this, ever, could be construed as evidence that the Applicant actively conducted a policy of genocide.

57. The section on Čapljina [Counter-Memorial 7.1.10.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

58. The section on Višegrad [Counter-Memorial 7.1.11.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

59. In the section on Brod [the true name of this town is Bosanski Brod, however the Respondent has deemed fit to delete "Bosanski", which means Bosnian] [Counter-Memorial 7.1.12.0.] five documents are annexed: Annex No. C 37, (...) pp. c384-c386/c387-c389, Annex No. C 38 (...), pp. c390-c393/c394-c397, Annex No. C 68, (...), pp. c699-c701/c702-c705, Annex No. C 93, (...), pp. c933-c937/c938-c942 [Counter-Memorial para. 7.1.12.1.] and Annex No. C 80, (...), pp. c808-c810/c811-c813 [Counter-Memorial para. 7.1.12.3.]. All of these annexes contain anonymous, mostly hearsay witness statements presumably given before a "Republika Srpska" legal authority; none of the statements provide any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organized campaign. Without acknowledging the accuracy of the allegations of the Respondent contained in this section, nor of the mentioned witness statements, Bosnia and Herzegovina wishes to clarify that certain atrocities committed in Bosnia came to the knowledge of the Bosnian

authorities. As soon as that happened the authorities of Bosnia and Herzegovina publicly condemned this incident. These condemnations have been broadcasted on radio and have been published in newspapers. In addition, Annex No. C 93 contains a witness statement that is not related to the allegations of paragraph 7.1.12.1. of the Counter-Memorial.

60. The witness provided in support of the allegations contained in paragraph 7.1.12.3. of the Counter-Memorial seems to state that the acts involved were allegedly committed by HVO soldiers. The Respondent fails to explain why, if the related facts are true, Bosnia and Herzegovina would be responsible. For the Information of the Court, Bosnia and Herzegovina herewith provides the description of HVO given by the Commission of Experts of the United Nations:

> "R. Croatian Defence Council
>
> 164. These surrogate forces of the Republic of Croatian regular army (HV), are known as the HVO. They are usually comprised of Bosnian Croatians armed and trained by Croatia, and tend to be more disciplined. This is the principal Croatian military force fighting in BiH." [United Nations, *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780* (1992), S/1994/674, 27 May 1994, Vol. I, Annex III, p. 30, para. 164].

More recently the Prosecutor at the ICTFY, in his opening statement in the Blaškić case on 24 June 1996 provided the following analysis of the position of HVO in Bosnia and Herzegovina:

> "Now focusing on the war in Bosnia, the parties to the conflict were generally, but not exclusively, divided along ethnic lines: the Bosnian Serbs, under the leadership of Dr. Radovan Karadzic and General Ratko Mladic sought to cleave out an independent entity known as the Republika Srpska. The socialist Federal Republic of Yugoslavia and its army, the JNA, supported this effort, but ultimately international pressure was brought to bear and the JNA was withdrawn, at least nominally form Bosnia on 19th May 1992. In truth and in fact the JNA remained in Bosnia and Herzegovina but merely changed its name. The war machine of the JNA was essentially transferred to the army of the Republika Srpska, the VRS, and throughout the war Belgrade continued to support the VRS with supplies, munitions and armaments. It was possession of these superior arms that gave the Bosnian Serbs a decided advantage at the outset of the conflict in Bosnia.
> Now opposing the Bosnian Serbs were the Bosnian Muslims and the Bosnian Croats, both groups initially under the direction of the central government, which was located in Sarajevo. Because the Bosnian government was unprepared for war and because of the superior armaments of the Bosnian Serbs, the Bosnian Serbs made impressive territorial gains in Bosnia and seized control over large parts of the country. The Bosnian Croats expressed dissatisfaction with the Bosnian government's weak response to the Serbian aggression, and in 1991 and in 1992 they created the Croatian Community of Herceg-Bosna, a quasi-state, and a military component to that state, the HVO, ostensibly for the Defence of Croat interests. Our evidence will show that the Bosnian Croats were provided with significant logistical and manpower support, political direction and diplomatic backing by Croatia in their efforts. While the Bosnian Croats initially allied themselves with the

forces of the central government to resist the Serbian offensive, this alliance was short-lived, and shortly it fell apart and a war within a war erupted. That war was the Croat-Muslim war and it is evens from that war that occurred in Central Bosnia that are the subject of the second amended indictment before you.
Now, to put into context the evens of the Croat-Muslim war, I think it's very important to identify the parties to the conflict, their goals and objectives, and the structures of their respective military commands. I well refer during the course of my opening remarks, your Honour, to the military unit of the Bosnian Croats as the HVO and I will refer to the military organisation of the Bosnian Muslims as the Armija.
To understand the goals and aspirations of the Bosnian Croats one must initially return to one of the former republics of the former state of Yugoslavia, that is the socialist Republic of Croatia, where in 1988 and in 1989 a new political party was formed. That political party was called the Croatian democratic community of the HDZ. Its leader was Dr. Franjo Tudjman, the current President of Croatia, and a well-known former partisan, communist and JNA general. Dr. Tudjman drafted the programme of the HDZ, and this programme was nationalistic in tone and asserted, among other things, the right of the Croatian people to self-determination in their historic borders. In April and May of 1990 multi-party elections occurred in Croatia and the HDZ was triumphant. It received the majority of seats in the assembly and on 30th May 1990 the assembled deputies elected Franjo Tudjman as the President of Croatia and Stipe Mesic took the new post of Prime Minister.
Following the elections in Croatia, the HDZ political party extended its activities into Bosnia and Herzegovina. The Croatian democratic party of Bosnia and Herzegovina or the HDZ BiH was founded in Sarajevo on 18th August 1990, and it was registered as an "association" in Sarajevo on 6th September 1990. The goals of this Bosnian-Croat party included the right of securing the right of self-determination of Bosnian Croats, the right of secession and the realisation of sovereignty of Bosnia and Herzegovina. The first President of this party was a man by the name of Davor Perinovic, and he was replaced by a man named Stjepan Kljuic. M. Kljuic was a moderate Croat, who believed in a single state, a single, multi-ethnic state of Bosnia and Herzegovina. Our evidence will show that Mr. Kljuic was removed from the head of this party by President Tudjman and ultimately replaced by a man named Mate Boban. I will explain the significance of that event later in my remarks." [ICTFY, Prosecutor's Opening Statement, Prosecutor v. Tihomir Blaškić, IT-95-14-I, 24 June 1996].

It is clear from this statement that HVO was not only not controlled by the Applicant's Government, but that they, on the contrary, at times even acted as enemy forces. The Commission of Experts came to a similar conclusion with regard to the HOS (Croatian Defence Forces), whose forces are sometimes referred to in other witness statements:

"Formed as the paramilitary wing of the ultra-right HSP [Croatian Party of Rights], the HOS reportedly trained soldiers at former JNA facilities in Slovenia and was supplied, in part, by the Republic of Croatia. There are also reports that HOS units served directly under the regular Croatian army. A Croatian military court tried HSP leader, Dobroslav Paraga, in 1993 for attempting to overthrow the Croatian Government. A Reuters report on the trial stated that the "majority of HOS units were proved to be under Croatian Army Command". After 1993, the HOS soldiers were integrated into the HVO." [United Nations, *Final Report of the United Nations Commission of Experts*, S/1994/674/Add. 2 (Vol I), 28 December 1994, p. 19, para. 65].

61. In the section on Kupres [Counter-Memorial 7.1.13.0.] five documents are annexed. The allegations of paragraph 7.1.13.3. of the Counter-Memorial are supported by two documents: Annex No. C 160, Photos 26-31, Annex No. C 122 (...), pp. c1236-c1241/c1242-c1249. Annex No. C 160 contains six, indeed, horrible pictures, but does not provide any further information.

The Annex does not clarify nor demonstrates the background of these pictures, let alone that it would provide for any objective indication that the perpetrator of these atrocities, whoever they may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group. However, Bosnia and Herzegovina wishes to draw the attention of the Court to the fact that these pictures show dead soldiers in JNA reserve unit uniforms. The other Annex contains an anonymous witness statement presumably given before a "Republika Srpska" legal authority in July 1996; the statement does not provide for any proof on the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct. Moreover, this witness statement is not related to the alleged incidents that took place in the suburb of Kratelj. Whatever the truth or relevance of this testimony may be, it reports that the alleged incidents, if true, were committed by HVO and HOS forces. None of these were controlled by Bosnian Government authorities.

Para. 7.1.13.6. is annexed with one document: Annex No. C 160, Photo 33. This Annex contains, indeed, a horrible picture, but does not provide any further information. The Annex does not clarify nor demonstrates the background of this picture, let alone that it would provide for any objective indication that the perpetrator of these atrocities, whoever this may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.

Para. 7.1.13.11. is annexed with two documents: Annex No. C 20, (..), pp. c203-207/c208-c210 and Annex No. C 85, (...), pp. c853-c859/c860-c864. All of these Annexes contain anonymous witness statements presumably given before a "Republika Srpska" legal authority in April 1995; none of the statements provide any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct. Both statements mention the bad physical condition and the eventual death of Dane Marijanac, as a result of the alleged incidents that allegedly took place in Bugojno. From Bugojno, Dana Marijanac and both witnesses were taken to Travnik. According to both testimonies, Dana Marijanac refused to be brought to the hospital and eventually died. Both witnesses also mention the

subsequent interference of the President of the Court and the investigation of the death of Dane Marijanac by a "commission set up of a Serb, a Muslim and a Croat" [Annex No. C 85, p. c863]. Whatever the relevance and truth of these statements might be, they also clarify that apparently at least appropriate action was taken by the relevant authorities.

62. In the section on Jablanica [Counter-Memorial 7.1.14.0.] two documents are annexed: Annex No. C 17, (...) pp. c167-c170/c171-c175 and Annex No. C 269, (...), pp. c2315-c2318/c2319-c2322 [Counter-Memorial para. 7.1.14.1.].
The first Annex contains an anonymous, partly hearsay, witness statement of a member of the Army of the "Republika Srpska", presumably given before a Respondent legal authority in Belgrade in May 1995; the statement does not provide any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.
The other Annex contains an autopsy report prepared by a Forensic Expert of the *Military* Medical Academy in Belgrade, regarding a person identified in the report. The report was produced in March 1995. Presumably the killing took place on 13 November 1994, however the report does not contain any reasoned opinion regarding the latter date. Apparently the person described in the report died as soldier in the Army of the "Republika Srpska" [Counter-Memorial para. 7.1.14.1.]. Accordingly the report informs that the deceased was wearing: "[c]amouflage pants, long cotton underpants in a green shade, short white panties, military boots size 40,5 and green military socks" [Annex No. 269, p. c2321]. The report does not provide for any objective indication that the perpetrator of these atrocities, whoever that may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.

63. In the section on Livno [Counter-Memorial 7.1.15.0.] four documents are annexed: Annex No. C 9, (...), pp. c66-c69/c70-c73, Annex No. C 16, (...), pp. c159-c162/c163-c166, Annex No. C 250, (...) pp. c2165-c2170/c2171-c2176 [Counter-Memorial para. 7.1.15.3.], and Annex No. C 40, (...). pp. c407-c410/c411-c415 [Counter-Memorial para. 7.1.15.5.].
The first three Annexes contain anonymous, partly hearsay, witness statements presumably given before a "Republika Srpska" legal authority. The same is true for the fourth annex statement [Annex No. C 40], which is presumably given before a Respondent legal authority, in Belgrade; none of the statements provides any proof of the identity of the perpetrators of the atrocities described, let alone any material

showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.
Without acknowledging that the testimonies are true, Bosnia and Herzegovina remarks that all the statements mention that the atrocities were apparently committed by HVO forces, which were not controlled by the Bosnian Government.

64. In the section on Goražde [Counter-Memorial 7.1.16.0.] six documents are annexed: Annex No. C 5, (...), pp. c28-c30/c31-c33, Annex No. C 15, (...), pp. c149-c153/c154-c158, Annex No. C 14, pp. c131-c140/c141-c148, Annex No. C 53, pp. c543-c546/c547-c551, Annex No. C 62, pp. c629-c632/c633-c636 and Annex No. C 116, pp. c1160-c1175/c1176-c1189 [Counter-Memorial para. 7.1.16.1.].
The first five Annexes contain anonymous, partly hearsay, witness statements presumably given before a "Republika Srpska" legal authority. Annex No. C 15 does not relate to the allegations made in this section. The sixth Annex [Annex No. C 116] contains a, mostly hearsay, witness statement presumably given before a Respondent legal authority in Belgrade. None of the statements provides any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct. Without acknowledging that any of the testimonies given in this section are true, the testimonies in the latter Annex show that there was presumably opposition against the alleged atrocities from *inter alia* the new head of the Goražde police, who according to this witness protected the Serb population [Annex No. C 116, p. c1178] and from former Muslim JNA officers who "opposed the liquidation of Serbs" [*ibid.* p. c1180]. Also, according to the witness, the Muslim population opposed. Whatever may be true in this witness statement, it certainly does not provide for a basis to conclude that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

65. In the section on Kotor Varoš [Counter-Memorial 7.1.17.0.] three documents are annexed: Annex No. C 99, (...) pp. c1010-c1014/c1015-c101, Annex No. C 150, (...), pp. c1493-c1495/c1496-c1499 and Annex No. C 161, pictures No. 1-3, p. 32 [Counter-Memorial para. 7.1.17.6.].
The latter Annex contains three pictures, but does not provide any further information. The Annex does not clarify nor demonstrate the background of these pictures, let alone that it would provide for any objective indication that the perpetrator of these atrocities, whoever they may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.

The other two Annexes contain one anonymous witness statement and one medical report, presumably regarding this witness. The witness statement was presumably given before a "Republika Srpska" legal authority in September 1996. It contains a truly horrible story, but no firm proof on the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct. The medical report repeats the witness' statement and declares that the witness was in bad physical condition due to being the victim of armed assault. The medical statement, understandably, does not contain proof on the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

66. The section on Fojnica [Counter-Memorial 7.1.18.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

67. In the section on Čajniče [Counter-Memorial 7.1.19.0.] three documents are annexed: Annex No. C 35, (...), pp. c370-c372/c373-c375 [Counter-Memorial para. 7.1.19.1.], Annex No. C 111, (...), pp. c1124-c1126/c1127-c1129 [Counter-Memorial para. 7.1.19.2.] and Annex No. C 21, (...), pp. c211-c212/c213-c214 [Counter-Memorial para. 7.1.19.4.].
All of these Annexes contain anonymous, mostly hearsay, witness statements presumably given before a "Republika Srpska" legal authority in Foča (renamed by the Respondent as "Srbinje", which means "*city of Serbs*") in May and June 1995; none of the statements provides any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

68. In the section on Tuzla [Counter-Memorial 7.1.20.0.] four documents are annexed: Annex No. C 46, (...), pp. c465-c469/c470-c474 [Counter-Memorial para. 7.1.20.2.], Annex No. C 47, (...), pp. c475-c483/c484-c491 [Counter-Memorial para. 7.1.20.4.], Annex No. C 7, (..), pp. c43-c48/c49-c54 and Annex No. C 63, (...), pp. c637-c644/c645-c651 [Counter-Memorial para. 7.1.20.5.].
All of these annexes contain anonymous, partly hearsay, witness statements presumably given before a "Republika Srpska" legal authority; none of the statements provides any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

With regard to the killing referred to in para. 7.1.20.2 the Respondent alleges:

> "The Police in Tuzla took no action against the perpetrators of this crime, and the witness was allowed to leave Tuzla only after he had given the military investigators a written statement saying that he had no intentions of pressing criminal charges.".

However, in this case the Applicant managed to trace the alleged crimes and found that, indeed the Tuzla legal authorities investigated the matter and that the two suspects mentioned by the Respondent were indeed brought to Trial. On 15 July 1995 the two suspects were found guilty by the District Military Court of Tuzla, which verdict was, in 1995, confirmed by the Supreme Court. The perpetrators were convicted to thirteen years imprisonment [Annex 304].
The Applicant, at this point, also wishes to draw the Court's attention to the public statement, delivered by the by the, then, mayor of Tuzla general policy, explicitly confirming the policy of the Government authorities aimed at the preservation of a multicultural Bosnia and Herzegovina [see Section 2 of this Chapter, and Annex 302].

69. The Section on Ugljevik [Counter-Memorial 7.1.21.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

70. In the section on Zvornik [Counter-Memorial 7.1.22.0.] two documents are annexed: Annex No. C 160, Photos 34 - 37 [Counter-Memorial para. 7.1.22.5.] and Annex No. C 270, (...), pp. c2323-c2327/c2328-c2331 [Counter-Memorial para. 7.1.22.6.]. The latter annex contains four, indeed, horrible pictures, but does not provide any further information. The annex does not clarify nor demonstrates the background of these pictures, let alone that it would provide any objective indication that the perpetrator of these atrocities, whoever they may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.
The other annex [No. C 270] contains an anonymous, witness statement presumably given before a "Republika Srpska" legal authority in September 1996. This statement is only based on hearsay as far as the allegations in para. 7.1.22.6. are concerned and does not provide any proof on the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.
The Applicant wishes to draw the attention of the Court to Section 6 of Chapter 5, above, which is in its entirety devoted to the true story of Zvornik.

71. In the section on Kladanj [Counter-Memorial 7.1.23.0.] three documents are annexed: Annex No. C 160, Photo 38, and Annex No. C 13, (...), pp. c119-c124/c125-c130, Annex No. C 268, (...), c2304-c2308/c2309-c2314 [Counter-Memorial para. 7.1.23.1.]. The first annex contains one, indeed horrible, picture, but does not provide any further information. The annex does not clarify nor demonstrates the background of this picture, let alone that it would provide any objective indication that the perpetrator of these atrocities, whoever they may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.
The other two annexes contain two autopsy reports. These reports, understandably, do not provide any objective indication that the perpetrator of these atrocities, whoever that may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group. The Applicant notes that both autopsies have been performed on 23 February 1994 in Šekovici, which is in Bosnia and Herzegovina, by a VJ Lt. Col. Zoran Stanković, who according to his report is an expert of the Military Medical Academy of Belgrade. The reports were made on the request of the Commander of the Territorial Defence Force of Šekovici ("Republika Srpska"), thus showing that local commanders of the Bosnian Serb Army effectively disposed of direct lines of communication with the Yugoslav military in Belgrade.

72. The section on Orašje [Counter-Memorial 7.1.24.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

73. The section on Mostar [Counter-Memorial 7.1.25.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

74. The section on Duvno (Tomislavgrad) [Counter-Memorial 7.1.26.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

75. In the section on Visoko [Counter-Memorial 7.1.27.0.] one document is annexed: Annex No. C 64, (...), pp. c652-c656/c657-c661 [Counter-Memorial para. 7.1.27.1.]. This annex contains one anonymous witness statement, presumably given before a "Republika Srpska" legal authority. According to the annex the statement was delivered on 12 December 1996, while the witness relates events which allegedly

took place in June 1992. The statement, furthermore, does not provide any objective indication that the alleged perpetrators of the alleged atrocities did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.

76. In the Section on Bugojno [Counter-Memorial 7.1.28.0.] one document is annexed: Annex No. C 118, (...), pp. c1198-c1200/c1201-c1203 [Counter-Memorial para. 7.1.28.1.]. This annex contains one anonymous, mostly hearsay, witness statement presumably given before a "Republika Srpska" legal authority. The witness mentions the presence of "Croat soldiers" in Bugonjo. His statement does not provides any proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

77. The section on Vitez [Counter-Memorial 7.1.29.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

78. The section on Vareš [Counter-Memorial 7.1.30.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

79. In the section on Breza [Counter-Memorial 7.1.31.0.] one document is annexed: Annex No. C 87, (...), pp. c872-c878/c879-c884 [Counter-Memorial para. 7.1.31.1.]. This annex contains one anonymous witness statement presumably given before a "Republika Srpska" legal authority. The statement does not provide corroborated proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

80. The section on Ilijaš [Counter-Memorial 7.1.32.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

81. The section on Odžak [Counter-Memorial 7.1.33.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

82. The section on Prijedor [Counter-Memorial 7.1.34.0.] is not supported by any accessible material whatsoever, so, in principle, this section will not be further discussed in this Reply.
However, Bosnia and Herzegovina does want to draw the attention of the Court to the fact that in Prijedor tens of thousands of non-Serbs were killed, tortured, raped, maltreated and expelled in a well-organised campaign or pattern of conduct run by the JNA, Serb paramilitaries and Bosnian Serb military. The Prijedor ethnic cleansing is one of the best documented episodes of the entire war [see above, Chapter 5, Section 8]. The mere fact that the Respondent does not even bother to acknowledge that these extreme atrocities took place in this area, but instead features this area in its mostly unsubstantiated listing of events which supposedly is meant to lead the Court to the conclusion that the non-Serb victims actually are the perpetrators of genocide, demonstrates the Respondent's utter disdain for the victims of this, well documented and indisputed, genocide against thousands of non-Serbs in this region, its arrogance towards the Applicant and eventually also its contempt of this Court. This approach makes it, in any event, perfectly clear that the Court should not take any of this type of allegations seriously in as serious a case as the present one.

83. In the section on Zenica [Counter-Memorial 7.1.35.0.] four documents are annexed: Annex No. C 247, (...), pp. c2120-c2123/c2124-c2126 [Counter-Memorial para. 7.1.35.1.], Annex No. C 246, (...), pp. c2113-c2116/c2117-c2119 [Counter-Memorial para. 7.1.35.6.], Annex No. C 1, (...), pp. c1-c4/c5-c7 [Counter-Memorial para. 7.1.35.8.] and Annex No. C 129, (...), pp. c1320-c1333/c1334-c1347 [Counter-Memorial para. 7.1.35.9.]. All of these annexes contain anonymous, mostly hearsay, witness statements presumably given before a "Republika Srpska" legal authority. None of the statements provides any corroborated proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.
Although the Applicant explicitly does not acknowledge the alleged facts listed by the Respondent, it readily accepts that certain units of the Bosnian Army III Corps took to committing serious crimes in the Zenica region during the years of the armed conflict. It took the Bosnian authorities some time, before they were able to act against these criminals. However, this is exactly what they eventually did, as was reported in *Oslobodenje* of 13 February 1994. The newspaper article mentions that criminal military leaders were arrested and that the action was approved by the

Presidency. The article also refers to similar, earlier, actions in Sarajevo [*Oslobodenje*, 13 February 1994, Annex 305].

84. The section on Jajce [Counter-Memorial 7.1.36.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

85. The section on Rudo [Counter-Memorial 7.1.37.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

86. The section on Hrasnica [Counter-Memorial 7.1.38.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

87. In the section on Derventa [Counter-Memorial 7.1.39.0.] one document is annexed: Annex No. C 128, (...), pp. c1311-c1314/c1315-c1319 [Counter-Memorial para. 7.1.39.5.].
This annex contains one anonymous, partly hearsay, witness statement presumably given before a "Republika Srpska" legal authority. The statement mentions several times certain actions taken by HOS or unidentified soldiers and does not provide any corroborated proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

88. In the section on Hadžići [Counter-Memorial 7.1.40.0.] one document is annexed: Annex No. C 67, (...), pp. c691-c694/c695-c698 [Counter-Memorial para. 7.1.40.1.].
This annex contains one anonymous witness statement presumably given before a "Republika Srpska" legal authority. The statements does not provide any corroborated proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

89. The section on Bihać [Counter-Memorial 7.1.41.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

90. The section on Vlasenica [Counter-Memorial 7.1.42.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

91. The section on Pazarić [Counter-Memorial 7.1.43.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

92. In the section on Trnovo [Counter-Memorial 7.1.44.0.] two documents are annexed: Annex No. C 160, Photo 39 [Counter-Memorial para. 7.1.44.8.] and Annex No. C 160, Photos 40 [Counter-Memorial para. 7.1.44.9.]. These annexes contain, indeed, horrible pictures, but do not provide any further information. The annex do not clarify nor demonstrate the background of these pictures, let alone that it would provide for any objective indication that the perpetrators of these atrocities, whoever they may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.

93. The section on Sokolac [Counter-Memorial 7.1.45.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

94. In the section on Bosanska Bijela [Counter-Memorial 7.1.46.1.] one document is annexed: Annex No. C 97, (...), pp. c995-c997/c998-c1001 [Counter-Memorial para. 7.1.46.1.]. This annex contains one anonymous, partly hearsay, witness statement presumably given before a "Republika Srpska" legal authority. The statement does not provide any corroborated proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct. Besides that the witness only relates events allegedly conducted by Croat forces, which were in no way controlled by the authorities of Bosnia and Herzegovina.

95. The section on Bukovac [Counter-Memorial 7.1.46.2.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

96. In the section on Bukvik, Vujičić, Gajeva and Lukovac [Counter-Memorial para. 7.1.46.3.] three documents are annexed: Annex No. C 4, (...), pp. c22-c24/c25-c27, Annex No. C 86, (...), pp. c865-c867/c868-c871 and Annex No. C 110, (...), pp.

c1119-c1120/c1121-c1123. All of these annexes contain anonymous, partly hearsay, witness statements presumably given before a Republika Serpska legal authority. None of the statements provide firm proof of the identity of the, sometimes described as Croats, perpetrators of the alleged atrocities, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

97. The section on Vučilovac [Counter-Memorial 7.1.46.4.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

98. The section on Cerik [Counter-Memorial 7.1.46.5.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

99. The section on "The killing of Serbs - prisoners of war" [Counter-Memorial 7.1.46.6.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

100. In the section on Han Pijesak [Counter-Memorial 7.1.47.0.] two documents are annexed: Annex No. C 100, (...), pp. c1020-c1025/c1026-c1030 and Annex No. C 69, (...), pp. c706-c710/c711-c715 [Counter-Memorial para. 7.1.47.1.]. These annexes contain anonymous, mostly hearsay, witness statements (one of them probably delivered by a minor) presumably given before a "Republika Srpska" legal authority. None of the statements provides any corroborated proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

The Applicant wishes to draw the attention of the Court to the fact that, at the time the alleged facts took place, Han Pijesak was, and for that matter still is, the headquarters of General Ratko Mladic, the Bosnian Serb commander who is indicted for war crimes and genocide by the Prosecutor of the ICTFY. The Respondent does not bother to mention this fact in its counter-claims alleging that it was the Applicant who was responsible for genocide. Neither the witnesses nor the investigative judge interrogating them deemed it necessary to mention this as a relevant circumstance. This again demonstrates the Respondent's approach to the non-Serb victims of this armed conflict and to this case as such.

101. In the section on Lopare [Counter-Memorial 7.1.48.0.] one document is annexed: Annex No. C 102, (...), pp. c1038-c1043/c1044-c1049 [Counter-Memorial para. 7.1.48.4.]. This Annex contains one anonymous, partly hearsay, witness statement presumably given before a "Republika Srpska" legal authority. The statements does not provide any corroborated proof of the identity of the perpetrators (sometimes naming them 'Croats', sometimes 'Muslims") of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

102. In the section on Živinice [Counter-Memorial 7.1.49.0.] two documents are annexed: Annex No. C 54 , (...), pp. c552-c554/c555-c557 and Annex No. C 55, (...), pp. c558-c560/c561-c563 [Counter-Memorial para. 7.1.49.2.]. All of these annexes contain anonymous, partly hearsay, witness statements presumably given before a "Republika Srpska" legal authority. None of the statements provides any corroborated proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

103. In the section on Banovići [Counter-Memorial 7.1.50.0.] one document is annexed: Annex No. C 92, (...), pp. c922-c927/c928-c932 [Counter-Memorial para. 7.1.50.3.]. This annex contains one anonymous witness statement presumably given before a "Republika Srpska" legal authority. The statements relates various alleged atrocities but does not provide any proof of the alleged killings listed in this paragraph of the Counter-Memorial, let alone any material showing that these killings took place as part of a well-organised campaign or pattern of conduct.

104. The section on Kalesija [Counter-Memorial 7.1.51.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

105. In the section on Kalinovik [Counter-Memorial 7.1.52.0.] one document is annexed: Annex No. C 160, Photo 41 [Counter-Memorial para. 7.1.52.1.]. The annex contains one, indeed, horrible picture, but does not provide any further information. The annex does not clarify nor demonstrate the background of this picture, let alone that it would provide for any objective indication that the perpetrator of the alleged atrocity, whoever that may have been, did commit this as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.

106. The section on Travnik [Counter-Memorial 7.1.53.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

107. The section on Mrkonjić Grad [Counter-Memorial 7.1.54.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply. The Applicant wishes to add that the lack of any annexed material is in this case especially remarkable given the long list of alleged killings produced in this paragraph of the Counter-Memorial. Also at this point the Respondent lists 81 Croat suspects of these alleged killings, President Tudjman being the first person mentioned. Bosnia and Herzegovina fails to see the relevance of all this to this case. This section also contains a list of some 11 Bosnian authorities as suspects of the same alleged crimes, President Izetbegović being the first one mentioned. Also this list is not supported by any annexed material. This method of proceeding, practiced by the Respondent, further demonstrates that it rather uses this case as an opportunity to continue its usual propaganda campaign than as serious litigation.

108. The section on Srbobran [Counter-Memorial 7.1.55.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply. Actually this section is interesting for the issues discussed in this case: the true name of this town is Donji Vakuf. It was renamed by the Serbs after the Serb take-over in May 1992. "Srbobran" is Serbo-Croatian for "Serbian Fight". No need to say that the Applicant's authorities never accepted this new name. Nevertheless, the Respondent has, together with the Bosnian Serbs, chosen to use this name.

109. The section on Doboj [Counter-Memorial 7.1.56.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

110. In the section on Kozarska Dubica [the true name of this town is Bosanska Dubica, however the Respondent has deemed fit to delete "Bosanska", which means Bosnian] [Counter-Memorial 7.1.57.0.] this section one document is annexed: Annex No. C 78, (...), pp. c792-c795/c796-c798 [Counter-Memorial para. 7.1.57.1.]. This Annex contains one anonymous, partly hearsay, witness statement presumably given before a "Republika Srpska" legal authority. The statements only relates acts presumably committed by "the Croatian army", so whatever the truth of it may be this statement does not have any relevance to this case whatsoever.

111. The section on Gradiška [the true name of this town is Bosanska Gradiška, however the Respondent has deemed fit to delete "Bosanska", which means Bosnian] [Counter-Memorial 7.1.58.0.] is not supported by any accessible material whatsoever - section will not be further discussed in this Reply.

112. The section on Gradačac [Counter-Memorial 7.1.59.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

113. The section on Kakanj [Counter-Memorial 7.1.60.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

114. The section on Krupa na Uni [Counter-Memorial 7.1.61.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

115. In the section on Sanski Most [Counter-Memorial 7.1.62.0.] two documents are annexed: Annex No. C 50, (...), pp. c511-c514/c515-c519 and Annex No. C 104, (...), pp. c1060-c1064/c1065-c1069 [Counter-Memorial para. 7.1.62.1.]. These annexes contain anonymous, partly hearsay, witness statements presumably given before a "Republika Srpska" legal authority; none of the statements provides any corroborated proof of the identity of the perpetrators of the atrocities described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

116. In the section on Teslić [Counter-Memorial 7.1.63.0.] two documents are annexed: Annex No. C 160, Photo 42 and 43 [Counter-Memorial para. 7.1.63.1.] and Annex No. C 117, (...), pp. c1190-c1193/c1194-c1197 [Counter-Memorial para. 7.1.63.2.]. The first annex contains two, indeed, horrible pictures, but does not provide any further information. The annex does not clarify nor demonstrates the background of these pictures, let alone that it would provide for any objective indication that the perpetrator of these atrocities, whoever they may have been, did commit these as part of a campaign, directed by the Applicant's Government and aimed at the destruction of a specific ethnic group.
The other annex contains an anonymous, witness statement presumably given before a "Republika Srpska" legal authority in September 1996. The statement does not provide any corroborated proof on the identity of the perpetrators of the atrocities

described, let alone any material showing that the mentioned atrocities took place as part of a well-organised campaign or pattern of conduct.

117. The section on the Territory of Respondent of the Counter-Memorial [7.1.64.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

118. It is clear from this long, monotonous, response to the Respondent's allegations, that the Federal Republic of Yugoslavia has not even began to formulate a sufficiently supported factual basis for its counter-claims. The approach of the Respondent apparently is to just overwhelm the Court with hundreds of pages of listings of alleged events, not with true and independently supported facts, neither with any beginning of analysis. For these reasons alone the Respondent's conclusions, based on this particular way of proceeding, cannot sustain its far reaching submissions.

4. Deliberate inflicting on Serbs conditions of life calculated to bring about their physical destruction and causing serious bodily or mental harm [Counter-Memorial 7.2.]

119. In its Counter-Memorial the Respondent also devotes an extensive section on providing materials which supposedly support the allegation that Bosnia and Herzegovina would be responsible for deliberately inflicting on Serbs conditions of life calculated to bring about their physical destruction and for causing Serbs serious bodily or mental harm with the intent to destroy the Serb people, in whole or in part. This section contains 47 paragraphs of which only 24 paragraphs seem to be supported by material which is accessible to the Applicant. As explained above in Section 1 of this Chapter, the Applicant does not deem it necessary, nor is it possible, to go into the allegations which are not supported by any material or which are supported by material supposedly to be found only in Belgrade.

120. In the section on Čelebići [Counter-Memorial 7.2.1.0.] six documents are annexed: Annex No. C 126, (...), pp. c1267-c1277/c1278-c1299, Annex No. C 76, (...), pp. c769-c775/c776-c785, Annex No. C 123, (...), pp. c1250-1252/c1253-c1256, Annex No. C 28, (...), pp. c271-c286/c287-c300, Annex No. C 137, (...), pp. c1418-c1419/c1420-c1422 and Annex No. C 161, (Presumably) Photo 1, p. 88 [Counter-Memorial para. 7.2.1.14.]. The first four documents contain anonymous witness statements presumably given before "Republika Srpska" legal authorities, with the exception of Annex No. C 28 which was given before a Belgrade legal authority.

With regards to Annex No. C 76, the same remarks made in the paragraph on Konjic in Section 3 of this Chapter above, can be made in this context. The medical report and the accompanying photo do not provide any proof whatsoever of an organized campaign, directed by the Applicant's Government and aimed at the Serbs as such. Without acknowledging any particular allegation made by the Respondent regarding these events, the Applicant wishes to reiterate that it fully cooperates with the ICTFY, as has been indicated above [Section 1 of this Chapter]. War crimes are unacceptable in the view of the Applicant regardless the ethnicity of the perpetrator and the victims.

121. The section on Musala in Konjic [Counter-Memorial 7.2.2.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in this Reply.

122. In the section on Ljubuški [Counter-Memorial 7.2.3.0.] eight documents are annexed: Annex No. C 94, (...), pp. c943-c956/c957-c975, Annex No. C 59, (...), pp. c589-c593/c594-c599, Annex No. C 156, (...), pp. c1530-c1531/c1532-1536 and Annex No. C 161, Photo 1, p. 33 [Counter-Memorial para. 7.2.3.2.], Annex No. C 139, (...), pp. c1429-c1431/c1432-c1435 and Annex No. C 161, Photos 1-2, p. 69 [Counter-Memorial para. 7.2.3.15.], Annex No. C 140, (...), pp. c1436-c1438/c1439-c1445 and Annex No. C 161, Photos 1-7, pp. 71-74 [Counter-Memorial para. 7.2.3.16.]. Two of the annexes contain anonymous witness statements presumably given before "Republika Srpska" legal authorities; the first witness statement (Annex No. C 94) also contains hearsay statements. The Respondent fails to explain why, even if the alleged facts were true, Bosnia and Herzegovina would be responsible for the deeds of the HVO forces which were not controlled by the Bosnian Government. The medical findings contain no legally relevant material and the photos, although horrible, as well as the witness statements do not provide any proof whatsoever of the existence of an organized campaign, directed by the Applicant's Government and aimed against the Sebs as such.

123. In the section on Dretelj [Counter-Memorial 7.2.4.0.] seven documents are annexed: Annex No. C 94, (...), pp. c943-c956/c957-c975 [Counter-Memorial para. 7.2.4.2.], Annex No. C 155, (...), pp. c1523-c1524/c1525-1529 and Annex No. C 161, Photos 1-2, p. 34 [Counter-Memorial para. 7.2.4.9.], Annex No. C 257, (...), pp. c2220-2225/c2226-c2230, Annex No. C 256, (...), pp. c2212-c2215/c2216-c2219 and Annex

No. C 161, Photo 1, p. 35 [Counter-Memorial para. 7.2.4.10.] and Annex No. C 94, (...), pp. c943-c956/c957-c975 [Counter-Memorial para. 7.2.4.30.]. All the witness statements - with the exception of Annex No. C 257 which was given before a presumably Belgrade legal authority - were presumably given before "Republika Srpska" legal authorities and are anonymous. These witness statements also partly contain hearsay statements. Neither these witness statements nor the medical findings and the accompanying photos provide any proof whatsoever of the existence of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such.

124. In the section on Goražde [Counter-Memorial 7.2.5.0.] sixteen documents are annexed: Annex No. C 61, (...), pp. c619-c622/c623-c628, Annex No. C 115, (...), pp. c1152-1155/c1156-c1159, Annex No. C 62, (...), pp. c629-c623/c633-c636 and Annex No. C 116, (...), pp. c1160-1175/c1176-c1189 [Counter-Memorial para. 7.2.5.4.], Annex No. C 61, (...), pp. c619-c622/c623-c628 and Annex No. C 114, (...), pp. c1145-1147/c1148-c1151 [Counter-Memorial para. 7.2.5.8.1.], Annex No. C 113, (...), pp. c1138-1140/c1141-c1144 [Counter-Memorial para. 7.2.5.8.2.], Annex No. C 254, (...), pp. c2200-c2202/c2203-c2205 and Annex No. C 161, Photo 1, p. 36 [Counter-Memorial para. 7.2.5.8.8.], Annex No. C 25, (...), pp. c244-c249/c250-c254, Annex No. C 108, (...), pp. c1102-c1105/c1106-c1109 and Annex No. C 112, (...), pp. c1130-1133/c1134-c1137) [Counter-Memorial para. 7.2.5.8.9.], Annex No. C 108, (...), pp. c1102-c1105/c1106-c1109 and Annex No. C 112, (...), pp. c1130-1133/c1134-c1137 [Counter-Memorial para. 7.2.5.8.10], Annex No. C 61, (...), pp. c619-c622/c623-c628 [Counter-Memorial para. 7.2.5.8.13.] and Annex No. C 116, (...), pp. c1160-1175/c1176-c1189 [Counter-Memorial para. 7.2.5.8.14.]. Except for one annexed witness statement, Annex No. C 116, all the other anonymous witness statements were presumably given before "Republika Srpska" legal authorities. Almost all of these partly contain hearsay statements, including Annex No. C 116 which is a witness statement presumably given before a Belgrade legal authority; the remarks regarding Annex No. C 116 made in the paragraph dealing with Goražde in Section 3 of this Chapter above, are also relevant here. None of the witness statements provide any proof whatsoever that an organized campaign, directed by the Applicant's Government and aimed against the Serbs as an ethnic group existed. The medical finding and the accompanying photo contain no legally relevant material, do not provide any information as to the identity of the alleged perpetrators and do not provide any material whatsoever that the alleged injuries were sustained as a consequence of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such.

125. In the section on Sarajevo [Counter-Memorial 7.2.6.0.] eight documents are annexed: Annex No. C 10, (...), pp. c74-c83/c84-c91 [Counter-Memorial para. 7.2.6.6.], Annex No. C 44, (...), pp. c446-c450/c451-c454 [Counter-Memorial para. 7.2.6.23.], Annex No. C 32, (...), pp. c332-c339/c340-c346 [Counter-Memorial para. 7.2.6.30.], Annex No. 300, (...), pp. 1889-1911/1912-1933 [Counter-Memorial para. 7.2.6.38.1], Annex No. 247, (...), pp. 1582/96-1582/129 [Counter-Memorial para. 7.2.6.38.4.], Annex No. C 93, (...), pp. c933-c937/c938-c942, Annex No. C 153, (...), pp. c1511-c1513/c1514-1517 and Annex No. C 161, Photos 1-3, p.37 [Counter-Memorial para. 7.2.6.39.1.]. Except for Annexes No. 300 and No. 247, all the other witness statements are anonymous and were given before presumably "Republika Srpska" legal authorities - some of these also contain hearsay statements. Neither the witness statements nor the medical finding and the accompanying photos provide any proof whatsoever that these alleged acts were directed against the victims because of their Serbian origin as such. The remarks made in the paragraph on Sarajevo in Section 3 of this Chapter are also relevant in this context.

126. The section on Duvno (Tomislavgrad) [Counter-Memorial 7.2.7.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in this Reply.

127. In the section on Livno [Counter-Memorial 7.2.8.0.] three documents are annexed: Annex No. C 250, (...), pp. c2165-2170/c2171-c2176 [Counter-Memorial para. 7.2.8.1.], Annex No. C 88, (...), pp. c885-c889/c890-c894 [Counter-Memorial para. 7.2.8.12.] and Annex No. C 33, (...), pp. c347-c350/c351-c354 [Counter-Memorial para. 7.2.8.15.]. All three documents contain anonymous witness statements given before presumably "Republika Srpska" legal authorities. However, none of these documents provide any proof that an organized campaign, directed by the Applicant's Government and aimed specifically against the Serbs existed. All the statements also refer to HVO forces which were not controlled by the Bosnian Government.

128. The section on Bosanska Posavina Region [Counter-Memorial 7.2.9.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

129. In the section on Odžak [Counter-Memorial 7.2.10.0.] seventeen documents are annexed: Annex No. C 66, (...), pp. c673-c681/c682-c690 and Annex No. C 168, (...), pp. c1605-c1607/c1608-c1610 [Counter-Memorial para. 7.2.10.1.4.], Annex No. C 56, (...), pp. c564-c567/c568-c570, Annex No. C 143, (...), pp. c1456-c1457/c1458-c1459 and Annex No. C 161, Photo, p. 39 [Counter-Memorial para. 7.2.10.1.5.], Annex No. C 251, (...), pp. c2177-c2179/c2180-c2182 [Counter-Memorial para. 7.2.10.1.8.], Annex No. C 145, (...), pp. c1462-c1463/c1464-c1465 [Counter-Memorial para. 7.2.10.1.21.], Annex No. C 258, (...), pp. c2231-c2234/c2235-c2237, Annex No. C 161, Photos 1-5, pp. 40-43, Annex No. C 119, (...), pp. c1204-1208/c1209-c1213 and Annex No. C 26, (...), pp. c255-c258/c259-c262 [Counter-Memorial para. 7.2.10.2.2.], Annex No. C 260, (...), pp. c2246-c2248/c2249-c2251, Annex No. C 161, Photos 1-2, pp. 44-45, Annex No. C 119, (...), pp. c1204-1208/c1209-c1213, Annex No. C 261, (...), pp. c2252-c2254/c2255-c2257, Annex No. C 161, Photo 1, p. 38 and Annex No. C 90, (...), pp. c904-c907/c908-c912 [Counter-Memorial para. 7.2.10.4.]. Except for the first document which contains an anonymous witness statement given before a Belgrade legal authority, the other witness statements were given before presumably "Republika Srpska" legal authorities and are also anonymous. The Respondent also failed to mention that, even if the alleged facts were true, the HVO forces were not controlled by the Bosnian Government. Like the medical findings and the horrible accompanying photos, these witness statements provide no material of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such.

130. In the section on Brod (the true name of this town is Bosanski Brod, however the Respondent has deemed fit to delete "Bosanski", which means Bosnian) [Counter-Memorial 7.2.11.0.] fifteen documents are annexed: Annex No. C 119, (...), pp. c1204-1208/c1209-c1213, Annex No. C 70, (...), pp. c716-c721/c722-c727, Annex No. C 29, (...), pp. c301-c304/c305-c308 and Annex No. C 96, (...), pp. c987-c990/c991-c994 [Counter-Memorial para. 7.2.11.0.], Annex No. C 142, (...). pp. c1452-c1453/c1454-1455 and Annex No. C 161, Photo, p. 51 [Counter-Memorial para. 7.2.11.1.], Annex No. C 70. (...), pp. c716-c721/c722-c727 [Counter-Memorial para. 7.2.11.2.1.], Annex No. C 15, (...), pp. c149-c153/c154-c158 [Counter-Memorial para. 7.2.11.4.1.], Annex No. C 101, (...), pp. c10310c1033/c1034-c1037 [Counter-Memorial para. 7.2.11.4.4.], Annex No. C 15, (...), pp. c149-c153/c154-c158 [Counter-Memorial para. 7.2.11.4.5.], Annex No. C 262, (...), pp. c2258-c2260/c2261-c2263 and Annex No. C 161, Photos 1-2, pp. 46-47 [Counter-Memorial para. 7.2.11.5.], Annex No. C 119, (...), pp. c1204-c1208/c1209-c1213 [Counter-

Memorial para. 7.2.11.6.3.], Annex No. C 263, (...), pp. c2264-c2266/c2267-c2269 and Annex No. C 161, Photos 1-2, pp.48-49 [Counter-Memorial para. 7.2.11.6.4.]. All the witness statements are anonymous and were given before presumably "Republika Srpska" legal authorities; some of these statements also partly contain hearsay statements. Without acknowledging the truth of these statements, it should be pointed out that at the time in issue, the HVO forces controlled Bosanski Brod - the Bosnian Government had no authority over these forces. In any case, neither these statements nor the medical findings and the accompanying photos provide any proof that an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such, existed.

131. In the section on Orašje-Donja Mahala [Counter-Memorial 7.2.12.0.] fourteen documents are annexed: Annex No. C 141, (...), pp. c1446-1448/c1449-c1451, Annex No. C 161, Photos 1-2, p. 50 and Annex No. C 8, (...), pp. c55-c58/c59-c65 [Counter-Memorial 7.2.12.1.2.], Annex No. C 252, (...), pp. 2183-c2186/c2187-c2190 and Annex No. C 161, Photos 1-2, p. 52 [Counter-Memorial para. 7.2.12.1.5.], Annex No. C 146, (...), pp. c1466-c1468/c1469-c1472 and Annex No. C 161, Photos 1-2, p. 53 [Counter-Memorial para. 7.2.12.1.9.], Annex No C 138, (...), pp. c1423-c1425/c1426-c1428 and Annex No. C 161, Photo 1, p. 81 [Counter-Memorial para. 7.2.12.1.11.], Annex No. C 60, (...), pp. c600-c607/c608-c618 and Annex No. C 245, (...), pp.c2105-c2108/c2109-2112 [Counter-Memorial para. 7.2.12.1.12.], Annex No. C 119, (...), pp. c1204-1208/c1209-c1213 [Counter-Memorial para. 7.2.12.1.13.], Annex No. C 29, (...), pp. c301-c304/c305-c308 [Counter-Memorial para. 7.2.12.2.1.] and Annex No. C 249, (...), pp. c2158-2161/c2162-c2164 [Counter-Memorial para. 7.2.12.3]. All the witness statements are anonymous and were given before presumably "Republika Srpska" legal authorities. Annex No. C 8 also refers to Muslims being held in a camp at Donja Mahala. Without acknowledging the truth or relevance of the statements, it must be noted that the area in issue was controlled by the Croatian and HVO forces for whom the Bosnian Government was not responsible. Neither these anonymous witness statements nor the medical findings and the accompanying photos provide any proof that an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such, existed.

132. In the section on Brčko [Counter-Memorial 7.2.13.0.] fifteen documents are annexed: Annex No. C 4, (...), pp. c22-c24/c25-c27, Annex No. C 106, (...), pp. c1082-c1085/c1086-c1089 and Annex No. C 110, (...). pp. c1119-1120/c1121-c1123

[Counter-Memorial para. 7.2.13.1.], Annex No. C 148, (...), pp. c1479-c1481/c1482-c1484 and Annex No. C 161, Photo, p. 54 [Counter-Memorial para. 7.2.13.1.5.], Annex No. C 89, (...), pp. c895-c898/c899-c903, Annex No. C 147, (...), pp. c1473-c1475/c1476-c1478 and Annex No. C 161, Photos 1-2, pp. 55-56 [Counter-Memorial para. 7.2.13.1.6.], Annex No. C 89, (...), pp. c895-c898/c899-c903, Annex No. C 149, (...). pp. c1485-c1488/c1489-c1492 and Annex No. C 161, Photos 1-3, p.57 [Counter-Memorial para. 7.2.13.1.7.], Annex No. C 97, (...), pp. c995-c997/c998-c1001 [Counter-Memorial para. 7.2.13.1.8.], Annex No. C 106, (...), pp. c1082-c1085/c1086-c1089 [Counter-Memorial para. 7.2.13.4.1.], Annex No. C 162, (...), pp. c1568-c1570/c1571-c1573 and Annex No. C 161, Photo 1, p. 80 [Counter-Memorial para. 7.2.13.4.3.]. All the witness statements are anonymous and were given before presumably "Republika Srpska" legal authorities; most of these also contain hearsay statements and none point to an organized campaign against the Serbs as such. The medical findings and the accompanying photos contain no material relevant to the question whether an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such existed.

133. The section on Kotor Varoš [Counter-Memorial 7.2.14.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

134. In the section on Derventa [Counter-Memorial 7.2.15.0.] thirteen documents are annexed: Annex No. C 45, (...), pp. c455-c458/c459-c464 [Counter-Memorial para. 7.2.15.4.], Annex No. C 128, (...), pp. c1311-1314/c1315-c1219 and Annex No. C 127, (...), pp. c1300-1304/c1305-c1310 [Counter-Memorial para. 7.2.15.7.], Annex No. C 131, (...), pp. c1356-c1358/c1359-c1464 and Annex No. C 161, Photos 1-2, p. 83 [Counter-Memorial para. 7.2.15.11.], Annex No. C 132, (...), pp. c1365-c1368/c1369-c1375 and Annex No. C 161, Photos 1-3, p. 84 [Counter-Memorial para. 7.2.15.12.], Annex No. C 133, (...), pp. c1376-c1381/c1382-c1392 and Annex No. C 161, Photos 1-3, p. 82 [Counter-Claim para. 7.2.15.13.], Annex No. C 134, (...), pp. c1393-c1396/c1397-c1403 and Annex No. C 161, Photo 1, p. 86 [Counter-Claim para. 7.2.15.14.], Annex No. C 135, (...), pp. c1404-c1406/c1407-c1411 and Annex No. C 161, Photo 1, p.85 [Counter-Memorial para. 7.2.15.15.]. With the exception of Annex No. C 128 in which the witness' name was not deleted in the substantive part of the statement, all the witness statements which were given before presumably "Republika Srpska" legal authorities, are anonymous. Some of these witness statements furthermore partly contain hearsay statements. In the case of the medical findings no material legally relevant to the question whether an organized

campaign, directed by the Applicant's Government and aimed against the Serbs as such existed, is provided. The photos are indeed terrible, but no information pertaining to the background to these photos is provided. None of the annexes provide any proof of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such.

135. The section on Zvornik [Counter-Memorial 7.2.16.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply. Bosnia and Herzegovina wishes to draw the Court's attention to Chapter 5, Section 6 of this Reply,which is entirely devoted to Zvornik and which provides the true picture of events that took place in this city.

136. In the section on Hadžići [Counter-Memorial 7.2.17.0.] six documents are annexed: Annex No. C 74, (...)., pp. c753-c754/c755-c757 and Annex No. C 75, (...), pp. c758-c763/c764-c768 [Counter-Memorial para. 7.2.17.2.], Annex No. C 58, (...), pp. c579-c582/c583-c588, Annex No. C 65, (...), pp. c662-c666/c667-c672 and Annex No. C 95, (...), pp. c976-c980/c981-c986 [Counter-Memorial para. 7.2.17.3.] and Annex No. 246, (...), pp. 1582/1-1582/95 [Counter-Memorial para. 7.2.17.5.1.]. All the documents contain anonymous witness statements given before presumably "Republika Srpska" legal authorities; some of the documents also contain hearsay information and none of the allegations point to the existence of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such. Annexes No. C 65 and No. C 95 furthermore contain anonymous witnesses statements made by two reserve soldiers of the Yugoslav People's Army captured in Žunovnica, which lies to the south-east of Sarajevo, on 25 May 1992 - the said Army by then already had, at least this seems to be the Respondent's (not the Applicant's) position, withdrawn from Bosnia and Herzegovina.

137. In the section on Kladanj [Counter-Memorial 7.2.18.0.] one document is annexed: Annex No. C 7, (...), pp. c43-c48/c49-c54 [Counter-Memorial para. 7.2.18.3.]. The document contains an anonymous witness statement given before a presumably "Republika Srpska" legal authority. The alleged perpetrators are not identified and the document provides no proof that there was an organized campaign, directed by the Applicant's Government and aimed against the Serbs.

138. In the section on Tuzla [Counter-Memorial 7.2.19.0.] four documents are annexed: Annex No. C 47, (...), pp. c475-c483/c484-c491 [Counter-Memorial para. 7.2.19.2.], Annex No. C 63, (...), pp. c637-c644/c645-c651 [Counter-Memorial para. 7.2.19.3.], Annex No. C 265, (...), pp. cc2277-c2280/c2281-c2287 and Annex No. C 161, Photos 1-5, pp.59-61 [Counter-Memorial para. 7.2.19.4.]. The two documents mentioned first are anonymous and partly hearsay witness statements given before presumably "Republika Srpska" legal authorities. Neither these documents nor the medical report and the accompanying photos provide any material whatsoever of an organized campaign, directed by the Applicant's Government and aimed against these victims because of their ethnic origin.

139. The section on Gradačac [Counter-Memorial 7.2.20.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

140. The section on Jajce [Counter-Memorial 7.2.21.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

141. In the section on Banovići [Counter-Memorial 7.2.22.0.] two documents are annexed: Annex No. C 49, (...), pp. c496-c503/c504-c510 Annex No. C 24, (...), pp. c228-c236/c237-c243 [Counter-Memorial para. 7.2.22.1.]. Both these documents contain anonymous, partly hearsay witness statements given before presumably "Republika Srpska" legal authorities - they do not provide any material that the Serbs as such were targeted for the alleged maltreatment.

142. The section on Živinice [Counter-Memorial 7.2.23.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

143. The section on Trnovo [Counter-Memorial 7.2.24.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

144. In the section on Lukavac [Counter-Memorial 7.2.25.0.] one document is annexed: Annex No. C 248, (...), pp. c2127-2144/c2145-c2157 [Counter-Memorial para. 7.2.25.1.]. The document contains an anonymous witness statement given before a legal authority in Belgrade. The witness himself refers to the fact that Serbs as well as Muslims were the victims of maltreatment at the hands of an HOS formation,

which in any case were not controlled by the Bosnian Government. No material is provided of an organized campaign, directed by the Applicant's Government and aimed specifically against the Serbs.

145. The section on Medjedja [Counter-Memorial 7.2.26.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

146. The section on Travnik [Counter-Memorial 7.2.27.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

147. In the section on Srebrenica [Counter-Memorial 7.2.28.0.] ten documents are annexed: Annex No. C 130, (...), pp. c1348-1350/c1351-c1355, Annex No. 266, (...), pp. c2288-c2290/c2291-c2295, Annex No. C 161, Photos 1-3, pp. 62-64, Annex No. C 267, (...), pp. c2296-c2298/c2299-c2303, Annex No. C 161, Photos 1-2, p. 65, Annex No. C 73, (...), pp. c744-c748/c749-c752 and Annex No. C 41, (...), pp. c416-c422/c423-c428 [Counter-Memorial para. 7.2.28.1.], Annex No. C 3, (...), pp. c16-c18/c19-c20, Annex No. C 253, (...), pp. c2191-c2195/c2196-c2199 and Annex No. C 161, Photos 1-4, pp. 89-90 [Counter-Memorial para. 7.2.28.2.]. None of the documents provide any evidence that there was an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such. Without acknowledging the value of these medical reports, both the victims mentioned in the medical reports [Annexes No. C 266 and No. C 267] were soldiers at the time of their capture, but, even more importantly, the first victim was captured on Bosnia and Herzegovinian territory while serving as a reservist in the Yugoslav People's Army - he took part in military activities around the village of Podravno which is not far from Srebrenica [it could not have been Podravina as is mentioned in the Annex, because the latter town is situated in the north-western corner of Croatia and at the relevant time no fighting took place in that part of Croatia] during September 1992, when the said Army supposedly, at least according to the Respondent (not according to the Applicant) already withdrew from Bosnia and Herzegovina. The witness statements are anonymous, some of them contain hearsay material and they also do not provide any proof that there was a systematic campaign, directed by the Applicant's Government and aimed against Serbs as such. Two of these witness statements (Annex No. C 130 and No. C 3) were given before legal authorities in

Belgrade - in the latter document the victim mentioned that he was exchanged and ended up in Belgrade, which seems to imply that he actually originates from the FRY; the other statements were given before presumably "Republika Srpska" legal authorities. The photos are horrible but do not provide any further information.

148. In the section on Visoko [Counter-Memorial 7.2.29.0.] one document is annexed: Annex No. C 79, (...), pp. c799-c803/c804-c807 [Counter-Memorial para. 7.2.29.2.]. The document contains an anonymous witness statement presumably given before a "Republika Srpska" legal authority - it does not provide any material of an organized campaign, directed by the Applicant's Government and aimed against the Serbs.

149. In the section on Mostar [Counter-Memorial 7.2.30.0.] three documents are annexed: Annex No. C 154, (...), pp. c1518-c1519/c1520-1522 and Annex No. C 161, Photo 1, p. 66 [Counter-Memorial para. 7.2.30.16.] and Annex No. C 81, (...), pp. c814-c819/c820-c824 [Counter-Memorial para. 7.2.30.25.]. The documents contain partly hearsay evidence, are anonymous and do not provide any evidence of an organized campaign specifically aimed against the Serbs. The photo is indeed horrific but does not provide any further information. The remarks made in the paragraph dealing with Mostar in Section 5 of this Chapter, are also relevant in this context.

150. In the section on Zenica [Counter-Memorial 7.2.31.0.] two documents are annexed: Annex No. C 49, (...), pp. c496-c503/c504-c510 [Counter-Memorial para. 7.2.31.7.] and Annex No. C 36, (...), pp. c376-379/c380-c383 [Counter-Memorial para. 7.2.31.12.]. Both the documents contain anonymous and partly hearsay witness statements given before a presumably "Republika Srpska" legal authority. The first, partly hearsay witness statement, does not even refer to acts which allegedly took place in Zenica.

151. The section on Vitez [Counter-Memorial 7.2.32.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

152. The section on Kupres [Counter-Memorial 7.2.33.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

153. The section on Jablanica [Counter-Memorial 7.2.34.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

154. The section on Fojnica [Counter-Memorial 7.2.35.0.] is not supported by any accessible material whatsoever -this section will not be further discussed in this Reply.

155. The section on Breza [Counter-Memorial 7.2.36.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

156. The section on Novi Travnik [Counter-Memorial 7.2.37.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

157. The section on Busovača [Counter-Memorial 7.2.38.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

158. The section on Bugojno [Counter-Memorial 7.2.39.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

159. The section on Hrasnica [Counter-Memorial 7.2.40.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

160. The section on Bihać [Counter-Memorial 7.2.41.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

161. The section on Kakanj [Counter-Memorial 7.2.42.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

162. The section on Konjić [Counter-Memorial 7.2.43.0.] is not supported by any accessible material whatsoever - this section will not be further discussed in this Reply.

163. In the section on Tešanj [Counter-Memorial 7.2.44.0.] five documents are annexed: Annex No. C 27, (...), pp. c263-c266/c267-c270, Annex No. C 151, (...), pp. c1500-c1502/c1503-1505 and Annex No. C 161, Photos 1-5, p. 67 [Counter-Memorial para. 7.2.44.1.], Annex No. C 107, (...), pp. c1090-c1096/c1097-c1101 [Counter-Memorial para. 7.2.44.2.] and Annex No. C 121, (...), pp. c1225-1229/c1230-c1235 [Counter-Memorial para. 7.2.44.3.]. The documents contain anonymous and partly hearsay witness statements given before a presumably Republika Srspka legal authority; the documents in most cases also do not identify the perpetrators nor do they provide any proof that the alleged deeds formed part of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such. The photos accompanying the medical finding are horrible indeed but do not provide proof that these injuries were sustained because of an organized campaign, directed by the Applicant's Government and aimed against a specific ethnic group.

164. In the section on Banja Luka [Counter-Memorial 7.2.45.0.] one document is annexed: Annex No. C 272, (...), pp. c2340-c2342/c2343-c2345. This document contains an anonymous witness statement given before a presumably "Republika Srpska" legal authority. The document does not contain any material that points to an organized campaign against Serbs as such - the statement in fact also refers to non-Serbs who were suffering together with others because of the shortage of medicine.

165. In the section "Rapes causing serious bodily and mental harm to Serb women" [Counter-Memorial 7.2.46.0.] six documents are annexed: Annex No. C 2, pp. c8-c11/c12-c15, Annex No. C 151, pp. c1500-c1502/c1503-1505 and Annex No. C 161, Photos 1-2, p. 68 [Counter-Memorial para. 7.2.46.1.], Annex No. C 136, pp. c1412-c1414/c1515-c1417 and Annex No. C 161, Photo 1, p. 88 [Counter-Memorial para. 7.2.46.2.] and Annex No. 59, pp. 526-553 [Counter-Memorial para. 7.2.46.3.]. The first mentioned document contains anonymous witness statements given before a presumably "Republika Srpska" legal authority; the last-mentioned document is entirely produced by the Federal Republic of Yugoslavia (which the Respondent fails to mention) and was send to the Secretary General of the United Nations. It contains long listings of locations, which would presumably have been exploited by the Applicant as brothels. These allegations are not supported by independent evidence, which is a likely explanation for the fact that many of the locations did, in fact, not

exist at all, while many others were completely destroyed by the Serbs without those ever having been used as a brothel. The second and fourth mentioned documents are medical findings which contain legally irrelevant material. The photos do not provide any evidence whatsoever regarding the identity of the perpetrators. None of the annexes contain any proof that the alleged rapes formed part of an organized campaign, directed by the Applicant's Government and aimed against the alleged victims specifically because of their ethnic origins.

166. In the section "Forensic-medical documentation" [Counter-Memorial 7.2.47.0.] eighty-eight forensic-medical documents, including four Photo Annexes, are annexed: the Annexes are listed in Section 7.2.47.0. of the Counter-Memorial. The medical reports were requested by the Belgrade based Committee for Gathering Information on Crimes Committed against Humanity and International Law. Most of the reports were drawn up by the same three medical doctors. None of the medical reports contain material regarding the identity of the alleged perpetrators or any evidence that the reported injuries were inflicted on the victims as part of an organized campaign specifically aimed against them because of their ethnic origins. In most cases the ethnicity of the victims are not even mentioned, and some of the victims sustained the injuries while serving as soldiers. Some of the areas mentioned were at the relevant time under the control of Croatian forces. The four photos do not provide any further information - the background to these photos are not explained and no evidence regarding any possible well-organised campaign or pattern of conduct, directed by the Applicant's Government and aimed against these victims because of their ethnic background can be gleaned from these photos.

167. The conclusion to be drawn from all of this, is the same as the one drawn at the end of the previous Section; it suffices to refer to that.

5. Ethnic cleansing [Counter-Memorial 7.3.]

168. In its Counter-Memorial the Respondent further devotes an extensive section on providing data which supposedly support the allegation that Bosnia and Herzegovina would be responsible for ethnic cleansing. The Applicant does not accept the view that the data presented in Section 7.3. of the Counter-Memorial do reflect any true facts, let alone that these facts would demonstrate an intent of the Applicant to destroy, in whole or in part, any ethnic group in Bosnia and Herzegovina.

169. Without further explanation and without taking any legal position regarding this issue the Respondent leaves it to the Court to find out whether the alleged facts would or would not meet the criteria of the Genocide Convention. The Applicant has a clear and reasoned view on the question whether the ethnic cleansing of the non-Serb population of Bosnia and Herzegovina given the relevant circumstances certainly equals the terms of the Genocide Convention [see above Chapter 5, Section 9 and Chapter 6, Section 5]. However, the Applicant does not accept the unsupported view that any ethnic cleansing of Serb persons took place in the territory of Bosnia and Herzegovina, nor that the Applicant would have been responsible for the same.

170. Section 7.3. of the Counter-Memorial contains 25 paragraphs of which only eight paragraphs seem to be supported by material which is accessible to the Applicant. As explained in Section 1 of this Chapter, the Applicant does not deem it necessary, nor is it possible, to go into any of the allegations which are not supported by any material or if the material supposedly is to be found in Belgrade.

171. The section on Olovo [Counter-Memorial 7.3.1.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

172. The section on Livno [Counter-Memorial 7.3.2.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

173. In the section on Tuzla [Counter-Memorial 7.3.3.0.] one document is annexed: Annex No. 252, (...), pp. 1582/233-1582/254 [Counter-Memorial para. 7.3.3.2.]. The annex contains an anonymous witness statement given before a presumably "Republika Srpska" legal authority. The statement provide no proof whatsoever of the existence of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such.

174. The section on Travnik [Counter-Memorial 7.3.4.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

175. The section on Zenica [Counter-Memorial 7.3.5.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

176. The section on Srbinje (Foča) [Counter-Memorial 7.3.6.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

177. The section on Konjic [Counter-Memorial 7.3.7.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

178. In the section on Mostar, Čapljina, Stolac and Jablanica [Counter-Memorial 7.3.8.0.] one document is annexed: Annex No. C 274, (...), pp. c2353-c2375 [Counter-Memorial para. 7.3.8.1.]. The annex contains the Report of the Committee Compiling Data on Crimes against Humanity and International Law on Mostar 1991-1993, presumably compiled by the Committee for the Collection of Data on Crimes Committed against Humanity and International Law. The report itself contains excerpts from witness statements. Not only are these witness statements inaccessible to the Applicant, but it is also unclear to whom and under what circumstances these supposed statements were made. Besides that, most of the statements also seem to refer to HVO, HOS or "Croat" forces which were in any case not under the control of the Bosnian Government.
As noticed before in this Reply, the Respondent often misrepresents sources. In Paragraph 7.3.8.0. of the Counter-Memorial a sentence taken from the Sixth Periodic Report of the Special Rapporteur of the United Nations Commission on Human Rights, Mr. Tadeusz Mazowiecki, is quoted. The quote is supposed to support the allegation that an organized campaign of ethnic cleansing aimed against the Serbs as such in Mostar, was practised by the Bosnian Government. The Respondent quotes the said sentence as follows:

> "The result of the ethnic cleansing of Serbs was that the entire population ws reduced from their pre-war number of 30,000 to only 400" [Counter-Memorial, p. 1001 para 7.3.8.1.]

The whole of Paragraph 16 of the Report of the Special Rapporteur, under the subsection heading "Terrorization of Muslims and Bosnian Serbs in Bosnian Croat held territory", actually reads as follows:

> "Control of the eastern part of the city Mostar is exercised by the Government forces and of the western part by Bosnian Croat forces. The 'ethnic cleansing' of Mostar was first directed against the Serbs and then against the Muslims. A result of the 'ethnic cleansing' of Serbs is that their population in Mostar has been reduced from a pre-war figure of 30,000 to just 400. Unlike their counterparts in western Mostar, who are subject to numerous abuses by the Croat population, *Serbs*

> *in the eastern part of the city do not appear to be the victims of any form of invidious discrimination by the Muslim majority.*" [United Nations, *Situation of Human Rights in the territory of the former Yugoslavia, sixth periodic report submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, E/CN.4/1994/110, 21 Feb. 1994, p. 6, para. 16, emphasis added].

It is clear that this section of the Mazowiecki report does not in any way support the Respondent's allegations. The annexed material does not provide any proof whatsoever that the Bosnian Government organized a campaign of ethnic cleansing aimed against the Serbs as such.

179. The section on Derventa [Counter-Memorial 7.3.9.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

180. The section on Bratunac and Srebrenica [Counter-Memorial 7.3.10.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

181. The section on Banovići [Counter-Memorial 7.3.11.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

182. In the section on Sarajevo [Counter-Memorial 7.3.12.0.] one document is annexed: Annex No. C 57, (...), pp. c571-c574/c575-c578 [Counter-Memorial para. 7.3.12.1.]. The annex contains an anonymous witness statement given before a presumably Belgrade legal authority. The statement provide no proof whatsoever of the existence of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such. Even if the statement were to be true, the witness himself states that he was in fact assisted by the Presidency of Bosnia and Herzegovina after the alleged deeds took place.

183. The section on Visoko [Counter-Memorial 7.3.13.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

184. The section on Hrasnica [Counter-Memorial 7.3.14.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

185. The section on Živinice [Counter-Memorial 7.3.15.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

186. In the section on Višegrad [Counter-Memorial 7.3.16.0.] one document is annexed: Annex No. 251c, (...), pp. 1582/206-1582/219 [Counter-Memorial para. 7.3.16.1.]. The annex contains an anonymous witness statement given before a presumably "Republika Srpska" legal authority and which partly contains hearsay material. The witness statement contains no proof whatsoever of an organized campaign, directed by the Applicant's Government and aimed against Serbs as such. In fact, the statement refers to Muslims leaving Višegrad and surrounding areas for Goražde, supporting the fact that Višegrad was at that time under the control of the Yugoslav People's Army.

187. The section on Bosanska Posavina [Counter-Memorial 7.3.17.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

188. In the section on Brod (Bosanski Brod) [Counter-Memorial 7.3.18.0.] four documents are annexed: Annex No. C 38, (...), pp. c390-c393/c394-c397, Annex No. C 96, (...), pp. c987-c990/c991-c994, Annex No. C 68, (...), pp. c699-c701/c702-c705 and Annex No. C 37, (...), pp. c348-c386/c387-c389 [Counter-Memorial para. 7.3.18.1.]. All the annexes contain anonymous witness statements presumably given before a "Republika Srpska" legal authority. These statements do not provide any proof whatsoever of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such.

189. In the section on Odžak [Counter-Memorial 7.3.19.0.] two documents are annexed: Annex No. C 119, (...), pp. c1204-c1208/c1209-c1213 and Annex No, C 26, (...), pp. c255-c258/c259-c262 [Counter-Memorial para. 7.3.19.0.]. Both the annexes contain anonymous witness statements given before presumably "Republika Srpska" legal authorities and both statements refer to the Croatian Army which allegedly also took part in the alleged deeds. The Government of Bosnia and Herzegovina had no control over the Croatian Army and the alleged deeds in any event do not provide any proof whatsoever of the existence of an organized campaign, directed by the Applicant's Government and aimed at the Serbs as such.

190. The section on Orašje [Counter-Memorial 7.3.20.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

191. The section on Goražde [Counter-Memorial 7.3.21.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

192. The section on Cazin [Counter-Memorial 7.3.22.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

193. The section on Gornji Vakuf [Counter-Memorial 7.3.23.0.] is not supported by any accessible material whatsoever - this section will therefore not be further discussed in the Reply.

194. In the section on Kozarska Dubica (Bosanska Dubica) [Counter-Memorial 7.3.24.0.] one document is annexed: Annex No. C 78, (...), pp. c792-c795/c796-c798 [Counter-Memorial para. 7.3.24.0.]. The annex contains an anonymous witness statement made before a presumably "Republika Srpska" legal authority. The witness noted that the alleged perpetrators of the deeds were soldiers of the Croatian Army - the Bosnian Government did not control the Croatian Army. The statement provides no proof of the existence of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such.

195. In the section on Brčko [Counter-Memorial 7.3.25.0.] one document is annexed: Annex No. C 97, (...), pp. c995-c997/c998-c1001 [Counter-Memorial para. 7.3.25.1.]. The annex contains an anonymous witness statement made before a presumably "Republika Srpska" legal authority. References are also made to HVO forces who supposedly were the perpetrators of the alleged deeds - the Respondent fails to explain why, if the related facts are true, Bosnia and Herzegovina would be responsible because these forces were not controlled by the Bosnian Government. The witness statement provides no proof of the existence of an organized campaign, directed by the Applicant's Government and aimed against the Serbs as such.

6. Destruction of places of worship [Counter-Memorial 7.4.]

196. Bosnia and Herzegovina is somewhat confused about Section 7.4. of the Counter-Memorial in which the Respondent states "[I]f the Court finds that hereafter submitted data are legally relevant, the Court is requested to consider the following cases.". Here it seems that the Respondent is of the opinion that it is the Court, which is to make a case on behalf of the Respondent, not the Respondent itself. It goes without saying that such an approach is entirely unacceptable. In the same vain it is clear that it cannot be expected that Bosnia and Herzegovina would have to defend itself against a case, which supposedly it needs first to construe itself before being able to respond to it. For these very reasons Bosnia and Herzegovina is of the opinion that Section 7.4. should be ignored in its entirety as part of or in support of any sort of counter-claim submitted by the Respondent.

197. Moreover, none of the Respondent's allegations are supported by any (readily available) material whatsoever. The large majority of the events listed by the Respondent is not specified at all as far as dates or perpetrators are concerned. Sometimes the Respondent seems to refer to events that took place in World War II, many times no date at all is provided, whilst in most occasions only a particular year or, even more vague, just "1991-1995" is added as an indication of the point of time on which the event presumably occurred.
Defining the alleged perpetrator is done more or less the same way: many times no indication whatsoever of an alleged perpetrator is provided, many times the Respondent confines itself to language as "the Croats", "the Muslims", "Muslim fundamentalists", "Croat extremists", "Muslim armed forces", "the Croat army", etc.. It may not be expected from Bosnia and Herzegovina, or for that matter from any State party in any case before this Court, to try and defend itself against this type of allegations.

198. Bosnia and Herzegovina acknowledges that in the course of the armed conflict Serb religious property may occasionally have been damaged or sometimes even destructed. However, it does deny that this has ever occurred systematically, on the basis of Government instructions or instructions from other official, civil or military, authorities, let alone as part of a deliberate ongoing policy. Since the Respondent does not offer any specific material which could possibly support any existence of such instructions or policy, this would suffice as a response to these unsupported allegations.

It is only because Bosnia and Herzegovina strongly believes in freedom of religion and in respect for all religions and its places of worship that it will add some observations to the issues raised by the Respondent in this Section of its Counter-Memorial.

199. Bosnia and Herzegovina wishes to draw the Court's attention to various public statements made during the armed conflict by the Bosnian authorities demonstrating their firm opposition against destroying cultural property.

200. Finally Bosnia and Herzegovina submits that in many occasions its authorities have actively allowed or supported the restructuring of damaged Serb religious property and have seen to it that free access would be available to those wanting to make use of the same for religious purposes.

201. There is no basis in fact to allege that the Applicant's authorities practised a deliberate policy aimed at the destruction of Serb cultural or religious property. As is shown above the contrary was the case, even in the midst of an armed conflict during which the Serb side tried to erase, and to a large extent succeeded in doing so, any trace of non-Serb culture and religion within the territory of Bosnia and Herzegovina.

7. Conclusions [Counter-Memorial 7.5.]

202. In this Chapter of its Reply Bosnia and Herzegovina has shown that there is no credible factual basis for the allegations brought forward by the Respondent to support its counter-claims. The Applicant has also shown what exactly the position of the authorities of Bosnia and Herzegovina has been regarding, indeed extremely deplorable, atrocities committed against Bosnian Serbs. The next Chapter will provide the legal analysis leading to the conclusion that the counter-claims must be dismissed by the Court.

CHAPTER 17

LEGAL APPRAISAL

1. Introductory remarks

1. In the previous Chapter, Bosnia and Herzegovina has analytically reviewed the facts on which the counter-claims submitted by the Respondent are based and has demonstrated that those facts are not sustained by any credible evidence, showing by the same token the intrinsic and overwhelming weakness of the allegations of the Respondent. This lack of foundation is even more patent under a legal perspective. As will be shown hereinafter, the allegations by the Respondent are without basis in law and are supported by no serious evaluation of the alleged facts under the Genocide Convention.

2. Moreover, the previous Chapter has revealed -as this Chapter also will- the striking cynicism and impudence that characterises the Respondent's position in this case. In contempt of the most evident truth, as it was recognised and proclaimed by the International Community through prestigious international institutions, impartial observers and the unanimous public opinion (all precisely referred to by the Applicant in its Memorial and in the previous pages of this Reply), the Respondent is now trying to reverse the roles before the Court. It is presenting the victim of one of the most atrocious genocides in history as supposedly the true perpetrator of genocide. It is trying, at least, to justify its own genocidal acts as nothing but a reaction to a genocide allegedly committed by Bosnia and Herzegovina -and in no way proven. It describes the facts as if there could be a "balance of guilt" between the parties. Bosnia and Herzegovina cannot but stress emphatically, once again, that it rejects this offensive attempt by the Respondent, which is in flagrant contradiction with the truth [see also above, Chapter 2, Section 1].

3. In a previous phase of the proceedings, Bosnia and Herzegovina had pleaded against the junction of the Respondent's counter-claims to the original proceedings, in so far as it considered them -as it still does- to constitute autonomous claims, based on different facts, which could not have any influence in the appreciation of the original Bosnian claim. In its Order of 17 December 1997, the Court found that the counter-claims form part of the current proceedings and decided their junction to them, essentially to achieve a procedural economy and to ensure better administration of

justice. Obviously, Bosnia and Herzegovina fully respects this pronouncement. Furthermore, it takes note with satisfaction that, in that Order, the claim and the counter-claims have been recognised as being completely autonomous on their merits so that the judgment on the claims of one of the parties cannot influence the judgment on the others [see notably Order, 17 Dec. 1997, para. 35; see also para. 27].

4. It is important for Bosnia and Herzegovina to restate clearly its position on this matter. Indeed, Bosnia and Herzegovina has never denied, and does not deny at this stage, that under Article IX of the Genocide Convention the Court has, in general, jurisdiction to decide on any dispute concerning the responsibility of a State party to the Convention, for the violation of the obligations prescribed by the Convention at the request of any other State party, and, in particular, to decide on the merits of the counter-claims submitted by the Respondent. The right to seize the Court for such disputes, even when the claimant State or its nationals are not the direct victims of the genocidal acts, is nothing but the logical consequence of the fact that "the rights and obligations enshrined by the Convention are rights and obligations *erga omnes*" [*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, 11 July 1996, para. 31].

5. However, if Bosnia and Herzegovina fully recognises the jurisdiction of the Court to decide upon the counter-claims, it does so with two important caveats.

6. First, the jurisdiction *ratione materiae* of the Court is strictly defined by the Genocide Convention and covers only State responsibility for genocide and for the other violations related to genocide, as provided by the Convention. Notably, the Court has no jurisdiction to decide on disputes concerning war crimes or crimes against humanity as such, which are beyond the scope of the Genocide Convention. War crimes and crimes against humanity (as many other kinds of criminal acts) could come under the jurisdiction of the Court by virtue of Article IX of the Genocide Convention only when -and in so far as- it is argued that they are elements of a genocidal pattern of conduct, as part of a plan intending "to destroy, in whole or in part, a national, ethnical, racial or religious group" [see above, Part I, Chapter 2, Section 3].

7. Secondly, the Respondent would be entitled to obtain remedies only to the extent it can prove that its rights under the Convention have been infringed and that the legal

grounds to obtain those remedies exist. Notably, the Court could adjudge and declare the Respondent's rights to obtain reparation -under any form- from Bosnia and Herzegovina only if it found -and to the extent it found- that the Respondent has suffered damages as a consequence of internationally wrongful acts attributable to Bosnia and Herzegovina. As the Court stated, concerning compensation:

> "In order to award compensation the Court can only act with reference to a concrete submission as to the existence and the amount of each head of damage." [*Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment, ICJ Reports 1974,* p. 204, para. 76].

8. In this respect, Bosnia and Herzegovina notes that Yugoslavia is requesting the Court to adjudge and declare that:

> "5. Bosnia and Herzegovina is bound to take necessary measures so that the said acts would not be repeated in the future.
>
> 6. Bosnia and Herzegovina is bound to eliminate all consequences of the violation of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and provide adequate compensation." [Counter-Memorial, p. 1085, Submissions 5-6].

9. The fifth Yugoslav submission is ambiguously formulated. Bosnia and Herzegovina interprets it as referring to its obligation to give assurances and guarantees of non-repetition as a consequence of the internationally wrongful acts it would allegedly have committed. Consequently, this submission is not to be considered autonomous: it depends on the demonstration by the Respondent that Bosnia and Herzegovina violated the Genocide Convention, which -as it was shown in the previous Chapter and will be further analysed hereinafter- is absolutely not the case. Moreover, the Respondent does not, at any time, either identify the legal grounds supporting this submission nor demonstrate that the conditions for the existence of such an obligation are fulfilled. Under this aspect, Bosnia and Herzegovina will only recall that in the words of the International Law Commission, the assurances and guarantees of non-repetition "should not be automatically available to every injured State" and that they "presuppose a risk of repetition of the wrongful act" which the Respondent has in no way proven -as it has not even proven that Bosnia and Herzegovina has actually violated the Genocide Convention- [see *Yearbook of the International Law Commission, Volume II, Part Two, 1993*, p. 82].

10. Even more striking is the sixth submission, where the Respondent invokes Bosnia and Herzegovina's obligation "to eliminate all consequences of the violation" and to "provide adequate compensation". Is the Respondent supposed to be entitled to obtain the payment of such a compensation? On which grounds? Nowhere in the Counter-Memorial is there an embryo of a legal explanation on this point. In fact, if the Respondent presents the absolutely unproven accusation that Bosnia and Herzegovina has committed acts of genocide or other violations of the Convention, it does not pretend [with some minimal exceptions: see Counter-Memorial, pp. 729-730, para. 7.1.64.0.] that these alleged acts have been committed in the territory of Yugoslavia, nor that they have been directed against individuals to be considered nationals of the Federal Republic of Yugoslavia under international law and for whom the Respondent could take up the case as *parens patriae*. In other words, the Respondent has in no way proven that it has suffered "any economically assessable damage" susceptible of being compensated [see Article 44, para. 2 of I.L.C.'s Draft Articles on State Responsibility, in United Nations, *Report of the International Law Commission to the General Assembly, 1996*, Doc. A/51/10, p. 142].

11. In the circumstances of this case, and should the Respondent's allegations be true - which, the Applicant reiterates, is absolutely not the case-, Bosnia and Herzegovina could only think of one remedy the Respondent would be entitled to receive, i.e. satisfaction for the moral and/or legal damage it could have suffered, being a party to the Genocide Convention, as a consequence of the violations allegedly committed by Bosnia and Herzegovina. Yet, the Respondent gives neither evidence nor legal assessment on this point.

12. In the following, Bosnia and Herzegovina will analyse and reply specifically to the accusations put forward against it by the Respondent in its Counter-Memorial. These can be classified in four categories: a) incitement to commit genocide [see Counter-Memorial, p. 1083-1084, Submission No. 3, paras. 2-5; see also *ibid.*, p. 1077, para. 7.5.9.]; b) genocide [see *ibid.*, p. 1083-1085, Submission No. 3, paras. 1-6]; c) breach of the obligation to prevent genocidal acts [see *ibid.*, p. 1084, Submission No.3, para. 7; see also *ibid.*, p. 1077, paras. 7.5.10. and par. 7.5.12.]; and d) breach of the obligation to punish genocidal acts [see *ibid.*, p. 1084, Submission No. 4; see also *ibid.*, p. 1077, para. 7.5.11.].

13. Only the last three accusations - i.e. the alleged commission of genocide, breach of the obligation to prevent genocidal acts and breach of the obligation to punish genocidal acts - will be dealt with in these pages. In fact, the first one - incitement to

commit genocide - does not deserve further comments, as it is not sustained by even a scintilla of evidence whatsoever, as was clearly demonstrated in the previous Chapter [Chapter 16, Section 2]. It suffices to recall that none of these acts or declarations alleged by the Respondent as constituting an incitement to commit genocide appears to be attributable, in any way whatsoever, to Bosnia and Herzegovina. On the contrary, the previous Chapter has also demonstrated that the Bosnian governmental authorities have repeatedly taken position, in public declarations, for the respect of the Serb population in Bosnia and Herzegovina.

14. As a preliminary and general remark, Bosnia and Herzegovina wishes to draw the attention of the Court to one feature of the entire Part Two of the Respondent's Counter-Memorial. In 730 pages dedicated to the counter-claims, the Respondent offers absolutely no legal analysis of its case before the Court: the facts alleged are never specifically appreciated in the legal terms of the Genocide Convention and the Respondent seems to rely only on two pages -called "Conclusions"- which do nothing more than repeating the words of the Convention. In order to reply on legal grounds to the counter-claims, Bosnia and Herzegovina is perhaps expected by the Respondent to build a case against itself. This, Bosnia and Herzegovina refuses to do, not in the least as it strongly sustains that no case can be built against it. The following Sections are only intended to further demonstrate in legal terms to the Court that the Yugoslav counter-claims are totally unfounded under the Genocide Convention.

2. The Respondent's unacceptable accusation that "Bosnia and Herzegovina is responsible for the acts of genocide committed against the Serbs in Bosnia and Herzegovina"

15. In the conclusions to Chapter VII of its Counter-Memorial, the Respondent alleges that:

> "The facts and evidence presented in Chapter VII of the Counter-Memorial prove that the said acts of genocide have been committed by the members of the State organs of Bosnia and Herzegovina." [Counter-Memorial, p. 1076, para. 7.5.7.].

16. In its "General Conclusions", it states:

> "The organs of Bosnia and Herzegovina has [have] committed acts of genocide (...)" [*ibid.*, p. 1080, para. 8.20.].

17. In its submissions, it reiterates that:

> " (...) the armed forces of Bosnia and Herzegovina, as well as other organs of Bosnia and Herzegovina have committed acts of genocide (...)" [*ibid.*, p. 1084, Submission No. 3, para. 6].

18. Now, the introductory paragraph of Submission No. 3 clarifies that the Respondent requests the Court to adjudge and declare that:

> "Bosnia and Herzegovina *is responsible* for the acts of genocide committed against the Serbs in Bosnia and Herzegovina and for other violations of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide." [emphasis added, *ibid.*].

19. Bosnia and Herzegovina cannot but declare to the Court its strong surprise of being accused by the Respondent of acts of genocide, when one of the bases of the Respondent's defence in Part One of its Counter-Memorial is precisely that "according to the 1948 Genocide Convention a State cannot commit genocide and other punishable acts" [see Counter-Memorial, pp. 308-312, Section 4.10.]. As it was clearly explained in the previous pages of this Reply [see above, Chapter 2, Section 4; and Chapter 6 Section 4], Bosnia and Herzegovina *does not accept* this latter interpretation, but it considers that such blatant contradiction in terms between the response to the Applicant's claim and the counter-claims reveals with absolute clarity, once again, the evident *mala fides* of the Respondent in the whole proceedings of this case and how the only real purpose of its counter-claims is the intent to delay the procedure and cloud the entire issue at stake. By doing so, by blowing hot and cold in the same written pleading, the Respondent is scorning the most basic principles of good faith which should inspire the behaviour of the parties in all proceedings before the Court and serve the interests of the proper administration of justice.

20. It is the opinion of Bosnia and Herzegovina that the Court should consider such a behaviour as unacceptable, on the basis of the elementary principle *allegans contraria non audiendus est*. This principle (called "judicial estoppel") is well known in common law systems. According to the *Black's Law Dictionary*:

> "Under doctrine of 'judicial estoppel', a party is bound by his judicial declarations and may not contradict them in a subsequent proceeding involving same issues and parties (...). Under this doctrine, a party who by its pleadings, statements or contentions, under oath has assumed a particular position in a judicial proceeding is estopped to assume an inconsistent position in a subsequent action (...)" [*Black's Law Dictionary, 6th edition, St. Paul, Minneapolis, 1990,* p. 848].

21. As far as international law is concerned, Bosnia and Herzegovina recalls the following statement by Lord McNair:

> "(...) international jurisprudence has a place for some recognition of the principle that a State cannot blow hot and cold -*allegans contraria non audiendus est.*" [Arnold D. McNair, "The Legality of the Occupation of the Ruhr", *The British Year Book of International Law*, 1924, p. 35].

22. Similarly, the *Dictionnaire de la terminologie du droit international*, when defining "estoppel", has stressed the existence in international law of:

> "(...) l'objection péremptoire qui s'oppose à ce qu'une partie à un procès prenne une position qui contredit soit ce qu'elle a antérieurement admis expressément ou tacitement, soit ce qu'elle prétend soutenir dans la même instance." [*Dictionnaire de la terminologie du droit international*, Jules Basdevant (ed.), 1960, p. 263].

23. Bosnia and Herzegovina will further consider the Respondent's allegations on this matter to show that the case the Respondent submits to the Court not only is contradictory with its defence in Part One, but also, on other grounds, lacks any legal basis.

24. In fact, in so far as the Respondent alleges the commission by Bosnia and Herzegovina of genocide as defined in Article II of the Convention, one would expect the Counter-Memorial to examine and prove the following points:

> -that acts as enumerated in Article II have been committed and that their commission is attributable to Bosnia and Herzegovina;
> -that those acts were directed against a national, ethnical, racial or religious group as such, namely -according to Yugoslav allegations- the Serbs in Bosnia and Herzegovina;

-that those acts were committed with the intent to destroy, in whole or in part, such a group and that this intent is also attributable to Bosnia and Herzegovina.

None of these elements are sufficiently proven nor examined under legal terms in the Counter-Memorial.

25. In the previous Chapter, Bosnia and Herzegovina has analysed in detail each of the factual allegations contained in the counter-claims and has demonstrated the grave deficiency of the evidence presented by the Respondent. As shown, in the majority of cases the facts are simply not supported by any accessible evidence whatsoever. Whenever pieces of evidence are submitted, they are often incomplete, as they simply lack any precise information about their source, their context, the date in which testimonies were taken, the identity and/or residence and/or nationality of the witnesses, etc. When this information is given, one discovers that the Respondent often relies upon anonymous testimonies, generally given before authorities of the "Republika Srspka" or of the Federal Republic of Yugoslavia -authorities which cannot be presumed to be sufficiently impartial in the present case. Finally, the substance of the testimonies is often vague and/or based on hearsay information. On this last point, Bosnia and Herzegovina recalls that, in the *Nicaragua* case, the Court has expressly indicated that a "testimony of matters not within the direct knowledge of the witness, but known to him only from hearsay" cannot be "of much weight" [*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, ICJ Reports 1986,* p. 42, para. 68].

26. Under strictly procedural grounds Bosnia and Herzegovina considers that the case presented by the Respondent is based upon incomplete and unreliable evidence to prove the alleged facts. This conclusion is even more manifest when one compares the evidence produced by the Respondent in its Counter-Memorial with the evidence supporting Bosnia and Herzegovina's case in its Memorial and in the present Reply [see the extensive analysis on this point in Chapter 3, Section 2]. Therefore, Bosnia and Herzegovina concludes that the Respondent has failed to satisfy the *onus* of proof which lied upon it, in application of the general principle *actori incumbit probatio* [as stated by this Court in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, ICJ Reports 1984,* p. 437, para. 101]. In this respect, Bosnia and Herzegovina does not forget the important *caveat* made by the Court in the aforementioned case, for those situations "in which evidence of facts may be difficult to come by (...)" [*ibid.*], and fully maintains its conviction that this is not a criminal

trial and that therefore the facts need not to be proven "beyond a reasonable doubt" [see above, Chapter 3, Section 1]. However, it sustains emphatically that the Respondent has not even satisfied its burden of proof, since it fails to give at least a beginning of credible evidence on the facts alleged, and that, in these circumstances, in no way could the burden of proof (to produce exculpatory evidence) shift to Bosnia and Herzegovina.

27. In addition, certain facts, even if they were proven, would not fulfil the legal criteria established in Article II as they would fail to constitute the objective element of genocide, and they would therefore fall outside the jurisdiction of the Court under the Genocide Convention [see above in this Chapter]. This holds true, for instance, for the majority of the acts alleged in the Counter-Memorial's Section 7.3. ("Ethnic cleansing"), and all the acts alleged in Section 7.4. ("Destruction of places of worship of the Serbian Orthodox Church"): many of these acts could possibly be qualified as war crimes or crimes against humanity. Once again, Bosnia and Herzegovina does not forget and fully maintains its conviction that even acts constituting war crimes or crimes against humanity could be relevant in the present instance [see above, Chapter 2] *if, and only if,* a pattern of conduct revealing that they are part of a plan intended to destroy, in whole or in part, a specific group, were proven. This, as shown in Chapter 16 and as will be hereinafter further explained, has not been done, in any way, by the Respondent: a simple enumeration of individual crimes -even if they were sufficiently proven, which they are definitely not- does not suffice to establish a pattern of conduct, let alone to demonstrate that all these individual crimes are linked by a deliberate intent of a genocidal nature.

28. Moreover, the Respondent fails to prove the attribution of the facts alleged to Bosnia and Herzegovina. As exposed in the previous chapter, for the overwhelming majority of the listed events the Respondent gives no serious evidence on the presumed perpetrators of the alleged facts, and, when it does, proposes no factual or legal explanation permitting to qualify the perpetrators as *de jure* or *de facto* organs of Bosnia and Herzegovina. Therefore, the allegation according to which "the armed forces of Bosnia and Herzegovina, as well as other organs of Bosnia and Herzegovina have committed acts of genocide" [Counter-Memorial, p. 1084, Submission No. 3] is sustained by no proof whatsoever. These deficiencies are even more unacceptable as Bosnia and Herzegovina, on its side, has given evidence

proving that, far from committing, inciting or even only permitting the commission of crimes against the Serbs, its government authorities did everything they reasonably could to prevent them [see above, Chapter 16].

29. The Respondent has also failed to prove that the alleged acts were directed against Serbs as a group. It refers to a certain number of documents and testimonies to prove indeed atrocious acts supposedly committed against Serbs, but fails to place them in a larger context and to demonstrate that they did not remain isolated and were the implementation of a larger policy targeting the Serbs as a group. Actually, Bosnia and Herzegovina does not deny and also deeply regrets that crimes have been committed against Serbs, but rejects the allegation about the existence of a policy aiming at their destruction as a group which is devoid of any evidential ground whatsoever.

30. This brings Bosnia and Herzegovina to the third element. As shown in the previous Chapter, the Respondent fails to give any evidence to support its allegations that there existed an intent to destroy, in whole or in part, the Serbs as a group and that this intent can be attributed to Bosnia and Herzegovina. As Bosnia and Herzegovina has previously asserted [notably, in Chapter 3, Section 1], such an intent could be inferred by the Court if the claimant could prove a pattern of conduct in the alleged acts on a national scale and over a protracted period. the Respondent introduces its description of the alleged "deliberate killing of the civilian population and captured persons of Serb nationality" with the following statement:

> "(...) these acts were committed with the intent of complete or partial destruction of one religious and ethnic group. This intent derives from a number of circumstances. Thus, the pattern of victims indicates that the killings were committed regardless of sex and age; men and women, the young and the old were killed alike. The victims did not participate in armed conflict and were not members of the Serb armed forces. The victims did not provoke this crime by their conduct in any way; they were killed in their homes, while working in their fields, taken to camps and tortured and killed there. All these elements clearly indicate that what is involved here is the genocide of the Serb people." [Counter-Memorial, p. 351, para 7.1.0.0.].

31. It is evident from this preliminary statement that the Respondent completely misses the point at stake. It seems to think that a long enumeration of acts characterised by a blind violence against civilians with no distinction of sex and age is enough to demonstrate the "intent" required by the definition of genocide. As Bosnia and Herzegovina has already shown [see above, Chapter 3, Section 1 and Chapter 6, Section 3], what needs to be proven in order to conclude on the existence of a genocide *is not* the blindness of violent acts but, on the contrary, their *instrumental*

character (i.e. their non-blindness) in connection with a genocidal intent. Such an intent can be inferred from a pattern of conduct that, by its proportions, its coherence and its duration, implies the existence of a larger systematic plan intended to destroy, in whole or in part, a specific group; otherwise these acts can only be qualified, should the constitutive elements exist, as war crimes or crimes against humanity and would then fall outside the jurisdiction of the Court under the Genocide Convention [see above in this Chapter, Section 1]. All this, the Respondent fails to do: it does not try to draw a general picture of the alleged genocide committed against the Serbs, but relies only on an extensive enumeration of isolated acts - besides insufficiently proven -, hoping perhaps that Bosnia and Herzegovina or the Court would find supposed patterns revealing an imaginary systematic policy targeting the Serbs. Moreover, in the entire Part Two, no evidence is given allowing to attribute an alleged intent to destroy the Serbs to Bosnia and Herzegovina. More generally, no evidence is given of a political program whatsoever by the governmental authorities of Bosnia and Herzegovina favouring an ethnically homogeneous State.

32. This loose presentation of the facts is far from challenging the large impartial evidence produced by Bosnia and Herzegovina demonstrating that an intent on its part to destroy the Serbs is absolutely excluded. In this respect, Bosnia and Herzegovina briefly recalls, *inter alia*, the independent observations specifically denying the existence of a pattern of policy on the part of Bosnia and Herzegovina [see Chapter 6, Section 3; Chapter 16, Section 1 and, for instance concerning the specific accusations of sexual assault, Chapter 7, Section 4], its extensive cooperation with the ICTFY [see Chapter 16, Section 1], the fact that multi-ethnic personnel has always participated in Bosnian public administrations and in the Bosnian government [see, Chapter 16, Section 1], its acceptance of all of the peace-plans proposed at various stages of the conflict, even when they did not exactly correspond to its political preferences [see Chapter 16, Section 1] and, in general, its reiterated declarations in favour of a peaceful settlement of the disputes in the region [see, Chapter 16, Section 1].

33. Furthermore, and as another clamorous demonstration of the cynicism characterising the Yugoslav accusations, Bosnia and Herzegovina would like to recall that, as it has been proven above [see Chapter 8, Section 3], before the outbreak of the war, the Respondent had implemented a policy intending to concentrate the arms in hands of

the Bosnian Serbs, so that, in the beginning of the war, the non-Serb side - notably the Muslims - was very poorly equipped and not militarily organised. It is self-evident that, in these disastrous conditions, it would have been materially impossible for Bosnia and Herzegovina to organise and implement a systematic and large scale plan aiming at the destruction of the Serbs.

34. To sustain its allegations on the responsibility of Bosnia and Herzegovina for acts of genocide, the Respondent would have been expected to demonstrate that: a) a conduct consisting of actions or omissions is attributable to the State of Bosnia and Herzegovina; and b) that this conduct violated the international obligations of Bosnia and Herzegovina under the Genocide Convention [see Article 3 of the International Law Commission Draft Articles on State Responsibility, United Nations, *Report of the International Law Commission to the General Assembly, 1996*, A/51/10, p. 126]. This, the Respondent has certainly failed to do.

3. The Respondent's unacceptable accusation that "Bosnia has breached its obligations, pursuant to Article I of the Convention on the Prevention and Punishment of the Crime of Genocide, to prevent acts of genocide"

35. The Respondent further argues that Bosnia and Herzegovina has breached its obligation to prevent acts of genocide [Counter-Memorial, p. 1084, Submission No. 3, para. 7.]; see also *ibid.*, p. 1077, para. 7.5.10].

36. This presupposes, of course, that genocide *has been* committed against the Serbs and that Bosnia and Herzegovina has not taken the appropriate measures at its disposal to prevent it. Consequently the present accusation collapses together with the allegations analysed in the previous Chapter and in the previous Section, since Bosnia and Herzegovina has extensively demonstrated that no genocide directed against the Serbs was committed.

37. Besides, this also seems to be the position of the Respondent, as far as Part Two of its Counter-Memorial contains no specific elaboration on this point: the Respondent appears to rely only on the description of the alleged acts of genocide as presented in Sections 7.1.-7.4. to reach its final conclusion [Counter-Memorial, p. 1077, para. 7.5.10.] that Bosnia and Herzegovina has violated its obligation to prevent acts of genocide. The only trace of elaboration one could find on this matter is perhaps at the beginning of Section 7.2., where the Respondent alleges the existence of camps where Serbs were supposedly subjected to torture and even killed, as a means of

genocide, and where it argues that "[t]he presidency, the Government and the other official bodies of Bosnia and Herzegovina knew about the existence of these camps. They knew that the inmates were exclusively Serb civilians, and they knew how they were being treated" [Counter-Memorial, p. 731, para. 7.2.0.0.]. The Respondent infers from this simple (alleged) "knowledge" the far reaching conclusion that "Bosnia and Herzegovina is held responsible for the acts of genocide" [*Ibid.*]. Bosnia and Herzegovina stresses again that, even if they were proven - which, it reiterates, is not the case - the aforementioned acts would substantiate war crimes or even crimes against humanity, but not genocide, and therefore would not fall within the jurisdiction of the Court under the Genocide Convention [see above in this Chapter, Section 1]. In any case, it is legally incorrect to qualify the unlawful omission to prevent acts of genocide as genocide *per se*. However, leaving aside these conceptual considerations, it must be highlighted that the Respondent does not support its allegations with any kind of proof and Bosnia and Herzegovina cannot but recall once again that the evidence presented in the whole Section 7.2. to, supposedly, prove that acts of genocide were perpetrated in camps is not credible: Bosnia and Herzegovina strongly denies these allegations [see Chapter 16, Section 2]. Consequently, Bosnia and Herzegovina concludes that the Respondent has not satisfied its burden of proof concerning the present accusations and that, in these circumstances, in no way can the burden of proof (to produce exculpatory evidence) shift to Bosnia and Herzegovina.

38. However, even if it is not absolutely necessary to reply to this accusation, Bosnia and Herzegovina wishes to recall, once more, the efforts it has undertaken in order to prevent crimes against the Bosnian Serbs. Notably, it recalls its *Platform* [Chapter 16, Section 1], its repeated declarations calling for the preservation of a multicultural Bosnia and Herzegovina and favouring a peaceful settlement of the disputes in the region and the concordant impartial reports that deny the existence, on its side, of a large scale and systematic action towards the commission of atrocities [see above, Chapter 16, Section 1]. In this respect, Bosnia and Herzegovina wishes also to underline its continued and constructive cooperation with the ICTFY, regardless of the ethnicity of suspects and/or of victims involved.

39. Similarly, the Respondent offers no elaboration (and no evidence) on the further

- though closely related - accusation that Bosnia and Herzegovina has breached its obligation under Article V of the Genocide Convention "to include in its internal legislation provisions on the implementation of the Convention" [Counter-Memorial, p. 1077, para. 7.5.12]. To reply to this specific point, Bosnia and Herzegovina needs only to recall that the Bosnian Criminal Code, which is in force and is copied from the Criminal Code of the Socialist Federal Republic of the Yugoslavia, contains specific provisions with regard to the crime of genocide, which is punished with the gravest penalties under its criminal legislation.

40. For these reasons, Bosnia and Herzegovina categorically denies that it has violated its obligations to prevent acts of genocide under the Genocide Convention and to include in its internal legislation provisions on the implementation of the Convention.

4. The Respondent's unacceptable accusation that "Bosnia has breached its obligation, in accordance with Articles I-IV of the Convention on the Prevention and Punishment of the Crime of Genocide, to punish acts of genocide"

41. In the Conclusions of Part II, concerning the Counter-Claims, and in the General Conclusions of its Counter Memorial, the Respondent unambiguously accuses Bosnia and Herzegovina of having breached its obligations to punish acts of genocide [see Counter-Memorial, p. 1077, para. 7.5.11 and *ibid.*, p. 1082, Section 8.23.]. This accusation is not expressly restated in the Respondent final submissions, although Submission No. 4 could be interpreted as a request to the Court to adjudge and declare that Bosnia and Herzegovina has violated such an obligation [see *ibid.*, p. 1085, Submission No. 4]. However, as this accusation has indeed been raised in the Counter-Claims, Bosnia and Herzegovina will also respond to it.

42. Once again, this accusation presupposes that acts of genocide *have been* committed by individuals under Bosnian jurisdiction which - Bosnia and Herzegovina reiterates - is absolutely false and the Respondent has in no way proven. It is self-evident from a reading of the Counter-Memorial that the Respondent has in no way satisfied its burden of proof concerning this allegation. In these circumstances the burden of proof (to produce exculpatory evidence) in no way can shift to Bosnia and Herzegovina.

43. Even if the Respondent had proven, which it has not, the omission by Bosnia and Herzegovina to punish the perpetrators of crimes that are not provided for by the Genocide Convention and that could only be qualified as crimes against humanity or

war crimes, the Court would not have jurisdiction to decide on such a dispute on the basis of Article IX of the Genocide Convention. Besides that, Bosnia and Herzegovina has done everything it, given the circumstances, reasonably could to prosecute individuals under its jurisdiction allegedly responsible of crimes against Serbs or to cooperate with the ICTFY for their prosecution at an international level [see above, Chapter 16, Section 1].

44. For these reasons, Bosnia and Herzegovina categorically denies that it has violated its obligations to punish acts of genocide under the genocide Convention.

5. Conclusions

45. As has been extensively demonstrated in Chapter 16 and in the previous Sections of this Chapter, the Respondent has in no way established any breach of the Genocide Convention attributable to Bosnia and Herzegovina and thus has demonstrated no grounds for any responsibility of Bosnia and Herzegovina under the Convention.

PART VI

CONCLUSIONS AND SUBMISSIONS

1. As shown by the Applicant in its Memorial and in the present Reply, the facts supporting *the Applicant's claim*, by themselves and in their entirety, precisely constitute what the Convention on the Prevention and Punishment of the Crime of Genocide meant to outlaw. These facts, indeed, constitute the most extreme of human rights violations. They truly reflect and demonstrate an intent to destroy a group of human beings, in whole or in part, for reasons found in their nationality, ethnicity and religious preference.

2. The facts, also show the Respondent's, at all relevant times, crucial and decisive role in the commission of these genocidal acts. The facts establish that genocide must be attributed to the Respondent and they entail its responsibility for these violations of the Convention on the Prevention and Punishment of the Crime of Genocide.

3. Moreover, the facts manifestly demonstrate the Respondent's failure to, in compliance with the 1948 Convention, prevent and punish these genocidal acts, although the Respondent clearly and continuously was in a position and, therefore, under an obligation to do so.

4. The Federal Republic of Yugoslavia's response to the Applicant's Application and Memorial is entirely inadequate and based on erroneous appreciations of fact and law. It cannot in any way be effective as a rebuttal to the facts and the legal appraisal thereof, as presented by Bosnia and Herzegovina.

5. The Respondent's approach to the facts, and to these proceedings as such, must be characterised as an offence to the victims of genocide in Bosnia and Herzegovina and equally as an offence to the Applicant.

6. The Counter-Memorial does not in anyway warrant the Applicant to modify or mitigate its Submissions as laid down in the Memorial of 14 April 1994.

7. Therefore the Applicant persists in its claims as presented to this Court on 14 April 1994, and recapitulates its Submissions in their entirety. Bosnia and Herzegovina requests the International Court of Justice to adjudge and declare,

1. That the Federal Republic of Yugoslavia, directly, or through the use of its surrogates, has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide, by destroying in part, and attempting to destroy in whole, national, ethnical or religious groups within the, but not limited to the, territory of Bosnia and Herzegovina, including in particular the Muslim population, by
   - killing members of the group;
   - causing deliberate bodily or mental harm to members of the group;
   - deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
   - imposing measures intended to prevent births within the group.

2. That the Federal Republic of Yugoslavia has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by conspiring to commit genocide, by complicity in genocide, by attempting to commit genocide and by incitement to commit genocide;

3. That the Federal Republic of Yugoslavia has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by aiding and abetting individuals and groups engaged in acts of genocide;

4. That the Federal Republic of Yugoslavia has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by virtue of having failed to prevent and to punish acts of genocide;

5. That the Federal Republic of Yugoslavia must immediately cease the above conduct and take immediate and effective steps to ensure full compliance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide;

6. That the Federal Republic of Yugoslavia must wipe out the consequences of its international wrongful acts and must restore the situation existing before the violations of the Convention on the Prevention and Punishment of the Crime of Genocide were committed;

7. That, as a result of the international responsibility incurred for the above violations of the Convention on the Prevention and Punishment of the Crime of Genocide, the Federal Republic of Yugoslavia is required to pay, and Bosnia and Herzegovina is entitled to receive, in its own right and as *parens patriae* for its citizens, full compensation for the damages and losses caused, in the amount to be determined by the Court in a subsequent phase of the proceedings in this case.

Bosnia and Herzegovina reserves its right to supplement or amend its submissions in the light of further pleadings.

8. On the very same grounds the conclusions and Submissions of the Federal Republic of Yugoslavia with regard to the Submissions of Bosnia and Herzegovina need to be rejected.

9. With regard to *the Respondent's counter-claims* the Applicant comes to the following conclusion. There is no basis in fact and no basis in law for the proposition that genocidal acts have been committed against Serbs in Bosnia and Herzegovina. There is no basis in fact and no basis in law for the proposition that any such acts, if proven, would have been committed under the responsibility of Bosnia and Herzegovina or that such acts, if proven, would be attributable to Bosnia and Herzegovina. Also, there is no basis in fact and no basis in law for the proposition that Bosnia and Herzegovina has violated any of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide. On the contrary, Bosnia and Herzegovina has continuously done everything within its possibilities to adhere to its obligations under the Convention, and will continue to do so.

10. For these reasons, Bosnia and Herzegovina requests the International Court of Justice to reject the counter-claims submitted by the Respondent in its Counter-Memorial of 23 July 1997.

The Hague, 23 April 1998

Muhamed SACIRBEY
Agent of Bosnia and Herzegovina