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**International Court  
of Justice**

**Cour internationale  
de Justice**

**THE HAGUE**

**LA HAYE**

**YEAR 2014**

*Public sitting*

*held on Wednesday 5 March 2014, at 10 a.m., at the Peace Palace,*

*President Tomka presiding,*

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

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**VERBATIM RECORD**

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**ANNÉE 2014**

*Audience publique*

*tenue le mercredi 5 mars 2014, à 10 heures, au Palais de la Paix,*

*sous la présidence de M. Tomka, président,*

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

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**COMPTE RENDU**

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*Present:*      President Tomka  
                 Vice-President Sepúlveda-Amor  
                 Judges Owada  
                 Abraham  
                 Keith  
                 Bennouna  
                 Skotnikov  
                 Cañado Trindade  
                 Yusuf  
                 Greenwood  
                 Xue  
                 Donoghue  
                 Gaja  
                 Sebutinde  
                 Bhandari  
Judges *ad hoc* Vukas  
                 Kreća  
  
                 Registrar Couvreur

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*Présents* : M. Tomka, président  
M. Sepúlveda-Amor, vice-président  
MM. Owada  
Abraham  
Keith  
Bennouna  
Skotnikov  
Cañado Trindade  
Yusuf  
Greenwood  
Mmes Xue  
Donoghue  
M. Gaja  
Mme Sebutinde  
M. Bhandari, juges  
MM. Vukas  
Kreća, juges *ad hoc*  
  
M. Couvreur, greffier

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The PRESIDENT: Good morning. Please be seated. The sitting is open. The Court will hear this morning the continuation of the presentation of the case by Croatia. I now call on Ms Blinne Ní Ghrálaigh. You have the floor.

Ms NÍ GHRÁLAIGH:

## SERBIA'S GENOCIDAL ACTIVITIES IN EASTERN SLAVONIA

### I. Introduction

1. Mr. President, Members of the Court, it is an honour to appear before you for the first time, on behalf of the Republic of Croatia.

2. Professor Sands' presentation yesterday dealt with all of the regions of Croatia targeted by Serbia. My presentation focuses on the region of Eastern Slavonia and on the genocidal acts committed against its Croat population<sup>1</sup>.

3. [Plate on] I use the designation "Eastern Slavonia" to refer to the most eastern part of Croatia, which was attacked by Serb forces in 1991<sup>2</sup>. Due to its location, bordering Serbia, and its strategic position along the Danube, it was essential to Serbia's goal of establishing an ethnically homogenous "Greater Serbia" on Croatian territory. It was the region where the conflict began; and it was also the scene of some of its most brutal atrocities, including the Vukovar siege and massacres, which Sir Keir Starmer will address. It therefore warrants particular attention.

4. I will focus on the *pattern* of attacks mounted by Serb forces in Eastern Slavonia, under the command of the Yugoslav People's Army, the JNA. [Plate off] The systematic, consistent pattern of atrocities, repeated against village after village in the region; the nature of the attacks; the overwhelming use of firepower against Croat civilian targets; the direct participation by the JNA in acts of genocide, including torture, rape and killing; the cover and assistance provided by the JNA to Serb paramilitaries and other Serb forces, as *they* engaged in acts of genocide, over and over again. All of this stands as clear evidence of Serbia's atrocities. It also stands as clear evidence of its intent to destroy.

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<sup>1</sup>Cf., MC, Vol. 1, Chap. 4 and RC, Vol. 5, Chap. 5.

<sup>2</sup>MC, Vol. 5, plate 4.2.

5. I focus on Eastern Slavonia as a case study. However, the same pattern of attack that I will describe was implemented against the Croat population across all of the regions targeted by Serbia.

6. My presentation addresses the pattern of attack in Eastern Slavonia in four parts:

7. First I will provide a brief description of the region in 1991.

8. I will then introduce the Serb forces, who were active in the region.

9. Thirdly, I will describe the typical JNA-led pattern of attack in Eastern Slavonia.

10. And fourthly and finally, I will describe how that pattern of attack was put into effect against individual Croat villages across the region.

## **II. Eastern Slavonia in 1991**

11. I begin then by describing Eastern Slavonia, as it was in 1991. The region was one of the richest areas of Croatia, with substantial oil and natural gas reserves. It was — and still is — a very rural area. Its population of approximately 600,000 inhabitants, dotted around the region in small towns, villages and hamlets, was mixed, although primarily Croat. Ethnic Croats constituted approximately 70 per cent of the population; ethnic Serbs accounted for approximately 17 per cent<sup>3</sup>. Croat and Serb neighbours lived peacefully, side by side in mixed villages. And Croat majority villages enjoyed a peaceful coexistence with their Serb majority neighbours.

12. Things began to change, however, in early 1991, in Eastern Slavonia — as elsewhere — with the rise of extreme Serb nationalism and anti-Croat sentiment, fuelled and supported by Serbia. In February 1991, the self-declared Serb autonomous region of Slavonia, Baranja and Western Srijem was established in Eastern Slavonia [plate on]. It is known, somewhat clumsily as the “SAO SBWS”, or the “SAO Eastern Slavonia”. It is now depicted on your screens, to the top right hand side. This was the second of the three Serb-ruled autonomous areas, unlawfully established in the early 1990s on Croatian territory, by Serb nationalists, encouraged and financed by Serbia. As you can see, the SAO SBWS comprised part of the territory of Eastern Slavonia, on which this presentation is focused. Its President, Goran Hadžić, is currently awaiting verdict from the ICTY, in relation to atrocities committed in the region.

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<sup>3</sup>MC, Vol. 1, para. 4.04; MC, Vol. 2 (I), p. 3, Ethnicity of Eastern Slavonia (Blie Manastir, Donji Miholjac, Dakovo, Osijek, Nasice, Valpovo, Vinkovci, Vukovar, Zupanja), 1991.

13. As you heard yesterday, it was in Eastern Slavonia, in the village of Borovo Selo, that the first tinder of the conflict in Croatia was ignited. On 1 May 1991, Serb paramilitaries ambushed a Croatian police bus. They killed 12 of the Croat police officers and mutilated their bodies. The JNA response was to occupy the village, to shield the perpetrators. Serb paramilitaries began blockading roads and sabotaging railway lines leading to Zagreb. JNA reinforcement battalions crossed the border from Serbia to Croatia, in support of the rebel Serbs<sup>4</sup>. This led to Serb strongholds being established across the region in Serb-majority villages, such as Tenja. Lists of Croat inhabitants in the stronghold villages were drawn up, distinguishing and separating them from their Serb neighbours. The strongholds were then to serve as bases from which attacks on neighbouring Croat villages would be mounted<sup>5</sup>. The stage for genocide was set. [Plate off]

### III. The Serb forces in Eastern Slavonia

14. Mr. President, Members of the Court, before describing the atrocities perpetrated in Eastern Slavonia, it is important to identify their primary perpetrators. The JNA was a key protagonist in the region — as it was in the whole of Croatia — particularly units of the First Military District, and also the 1st Guards Motorised Brigade, of which convicted war criminal Mile Mrkšić was the commander<sup>6</sup>. The JNA's ranks were swelled by the Territorial Defence forces, or "TOs", including the Serbian TO and the so-called "TO" units, established by the rebel Serb authorities in Croatia; these included the SAO SBWS TO. They were formally incorporated into the structures of the JNA in operations conducted in the region, and were under its command<sup>7</sup>.

15. The JNA also incorporated Serb paramilitaries and paramilitary formations into its ranks during operations in Eastern Slavonia, as elsewhere. These included paramilitaries from a number of extreme Serb nationalist groups that were described to you yesterday, which Serbia had helped establish and arm<sup>8</sup>. "Arkan's Tigers", based in Erdut, Vojislav Šešelj's "White Eagles", based in

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<sup>4</sup>MC, Vol. 1, paras. 4.15-4.19.

<sup>5</sup>MC, Vol. 1, paras. 4.20-4.29; and Vol. 2 (I), Anns. 1-18; RC, Vol. 1, paras. 5.14-5.19.

<sup>6</sup>MC, Vol. 1, paras. 3.82-3.83, and 4.12-4.14.

<sup>7</sup>See Expert Report of R. Theunens, 30 June 2007, submitted by the Prosecution in *Prosecutor v. Jovića Stanišić and Franko Simatović*, IT-03-69 ("Theunens Report, 2007"), pp. 6-7, paras. 9-10, and see Part 1: Section Three, Part 5 of the Report, pp. 89-104; cf., also, RC, Vol. 1, para. 4.77.

<sup>8</sup>MC, Vol. 1, paras. 3.51-3.53. Cf., also, Theunens Report, 2007.

Borovo Selo, and the “Dušan the Mighty Detachment”, were amongst the most notorious, and the most brutal<sup>9</sup>. Mr. President, we have noted Judge Greenwood’s question concerning Mr. Šešelj and will respond to it and to the other questions in the course of our oral presentations tomorrow and on Friday.

16. In addition to paramilitaries, Serb volunteers, including thousands of volunteers from Serbia, were also assigned to different JNA and TO units in the region<sup>10</sup>.

17. All those forces were under the JNA’s single, unified command<sup>11</sup>. [Plate on] In Eastern Slavonia, as in other parts of Croatia, the JNA retained “complete command and full control . . . over all military operations”, both *de jure* and *de facto*, as determined by the ICTY in *Mrkšić*<sup>12</sup>.

18. It was these various Serb forces, under the command of the JNA, which engaged in widespread attacks against the Croat population of Eastern Slavonia, over the course of seven long months, from July to December 1991. [Plate off]

19. Within less than a year of the initial attack on the Croatian police in Borovo Selo in May 1991, almost every member of the ethnic Croat population of Eastern Slavonia had been killed, had fled in terror or had been forcibly removed from the region<sup>13</sup>.

#### **IV. Pattern and nature of the attacks under JNA command**

20. I now turn to the third — and central — point of my presentation: that is to demonstrate the systematic pattern behind the destruction by Serbia of the Croat population of Eastern Slavonia.

21. The attacks against Croat towns, villages and hamlets across the region were systematic, co-ordinated, pre-planned assaults, following a generally similar pattern. The ICTY Trial Chamber in *Mrkšić*, determined that the attacks “typically evolved along the . . . lines”<sup>14</sup> described by representatives of the European Community Monitoring Mission in the region, as follows [plate on]:

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<sup>9</sup>*Mrksic*, para. 24.

<sup>10</sup>Theunens Report, 2007.

<sup>11</sup>Expert Report of R. Theunens, 16 Dec. 2003, Part I: Structure, command & control and discipline of the SFRY Armed Forces, 7, para. 9, submitted by the Prosecution in *Milošević* and cited in RC, para. 4.77.

<sup>12</sup>IT-95-13/1-T, Trial Chamber Judgement, 27 Sept. 2007, (“*Mrkšić*”), para. 89. Cf., also, Theunens Report, 2007. Cf., also, RC, Vol. 1, para. 4.77.

<sup>13</sup>MC, Vol. 1, paras. 4.03-4.05 and 4.11.

<sup>14</sup>*Mrkšić*, para. 43.

- “(a) tension, confusion and fear is built up by a military presence around a village (or bigger community) and provocative behaviour;
- (b) there is then artillery or mortar shelling for several days, mostly aimed at the Croatian parts of the village; in this stage churches are often hit and destroyed;
- (c) in nearly all cases JNA ultimata are issued to the people of a village demanding the collection and the delivery to the JNA of all weapons; village delegations are formed . . . ; with or without waiting for the results of the ultimata a military attack is carried out; and
- (d) at the same time, or shortly after the attack, Serb paramilitaries enter the village; what then follows varied from murder, killing, burning and looting, to discrimination.”<sup>15</sup>

22. As the pattern of attack makes clear, the Eastern Slavonian towns and villages seized under the command of the JNA were the site for atrocities. These atrocities were not *random* attacks on ethnic Croats. They were not isolated “violations of the rules of international humanitarian law protecting civilians”, as the Respondent now seeks to recast them<sup>16</sup>. [Plate off] The ICTY has found that it would be “misleading” to view such attacks on individual towns and villages “in isolation or to imagine they were governed by local factors”<sup>17</sup>. [Plate on] As the ICTY has held: “They were but part of a much wider political and military struggle.”<sup>18</sup>

23. Serbia’s attacks on Croat villages in Eastern Slavonia were systematic. [Next graphic] A map of all of the villages attacked across the region is now on your screens<sup>19</sup>. As it shows, the attacks were also widespread. They were a carefully co-ordinated effort, evidencing high-level planning. Serb forces, under the command of the Serbian-controlled JNA, shelled village after village, burned houses, blew up Catholic churches, killed, raped, tortured, detained and expelled Croat men, women and children. The statistics are stark. By 1992, 97 per cent of the population of the occupied areas of Eastern Slavonia was Serb, in a region that had been over 70 per cent Croat just one year before<sup>20</sup>. [Plate off]

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<sup>15</sup>*Mrkšić*, para. 43.

<sup>16</sup>RS, Vol. 1, para. 354.

<sup>17</sup>*Mrkšić*, para. 19.

<sup>18</sup>*Ibid.*

<sup>19</sup>*MC, Vol. 3, plate 4.2.*

<sup>20</sup>MC, Vol. 1, paras. 4.03-4.05 and 4.11.

## V. The three phases of the attacks under JNA command

24. Mr. President, Members of the Court, having described the overall pattern of attack, I will now describe how that pattern of attack was put into practice against individual villages across the territory of Eastern Slavonia. I will focus in particular on the villages of Bogdanovci, Sotin, Tovarnik, and Lovas.

25. The pattern of attack had three broad phases, and here I amalgamate the first two stages of the pattern described in *Mrkšić*. Phase 1 consisted of the encirclement of villages by the JNA, and the ensuing artillery attack. Phase 2 consisted of the infantry attack to seize the village. Phase 3 heralded the entry into the village of paramilitaries, and its takeover and occupation. I deal with each of these phases in turn, although in practice they often overlapped.

### Phase 1: Encirclement, Artillery and Mortar attacks

26. [Plate on]<sup>21</sup> Turning then to the first phase. Phase 1 of Serbia's attacks involved the JNA artillery shelling of majority-Croat villages and towns across Eastern Slavonia. The JNA pounded Croat villages with bombs, cluster bombs, incendiary devices, artillery shells and mortars. They rained those down on Croat villages from JNA tanks, military aircraft and naval vessels, from Serbia, Bosnia, the Danube and other areas of Croatia under Serb control.

27. The ICTY has determined as fact that the JNA was responsible for the artillery attacks on Croat towns and villages across the region, including, but not limited to, Dalj, Erdut, Ilok, Vinkovci, Osijek, Šarengrad, Bapska, Mohovo, Tovarnik, Ilača and, of course, Vukovar<sup>22</sup>. The litany of villages is long.

28. These were civilian towns and villages. They were civilian towns and villages that were largely undefended, other than by their own populations — or in some limited cases by members of the Croat forces. They could do little to counter the might and weaponry of the JNA.

29. The JNA artillery attacks were not directed at military outposts or army bases. They were directed against the Croat population. [Next graphic] As held by the ICTY in *Mrkšić*, even

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<sup>21</sup>*MC, Vol. 3, plate 4.2.*

<sup>22</sup>*Mrkšić*, paras. 34, 471-472.

when *targeting* Croat majority villages, JNA attacks were “mostly aimed at the Croatian parts of the village”<sup>23</sup>.

30. They resulted in extensive civilian casualties. Croat homes were attacked and reduced to rubble. Catholic churches were targeted, including during times of worship, in order to achieve maximum casualties<sup>24</sup>.

### ***Tordinci***

31. [***Map***] By way of illustration, Tordinci, a village of just over 1,000 people, 858 of them Croat, was shelled with JNA mortars every day for three weeks<sup>25</sup>. Over 100 missiles were fired at the village during the night of 27 September 1991 alone<sup>26</sup>.

### ***Nuštar***

32. The 86 per cent Croat village of Nuštar was hit by a 500 lb bomb [next graphic], dropped from a JNA fighter jet. A picture of the crater formed upon impact is now on your screens<sup>27</sup>.

Mr. President, the reference for the graphics I am using are in the footnotes of my speech.

### ***Bapska***

33. [***Map***] More than 1,000 JNA missiles pounded the 91 per cent Croat village of Bapska, 26 km south-east of Vukovar. Approximately 400 of them were fired in a single day<sup>28</sup>.

### ***Sotin***

34. [***Map***] The Croat village of Sotin, home to just 1,324 people, was subjected to over a month of JNA artillery attacks from tanks encircling the village. There was no resistance. Many of

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<sup>23</sup>Mrkšić, para. 43.

<sup>24</sup>MC, Vol. 3, Plate 8.2. Cf., also, M. Kevo and D. Hečimović, *The Wounded Church in Croatia, the Destruction of Sacral Monuments in Croatia, 1991–1995*, Zagreb, 1996.

<sup>25</sup>MC, Vol. 1, para. 4.134.

<sup>26</sup>Eds. S. Botica, A. Covic, M. Judas, G. Pifat-Mrzljak, V. Sakic, *Mass Killing and Genocide in Croatia 1991/2: A Book of Evidence*, Zagreb, 1992, p. 69.

<sup>27</sup>Eds. S. Botica, A. Covic, M. Judas, G. Pifat-Mrzljak, V. Sakic, *Mass Killing and Genocide in Croatia 1991/2: A Book of Evidence*, Zagreb, 1992, p. 72 [as per Judges' folders].

<sup>28</sup>MC, Vol. 1, para. 4.83, and Vol. 2 (I), Anns. 68 and 69.

Sotin's Croat villagers fled to Lovas in terror under the bombing raids<sup>29</sup>. They found little shelter there.

### ***Lovas***

35. [*Map*] Indeed, the full might of the JNA was unleashed against the Croat population of Lovas in October 1991. The 90 per cent Croat village of approximately 1,700 people was shelled by the JNA every day for 10 days. The shelling took the village by surprise: there were no Croatian armed forces in Lovas and no meaningful resistance was offered. The village was devastated in the attacks, with hundreds of homes destroyed and many others partially damaged. At least 23 Croat civilians were killed in the bombardments<sup>30</sup>.

36. The artillery attacks were intended to kill. They were also intended to cause terror, to compel Croats to abandon their villages. Some villagers were killed as they fled. Others reached what they thought were safe havens, only to be shelled and forced to flee once more. However, the worst atrocities were reserved for those who refused to flee or were unable to flee, many of them being too old, or too infirm. During Phases 2 and 3, the most brutal phases of the attacks — to which I will turn shortly — those who did not flee were killed, tortured, raped and abused by the attacking Serb forces, intent on destroying the Croat population of the region. It was Phase 1, which I have just described, in which the JNA was the primary protagonist, which brought the villages under Serb control, and enabled their seizure and takeover. Phase 1 was therefore critical in paving the way for the subsequent atrocities that occurred. In sum, these artillery assaults were not legitimate military engagements, as Serbia would now attempt to portray them; they were the first, *key* stage of a pattern of attack that was genocidal, in that it intended to destroy a part of the Croat population.

### ***Bogdanovci***

37. [*Map*] The events in the Croat village of Bogdanovci illustrate this further — the village is on your screens. In 1991, the small hilltop village, situated approximately 8 km south-east of

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<sup>29</sup>MC, Vol. 1, para. 4.109, and Vol. 2 (I), Anns. 88 and 93.

<sup>30</sup>MC, Vol. 1, paras. 4.116-4.132; MC, Vol. 2 (I), Anns. 95-111; RC, Vol. 1, paras. 5.57-5.62 and Vol. 2, Ann. 26.

Vukovar, had a population of 1,113 people, amongst them, 914 Croats and 19 Serbs. It was, and still is, the home of Croatia's witness Ms Marija Katić, who will testify to the Court this afternoon. The village was subjected to an intensive artillery attack, beginning in August 1991. By the end of September 1991, the village had been encircled by a very large number of JNA tanks — their guns trained on the village — and soldiers and paramilitaries. The surrounding fields were mined by Serb forces, limiting exit and entry through all but a perilous passage across some cornfields towards Vukovar, which was itself encircled. Throughout September and October, the village was subjected to intense artillery attack from surrounding tanks, and neighbouring Serb villages, combined with multiple infantry incursions and JNA airforce bombing raids. These continued until Serb forces seized the village on 10 November 1991.

38. The Respondent seeks to infer from the extent of the attacks against Bogdanovci that the JNA was involved in a legitimate “military engagement” against the village<sup>31</sup>. In its Rejoinder it poses the rhetorical question — and this is on your screens: [next graphic] “if it were not a military engagement, what did these attacks consist of and who was being attacked?”<sup>32</sup>

39. Who, indeed, was being attacked in Bogdanovci, Mr. President?

40. Witness accounts answer that question clearly. [Next graphic] They record that: “practically the whole village was destroyed, so that not even one house, one farming building, the church [or] the school had remained undamaged”<sup>33</sup>.

41. They record the deaths and injuries of scores of Croat civilians in the initial stages of the attacks. Witnesses describe infantry incursions into the village in chilling detail, explaining that JNA soldiers and paramilitaries would test the temperature on water pipes on houses to ascertain whether people were hiding in their basements. On finding signs of life, the soldiers would demand that the terrified civilians surrender themselves. Those complying with their demands were shot on sight; those too afraid were killed by hand grenades thrown into their basements.

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<sup>31</sup>RS, Vol. 1, para. 358.

<sup>32</sup>*Ibid.*

<sup>33</sup>MC, Vol. 2 (I), Ann. 39.

Families were massacred in the basements of their homes where they had taken refuge. More were killed as they attempted to escape, including across the cornfields to Vukovar<sup>34</sup>. [Plate off]

42. The villagers of Bogdanovci had heard what had happened in other Croat villages in the region, such as Borovo Selo. The fact that the besieged villagers refused to comply with the ultimatum issued to them by the JNA — rightly terrified of what would happen if they gave themselves up — does not transform Serbia's assault on the village into a legitimate military attack. The fact that the location of the village, perched on top of a hill, gave it an important natural defence, did not make it a military target. The fact that villagers sought to defend themselves against the JNA's attacks, does not transform the deliberate destruction of the Croat population of Bogdanovci into a legitimate "military engagement", as the Respondent seeks to argue. Neither does the presence of vastly outnumbered and outgunned members of the Croat forces, alter the nature of the Serb attacks. As the ICTY has held, the presence of non-civilians does not of and by itself affect the civilian character of the attacked population<sup>35</sup>. It does not transform an attack on a civilian village into a legitimate military assault.

43. And Mr. President, Members of the Court, lest there be any shadow of a doubt as to the intent behind the attacks on Bogdanovci, the Court need only consider what happened when the village ultimately fell to the JNA and Serb paramilitaries. The remaining villagers were slaughtered, with few exceptions: the survivors included two women whose daughters had married Serb husbands, and a Croat widow, whose Serb husband's Orthodox icons were still hanging on the walls of their marital home. An Albanian woman was also spared death, if "spared" could ever properly be used to describe the horrors inflicted on her in its stead<sup>36</sup>.

44. A total of 87 people were killed in Bogdanovci. Some were lined up and executed one by one by machine gun fire; they included two octogenarians<sup>37</sup>. Many died particularly horrific deaths, including one man, who was crucified against a tree in front of the village Catholic

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<sup>34</sup>MC, Vol. 1, paras. 4.47-4.55, and Vol. 2 (I), Anns. 37-45.

<sup>35</sup>*Prosecutor v. Martić*, IT-95-11, Trial Chamber Judgement, 12 June 2007, ("*Martić*") para. 350: "the presence of Croatian armed forces and formations in the Škabrnja and Saborsko areas does not affect the civilian character of the attacked population". Cf. also *Bosnia*, p. 179, para. 328, "[The] Court . . . takes account of the assertion that the Bosnian army may have provoked attacks on civilian areas by Bosnian Serb forces, but does not consider that this, even if true, can provide any justification for attacks on civilian areas."

<sup>36</sup>RC, Vol. 4, Ann. 99.

<sup>37</sup>RC, Vol. 4, Ann. 99.

church<sup>38</sup>. Seventy corpses have so far been recovered from four separate graves in and around the village, [plate on] including the one now on your screens<sup>39</sup>. Many villagers, including the brother of witness Marija Katić, still remain unaccounted for.

45. So, Mr. President, Members of the Court, in response to the Respondent's question, the evidence establishes that the attacks on Bogdanovci — like the attacks on other Croat towns and villages across Croatia — were not legitimate military engagements. They were attacks intended to destroy the Croat population of the villages targeted. [Plate off]

### **Phase 2: Attack to seize control of village**

46. I move on to Phase 2 of the assaults. Phase 2 consisted of the seizure of individual Croat villages by way of military infantry attack. JNA tanks, transporters and infantry seized many villages directly; and JNA soldiers were individually and directly involved in the atrocities committed. In other villages, the role adopted by the JNA at this stage was to maintain a blockade, enforced by artillery fire, to prevent movement out, and to provide cover to Serb paramilitaries who were completing what were termed “mop up” operations to destroy the remaining Croat population of the villages<sup>40</sup>.

47. As the ICTY has accepted as fact, military attacks to seize Croat villages were mounted whether or not the villagers complied with ultimata issued by the JNA<sup>41</sup>. In Dalj, Croat police officers who had surrendered in response to a JNA ultimatum were shot dead, even as they waved white flags. So too was the police officer, sent by the JNA to deliver its ultimatum<sup>42</sup>. In villages such as Šarengrad, where weapons were surrendered in response to ultimata, Croats were easy prey for Serb forces<sup>43</sup>. In other villages, no opportunity was given to comply with JNA ultimata. In Berak, for example, no sooner was the ultimatum delivered by megaphone from one of the JNA tanks rolling into the village, than the tanks opened fire on Croat houses, attempting — unsuccessfully — to provoke an armed engagement. Four Croat civilians were mown down as they

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<sup>38</sup>MC, Vol. 2 (I), Ann. 41.

<sup>39</sup>MC, Vol. 3, plate 16.6.

<sup>40</sup>MC, Vol.1, para. 3.57; RC, Vol. 1, para. 5.10.

<sup>41</sup>*Mrkšić*, para. 43: “with or without waiting for the results of the ultimata a military attack is carried out”.

<sup>42</sup>RC, Vol. 1, paras. 5.21, and Vol. 2 (I), Ann. 7.

<sup>43</sup>MC, Vol. 1, para. 4.58, and Vol.2 (I), Ann. 46; RC, Vol. 1, para. 5.36.

fled<sup>44</sup>. In villages such as Bapska, where weapons were not surrendered, villagers were unable to defend themselves against the extensive JNA armoury<sup>45</sup>. Whether the Croat population surrendered, attempted to resist or tried to flee, there was little escape. This is clear evidence that the intention behind the attacks was to destroy the remaining population.

48. I will provide the Court with three illustrations of how Stage 2 of the military attacks was launched against individual Croat villages in the region.

### *Tovarnik*

49. [Map] I begin with the 70 per cent Croat village of Tovarnik, home to just over 3,000 people. The village was seized by JNA infantry and paramilitaries, including Šešelj's White Eagles, on 23 September 1991<sup>46</sup>. The chilling account of the attack on this village requires particular emphasis, since it is an account given by a JNA officer who participated in the assault himself. The officer's account establishes that atrocities were committed under direct JNA military orders<sup>47</sup>.

50. [Next graphic] The officer describes how the attacking JNA forces were ordered to execute every single civilian in the village. He says — and here I read from your screens:

“I was in Tovarnik for three days and a lot of horrible events were imprinted on my memory, although I try to forget them . . .

I remember well the order of Major Bajat that every civilian had to be killed and that nobody should bring anybody to him. I saw when 10 people were executed by a firing squad in front of the building of the Municipality. A group of reservists killed them.”<sup>48</sup>

51. He then describes seeing JNA soldiers taunting Croat civilians, before stabbing them to death. He describes soldiers tossing bombs into basements where Croat civilians were sheltering in terror, and mowing down survivors with automatic gunfire. He recounts, and here I continue reading from your screens:

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<sup>44</sup>MC, Vol. 1, para. 4.40, and Vol. 2 (I), Ann. 28 and Ann. 29.

<sup>45</sup>MC, Vol. 1, paras. 4.83-4.85, and Vol. 2 (I), Anns. 69 and 74; RC, Vol. 1, para. 5.47.

<sup>46</sup>MC, Vol. 1, paras. 4.94-4.95.

<sup>47</sup>MC, Vol. 2 (I), Ann. 79; RC, Vol. 1, para. 5.51.

<sup>48</sup>*Ibid.*

“There were, in Tovarnik, corpses lying on a road and in yards. The burial of the dead wasn’t allowed. I’ll never forget the number of dead people — 48. I counted so many dead women, children and older men. I saw that killing with my own eyes.”<sup>49</sup>

52. The JNA order bears repeating. It was not that every single civilian in the village be displaced or deported or removed. It was that every single civilian in the Croat village be killed. And Croat civilians were duly killed, indiscriminately, in knife attacks, with grenades and machine gun fire. The bodies of 48 victims have been exhumed from graves in and around the village.

53. So, to return to the Respondent’s question, Mr. President, who *was* being attacked in these villages? Why, and for what purpose? [Plate off]

### ***Sotin***

54. The Croat village of Sotin was seized by the JNA and Serb paramilitaries on 14 October 1991. Croats were subjected to severe physical and mental harm, including rape. Some were arrested by JNA soldiers, bound hand and foot, with nooses around their necks, and forced to parade behind the JNA tanks, as they wreaked destruction on their village. One man was forcibly hanged by his arms from the barrel of one of the tank guns. JNA tanks and soldiers attacked and destroyed Croat homes, identified to them by local Serbs, as well as the village Catholic Church. Fifty people were killed. Witnesses describe the smell of human flesh pervading the air<sup>50</sup>.

55. [Plate on] The following mass grave that is shown on your screens was discovered in Sotin just last year. It contained 13 people. [Plate off]<sup>51</sup>

### ***Lovas***

56. In the village of Lovas, Phase 2 of the attack was mounted by the JNA, together with Serb paramilitaries, including the Dušan the Mighty Detachment. The attack began at 7.30 in the morning on 10 October 1991, when a number of JNA mortar shells hit the village, providing cover for the entry of Serb paramilitaries. The paramilitaries were later joined by JNA tanks and soldiers.

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<sup>49</sup>*Ibid.*

<sup>50</sup>MC, Vol. 1, paras. 4.110-4.113; Vol. 2 (I), Anns. 90-93.

<sup>51</sup><http://www.index.hr/vijesti/clanat/u-sotinu-projadjena-jos-jedna-masovna-grobnica/67484.aspx> [as per judges’ folders were asked by the Registry to include these in the text].

There was no meaningful resistance in the village: there was no Croat Army presence, and the villagers had surrendered the bulk of what light weaponry and hunting rifles they had in response to a JNA ultimatum<sup>52</sup>. The massacre of Croat civilians began immediately. Croat civilians were killed where they were found: in their yards, crossing the street, in cafés, hiding in their homes and attics. Many civilians were massacred by grenades thrown into the basements where they were sheltering. Croat men were taken from their homes at gunpoint and shot dead in front of their children. One woman was taken away and set on fire by a JNA soldier. The Catholic Church was burned to the ground, along with 20 Croat houses, identified to the JNA by local Serbs. Fleeing was impossible: JNA tanks had surrounded the village, preventing any movement out<sup>53</sup>. [Plate on] This is what they left behind in their wake<sup>54</sup>. *[Plate on]*

57. Again, who was being attacked in these villages? And for what purpose? [Plate off]

58. The evidence is clear. The assaults mounted on Eastern Slavonian villages were brutal. They involved the deliberate, targeted destruction of their Croat inhabitants. They also involved the destruction of Croat property, as well as buildings of cultural and religious importance. This was done in order to wipe out all traces of Croat culture in the village and to prevent return<sup>55</sup>. [Plate on] Catholic churches were a particular target, as demonstrated in Croatia's written evidence. I show two photographs by way of illustration. *[Plate on]* This photograph depicts the Catholic church in Aljmaš, a Croat village on the border with Serbia<sup>56</sup>. This photograph [next graphic] depicts the church after it was deliberately destroyed by Serb forces<sup>57</sup>. This was no accident.

59. Mr. President, Members of the Court, the Respondent's attempts in its written pleadings to depict the deliberate targeting of Croat villages and villagers as combat-related killings, occurring in the context of a legitimate military attack, are unfounded. [Plate off] The ICTY itself

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<sup>52</sup>MC, Vol. 1, paras. 4.117-4.122; RC, Vol. 1, paras. 5.57-5.62.

<sup>53</sup>MC, Vol. 2 (I), Anns. 95-101.

<sup>54</sup>MC, Vol. 3, plates 16.1 and 16.2.

<sup>55</sup>M. Kevo and D. Hečimović, *The Wounded Church in Croatia, the Destruction of Sacral Monuments in Croatia, 1991-1995*, Zagreb, 1996.

<sup>56</sup>*Ibid.*

<sup>57</sup>*Ibid.*

has found that in the SAO SBWS, and here I quote, “most victims were Croats”<sup>58</sup>. It has also said, and here I quote again, that “[t]he evidence shows that the persons targeted [and I emphasize the word “targeted”] were primarily members of the civilian population”<sup>59</sup>.

60. It is Croatia’s case that the pattern of evidence also shows that the targeting of Croat civilians was driven by an intent to destroy their Croat populations.

### **Phase 3: Occupation of the village by paramilitaries and other Serb forces**

61. I turn, as the final part of my presentation, to Phase 3 of the JNA-led attacks on Croat villages. Phase 3 involved the entry into a village of paramilitaries, sometimes alongside the JNA or shortly thereafter, sometimes under JNA fire cover. This was a particularly savage phase of the attacks, often involving acts of extreme sadism against the Croat population.

62. In some villages, such as Bogdanovci, paramilitaries massacred all or almost all of Croats remaining in the village.

63. In other villages, the Croats who had not fled and were not killed on sight, were subjected to a régime of terror, involving arbitrary executions, torture and rape.

64. You will hear more about these atrocities in the presentations tomorrow morning. I will describe just one event, to give the Court an idea of the horrors of Phase 3.

65. It took place in the village of Lovas. As you will recall, Lovas had been occupied on 10 October 1991. Twenty-three Croats had been killed in the initial stages of the attack under the command of the JNA. Six days later, on 17 October, all Croat males aged between 18 and 65 were rounded up. They were detained overnight in a makeshift detention facility, where they were tortured. They were kicked. They were stabbed. They were battered with steel pipes and rifle butts. They were whipped with steel wire, to which metal nuts had been attached. Eleven men were beaten to death<sup>60</sup>.

66. The following day, on 18 October, 50 of the survivors were singled out and made to undertake a forced march to a clover field at the outskirts of the village. One man was executed en

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<sup>58</sup>*Stanišić et al*, Trial Chamber Judgement, para. 971.

<sup>59</sup>*Stanišić et al*, Trial Chamber Judgement, para. 971.

<sup>60</sup>MC, Vol. 1, paras. 4.123-125, and Vol. 2 (I), Anns. 95, 96, 97, 98, 101, 102 and 104; RC, Vol. 1, paras. 5.58-5.62.

route, because he was unable to keep up with the group, due to injuries inflicted the previous night. Once at the field, Serb forces ordered the men to clear it of mines. The men were forced to hold hands and walk across the field, kicking the clover as they walked, mimicking the movement of the scythe with their legs and feet. The first mine detonated. It triggered a chain of explosions. The Serb forces opened fire, mowing down all those still standing<sup>61</sup>. When the shooting abated, the survivors were told to identify themselves, so that they could be rescued. Those who complied were executed on the ground where they lay. Twenty-one men in total died in the clover field that day, in what has become known as the “minefield massacre” of Lovas<sup>62</sup>.

67. Across Eastern Slavonia, Croat civilians who had been unable to flee were subjected to torture, mock executions, forced labour, ill-treatment and mass detention. Croat women were raped and gang raped, sometimes in public, in front of large crowds<sup>63</sup>. Croats were starved, beaten, hanged, stabbed, mutilated, castrated and hacked to death with axes, because they were Croats<sup>64</sup>. The derogatory taunts of “Ustasha” or “Ustasha whores” which were spat in their faces confirm this without doubt<sup>65</sup>. So, too, do the Serb national symbols carved into their flesh<sup>66</sup>.

68. Those left alive were submitted to a brutal régime of martial law. It was imposed by the Serb administrative régime established in each occupied village, together with the JNA, TO and other Serb forces. Paramilitaries played a prominent role. For example, in Erdut, the very seat of Hadžić’s SAO SBWS government, Arkan ran a prison in the TO training centre, where Croats were brutally mistreated and murdered<sup>67</sup>. Lists were drawn up in villages, identifying all Croat inhabitants<sup>68</sup>. Croat men and women were forced to display white ribbons on their persons or on

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<sup>61</sup>MC, Vol. 2 (I), Ann. 98.

<sup>62</sup>MC, Vol. 1, paras. 4. 125, and Vol. 2 (I), Anns. 95, 96, 97, 98, 101, 102, 103, 104; RC, Vol. 1, paras. 5.58-5.62; Vol. 2 (I), Anns. 26 and 115.

<sup>63</sup>MC, Vol. 1, paras. 4.25, 4.44-4.45, 4.110, 4.113, 4.129, 4.185; Vol. 2 (I), Anns. 30, 33, 35, 51, 66, 72, 79, 94, 108; RC, Vol. 1, paras. 5.35, 5.46, 5.54, 5.84.

<sup>64</sup>MC, Vol. 1, paras. 4.30, 4.37, 4.60, 4.67-4.69, 4.77-4.80, 4.87-4.93, 4.98, 4.105-4.106, 4.128, 4.132; RC, Vol. 1, paras. 5.46, 5.54, 5.57 and associated appendices.

<sup>65</sup>MC, Vol. 1, paras. 4.44, 4.54, 4.98, 4.111, 4.128; Vol. 2 (I), Anns. 16 (Tenja), 60 (Ilok), 74 (Bapska), 80, 81 and 83 (Tovarnik), 91 (Sotin) and 106 (Lovas).

<sup>66</sup>MC, Vol. 2 (I), Ann. 57.

<sup>67</sup>IT-03-69, *Prosecutor v. Stanisic and Simatovic*, Trial Chamber Judgement Part 1, 30 May 2013, paras. 458-461.

<sup>68</sup>MC, Vol. 2 (I), Anns. 6, 12 and 16 (Tenja) and 61 (Tompojevci).

their properties as ethnic identifiers, marking them out as Croats<sup>69</sup>. They were subjected to curfews and to severe restrictions on movement within and between villages: in many villages Croats required permits even to leave their own homes<sup>70</sup>. Access to food and medicine was curtailed<sup>71</sup>. Croat households were cut off from water and electricity supplies<sup>72</sup>.

69. Across the region, Croats were made to undertake forced manual labour, often at gunpoint<sup>73</sup>. Croat women compelled to undertake domestic labour for Serb officials were subjected to repeated sexual assaults<sup>74</sup>. Forced manual labour often included digging graves and burying those killed<sup>75</sup>. Some were forced to dig their own graves before being shot themselves<sup>76</sup>. “Payment” for forced labour was provided in the form of beatings, meted out by Serb officials on what they cruelly called “pay day”<sup>77</sup>. Many died from such beatings; many others, taken away to be “paid”, were never seen again<sup>78</sup>. Meanwhile, Croat homes were systematically looted, under the guise of “official” searches<sup>79</sup>. Catholic buildings and Croat cultural edifices continued to be systematically targeted for destruction, and often desecrated<sup>80</sup>.

70. The régime culminated with the forced deportation and transfer from Eastern Slavonia of over 90,000 Croats who had not been killed or imprisoned. Many of those were forcibly transferred to detention facilities in other occupied areas of Croatia, in Serbia and other parts of the

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<sup>69</sup>MC, Vol. 2 (I), Anns. 53 (Šaregrad), 66 (Bapska), 76 (Tovarnik), 84 (Tovarnik); 101, 106 and 108 (Lovas) and 128 (Vukovar).

<sup>70</sup>MC, Vol. 2 (I), Anns. 4 (Tenja), 29 (Berak), 47 (Šaregrad), 61 and 65 (Tompojevci), 68 and 70 (Bapska), 76 (Tovarnik).

<sup>71</sup>MC, Vol. 2 (I), Anns. 5 (Tenja), 15 (Tenja), 74 (Bapska).

<sup>72</sup>*Mrkšić*, para. 44; MC, Vol. 1, paras. 4.77-4.80; Vol. 2 (I), Anns. 4, 11 and 65; RC, Vol. 1, para. 5.43.

<sup>73</sup>MC, Vol. 2 (I), Anns. 7 (Tenja) and 23 and 29 (Berak).

<sup>74</sup>MC, Vol. 2 (I), Anns. 9 (Tenja) and 106 (Lovas).

<sup>75</sup>Cf., e.g., MC, Vol. 2 (I), Anns. 18, 81 and 83.

<sup>76</sup>MC, Vol. 2 (I), Anns. 31 (Berak) and 81 (Tovarnik).

<sup>77</sup>MC, Vol. 2 (I), Ann. 64 (Tompojevci).

<sup>78</sup>*Ibid.*

<sup>79</sup>MC, Vol. 2 (I): Anns. 24 and 25 (Dalj), 61 (Tompojevci), 67 and 70 (Bapska) and 105 (Lovas). See also RC, Vol. 4, Ann. 99.

<sup>80</sup>MC, Vol. 2 (I), Anns. 26 (Dalj) and 65 (Tompojevci). Cf., also, M. Kevo and D. Hečimović, *The Wounded Church in Croatia, the Destruction of Sacral Monuments in Croatia, 1991–1995*, Zagreb, 1996.

former Yugoslavia. Many were compelled to sign over properties to the rebel Serb “Republika Srpska Krajina” as a condition of safe passage<sup>81</sup>.

## VI. Conclusion

71. Mr. President, Members of the Court, in conclusion, within a year of Serbia’s occupation of Eastern Slavonia, the peaceful communities of the region had been destroyed. The intent to destroy the Croat population is as clear as the figures are stark: [Plate on]<sup>82</sup>.

- (1) Every Croat majority town and village in Eastern Slavonia was attacked. Those towns and villages are depicted on the maps on your screens.
- (2) Approximately 4,000 Eastern Slavonian men, women and children were killed; 485 more are still missing.
- (3) Tens of thousands of Eastern Slavonian Croats were subjected to serious physical and mental harm, including torture and rape. The exact number is impossible to state with certainty, given the scale of the atrocities and the reluctance of victims to speak openly of their ordeals.
- (4) Over 3,600 Eastern Slavonian Croats were transferred to prison camps, where many of them were raped and tortured; many more were killed and remain unaccounted for.
- (5) Over 90,000 Croats were compelled to flee or forcibly transferred from Eastern Slavonia to other parts of non-Serb occupied Croatia.
- (6) Tens of thousands of Croat-owned homes in the region were torched, bombed and mined.
- (7) Over 300 Catholic churches, and Croat buildings of religious, historical and cultural importance were targeted for destruction, in an attempt to eradicate all vestiges of Croat culture in the region and to prevent return.
- (8) 510 mass graves have since been discovered, containing the corpses of nearly 2,300 men, women and children; many others have been discovered in individual graves. More still are being discovered yearly.

72. Entire Croat villages were destroyed. By 1992, almost every member of the ethnic Croat population of Eastern Slavonia had been massacred, had fled or had been forcibly removed from

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<sup>81</sup>MC, Vol. 2 (I), Anns. 22 and 27 (Dalj), 29 (Berak), 48 (Sarengrad), 61 (Tompojevci), 64 and 65 (Tompojevci) and 89 (Sotin).

<sup>82</sup>*MV, Vol. 3, plate 4.2.*

the area. The plan by the Serbian political and military leadership to create an ethnically homogenous Serb area in Eastern Slavonia was complete.

73. Mr. President, Members of the Court, the attacks I have described to you, during which these people were killed, raped, maimed and displaced, were not legitimate military engagements. Nor were they random acts of violence, or isolated breaches of the laws of war. Faced with the evidence of the clear systematic pattern of attacks, even the Respondent is compelled to accept the killings took place, that they were “methodical, directed at civilians and driven by ethnicity”<sup>83</sup>. What I have described to you is a widespread, systematic, co-ordinated pattern of assault that targeted the Croat population for destruction. That pattern was repeated not just across Eastern Slavonia, but across all of the regions of Croatia targeted by Serbia for inclusion in a Greater Serbian State.

74. **[Plate on]**<sup>84</sup> I finish by returning to a chilling photograph that you were shown yesterday by Professor Sands<sup>85</sup>. It depicts a Croat civilian from the Eastern Slavonian village of Lovas. Her name was Slavica Pavošević. She was killed, in the basement of her home, in mid-October 1991. She was 60 years old. The reason she was killed is indicated by the white band on her sleeve. She was killed because she was a Croat. She was killed because she was a Croat, living in one of the regions that Serbia intended to be Croat-free. Her killing, like the killing of those who lay next to her in the mass grave in which she was found, was driven by an intent to destroy the Croat population of those regions. This is the only inference that can reasonably be drawn from the nature and pattern of the widespread, systematic, co-ordinated attacks by Serb forces, under the command of Serbia’s JNA, of which she and many thousands of others were the victims. [Plate off]

75. Mr. President, Members of the Court, thank you for your attention. Mr. President, I would ask you now to call on Sir Keir Starmer who will describe how this pattern of attack was put into practice against the Croat town of Vukovar.

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<sup>83</sup>RS, Vol. 1, para. 392.

<sup>84</sup>MC, Vol. 3, plate 16.5.

<sup>85</sup><https://www.branitelji.hr/pregled/fotografije-masovnih-grobnica>.

The PRESIDENT: Thank you very much, counsel. Now I call on Sir Keir Starmer to continue. You have the floor, Sir.

Sir Keir STARMER:

## SERBIA'S GENOCIDAL ACTIVITIES IN VUKOVAR

### I. Introduction

1. Mr. President, Members of the Court, I am going to deal with the events in Vukovar. Even when judged against the other atrocities detailed by the Applicant before this Court, including some of those heard this morning, the events in Vukovar plumbed new depths. Serbian forces carried out a sustained campaign of shelling; systematic expulsion; denial of food, water, electricity, sanitation and medical treatment; bombing; burning; brutal killings and torture which reduced the city to rubble and destroyed its Croat population. It started with roadblocks and ended with torture camps and mass execution. In human terms, the scar will never heal.

2. The events at Vukovar are significant and they are known around the world. They deserve to be examined in context, in detail and in full.

3. The city itself, as the name suggests, straddles the Vuka River which flows into the Danube just north of the city centre. At Vukovar, the Danube marks the border between Croatia and Serbia. No doubt this strategic positioning contributed to putting Vukovar at the sharp end of Serb aggression in 1991. [Plate on] I am just going to remind the Court of the strategic position of Vukovar with a plate which I hope is coming on to your screens. [Plate off]

4. Throughout its history, Vukovar has been part of Croatia. It enjoyed a leading position as capital of the Vukovar region. But, tragically, in the plans for "Greater Serbia", Vukovar was assigned a different leading position. It ~~was~~ was intended to be the capital of the new Serbian region of Eastern Slavonia, Baranja and Western Syrmia. Vukovar was to be that capital.

5. As the Court will know, individual responsibility for specific acts of extreme violence and destruction relating to Vukovar has been determined in a number of courts and tribunals, most notably in the *Mrkšić* case<sup>86</sup>. The convictions entered in those cases provide an intense focus on

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<sup>86</sup>*Prosecutor v. Mrkšić, Radić and Šljivančanin*, Case No. IT-95-13/1-T, Judgement, 27 Sep. 2007.

the nature and gravity of the atrocities visited on the Croat population. But, inevitably, each case was tightly constrained to deal with the events only as they related to the individual defendant: what did *he* do, what did *he* know and for what part is he *personally* culpable?

6. Mr. President, Members of the Court, you have the opportunity to take a broader look; to look at the events of Vukovar in their entirety. Not salami slices of individual responsibility, but a global view of *all* the atrocities from start to finish. *State* responsibility for the conduct *as a whole*, from the first shell to the last bullet.

7. So what was the city of Vukovar like before all this? In the 1991 census, the city had a population of just over 21,000 Croats, 14,500 Serbs, 4,300 Yugoslavs and about 4,500 others.<sup>87</sup> It was an attractive city, reasonably affluent, acting as a service city and centre for the surrounding agricultural areas, reputed to be the richest farmland in the area.

8. Despite its rich mix of people, ethnic tension in Vukovar was at a low level until the early 1990s, when Serb radicals began to call for a “violent” response to Croat so-called “provocation”. Large numbers of ultra-nationalist Serbs came to strengthen the Serb irregular forces. These units were armed and provided logistical support to the JNA.

9. By mid-August, the JNA had deployed troops on the Croatian side of the Danube in such a manner as to entirely encircle Vukovar. They also placed additional units on the Serbian side of the river, where artillery and rocket launchers were also erected. At least three gunboats were deployed in the Danube, above the city<sup>88</sup>.

10. As you heard from Mr. Kožul yesterday, many Serbs took the opportunity to leave because they could see what was about to happen. Thus positioned, on 25 August 1991 — a date etched in Vukovar history — the JNA launched its full-scale assault on the city of Vukovar<sup>89</sup>. The deadly siege had begun, and with it the destruction of the Croat civilian population living in Vukovar.

11. What followed is best understood as four distinct but overlapping phases. Phase 1 (which is from August until November 1991), was the laying waste to the city by artillery, rockets,

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<sup>87</sup>Memorial of Croatia (MC), para. 4.140.

<sup>88</sup>*Mrkšić*, Trial Chamber Judgement, para. 41.

<sup>89</sup>MC, para. 4.147.

tanks and mortar shelling. Phase 2, which overlaps, is from mid-September until November 1991 and that takes in the attacks on the Croat population of Vukovar as the JNA and Serb and Serbian forces (including militia, special forces, Territorial Defence (“TO”) and volunteer and paramilitary formations) moved forward to seize ground, burning, raping and killing as they did so. Phase 3 is a short phase, in the middle of November (18-21), and that is the fall of Vukovar, when the shelling stopped: that eerie moment when those trapped Croats, who had survived the shelling, emerged from their basements, surrendered and were taken from the city in buses and trucks. And Phase 4 is from about 18 November 1991 onwards and that was the deadly aftermath, which saw the torture and abuse of Croat survivors in detention camps and the mass killings at Velepromet and Ovčara and elsewhere.

12. So let me start with Phase 1, the bombardment of Vukovar. This was almost certainly the most sustained attack on an urban area in Europe since the Second World War. The estimated daily round of missiles was 10,000<sup>90</sup>. The loss of life was extensive (the precise number will never be known, but estimates sit at about 1,100)<sup>91</sup>. Six thousand apartments came crashing down and only 1,000 of the 9,000 family homes in Vukovar were left standing<sup>92</sup>. Essential services including electricity, water and the sewage system all failed<sup>93</sup>. Wells were targeted and destroyed<sup>94</sup>. In addition, much of the fabric of Vukovar’s cultural, historic and religious life was destroyed through the shelling of churches, schools, kindergartens and public buildings<sup>95</sup>.

13. As found in *Mrkšić* by the ICTY, by mid-October — say, some two months after the beginning of the shelling — Vukovar had been completely surrounded with widespread damage to buildings. In Mitnica, one of the suburbs facing the Danube, the roofs of family houses had been blown off and by early November there was practically no house standing above the cellar. After the fall of Vukovar, the scenes were of utter and total destruction. Ambassador Herbert Okun, who visited Vukovar on 19 November 1991, commented that the city was “completely shattered” and

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<sup>90</sup>MC, para. 4.149.

<sup>91</sup>*Ibid.*

<sup>92</sup>*Ibid.*, para. 4.150.

<sup>93</sup>*Mrkšić* Trial Chamber Judgement, para. 465.

<sup>94</sup>*Ibid.*, para. 466.

<sup>95</sup>*Ibid.*

likened it to Stalingrad at the end of the Second World War. Video footage taken at the time depicts a landscape of burnt out cars and buildings reduced to rubble. Every house had suffered damage. The predominantly residential area south of the Vuka River was flattened<sup>96</sup>. Countless bodies lay in the streets and yards, unburied because of the danger from shelling to anyone who ventured out<sup>97</sup>.

14. Under the headline, “Army seeks to justify destruction of Vukovar”, the United Press International *News Bulletin* for 21 November 1991 captured the image with the following description “Not a single building has escaped unscathed the almost three months of withering bombardments. The town centre on the Danube River is totally destroyed and scores of bodies remain unburied.”<sup>98</sup>

15. Those who survived only did so by cowering in their basements, with no electricity, and very little food or water. Some were in the basements of their own homes. Others in collective shelters of up to 500 people<sup>99</sup>. The fate of those venturing out was obvious. A little 8-year-old girl was killed when she did so, and her 7- and 11-year-old sisters badly injured<sup>100</sup>. The International Committee of the Red Cross (ICRC) referred to these people trapped in their cellars as the “mushroom people”<sup>101</sup>. Most did not crawl out until the end of the three-month siege. At that point, many made their way to Vukovar Hospital, mistakenly believing it to be a place of relative safety and protection.

16. The Respondent attempts in the Counter-Memorial to characterize the siege (inaptly described as the “battle for Vukovar”) as no more than a fight between two opposing military forces<sup>102</sup>. And I shall read from paragraph 955 of the Counter-Memorial the Respondent’s case

“The battle for Vukovar was thus; a battle between two opposing military forces, one trying to capture a town, the other one trying to defend it, even when it would become obvious that defence was not possible.”

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<sup>96</sup>*Ibid*, para. 56.

<sup>97</sup>MC, para. 4.152.

<sup>98</sup>MC., Vol. 4, Ann. 41.

<sup>99</sup>MC, para. 4.151

<sup>100</sup>*Ibid*.

<sup>101</sup>*Ibid*, para. 57.

<sup>102</sup>Counter-Memorial of Serbia (CMS), para. 955.

So that is the Respondent's position and justification for what happened at Vukovar. Even when putting forward that justification, the Respondent is compelled to concede that "the use of force may have exceeded the needs of a normal military operation". That justification is so paper-thin that it does not withstand scrutiny when set *beside* the findings of the ICTY in the *Mrkšić* case.

17. These findings reveal not an armed conflict directed at military objectives, but a radically disproportionate attack deliberately intended to devastate the town and its civilian population. The ICTY Trial Chamber recorded that a large number of JNA units, as well as territorial defence units and paramilitary units, including Serb volunteers took part in the battle for Vukovar on the Serb side. The evidence before the ICTY, and accepted, was that there was some **15,000** JNA soldiers in the Vukovar area. On the Croatian side, even at the height of the siege, the number of Croat combatants was no more than 1,700-1,800<sup>103</sup>, and here I am rooting myself in the ICTY findings.

18. That numerical mismatch is 1:9. And if that were not enough in itself to demolish the Respondent's justification for what happened at Vukovar as some tragic battle between equally balanced forces, the Trial Chamber's findings also record that there were "dramatic differences" between the military capabilities of the opposing forces<sup>104</sup>. The JNA was an extensively equipped and trained military force with a full range of military weaponry. Rockets and artillery launchers were placed on all sides of the city, and every type of heavy weaponry was used, including howitzers, mortars, battle tanks, armoured personnel carriers, naval gunboats from the river Danube and fighter/bomber aircraft<sup>105</sup>.

19. By way of stark contrast, and here I quote again directly from the Trial Chamber's finding, "not only were the Croat forces very significantly less numerically and mostly ill-equipped and untrained, but for the most part, they only had light infantry weapons"<sup>106</sup>. By the time the city fell, the JNA had amassed 30,000 troops in the area, an advantage of about 16:1, an advantage of about 100:1 in artillery and tanks — military might, we submit, far in excess of what was required to overpower the Croat forces.

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<sup>103</sup>*Mrkšić*, Trial Chamber Judgement, paras. 39-42.

<sup>104</sup>*Ibid.*, para. 41.

<sup>105</sup>*Ibid.*

<sup>106</sup>*Ibid.*, para. 42.

20. As the Applicant has always asserted<sup>107</sup>, this colossal mismatch in numbers and capabilities reveals the true purpose of the attack on Vukovar. Not a military strategy as the Respondent would have it, but a mission to destroy the Croat population living there. And in Phases 2, 3 and 4 of the events at Vukovar, that intention became chillingly clearer and clearer.

21. Before I leave Phase 1, Mr. President, may I draw your attention to the words of General Života Panić of the Yugoslav Army, because they really reveal the mind-set, when he said: “We decided not to fight house to house. We would take Vukovar with heavy weapons.” And I will show you what he said, and remind you of some of what followed. [Video on]

22. Phase 2, the advance into the ruined city by JNA ground troops and Serb paramilitaries, began in early to mid-September. As they approached on foot and in tanks, bearing heavy weapons, they brought terror to the Croat population in their path. First a few streets were taken, then the suburbs. First to go was Sajmiste, where at least 120 of the local population were killed. Then Petrova Gora, where, witnesses report that every day four to five people were brought and killed<sup>108</sup>. Then Borovo Naselje was cut off from central Vukovar, and later Mitnica was similarly cut off. Eventually, the city would fall.

23. Those in Vukovar, as these deadly events unfolded, must surely have known what was coming to them. The pattern reflected what had happened, and what was still happening, across Eastern Slavonia and the rest of Croatia. Towns and villages were being destroyed; Croat families burnt out of or blown up in their homes. You have heard some of the details this morning. Vukovar was only different in degree and intensity.

24. One witness, a former JNA soldier, captures the mood of the advancing Serbs during Phase 2 of the events in Vukovar<sup>109</sup>. He was a former JNA parachute commando, he describes being introduced to a JNA commander, who rallied the troops as they advanced through Vukovar by describing how he had killed Croats, regardless of their age, gender or status. The commander boasted of having butchered women and children. This was not idle talk. The witness describes how, as they advanced from Sajmiste to Mitnica, he witnessed the commander forcing Croat

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<sup>107</sup>See MC, para. 4.147.

<sup>108</sup>MC, Vol. 2 (I), Ann. 127.

<sup>109</sup>*Ibid.*, Ann. 119.

prisoners into a room and blowing them up. A “procedure”, as he describes it, repeated several times that day.

25. The evidence from two female residents of the city<sup>110</sup> graphically backs this up. They give details of killing lists, rape and the arbitrary killing of men, women and children as the attackers took the city.

26. Burning and bombing places of shelter was commonplace. One former JNA soldier<sup>111</sup> describes how, from his perspective, the attack on Vukovar began from Nova Street with tanks and infantry. First, he says, “they set houses on fire and then retreated”. In different parts of the city a strikingly similar account is given by another witness<sup>112</sup>, who describes the advancing forces as “killing those who did not leave their basements by throwing bombs [in]”. When Croat civilians surrendered and came out of the mass shelters, the men were separated from the women and children, and most were transported to the torture and death camps in other places, particularly in Serbia.

27. There is evidence that the advancing tanks shot at every Croatian house and every shelter where Croatians were hiding. Survivors who surrendered were often abused and some were killed. Included in the Applicant’s Memorial are the accounts of one witness whose surrendering husband was butchered in front of her and their children<sup>113</sup>, another witness, whose mother was shot in the head<sup>114</sup>, and another, who describes the blood-strewn streets<sup>115</sup>.

28. Witness the execution of Croat prisoners detailed in the evidence submitted by the Applicant in the streets and squares<sup>116</sup>. One witness describes summary execution of a prisoner in front of the crowd and the bodies of about 40 Croat prisoners at Luzac, beaten, abused, and then shot with their hands tied behind their backs.

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<sup>110</sup>*Ibid.*, Anns. 126 and 128.

<sup>111</sup>*Ibid.*, Ann. 127.

<sup>112</sup>MC, Vol. 2 (I), Ann. 134.

<sup>113</sup>MC, para. 4.164.

<sup>114</sup>*Ibid.*, para. 4.165.

<sup>115</sup>*Ibid.*, para. 4.166.

<sup>116</sup>MC, Vol. 2 (I), Ann. 115.

29. Mr. President, Members of the Court, I return to the Respondent's case, in the face of the evidence of these atrocities. Their case is, and I quote again from the Counter-Memorial, paragraph 955, that the facts were much different than how the Applicant seeks to portray them. I remind the Court of the intelligence briefing that was put on the screen and read to you yesterday. That intelligence briefing that Professor Sands drew your attention to, dated mid-October, in the middle of this phase that I am describing, was reporting back to the Serbian authorities uncontrolled genocide and terrorism. Is it a coincidence that the Applicant's witness testimony chimes with that intelligence briefing, at precisely the same period in Vukovar?

30. [Plate on] The image on-screen now shows the position of the Serbian forces poised for the final attack on Vukovar. From this image it is possible to see the extent to which Vukovar was surrounded. For its Croat inhabitants who had survived to this point, refuge was impossible; escape was not an option. [Plate off]

31. Vukovar fell on 18 November 1991. By that stage, even the birds had left. The city in ruins: the Phase 1 bombardment was complete. This was Phase 3. The eerie few days. The Phase 2 attack was continuing and the Phase 4 nightmare was about to unfold.

32. The terrifying inevitability of what was about to occur is foreshadowed in the following clip. As shell-shocked civilians emerge from their bunkers to confront their ruined city and the dismembered bodies lie in the rubble, Serb paramilitary units and JNA soldiers march in formation through the streets, singing of their intention to bring Croats to the slaughter. [Video]

33. Mr. President, Members of the Court, we have reached a pivotal point in the events in Vukovar. The bombardment has ended, the shelling has stopped, the civilians are emerging and that is a good point to look back at what had just happened, but also to look forward. Mr. President, it is probably also a good point to take a break, if that is convenient to the Court.

The PRESIDENT: Thank you very much, Sir. I understand that you have still some 30 minutes so if you consider it is a good moment in your presentation to make a pause, the Court will take a 15 minutes' break. Thank you.

Sir Keir STARMER: I am grateful.

*The Court adjourned from 11.20 a.m. to 11.40 a.m.*

The PRESIDENT: Please be seated. The sitting is resumed and I invite Sir Keir Starmer to continue. You have the floor, Sir.

Sir Keir STARMER: Mr. President, Members of the Court, we have reached 18 November 1991 in Vukovar and I am pausing here because this, as I have said, is the stage when the three-month bombardment had ended. The city was in ruins. I want now to analyse what had happened by looking backwards and then looking forwards, so this is not simply a recital of what happened, it is some analysis of what happened.

34. So far as the look backwards is concerned, our submission is that it exposes the Respondent's case for what it is — very far removed from reality. In one sense, what I am asking the Court to do is to have in one hand, or in one column, the Respondent's position as I read this morning. The "battle for Vukovar" was thus a battle between two opposing military forces, one trying to capture a town, the other trying to defend it. So, in one hand, we have that — that is, the Respondent's position. And, on the other hand, or on the other column on the page, I am inviting the Court to have to hand the trenchant findings of the ICTY in relation to Vukovar, and to compare, as it were, one with the other.

35. The trenchant findings of the ICTY which I seek to set aside Respondent's case starts with this quotation, in the *Mrkšić* case: [Plate on]

"the Serb attack was consciously and deliberately directed against the city of Vukovar itself and its hapless civilian population, trapped as they were by the Serb military blockade . . . and forced to seek what shelter they could in the basements"<sup>117</sup>.

36. The ICTY then went on to say this — and this really does have to be put in the column right opposite the Respondent's case: [Next graphic]

"What occurred was not . . . merely an armed conflict . . . [so the ICTY takes a profoundly different position to the Respondent] in the course of which civilians became casualties and some property was damaged. The events, when viewed overall, disclose an attack by comparatively massive Serb forces, well armed, equipped and organised, which slowly and systematically *destroyed* a city and its civilian and

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<sup>117</sup>*Mrkšić* Trial Chamber Judgement, para. 470.

military occupants to the point where there was a complete surrender of those that remained.”<sup>118</sup>

And I underline quite obviously the word “destroyed”. That is the ICTY analysis.

37. I go on to a further passage in the Trial Chamber’s Judgement, to this: [Next graphic]

“the city and civilian population of and around Vukovar were being punished, and terribly so, as an example to those who did not accept the Serb controlled Federal government in Belgrade . . . or the JNA”<sup>119</sup>.

How can the Respondent’s justification sit alongside those trenchant findings, which knock the justification out word for word. [Plate off]

38. The total devastation of Vukovar is evident from the next clip. Bodies line the street. Through the front windscreen of a bus, all that can be seen are buildings torched and crumbling, and cars burnt out or blown up. [Video on (1 min 20 secs)]

39. [Plate on] The photograph now on the screen shows Nicola Tesla Street, a residential street in central Vukovar, soon after the fall of the city and captures the scene of destruction<sup>120</sup>. [Plate off]

40. The aerial footage that I will now show provides an overarching perspective of the damage wrought. A once-flourishing metropolis laid to waste. [Video on (1 min)]

41. Mr. President, Members of the Court, I am still in the period 18 to 21 November 1991. That completes my look back. The point of that part of my analysis is to demonstrate that the Respondent’s defence in relation to Vukovar simply cannot sit with the findings of the ICTY in the *Mrkšić* case. I now want to look forward — and that is why I showed you that footage and those pictures in particular — because, on any view, whether my analysis looking back is right or wrong, on 18 November 1991 nobody could argue with the proposition that Vukovar city was on its knees. The attack was complete. The infrastructure was in ruins. The trapped Croat population was captive and utterly defenceless. There was this moment in history. The bombardment had stopped.

42. Mr. President, Members of the Court, if ever there was an opportunity to test the real intent of the Serbian forces, this was it. They had the city where they wanted it. It was in ruins. The people beaten. If all that happened thereafter was the relatively peaceful removal of those

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<sup>118</sup>*Ibid.*; emphasis added.

<sup>119</sup>*Ibid.*, para. 471.

<sup>120</sup>[http://centardomovinskograta.hr/wp-content/uploads/2013/12/Plakati-eng2\\_smsfgxfhjghjhjhjall.pdf](http://centardomovinskograta.hr/wp-content/uploads/2013/12/Plakati-eng2_smsfgxfhjghjhjhjall.pdf).

remaining Croats to another place, that might have been evidence consistent with the Respondent's defence that, however terrible the events at Vukovar, there was never genocidal intent. But, tragically, the gruesome events that were about to follow, including repeated torture, rapes and mass killings, are *devastating* evidence the other way. If the aim were merely to displace the population, there would have been no need to eradicate the vestiges once that aim was achieved. At this moment, in mid-November 1991, there was a window of opportunity to displace not destroy the surviving Vukovar Croats. That this window was slammed so firmly shut speaks volumes.

43. The focus of much attention was, of course, Vukovar hospital. As the Trial Chamber in *Mrkšić* found, it had been subject to attacks on virtually a daily basis — again, attacks only consistent with intent to destroy vulnerable civilians rather than military objectives. All the windows were shattered. The roof was nearly destroyed. There were large holes in the building caused by shelling. Patients, staff and the improvised treatment facilities were below ground in desperately crowded basement areas<sup>121</sup>. This was the central hospital.

44. Very many of the trapped Croat population of Vukovar — consisting of men, women and children — tried to leave Vukovar from 18 November onwards. Some managed to get out, via a surrender point in Mitnica and from there to Velepromet, Ovčara and to detention camps. Others went to the hospital, seeking safety and protection.

45. On 19 November, the hospital was full beyond capacity. No less than about 750 people were there. The sick, the wounded, hospital staff, and those who had simply taken refuge there<sup>122</sup>. Others were still arriving.

46. Some of those arriving may have known that a plan was being negotiated in Zagreb for the evacuation of the hospital; that may have been why they thought it was a safe place to go. Finally agreed on 18 November 1991, it provided for a ceasefire and the safe passage out of the city for the sick and wounded, overseen by the European Community Monitoring Mission (ECMM) and ICRC representatives.

47. What a test of Serb intent this would prove to be. Follow the plan, or use it as cover for the removal of Croat prisoners not to safety — as the plan envisaged — but to the torture and death

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<sup>121</sup>*Mrkšić*, para. 58.

<sup>122</sup>*Ibid.*, para. 181.

camps of Velepromet and Ovčara? Mr. President, Members of the Court, you know the answer to those questions.

48. During the evening of 19 November 1991, Serb forces began removing Croats from Vukovar to Velepromet in buses. By 7 a.m. the next morning, they were going through the hospital telling everyone who could walk to leave. At the exits, JNA soldiers separated the men from the women and children. The women and children went towards the main gate on Lola Ribora Street. The men to the side entrance on Gundulićeva Street, where they were lined up against a wall<sup>123</sup>.

49. During the course of the day, the women and children left in convoys of buses, destined for detention camps, but not for Velepromet and Ovčara. The men left in other convoys of buses. They were destined for Velepromet and Ovčara. Many of them were now on their way to death.

50. Phase 4 was about to unfold.

51. Any suggestion that those responsible for what was about to happen at Velepromet and Ovčara did not know the broad intention beforehand, is met with the clear and sinister evidence that the ECMM monitors and the ICRC representatives, who were supposed to provide a modest degree of protection for the captive Croats, were cynically prevented by the JNA from attending Vukovar hospital in time to stop the death trips to Velepromet and Ovčara. Their delegation was stopped and held at the bridge over the Vuka nearest the hospital. As they waited there, unable to proceed, buses full of Croat prisoners sped to their destiny via the next bridge. Only then, were the ECMM monitors and the ICRC representatives allowed to proceed, arriving at Vukovar hospital just too late to prevent what was about to happen a few kilometres away at the torture and death camps of Velepromet and Ovčara.

52. The very moment at which General Šljivančanin himself obstructed the ICRC from crossing the bridge is shown in the following clip, with ICRC officials powerless to foil the Serbian plan. [Video: 1 min 46 secs]

53. The findings of the Trial Chamber in the *Mrkšić* about this are clear: clear findings by that Chamber that the ECMM monitors and ICRC representatives were deliberately delayed for false reasons by the JNA<sup>124</sup>. Why? The Helsinki Report of 21 January 1992 is to similar effect. It

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<sup>123</sup>*Mrkšić* Trial Chamber Judgement, para. 201.

<sup>124</sup>*Ibid.*, para. 211.

records that “during half the day on November 20, the JNA denied journalists and the ICRC access to Vukovar Hospital”. Helsinki Watch interviewed medical personnel who were at the hospital when it was sealed off to outside observers by the JNA. In the interim, Serbian paramilitaries evacuated male medical personnel and wounded individuals who were identified as Croats by some Serbian members of the hospital staff<sup>125</sup>.

54. It is against that sinister choreography, that the events at Velepromet and Ovčara fall to be examined.

55. [Plate on] Velepromet is located on the outskirts of Vukovar, a few hundred metres from the JNA barracks. Made up of several brick buildings and six tin storage hangars, it was to house hundreds of Croat prisoners over just a few months. You see an aerial shot on your screen. [Plate off]

56. The prisoners who were brought to Velepromet on 19 November 1991 came from various places, including Vukovar. On arrival, they were separated according to their ethnicity and women and children were separated from the men. Others, mainly men, arrived the next day from the hospital.

57. Some of those arriving at Velepromet may well have a fair idea of what was in store. One witness<sup>126</sup> describes how he was on one of the buses waiting to leave Vukovar, when a Serb neighbour came forward to mock those on board that they would “either [be] executed or slaughtered”. And when the buses arrived at Velepromet, the JNA disappeared for a while, to provide an opportunity to the local Serb paramilitaries to attack and abuse the prisoners. Some were stabbed. Some were punched and kicked. Others decapitated. The same witness describes 15 decapitated bodies by a hole in the ground<sup>127</sup>. Mr. President, Members of the Court, when it comes to complicity, and failure to prevent, what an example this is. These buses were being brought to Velepromet by the JNA. How can this have happened, without complicity, providing that opportunity to men on buses.

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<sup>125</sup>RC, Vol. 4, Ann. 92.

<sup>126</sup>MC, Vol. 2 (I), Ann. 121.

<sup>127</sup>*Ibid.*

58. Franjo Kožul, who you heard from yesterday afternoon, has made a statement in these proceedings, which you have seen. He witnessed a man he identified as “Mirko” holding in one hand a human head that he had severed from a Croat prisoner and in the other a knife dripping blood<sup>128</sup>. Mr. Kožul himself was held in the so-called “death room”. He describes being pushed in, along with about 50 others who were packed into the room. Individuals were then taken out for beatings, returning with injuries and gunshot wounds. At one point, a drunken Serb came in to the death room, automatic gun in hand, and said: “At 9 o’clock, no, at half past 9, you will go for execution”. For Mr. Kožul, only the courageous intervening act of one JNA officer saved him and others from that fate.

59. Others were not so lucky. A witness describes how he was taken outside to be executed. Although he escaped because of a returned favour from a Serb who he had previously worked with, he witnessed three others executed in cold blood behind one of the buildings at Velepomet<sup>129</sup>. He says that this happened about 10 metres from a group of women who could hear the shots “and perhaps see it”.

60. This detail of executions seen by women at the camp forced to watch is echoed in the evidence of other witnesses. One says she was taken with her husband and granddaughter to Velepomet. Her testimony is that “the first night at Velepomet I saw executions. I saw 12 tied persons who were taken outside and executed about 9 p.m. . . . My granddaughter . . . saw all this along with many other women”. She goes on to describe a second group of about 25 men brought to the edge of ditches some two hours later, lined up and executed<sup>130</sup>.

61. Although women and girls were, by and large, spared the bullet at Velepomet, they did not escape brutal rapes. One woman from Velepomet describes witnessing the rape of a fellow prisoner during her so-called “interrogation”. The victim was taken to a nearby room, with some blankets. Later her “interrogators” boasted that 15 of them had raped her<sup>131</sup>.

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<sup>128</sup>MC, Vol. 2 (I), Ann. 114.

<sup>129</sup>*Ibid.*, Ann. 123.

<sup>130</sup>*Ibid.*, Ann. 147.

<sup>131</sup>*Ibid.*, Ann. 151.

62. Although the events at Velepomet were not charged as offences in the indictment against *Mrkšić* and others, the Trial Chamber made a number of findings based on its brief review of the events there. The Chamber found that hundreds of non-Serbs were taken from Vukovar hospital to the facility at Velepomet by Serb forces. Others arrived from elsewhere. They were beaten, insulted and otherwise mistreated during so-called “interrogations”. And a number were shot dead. In the Chamber’s view, many, if not all of the persons responsible for the brutal interrogations and killings were members of the Serb TO or paramilitary units<sup>132</sup>. Again, how did that happen? These people were brought there by the JNA. The actions of Serbian TO and paramilitaries at Velepomet show not only a murderous intent towards the Croats as a group, but an intent to humiliate, terrorize and deprive victims of their dignity.

63. I move to Ovčara. The Croat prisoners taken from Vukovar hospital to the other torture and death camp of Ovčara, went via the JNA barracks at Vukovar. They arrived there at 10.30 a.m. on 20 November 1991, just as the ECMM monitors and ICRC representatives were finally arriving at the hospital. You could not script this. They arrive at the hospital, the buses have sped away, and at the precise same time, arriving at the barracks.

64. At the barracks were regular JNA soldiers, TOs and paramilitaries — all together. And as the buses of Croat prisoners waited, the JNA officers obligingly provided an opportunity for their paramilitary colleagues to assault and beat the prisoners. As the Trial Chamber found “there were no attempts by the JNA military police or officers present to stop the beatings”<sup>133</sup>. Some three hours later, the buses left the barracks for Ovčara.

65. Ovčara is located about 5 km south-east of Vukovar. It is a desolate stretch of land, where storage hangars were built after the Second World War. In 1991, it was being used as a pig farm. It was then turned into a torture and death camp.

66. When the buses carrying their human cargo arrived at Ovčara, the JNA soldiers, paramilitaries and others formed a gauntlet of two lines, through which each terrified prisoner was forced to run. As they did so they were assaulted and beaten. One witness gives evidence of at

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<sup>132</sup>*Mrkšić* Trial Chamber Judgement, para. 163.

<sup>133</sup>*Ibid.*, para. 217.

least two prisoners who were beaten to death in that process<sup>134</sup>. Another witness, describes how, as the prisoners exited the bus, they were beaten with rubber and wooden bats, shoes and fists<sup>135</sup>.

67. The finding of the Trial Chamber in the *Mrkšić* case, reflects that of the witness testimony put forward by the Applicant in this case. The Chamber found that the prisoners at Ovčara “had to pass between rows of soldiers . . . who were beating them severely as they passed . . . using wooden sticks, rifle butts, poles, chains and even crutches”<sup>136</sup>.

68. Inside the buildings at Ovčara, the beatings, torture and killing were to continue. One witness<sup>137</sup> saw two men killed in his shack. One had gone to relieve himself when he was killed with a machine gun. The other was simply beaten to death. And it is clear that the JNA were providing access to the prisoners for Serb paramilitaries to inflict such violence. One witness<sup>138</sup> is clear that among those organizing such access for Serb paramilitaries was a JNA colonel, effectively organizing the Serb assailants into groups and assigning them batches of Croat prisoners to torture.

69. Outside it was not just the torture and extreme violence that was organized. It was the killing itself.

70. As the Trial Chamber details in *Mrkšić*, in the afternoon of 20 November 1991, just a few hours after leaving Vukovar hospital, a soldier at Ovčara approached a man working at the nearby local pig farm at Vupik. He instructed the man to drive his excavating machine to the woods about 1 km from the Ovčara buildings. There the pig farmer was made to dig a trench. He recalls that it was 10 metres long, 3 metres wide and 2 metres deep<sup>139</sup>. It was a mass grave in waiting.

71. That the local pig farmer was made to dig this mass grave at about 2 to 3 p.m., just one hour after the buses of Croat prisoners arrived at Ovčara gives the lie to any suggestion that

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<sup>134</sup>MC, Vol. 2 (I), Ann. 145.

<sup>135</sup>*Ibid.*, Ann. 137.

<sup>136</sup>*Mrkšić*, Trial Chamber Judgement, para. 234.

<sup>137</sup>MC, Vol. 2 (I), Ann. 137.

<sup>138</sup>MC, Vol. 2 (I), Ann. 145.

<sup>139</sup>*Mrkšić*, Trial Chamber Judgement, para. 240.

there was no plan by the Serb forces to massacre their Croat prey. Ovčara was to be their killing fields. And, it was being carefully prepared.

72. As the darkness of the night descended, the prisoners trapped in the Ovčara buildings were organized into batches of between 10 and 20, loaded onto a truck and taken to the freshly dug trench. There they were brutally executed. After each killing, the truck returned so that the next batch of Croat victims could be loaded for execution.

73. When the trench was full, the JNA and paramilitaries dug deeper and wider, expanding the grave. The precise number of men taken from Vukovar Hospital that morning who were dispatched in this way is not known. But 260 of the 300 are dead or missing<sup>140</sup> and the Trial Chamber found that at least 194 were executed at Ovčara<sup>141</sup>. The youngest 16, the oldest, 76. This was not simply a form of military revenge. It was the carefully orchestrated killing of Croat men and boys en masse, because they were Croat.

74. [Plate on] Five years later, the mass grave was discovered. As the Trial Chamber in *Mrkšić* made clear, the location of the trench dug by the hapless pig farmer from Vupik under the instruction of the soldier from Ovčara, and I quote, “coincides exactly with the location of the mass grave”<sup>142</sup>. And you see the image on your screen<sup>143</sup>. [Plate off]

75. The Respondent does not take issue with these factual findings in relation to Ovčara , preferring to steer well clear of those facts altogether.

76. Velepromet and Ovčara are the worst examples of Phase 4 of the events at Vukovar. But they were not the only torture and death camps to which surviving Croats of Vukovar were taken. Others were taken to Dalj, some distance to the north of Vukovar where the Danube river meets the Drava river. Other witnesses describe the summary executions there. One witness gives testimony about batches of executions<sup>144</sup>. Another speaks of executions at the side of the bus<sup>145</sup>.

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<sup>140</sup>MC, paras. 175-178.

<sup>141</sup>*Mrkšić* Trial Chamber Judgement, paras. 509-511.

<sup>142</sup>*Ibid.*, para. 241.

<sup>143</sup><https://www.branitelji.hr/arhiva/p3277/slika/3168/ovcara.jpg>.

<sup>144</sup>MC, Vol. 2 (I), Ann. 115.

<sup>145</sup>*Ibid.*, Ann. 134.

77. And the journey of one particular witness is described in some detail<sup>146</sup>. He was rounded up in Vukovar on 21 November 1991 and taken to Dalj. En route 35 people were “thrown out” and never seen again. At the camp, he was amongst a group of six taken out after midnight on 22 November for execution. He saw mass graves and witnessed the executions of those around him. He survived the same fate only because, unknown to his executioner, the knife he was using to slit the victim’s throat stuck on the metal cross hanging around his neck. He fell wounded but alive into the pit of bodies, despite being shot twice, he survived and made his witness statement.

78. Other Vukovar Croats were taken to Stajićevo and Niš in Serbia, where the evidence of torture and death is well documented<sup>147</sup>. The men taken from Borovo Naselje to Stajićevo were but just one example. They were tortured from the moment they stepped off the buses. Brutal “interrogations” followed on a daily basis, and at night there were executions, as the witnesses, many witnesses, testify<sup>148</sup>.

79. These terrible events in Phase 4 of the Vukovar episode, after the city was on its knees, after there was the opportunity to act in some other way, have to be seen in context and in light of what had already taken place in Phases 1, 2 and 3. The Applicant’s case is that the atrocities committed at *each* of the four stages of events, *taken together*, disclose a genocidal intent, a genocidal plan, by Serb forces.

80. The factual platform on which the Applicant builds the case is firm. Although every attempt is made in the Counter-Memorial to minimize the factual findings of the Trial Chamber in *Mrkšić*, the Respondent simply cannot displace them. And they powerfully support the Applicant’s case.

81. It is accepted that the ICTY was not concerned with offences of genocide; indeed, the issue of genocide in Croatia was never put before it. But as the Trial Chamber itself was at pains to point out — this is now on your screen in front of you: [Plate on]

“The indictment is confined to the events mentioned above. [That is, Ovčara] It does not include the attack against the city of Vukovar and its civilian population by the JNA and other Serb forces in 1991. The devastation brought on Vukovar after the

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<sup>146</sup>*Ibid.*, Ann. 155.

<sup>147</sup>MC, Vol. 2 (I), Anns. 136, 132 and 155.

<sup>148</sup>*Ibid.*, Anns. 137, 138 and 139.

prolonged military engagement in 1991, the very many civilian casualties and the extensive damage to property resulting from the military operations are not the subject of the indictment.”<sup>149</sup> [Plate off]

That was not before the ICTY, it is before you.

82. The Trial Chamber was equally clear about the events at Velepomet. It only described them “briefly” because “events at Velepomet are not charged as offences in the indictment”<sup>150</sup>. They are before you, Mr. President, and before this Court. The ICTY was concerned with the “individual responsibility” of three men for specific acts alleged against each of them, namely their *personal* responsibility for the removal of a number of individuals from Vukovar Hospital, knowing that they would be murdered at Ovčara.

83. That genocide was not charged in relation to these three individuals for their specific acts is no answer to the Applicant’s case that, cumulatively, the atrocities committed in *all* four phases of events concerning Vukovar, *taken together*, from start to finish, and involving *all perpetrators*, amounted to genocide.

84. The precise number of Vukovar Croats killed as a result of these events in 1991 will never be known with precision. Around 1,100 probably died in the Phase 1 shelling. In addition, exhumed from the Ovčara mass grave were nearly 200 victims. And the mass grave of Velepomet yielded another 19, which had been dug up and reburied. These 19 were amongst the 938 victims reburied in mass graves at the Vukovar New Cemetery<sup>151</sup>.

85. Vukovar has never recovered — as I have said at the outset, it is renowned throughout the world. Even after the peaceful reintegration of the region, only 7,500 of the original 21,500 Croat population of Vukovar in 1991 have ever returned to the city<sup>152</sup>. For others who survived, their displacement was permanent.

86. As has already been explained, what happened at Vukovar was repeated again and again across Eastern Slavonia and across Croatia as a whole in the course of this conflict.

87. The pattern may have varied from village to village, town to town and across different regions. But, properly analysed, the “pattern” discloses that there was an intention to “destroy” a

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<sup>149</sup>Mrkšić Trial Chamber Judgement, para. 8.

<sup>150</sup>Mrkšić Trial Chamber Judgement, para. 163.

<sup>151</sup>MC, Vol. 2 (I), Ann. 164.

<sup>152</sup>MC, para. 4.140.

part of the group of the Croat group in question. The artillery or mortar shelling was wholly disproportionate and, in places such as Vukovar, essentially destroyed the entire city. And the murderous attacks were never intended as part of the mere expulsion of a part of the Croat group in question.

88. Mr. President, Members of the Court, in the case of *Bosnia v. Serbia*, this Court distinguished between the destruction of a group on the one hand and its “mere dissolution”<sup>153</sup> on the other. To describe the four phases of events at Vukovar in 1991 — the colossal use of force by *overwhelmingly greater Serbian forces* to deprive the trapped inhabitants of their basic conditions of life, the killing, raping and dismembering by the advancing forces of those who remained, the staged removal to torture and death camps and the organized mass killing at Velepomet and Ovčara — to describe that as “mere dissolution” of the Vukovar Croats is so to distort language as to render it meaningless.

89. What the evidence before this Court reveals is systematic physical and psychological destruction deliberately perpetrated by the Serbian forces, JNA and paramilitaries against the Croats of Vukovar. What the evidence before this Court reveals is genocide.

90. Mr. President, Members of the Court, I have dealt with the events at Vukovar, and I am grateful to the Court for listening to my submissions. My colleague, Ms Seršić, will now describe to you the events that occurred on 18 November 1991, the same day of the fall of Vukovar, 600 km away in the much less known little village of Škabrnja. Thank you.

The PRESIDENT: Thank you, very much, Sir. I now give the floor to Professor Seršić to continue. You have the floor, Madam.

Ms SERŠIĆ:

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<sup>153</sup>*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I), pp. 122-123, para. 190.*

## SERBIA'S GENOCIDAL ACTIVITIES IN ŠKABRNJA AND SABORSKO

### I. Introduction

1. Mr. President, Members of the Court, at the start of 1991 Škabrnja and Saborsko were two small, ordinary, peaceful villages in the heart of the Croatian countryside. Within a year both were razed to the ground, deliberately erased from the map in an armed campaign of incredible ferocity. Today Saborsko and Škabrnja are known across Croatia, their names amongst a roll call of Croatian villages synonymous with genocide, the destruction of a part of an ethnic population.

2. In its Memorial and Rejoinder the Respondent makes extensive general criticisms of the evidence produced by the Applicant in support of its case. You heard Croatia's response to those misconceived and legally erroneous complaints. But as this speech shows, the resolution of this case in Croatia's favour does not require the Court to determine contested issues concerning the weight of evidence that is not based on ICTY findings. The villages of Saborsko and Škabrnja were each the subject of detailed factual findings by the ICTY in the cases of *Martić* and *Stanišić and Simatović*. As such, they provide the Court with an opportunity to examine the essence of the Applicant's case, shorn of the distraction of the evidential disputes that divide the Parties.

3. Seen through the clarifying prism of the ICTY's findings, Saborsko and Škabrnja are case studies in genocide, microcosms of Serbia's activities across Croatia. They fall within the conception of genocide envisaged by Rafael Lemkin, in his book in 1944, and by the drafters of the 1948 Convention.

4. I have to repeat again what was said. Genocide is not a numbers game. In this speech I shall explain how, in two ordinary villages in two different regions of Croatia, Serbian forces engaged in a strikingly similar pattern of killings and destruction against the indigenous Croat population, with the intention of destroying a part of that population. With the JNA at the helm, soldiers, reservists and paramilitaries beat, killed, looted and burned their way towards the destruction of the Croat ethnic group. The end result was stark, as the ICTY findings make plain. Scores of defenceless Croats dead — deliberately singled out and executed on the basis of their ethnicity. Churches, schools and homes bombed. Two Croat villages completely destroyed.

## II. Škabrnja

5. The village of Škabrnja is in Zadar area, in north Dalmatia— as you can see on your screen. [Plate on] Located deep in the Croatian countryside, the locality has been continuously populated for over nine centuries. In 1991 the village had approximately 2,000 inhabitants, almost all of them ethnic Croats<sup>154</sup>. The village included a number of important Croat religious and cultural sites, including two ancient Catholic churches dating from the eleventh and thirteenth centuries.

6. As the JNA advanced across Dalmatia, in September and October 1991, Škabrnja and the neighbouring Croat village of Nadin were subjected to mortar fire and aerial bombardments, including cluster bombs. There was no military justification for the attacks. On 2 October 1991 JNA aircraft shelled Škabrnja and dropped shell casings with messages such as “greetings from the JNA for Tudjman’s rats”<sup>155</sup>. Following the deaths of three civilians in early October, all but 240 of the village’s inhabitants were evacuated<sup>156</sup>.

7. On 5 November 1991, a ceasefire agreement was signed, at which point most civilians returned to Škabrnja<sup>157</sup>. However, a fortnight later, in breach of the ceasefire, Serb forces launched a full-scale aerial and ground assault on Škabrnja on 18 November 1991<sup>158</sup>. This was the same day, as we heard, as the fall of Vukovar, over 600 km away in Eastern Slavonia. It was to prove one of the bloodiest few days of the entire campaign. According to the ICTY, the attack involved the JNA, the TO, the SAO Krajina Police, and various local Serb paramilitary units<sup>159</sup>. The JNA “were composed of regular soldiers and reservists from neighbouring Serb villages”<sup>160</sup>. As in all combat operations in Croatia, TO units were “subordinated to the JNA” and included “volunteers” from Serbia<sup>161</sup>.

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<sup>154</sup>*Prosecutor v. Milan Martić*, (IT-95-11-T), Trial Chamber Judgement, 12 June 2007, para. 235.

<sup>155</sup>*Prosecutor v. Jovica Stanišić and Franko Simatović*, (IT-03-69-T), Trial Chamber Judgement, 30 May 2013, para. 271; testimony of Marko Miljanić, 1 Dec. 2009, T. 2362-2363.

<sup>156</sup>*Martić*, Trial Chamber Judgement, para. 236; *Stanišić and Simatović*, Trial Chamber Judgement, paras. 268 and 272.

<sup>157</sup>*Stanišić and Simatović*, Trial Chamber Judgement, paras. 268 and 272.

<sup>158</sup>*Ibid.*, paras. 239 *et seq.*

<sup>159</sup>*Ibid.*, para. 308.

<sup>160</sup>*Martić*, Trial Chamber Judgement, para. 244.

<sup>161</sup>*Stanišić and Simatović*, Trial Chamber Judgement, para. 308.

8. In *Stanišić and Simatović*, the Trial Chamber described how the attack on Škabrnja took the same, general pattern as that described by Ms Ní Ghrálaigh earlier today. It began with “intensive shelling”<sup>162</sup> involving cluster bombs and incendiary bombs. This was followed by an invasion of infantry troops and heavily armed paramilitaries. As they entered the village, JNA tanks fired at houses, the school and a church, while Serb forces fired rocket launchers at houses and used civilians as human shields<sup>163</sup>. Several soldiers entered the church of the Assumption of the Virgin and opened fire<sup>164</sup>. The church was completely destroyed, and Croat religious icons deliberately ruined. [Next graphic] This image, which shows an axe embedded into a statue of the Virgin Mary, is typical of the deliberate and wanton destruction<sup>165</sup>.

9. The ICTY’s findings are entirely consistent with the evidence submitted by the Applicant in these proceedings. [Plate off] To give just two examples, a witness statement filed by the Applicant from a former JNA officer describes how the order to attack Škabrnja came from the local JNA Headquarters in Benkovac. His statement goes on to describe how JNA tanks fired at houses and paramilitaries sought to shoot civilians as they emerged from basement shelters<sup>166</sup>. No military justification, only the targeting of Croats for destruction. The JNA officer’s words confirm the close collaboration between the JNA and paramilitaries found by the ICTY — I quote from your screen: [plate on]

“My battalion participated in the attack on the village of Škabrnja . . . We gathered at a crossing and from there went into the attack . . . [A]rmored vehicles and three infantry platoons were stationed at this crossing. One platoon was ‘The White Eagles’ and the other two were [two] Kninda Platoons. Goran Opačić and a certain Dražić were in command of the Kninda Platoons. Those ‘specialists’ were around 50-100 metres in front of us and we were following them.”<sup>167</sup> [Plate off]

10. After occupying the village, Serb forces slaughtered Croat civilians. On 18 November eight civilians were shot dead outside a house by local paramilitaries<sup>168</sup>. On 19 November soldiers wearing JNA uniforms murdered seven civilians outside another house in the village. In addition,

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<sup>162</sup>*Ibid.*, para. 278.

<sup>163</sup>*Stanišić and Simatović*, Trial Chamber Judgement, para. 312.

<sup>164</sup>*Ibid.*, para. 279.

<sup>165</sup>MC, Vol. 3, Colour plates, plate 14.3.

<sup>166</sup>MC, Vol. 2 (III), Ann. 503.

<sup>167</sup>*Ibid.*

<sup>168</sup>*Martić*, Trial Chamber Judgement, para. 387.

the ICTY found that a further 25 civilians and five Croat defenders not actively participating in hostilities were murdered in Škabrnja and the neighbouring area on those two days. The ICTY found the killings were perpetrated by members of the units, including JNA and TO units, which took part in the attack on the village<sup>169</sup>.

11. The Trial Chamber described how: [Plate on]

“soldiers present in Škabrnja threatened villagers hiding in basements, saying ‘Come out you Ustase, we are going to slaughter you all’ and that even women and children were being called Ustashas and were insulted by soldiers”<sup>170</sup>. [Plate off]

12. Mr. President, Members of the Court, you will have noted the conjunction between the identification of individuals as members of a group, and the intention to destroy those individuals. The ICTY noted that evidence showed “elderly people . . . were unarmed and killed as they were hiding in basements or lying in bed”<sup>171</sup>. A Croat woman in her 90s, incapacitated by a stroke, was shot dead in her bed in a hamlet just outside the village<sup>172</sup>.

13. The Applicant’s witness statements confirm the ICTY’s findings about the targeted killing of Croat civilians. For example, a 28 year-old female resident of Škabrnja described how paramilitaries screaming anti-Croat profanities forced terrified civilians out of basements before executing all of the men in the street: [Plate on]

“armed and uniformed Chetniks with blackened faces . . . came in front of the basement and started shouting at us to come outside and that they would [Expletive] our Ustasha mothers. After that we started to get out of the basement slowly, one by one, with our hands in the air. Those Chetniks were standing beside and when a man would come out, even the oldest old man, they would shoot him.”<sup>173</sup> [Plate off]

14. Between 19 November 1991 and 11 March 1992, eighteen more Croat civilians were killed in Škabrnja by the JNA, TO and local paramilitaries<sup>174</sup>. In *Martić* the ICTY held that the killings of at least 69 Croats in Škabrnja and the neighbouring hamlet of Nadin amounted to murder and anti-Croat persecutions<sup>175</sup>. Significantly, the ICTY found that a large proportion of the killings

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<sup>169</sup>*Ibid.*, paras. 389-390.

<sup>170</sup>*Martić*, Trial Chamber Judgement, para. 398; *Stanišić and Simatović*, Trial Chamber Judgement, para. 109.

<sup>171</sup>*Stanišić and Simatović*, Trial Chamber Judgement, para. 128.

<sup>172</sup>*Ibid.*, para. 132.

<sup>173</sup>MC, Vol. 2 (III), Ann. 504.

<sup>174</sup>*Martić*, Trial Chamber Judgement, para. 392.

<sup>175</sup>*Prosecutor v. Martić*, (IT-95-11-A), Appeals Chamber Judgement, 8 Oct. 2008, para. 202.

were committed directly by members of the JNA and TO forces that “were resubordinated to the JNA”<sup>176</sup>. In light of these findings, the Respondent is compelled to admit that: “the majority of the Applicant’s claims on the crimes in the Zadar municipality has been confirmed by the ICTY judgment”<sup>177</sup>.

15. The JNA’s destruction of the village was calculated and premeditated. In a personal diary entry written on 17 November 1991, just one day before the deadly attack, the Chief of Staff of the Knin Corps, Ratko Mladić, who is currently on trial for genocide before the ICTY, wrote that the JNA’s task was to “mop up the sectors of Nadin, Škabrnja”. Next to his instructions about the village, he wrote, simply, “erase that”<sup>178</sup>.

16. There can be no doubt that the JNA were fully aware of the genocidal intentions of the perpetrators. Four days after the attack, on 22 November 1991 the JNA interviewed soldiers about the killings in the village. The reports described how members of the TO and paramilitaries lined up and executed numerous civilians, including elderly men and women. One man was shot dead in front of his daughter by a TO soldier who cried “Watch, [Expletive], I’m going to kill your father!”<sup>179</sup> One soldier described how: [Plate on]

“a group of civilians was taken out of a house. The members of the Territorial Defense separated four males behind the house and shot them. I saw them hitting an elderly man on his head with a gunstock. He walked for about 20 meters and then one member of the Territorial Defense wounded his legs with an automatic rifle, so he fell down. Then he killed him with a shot to the head.”<sup>180</sup>

17. Such was the intensity of the attack, that by 1995 the whole of Škabrnja was completely destroyed<sup>181</sup>. The destructive purpose of the Serb forces is reflected in graffiti daubed on Croat buildings in the village. [Next graphic] In one, shown to you now, the Serbian two-headed eagle is shown with the chilling captions: “GOD FORGIVES, WE DO NOT” and “WELCOME TO THE DEAD VILLAGE”<sup>182</sup>. [Next graphic]

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<sup>176</sup>Martić, Trial Chamber Judgement, para. 239.

<sup>177</sup>Counter-Memorial of Serbia (CMS), Vol. 1, para. 911.

<sup>178</sup>Martić, Trial Chamber Judgement, para. 276.

<sup>179</sup>MC, Vol. 2 (III), Ann. 573: Strictly Confidential Military Classified Document No. 416-1, 23 Sep. 1991; Ann. 574: Strictly Confidential Military Classified Document No. 417-1, 23 Nov. 1991.

<sup>180</sup>*Ibid.*

<sup>181</sup>Martić, Trial Chamber Judgement, para. 264.

<sup>182</sup>MC, Vol. 3, Colour Plates, Plate 17.3.

### III. Saborsko

18. Mr. President, Members of the Court, I now leave Škabrnja and travel 156 km north, to the Lika hinterland, to the village of Saborsko in the Plitvice Lakes National Park. A picturesque and peaceful community; at the start of 1991 there were 852 people, over 90 per cent of them Croats, living in the village<sup>183</sup>.

19. As preparations began for the armed campaign, from April 1991 the JNA conducted daily patrols in Saborsko. Between June and August 1991 the village was attacked by rifle and artillery fire, directed mainly at a church and a school. Ten people were killed and a large number wounded during these attacks<sup>184</sup>. On 5 August 1991 most of the civilians fled the village to Grabovac, where the Red Cross had arrived with three buses. However, around 400 people returned to Saborsko during the following days<sup>185</sup>.

20. From early August the village was shelled on a daily basis for over three months<sup>186</sup>. [Plate off] On the morning of 12 November 1991 the JNA launched an assault on Saborsko<sup>187</sup>. According to the ICTY, two units of the JNA 13th Corps<sup>188</sup> led the attack, supported by the Plaški State Security Service, the Plaški TO Brigade and Milicija Krajine units<sup>189</sup>. The attack began with an aerial bombardment by several JNA airplanes. This was followed by artillery fire and a ground assault with JNA troops and tanks<sup>190</sup>. As with Škabrnja, witnesses at the ICTY testified that local Serb forces operated “under the command of the JNA”<sup>191</sup>, and that technical equipment for the attack was supplied from nearby JNA training grounds<sup>192</sup>.

21. The ICTY held that uniformed Serbian soldiers belonging to one or more of the JNA or Plaški units killed 13 Croat civilians in Saborsko<sup>193</sup>. Eight of the dead had been together, sheltering

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<sup>183</sup>MC, Vol. 1, paras. 5.149-5.152; *Stanišić and Simatović*, Trial Chamber Judgement, para. 230.

<sup>184</sup>*Stanišić and Simatović*, Trial Chamber Judgement, para. 239.

<sup>185</sup>*Ibid.*, para. 232.

<sup>186</sup>*Ibid.*, para. 240.

<sup>187</sup>*Martić*, Trial Chamber Judgement, para. 225.

<sup>188</sup>Tactical Group 2 and the 5th Partisan Brigade.

<sup>189</sup>*Stanišić and Simatović*, Trial Chamber Judgement, para. 243; *Martić*, Trial Chamber Judgement, para. 225.

<sup>190</sup>*Martić*, Trial Chamber Judgement, para. 226; *Stanišić and Simatović*, Trial Chamber Judgement, para. 259.

<sup>191</sup>*Stanišić and Simatović*, Trial Chamber Judgement, para. 245.

<sup>192</sup>*Ibid.*, para. 244.

<sup>193</sup>*Martić*, Trial Chamber Judgement, para. 379.

in the basement of a house. Serb soldiers ordered them to leave. The men were then taken aside and shot with automatic rifles. The women were told they had an hour to leave or they, too, would be killed. As they ran away the soldiers shot at them, killing one woman<sup>194</sup>.

22. In total, Serb forces killed at least 20 Croats in Saborsko on 12 November 1991<sup>195</sup>. They were killed because they were Croats. A contemporaneous report on the killings by a local priest makes clear the Serb forces' intention to destroy the Croat population, regardless of age or infirmity: an 85-year-old woman burned alive; an 83-year-old man hanged with his throat cut; a 96-year-old man killed in the yard of his house; a 93-year-old man buried alive in the ruins of his home. Savage and gratuitous crimes with no conceivable military purpose.

23. In *Martić* the ICTY held that the killings of the 13 civilians constituted murder and persecution carried out with intent to discriminate on the basis of Croat ethnicity<sup>196</sup>. As well as the ethnically targeted killings, Serb soldiers and policemen set fire to Croat houses and engaged in widespread looting in the village. The ICTY found this had "grave consequences for the victims, taking into account the overall effect on the civilian population and the multitude of offences committed"<sup>197</sup>. Like Škabrnja, by 1995 the entire village had been destroyed<sup>198</sup>.

24. According to the ICTY, a day after the attack a commander of the SAO Krajina Police, wrote a letter declaring that there no longer was a Saborsko, and there likely never would be again<sup>199</sup>. In *Martić* the Tribunal noted that, "some of the soldiers present in Saborsko abused the inhabitants with profanities such as "[Expletive] your Ustasha mother" and that all Croats should be slaughtered<sup>200</sup>. One witness testified that paramilitaries "boasted that they had shot dead eight people . . . during the attack on Saborsko because they hated 'all Ustashes'"<sup>201</sup>. According to a Serb fighter who travelled through Saborsko with Milan Martić shortly after the attack, Martić described the town as "scorched earth" before commenting that, "we [expletive] their mothers, this is now pure Serbian land"<sup>202</sup>.

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<sup>194</sup>*Martić*, Trial Chamber Judgement, paras. 230-231.

<sup>195</sup>*Ibid.*, para. 379.

<sup>196</sup>*Ibid.*, para. 383.

<sup>197</sup>*Ibid.*, paras. 381-382.

<sup>198</sup>*Ibid.*, para. 227.

<sup>199</sup>*Stanišić and Simatović*, Trial Chamber judgment, para. 256.

<sup>200</sup>*Martić*, Trial Chamber Judgement, para. 383.

<sup>201</sup>*Stanišić and Simatović*, Trial Chamber Judgement, para. 95.

<sup>202</sup>Witness JF-039, quoted at *Stanišić and Simatović*, Trial Chamber Judgement, para. 246.

25. Again, the ICTY's findings confirm the facts pleaded in the Memorial and Reply. The Memorial describes how male civilians were lined up and executed against a wall, while Croatian women were told they were free to leave and then shot in the back as they walked away<sup>203</sup>. Another eyewitness describes how the head of the local authorities in Plaski shouted that Croat civilians in Saborsko were "Ustashas" and should all be killed<sup>204</sup>. The order to attack the village was issued by a JNA Colonel, and makes express reference to co-ordination between the JNA and local TO forces. A copy of the order was filed with the Memorial. It expressly refers to "the attack on . . . Saborsko, with the support of the aviation and the co-activity of the Plaški and Lička Jasenica Territorial Defence forces"<sup>205</sup>.

26. A Serb TO fighter, described the attack on Saborsko in a witness statement filed with the Applicant's pleadings. His testimony is entirely consistent with the ICTY's findings, highlighting again the reliability of the Applicant's evidence. His account proves the assault on Saborsko was specifically intended to destroy the Croat population. I quote from the screen before you:

[Plate on]

"it was decided in the command that Saborsko should be called 'Ravnagora' [meaning: flattened hill] because it was planned that this village should be cleaned so that name would suit it. They even brought the panels with the name of the village written in Cyrillic script . . . [The commander of Plaški] and the other commanders of the units, while they were issuing the orders to kill the civilians in Saborsko, used to say that they are all Ustashas and that they all should be killed and completely destroyed. That is the reason why all the houses were pulled down and all the people who could have testified about those brutalities were killed . . .

*After Saborsko was conquered, [the commander of Plaški] spent some time there, he issued orders to liquidate the people as well as the orders to steal the properties. On that occasion he also issued orders to pull down the houses and to completely destroy almost the entire village. The only houses that were spared were the family houses of the [S] family, the Serbs."*<sup>206</sup> [Plate off]

27. The Respondent acknowledges that Croatia's witnesses "provide unanimous accounts about the attack on the village and the destruction of property"<sup>207</sup>. In the face of the ICTY's

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<sup>203</sup>MC, para. 5.151.

<sup>204</sup>MC, Vol. 2 (II), Ann. 364.

<sup>205</sup>MC, Vol. 2 (III), Ann. 414.

<sup>206</sup>MC, Vol. 2 (III), Ann. 365.

<sup>207</sup>CMS, Vol. 1, para. 838.

unambiguous findings, the Respondent is also compelled to concede that, “most of the acts alleged to have taken place in Saborsko have been confirmed by the judgment of the ICTY”<sup>208</sup>.

#### IV. Croat resistance in the villages

28. Before conclusion, I would like to make a few remarks on the Croat resistance in the villages. In its pleadings, Serbia places great reliance on the presence of Croat defenders in Škabrnja, arguing that “fierce fighting” led to the infliction of “heavy losses” against Serbian forces<sup>209</sup>. You will hear soon . . .

The PRESIDENT: Please, I think we have that statement in our file so you can continue with evidence, yes?

Ms **SERŠIĆ**: Thank you very much, it was not my intention to mention the name.

The PRESIDENT: Even to describe the witness. Just continue, skip that sentence.

Ms **SERŠIĆ**: May I continue with his evidence?

The PRESIDENT: Yes, his evidence, yes.

Ms **SERŠIĆ**: His evidence, along with the ICTY findings, makes it clear the defence of the village was poorly organized, vastly outgunned and easily overwhelmed by the invading Serb forces. To suggest, as Serbia seeks to do, that the existence of armed resistance fundamentally changed the character of events in Škabrnja is wholly at odds with the ICTY’s findings that numerous Croat civilians were murdered in cold blood while taking no part in hostilities. It is also inconsistent with the ICTY’s findings in relation to both villages that, I quote from the screen:

[Plate on]

“the presence of Croatian armed forces and formations in the Škabrnja and Saborsko areas does not affect the civilian character of the attacked population”<sup>210</sup>. [Plate off]

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<sup>208</sup>CMS, Vol. 1, para. 841.

<sup>209</sup>CMS Vol. 1, para. 909.

<sup>210</sup>*Martić*, Trial Chamber Judgement, para. 350.

## V. Conclusion

29. Mr. President, Members of the Court, three important conclusions may be drawn from these two short case studies.

30. *First*, as the Respondent is forced to admit, the key facts pleaded in the Applicant's Memorial in 1999 were subsequently confirmed by the ICTY in 2007 and 2013. This demonstrates the inherent reliability of the Applicant's pleadings and evidence, while disproving the Respondent's evidential criticisms.

31. *Second*, the ICTY's findings establish beyond any reasonable doubt that both the JNA, controlled by Serbia, and forces under the command of the Serbian-controlled JNA, killed numerous Croat civilians in unprovoked and ethnically targeted attacks, intended to destroy the Croat populations. In *Martić*, the Appeals Chamber confirmed that, "Martić was responsible for the killings committed in Škabrnja and Nadin, Saborsko . . . by a combination of JNA soldiers or TO soldiers and paramilitary units, Serb soldiers and policemen, and local armed men"<sup>211</sup>. The Appeals Chamber referred to "the cooperation between the TO, the JNA, the Milicija Krajine and the armed forces of the SAO Krajina". And it confirmed that paramilitary groups, Serb soldiers and policemen "acted together and in concert with the JNA and TO soldiers"<sup>212</sup>.

32. In view of those findings, the Respondent is compelled to acknowledge, "that killings took place, that they were methodical, directed at civilians, and driven by ethnicity"<sup>213</sup>. In light of the ICTY's unambiguous findings it is also clear — although the Respondent's concession does not extend this far — that Serbia bears legal responsibility for all of those acts. That is a question that my colleagues Professor Crawford and Sir Keir Starmer will address.

33. *Finally*, the evidence of victims and Serb eyewitnesses demonstrates the attacks on Škabrnja and Saborsko were not intended merely to displace the Croat population, but to destroy them. The deliberate and systematic execution of Croat civilians pursuant to instructions that "they are all Ustashas and that they all should be killed and completely destroyed" is irrefutable proof of genocide, as Sir Keir Starmer will explain tomorrow.

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<sup>211</sup>*Martić*, Appeals Chamber Judgement, para. 205.

<sup>212</sup>*Martić*, Appeals Chamber Judgement, para. 205.

<sup>213</sup>RS, Vol. 1, para. 392.

34. Mr. President, Members of the Court, for 25 minutes the attention of the Court has been focused on two small villages deep in the Croatian countryside, and on events that took place almost a quarter of a century ago. Why does the pre-eminent Court of the United Nations find itself in this unusual position, examining specific incidents in individual houses, streets and churches in two small rural communities? The answer, Mr. President, Members of the Court, is that Škabrnja and Saborsko are not simply two small rural communities. Nor are they historic aberrations. On the contrary, they are typical examples of a pattern of genocidal conduct that was repeated in village after village, and which has wrought a legacy of destruction and loss that endures to this day.

35. Mr. President, Members of the Court, I thank you for your kind attention. Tomorrow morning you will hear from Professor Lapaš who will address the *actus reus* of genocide, with a specific focus upon the Respondent's systematic killing of thousands of ethnic Croats across the occupied regions of Croatia. Thank you.

The PRESIDENT: Thank you very much, Professor Seršić. Before adjourning: two Members of the Court have questions to put to Croatia. One of them, in my view, further seeking a clarification of facts. So I shall now give, to that end, the floor first to Judge Cançado Trindade. Judge Cançado Trindade, if you please.

Judge CANÇADO TRINDADE: Thank you, Mr. President.

“My question concerns the international criminal responsibility of individuals, as well as the international responsibility of States, for genocide. References have so far been made only to the case-law of international criminal tribunals (the ICTY and the ICTR), pertaining to individual international criminal responsibility. Do you consider that the case-law of international human rights tribunals is also of relevance here, for the international responsibility of States for genocide, as to standard of proof and attribution?”

Thank you.

The PRESIDENT: Thank you very much. Now, Judge Greenwood please.

Judge GREENWOOD: Thank you, Mr. President.

“I would like to seek some clarification of one or two of the figures that were mentioned by counsel in their speeches this morning. I understand Croatia's point

about this not being a numbers game but as several numbers have been mentioned, I want to make sure that we have them right. In the video clip that was shown about Vukovar, a figure of 15,000 dead was mentioned but I understand from Sir Keir's speech and also from Ms Ní Ghrálaigh's speech that the figures that Croatia asserts are actually significantly smaller than that. It would be very helpful to have as reliable an estimate as possible, please, of how many people were killed, according to Croatia, during the siege itself in Vukovar and in what was described as phase 4 which followed. Also to have some indication perhaps of how many people were detained and later released in the aftermath.

The second question relates to what Ms Ní Ghrálaigh said. She gave a figure of approximately 600,000 people for the population of Eastern Slavonia and then percentages broken down by ethnicity. I would like to know whether the figure relates to the whole of Eastern Slavonia as shown on the pre-war map or only that part of it which was subsequently occupied and set up as the SAO."

Thank you.

The PRESIDENT: Thank you very much, Judge Greenwood. The text of these questions will be sent to the Parties as soon as possible. Croatia is invited to respond orally during the first round of oral argument, preferably. If further enquiry is needed, at the latest during the second round. Serbia will have an opportunity to comment on answers by Croatia orally in the course of these hearings.

The Court will meet again this afternoon, from 3 p.m., to hear Croatia's witness and witness-expert. Thank you. The Court is adjourned.

*The Court rose at 1 p.m.*

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