

CR 2014/16

**International Court
of Justice**

THE HAGUE

**Cour internationale
de Justice**

LA HAYE

YEAR 2014

Public sitting

held on Wednesday 12 March 2014, at 3 p.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)*

VERBATIM RECORD

ANNÉE 2014

Audience publique

tenue le mercredi 12 mars 2014, à 15 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)*

COMPTE RENDU

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

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: Please be seated. The sitting is open, I invite Mr. Ignjatović to continue with his argument. You have the floor, Sir.

Mr. IGNJATOVIĆ: Thank you, Mr. President.

Alleged control of the JNA over the paramilitary units

57. This morning I have already demonstrated that JNA, even if its acts could be attributed to the Respondent, did not have effective control over the armed forces of Krajina, within the meaning of your jurisprudence on Article 8 of the ILC Articles. Nor did those forces were either *de jure* or *de facto* organs of the Respondent. I will now turn to the relationship between the JNA and the various paramilitary groups that were participating in the armed conflict in Croatia. The Applicant claims that the JNA had control over various volunteer and paramilitary units that participated in the conflict. In order, however, to prove that any action of the paramilitaries could be attributed to the SFRY/JNA either on the basis of Article 4 or on the basis of Article 8 of the ILC Articles on State Responsibility, the Applicant would have to prove either that the paramilitary units were *de jure* units of the JNA or that they acted on the instructions of the JNA or under its effective control in the course of particular operations when the alleged crimes had been committed. The Applicant has failed to prove either of the two.

58. Both in the Memorial and in the Reply, the Applicant claims that members of volunteer paramilitary groups were integrated into the JNA by an order of the Federal Secretariat for National Defense of the SFRY, that is Ministry of Defence, dated 13 September 1991.

59. In its written submissions the Respondent already explained that, according to the order of 13 September 1991, volunteers were individually integrated into the JNA, and that the order referred to the volunteers individually, and not on the volunteer units.

60. The volunteers had to file an individual application and the relevant form was appended to the order. The volunteers that applied would be accepted to the JNA upon a decision of an appropriate military officer and would be assigned to a JNA unit. Such volunteers would be equal to other JNA members.

61. This means that for each volunteer that was integrated into the JNA there ought to be an individual decision to that effect¹.

62. The Applicant has failed to identify, either in the Memorial or in the Reply, specific instances in which volunteers were incorporated into the JNA.

63. Quite to the contrary, the documents submitted by the Applicant with both the Memorial and the Reply show that the above order was never implemented with respect to the volunteer or paramilitary units, since the JNA and General Kadijević were issuing instructions that volunteer and paramilitary units either accept the JNA command or be disarmed and removed from the battlefield both in mid-October² and mid-December 1991³. The need that the Defense Secretary himself issue such order, and to repeat it, clearly demonstrates that during the 1991 conflict JNA did not control paramilitary formations.

64. In order to compensate for the obvious lack of evidence that volunteer and paramilitary units were integrated in the JNA, the Applicant refers to the findings of the ICTY in the *Mrkšić* and *Martić* judgements. However, neither of the two judgements confirms that the volunteer or paramilitary units were integrated in the JNA collectively.

65. The *Martić* judgement is rather scarce on this issue, since it only occasionally mentions paramilitary units, without analysing their status or relation to the JNA and other forces participating in the conflict. However, this judgement also illustrates that the paramilitary units were at times confused with the “official” units of the SAO Krajina. Thus, one of the witnesses, quoted by the Trial Chamber in the judgement, identified “reserve forces, Martić’s troops or Martić’s army” as paramilitary forces, saying that for him “a paramilitary unit is the same thing as a reserve force or the TO”⁴.

66. The Trial Chamber in *Mrkšić* devoted more attention to the status of volunteers and paramilitary units and, what is very significant as it confirms the Respondent’s position, made a

¹See CMS, paras. 649-650.

²RC, Ann. 67, Command of the 1st Military District, Strictly Confidential No. 1614-82 27, 15 Oct. 1991.

³MC, Ann. 74, Federal Secretariat for National Defence, Order of 10 Dec. 1991.

⁴*Prosecutor v. Milan Martić*, Judgement, 12 June 2007, para. 203.

clear distinction between individual volunteers and volunteer (paramilitary) units. According to the Chamber, there were first: [Screen on]

“individuals who were not subject to military service and who had been accepted and had joined the armed forces at their own request. In this way volunteers became either members of the JNA or TO. The volunteers had the same rights and duties as the other military personnel and conscripts.”⁵

On the other hand:

“While individuals could and did volunteer in this way, it was also common for volunteer units to be formed under the auspices of organisations such as political parties or trade unions and for these units, trained and equipped, to present for voluntary service, usually as TO. These often wore distinguishing emblems. Volunteers, especially volunteer units, were often referred to as paramilitaries . . .”⁶

67. In the rest of the *Mrkšić* judgement, the Trial Chamber continued to refer to the paramilitary units almost always together with the units of the local TO and made a clear distinction between the JNA units, on the one side, and the local TO units, volunteers and paramilitaries on the other⁷. [Screen off]

68. Accordingly, neither the *Martić* nor the *Mrkšić* judgements confirmed that paramilitary units had been integrated in or had been treated as part of the JNA and accordingly the responsibility of the JNA/SFRY for their actions cannot be based on Article 4 of the ILC Articles on State Responsibility.

69. *In as much* as some individual volunteers might have been accepted in the JNA, they should indeed be regarded equal to the JNA members. However, the Applicant has failed to show that any of the individual volunteers had been accepted in the JNA or that any of those integrated volunteers had committed any crime.

70. Concerning the possible attribution of the alleged crimes committed by paramilitaries to the JNA/SFRY on the basis of Article 8 of the ILC Articles on State Responsibility, all that is said above with respect to the alleged responsibility of the JNA for the actions of the formal forces of Croatian Serbs (Ministry of Interior, Territorial Defence and *Milicija Krajine*) equally applies here. Therefore, the findings of the Trial Chamber in *Martić* remain inconclusive as to this issue, since

⁵*Prosecutor v. Mrkšić et al.*, Judgement, 27 Sept. 2007, para. 83.

⁶*Ibid.*

⁷See RS, para. 506.

the Trial Chamber did not precisely identify either the exact crimes committed by paramilitary units or whether any of the crimes had been committed under the effective control or under the instructions of the JNA⁸.

71. On the other hand, the Trial Chamber in *Mrkšić* did analyse, in great detail, the crimes found to have been committed and the relations of the JNA and Mile Mrkšić towards the crimes. In this regard, however, all that is said above with respect to the TO units equally applies to paramilitaries and it is submitted that the crime at Ovčara, committed jointly by local TO and paramilitary units, cannot be attributed to the JNA/SFRY on the basis of Article 8 of the ILC Articles on State Responsibility.

72. The Applicant suggests that there were *around* 32 different “volunteer” groups operating in different parts of Croatia. However, for the vast majority of these groups the Applicant only provides their alleged names. There is not a single piece of information, let alone evidence, of any specific action associated with the majority of these groups. There is also not a single piece of evidence in support of an alleged relationship between these groups and the JNA.

73. In relation to this issue, the Memorial primarily relies on two sources⁹. The first source is a list and information concerning “32 different volunteer paramilitary units” which was provided by — and this is how it is referred to in the Memorial — “Croatian intelligence sources”. No further information about the “Croatian intelligence sources” was given in the Memorial. Once again we have an issue with the quality of evidence being provided and its probative weight, given that the Applicant is trying to prove one of its own claims with another of its claims. We believe that all claims supported by this type of evidence, in particular the allegation concerning the “32 different volunteer paramilitary units”, should be considered as unproven¹⁰.

74. The second source relied on by the Applicant is the Final Report of the United Nations Commission of Experts established pursuant to Security Council resolution 780 (1992), specifically its annex dealing with special forces. The Experts’ Report, including the annex in question, does not provide evidence that could satisfy a high standard of proof as required in the present

⁸See RS, paras. 489-493 and 508.

⁹See Memorial of Croatia (MC), para. 3.47.

¹⁰CMS, paras. 638-640.

proceedings. This was the position that the Serbian Government also highlighted in the *Bosnia* case. Charges of exceptional gravity, such as genocide, must be proved by evidence that is “fully conclusive”¹¹. Contrary to that, according to the Experts’ Report invoked by the very Applicant, the Commission of Experts “was not able to verify much of the information that it received”¹². Moreover, “[i]t was not the Commission’s intention or part of its responsibility to prepare cases for criminal prosecution”¹³. It is therefore submitted that the United Nations Commission of Experts’ Report cannot be considered as a reliable source of evidence in the present proceedings, unless its allegations were somehow confirmed in criminal proceedings before the ICTY¹⁴.

75. Contrary to this, the Applicant is of the opinion that it has done everything possible to identify all relevant groups. During its oral presentations last week, it reminded the Court that the evidence pertinent to particular groups is set out in the paragraph 9.78 of the Reply¹⁵. This is a bit of a surprise since the paragraph in question covers only three matters related to the responsibility of the FRY for the acts of paramilitary groups. The Applicant first claimed that “there is clear evidence that Arkan’s Tigers were controlled by the MUP [Ministry of the Interior] of Serbia” and, second, that “the evidence discloses a particularly close connection between Arkan and the FRY leadership”. Both of these claims, however, became obsolete when the ICTY in the *Stanišić* case, 2013 judgement, found that the Serbian State Security Agency (hereafter “DB”) did not direct the Serbian Voluntary Guard (SDG) or differently known as “Tigers”, in Eastern Slavonia in 1991¹⁶. The third Applicant’s claim is related to the JNA order dated 13 September 1991 and it has already been addressed.

76. So, as an example, what is the position that the Applicant could use this testimony and other evidence from last week that the Court heard? Last week we have heard the testimony about a so-called “Silts group” which had committed crimes with lucrative motives. Croatia provided evidence that the Silts group was killing people irrespective of their ethnic origin just to acquire

¹¹*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), p. 129, para. 209.

¹²CMS, paras. 638-640.

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵CR 2014/10 p. 46, para. 35 (Crawford).

¹⁶*Stanišić and Simatović*, IT-03-69, Judgement, 30 May 2013, para. 1789.

their possessions¹⁷. Again, no single piece of evidence has been provided that shows that the JNA was in any way involved in those crimes. Yet, the Applicant claims that such crimes could be attributed to the JNA, and consequently to the Respondent, on the basis of an established principle of unity and singleness of command in *Mrkšić*. With all due respect, this argument is too vague.

77. The Applicant's case is obviously suffering from a lack of credible and convincing evidence regarding the paramilitary units and their relations with the JNA.

78. The Applicant claims that the test of "overall control" is not being invoked here¹⁸, but this is exactly what the Applicant is doing — attempting to introduce the "overall control" test. Only, this time, the Applicant is trying to do so under the disguise of the effective control test. Nonetheless, regardless of how the Applicant refers to it, in essence we are still talking about the overall control test. Application of this test was rejected by this Court in the 2007 *Bosnia Judgment* and there is no reason for the Court to take a different approach now.

79. The Applicant also refers to the finding of the Trial Chamber in *Martić* that Vojislav Šešelj, Serbian politician whose volunteers participated in the conflict in Croatia, was party to the joint criminal enterprise together with JNA Generals Veljko Kadijević and Blagoje Adžić, together with Slobodan Milošević and others, and seeks to draw the proof of attribution from this finding¹⁹.

80. The Respondent does not dispute that the Trial Chamber in *Martić* indeed found that Šešelj was party to the joint criminal enterprise. However, as in the case of Generals Kadijević and Adžić, the Trial Chamber did not explain in a single sentence in which way Šešelj had participated in, or contributed to, the joint criminal enterprise. Apart from the paragraph which lists Šešelj as one of the members of the joint criminal enterprise, the judgement mentions him on only two more occasions, both times with respect to the same incident — Šešelj's alleged visit to the old hospital in Knin, where Croat detainees were being held, during which he allegedly insulted them by asking "how many Serbian children they slaughtered, how many mothers"²⁰. The judgement, on the other

¹⁷MC, statements, Anns. 260 and 263.

¹⁸CR 2014/10, p. 47, para. 37 (Crawford).

¹⁹Reply of Croatia (RC), para. 4.106.

²⁰See *Prosecutor v. Martić*, Judgement, 12 June 2007, paras. 288 and 416.

hand, does not contain a single reference to the Šešelj volunteer units. It is thus submitted that the findings of the Trial Chamber in *Martić* on the alleged participation of Vojislav Šešelj in the joint criminal enterprise are inconclusive and have to be taken by the Court with a strong reserve.

81. As already stated, and I will repeat it, the Respondent does not dispute that the ICTY in *Martić* concluded that the JCE has existed. However, the developments which occurred after the *Martić* decision to a large extent reduced the importance and reliability of the above conclusion. Alleged members of the JCE Stanišić and Simatović were acquitted by the ICTY Trial Chamber, Slobodan Milošević died before the end of the ICTY proceedings, Generals Kadijević and Adžić were not even indicted, the proceedings against Vojislav Šešelj is not over after more than 11 years. Eleven years of trial, 11 years with detention, some trial. It is also important to mention, although not indicted for the JCE, General Perišić, the former chief of staff of the VJ, was acquitted on all counts of the ICTY indictment, including those related to Croatia. So what is left of the JCE in *Martić*?

2.2. The Status of the Territorial Defence of Serbia

82. I will now turn to the status of the territorial defence of Serbia. In the Reply, the Applicant emphasizes that the Territorial Defence (TO) units from the Republic of Serbia participated in 1991 in the conflict in Croatia, in particular in Eastern Slavonia, and seeks to engage the responsibility of the Respondent on this basis²¹.

83. The Respondent does not dispute that the TO units from the Republic of Serbia were under the effective control of the JNA throughout all operations that took place in Eastern Slavonia. For that reason, any action of the TO units from Serbia should be equated to the actions of the JNA and attributed to the JNA and, consequently, the SFRY. This further means that the actions of the TO units from Serbia, which were fully subordinated to the JNA, cannot be attributed to the Respondent since, for the reasons explained above, the actions of the JNA cannot be attributed to the Respondent either on the basis of Article 4 or on the basis of Article 8 of the ILC Articles on State Responsibility.

²¹RC, paras. 4.78-4.84.

2.3. Alleged control of the Respondent over the forces of Croatian Serbs and the paramilitaries

~~Alleged control before 27 April 1992~~

84. I will now turn to the alleged direct control of the Respondent over the forces of Croatian Serbs and the paramilitaries, and first address the alleged control before 27 April 1992. As a matter of fact and as a matter of law, Respondent cannot bear any responsibility for any of the events that took place before 27 April 1992, that is, before the FRY came into existence as a State. Nevertheless, for the sake of the completeness of this analysis and *ex abundanti cautela*, the Respondent will address some of the claims raised by the Applicant.

85. The Respondent does not deny that the leadership of the Republic of Serbia at the time, headed by Slobodan Milošević, publicly or covertly, politically, and financially, supported the establishment of the Serb territorial autonomy in Croatia. However, this political or financial support does not make the organs established by the Croatian Serbs either *de jure* or *de facto* organs of the Republic of Serbia and the Applicant has failed to produce any credible evidence in that regard.

86. The Applicant has equally failed to produce any credible evidence that the establishment of the Serb territorial autonomy in Croatia or political organization of Croatian Serbs was effected under the control or directions of the Republic of Serbia.

87. The same can be said for the Applicant's claim that the actions of various forces of Croatian Serbs and paramilitaries should be attributed to the Respondent. In connection to this, the Respondent will, nevertheless, address a few points raised in the Reply.

88. The Applicant claims that the ICTY has found that the JNA and other participants in military operations in Croatia acted under the effective control and direction of the then President of Serbia, Slobodan Milošević, and the "Serb leadership"²².

²²RC, paras. 9.62 and 9.64. In para. 9.62, the Applicant claims that:

"The ICTY has also found that the JNA, in its turn, was operating under the direction and control of Milošević and the other members of the Serb political and military leadership who were party to the joint criminal enterprise."

In para. 9.64, the Applicant claims that:

"The ICTY had found that these crimes [on Croat civilian population] were committed under the direction and control of the JNA, and that all perpetrators participated in military operations on the instructions of, or under the effective direction and control of, Milošević and the other members of the Serb leadership for whose criminal acts the FRY is internationally responsible."

89. By doing that the Applicant intentionally confuses and misrepresents the other findings of the ICTY for the reason that there is no ICTY judgement that contains the alleged finding.

90. Namely, there is absolutely no judgement of the ICTY that contains the finding that: “all perpetrators participated in military operations on the instructions of, or under the effective direction and control of”²³ Milošević himself. Thus, it is submitted that there is no conclusive finding of the ICTY that Milošević had effective control over any of the forces that participated in the conflict in Croatia. Equally, there is no conclusive finding of the ICTY that Milošević exercised the alleged effective control over the forces who committed the crimes in Croatia at the time when the crimes were committed, or that any of the crimes were committed under his instructions or direction.

91. As far as the rest of the Applicant’s claim is concerned, namely that: “the ICTY has found that . . . all perpetrators participated in military operations on the instructions of, or under the effective direction and control of . . . the other members of the Serb leadership for whose criminal acts the FRY is internationally responsible.”²⁴ This is both inaccurate and misleading. It is inaccurate since it obviously refers to all persons that the Applicant sees as the part of the “Serb leadership”, that is, Serb leaders from Croatia, such as Martić and Babić; JNA leadership — Kadijević and Adžić; and the leadership of the Republic of Serbia — Milošević, in the first place. It is misleading since it attempts to claim that the ICTY has found that the FRY is internationally responsible for the acts of these persons, something the ICTY has never found as it was not its task to do it in the first place.

92. In this way, the Applicant tries to present to the Court the question of attribution as already solved by the ICTY, while in truth the judgements of the ICTY do not confirm that any of the crimes committed in Croatia can be attributed to the Respondent on the basis of the relevant articles of the ILC Articles on State Responsibility and the Court’s practice in that regard.

93. Apart from this, the Applicant offers very few documents in support for its occasional claims that the Respondent controlled the forces of Croatian Serbs and paramilitaries. Some of the evidence relates to training of the forces of Croatian Serbs — Krajina MUP in the first place — by

²³RC, para. 9.64.

²⁴*Ibid.*

instructors coming from the Serbian MUP, some to the assistance in weapons and other material which Serbia provided to Croatian Serbs for the establishment of their armed forces — again to Krajina MUP in the first place — and some to the alleged links between paramilitary leaders — primarily Arkan — and the leadership of the Republic of Serbia.

94. The Respondent in general does not dispute that Serbia provided some support to the Croatian Serbs for the establishment of their armed forces. However, this support, which took the form of occasional combat training and the occasional provision of weapons and other material, is not enough to consider the forces established in Serb autonomous regions in Croatia as either *de jure* or *de facto* organs of Serbia, since it clearly does not amount to “complete dependence” in terms of the Court’s findings in the *Bosnia* Judgment. Equally, the occasional combat training and the occasional provision of weapons does not prove that the Republic of Serbia had or exercised effective control over the forces of Croatian Serbs at the time when these forces were engaged in combat operations and in particular when some of these forces committed crimes against Croatian population.

95. The Respondent’s position is supported by the ICTY judgement in *Stanišić and Simatović* which *inter alia* reads as follows: [Screen on]

“As for the SAO Krajina TO, in the absence of evidence in this respect, the Trial Chamber is unable to conclude that the Accused directed and organized any other support or assistance to the SAO Krajina TO, besides the logistical support . . .”

and that the Trial Chamber is “unable to conclude that the Accused directed and organized the formation of the SBWS police and TO units” as well as that the Trial Chamber is “unable to conclude that the Accused directed and organised the financing of the SBWS police and TO units”²⁵.

96. As far as the activities of late Željko Ražnatović, a.k.a. “Arkan”, are concerned, the Respondent accepts that Arkan and his paramilitary group participated in armed conflicts on the territory of the former Yugoslavia. It should be, however, noted that, before he died in 2000, Arkan was indicted by the ICTY, but not in connection with any event that took place in Croatia²⁶.

[Screen off]

²⁵*Stanišić and Simatović*, IT-03-69, Judgement, 30 May 2013, paras. 2214, 2236 and 2260.

²⁶See *Željko Ražnatović “Arkan”*, IT-97-27, Indictment.

97. The Applicant's claims that there is "overwhelming evidence of Arkan's ties with the Governments of Serbia and the FRY" is wholly without substance as it contains no source whatsoever for this "overwhelming evidence"²⁷.

98. The nature and the extent of the connection between Arkan and the leadership of Serbia has never been determined. Nevertheless, even if some political connections of Arkan and the leadership of Serbia existed, this is still far from the proof of the "complete dependence" and does not make Arkan and his unit either *de jure* or *de facto* organs of the Respondent. Likewise, the Applicant has offered no evidence that the Respondent had or exercised effective control over Arkan and his unit at the time when they were engaged in combat operations and in particular when — and if — they committed crimes against Croatian population.

99. The Respondent position that there was no effective control over Arkan and his unit — the Serb Volunteer Guard, known also as "Tigers", is supported by the fact that the ICTY Trial Chamber has acquitted Jovica Stanišić and Franko Simatović of all charges including those related to the activities of Arkan and the Serb Volunteer Guard. Just to remind the Court, Jovica Stanišić was the head of the State Security Service (DB) of the Ministry of Internal Affairs of the Republic of Serbia (MUP) and Franko Simatović was one of the employees of the Serbian State Security Service (DB) at the relevant time.

100. The Trial Chamber concluded [screen on] "that neither in and of itself, nor cumulatively, does the evidence rise to a level sufficient to establish that the Serbian DB [State Security Service] or Stanišić directed the involvement of the SDG (Serbia Volunteer Guard) in the SAO SBWS [Slavonia, Baranja and Western Sirmium] in 1991"²⁸, and that

"it has received insufficient evidence to show that the Accused directed the SDG in the Banja Luka operations in 1995. [Banja Luka in Bosnia] The Trial Chamber finds that without further evidence, the mere fact that the Accused were involved with the Serbian Volunteer Guard in other ways does not affect this finding."²⁹

101. So for the whole period of war, both in Croatia and in Bosnia-Herzegovina there was no responsibility for the Serbian Volunteer Guard on the side of the Serbian MUP. The

²⁷See MC, para 3.52 and CMS, para. 646.

²⁸*Stanišić and Simatović*, IT-03-69, Judgement, 30 May 2013, para. 1789.

²⁹*Ibid.*, para. 1812.

above-mentioned, among many other findings, clearly show that the Respondent did not exercise effective control over the SDG. [Screen off]

2.4. Alleged control of the Respondent over the RSK ~~and its~~ armed forces after 27 April 1992

102. Since the Applicant did not even mention this issue in its oral arguments, the Respondent stands by the positions and the arguments expressed in its written submissions.

Allow me, Mr. President, to conclude.

Conclusion

103. On the basis of the above-mentioned arguments, it is submitted that:

- first, the Respondent cannot, as a matter of fact and as a matter of law, be held responsible for any alleged violations of the Genocide Convention that took place before 27 April 1992;
- two, in any case, the Applicant has failed to prove that any action or any crime, allegedly or truly committed by the JNA, can be attributed to the Respondent on the basis of the ILC Articles on State Responsibility and the relevant practice of the Court;
- and three, the Applicant has equally failed to prove that any action or any crime, allegedly or truly committed by the forces of Croatian Serbs or paramilitary units, can be attributed to the Respondent on the basis of the ILC Articles on State Responsibility and the relevant practice of the Court, either directly or through the Respondent's alleged control over the JNA.

3. Alleged violation of the obligation to prevent and punish the crime of genocide

3.1. Obligation to prevent

104. As to the obligation to prevent, in accordance with the Court's Judgment in the *Bosnia* case, the question of an obligation to prevent comes into play only if the Court finds that: (a) genocide was committed; (b) it was however not committed by organs or persons whose conduct is attributable to the Respondent; (c) the Respondent could not be held responsible for complicity in genocide; (d) the Respondent was aware of the possibility that genocide would be committed, but failed to take reasonable action to prevent it; and (e) the Respondent was in a position to influence the actions of the principal perpetrator or perpetrators.

105. The Respondent has already convincingly demonstrated that neither genocide, nor any other act prohibited by the Genocide Convention were committed against Croats, which leads to only one possible conclusion — the Respondent has not violated its obligation to prevent genocide.

106. Finally, given that all the evidence referred to by the Applicant in the relevant section of the Reply³⁰ relates to events from 1991, consideration of the Respondent's potential responsibility for those events is also precluded by the fact that the Respondent did not exist as a State prior to 27 April 1992.

3.2. Obligation to punish

107. The Respondent has demonstrated that it cannot be held responsible for failure to punish those responsible for committing genocide given that neither genocide, nor any of the acts enumerated in Article III of the Genocide Convention, have been committed.

108. Furthermore, the Respondent has shown that, even if the Court were to find that some of the acts prohibited by the Genocide Convention were committed — *quod non* — the Respondent could still not be held responsible for failure to punish since the alleged crimes did not take place on its territory nor has anyone ever been charged by the ICTY for genocide committed against the Croatian national, ethnic, or religious group³¹.

109. Relatedly, the Applicant's claim that the Respondent has violated its obligation to punish genocide by failing to arrest Goran Hadžić, former high official of the Serbian community in Croatia, has since become obsolete as Mr. Hadžić was arrested in Serbia in July 2011, and transferred to the ICTY. The Respondent however notes that Mr. Hadžić was never charged with genocide by the ICTY.

Co-operation with the ICTY

110. The Respondent did and continues to co-operate with the ICTY in its cases, and has facilitated transfer of all persons charged by the ICTY of crimes committed in Croatia to the ICTY.

111. The Republic of Serbia has full co-operation with the ICTY, which can be illustrated by the following results:

³⁰RC, paras. 9.83-9.89.

³¹See CMS, paras. 1051-1057.

- as of July 2011, there are no remaining fugitives being sought from the Republic of Serbia. All of the defendants have been transferred to the ICTY, 45 of them, all 45.
- The Republic of Serbia has responded in a timely manner to all requests for assistance (RFAs) received from the ICTY Office of the Prosecutor (OTP), total numbers of such request being more than 2,200.
- The Republic of Serbia has also acted upon nearly all RFAs received from legal defence teams, total number will be more than 1,300.
- Not a single request for access to State archives received either from the ICTY or a legal defence team has been denied.
- All individuals called to give testimony at the ICTY by the Office of the Prosecutor (OTP) and/or defence teams received waivers from an obligation to maintain confidentiality.
- All summonses and other documents sent by the ICTY have been distributed to intended recipients residing in the territory of the Republic of Serbia where there is full jurisdiction.
- All ICTY requests for witness protection have been met in cases where witnesses in question were residing in the territory of the Republic of Serbia where there is full jurisdiction.

112. Confirmation of Serbia's excellent co-operation can be found in regular biannual reports submitted by the ICTY officials to the United Nations Security Council and discussed every June and December. These reports continually contain a positive evaluation of co-operation between Serbia and the ICTY.

113. As an example, the Report presented by the Prosecutor of the ICTY to the United Nations Security Council in June 2012³² states, *inter alia*, that co-operation provided by Serbian authorities had "continued to fully meet expectations" and that: "The Serbian authorities responded promptly and adequately to the OTP's requests for assistance, with none presently overdue" and that "Serbian authorities continued to adequately facilitate the OTP's access to witnesses, including their appearance before the ICTY"³³.

³²Report of Serge Brammertz, Prosecutor of the ICTY, provided to the Security Council under para. 6 of Security Council resolution 1534 (2004), S/2012/354.

³³*Ibid.*, paras. 48-49.

Domestic War Crimes Trials

114. As to the domestic war crimes trials, on 1 July 2003, the National Assembly of the Republic of Serbia adopted the Law on Organization and Jurisdiction of State Bodies in War Crimes Proceedings, establishing specialized judicial and law enforcement entities assigned to handling war crime cases. Since their inception, up until now, these entities have processed 410 individuals suspected of involvement in war crimes committed in the territory of the former Yugoslavia, including those suspected of committing war crimes in Croatia. Proceedings against such individuals are in various stages at the moment, some are still being investigated, some are facing trial, while in the case of some, final judgments have been rendered.

115. A total of almost 3,000 victims have been covered through ongoing and finalized cases. Hundreds of witnesses gave testimony. Identified perpetrators of these crimes were sentenced to a total of 1,151 years in prison.

116. All of the above undoubtedly shows that the Respondent is making efforts to try and punish persons responsible for crimes committed during the armed conflicts in former Yugoslavia. At the end, I would like to thank the Court for its patience and, Mr. President, may I kindly invite you to give the floor to Mr. Obradović.

The PRESIDENT: Thank you very much, Mr. Ignjatović, and I call on the Agent, Mr. Obradović. You have the floor, Sir.

Mr. OBRADOVIĆ:

THE APPLICANT'S ARGUMENTS ON SERBIAN EXPANSIONISM

1. Introduction

1. Good afternoon. Mr. President, distinguished Members of the Court, the next part of our presentation in response to the Applicant's claim is related to the allegations on the existence of the idea of a Greater Serbia. The Applicant is persistent in its attempt to replace the presentation of evidence relevant for the existence of the *dolus specialis* of the crime of genocide with more attractive discussion on a Greater Serbia — more attractive for the domestic political theatre, at least.

2. The Applicant tries to impute political ideas of Serbian oppositional politician, Vojislav Šešelj, to the leadership of the Republic of Serbia at the time of the dissolution of the former Yugoslavia, and to equate Šešelj's ideological concept with the aim proclaimed by the deceased President of Serbia, Slobodan Milošević, that all Serbs should continue living in one State, as his view to the political solution of the Yugoslav crisis which would be, according to him, acceptable to the Serb people³⁴. It seems that, for the Applicant, such a political goal was criminal by itself. Moreover, the Applicant is eager to expand its thesis to the conclusion that the Serbs, by their nationalistic politics in the 1990s, broke out the Federal Yugoslavia. According to the Applicant, it was not Croatia who separated from Yugoslavia; no, we should believe, after all, that Milošević organized "a movement", pursuant to Article 10, paragraph 2, of the ILC Articles on State Responsibility, aiming at the establishment of the FRY, a new State, rather than the preservation of the existing one, in which all Serbs had already lived together. That alleged movement should be the Applicant's exit strategy for claiming the attribution of the responsibility to the new State which did not exist at the time when most of the crimes described in the Memorial were conducted³⁵.

3. We cannot agree with this misleading presentation of our joint history. People in the former Yugoslavia, including Serbia and Croatia, do not believe in such presentation and could not be misled. In order to assist the Court, I will present the arguments well known to all nations in the former Yugoslavia, showing that the argument of the Applicant does not exist in reality.

4. I will further demonstrate the following:

- first, the idea of a Greater Serbia cannot cure by itself the lack of evidence for *dolus specialis* of the crime of genocide;
- second, the Applicant has not produced the convincing evidence that the leadership of Serbia had ever shared the idea of a Greater Serbia of Vojislav Šešelj and his Serbian Radical Party;
- third, the Applicant actually tries to wipe out any distinction between the idea of a Greater Serbia and Yugoslavia;

³⁴RC, paras. 3.34-3.40; Testimony of the expert witness Ms Sonja Biserko; CR 2014/10, p. 48, para. 38, (Crawford).

³⁵RC, paras. 7.43-7.72.

- fourth, in the situation of the dissolution of the Federal State, the claim of the Serbs from Croatia for its own entity, or for their unity with other Serbs, cannot be seen as a criminal plan, let alone a conspiracy for genocide; and
- fifth, the national strategy of the Croatian President Tudjman was nothing else but a policy of a Greater Croatia.

2. The idea of a Greater Serbia did not include the genocidal intent

5. In the 1990s in Belgrade, one could freely buy in the street shops a magazine “Greater Serbia” published by the Serbian Radical Party. The President of that oppositional party, Mr. Vojislav Šešelj, voluntarily surrendered to the ICTY in 2003. He was accused as a member of an alleged joint criminal enterprise aimed at forcible transfer of the non-Serb population. Among the Prosecutor’s allegations on his individual criminal liability, the Court can find a claim that Šešelj propagated “a policy of uniting ‘all Serbian lands’ in a homogenous Serbian State”³⁶. However, after 11 years, the Accused is still in the United Nations Detention Unit defending himself, and waiting for the trial judgement under the legal presumption of innocence. He is still proud of his concept of Greater Serbia and promotes it during the trial. The Government of the Republic of Serbia expressed its serious concern several times about respect for his procedural rights, taking into account how long he was detained and how time-consuming his trial was.

6. Yet, there is something more important for the subject-matter of this case. Namely, Mr. Šešelj has never been accused for genocide. He is accused for the crimes against humanity — persecution, deportation and inhuman acts, as well as for the violations of the laws or customs of war.

7. The political ideas are criminal only if they include the legal elements of certain crimes. The Applicant has not shown that the idea of a Greater Serbia of Mr. Šešelj was connected with intent to destroy other national or ethnic groups, as such. If the Applicant did not agree with the ICTY Prosecutor, it could easily provide to the Court any of Šešelj’s magazines from the 1990s in which the *dolus specialis* of the crime of genocide was shown, but we cannot see such evidence in the case file because it never existed.

³⁶Available at: http://www.icty.org/x/cases/seselj/cis/en/cis_seselj_en.pdf.

3. No evidence that the Serbian leadership accepted Šešelj's political program

8. Furthermore, whatever the outcome of Šešelj's odd trial at the ICTY, the Applicant has not presented convincing evidence that the Serbian leadership at the time relevant for the subject-matter of this case accepted the political program of the Serbian Radical Party. Šešelj and Milošević were political adversaries³⁷. I do not need to defend Milošević's politics now, but it is a fact that neither he nor anyone from his Socialist Party of Serbia has ever mentioned the line Karlobag-Ogulin-Karlovac-Virovitica, proclaimed by Mr. Šešelj as a desirable border with Croatia³⁸. The attitude of the expert-witness of the Applicant for nationalism, that Šešelj was an alter ego of Milošević, is only an attractive exaggeration of the political situation in Serbia of the 1990s that can be easily sold in the western market.

9. The Applicant misleadingly unifies Šešelj's concept of Greater Serbia with the Milošević's political aim, that all Serbs should continue living in one State. The Milošević's policy was created as a reaction to the separatist movement of Tudjman's Government. By finding the aspirations of the JNA General Staff towards keeping the Yugoslav Federation unrealistic, Milošević called for the creation of a new Yugoslavia, made up of those peoples who really wanted to live in it³⁹.

10. In the Memorial, the Applicant cites the following words from the book of Milošević's political speeches:

“The solution for the problem in Yugoslavia would be provided by the policy to which the majority of the people in this country [the SFRY] has committed itself . . . [T]he people will live in a single state, on an equal basis, with greater affluence and a richer culture.”⁴⁰

By this quote, the Applicant actually offers to the Court a proof that Milošević, in 1989 at least when his book was published, was strongly in favour of keeping Yugoslavia. What was criminal in his words quoted in the Memorial?

³⁷See, *Milošević*, IT-02-54, Testimony of Witness Vojislav Šešelj, Transcripts, 7 Sept. 2005.

³⁸RC, para. 3.36.

³⁹Central Intelligence Agency (CIA), *Balkan Battlefields: A Military History of the Yugoslav Conflict 1990-1995*, Washington DC, 2002, Vol. I, Chap. 11, p. 98 (the Peace Palace Library); see also, Laura Silber & Allan Little, *The Death of Yugoslavia*, Penguin Books, BBC Books, 1997, pp. 186-187.

⁴⁰Memorial of Croatia (MC), para. 2.62, with the quotation from Slobodan Milošević, *Godine raspleta (The Years of Denouement)*, 1989, 5th ed., p. 261.

11. That was not all. The Applicant also quoted the BBC interview with President Milošević given in January 1991 in which he stated:

“we hold that each nation has the equal right to decide freely about its destiny. Such a right can be constrained solely by the same, equal right of other nations. . . . The Serbian nation will live in one State and every nation wanting to live with the Serbian people in the same State on an equal basis is welcome . . .”⁴¹

It is really difficult to recognize genocidal intent in these words. After all, what was criminal in this political view quoted by the Applicant?

12. Moreover, the Applicant acknowledged in the Memorial that at the beginning of November 1991, Milošević agreed with the deployment of the UNPROFOR in Croatia although heavy fighting was continuing⁴². The Applicant also recognized that Serbs from Croatia accepted the United Nations peace plan after strong pressure from Belgrade⁴³. One of the main concerns of the Serb leaders in Croatia was the reference contained in the plan to the United Nations Protected Areas as being “in Croatia”, because it prejudged the political solution of the conflict⁴⁴. However, that was Milošević who pressed the leaders of Serbs in Croatia to accept the plan. His political action could not be seen as a realization of the alleged plan for Greater Serbia.

4. The Applicant equates the idea of Greater Serbia with Yugoslavia

13. Indeed, it seems that the Applicant quotes all these statements in order to prove that Milošević was for Yugoslavia, which was nothing else, from the Croatian extremely nationalistic point of view, but a Greater Serbia. That was one of the leading ideas of the 1971 Croatian Maspok, also known as the Croatian Spring movement. One of the Croatian extreme nationalists of that time, Šime Djodan, published an article in which it was advocated that “the Yugoslav nation is essentially belonging to the Serbian nation, considering that, in the final political analysis, Yugoslavianism, in the national sense, is ‘great Serbianism’”⁴⁵.

In the 1990s, Djodan became a minister in the Croatian Government.

⁴¹MC, para. 2.65.

⁴²*Ibid.*, para. 2.119.

⁴³*Ibid.*, para. 2.125.

⁴⁴Further Report of the Secretary-General pursuant to SC resolution 721 (1991), S/23513, 4 Feb. 1992, p. 5, para. 12.

⁴⁵Rejoinder of Serbia (RS), para. 23, ft. 35.

14. It seems that the Croatian Memorial is full of similar feelings. In paragraph 2.83 of the Memorial, the Applicant describes a rally of the local Serbs in Petrova Gora “near the well-known Partisan monument”. The Memorial points out that “[e]very reference to Yugoslavia, the JNA or Serbia was greeted with euphoria. They read out a message to the Serbian public [*sic*]: ‘we dismiss all individual dreams of a confederation and this is the last warning for those who want to destroy Yugoslavia . . .’” Thus, it seems that in 1990 in Croatia it was considered as a misdeed — according to the Memorial — if someone greeted Yugoslavia and JNA with euphoria. Is it criminal today if someone in Scotland greets the United Kingdom? According to the Applicant’s view expressed in this case, that individual can be seen as a promoter of the idea of a Greater England.

15. One can ask why the Serbs from Croatia liked Yugoslavia so much and why they were so strongly against the restructuring of the Federal State into the confederation. The answer is complex. Living in Croatia, in Krajina, in Lika, those Serbs for decades had the feeling that they lived in *their* country called Yugoslavia, for which freedom their predecessors fought. The Serbs in Croatia had the exceptional national rights. The 1974 Constitution of the Socialist Republic of Croatia as an integral part of Yugoslavia reads that “The Socialist Republic of Croatia shall be a national State of the Croatian people, the state of the Serbian people in Croatia and the State of national minorities living in it.”⁴⁶ Thus, that was *their* Republic, as well as the Republic of the Croat majority.

16. That unique position of the Serb people in Croatia was based on their national tragedy in World War II, as well as on their contribution in the fight for freedom. The first Croatian socialist government adopted, at its session on 11 April 1945, the declaration which stated as follows:

“The national government of Croatia considers its duty to emphasize an enormous participation of Serbs from Croatia in the common struggle against the occupiers and their lackeys and to single out their role as elite fighters, as well as the assistance they gave in standing up the Croatian people to arms. The national government of Croatia will bear it in mind and make sure that the first item of the ‘Declaration on the basic rights of people and citizens of democratic Croatia’ to equality of Croats and Serbs is respected.”⁴⁷

⁴⁶The 1974 Constitution of the Socialist Republic of Croatia, Art. 1, para. 2.

⁴⁷This declaration is quoted in Velimir Ivetić, *Srbi u antifašističkoj borbi na područjima NDH 1941-1945. (Serbs in the Anti-fascist Struggle on the Territory of the NDH 1941-1945)*, Vojnoistorijski glasnik No. 1, Belgrade, 1995, p. 150.

That was written in 1945.

17. Now, it is difficult to imagine a nation who would like to change such a position for something smaller. And how much smaller? That answer is also complex. On 24 February 1990, at the First Congress of the Croatian Democratic Union (HDZ) held in Zagreb, the Party President Dr. Franjo Tudjman stated:

“Our opponents see nothing in our program but the claim for the restoration of the independent Croatian Ustasha State. These people fail to see that the State was not the creation of fascist criminals; it also stood for the historic aspirations of the Croatian people for an independent State. They knew that Hitler planned to build a new European order.”⁴⁸

18. Mr. Karl Pfeifer, Austrian journalist and prominent activist against neo-Nazism, in his article “Tudjman and the genesis of Croatian revisionism” criticizes the methodological approach of Dr. Tudjman, the historian, in the following way:

“Tudjman’s patently selective choice of data reduces to the barest minimum the number of victims of Croatian Nazism, especially Serbs, with the claim that ‘in fact only several thousand (probably 3,000-4,000) prisoners of Jasenovac camp were killed, mostly Gypsies, followed by Jews and Serbs, and also Croats’.”⁴⁹

19. Could anyone reasonably expect that after Tudjman’s electoral victory in 1990, the Serbs in Croatia would peacefully accept the separation of Croatia from the Federal Yugoslavia? In December 1990, by adoption of the new Croatian Constitution, the Serbs lost their position as a constitutional element of the Croatian Republic; they became a national minority⁵⁰.

20. According to the opinion expressed in the CIA Report — which can be found in the Peace Palace Library:

“These legislative moves — discriminatory in their wording, ill-considered in their timing, and occasionally reminiscent of the Fascist NDH State — were eventually to spark a counter-secessionist backlash among the Serbs and move both sides along the path to civil war in Croatia.”⁵¹

21. That was not the worst. This is how Karl Pfeifer described Tudjman’s new society:

“Tudjman’s personal responsibility for the promotion of Croatian revisionist historiography has to be placed alongside his even greater responsibility for being the

⁴⁸Laura Silber and Allan Little, *The Death of Yugoslavia*, Penguin Books, 1995, p. 86.

⁴⁹Counter-Memorial of Serbia (CMS), Ann. 10.

⁵⁰See MC, para. 2.27, and CMS, paras. 456 – 472.

⁵¹Central Intelligence Agency (CIA), *Balkan Battlegrounds: A Military History of the Yugoslav Conflict 1990-1995*, Washington DC, 2002, Vol. I, Chap. 6, p. 81.

main patron of revisionism in political and public life. Military terminology, the terminology of government documents and the new names given to State institutions were a further sign of continuity with the NDH [independent State of Croatia]. Under Tudjman, monuments and memorials (2,964 in all) to fighters killed in National Liberation Struggle of the Second World War and to victims of Ustasha and Nazi terror were destroyed or removed. Streets, army barracks and institutions in various towns were named after Ustasha officials and army commanders. Worse, notorious Ustasha songs became part of public celebrations and other events.”⁵²

22. On 25 January 1991, the secret movie of the JNA counter-intelligence service called “The Truth about the Armament of the HDZ in Croatia” was broadcasted. Yugoslavia could see Croatian Minister of Defence Martin Špegelj talking on the preparation for killing JNA officers⁵³. On 22 February 1991, rallies in Split, Zagreb and Virovitica sent a message to Krajina: “This is Croatia, Serbs out!” Croatian Government thus commenced preparation for its secessionist war, which would be described ironically, eight years later, as a genocidal campaign of Serbia. Although, that view cannot be found easily in the books of the relevant Croatian historians; it was kept exclusively for this Court.

5. The borders issue

23. It seems also that the Applicant, in its written pleadings, wishes to distress the Court with the picture of Krajina Serbs separatism from Croatia as something criminal per se, but not at all with the previous Croatian demand to separate from Yugoslavia. Thus, the Memorial quotes the first leader of the Krajina Serbs, the late Jovan Rašković, who said that “for every step which Tudjman takes distancing Croatia from [SFRY] we shall make a step towards distancing ourselves from Croatia”⁵⁴. By this statement quoted in the Memorial, it seems that Croatia admits that the separatist initiative was always on their side.

24. At this point, we come to the issue of the respect for the internal borders among the former Yugoslav Republics. For Croatia, it seems that the demand for the establishment of an entity on its territory or moreover, the possible association of that entity with another republic of the former Yugoslavia, was the gravest crime that could be imagined. Croatia’s Memorial invokes not only its 1990 Constitution, but also Article 5 of the 1974 Constitution of the former Yugoslavia

⁵²CMS, Ann. 10.

⁵³MC, para. 2.97.

⁵⁴MC, para. 2.87; RC, para. 3.60.

which provided that “boundaries between the Republics [might] only be altered on the basis of mutual agreement”, while “the territory of a Republic [might] not be altered without the consent of that Republic”⁵⁵. At the same time, the Applicant would not like to see the preceding part of the same Article providing that the territory of Yugoslavia was “a single unified whole”⁵⁶. Thus, it is normal to Applicant that Croatia could violate the territorial integrity of the former Yugoslavia, but not at all that the Serbs from Krajina could do the same to the territorial integrity of the new Croatian State.

25. In the Counter-Memorial, we argued that it was only in January 1992 that the Badinter Commission held that the former internal borders of the republics were frontiers protected by international law⁵⁷. Then, the Applicant in its Reply invoked the Declaration on Yugoslavia issued by the Council of Ministers of the European Communities six months earlier, on 27 August 1991⁵⁸. It would be useful if the Applicant could explain why the Krajina Serbs had to respect the European Community’s political declarations. It may be that they did not agree with them. It may be that they did not wish to join the European Community at that time, but rather to join the FRY. However, we are not now before a European Union organ, we are before the International Court of Justice concerning the Genocide Convention, so we should be focused on international law. Why was it *criminal* if the Krajina Serbs during the process of the dissolution of the former Yugoslavia wanted to stay in the same State with their kinfolk? Can it really be seen as an idea of a Greater Serbia?

26. On 1 April 1991, the Serbian autonomous region of Krajina adopted a decision to join the Republic of Serbia⁵⁹. However, on the following day, the National Assembly of the Republic of Serbia adopted the Declaration on the Peaceful Settlement of the Yugoslav Crisis, provided to the Court by the kindness of the Applicant⁶⁰. We cannot find anything criminal in that Declaration. Again, it is obvious that the decision of the SAO Krajina was not accepted by Belgrade.

⁵⁵RC, para. 3.34, ft. 86.

⁵⁶*Ibid.*

⁵⁷CMS, para. 443.

⁵⁸RC, para. 3.35.

⁵⁹CMS, para. 446; RC, para. 3.39.

⁶⁰RC, Ann. 49.

27. On 27 April 1992, the Federal Republic of Yugoslavia was proclaimed. Even then, when the Republic of Serbian Krajina firmly existed as a specific entity on almost one third of the territory of the former Socialist Republic of Croatia, the new Yugoslavia did not include that entity under its sovereignty.

28. However, any political decision, good or bad, a decision to protect territorial integrity of an old state, or of a newly created state, or to separate from all of them, can neither justify the war nor the serious crimes which were committed during the armed conflict in Croatia. That was a disaster for both people, for Croats and for Serbs. The Government of the Republic of Serbia strongly condemns all crimes conducted during that conflict, and urges the investigation and prosecution without discrimination by national or ethnic affiliation.

6. Was there an idea of a Greater Croatia?

29. Finally, allow me to ask who accused the Serbs for the idea of a Greater Serbia? According to Dr. Dejan Jović, Chief Analyst and Special Co-ordinator at Office of the President of the Republic of Croatia, “Tudjman was the first genuine separatist nationalist who came to power in Yugoslavia”⁶¹.

30. According to the first Ambassador of the United States of America to the independent Croatia, Mr. Peter Galbraith, who testified in the ICTY *Gotovina et al.* case, Tudjman believed in “a great Greater Croatia, that is, one that would include the Bosnian Muslims”, while other Croats believed somehow in “the smaller Greater Croatia, which would include [only] Herzegovina”⁶². Galbraith said also that Tudjman desired an “ethnically pure Croatia”⁶³. The last was not necessarily in contradiction with the previous statement of the former American Ambassador because Tudjman was such a historian and national strategist who believed that the Bosnian Muslims can be selected by their previous ethnic origin, and that the most of them were Croats. In addition, he “spoke approvingly of population transfers”⁶⁴.

⁶¹Dejan Jović, *Jugoslavija, država koja je odumrla*, Zagreb, 2003, p. 65.

⁶²*Gotovina et al.*, IT-060-90, testimony of Witness Peter Woodward Galbraith, 23 June 2008, Transcripts, p. 4938.

⁶³*Ibid.*, p. 4949.

⁶⁴*Ibid.*, p. 4937.

31. As our counsel Mr. Lukić demonstrated today, the ICTY final judgement in *Kordić* confirms the Tudjman's policy of Greater Croatia. Thus, Greater Serbia v. Greater Croatia. One all. Yet, with one significant difference: in Croatia, it was the governmental policy. No one Serbian official at the critical time was found guilty by the ICTY for the crimes committed in Croatia. Nor, at any moment in 1990s, an official plan of expanding borders to the territories of other peoples existed in Serbia. Mr. President, this is a point in our presentation should transit to the counter-claim, and I am wondering whether this is a good moment for a short break?

The PRESIDENT: Thank you very much, Mr. Obradović. Indeed, it is an appropriate moment to declare a break of 15 minutes. The hearing is suspended for 15 minutes.

The Court adjourned from 4.10 p.m. to 4.25 p.m.

The PRESIDENT: Please be seated. The hearing is resumed. Mr. Obradović, you can turn to a next chapter.

Mr. OBRADOVIĆ: Thank you very much, Mr. President.

THE COUNTER-CLAIM

1. Mr. President, allow me to start presenting now the Serbian counter-claim, which is related to Operation Storm and genocide committed against the Krajina Serbs. To commence with, I will briefly address the issues of evidence related to the counter-claim in light of the Applicant's objections and observations. My distinguished colleagues — Mr. Jordash and Mr. Lukić will continue presenting the most important parts of the statements of seven witnesses called to testify in the oral proceedings, as well as one expert witness — Mr. Savo Štrbac, Head of Veritas, the Centre for Collecting Documents and Information related to the victims of Serb ethnicity killed in the armed conflict in Croatia, and especially during and after Operation Storm. Tomorrow, I will have the honour to present the factual ground of our case in detail. Following that presentation, Mr. Jordash will address the legal elements of the counter-claim, while Professor Schabas will finish our first round of oral arguments with the rebuttal to the Applicant's response presented in the Additional Pleading.

2. Distinguished Members of the Court, the Respondent has produced sufficient evidentiary material to support its claim that Operation Storm, which was conducted by the Croatian *de jure* organs, fulfils the legal elements of the crime of genocide, and consequently that Croatia violated its obligations under the Genocide Convention. The statements of President Tudman at the Brioni meeting on 31 July 1995, when the conspiracy was created, can serve as evidence of the existence of intent to destroy the part of the Serb national and ethnical group living in the Krajina Region, i.e., in the United Nations Protected Areas North and South⁶⁵. In addition, the existence of the genocidal intent was confirmed by many other indicators and, in particular, by the subsequent magnitude of the criminal activities against the Krajina Serbs during and after Operation Storm, including: (a) the indiscriminate shelling of the Krajina towns; (b) forcible displacement of the Serb civilian population; (c) massive killings of those Serbs who decided to stay in the UN Protected Areas; (d) attacks on the helpless refugee columns; (e) massive destruction and looting of Serb property, and finally, (f) by imposing administrative measures to prevent the Krajina Serbs returning to their homes. Croatia has not convicted yet any person responsible for the massive killing perpetrated during and after Operation Storm. On the contrary, that criminal operation is even celebrated in Croatia as a public holiday⁶⁶. The celebration of a crime is the sharpest form of the impunity.

3. The jurisdiction *ratione temporis* of Serbia's counter-claim is not in doubt: Operation Storm was conducted in 1995, more than three years after the Genocide Convention had entered into force between Serbia and Croatia.

4. Furthermore, Serbia has a legitimate interest to request a remedy for the Krajina Serb victims and refugees, out of whom more than 150,000 found shelter on its territory. At least one third of those refugees in the meantime have become our citizens.

5. The question of the admissibility of the counter-claim as such is also not in question, because the Applicant has contested none of the formal preconditions for the Judgment on the merits to be rendered in relation to Serbia's counter-claim — the position highly appreciated by the Government of Serbia. That alone suffices to settle the matter of the admissibility of Serbia's

⁶⁵CMS, paras. 1195-1204.

⁶⁶CMS, paras. 1473-1476.

counter-claim as such. Moreover, the counter-claim of Serbia is directly connected in facts and in law with the subject-matter of the initial claim of Croatia, as the Respondent explained in the written proceedings⁶⁷.

Evidence produced by the Respondent

6. Mr. President, I think that a method of work of our legal team is the best reflected in the evidence that we have so far produced in support to the factual ground of the counter-claim, with a clear intention to follow the well-known method of proof established through the practice of this Court. However, the Applicant has raised some objections, different in their nature and intensity, and I will further answer them briefly.

Brioni Minutes

7. In proving *dolus specialis* of the crime of genocide, Serbia strongly relies on the contents of the confidential transcript from the meeting held at Brioni Island on 31 July 1995, when Croatian President Franjo Tudman met his military leadership to discuss the plan for Operation Storm. This document is known in the ICTY Archive as the Brioni Minutes⁶⁸.

8. In its Additional Pleading of 30 August 2012, Croatia for the first time placed on record some concerns regarding the accuracy of the Brioni Minutes⁶⁹. Thus, Croatia pointed out that the transcript had several gaps in the recording, that sometimes it had been marked that “several voices [had been] heard simultaneously”. Croatia also emphasized that the transcript did not provide “any indication of the general mood of the meeting”, and whether anything said was said “sardonically or ironically”. The impossibility to review the body language of the participants and the “lost in translation” issue were also stressed by our distinguished opponents⁷⁰.

9. Mr. President, this objection is not serious enough. With all gaps recorded by the Applicant, it is still clear that a stenographic record of the confidential meeting is the most accurate

⁶⁷CMS, paras. 1099-1114.

⁶⁸CMS, Ann. 52.

⁶⁹Additional Pleading of Croatia (APC), para. 3.11.

⁷⁰*Ibid.*

source of evidence vis-à-vis the conversation at that meeting. At least, the fact-finding techniques have not yet found a better tool for such purpose.

10. This observation of the Applicant becomes even more unclear if we know that the Croatian legal team claims that President Tudman at Brioni was engaged in some humanitarian efforts: his intent, according to the Applicant, was not directed to the destruction and/or expulsion of the Serb civilian population, but to the facilitation of an exit for them, in order to save their lives⁷¹. Then, a certain clarification by the Applicant would be appreciated: what was *exactly* lost in translation?

The ICTY testimonies in *Gotovina*

11. The Respondent also relies on the public testimonies that were recorded in the ICTY case against three Croatian Generals⁷². The transcripts from that case are part of a publication readily available, and the Parties are free to rely on those statements. Nevertheless, the Applicant claims that the testimonies of witnesses in Gotovina “[do] not enjoy any special status”⁷³.

12. The Respondent has never asked for a special status, but a common status of the witness statements given before the United Nations Criminal Tribunal. Those witnesses were cross-examined by the Defence counsel, and additionally questioned by the Trial Chamber, and all their answers were duly recorded. Following the practice of this Court in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, the Respondent decided not to call all of them to testify again in the Great Hall of Justice. Their statements, given before the ICTY, can be used in this case as public documents, which, together with the statements given in these oral proceedings, form authentic and reliable evidence on killing committed during and after Operation Storm. That evidence is of strong probative value, and it cannot be equated with the unsigned affidavits produced by the Applicant.

13. The fact that the ICTY Appeals Chamber reversed the Trial judgement acquitting Gotovina and Markač does not have any effect on the probative weight of the witness statements in

⁷¹See RC, paras. 11.48-11.50.

⁷²ICTY, *Gotovina et al.*, IT-060-90, transcripts.

⁷³RC, para. 2.33.

that case. The inversion of the ICTY legal position concerning the existence of evidence on the joint criminal enterprise was not based on a lack of trust in the witnesses, among whom there were many officers of the United Nations blue helmets. Indeed, it is really difficult to raise any serious objection concerning impartiality of those United Nations officers and their professional capability in observing the crimes and their consequences.

Declarations and affidavits produced by the Respondent

14. In accordance with the agreement of the Parties on the method of examining witnesses and expert witnesses, Serbia submitted to the Court on 1 October 2013, declarations of seven witnesses and one expert witness in lieu of examination-in-chief. Surprisingly, Croatia did not want to use its right to cross-examine these eight persons. In consequence, Serbia considers that Croatia, by deciding that, admitted the authenticity of these statements and credibility of the witnesses. It seems difficult now to challenge the probative weight of their testimonies.

15. In addition to the statements of these witnesses that form an integral part of the oral proceedings⁷⁴, and the statements of the witnesses who testified in *Gotovina*, the Respondent will further rely on ten affidavits annexed to the Rejoinder⁷⁵, as additional corroborative materials that confirm the existence of attacks on the refugees by the Croatian governmental forces.

16. These statements produced by Serbia were taken in accordance with the domestic rules on criminal procedure. They are duly signed both by the persons who gave them and by the investigating judges who recorded these statements in the judicial proceedings. The statements were given from 1995 to 1999, prior to filing the Application instituting the current proceedings.

17. The declarations and affidavits are corroborated further by documentary materials annexed to the Counter-Memorial, as a compilation of human rights reports in the days following Operation Storm. Those reports were prepared by the United Nations monitoring teams⁷⁶ and European Community Monitoring Mission⁷⁷, as well as by the United Nations Special Rapporteur

⁷⁴Agreement of the Parties on the method of examining witnesses and expert witnesses, para. 9.

⁷⁵Rejoinder of Serbia (RS), Anns. 53, 54, 55, 56, 58, 59, 60, 61, 65 and 66.

⁷⁶CMS, Anns. 55, 57 and 58 .

⁷⁷*Ibid.*, Anns. 54 and 60.

of the Commission on Human Rights⁷⁸. The impartiality and professional approach of the authors of these documents have never been challenged.

The CHC Report

18. The Respondent relies also on the Report of the Croatian Helsinki Committee for Human Rights⁷⁹ (the CHC) called “Operation ‘Storm’ and Its Aftermath”, published in the Croatian capital in 2001⁸⁰. The Report was objected by the Applicant for the “significant methodological flaws and mistakes”, such as wrong biographical details for a number of victims, or mistakes in reporting causes of a number of deaths, or simply mistakes in characterizing status — military or civilian — of some victims⁸¹. In addition, the Applicant invoked the decision of the ICTY Trial Chamber in *Gotovina* not to rely on this report “if uncorroborated by other evidence”⁸².

19. Distinguished Members of the Court, there is no doubt that the CHC Report contains some errors, but that does not mean that the report is without any probative weight. Its probative weight depends on the matter that has to be proven. The Respondent does not intend to prove the name of each and every victim of Operation Storm. Nor does it intend to prove the individual criminal liability of certain persons as the ICTY Prosecutor had to do. We invoke this report in order to prove the following facts:

- (a) that killings during Operation Storm were committed on a massive scale;
- (b) that perpetrators of those mass killings mainly belong to the Croatian official armed forces;
- and
- (c) that all victims of the mass killings belong to the Serbian national and ethnic group.

20. In spite of some factual errors of the report, neither one of these three factual conclusions could be seriously denied, if one carefully reads the report.

⁷⁸CMS, Ann. 59.

⁷⁹Hereinafter CHC Report.

⁸⁰This document is readily available on <http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Exhibit/NotIndexable/IT-06-90/ACE81106R0000326368.pdf>.

⁸¹RC, para. 2.65.

⁸²APC, para. 1.35.

21. These three factual conclusions are corroborated by other reports, [such] as, the Veritas Report and List of Victims killed in Operation Storm⁸³, and the 1996 Human Rights Watch Report⁸⁴.

The Veritas report and list of victims of Operation Storm

22. At this point, I am coming to the most vigorous objection raised by Croatia concerning the counter-claim evidence, the objection directed against the work and reports of the non-governmental organization (NGO) Veritas⁸⁵. For the subject-matter of this case, the most important document of that organization is the list of direct victims of Operation Storm⁸⁶, which is actually an excerpt from the updated list of Serb victims of war and post-war in the territories of Croatia and the former Republic of Serbian Krajina 1990-1998, produced as Annex 66 to the Counter-Memorial. While the whole list currently contains full names and other personal data on 6,361 Serbs killed in Croatia, the excerpt contains data of 1,719 Serb victims killed during and after Operation Storm in the region of Krajina.

23. Although the exact number of victims can never be precisely determined,⁸⁷ the Respondent considers this list of the victims of Operation Storm to be the most completed today. The list is the outcome of the 18-year work on collecting information and evidence concerning the victims of Operation Storm and its aftermath. It contains full names of all recorded victims with the father's names and other personal data including dates and places of birth, dates and places of death, as well as the status of the victims — military or civilian. The list is regularly updated, following each new exhumation report made by Croatia. The President of this organization, Mr. Savo Štrbac gave his statement in these oral proceedings. He worked as an expert for the FRY Commission for Humanitarian Issues and Missing Persons, while the centre was also engaged as an intermediary in the ICTY investigation concerning the crimes committed in Operation Storm.

⁸³ Available on: <http://www.veritas.org.rs/wp-content/uploads/2013/02/Oluja-spisak-direktnih-zrtava2.pdf>.

⁸⁴ Available on: www.hrw.org/legacy/reports/1996/Croatia.htm.

⁸⁵ RC, paras. 2.66-2.68; 11.68; RS, paras. 591-595; APC, paras. 1.37-1.41.

⁸⁶ This electronic document is readily available on: <http://www.veritas.org.rs/wp-content/uploads/2013/02/Oluja-spisak-direktnih-zrtava2.pdf> (last visited on 7 Feb. 2014).

⁸⁷ Statement of expert-witness Savo Štrbac (4.5).

24. The method of compiling this list is explained in the statement of Mr. Štrbac given in lieu of examination-in-chief⁸⁸. Veritas is recommended by the United Nations Liaison Office in Belgrade, the ICTY Office of the Prosecution, and the International Committee for the Red Cross as “a serious organization” assisting “in professional and responsible manner” in establishing the destiny of missing persons⁸⁹.

25. I have already mentioned that the Veritas list of Serbs killed in Operation Storm corroborates the report on mass killing produced by the CHC. Indeed, these two reports, one made by the Croatian NGO, another by the Serbian, can be seen as complementary. While the CHC 2001 Report contains data on civilian victims of Operation Storm available at that time, the regularly updated Veritas list contains data on both civilian victims and soldiers killed in the operation. In many cases, the Veritas list recovers the errors of the names of victims contained in the CHC Report. However, there are only 60 victims of Operation Storm recorded in the Veritas list, out of 1,719 in total, for whom the CHC Report is the sole source of information today⁹⁰.

26. The outcome of the Veritas work is a publicly available list, as an open invitation to everyone who can provide additional information or simply challenge the existing data. Indeed, when the Applicant in the written proceedings gave an example on ten wrong entries in the Veritas list of all Serb victims of war and post-war, I asked the Centre to provide me with an explanation. The challenging entries were checked and Veritas found that the objections were right. As far as I have been informed, this resulted in ten wrong entries being taken out from the list⁹¹.

27. However, this action did not protect Mr. Štrbac from the further Applicant’s *argumentum ad hominem*. He was even mentioned in the Additional Pleading as a member of the Serbian legal team. That is not correct.

28. The list with 1,719 names of the Serbs killed during and after Operation Storm is something that our neighbours would not like to see in this case. It seems that they would be happy if Veritas can anyhow be disqualified from these proceedings. Yet, that is impossible; *Veritas*

⁸⁸Statement of expert-witness Savo Štrbac (3.2).

⁸⁹CMS, Ann. 63.

⁹⁰Statement of expert-witness Savo Štrbac (6.10).

⁹¹*Ibid.* (5.1).

firmly stands on the wall of the Great Hall of Justice, as a good company of *Justitius*. She is uncovered, and beautiful. She holds a mirror in which misdeeds of everyone are reflected. The crimes cannot remain hidden, we believe.

Mr. President, distinguished Members of the Court, this concludes my presentation today. I am grateful for your kind attention. I would ask you, Mr. President, to invite our counsel, Mr. Jordash, to come to the roster.

The PRESIDENT: Thank you, Mr. Agent. I call on Mr. Jordash. You have the floor, Sir.

Mr. JORDASH:

OVERVIEW OF TESTIMONIES OF WITNESSES CALLED BY THE RESPONDENT

1. Mr. President, distinguished Members of the Court, I am honoured to appear and address you for the first time. May it please the Court, in support of the counter-claim, the Respondent relies, *inter alia*, on the following witnesses:

- (i) Captain John Geoffrey William Hill (the Commander of the United Nations Military Police in Sector South from June until December 1995);
- (ii) General Andrew Brook Leslie (Chief of Staff of the United Nations Confidence Restoration Operation [UNCRO] Sector South);
- (iii) Mr. Bozo Susa;
- (iv) Mr. Mirko Mrkobrad;
- (v) Ms Jela Ugarković;
- (vi) Mr. Ilija Babić;
- (vii) Mr. Mile Sovilj; and
- (viii) Mr. Savo Štrbać (expert witness).

2. The witnesses, United Nations military personnel, an expert witness, and a range of civilians testify to aspects of Operation Storm, and in particular the underlying nature of the attacks and the conduct of the Croatian forces during and after the operation. The evidence is representative, and includes testimony describing the shelling of the towns and the villages by the Croatian forces and the ejection of the civilians from their homes. It describes the attitude of the

Croatian forces to the refugees and the attempts by the United Nations personnel to protect them. The civilians describe their helplessness in the face of the shelling, their attempts to escape from death or injury and the many other civilians who were unlawfully killed or injured. The witnesses testify to the widespread destruction and plunder of the property in the towns and the villages of the former RSK.

3. Both United Nations and civilian witnesses also describe the aftermath of Operation Storm, and in particular the continued killing of civilians, including women, children and the elderly. The United Nations witnesses describe how they were prevented from leaving their compounds immediately after the principal attacks. By the time they were allowed to move, the smell of dead bodies hung in the air, but the Croatian forces had removed all traces of the corpses and had repaired some of the roads.

4. A close examination of the individual accounts and the totality of the evidence provide an insight into the horrors and destruction that were the consequence of Operation Storm. The professional accounts and the moving and simple tales of the civilians speak volumes about the intent underlying this criminal operation. As you heard, the Applicant chose not to challenge their evidence through cross-examination. I will now summarize the most salient aspects of the evidence of Captain Hill, General Leslie, Bozo Susa, and Mile Sovilj. Beginning with the testimony of Captain Hill, given on 27 May 2008, during the *Gotovina et al.* trial at the ICTY.

Testimony of Captain Hill; 27 May 2008: *Gotovina et al.*

5. Captain Hill⁹² was the Commander of the United Nations Military Police in Sector South from June to December 1995⁹³. In summary, he was present in Knin on 4 and 5 August 1995 at the commencement of Operation Storm when the town was subject to artillery attacks. After Operation Storm, Mr. Hill also travelled to many areas in Sector South where he observed the aftermath, namely dead bodies, shelling damage, and looting by the HV soldiers, Special Police and the civilian police.

⁹²Statement of Mr. J.G.W. Hill submitted as Ann. 44 to the Rejoinder in lieu of examination-in-chief.

⁹³John Hill, T. 3736.

6. Mr. Hill testified that on 4 August 1995, together with his military police platoon, he was deployed in front of the military police headquarters at the United Nations compound when at exactly 5 a.m. the heavy bombardment started. There were “hundreds and hundreds . . . of artillery rounds”⁹⁴. It went on for approximately 90 minutes before there was a lull”. Then, the shelling continued, before it became harassment fire.

7. Mr. Hill explained that the term “harassment fire” was a term first used by the Americans in World War II and later Vietnam to describe fire that, “basically is harassing the enemy rather than an all-out offensive”⁹⁵. This fire continued throughout the day, before escalating prior to 11 p.m. to the “second highest level of shelling for the day in Knin”⁹⁶.

8. At approximately 11 p.m., Mr. Hill was summoned to the front gate of their camp where he met the Chief of Staff, Colonel Leslie. General Forand, his commander, had decided to “take in the Serb refugees” who had “been accumulating at the gate throughout the day, seeking refuge from the shelling”⁹⁷. There was in excess of 300 and he was tasked to process them and provide them with food. They were women, children, some middle-aged individuals, and the elderly.

9. Mr. Hill further testified that at about 5.10 a.m. on 5 August 1995, the heavy shelling by the HV started again in extremely large volumes throughout the town of Knin. There were hundreds and hundreds of rounds, although slightly less than the bombardment on the morning of the fourth [4 August 1994].

10. Mr. Hill testified that as he was talking with General Forand at the main gate of the United Nations compound at around 9.30 a.m. on 5 August 1995, an artillery round hit the wall of the United Nations compound and killed six Serbs and wounded four. They were a mixture of civilian and military personnel. Forand told Hill to go to the scene with Berikoff and two corporals. Mr. Hill saw the casualties and Berikoff and other soldiers placed the bodies into black bags. Mr. Hill testified that the bags were put by the side of the road across from the camp, where they remained for several days. He saw one of the bodies at a later date and saw that it had faeces

⁹⁴John Hill, T. 3738.

⁹⁵*Ibid.*, T. 3741.

⁹⁶*Ibid.*, T. 3741.

⁹⁷*Ibid.*, T. 3746.

on it. The bodies had also been shot. He was told that the HV had opened the bags, urinated and defecated on the bodies and also shot at them. Mr. Hill stated that shortly after the shelling incident at the wall of the United Nations compound, the shelling stopped.

11. Mr. Hill further testified that he first saw the HV around noon on 5 August when a convoy of six tanks, three APCs, and some infantry arrived in a column. They wanted to come into the camp to take the refugees. Colonel Leslie negotiated with them and the HV agreed to stay out of the camp. Mr. Hill talked to two HV members and asked them what they were going to do. One of them answered that they “were going to kill all the Serbs”⁹⁸.

12. Mr. Hill testified that on the evening of 5 August he tried going into Knin to collect any refugees but a Croatian officer would not allow him to pass the intersection. Mr. Hill told them that they were the United Nations and were trying to find refugees. However, the Croatian soldiers became angry and stated it was “absolutely forbidden”, they put the tank across the road, and ordered them back to the camp⁹⁹.

13. Mr. Hill testified that everywhere in Knin and virtually every town they went Croatian soldiers were looting the abandoned homes of their appliances and clothes and placing them into stolen cars. Mr. Hill saw burning buildings, as well as those that had been damaged or destroyed by artillery fire. As for Knin, he stated, “[o]n any given area of the town you went to, behind the parliament, below the castle, you would see cars being stolen and soldiers coming out of houses or apartments with material they were loading the cars with. Any part of the town you went to, you saw this”¹⁰⁰. Mr. Hill had no doubt that those responsible were armed and fully uniformed. They were HV soldiers.

14. Mr. Hill further testified that on the evening of 8 August 1995 he went to Knin to check on a reported incident. Mr. President, Members of the Court, I invite you to put on your headphones so you may hear how Mr. Hill described that event during his testimony at the ICTY in the *Gotovina et al.* case¹⁰¹. After this, you will hear Mr. Hill testify in the same case to what he

⁹⁸John Hill, T. 3751.

⁹⁹*Ibid.*, T. 3752.

¹⁰⁰*Ibid.*, T. 3757.

¹⁰¹Judges' folders, item No. 1.

observed when he visited the towns of Kistanje and Gracac¹⁰². Both clips are around two minutes long. [Video on]

Item No. 1 — Transcript:

“At approximately 19:30, I was advised there was an issue with the UN worker downtown. I took several of my police with me. I went down to the police station, and found a lieutenant HV, who came with me. At a certain [part] of town, in an open courtyard in between two apartment buildings, there was approximately 30 military individuals standing around. At that point, they were [very] agitated because of our weapons. I had to give up my long arm and my pistol to my second in command, and then I went to talk to who I believe was in charge, who I thought was the commander of 4 Brigade. There was an UN pick-up truck with the right front tire shot out, and it was flat. The back of the truck was filled with personal belongings, and there was an UN employee, a Serbian interpreter, standing there. When I approached the individual, there was an HV civilian police there, Jan, who spoke very good English, . . . I asked about the situation. The commander showed me a piece of paper that was in, I believe, Croatian, that showed that this individual had served in the ARSK army for, I believe, nine or ten months. Through the interpreter, he said he was a Chetnik and they were going to kill him. All I understood from the commander was the word ‘Chetnik’, and I understood what it meant. Apparently, this individual left our camp, gone to his own accommodation, and was retrieving personal items. We negotiated back and forth that he could not shoot the individual, it was not his responsibility, the individual belonged to me. And, eventually, he agreed that the individual would go with me; however, he said that he could not guarantee the safety of the individual if his soldiers saw him, or my safety which was the first time they said that. He said that any helicopters leaving our camp with Serbs would be shot down, and any Serb men of military age, 19 to 60, who leave our camp would be shot. At this point, we took the individual, we surrounded him, moved him back to our two vehicles, and drove him back to our camp.”

Item No. 2 — Transcript:

Question: “And at this point in your statement, Mr. Hill, you discuss a trip that you took through the town of Kistanje, and I would like [you] to describe for the Court what you witnessed in that town?”

Answer: “That was the worse town I had seen for damage. There was no inhabitants at all. I believe there was an HV company there on the factory side. The majority of the homes [were] destroyed by either artillery or fire. They had artillery impacts on the outside of the town for the first time, where we saw how they had walked the artillery into the town. There was a massive war memorial, beautiful. It was huge made of it appeared to be granite, that had been virtually destroyed, not by artillery but it appeared as if by sledge hammers. In Canada, we would call it — I can’t remember — vandalism, but it was destroyed, completely destroyed. It was a massive monument. There was an extremely strong smell of dead bodies, but yet we found none. [And there was that single company of HV soldiers who were resting by the factory area.]”

¹⁰²Judges’ folders, item No. 2.

Question: “Mr. Hill, here, you [discuss] what you saw in the town of Gracac and I would like to you tell the Court, please, what you witnessed there.”

Answer: “We saw artillery impacts in the fields leading up to the town. There was no MP, so there was HV. I remember one check-point with HV soldiers by the impacts. The town was fairly well destroyed. Some houses were still burning. There was looting, and there were still some soldiers there. As it says in my statement, they were friendly. Again, large very strong smell of bodies. We drove everywhere with our windows open, so we could identify that. Then we continued to the Czech battalion.”

Question: “Can you tell the Court who was doing the looting?”

Answer: “HV soldiers.”

Question: “And did you see any civilians in this town at that time?”

Answer: “No. The town was empty.” [Video off]

15. Mr. Hill further testified that driving through the area he observed homes burning. Once he arrived at Otric, he saw all of the animals had been killed and shot¹⁰³. He further stated that in driving north and when passing Otric, he noticed six bodies. However, soon thereafter the bodies disappeared. He stated that individuals in grey uniforms with an orange, flat bed Volkswagen were removing whatever bodies they found, including the aforementioned six. Mr. Hill testified that he later saw the orange Volkswagen in other places in the sector. He later learnt that the HV were getting rid of the bodies.

16. Mr. Hill further testified that in front of the camp he saw an individual with a shaved head and a grey uniform, holding a sub-machine gun and having an old man at his feet like a dog. Mr. Hill testified that Ivan Juric, the HV military police commander in control of all military police units operating in the former RSK during Operation Storm, told him that the armed man was a member of the counter-terrorist unit that was a part of the military police. Juric stated, “all Serbs in the former RSK were considered terrorists”¹⁰⁴.

Testimony of General Leslie; 22 & 23 April 2008: *Gotovina et al.*

17. Moving to the testimony of General Leslie, given in the *Gotovina* trial on the 22 and 23 April 2008. Mr. Andrew Leslie¹⁰⁵, a Canadian Army General, was the Chief of Staff of

¹⁰³John Hill, T. 3776.

¹⁰⁴*Ibid.*, T. 3736.

¹⁰⁵Statement of General Leslie submitted in lieu of examination-in-chief on 1 Oct. 2013.

UNCRO stationed in Knin, Sector South from March to August 1995. In summary, he testified to the deliberate attempt to shell, or the indiscriminate shelling of, civilian structures and areas by the Croatian forces on 4 and 5 August 1995 in Knin. He confirmed that he had observed a large number of men, women and children who had been killed or injured during the operation. He described the chaotic, mixed columns of departing Serbian civilians and military personnel. Mr. Leslie also confirmed that the Croatian forces had refused to allow the UNCRO personnel to leave their United Nations compound after the initial shelling of the area.

18. General Leslie testified that Knin had a population of about 35,000 people immediately prior to 4 August 1995. As it had become clear that hostilities were approaching, the numbers had increased from around 20,000 or 25,000 in March 1995. The people from the villages and towns closer to the zone of separation had moved into Knin for safety. General Leslie testified that from May 1995 onwards men of fighting age had been mobilized and deployed into the zone of separation in a variety of defensive positions. Thus, immediately prior to 4 and 5 August, the town was mainly populated by the elderly, women, and children.

19. In describing the consistent shell fire on 4 August 1995, General Leslie testified that the intensity was high between approximately 5 and 7 a.m. At 7 a.m. it diminished markedly:

“instead of having explosions all over the city of a consistent nature, the explosions and shell fire was grouped across specific regions of the city which varied, wherein you’d have a shell detonating, a minute or two or three would go by, another shell detonating 200 to 300 meters away from where the first one went off”¹⁰⁶.

There was no “discernible pattern that corresponded to any obvious point of aim of military value. The fire was, to put in layman’s terms, all over the place.”¹⁰⁷

20. Most of the fire was directed towards the centre of the town. That process would be repeated several times. Then four to six shells landed tightly grouped together. This signified, according to the witness, that the HV artillery was engaged in “fire or target group or grid procedures”, that is, directing the artillery “in an effort to hit targets”¹⁰⁸. Mr. Leslie confirmed that,

¹⁰⁶Andrew Leslie, T. 1942.

¹⁰⁷*Ibid.*, T. 1979.

¹⁰⁸*Ibid.*, T. 1943, 1980.

“the vast majority of the target grid procedure centre of mass impact were in and amongst residential structures”¹⁰⁹. The “vast majority of the fire was not legitimate military targets”¹¹⁰.

21. General Leslie testified that on 5 August 1995, the same pattern of shelling as had occurred on the previous day was repeated.

22. At approximately 9 a.m. on 5 August 1995, Mr. Leslie left the Sector South headquarters compound. He had been asked to assist in the evacuation of the Knin hospital. I invite you, Mr. President, Members of the Court, to hear General Leslie’s own words as he describes the scene he encountered¹¹¹. The piece of testimony will last in the region of two minutes and thirty seconds.

[Video on]

Item No. 3 – Transcript:

“The journey was — took approximately 15 to 20 minutes. We started with six vehicles. We were — initially, my vehicle was going to lead, but at some point the Serbian ambulance cut in front, I think during one of the moments of shell fire. There were two significant periods of shell fire en route. One was in the area of the train yards before you got to the main traffic circle, quite close to the vehicles, to the extent that they were rocked by the blast. The second, which was in the area of — or prior to the north Dalmatian corps headquarters, after the traffic circle. En route, the town appeared to be, from what I could see, essentially deserted. There were dead along the route, numbering somewhere in the order of 15 to 20 scattered hither and yon, along that main route, occasionally up the side street. There was an enormous debris field along that route of baggage and suitcases and even furniture until we got to the turn-off which left Knin to the north and west, at which point the route became relatively clear.”

Question: “You mentioned seeing dead along the route to the hospital. Did you see any bodies or injured persons upon arrival at the hospital?”

Answer: “On arrival at the hospital, there were large quantities of dead, men, women, and children, stacked in the hospital corridors in a pile. A makeshift room on the back rear floor was being used as a morgue. There was no power, and the medical staff had departed, with the exception of one male nurse who had obviously stayed there while the Serbian physician came and got us. There were approximately 30 to 40 patients of which 25 or so were in absolutely critical condition, a mix of the elderly women, occasional fighting-age male, and — yeah.”

Question: “While . . .”

Judge Orić: “Mr. Tieger, could we ask the witness ‘large quantities of dead, men, women, and children, stacked in the hospital . . .’ What do I have to understand

¹⁰⁹Andrew Leslie, T. 1980, 1990-1991, 2047, 2120.

¹¹⁰*Ibid.*, T. 1991.

¹¹¹Judges’ folders, item No. 3.

approximately by large quantities? Where you are saying '30 to 40 patients, 25 in absolutely critical condition', what about the dead bodies."

Answer: "Sir, it's very difficult to estimate. I would say the number was no lower than 30 and probably no higher than 50 or 60."

Judge Orie: "Yes. In the tens of?"

Answer: "Yes, sir." [Video off]

23. General Leslie also testified about the fleeing columns. Starting on 4 August, he observed Serbian soldiers in a column of vehicles. Within a couple of hours, this column became constant and steady,

"where you'd have trucks carrying two or three soldiers, five or six women and children, followed by a putt-putt, which is this tractor pulling this wooden cargo flat rack, that might have all soldiers; followed by a normal tractor pulling at a hay wagon that would have all women and children. So it was truly a chaotic melange of people driving by Sector South headquarters."¹¹²

24. The witness further testified that UNCRO personnel after Operation *Storm* were not allowed to leave their camps. Again, it is useful to hear him describe this state of affairs. [Video on]

Item No. 4 — Transcript:

Question: "Did you demand on behalf of UNCRO that UNCRO personnel be permitted to leave the compound?"

Answer: "Yes."

Question: "And did you explain for what purpose UNCRO wanted to leave the compound?"

Answer: "Yes."

Question: "What was that purpose?"

Answer: "To ensure that the laws of war were being respected, to ensure that no humanitarian violations were being perpetrated, to allow us access and visibility as per the United Nations Security Council resolutions which granted us such, and I also mentioned that we were willing to accept the responsibility and risk in doing so."

Question: "Okay. If you recall, what response did you receive to the demand to leave the compound?"

Answer: "Endless repetitions of no." [Video off]

¹¹²Andrew Leslie, T. 1993.

25. General Leslie testified that HV soldiers from the Puma Brigade arrived at the front gates of the United Nations compound and refused to let them, the United Nations, leave until 9 August when the witness was one of the first ones to leave, escorted by Captain Marine Lukovic from the Sector South headquarters.

26. During cross-examination in the *Gotovina* case, General Leslie was asked to give his general view of Operation *Storm*. For the final time, I would ask the Court to hear his description of this event¹¹³. [Video on]

Item No. 5 — Transcript:

Defence counsel: “So what you’re saying is that Operation Storm was conducted with a high degree of expertise; is that right?”

Answer: “I, as a military professional, would agree that certain elements of Operation Storm were conducted with a high degree of expertise. If the aim was to ensure that the local population was cleansed from the region.” [Video off]

27. General Leslie confirmed that he had spoken on the BBC at 7.04 on the morning of 4 August, and reported, *inter alia*, that, “essentially every large urban center in the Krajina had been hit by shell fire”¹¹⁴.

28. General Leslie further testified that the observations in the 7 August report from Mr. Stoltenberg to the Secretary-General with regard to the attack on Knin were inaccurate. Contrary to the observations, General Leslie testified that most of the civilians had not fled the city of Knin before it was shelled and the shelling was not directed at only the three military barracks located there.

29. Lastly, General Leslie concluded that the shelling he had observed was either a deliberate attempt to shell civilian areas and structures, or the indiscriminate shelling of such structures and areas.

Bozo Susa: Witness Statement of 23 May 2012

30. Moving to the civilian witnesses, Bozo Susa, who gave a witness statement on the 23 May 2012. Mr. Bozo Susa stated that in May 1991 he resided with his family in Biograd—

¹¹³Judges’ folders, item No. 5.

¹¹⁴Andrew Leslie, T. 2047.

near Zadar — where he worked as a carpenter for a construction company. The witness stated that one day, when he arrived to work, Croats from a place called St. Filip Jakov near Biograd ordered him to leave or else they would kill him. Mr. Susa stated that at that time, he would receive phone threats because he was a Serb. The witness stated, “[e]verything that had anything to do with Serbian identity, such as kiosks selling newspapers from Serbian shops and restaurants owned by Serbs, were all demolished or destroyed”¹¹⁵.

31. The witness stated that on 26 May 1991, he was fired from the construction company. On 31 June 1991, he was conscripted into the JNA. Whilst in the army, he served as a driver in the scouts unit belonging to the Knin Corps. The witness stated that he later stayed and served in the Serb Krajina Army.

32. Mr. Susa moved with his family to the Marici neighbourhood in Knin in 1992. The witness was at home when Operation Storm began on 4 August 1995. He stated that on the morning of 4 August 1995, the shelling of Knin was relentless and that targets included the military barracks, the police station, the JNA centre, the railway but also the town’s residential quarters. All of the residential areas other than Marici were shelled because “this estate was inhabited by Croats”. The witness opined that this was because the Croatian forces knew that the owners of those houses would return some day”¹¹⁶. On 4 August, “no one fired back from Knin in response to the attack, not a single bullet was fired”¹¹⁷.

33. The witness stated that on the same morning of 4 August 1995, around 9 or 10 o’clock, massive convoys of civilian refugees arrived in Knin. Residents of entire villages came from the direction of Drniš, Vrlika and Strmica¹¹⁸. The witness noted that these convoys had to pass through Knin and the intense shelling on their way to Kistanje and a place called Srb. He observed that even the roads that the convoys took had been shelled.

34. The witness stated that around 8 p.m. on that day he put his family and some neighbours he had hidden in a basement into a United Nations vehicle and drove them to a house near to where

¹¹⁵Bozo Susa, Witness Statement of 23 May 2012, p. 1.

¹¹⁶*Ibid.*

¹¹⁷*Ibid.*

¹¹⁸*Ibid.*

the United Nations troops were stationed, where he thought they would be safer. On 5 August 1995, Mr. Susa saw the Croatian Army entering Knin from Strmica via Crvena Zemlja. According to the witness, infantry soldiers wearing camouflage uniforms followed the tanks. The witness stated that he later found out that this unit was the Seventh Guard Brigade of Varaždin and it was known as the Pumas. The witness heard the officer leading the infantry column issue an order to “Shoot them all at random!”¹¹⁹ The witness was hidden. From his position 50 metres away, he observed the Croatian soldiers fire at and kill around 15 elderly people close to St. Jacob’s Church. Half of the people were women. They had stood aside to let the infantry go through. After the initial burst of fire, the witness heard some women scream. All the women were laid on the ground wounded, they were begging the soldiers to spare their lives. However, “they took no pity on them and finished them off”¹²⁰.

35. The witness also testified that immediately after the incident, a Croatian soldier shot and killed a young man who was wearing an RSK Army uniform. Despite the fact that he had his arms in the air and was probably surrendering, a Croatian soldier put a pistol to the man’s temple and killed him with a single bullet. The witness was later told that the Croatian Army killed all the uniformed personnel that they encountered.

36. Mr. Susa stated that after these incidents he hid for six days in a forest nearby. He found two other civilians. They were named Dusan Pekić and Savo Žeželj. The witness stated that they all sought shelter in the Raškovići field. The witness stated that from that location, they could watch Croatian soldiers looting and burning houses in Knin. He also saw four or five houses burning in Raškovići. Croatian soldiers in uniform started the fires. In total, he observed Croatian soldiers torch 20 houses in Raškovići. They were also killing dogs and chasing livestock. Mr. Susa also observed soldiers enter houses with their weapons. From time to time, he heard bursts of automatic gunfire and the screams of people in Raškovići. Military trucks were loaded with furniture and driven away. On 7 August, he saw Croatian soldiers loading dead civilians — in civilian clothes — and animal carcasses onto trucks.

¹¹⁹Bozo Susa, Witness Statement of 23 May 2012, p. 2.

¹²⁰*Ibid.*, p. 2.

37. At this time, Mr. Susa did not know the whereabouts of his family. The witness was able to make his way to his own house. It had been ransacked and all the electrical goods had been stolen.

38. On 11 August 1995, along with Pekić, Mr. Susa surrendered. The witness stated that they had heard through a transistor that 800 Serbs were sheltering at the United Nations compound. Mr. Susa stated that, "Tudjman called on all people who had not bloodied their hands to remain behind"¹²¹. Since he had not done anything wrong or committed any crime, at around 8 a.m. they went to the International Red Cross building in Knin. In Knin, the witness observed overturned refugee tractors and horse-drawn carts damaged by shells. He also saw road workers filling the gaping holes on the road that were the result of the shelling.

39. Two ICRC employees registered them and then two Croatian military policemen took them away to the Senjak barracks where the 72nd MP combat unit from Lora in Split was housed. Mr. Susa related how the Croatian military policemen tore up their ICRC registration cards and forced them to scrub the floors for two hours while being beaten. The witness testified that he and Pekić suffered beatings and inhumane treatment. The MPs were beating them with bats and shovel handles. They put a ram's bell around his neck and forced him to bleat, then to bray like a donkey and bark like a dog. A photograph was taken during this abuse.

40. During that time, an MP kicked the witness in the mouth and broke his tooth. He was beaten with clubs and across his head with a broom. He was threatened with having his throat slit. His ribs were broken during this inhumane treatment. Mr. Susa stated that, as a result of these beatings, for some months afterwards, he could not walk properly or stand unaided. He urinated blood and his left testicle was swollen to the size of a fist. About 40 MPs had taken turns in beating the two men. The officers had not joined in. However, he heard them tell their subordinates not to beat them across the face. The officers knew that the ICRC had registered them. The witness believed that it was only this fact that saved them from death.

41. The next day the witness and Pekić were moved to Zadar. They were interrogated and given food for the first time. A doctor examined the witness because his condition was very bad as

¹²¹Bozo Susa, Witness Statement of 23 May 2012, p. 2.

a result of the beatings. The witness testified that Pekic and himself were then transferred to a prison in Zadar where they were beaten by a guard called Mirko Philipovic. He beat them on a daily basis with a police baton across the palms. During this time, the witness saw Philipovic and another guard called Jurjevic forcing prisoners to have oral sex while in the shower. The witness stated that he shared his cell with Milan Jovic. In September, as a consequence of the beatings, Jovic committed suicide by hanging himself in the cell toilet.

42. On 31 August 1995, Mr. Susa was brought before a military judge. On 16 October he was charged with deportation of the civilian population, separatism, and other alleged crimes. He was then moved to the Bilice prison in Split where he was constantly beaten by the guards, Marjan Rasic, Zoram Kaselj, Bajic, Mandaric and a certain Ljubo. This continued until 1996.

43. The witness stated that in November 1995, SIS investigators at a location outside Split interrogated him. The witness stated that the investigators tortured him by administering electric shocks. They tied the cables of a field telephone to his handcuffed hands. He was asked about Ratko Mladic. The witness stated that he felt his lungs would explode. The pain was unbearable. The torture was so severe that the handcuffs broke. He heard from other prisoners that they were also subjected to this same kind of torture.

44. On 5 October 1996, Mr. Susa received an amnesty decision and on 17 October he went to Yugoslavia. He discovered that his father's house had been burnt down during Operation Storm, on 5 or 6 August 1995, while his house in Zadar had been completely looted. Mr. Susa also stated that prior to his release he was asked whether he wanted to stay in Croatia. He surmised that this offer was not genuine. Some of the amnestied people had been returned to prison after only a few days. Also, he had learnt of the conditions outside from newspapers, in particular that Serbs who had remained in their villages had been massacred.

Mile Sovilj: Witness Statement of 20 March 2013

45. Moving to Mile Sovilj, who gave a witness statement on 20 March 2013. In sum, Mr. Sovilj, a Serb journalist from Kijani in Gračac¹²², described the heavy shelling of the village of Kijani. He gave details about the absence of military targets in Gračac during Operation Storm and

¹²²Mile Sovilj, Witness Statement of 20 March 2013, para. 1.

formed the view that “the purpose of pounding the town was obviously to upset the residents and force them to leave”. His father refused to leave Kijani. The witness testified to the massacre by HV soldiers of the elderly people and civilians that remained in the village, in particular his father and 13 others. The village was also completely destroyed.

46. The witness stated that he was in Gračac on the night of 3 to 4 August 1995 when Operation Storm commenced. He stated that at around 5 a.m. a shell fell near his home.

47. On 4 August 1995, different parts of the town were shelled. Around 15 shells fell in the part of the town he used to live. The witness stated that during Operation Storm there were no military installations or personnel in Gračac. There was no one to return the fire. At around, 2 p.m. or 3 p.m., the local population formed a convoy to leave and started heading towards Bosnia. The people thought that they would be able to return to their homes when the shelling stopped. At around 4 p.m. on the same day he went to Kijani to retrieve his wife and child. He was told that the shelling of Gračac continued after he left. He heard that the shelling had killed civilians¹²³.

48. The witness stated that around 80 families or 150 people lived in the village of Kijani, and that the village included approximately ten smaller hamlets. The witness stated that his father’s hamlet was Surla. The witness confirmed that there were no Serb forces in Kijani or in the nearby hamlets.

49. Mr. Sovilj stated that he tried to persuade his 65-year-old father to leave. However, he refused to leave his home. His father quoted Tudjman’s words; those Serbs who had “not bloodied their hands” could stay¹²⁴.

50. At around 1 a.m. on 5 August 1995, Mr. Sovilj and a dozen other people from two or three of the Sovilj families in the village left by truck. The witness travelled through Bosnia and reached Serbia on 6 August 1995. Later, he heard from the media that some of the convoys that went the Bosanski Petrovac route, and not the road through Sanski Most, were shelled.

51. Having heard of the crimes committed by the Croatian army, the witness did not even consider going back to Croatia. He tried unsuccessfully for a year through international

¹²³Mile Sovilj, Witness Statement of 20 March 2013, para. 2.

¹²⁴*Ibid.*, para. 5.

organizations and the Croatian Helsinki Committee to obtain news of his father. He eventually concluded that he was probably dead. Mr. Sovilj confirmed that his mother died in Serbia in 1999, only a month after his wife had died. He believed that this was due to the stress and dire conditions that she endured as a refugee.

52. The witness later heard that his father along with 13 others was killed on 8 August 1995 by Croatian forces. Mr. Sovilj stated that in 2002 the Veritas organization showed him a photograph of his father's dead body. It appeared to have been torched but he was able to recognize a cigarette case next to him. In 2004, his father was identified by DNA analysis. He took possession of his mortal remains in 2006.

53. The witness testified that the others from Kijani that were killed were predominantly elderly people and civilians "and that is why they stayed behind in the village"¹²⁵. Their relatives told him about their deaths. He named 12 persons as having being killed on the same day, the 8 August 1995. The ages ranged between 45 and 80 years old. One was a deaf mute. The witness heard from the son of Dane Bolta that his body had been decapitated¹²⁶. Milica Jelača's sons did not find their mother's body. However, they saw that the house had been burnt and thought she had been burnt in the house¹²⁷.

54. The witness stated that he had no doubt that the Croatian army entered Kijani, killed the people, and burnt the houses¹²⁸. The witness further stated that almost 90 per cent of the 80 houses in the village of Kijani were destroyed and that today only one person still lives there¹²⁹. Lastly, the witness stated that he applied to the Croatian Government for the reconstruction of his family house in Kijani but his request was denied¹³⁰. The witness was a witness for the prosecution in the *Gotovina* case at the ICTY. However, no one has been held accountable for the massacre of Kijani. He believes it is a great injustice¹³¹.

¹²⁵Mile Sovilj, Witness Statement of 20 March 2013, para. 8.

¹²⁶*Ibid.*

¹²⁷*Ibid.*

¹²⁸*Ibid.*, para. 9.

¹²⁹*Ibid.*, para. 10.

¹³⁰*Ibid.*, para. 10.

¹³¹*Ibid.*, para. 10.

55. Mr. President, I would now respectfully ask you to give the floor to my colleague Mr. Novak Lukić.

The PRESIDENT: Thank you very much, Mr. Jordash, and I invite Mr. Lukić to continue. You have the floor, Sir.

Mr. LUKIĆ:

OVERVIEW OF TESTIMONIES OF WITNESSES CALLED BY THE RESPONDENT – PART II

Mr. President, Members of the Court, I will now draw your attention to the main points of the testimonies of another four witnesses that we called to testify.

Testimony of Jela Ugarković

1. First I will address the testimony of Jela Ugarković. Ms Ugarković was born in a village named Komić in the municipality of Titova Korenica. Before the war she lived and worked in Zagreb but, in 1991, she was dismissed. Subsequently, she decided to live with her parents in her native village, Komići. Her mother was very ill, and the father was old, so she wanted to stay with them. The village was a poor one. It was situated outside the combat areas so during the war, the locals did not experience the combat.

2. The witness stated that on 4 August 1995 she heard a distant shelling. During the same day she heard on the radio that the Croatian army launched an attack on Krajina. In the afternoon of the same day, she saw a convoy of farmers with tractors as they were moving towards the east. These people explained to her that they had to flee as Croatian forces were arriving. On the advice of her father, who feared for her, she slept outside the house that night. The next morning she heard gunshots again. On the same day, the majority of locals — about 150 of them — left the village while only the elderly remained.

3. Ms Ugarković further describes the arrival of the Croatian army in the village on 12 August 1995. She was hidden while observing the entry of armoured vehicles marked by the label of the chessboard. She saw the smoke coming from a house. She later found out that 60-year-old Lavrnić Petar and his 90-year-old mother died in their family house, which was burnt

to the ground. Their remains were found beneath the burned family house, remaining there even six months after the event.

4. Ms Ugarković was an eyewitness when the Croatian soldiers burned down her house and when her immobile mother died. She was hidden 15 metres away. This is how she describes what happened:

“Two soldiers entered the house on one side and the other two on the other side and I froze and hid among the trees. They entered all the rooms as well as the large barn and threshing barn. Shortly after I heard the soldiers say ‘Guys, we burned it all, let’s go’ and the soldiers left. I waited a little, then ran toward the house thinking that I could save my mother, but it was already too late. The roof of the summer kitchen had collapsed and completely dropped. It was all lit up in the second, as they had set fire to all rooms . . . I will never forget that moment . . .”

5. She describes seeing the burning of other houses in the village as well, and the next day she visited the neighbouring villages and saw more burnt houses and dead domestic animals. The remaining villagers decided to hide in the hills above their homes, in fear of being killed. Around 25 August, they decided to seek help from the Czech squad of UNPROFOR. They helped them to evacuate 18 locals.

6. Ms Ugarković later returned to the village to bury the remains of her mother. She also obtained information on the other deaths. According to this information, one disabled person was found dead next to a burned house. The second person was found dead in the garden. One deaf person was missing.

7. From a total of 89 individual houses in the village, according to the witness, about 80 per cent of all estates were burned. It was similar with the neighbouring village, where about 70 per cent of the buildings were destroyed.

Testimony of Ilija Babić

8. Now to the testimony of Mr. Ilija Babić¹³². Ilija Babić was born and, like many previous generations of his family, spent his life in Mokro Polje in the Municipality of Knin. This place covered an area of about 70 sq km with 39 small hamlets, and about 1,500 inhabitants. All of the residents were of Serbian ethnicity. Mokro Polje was located deep in the territory of UNPA zone South, outside of the combat operations where there were no military facilities.

¹³²Testimony of witness Ilija Babić dated 4 March 2013.

9. In his statement, Mr. Babić described the events that occurred in this location after the beginning of Operation Storm, commencing on 4 August 1995, namely, the shelling from the direction of Grahovo during the first night, the convoy of refugees that passed through his place, the departure of his entire family, including seven grandchildren and finally his own decision to stay and not to leave his birthplace. The next day, he found that a total of 64 residents that remained in Mokro Polje were hiding in their homes.

10. The Croatian army, as testified by Babić, entered his village after two days. He saw a burning house at the entrance of the village. Previously, the electricity power had been cut. He saw Croatian soldiers shooting at a tractor and then capturing and taking away three civilians. The witness found out from the soldiers themselves, members of the Croatian army who came to the place, that they were members of the Split Brigade of the Croatian army.

11. This is how witness Babić described the situation the following day:

“On Monday morning, August 7th, Kanazir Manda, whose house was downtown, came to my house and told me Babic Ruža was killed [Babic Ruža was born in 1926] . . . and also that somebody else was killed in my store and that the bodies were burned. When I went to the city, I saw the body of Babic Ruža right at the entrance to the hallway of her house as well as the body of Stevan Sučević. Within my store, on wooden pallets, I saw burned bodies and I did not know at the time how many bodies there were and who those killed people were. I have later learned that among those people were Manojlovic Steva and Ruža and Sava Traživuk and after the war their bodies were found in the Knin cemetery.”

12. He also described his knowledge of the murder of two people in the hamlet of Popovic as well as the bodies that were later found in the presence of UNPROFOR and Croatian police officers. Amongst other observations, he describes discovering a person, born in 1913, who had been shot twice in the head and the body of a woman, born in 1928, who had been dumped in a well.

13. According to the testimony of Babic, members of UNPROFOR were only allowed to enter the place after 15 August 1995.

14. The witness said in his statement that, during and after the Operation Storm, 53 residential and 15 commercial buildings were burned down in Mokro Polje itself, thousands of goats and sheep were slaughtered as well as hundreds of pigs. Hamlet Prevljes was completely

burned and destroyed and, in the period of making the written statement, there were less than 10 people remaining in Mokro Polje.

Testimony of Mirko Mrkobrad

15. Now I turn to the testimony of Mirko Mrkobrad. He gave his statement to the District Court in Požarevac in the Republic of Serbia in 1997¹³³. The statement has been submitted by the Respondent as Annex 52 of the Rejoinder.

16. Mrkobrad was born in 1961. He was a police inspector, who worked in the Ministry of Internal Affairs of Croatia. At the beginning of the war he had left Karlovac and settled with his family in the municipality of Vrgin Most.

17. On August 8 1995, his entire family moved with a convoy of refugees towards Bosnia. He initially stayed in his place but afterwards he also joined a convoy of refugees.

18. Mrkobrad described the attack on the convoy of Serbian refugees who were on the move on 8 August 1995 near Ravno Rašće settlement. The attack began with an artillery barrage that lasted about 10 minutes. One shell hit a vehicle in the convoy that set it on fire, thereby preventing further movement of the refugees. According to Mrkobrad's estimation, around 30 people were killed and many more were wounded by shelling in the cut-off part of the column in which he stood.

19. After the artillery fire had ceased, about 50 members of the Croatian army approached the convoy of refugees and opened fire from automatic weapons and mortars. Witness Mrkobrad said that there was a number of dead people.

20. He further describes the events in the settlement of Glina, which occurred after the arrival of his group of refugees. According to Mrkobrad, the members of the Croatian army were then already there. There were about 600 Serbian refugees, mostly civilians, women, children, and a smaller number of uniformed personnel.

21. Members of the Croatian army then opened fire at the Serbian refugees without any warning. Individuals from the convoy were mostly randomly firing back. According to the rough estimates of witnesses, about 150 people were killed on that occasion. Croatian soldiers were then

¹³³Testimony of witness Mrkobrad Mirko dated 13 March 1997.

shooting at the wounded ones from close range and some were being pulled out of the convoy and lined up against a wall and killed. The witness later learned that those soldiers were members of the Croatian army, the military unit of Sisak.

22. On that occasion the witness was captured. He spent the first few days in Glina and then a couple of days in Pertinja. After that he was transferred to a collective centre in Sisak, where he spent ten days. He then spent one day in jail in Karlovac. He spent six months in Zagreb in Remetinac prison from where he was exchanged.

23. He described in his statement the events and conditions in captivity. As a result of physical abuse during his stay in prison in Sisak, he lost six teeth, two of his ribs were broken and the knuckles of his both hands and fingers were broken. Other prisoners were tortured as well. Some people were taken from the prison in Pertinja and he has never seen them again. He heard the Croatian soldiers bragged about “cutting the throats of two or more Chetniks”.

24. Criminal proceedings before a military court were conducted against the witness while he was in prison in Zagreb and he was sentenced to five years’ imprisonment.

Testimony of expert witness Savo Štrbac

25. Finally, I want to turn to the testimony of expert witness, Mr. Savo Štrbac. Mr. Savo Štrbac is an expert witness who had prepared a statement about his work, and the work of NGO “Veritas”, relating to Serb victims of war and post-war periods in the territory of Republic of Croatia¹³⁴. I will use this opportunity to underline the most specific portions of that report or statement, with special emphasis on the findings relating to the Serb victims during and after Operation Storm.

26. Mr. Štrbac was born in 1949 in Croatia, in the territory of Krajina. He lived and worked there until August 1995, when the Croatian army launched the attack on Knin. Since then, he lives and works in Belgrade¹³⁵.

¹³⁴Statement of expert witness Savo Štrbac, February 2013.

¹³⁵*Ibid.*, para. 1.

27. In his jurist career, he has been a municipal and then district judge in Croatia, and as of 1990, he practised law as an attorney, being a member of the Bar Associations of Croatia, Republic of Srpska Krajina and, finally, Serbia. He retired in 2011¹³⁶.

28. As of 1991, Mr. Štrbac was also involved in humanitarian activities, firstly in activities relating to exchanges of prisoners and, after that, extensively through the humanitarian organization “Veritas” founded in 1993, which he has presided over from its foundation to the present day¹³⁷.

29. Throughout its existence, Veritas co-operated with the gathering of evidence and facts for the needs of relevant State organs in conducting criminal proceedings for war and other crimes. Since 1994, Veritas actively co-operated with the Prosecutor of the ICTY, as well as with war crimes prosecutors in the entire region of the former Yugoslavia. Veritas also co-operates with other States, and international and non-governmental organizations that are operating in similar activities, such as: the State Commission for Detained and Missing Persons of Republic of Serbia, Bosnia and Herzegovina and Croatia, ICRC, ICMP, OSCE, and UNHCR. The ICRC published the materials of Veritas in their publication after the conference on missing persons in Geneva in 2003¹³⁸.

30. In his report, Mr. Štrbac explains the methods of work on gathering information on detained and missing Serbs: and those are,

“information gathered from the family, information from the media, reports of non-governmental, governmental and international organizations, reports of military units of international peace keeping forces, memoirs archival materials, court records, witnesses’ interviews, visits to sites of executions and burial of victims, exhumations and identification reports, comparison of lists of missing persons and data from census of citizens/refugees, publishing lists and information on missing persons in the media”¹³⁹.

31. The report also specifically emphasized that the Veritas information must be transparent, available to the public, and updated on a regular basis. Periodical publications and bulletins are

¹³⁶Statement of expert witness Savo Štrbac, February 2013.

¹³⁷*Ibid.*, para. 1.

¹³⁸*Ibid.*, para. 2.

¹³⁹*Ibid.*, para 3.2.

published and, as of 1999, the lists of killed or missing persons can be found on the Veritas web page¹⁴⁰. This information is subject to constant verifications and amendments¹⁴¹.

32. The information submitted to this Honourable Court within the report are based upon information received until 31 December 2012. However, the information in Veritas report now is not final as noted by Mr. Štrbac in his statement¹⁴². To the present date, the data has been updated — and it is still being updated — and it is publicly available on the website of Veritas.

33. For the sake of this presentation, I shall primarily focus on the data on the victims of war, in general, and on the victims of Operation Storm, in particular.

34. According to Mr. Štrbac's report, Veritas recorded 6,284 victims¹⁴³. Until 31 December 2012, 4,382 victims were buried¹⁴⁴. The number of 1,902 victims are still recorded as missing¹⁴⁵. Fifty-seven (57) victims were younger than 18, and 1,443, forming 23 per cent of the total number, were older than 60¹⁴⁶.

35. In a chronological analysis of the report states that in 1990 two persons were killed. In 1991, 2,571 persons *or* 41 per cent. In 1992 — I will just use the per cents — 11 per cent *were killed*. In 1993, 10 per cent of the total number were killed. In 1994, 3 per cent, and a total number of 2,138, or 34 per cent were killed in 1995.

36. In Operation Storm, there were 1,713 victims. It has been established that 73 per cent of them were male, and 27 per cent were female. It has also been established that 62 per cent of them were civilians, and 38 per cent were uniformed persons¹⁴⁷.

37. Nine victims were younger than 18 years. Forty-seven (47) per cent of the total number of victims were older than 60 years. For 3 per cent, or 45 victims, the age was not determined¹⁴⁸.

¹⁴⁰Statement of expert witness Savo Štrbac, February 2013, para. 4.6.

¹⁴¹*Ibid.*, para. 4.7.

¹⁴²*Ibid.*, para. 4.5.

¹⁴³*Ibid.*, para. 4.2.2.

¹⁴⁴*Ibid.*

¹⁴⁵*Ibid.*

¹⁴⁶*Ibid.*

¹⁴⁷*Ibid.*, para. 6.3.

¹⁴⁸*Ibid.*

38. When analysing the time frame of these events, Mr. Štrbac states that 1,672 persons were killed from the onset of Operation Storm, until the end of 1995¹⁴⁹.

39. When focusing on the period of Operation Storm from 4 until 12 August 1995, the report states that a total of 1,513 persons were killed, out of which there were 887 civilians, 616 combatants, and just 10 policemen. At least 254 persons were killed during the attacks on refugee columns. Out of the number, 228 persons were subsequently exhumed. Only in Knin municipality, 357 persons were killed, 237 of them were civilians¹⁵⁰.

40. Until 31 December 2012, a total of 808 direct victims of Operation were identified and buried. Among them, there were 451 civilians and 357 uniformed persons¹⁵¹.

41. The report contains the information that 905 victims of Operation Storm, which is 53 per cent, are still recorded as missing¹⁵².

Conclusion

42. Mr. President, Members of the Court, this concludes our presentation of the witness testimonies that we proposed should testify *viva voce*. We submit that they present a credible picture of the horrific events which are the subject of the counter-claim. By providing a precise description of the facts the eyewitnesses assist the Honourable Court with your final conclusions about the different events described in the counter-claim. We have the identical intention in relation to the statement of the expert Štrbac. The numbers and data we have summarized today present only a part of a “never ending story” of the tragic fate of the people from the war. However, even in this form, we believe that they significantly benefit and assist the Court in reaching its final conclusions on the counter-claim.

43. This concludes our presentation. Thank you.

¹⁴⁹Statement of expert witness Savo Štrbac, para. 6.3.

¹⁵⁰*Ibid.*, para. 6.7.

¹⁵¹*Ibid.*, para. 6.3.

¹⁵²*Ibid.*, para. 6.3.1.

The PRESIDENT: Thank you, Mr. Lukić. This completes today's sitting. The Court will meet tomorrow morning at 10 a.m. for the continuation of the presentation of Serbia's counter-claim. The sitting is adjourned.

The Court rose at 6 p.m.
