

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING

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

(CROATIA v. YUGOSLAVIA)

MEMORIAL
OF THE REPUBLIC OF CROATIA

VOLUME 1

1 MARCH 2001

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CHAPTER 1

INTRODUCTION

HISTORY OF THE CASE

1.01. On 2 July 1999 the Republic of Croatia (Croatia) submitted its Application to the International Court of Justice (the Court) instituting proceedings against the Federal Republic of Yugoslavia (FRY) for violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). The Court has jurisdiction under Article IX of the Genocide Convention.

1.02. By Order dated 14 September 1999 the Court granted Croatia a period of six months for the submission of its Memorial. By a further Order dated 10 March 2000 the Court acceded to Croatia's request for an extension and set a new date for the submission of Croatia's Memorial of 14 September 2000. In December 1999 and January 2000, there were major political changes in Croatia, including the election of a new President and a change of Government. This also led to the appointment of a new Agent and the appointment of Co-Agents with responsibility for these proceedings before the Court. In light of these changes, and recognising its responsibility to ensure that on a matter so serious as genocide the Court should benefit from access to a complete Memorial and Annexes, Croatia sought a second extension. By its Order dated 27 June 2000 the Court acceded to Croatia's request and set 14 March 2001 as the new deadline for the submission by Croatia of its Memorial. This Memorial is submitted in accordance with that Order.

RELATIONSHIP BETWEEN APPLICATION AND MEMORIAL

1.03. The Croatian application of 2 July 1999 contains two main claims of genocide. The first claim was that from 1991 to 1995 the FRY repeatedly violated the Genocide Convention:

“By directly controlling the activity of its armed forces, intelligence agents and various paramilitary detachments, on the territory of the Republic of Croatia, in the Knin region¹, Eastern and Western Slavonia, and Dalmatia, the Federal Republic of Yugoslavia is liable for the “ethnic cleansing” of the Croatian citizens from these areas – a form of genocide which resulted in large numbers of Croatian citizens being displaced, killed, tortured, or illegally detained, as well as extensive property destruction – and is required to provide reparation for the resultant damage”.

1.04. The second claim in the Application stated that:

“In addition, by directing, encouraging, and urging Croatian citizens of Serb ethnicity in the Knin region to evacuate the area in 1995, as the Republic of Croatia reasserted its legitimate governmental authority (and in the face of clear reassurance emanating from the highest level of the Croatian government, including the President of the Republic of Croatia, Dr. Franjo Tudman, that the local Serbs had nothing to fear and should stay), the Federal Republic of Yugoslavia engaged in conduct amounting to a second round of “ethnic cleansing”, in violation of the Genocide Convention.”

1.05. This Memorial provides the evidence and legal material to support Croatia’s case only in respect of the first of the claims; namely that the FRY is responsible under international law for violations of the Genocide Convention which occurred between 1991 and 1995. The genocide was primarily targeted against Croats, although victims also included Croatian citizens of other ethnic or national origin.

1.06. Croatia’s Memorial addresses the FRY’s role in the events of 1995 only insofar as it is necessary to better understand its violations in the period from 1991 to 1995. The Memorial does not pursue the claim that the

¹ At the behest and with the support of the Serbian leadership the Serb residents of this area declared the “Republic of Serbian Krajina” in December 1991. This illegal declaration was not recognized by the Republic of Croatia, and was universally rejected by the international community. For ease of reference, Croatia will hereinafter collectively refer to the areas of Knin, portions of Dalmatia, Lika, Kordun, and Banovina as the “Knin region”.

FRY's involvement in the events of 1995 constituted violations of the Genocide Convention. In 1995, at the time of the liberation of occupied areas by Croatian forces, Croatian Serbs were incited to leave newly liberated territories as an organized action by the rebel authorities acting under the control of the FRY. However, some of them also fled due to a fear of war, a fear of prosecution for war crimes committed against Croats and a fear of reprisals. Although the suffering of the Croatian Serbs in 1995 is beyond doubt, according to the evidence presently available it does not meet the elements required for the establishment of a crime – and hence for state responsibility – under the Genocide Convention.

REASONS FOR THE INSTITUTION OF PROCEEDINGS AGAINST THE FRY

1.07. Croatia has a number of reasons for bringing its case against the FRY before the International Court. Some of these reasons are primarily relevant for Croatia, but others have regional and even global relevance given the gravity of the subject matter addressed. Croatia did not bring its case to the International Court of Justice for a number of years. The fact that the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) has not yet issued indictments against those persons most responsible for genocide in Croatia, and that it cannot provide for any compensation to the victims of the genocidal and other internationally criminal acts perpetrated during the conflict, were among the reasons why Croatia instituted proceedings against the FRY in 1999. The failure of the FRY to hand over to the ICTY or to bring to trial any of its citizens indicted for war crimes committed in Croatia, or to punish the perpetrators of genocidal acts and war crimes nationally and to compensate victims, was a contributing factor.

1.08. Croatia submitted its application against the FRY at a time when Slobodan Milošević, the key individual responsible for war crimes and genocide, was still the President of the FRY. Since then, there have been important political changes. In Croatia, after ten years of the rule of HDZ (Croatian Democratic Union), the first turnover of power took place in a peaceful and orderly fashion, substantially strengthening the rule of law. In the FRY, the Milošević Government has been replaced, opening the way for democratic processes. However, the recent changes in the region, which indicate a transition to democratic principles, do not obviate the need for bringing this case: the case is concerned with the responsibility of the FRY as a state, in relation to its responsibility for committing genocide, its failure to take steps to prevent genocidal acts, and its continuing failure to punish any of those individuals within its jurisdiction and control who

perpetrated or contributed to the genocidal acts. By pursuing this case on the basis of the extensive material set forth in the Memorial, Croatia hopes that the citizens of the FRY might be encouraged to confront the actions of the previous regime and their consequences (for which the FRY has a continuing responsibility) and thus contribute to democratic processes, the establishment of the rule of law and lasting peace and stability in the region.

RELEVANCE FOR CROATIA

1.09. This case has far-reaching legal and historical relevance for Croatia. Croatia suffered great losses that can be attributed to the war of aggression and genocidal campaign launched against it in 1991 by the Serbian leadership. These losses include 10,572 persons killed, 1,419 persons still missing and unaccounted for,² and 7,624 imprisoned in various camps and detention centres,³ a majority of them on the territory of FRY. Beyond the personal losses and material destruction (including economic facilities, housing and infrastructure), destruction of cultural property was also great. More than one third of all cultural monuments and churches in Croatia were heavily damaged or destroyed, and a very large number of cultural objects was looted by the occupying Serbian forces. A substantial portion of the enormous damage to property and economic activity in Croatia is directly related to the genocidal acts described in this Memorial for which the FRY is responsible.

1.10. Without prejudice to the other war crimes or crimes against humanity and criminal responsibility of the perpetrators, including acts which might not in isolation be characterised as genocidal in character but are to be so characterised in the context of Serbia's genocidal campaign, and the responsibility and liability of the FRY for these acts, in this case Croatia seeks to establish the clear responsibility of the FRY for violations of the Genocide Convention. It is submitted that several of the acts set out in Article II of the Genocide Convention were carried out, including killing members of the group, causing serious bodily or mental harm to the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part and imposing measures intended to prevent births within the group. These violations include perpetrating genocide, conspiracy to commit genocide, incitement to genocide, attempt to commit genocide, complicity in genocide, and the

² The source of information on the deceased and missing is the Office of the Government of Croatia for Detained and Missing Persons. These numbers are expected to change as more information becomes available.

³ For a provisional list of missing and detained see Appendices, Volume 6.

failure to prevent genocide. They also extend to the failure to punish those persons within the jurisdiction of the FRY who have committed genocidal acts, a failure which continues to this day. All of these acts have been committed and are attributable to the FRY, and Croatia seeks from the Court a declaration that genocide has been committed, to order the FRY to punish the perpetrators and reveal the whereabouts of persons still missing as a result of the genocidal campaign, as well as return the mortal remains to their families. Croatia also seeks the return of cultural property stolen in the course of the genocidal campaign to their rightful owners. Croatia has also turned to the Court to obtain a legal determination of the principles of reparation which are applicable and ultimately the quantum of compensation for genocide victims and their families, so far as it concerns or arises from conduct in violation of the Genocide Convention.

1.11. From Croatia's perspective it is particularly unacceptable that genocidal acts have not been prosecuted in the FRY even ten years after some of them have been committed, and five years after accepting the obligations set forth in the Dayton Agreement.⁴ It is equally unacceptable that successive Governments of the FRY have refused – and continue to refuse – to cooperate with the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed on the Territory of the Former Yugoslavia (ICTY), established by the United Nations Security Council and mandated by the Security Council and the General Assembly on a continuing basis to investigate and prosecute serious crimes against international law committed on the territory of the former Yugoslavia.

1.12. Despite recent democratic changes, the FRY still provides safe harbour to many individuals (including senior members of its former Government, and especially its former President) who have been indicted by the ICTY. These circumstances make it impossible to individualize responsibility in the FRY and thereby bring those responsible to justice. In any event, the Serbian leadership has both planned and carried out, either directly or through its agents, the genocidal acts described in this Memorial, Croatia considers that, as a party to the Genocide Convention, it has a particular responsibility to take steps to provide for the accountability of the FRY through these proceedings. The authority of the International Court of Justice – the principal judicial organ of the United Nations – provides the single most important forum within which a condemnation of genocidal acts may be obtained, and hence a deterrent effect which may assist in preventing possible further violations of the Genocide Convention by the FRY or by any other state. Croatia has brought this case because there can be no impunity for genocide.

⁴ See Chapter 2, para. 2.153.

1.13. Finally, this case has important historical relevance for Croatia. Proceedings before the ICTY are brought against individuals, focused on particular crimes committed by particular perpetrators. Croatia expects that the proceedings before the International Court of Justice will, amongst other things, shed light on the overall context within which events unfolded in Croatia in 1991 and subsequently, and that the ruling of the International Court will prove beyond doubt the nature and extent of the genocidal acts which occurred, as well as the involvement and responsibility of the FRY under international law. The proceedings before the International Court of Justice are necessary to address issues, which cannot be addressed in any other legal forum. They will provide a clear and credible historical record of the events in question. The Court has a vital and unique role, which is not to be neglected or avoided by reference to the possibility of criminal proceedings, which may be brought against individuals.⁵

REGIONAL AND GLOBAL RELEVANCE

1.14. The proceedings also have broader regional and even global relevance. The establishment, through the legal process, of the truth of accusations of genocidal conduct can contribute towards bringing justice and redress to the victims. Justice and redress are also a prerequisite for healing and reconciliation. The establishment of the whereabouts of the missing persons, often victims of genocide, is a painful process, but a necessary step for the sake of a better future. To establish lasting peace and stability in the region, it is essential to determine what happened, and to qualify the genocidal acts committed in an appropriate and objective manner. So far as states (rather than individuals) are concerned, this is specifically and exclusively the province and function of the Court. Such a process can also contribute to better relations over the long term between neighbouring states and between people living in the same communities or in close proximity. A judgment by the International Court of Justice can contribute a reliable and authoritative basis for the acceptance of proven matters of historical fact, and can prevent the creation and perpetuation of different and biased national histories, based on myths, legends and distortions, which are often deliberate.

1.15. In certain respects the proceedings brought by Croatia against the FRY relate to the proceedings that Bosnia and Herzegovina has initiated against the FRY. The genocidal acts in Croatia and Bosnia and Herzegovina were a part of the same pre-planned scheme of imposing Serbian control – and establishing a “Greater Serbia” – on various parts of

⁵ See *infra*. paras. 1.16-1.17.

the territory of the former Socialist Federal Republic of Yugoslavia (SFRY), including through genocidal acts. They involved many of the same perpetrators and followed a similar pattern. Croatia and Bosnia and Herzegovina have decided to cooperate in their proceedings against the FRY. They have stated that:

“These proceedings were initiated with the aim to ascertain both the full truth about the sufferings and loss of lives incurred in Bosnia and Herzegovina and the Republic of Croatia, as well as the legal, political and historical accountability for them. The proceedings are not directed against Serbs in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. Rather, they are directed against the State authorities of the Federal Republic of Yugoslavia, which are to be held responsible for the aggression, suffering and loss of lives incurred and genocide committed against the Croats and Bosniaks.”⁶

However, the two proceedings are distinct and each has its own rationale and legal purposes. Croatia brings this proceeding in its own name and in the name of the victims of the genocide committed on its territory.

THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE

1.16. Although the Bosnian and Croatian cases are not the first attempts to launch proceedings at the International Court of Justice on the basis of the Genocide Convention,⁷ they do provide a first opportunity for the highest international judicial body to determine, conclusively and authoritatively, an interpretation and application of the meaning and scope of the Genocide Convention. Article IX of the Convention identifies the Court as the ultimate guardian of the Convention. The Court has the opportunity and responsibility to define the circumstances under which genocide has occurred and in which a state will be responsible for causing genocide, for failing to prevent it, and for failing to punish it. The Court also has the historic opportunity to pronounce upon the practice of misusing members of an ethnic group, associated with the perpetrator state but living in other states, for the purpose of territorial expansion, as well as on the use of state-sponsored hate speech and propaganda in inciting genocide.

⁶ Joint Statement of the Ambassador Muhamed Šaćirbey, Agent for Bosnia and Herzegovina, and Ambassador Ivan Šimonović, Agent for the Republic of Croatia, in Proceedings Instigated upon Applications of the Genocide Convention against the Federal Republic of Yugoslavia before the International Court of Justice, New York, 12 June 2000: see Annexes, vol 4, annex 2.

⁷ See *infra*. Chap. 7, para. 7.16 *et seq.*

1.17. The ICTY, which is an *ad hoc* criminal tribunal, charged with prosecuting individual crimes, cannot fully perform that task. Indeed, a failure to bring the main perpetrators such as Slobodan Milošević to trial would ultimately lead to the misrepresentation of the nature of the conflict and the incorrect inference that all sides to the conflict were equally involved in genocidal acts and war crimes. All individual crimes should be punished, either by the ICTY or by national courts. But the International Court's confirmation that genocide has been perpetrated, and that the FRY is responsible for genocide, is a necessary prerequisite for the citizens of the FRY to face the responsibility of their military and political leadership, and their own responsibility, thereby enabling the citizens of the victim country to forgive and rebuild trust in their neighbours.

CROATIA'S APPROACH TO THE PRESENTATION OF THE CASE: METHODOLOGICAL ISSUES

1.18. The Genocide Convention defines the responsibility of the State Parties – not the perpetrators of individual crimes – and is concerned exclusively with genocide and not other international crimes. In the presentation of its case Croatia has appropriately narrowed the scope of evidence that it presents and relies upon. To the extent possible the evidence presented in this Memorial is based on primary sources, especially witness statements, documentation (including that captured from the JNA/VJ), or the personal testimonies of high-level officials.

1.19. In relation to some of the witness statements upon which Croatia relies, it has in this Memorial, for humanitarian reasons, taken steps to ensure the appropriate protection of the identity of those persons (women and men, including children) who have been subjected to sexual and sex-related crimes. It includes witnesses and persons referred to in the testimony of witnesses. For social and humanitarian reasons the use of the real names of these persons in the Memorial might expose them to real risks and adverse consequences. In the absence of existing procedures within the Court's Statute and Rules, and pending a determination by the Court as to the approach to be taken, Croatia has made anonymous the identity of persons falling within the two categories above, by the use of a pseudonym. Wherever this occurs in the text of the Memorial an asterisk (*) has been placed after the name of the person, where it appears for the first time in the Memorial.⁸

⁸ Croatia has deposited with the Registrar of the Court a document identifying the real names of these persons.

1.20. Reference is also made to secondary sources, such as United Nations resolutions and documents of other international organizations, non-governmental organizations, books, and other sources in order to confirm or supplement the primary material. In accordance with the Court's Rules, in some instances only relevant paragraphs are quoted in the Annexes and Appendices.

1.21. In the text of the Memorial, reference has been made to "ethnic cleansing". "Ethnic cleansing" is a relatively new term whose definition in international law has not fully crystallized. It is, however, widely used not only in academic studies and the media, but also in resolutions of the United Nations organs and other international organisations. Croatia understands that the term "ethnic cleansing" includes various practices oriented towards the removal of national, ethnic or religious groups from a certain territory. In general, those practises intended to destroy the group correspond to genocide. Various practices related to "ethnic cleansing" which individually do not necessary amount to genocide, if taken together and bearing the hallmarks of the requisite intent to destroy a targeted group on a certain territory, constitute genocidal acts as well. Whilst a dialogue on clarifying the relationship between the terms "ethnic cleansing" and "genocide" is no doubt useful for the development of international humanitarian law, for the purposes of this case, Croatia limits itself to proving that genocide, as defined by the 1948 Convention, has been perpetrated.

1.22. It is also appropriate to explain the use of some terms in the Memorial. In the Memorial Croatia has described the process of dissolution of the SFRY and the takeover of the federal institutions of the SFRY by the Serbian leadership. For the single state comprising all six Republics (and the two Autonomous Provinces), and working in accordance with the Constitution of 1974 on the principle of equality, Croatia uses the term "Socialist Federal Republic of Yugoslavia" ("SFRY"). The term "rump Yugoslavia" is occasionally used to designate the Serbian controlled entity which emerged with the dissolution of the SFRY. The abbreviation "FRY" has been used for the Federal Republic of Yugoslavia, a state consisting of the Republic of Serbia and the Republic of Montenegro (which existed as entities within the SFRY) and which was a state in *statu nascendi* from mid-1991,⁹ even though it was only self-proclaimed on 27 April 1992. On the same date the name of the Yugoslav People's Army (JNA) was changed to the Yugoslav Army (VJ).

⁹ Whilst in *statu nascendi* this entity has sometimes been referred to as the "rump Yugoslavia" under the control of the Serbian authorities.

1.23. It is also important to note that in this Memorial the terms “Croats” and “Serbs” refer to the respective national (or ethnic) groups irrespective of where they live. On the other hand, the term “Serbians” refers to Serbs from Serbia.¹⁰

STRUCTURE OF THE MEMORIAL

1.24. Croatia's Memorial consists of six volumes. Volume 1 contains the main text of the Memorial, while Volumes 2 to 6 contain supporting materials. Volume 2 contains witness statements and captured documents, as referred to in the main text. Volume 3 contains maps, organograms and photographs, and Volume 4 various relevant national and international legal and political documents and reports. Volume 5 contains Appendices covering the following issues: chronology, hate speech, testimonies of the actors, paramilitaries, cultural damage, prison camps, personal and political continuity, and a transcript of the text of the documentary film, which is also a part of the Memorial. Volume 6 contains as Appendices lists of detained and missing persons related to the genocidal campaign.

1.25. The main text of the Memorial, Vol. 1, consists of eight Chapters and Submissions. It is divided into two parts: Part One addresses the factual elements, and Part Two addresses the legal elements.

PART ONE – FACTUAL ELEMENTS

1.26. Following this Introductory Chapter, **Part One** comprises Chapters 2 to 5. **Chapter 2** sets out the general historical and political background against which the genocidal acts were carried out in Croatia in 1991 and subsequently may be understood. The starting point is the death of the long-term President of the Socialist Federal Republic of Yugoslavia, Josip Broz Tito, which was followed by the process of dissolution of the SFRY (comprising the Republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, and the two Autonomous Provinces of Kosovo and Vojvodina). The inherent tensions within the SFRY between the ambition of the largest ethnic group – the Serbs – to dominate, and the interests of other groups – to protect their equality and pursue their national interests through the establishment of their national states – had been suppressed for many years. However, after President Tito's death they surfaced. The federal institutions, which were charged with protecting equality, were undermined and then usurped by the new Serbian leadership,

¹⁰ This terminological difference can be linguistically expressed in the Croatian, Serbian and English languages but cannot be expressed in the French language.

led by Slobodan Milošević, which was committed to establishing a Serb dominated Yugoslavia, or a “Greater Serbia” which would include within its borders more than half of the territory of Croatia. In this context the Republics predominantly inhabited by a non-Serb population opted for independence as the only scenario for the maintenance of their civil and political rights. Given that the Serbs constituted a large majority of the officer corps of the JNA, by the autumn of 1991 the JNA had been transformed into the *de facto* Serbian Army under the control of the Serbian leadership. The takeover by Serbian President Milošević and the Serbian authorities had occurred in the spring of 1991 and was completed by the autumn of that same year, well in advance of the formal proclamation of the FRY on 27 April 1992. Throughout that period the state-controlled media in the Republics of Serbia and Montenegro were systematically used to demonize the targeted non-Serb ethnic groups, creating a climate conducive to genocide, inciting it and justifying it.

1.27. **Chapter 3** describes the role of the JNA and the paramilitary groups in carrying out the genocidal acts, which began in the summer of 1991. The Chapter describes the process of the transformation of the JNA – which started as the principal military force of the SFRY – into a *de facto* Serbian national army, its role in the 1991 conflict in the Republic of Croatia, and its cooperation with various paramilitary units in perpetrating genocide. Although the JNA was formally classified as the army of the FRY (subsequently called the Yugoslav Army or “VJ” only after the adoption of the Constitution of the FRY on 27 April 1992), it will be shown that it has acted as the organ and instrumentality of the Serbian leadership since 1990. The aggression against Croatia was secretly but carefully planned and prepared in cooperation between the Serbian leadership, headed by President Milošević, and the JNA leadership. The Serbian political leadership incited rebellion amongst parts of the predominantly rural Serbian population in Croatia, politically mentored and supported it (including with finance and arms), while the “Serbianized” JNA cooperated closely with the rebel Serb paramilitary groups, which emerged after 1990. Throughout the whole period irrespective of its label or its professions, it continued to cooperate intensively with rebel Serbs in Croatia.

1.28. **Chapters 4 and 5** rely on original witness statements to describe the genocidal acts which were perpetrated in Croatia in 1991 and subsequently. Due to the difficulties in gathering evidence, Croatia does not claim that the material is complete. In the period from 1991 to 1995 Croatia, as a newly emerged sovereign state and member of the United Nations, was organizing its administration whilst subject to outside aggression. Surviving brutal aggression, organizing a resistance, preventing genocide and liberating occupied areas had a much higher priority than keeping a precise record of all crimes and all violations. The FRY’s authorities also took care to avoid the production and distribution of written

documents, which could directly relate them to genocide, crimes against humanity and war crimes.¹¹ The efforts of the Croatian government to obtain original evidence and primary materials were made even more difficult by the fact that some of the evidence had to be obtained a number of years after crimes had been committed. Due to the destruction of their homes, survivors, witnesses and their families have often been living as displaced persons and refugees, scattered throughout Croatia and abroad. However, the evidence presented is fully sufficient to prove genocide. In providing evidence, the Croatian Government greatly benefited from cooperation with non-governmental organisations.

1.29. **Chapter 4** provides a detailed account of the genocide, which occurred in Eastern Slavonia, including the events in Vukovar in Autumn 1991. Although genocide has been perpetrated in all of the occupied areas of Croatia, the case of Eastern Slavonia, and especially Vukovar, has been elaborated in more detail because of the number of victims, the abundant evidence of direct participation of the JNA in genocidal acts, and the clear involvement of the highest Serbian leadership. The body of evidence collected from victims and witnesses of genocide, and confirmed by independent observers and commentators, provides an important case study of the genocide perpetrated against Croats, which is a reflection of the events in other parts of Croatia during the same period.

1.30. **Chapter 5** provides an account of the genocidal acts, which occurred throughout other occupied parts of Croatia: Western Slavonia, Banovina, Kordun and Lika and Dalmatia. The same genocidal pattern analysed in detail in the case of Eastern Slavonia, was repeated elsewhere in these other occupied areas. Chapters 4 and 5 are intended to describe events: the legal implications in terms of the charge of genocide, which flow from the evidence outlined in these Chapters, are addressed in Chapter 8.

PART TWO – LEGAL ELEMENTS

1.31. **Part Two** of the Memorial comprises Chapters 6 to 8, dealing with legal elements, and concluding with Croatia's Submissions. In Part Two, the Memorial explains the basis of the Court's jurisdiction, and demonstrates that the facts established by the evidence constitute violations of the Genocide Convention, and that the violations are attributable to the FRY which is responsible under international law.

¹¹ See respectively the memoirs of Borisav Jović (Appendices, vol 5, appendix 4.3) and General Veljko Kadijević (Appendices, vol 5, appendix 4.1).

1.32 **Chapter 6** explains the basis upon which the Court has jurisdiction pursuant to Article IX of the Genocide Convention and Article 36(1) of the Statute of the Court.¹² At the time the Application was lodged, Croatia and the FRY were parties to the Genocide Convention without reservation. Accordingly, the Court has jurisdiction over disputes existing at that time concerning responsibility for breaches of the Convention, and there were (and continue to be) such disputes. Moreover, as the Court has affirmed, there was no temporal gap in the coverage of the Genocide Convention, so far as the entire territory of the former SFRY is concerned.

1.33. **Chapter 7** provides an overview of the Genocide Convention, including such international practice as may assist the Court in applying it to the facts set out in this Memorial. It addresses the historical background to the Convention (including its negotiating history); the mental and physical elements of the crime of genocide; the related acts of incitement, attempt and complicity; and the nature and extent of the obligations of the states bound by the Convention to prevent and punish genocide.

1.34. Finally, **Chapter 8** sets out the FRY's responsibility in public international law for violations of the Genocide Convention. The killing of members of the group, causing serious bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and the imposition of measures to prevent births within the group, were committed by, or on behalf of Serbian-controlled bodies and the FRY, in *statu nascendi* with the intent to destroy significant parts of the population of non-Serbs, primarily Croats, in the various parts of Croatia that the Republic of Serbia and the FRY sought to annex in pursuit of their aspiration to establish a "Greater Serbia". The destruction was perpetrated by killing or physically removing Croats through expulsion and subsequently removing all traces of their presence in the newly-conquered area by destroying churches, cemeteries, museums, and other symbols of religious and cultural heritage. These areas were then integrated into the political, economic and administrative system of the Republic of Serbia and the FRY.¹³

1.35. The genocidal acts were committed according to previously prepared plans, and executed in an organized manner, either by the JNA (and later the VJ), or by paramilitary units under the direction and control

¹² Alternatively, Article 35(2) of the Statute of the Court.

¹³ See UN General Assembly resolution 49/43 ("The situation in the occupied areas of Croatia"), Annexes, Volume 4, Annex 4. The resolution states, *inter alia*, at paragraph 2 that the activities of the FRY "aimed at achieving the integration of the occupied territories of Croatia into the administrative, military, educational, transportation and communication systems of the Federal Republic of Yugoslavia (Serbia and Montenegro) are illegal, null and void, and must cease immediately".

of the leadership of the Republic of Serbia and the FRY. As will be demonstrated in Chapter 8, genocide and the related offences can be attributed to the FRY. The Serbian leadership which controlled the “rump Yugoslavia” and then created the FRY (comprised of the Republics of Serbia and Montenegro) was involved in the genocide through orders to the military and paramilitary units under their control and through the use of state-controlled media to systematically incite genocide.

1.36. The Serbian political and military leadership headed by Slobodan Milošević was personally, ideologically and politically continuous from the beginning of the final phase of the dissolution of the SFRY in spring 1991, until the end of the period under survey in August 1995. The Serbian leadership, whether acting within and in control of the “rump Yugoslavia”, Republic of Serbia, or the FRY, participated in planning, inciting and executing the commission of the crime of genocide. The formal act of self-proclamation of statehood by the FRY in April 1992 does not permit the same political and military leadership to escape responsibility under international law for the acts which it took. The Court can ensure that a state cannot avoid responsibility for its acts by re-inventing itself in a different guise.

SUBMISSIONS

1.37. Croatia’s Submissions flow from the material set forth in the Memorial and represent the legal consequences of the established facts and applicable law. They are set out at the end of this Memorial. There are five main submissions.

First, that the Court should declare that the FRY is responsible for violations of the Genocide Convention, by committing genocide, by complicity in genocide, by attempting to commit genocide, by incitement to commit genocide, and by failing to prevent genocidal acts against Croatian citizens and in particular Croats in attacked or occupied parts of Croatia between 1991 and 1995.

Second, that the Court should declare that the FRY is responsible on a continuing basis for its failure to punish violations of the Genocide Convention, and to require without delay that the FRY shall take steps to punish its citizens or persons under its jurisdiction or control responsible for genocidal acts.

Third, that the Court should order the FRY to provide information as to the whereabouts of citizens of Croatia who are missing as a result of the genocidal acts for which it is responsible, so as to

enable the families of the deceased to dispose with the mortal remains of their relatives.

Fourth, that the Court should order the FRY to return cultural property seized in the course of its genocidal activities.

Fifth, that the Court should declare that the FRY is liable *inter alia* to make reparations for the violations of the Genocide Convention for which it is responsible.

PART ONE:

FACTUAL ELEMENTS

CHAPTER 2

HISTORICAL AND POLITICAL BACKGROUND

INTRODUCTION

2.01 Genocide is not a single act but a series of acts, a programme and a campaign. It occurs in a given geographical and historical context, even if, legally and morally, the genocidal acts themselves can never be excused by reference to historical or any other factors. The historical account in this Chapter is, however, provided in order to assist the Court in understanding the overall context of the conflict in Croatia, as well as the history of the various entities concerned. **Part One** (paras. 2.05-2.35) describes the geography, ethnic composition and political and constitutional background of the SFRY. Of central importance are the constitutional structure and the territorial borders of the SFRY and each of its constituent Republics, including Croatia,¹ as they existed during the period from the adoption of the 1974 SFRY Constitution until the period beginning on 15 May 1991, when the process of dissolution of the SFRY entered its final stage.

2.02 **Part Two** (paras. 2.36-2.116) describes the events leading up to the genocidal acts which took place in Croatia after its declaration of independence in June 1991 and which are the subject of Croatia's Application to the Court. This Part focuses on the period following the death of President Tito of the SFRY in 1980 up until the actions of the Serbian controlled members of the Presidency in seeking to block the appointment of the Croatian Representative, Stjepan Mesić, as President of the Presidency of the SFRY in May 1991. The period witnessed the rise of Serbian nationalism, leading to a situation by 1991 in which Croatia was essentially presented with two options by Serbia: it could remain within a federal Yugoslav state dominated by Serbian interests, alternatively it could become an independent state but within a sharply reduced territory, with Serbia taking over control of large swathes of territory which had lain within the borders of the Republic of Croatia since at least the Second World War. When Croatia's citizens opted overwhelmingly for independence in a national referendum in May 1991, Serbia embarked on a campaign of territorial acquisition with the object of establishing Serbian control in parts of the Republic of Croatia, including in particular Eastern

¹ The other Republics were Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Slovenia.

and Western Slavonia, Banovina, Kordun and Lika and Dalmatia. This campaign was conducted by the Serbian leadership, acting through the instrumentality of the Yugoslav People's Army (JNA) (which it controlled) and paramilitary groups which had either been incorporated into the structures of the JNA or which were under the effective control of the Government of the Socialist Republic of Serbia, acting from Belgrade. The campaign of territorial acquisition and the ethnic cleansing and "Serbianisation" of Croatian territories was accompanied by the genocidal destruction of a significant part of the Croatian populations of Eastern and Western Slavonia, Banovina, Kordun and Lika and Dalmatia. It is the genocidal destruction of a significant part of the Croatian populations in these areas which is the subject of Croatia's Application and this Memorial.

2.03 **Part Three** of this Chapter (paras. 2.117-2.162) deals with events taking place from the end of 1991,² after the JNA, supported by local Serb rebels, had occupied large parts of Croatian territory, through to the winding up of the United Nations Transitional Administration for Eastern Slavonia (UNTAES) in January 1998. It describes the work of the European Community's Conference on Yugoslavia and the involvement of the United Nations in seeking to resolve the crisis in the former SFRY, including the deployment of peace-keeping missions and the establishment of United Nations Protected Areas. It also covers the proclamation of the FR Yugoslavia, and the adoption of the Dayton Peace Agreement. It looks at the way in which the United Nations in particular monitored the human rights situation in the former SFRY during this period.

2.04 In considering the events of 1981 to 1998 (covered in Parts Two and Three of this Chapter) it becomes apparent that they fell within five periods:

- 1) **1981-1987.** The initial period following the death of Tito saw the promotion of a Serbian national programme for the restructuring of the SFRY, based on the idea of a "Greater Serbia". A fervent form of Serbian nationalism, fuelled by the media, helped to mobilize Serbian public opinion in support of a "Greater Serbia". Many prominent figures from Serbian political and social life helped to promote the nationalistic fervour which is documented in this Chapter. In this context, the 1986 "Memorandum" prepared by the Serbian Academy of

² The military campaign from May 1991 to December 1991 in the context of which the genocidal acts in Croatia were carried out is summarised in Chapter 3 which describes in overview the role of the JNA and the paramilitaries, and describes the direct control which the Socialist Republic of Serbia had over the armed forces and paramilitary groups which perpetrated the genocide. The genocidal acts are described in detail in Chapters 4 (Eastern Slavonia) and 5 (other parts of Croatia).

the Sciences and Arts (SANU) was particularly important in fuelling the rise of Serbian nationalism.

- 2) **1987-1990.** This period saw the rise to power of Slobodan Milošević, first through the Serbian League of Communists and then within the Government of the Socialist Republic of Serbia, culminating in his election on 6 December 1989 as President of the Socialist Republic of Serbia. As a politician, Milošević legitimised extreme nationalist ideas and as President of the Republic of Serbia he embedded them as part of the official ideology and practice in the Republic of Serbia. Serbian President Milošević ended the autonomy of the two Serbian autonomous provinces: Vojvodina and Kosovo. He also tried to impose a Serbian model for the restructuring of the SFRY both by constitutional means, using SFRY's existing constitutional machinery and institutions, and also through illegal forms of public pressure and intimidation. The role of hate speech propaganda, directed against other ethnic groups within the SFRY, including the Croats, was essential in this regard.
- 3) **April 1990–May 1991.** Following democratic elections in the Republic of Croatia, representatives of the political party of the Serb rebels in Croatia – the Serbian Democratic Party (SDS) – refused to accept the authority of the newly elected Croatian government and, with the help of the Serbian leaders of the Republic of Serbia and the JNA, began preparations for a rebellion against the Government of the Republic of Croatia. In August 1990 Croatian Serb rebels closed off the region round Knin in southern Croatia. The rebellion gradually spread into other parts of Croatia where Serbs represented the majority or at least a significant proportion of the local population. During this period the Serb paramilitaries were armed by the JNA, and the “SAO Krajina” was “proclaimed”.
- 4) **May 1991-January 1992:** After those members of the Presidency of the SFRY controlled by the Serbian leadership refused to confirm the Croatian representative Stjepan Mesić as President of the SFRY Presidency in May 1991, conflict intensified throughout Croatia. The JNA initially purported to play the role of intermediary, but later it openly took the side of the Serb rebels. A planned and strategic programme of genocide was carried out in the campaign against Croatia as part of the policy of extending the borders of a “Greater Serbia” and establishing areas of Serbian occupation within the territory of the Republic of Croatia. By October 1991, the Presidency of the SFRY was reduced to a group which

consisted only of members from Serbia and Montenegro and Serbian-controlled representatives of Vojvodina and Kosovo. An unconstitutional state of emergency was pronounced by this group on 4 October 1991.

- 5) **January 1992-January 1998:** This period covers: the introduction of United Nations presence in the occupied territories in Croatia; the proclamation of the FRY; the peace negotiations which led to the Dayton Peace Agreement of November 1995 and the Paris Agreement of December 1995. During this period unsuccessful political attempts to resolve the crisis were followed, in 1995, by successful military action undertaken by Croatian forces which led to the withdrawal of FRY sponsored forces from the liberated territory of Croatia. This was followed by the adoption in 1996 of an Agreement on the Normalisation of Relations between Croatia and the FRY and the closure, following the successful completion of its mission, of UNTAES in January 1998, at which point Eastern Slavonia was fully reintegrated into Croatian control.

SECTION ONE

2.05 This part of the Chapter describes the political, constitutional and ethnic background of the SFRY, and in particular that of Croatia, together with its physical geography (A Chronology of Events during the period 1980-2000 is contained in Volume 5 at Appendix 1).

THE FORMATION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA

2.06 The Socialist Federal Republic of Yugoslavia (SFRY) was formally established in 1945.³ Prior to the Second World War, most of the territory which was to form the SFRY had been contained within the Kingdom of Serbs, Croats and Slovenes, which was created in 1918 following the First World War and the break up of the Austro-Hungarian Empire. This kingdom was established as a South Slav state consisting of Croatia, Slovenia and Bosnia and Herzegovina which had all been part of the Hapsburg Empire, together with Serbia, which had declared itself a

³ In November 1945 a communist-dominated constituent assembly abolished the monarchy, proclaimed the Federal People's Republic of Yugoslavia and adopted the country's first Constitution.

Kingdom in 1882 following independence from the Ottoman Empire,⁴ Montenegro, also independent of Turkey after 1878, and Macedonia (from which the Turks had been expelled in 1912) (See Plates 1 and 2).

2.07 The constitution of this new state, which established a highly centralised system of government, was adopted in 1921. Increasingly, the Kingdom came to be regarded as Serb-dominated, particularly in Croatia where there were demands for the introduction of a more federal system. Following the shooting of Croatian deputies, including Stjepan Radić, leader of the Croatian Peasant Party (the principal voice of Croatian interests), in the parliament in 1928, a royal dictatorship under the Serb royal family was established in 1929. The new name of “Yugoslavia” was introduced as part of a unitarist policy which sought to foster greater national feeling. In 1934 King Alexander was assassinated by a member of the Macedonian nationalist organization (VMRO) in action organized by the Croatian Ustasha, a separatist terrorist movement founded by Ante Pavelić and supported by the Hungarian and Italian governments. Democratic government was not restored under the new Regent, Prince Paul. Persistent support for the reinstatement of democracy and for constitutional reform eventually led to the 1939 “Sporazum” (or Agreement) under which an autonomous self-governing Croatia was created covering about a half of the territory of today’s Bosnia and Herzegovina.

2.08 When war broke out in 1939, Yugoslavia declared itself neutral. In March 1941 there was a military coup d’état in Yugoslavia undertaken by Yugoslav Army officers after the signing of the “Trojni Pakt” (Triple Alliance). In April 1941, Hitler invaded Yugoslavia and its territory was partitioned among the Axis powers: Germany, Italy, Hungary and Bulgaria.⁵ The Germans and Italians used Croatian aspirations for independence to set up the “Independent State of Croatia” (or NDH) which included not only most of the territory of present day Republic of Croatia⁶ but also the entire Bosnian territory. Vlatko Maček, leader of the largest Croatian political party, the democratic Croatian Peasant Party (HSS), refused the German offer to take power and the leader of the nationalistic

⁴ Serbia had been an autonomous principality of the Ottoman Empire since 1830. Under the 1878 Treaty of San Stefano following the war with Turkey, both Serbia and Montenegro made territorial gains and the Congress of Berlin in the same year confirmed their *de jure* status as independent states, see Tim Judah “The Serbs, History, Myth & the Destruction of Yugoslavia” Yale Nota Bene 2000, Second Edition, at page 67.

⁵ For a discussion of this period see Christopher Bennett, “Yugoslavia’s Bloody Collapse: Causes, Course and Consequence” Hurst 1995 at pages 42-43.

⁶ The Croatian regions of Istria and much of Dalmatia remained under Italian rule, *ibid.* page 43.

Ustasha movement, Ante Pavelić, was installed by the Germans and Italians. Ustashes implemented Nazi policies and persecuted Serbs, Jews, Roma/Gypsies and anti-fascist Croats.⁷

2.09 Serbia was occupied by Germany and a collaborating government led by General Milan Nedić was established. Their policy followed the ideological principles of Nazism. The Chetniks, led by Draža Mihajlović, wanted to see a restored monarchy ruling over a country dominated by Serbia and collaborated with the Nazi's in the hope of securing this goal.⁸ Chetnik troops were initially organized in Serbia and then in Bosnia and Herzegovina, Montenegro as well as in parts of Croatia, particularly in the area around the town of Knin. The Chetnik movement was based on an extreme form of nationalism which centred on the idea of a "Greater Serbia". In implementation of their nationalist aims they committed atrocities against Moslem and Croat populations in parts of Bosnia and Herzegovina and Croatia.

2.10 The resistance movement in Yugoslavia was the multi-ethnic communist-dominated Partisans, led by Josip Broz Tito who wanted to establish a federal state and institute wide-ranging social reforms. In the early years of the resistance, Croats and Serbs from Croatia constituted the overwhelming majority of the Partisans. By 1942 the Partisans had taken control of a large part of central NDH. At this time, Tito established the Anti-Fascist National Liberation Council of Yugoslavia (AVNOJ), the nucleus of Yugoslavia's future government.⁹ Following Italian capitulation in September 1943, the Partisans captured significant quantities of Italian arms and many more Croats from the coastal regions joined the Partisans. In November 1943, at its second session in Jajce, AVNOJ was constituted as the supreme legislative and executive body of Yugoslavia and the National Liberation Committee of Yugoslavia was established as its supreme executive body. It was decided that Yugoslavia should be reconstructed as a federal Republic with six units. The Royal Government in exile was divested of the right to represent the country. It was decided that a general election or referendum to decide the fate of the monarchy would be held after the war.¹⁰ By 1944, most of Croatia was liberated territory and ZAVNOH, the Regional Anti-Fascist Liberation Council of Croatia which had been founded in 1943, was constituted as the highest representative legislative and executive body in Croatia in May 1944. Tens

⁷ See further Part Two *infra* at para. 2.53.

⁸ See Bennett, note 5 *supra* at page 47. The original Chetniks were those Serbs who rebelled against Ottoman rule in the nineteenth century, see Ivo Goldstein "Croatia, A History" Montreal 1999, at page 145.

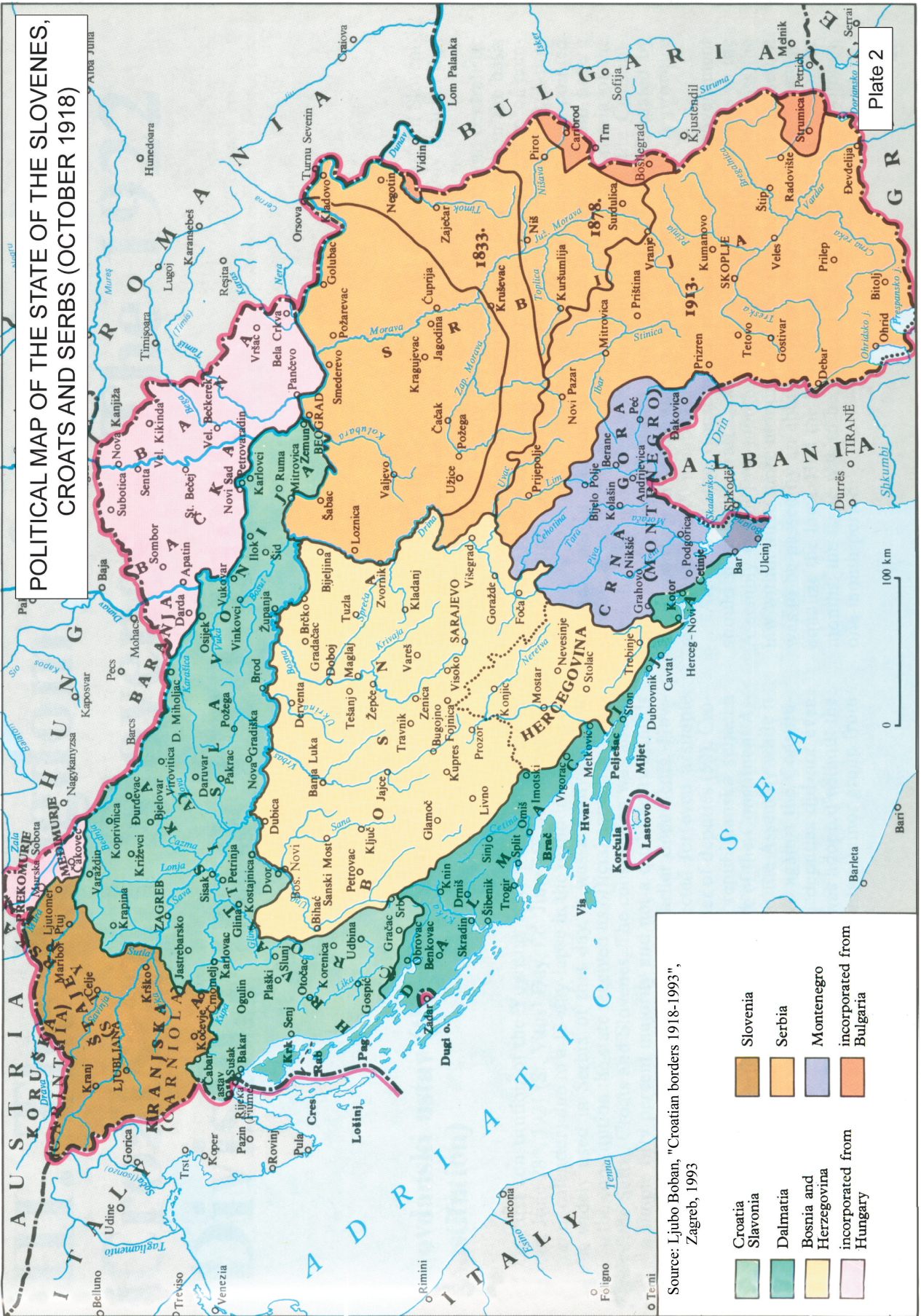
⁹ *Ibid.*, p. 147.

¹⁰ *Ibid.*, pp. 149-150.










POLITICAL MAP BEFORE WW I



**POLITICAL MAP OF THE STATE OF THE SLOVENES,
CROATS AND SERBS (OCTOBER 1918)**



Source: Ljubo Boban, "Croatian borders 1918-1993", Zagreb, 1993

	Croatia		Slovenia
	Slavonia		Serbia
	Dalmatia		Montenegro
	Bosnia and Herzegovina		incorporated from Bulgaria
	incorporated from Hungary		

of thousands of Croats who tried to flee because of their collaboration with the Germans or because they were opposed to communism were returned by British forces and were killed by the Partisans at the end of the war.

2.11 The growing rivalry between Stalin and Tito in the period following the Second World War culminated, in 1948, in the expulsion of Yugoslavia from the Communist bloc. Yugoslavia went on to build a communist system of its own, outside the Soviet sphere of influence. The position of the Republic of Croatia from 1945 until 1990 remained largely unchanged in the sense that it constituted a federal unit with limited sovereignty. On each occasion when there were attempts to re-examine the position of Croatia within the Federation, the communist regime responded with repressive measures. This was particularly so in 1971, when a popular movement subsequently known as the “Croatian Spring” was put down and many of the participants imprisoned. This movement had sought greater decentralization, the transfer of greater power to the Republics and general democratization of Yugoslav society.

THE CONSTITUTIONAL STRUCTURE OF THE SFRY

2.12 Following the proclamation of the Federal People’s Republic of Yugoslavia by a Constituent Assembly in November 1945 a constitution was promulgated on 31 January 1946.¹¹ Under this Constitution, monarchy was replaced by a federation of six Republics. Two areas within Serbia were accorded distinctive constitutional status: the Autonomous Province of Vojvodina and the Autonomous Region of Kosovo-Metohija. This was done because of the large non-Serb populations living in those areas.¹²

2.13 Following Yugoslavia’s expulsion from Cominform in 1948, the country embarked on the Yugoslav road to socialism. This shift was reflected in the 1953 Constitution which recognised the establishment of Workers Councils. A new Constitution was adopted on 7 April 1963 which strengthened self-management and extended it beyond industrial organisations into social services and political administration. The 1963 Constitution also made Kosovo an autonomous province rather than an autonomous region as under the 1946 Constitution. The 1963 Constitution was amended in 1967, 1968 and 1971.

¹¹ The 1946 Constitution was modelled on the 1936 Constitution of the Soviet Union, drawn up by Stalin.

¹² See Bennett, note 5 *supra* at p. 53.

2.14 The importance of the 1974 Constitution was that it made concessions to those who sought greater devolution¹³- the constituent elements of the federation were given a considerable degree of self-rule.¹⁴ Nevertheless, autonomy was limited because of centralised party control in the Republics.

2.15 The 1974 Constitution recognized the right of every nation to self-determination, including the right to secession, national freedom and independence. Article 1 described the SFRY as

“a federal State having the form of a state composed of voluntarily united nations and their Socialist Republics, and of the Socialist Autonomous Provinces of Vojvodina and Kosovo, which are constituent parts of the Republic of Serbia...”.

Article 5 provided that the territory of the SFRY was a single unified whole and consisted of the territories of the Socialist Republics and went on to provide that “the territory of a Republic may not be altered without the consent of that Republic” and that the territory of an Autonomous Province could not be altered without the consent of that Autonomous Province. Article 5 also provided that “boundaries between the Republics may only be altered on the basis of mutual agreement, and if the boundary of an Autonomous Province is involved, also on the basis of the latter’s agreement.”

2.16 Tito was made President for Life under the terms of the 1974 Constitution (Article 333) but after his death Presidential authority vested in a collective Presidency which included representatives of the Republics and Autonomous Provinces. By virtue of Article 321, the SFRY Presidency was to be composed of a member from each Republic and Autonomous Province. Members were to be elected for a term of five years (Article 324). Under Article 327 the Presidency of the SFRY was required to rotate the position of President and Vice-President from among its members for a term of one year, according to a schedule laid down by the Presidency Rules of Procedure.

2.17 Article 282 of the Constitution provided for a Federal Assembly of the SFRY, described as “the supreme organ of power within the framework of federal rights and duties”. The Assembly consisted of the Federal Chamber and the Chamber of Republics and Autonomous Provinces. Under

¹³ These tendencies had culminated in the “Croatian Spring” of the late 1960’s and early 1970’s, see Bennett, note 5 *supra*, at page 74 and Goldstein, note 8 *supra* pages 184-185.

¹⁴ Matters which were reserved the federal level included foreign affairs, defence and essential economic matters.

Article 283 of the Constitution, the SFRY Assembly: decided, *inter alia*, on amendments to the SFRY Constitution and alterations of the boundaries of the SFRY; elected the President of the Republic and proclaimed the election of the SFRY Presidency; elected and relieved of office the President and members of the Federal Executive Council.

2.18 Articles 346 to 368 governed the powers of the Federal Executive Council, described as the executive body of the SFRY Assembly. The Federal Executive Council was responsible *inter alia*, for introducing federal bills, ensuring the execution of policy and ensuring the execution of the country's defence policy. It was composed of members elected in conformity with the principle of equal representation of the Republics and corresponding representation of the Autonomous Provinces (Article 348). The Federal Executive Council was responsible to the Chambers of the SFRY Assembly for its work (Article 359).

2.19 So far as military matters were concerned, the Presidency of the SFRY was stated to be "the supreme body in charge of the administration and command of the Armed Forces of the SFRY in war and peace"(Article 313). Under Article 316, the Presidency could transfer specific affairs concerning the administration and command of the Armed Forces to the Federal Secretary of the National Defence (Ministry of Defence) which would remain responsible to the Presidency. By virtue of Article 328, the President of the SFRY Presidency was in charge of the command of the Armed Forces of the SFRY, in conformity with the Constitution. The President was also to be Chairman of the Council for National Defence.

2.20 Article 245 of the Constitution stipulated equality of all peoples and nationalities; Article 249 provides for a single citizenship for Yugoslavia and for the citizenship of the Socialist Republics as well as equal protection before the law.

2.21 An extensive list of the rights and duties of the Federation was set out in Article 281 of the 1974 Constitution under which the Federation shall *inter alia*: "ensure the independence and territorial integrity of the SFRY and protect its sovereignty in international relations; decide on war and peace (1); regulate the fundamentals of the system of national defence and ensure their implementation...regulate the administration and command of the Armed Forces of the SFRY and exercise supreme command over the Armed Forces; regulate and organize the [JNA], administer it and exercise command over it; regulate the management and use of social resources utilized by the [JNA] and for its needs; regulate citizen's national service...regulate the special rights and duties of military personnel in connection with their service in the Armed Forces...regulate and organize military courts and the office of military prosecutor...(6); regulate general conditions and principles concerning the imposition of

sanctions for criminal offences and economic violations...define criminal offences against humanity and international law... (12); protect constitutionality as established by the present Constitution...”.

2.22 Yugoslav federalism operated under the strict control of the Communist party - almost all institutions of the state were mirrored by similar institutions within the Communist party structure. Thus Marshall Tito was both the Head of State and Commander in Chief of the Army as well as being head of the Communist Party. Following Tito's death in 1980, the state was presided over by a collective Presidency, while command of the Army was vested in the General Staff and the SFRY Ministry of Defence.

THE POLITICAL SYSTEM OF THE SFRY: THE LEAGUE OF COMMUNISTS OF YUGOSLAVIA

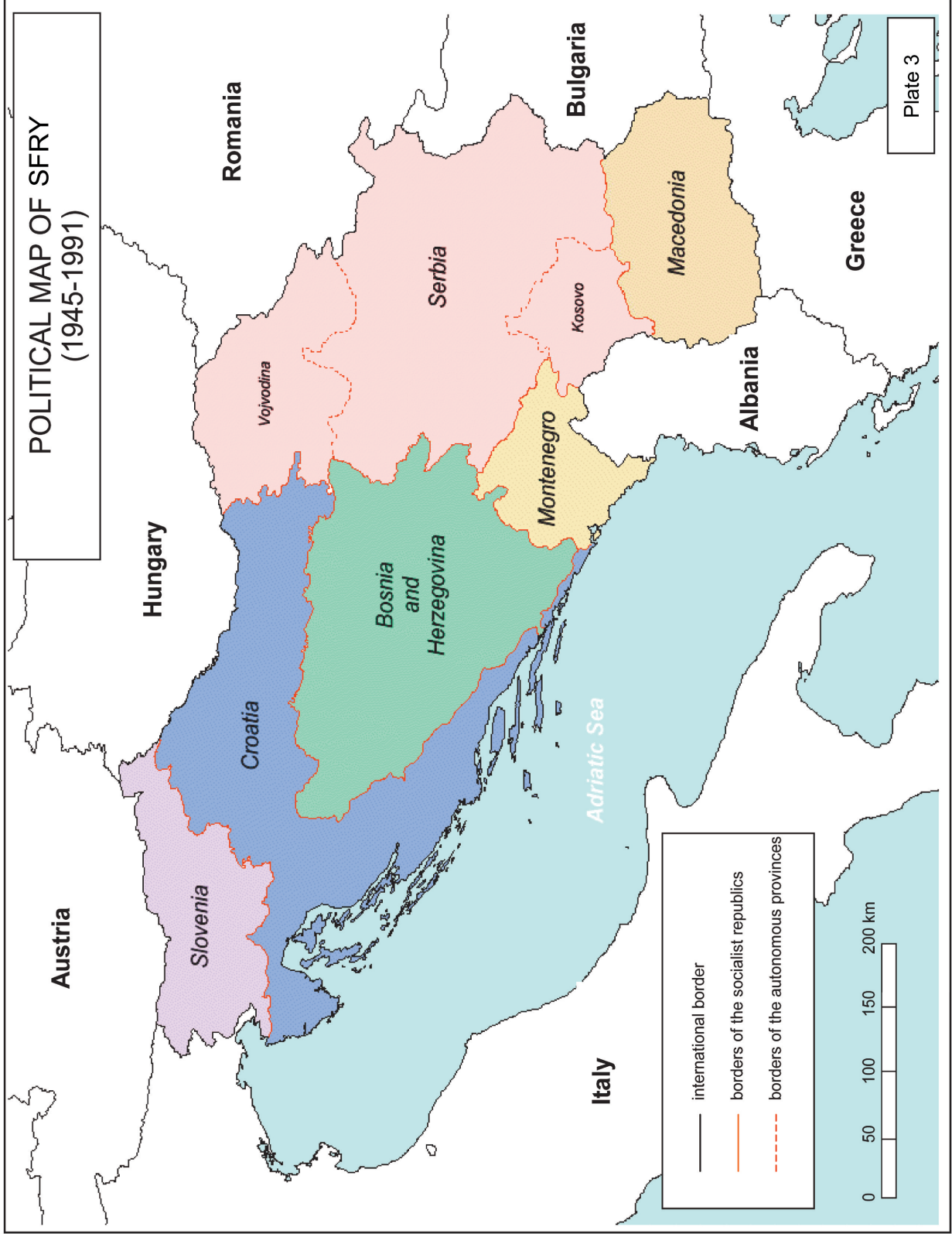
2.23 The Communist Party of Yugoslavia was renamed the League of Communists of Yugoslavia in 1953. The LCY was divided into eight units: representing the six Republics and the two Autonomous Provinces. The introduction to the 1974 Constitution recognised the League of Communists of Yugoslavia as “the prime mover and exponent of political activity aimed at safeguarding and further developing the socialist revolution...” The process of devolution within the SFRY led to a tendency among the eight individual Leagues to pursue their own development strategies.¹⁵

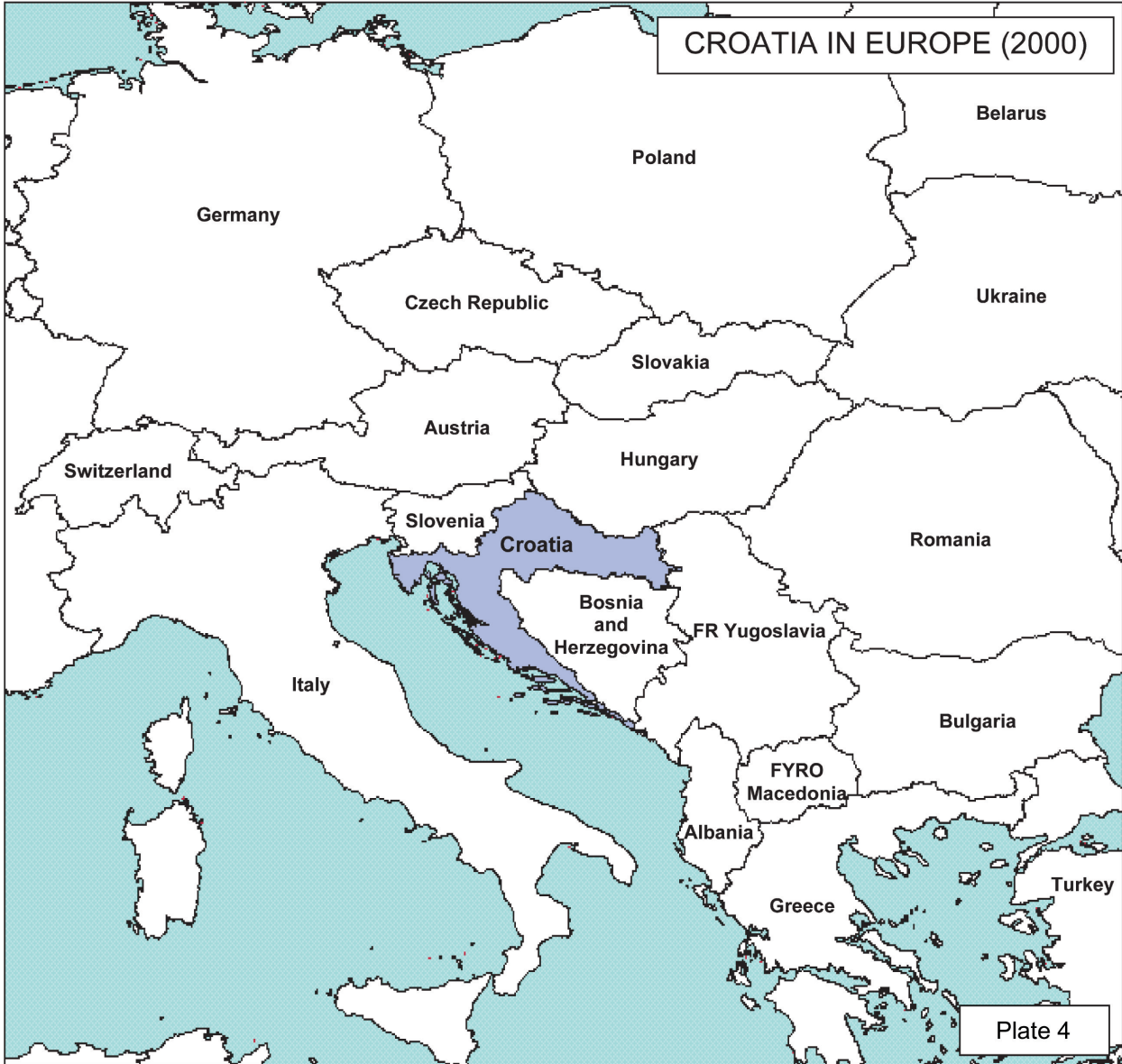
PHYSICAL GEOGRAPHY AND TERRITORIAL BORDERS OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA (SFRY) AND CROATIA

2.24 The SFRY was bordered by Italy, Austria, Hungary, Romania, Bulgaria, Greece and Albania, as shown on the Map at Plate 3. As shown, the territory of the SFRY included the 6 Republics of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, as well as the two Autonomous Provinces of Vojvodina and Kosovo. As also shown, within the SFRY, the Republic of Croatia was bordered by Slovenia, Serbia, Bosnia and Herzegovina and Montenegro.

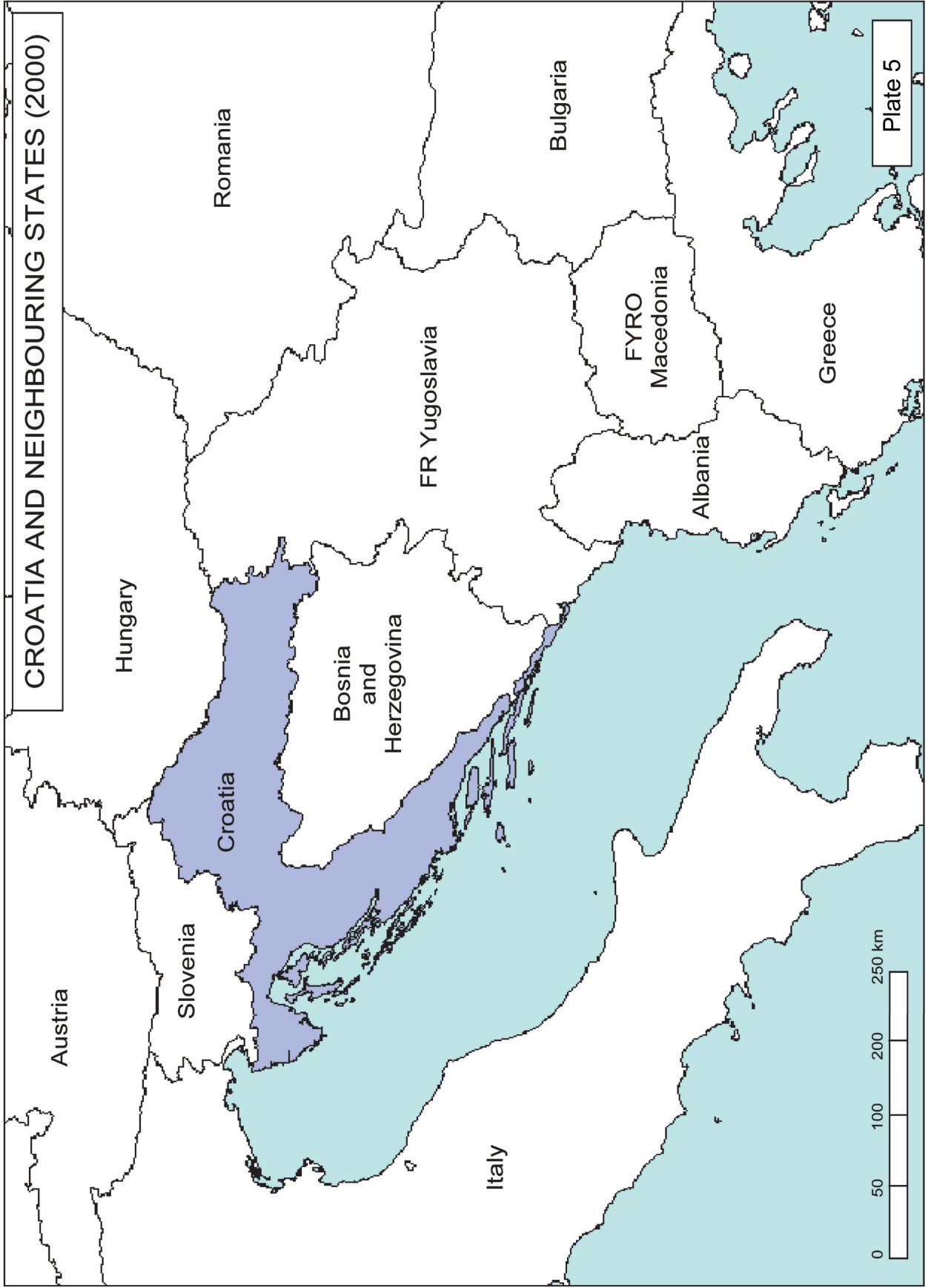
2.25 The location of Croatia within Europe is shown in Plates 4 and 5. The Republic of Croatia covers a territory of 56,538 square kilometres. As shown on Plate 6, the Republic of Croatia included various geographical

¹⁵ See Bennett at p. 75.

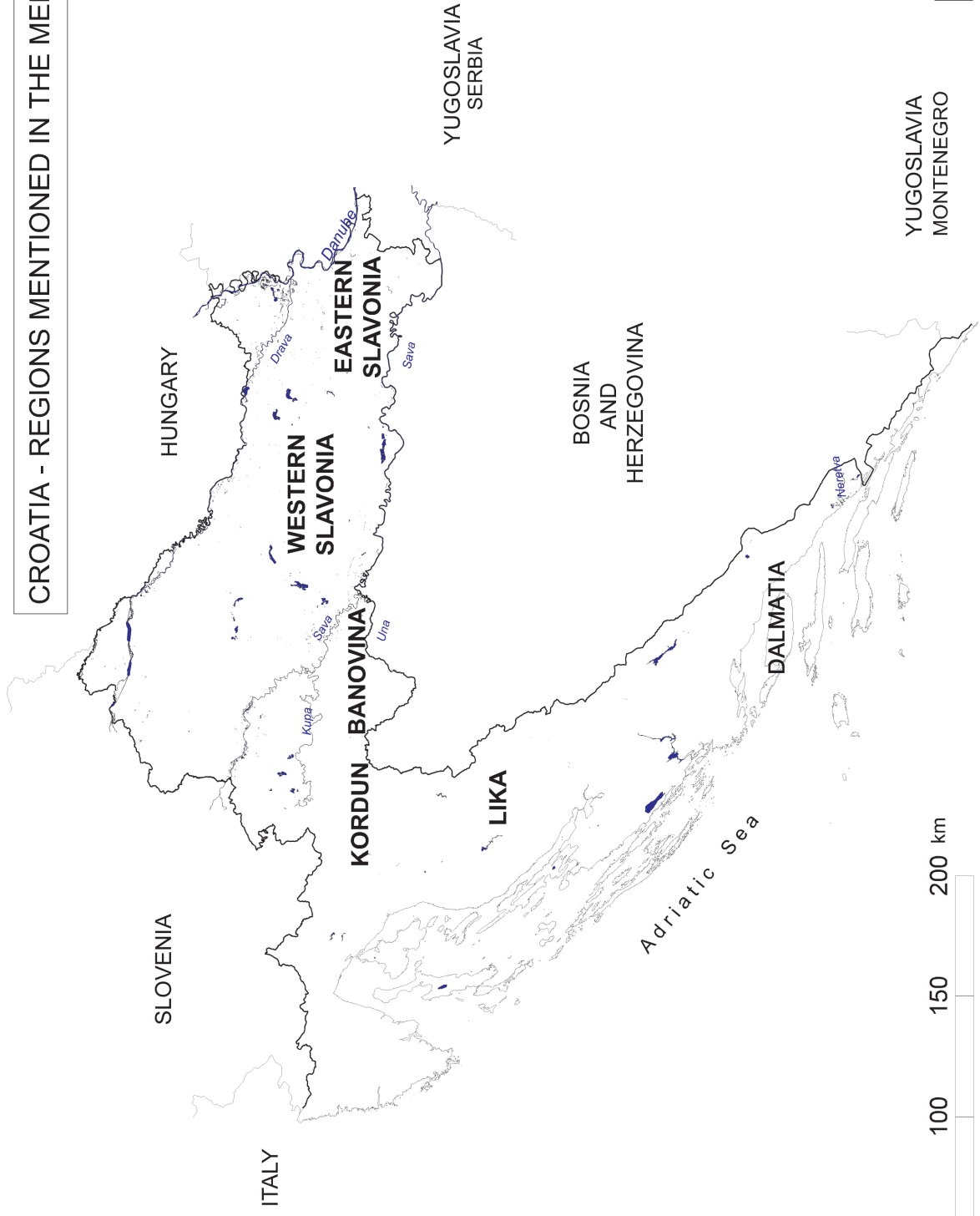




CROATIA AND NEIGHBOURING STATES (2000)



CROATIA - REGIONS MENTIONED IN THE MEMORIAL



regions. In this Memorial, particular reference will be made to Eastern and Western Slavonia, Banovina, Kordun, Lika, and Dalmatia because it is in these regions that the genocidal acts which are the subject of this Application were committed.

ETHNIC COMPOSITION OF THE SFRY, INCLUDING CROATIA
(AND IN PARTICULAR THOSE AREAS WHICH WERE TO BE TARGETED
AS PART OF "GREATER SERBIA")

2.26 According to the 1991 census the population of the SFRY was 23,528,230 (a rise from 22,427,585 in the 1981 census).¹⁶ According to the figures for 1981, the percentage of Croats was 19.8% and of Serbs 36.3% (19.7% and 36.2% respectively in 1991), whilst Moslems made up 8.9%, Albanians 7.7%, Slovenes 7.8%, Macedonians 6%, Montenegrins 2.6% and Yugoslavs 5.4%, with others forming 5.5% of the population.

2.27 In 1991 the population of Croatia was 4,784,000 people.¹⁷ The great majority, approximately 78% as at 1991,¹⁸ of the population are ethnic Croats. National minorities made up about 15.9% of the Croatian population, including 12.2% Serbs.¹⁹ Within different parts of Croatia the proportions varied markedly, so that, in some regions, in certain villages and towns Serbs were a majority or a significant minority. It is in many of these areas that genocidal activities were targeted, as described in Chapters 4 and 5 of the Memorial.

2.28 In the Serbian Republic as a whole (including Vojvodina and Kosovo), Serbs made up some 66.4% of the population as at 1981, while Croats made up 1.6% (65.8% and 1.1% respectively in 1991).²⁰

2.29 Approximately one-fifth of the Croats of the SFRY lived outside Croatia as at 1991, most of them in Bosnia and Herzegovina.²¹

¹⁶ See table in "Balkan Tragedy" Susan L Woodward, Brookings Institution Washington DC 1995 at p. 32 and sources referred to therein.

¹⁷ "Croatia Between War and Independence" University of Zagreb, Edited by Božo Čović, Zagreb November 1991 at p. 48.

¹⁸ Woodward, note 16 *supra*, see table at p. 33.

¹⁹ *Ibid.*, at p. 33.

²⁰ *Ibid.*, see table at p. 34.

²¹ Čović, note 17 *supra*, at p. 48.

CONSTITUTIONAL STRUCTURE OF THE REPUBLIC OF CROATIA

2.30 The Constitution of the Republic of Croatia, adopted on 22 December 1990, defines the Republic of Croatia as an integral and indivisible democratic and social state. The Constitution's primary principle is that of national sovereignty according to which power derives from the people and belongs to the people as a community of free and equal citizens. The people exercise power through the election of representatives and through direct decision-making.

2.31 By the Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia adopted on 25 June 1991,²² the Republic of Croatia was proclaimed as a sovereign and independent state and initiated proceedings for dissociation from the other Republics and from the SFRY. The Decision also states that the Republic of Croatia will initiate proceedings for seeking international recognition.

2.32 Article IV of the Decision provides that only those laws shall have force on the territory of the Republic of Croatia which have been passed by the Parliament (Sabor) of the Republic of Croatia and, until the termination of dissociation, also those federal regulations which have not been repealed. It also states that the Republic of Croatia assumes all the rights and obligations that were transferred to the bodies of the SFRY by the Constitution of the Republic of Croatia and by the Constitution of the SFRY. Article III of the Declaration on the Proclamation of the Sovereign and Independent Republic of Croatia of the same date provides that the Republic of Croatia in its capacity as legal successor of the former SFRY guarantees to all states and international organisations that it will fully and conscientiously exercise all rights and perform all obligations relating to the Republic of Croatia.²³

2.33 Within the SFRY, Croatia, like the other constituent Republics, had its own parliament, known as the Sabor. Following free elections held in 1990, the Parliament of the Republic of Croatia became a multiparty governing body. The Croatian Parliament consists of the House of Representatives and the House of Županijas (counties). The former is a legislative body which passes laws, adopts the state budget, decides on changes in the Constitution, war and peace and alterations in the boundaries of the Republic. An Electoral Law was adopted in 1992 providing for the election of a House of Representatives on the basis of a mixed plurality-proportional system. The House of Županijas is concerned with regional interests, citizens of the counties elect three representatives by secret ballot

²² See Annexes, vol 4, annex 9.

²³ See Annexes, vol 4, annex 8.

and the president may nominate five members to the House. The House of Županijas has the right to propose all bills which are decided upon by the House of Representatives and can also discuss them and has the right of suspensive veto on laws passed in the house of Representatives-this veto can be overruled by a majority of the House of Representatives.

2.34 With effect from 8 October 1991, Croatia informed the United Nations Secretary General that it considered itself bound by state succession to the treaties to which the SFRY had been a party.²⁴

2.35 The President of the Republic of Croatia is the Head of state. The Republic's first President was Franjo Tuđman who was elected with 56% of the votes in the first round of the elections held on 2 August 1992. The second and current President, since 7 February 2000, is Stjepan Mesić.

SECTION TWO

PHASE ONE: THE RISE OF GREATER-SERBIAN NATIONALISM 1981-87

2.36 The death in 1980 of the President of the SFRY, Josip Broz Tito, marked a turning point which was to lead to the conflict in the Balkans and genocide in Croatia. Many had thought that it was primarily due to President Tito that the inter-ethnic conflict of the Second World War had been brought to an end, and replaced by a period of greater mutual trust between the different ethnic groups in the SFRY. With the benefit of hindsight, President Tito's solutions appear to have contributed indirectly to the conflict which erupted in 1991. One party dictatorship suppressed to a large extent different interests, including national ones, which made things potentially even more volatile. The conditions for conflict were also sparked by the economic failures of the SFRY, which became marked in the long lasting economic crisis of the 1980's. The result was a disillusioned and frustrated population, and fertile ground for demagogic activities. President Tito's pragmatic solutions merely delayed the re-emergence of underlying issues.

2.37 President Tito was plainly aware of the inter-ethnic problems which lay just below the surface of the SFRY. They were suppressed by restrictions on freedom of expression and the press, and the dominance of the one party system. No successor to President Tito was able to maintain

²⁴ "Decision on the Sovereignty and Independence of the Republic of Croatia", 8 October 1991, Annexes, vol 4, annex 10.

the same degree of ethnic and political stability. After his death the supreme state power of the SFRY was taken over by the collective Presidency of the SFRY, consisting of eight politicians representing each of the six Republics and the two Autonomous Provinces.²⁵ The Presidency had existed under President Tito but during his lifetime, remained subject to his political dominance.

The 1974 Constitution

2.38 To understand the role of the Presidency of the SFRY one needs to look back to various developments in the life of the SFRY in the 1960's and early 1970's, including experiments with market economy and economic liberalism and the opening of borders to allow for the free movement of persons.²⁶ These developments indicated that the centralized machinery of the state and the centrally planned economy were not functioning as efficiently or as effectively as was intended. The 1965 economic reforms included certain elements towards a market economy and was accompanied by a degree of liberalization and democratisation of political life. In parallel there were moves towards decentralization, providing greater powers to the constituent Republics of the SFRY. The decentralizing urge gave rise to the 1971 amendments to the 1963 Constitution of the SFRY, and also the adoption of a new Constitution in 1974. The 1974 Constitution had a number of significant features. Most notably the sovereignty of the six constituent Republics and the two Autonomous Provinces was enhanced, and there was established a "federal-confederal" relationship between the six Republics. This meant that the position of the Republics was strengthened in relation to the federal structure of the SFRY. At the heart of the changes was the composition of the Presidency of the SFRY according to the principle of equal representation of the Republics and Autonomous Provinces. The SFRY Republics, in contrast to the two Autonomous Provinces, were defined as states but both Republics and Autonomous Provinces represented constituent elements of the Federation.

2.39 With the adoption of the 1974 Constitution, the Socialist Republic of Serbia began to question the basic principles governing the structure of the SFRY, in particular the authority of the Autonomous Provinces of Kosovo and the Vojvodina, which were independent of the Serbian Republic. After President Tito's death in 1980 Serbia claimed that Kosovo and Vojvodina had, in practise, become states in their own right.²⁷ Serbia

²⁵ See Part One, at para. 2.16.

²⁶ See Goldstein, note 8 *supra*, at pp. 170-3.

²⁷ See the SANU Memorandum, discussed below at paras. 2.43 *et seq.*

objected to this because of the loss of control over the Provinces (and their supportive votes in the Presidency) that this entailed so far as it was concerned.

Growth of Tension in Kosovo

2.40 Kosovo thus played a key role early on after the death of President Tito. In the spring of 1981 unrest broke out and, following police suppression of student demonstrations at the University of Priština, there were Albanian nationalist demonstrations throughout Kosovo. According to official figures, twelve people died during the unrest and 150 were injured but because the area was closed to foreign journalists, some have suggested that the actual figures may have been considerably higher.²⁸ The Federal authorities of the SFRY initiated a total blockade of communication and transport. These events led to even sharper divisions between the Serb and Albanian communities in Kosovo: the Kosovan Serbs petitioned Belgrade to draw attention to their plight²⁹ and the Kosovo Albanians sought greater autonomy, including a Republic of Kosovo within the SFRY. The use of force in Kosovo was considered justifiable by many within the Serb population. It reflected also the beginning of a process in which the Serb populations in Kosovo and in other Republics of the SFRY – in particular Croatia and Bosnia and Herzegovina – sought to ensure that their political domination and the protection of Serbian ethnic interests should be achieved by any means, including the use of force.

Serbia Seeks Amendments to the Constitution

2.41 After the 1981 riots in Kosovo, the view that the position of the Socialist Republic of Serbia within the SFRY was unsatisfactory achieved popular support in Serbia. Subsequently, views promoting Serb national interests began to be expressed more often, and more openly. In November 1984 the Central Committee of the League of Communists of Serbia (“CK SKS”) demanded greater Serbian unity and a more favorable position for Serbia and for Serbs within the SFRY Federation. A so-called “programme for reintegration” was elaborated by the League of Communists of Serbia with the object of centralising the federal structure in Belgrade. With hindsight, it is apparent that these developments marked the first step towards the disintegration of the SFRY. Although the basic premise of the

²⁸ “Yugoslavia’s Bloody Collapse: causes, course and consequences” Christopher Bennett, Hurst 1995, at p. 89.

²⁹ “Serbia under Milošević: politics in the 1990’s” Robert Thomas, Hurst 1999, p. 35.

1974 Constitution was not yet being directly challenged, the growth of Serbian nationalist demands were well in evidence by 1985.

2.42 Serbia thus sought to engage the other Republics of the SFRY in discussions about the maintenance of federal structures, under the slogan of “Saving socialism-communism and the Yugoslav state”. The five other Republics and the two Autonomous Provinces relied on their constitutional rights under the 1974 Constitution to maintain the *status quo* of a decentralized system, and declined to accept Serbia’s initiative. At this time – in 1985 – the line up of the Republics of the SFRY and the Autonomous Provinces was 7 to 1 against Serbia’s position of promoting greater centralization. Serbia found itself to be increasingly isolated, and for the first time since the establishment of the SFRY, without support in its efforts to limit the sovereignty of the Republics.

The 1986 SANU Memorandum and the Rise of Serb Nationalism

2.43 In respect of the genocidal acts perpetrated by Serbs against Croats, a catalytic event was the appearance of a Memorandum in 1986 by the Serbian Academy of Sciences and Arts (SANU).³⁰ The Memorandum, which became known as the SANU Memorandum, was published in draft by the Belgrade daily newspaper *Večernje Novosti*.³¹ The SANU Memorandum was a manifesto: it set forth a Serb nationalist re-interpretation of the recent history of the SFRY.³² It carried considerable weight because of the authority of its authors.³³ The Memorandum reflected the basic precepts of the growing Serbian nationalist movement, which was premised on the belief that the Socialist Republic of Serbia and the Serbs in the Republics of the SFRY outside Serbia were in a uniquely unfavorable situation within the SFRY. The appearance of the SANU Memorandum is one of the key developments which gave rise to the circumstances in which a genocide could be perpetrated in Croatia.

³⁰ The Memorandum was drafted by a committee of 23 SANU members, see Thomas, *ibid.* at p. 41.

³¹ “*Večernje Novosti*”, (Belgrade), 24 and 25 September 1986, see Judah note 4 *supra* at p. 158. The Memorandum was subsequently published in a limited edition and then republished several times, see also Branimir Anzulović “Heavenly Serbia, from Myth to Genocide” Hurst 1999 at p. 204, note 48.

³² SANU Memorandum, Annexes, vol 4, annex 14. See also Bennett, note 5 *supra* at pp. 81-82.

³³ The authors included Dušan Kanazir, President of SANU and vice-President Antonije Isaković. Serbian novelist and later first President of the FRY, Dobrica Ćosić has been described as the driving force behind the Memorandum even though he did not participate in its drafting, see Anzulović note 31 *supra* at p. 116.

2.44 The 1986 SANU Memorandum gave authority to the grievances of Serbs for the wrongs which had allegedly been perpetrated upon them in the SFRY system. By emphasising the right of the Serbian people “to establish their full national and cultural integrity regardless of which republic or autonomous province they live in”,³⁴ the Memorandum contributed to the rebirth of the idea of a “Greater Serbia” which would encompass those parts of the territory in Croatia and Bosnia and Herzegovina within which significant Serbian ethnic populations lived. From the vantage point of the subsequent conflicts, the aspiration for Serbian integrity reflected in the Memorandum can be interpreted as an aspiration for the establishment of a Serbian state, embracing all those territories within the SFRY which had Serb populations.

2.45 The Memorandum set forth a detailed analysis of the “crisis” in the SFRY, accusing the late President Tito of having deliberately weakened Serbia, and outlining the ways in which Serbia was said to have been discriminated against, economically, culturally and politically. The SANU Memorandum repeatedly criticised the constitutional position of Serbia: the fact that two parts of its territory, Kosovo and Vojvodina, had been afforded the status of Autonomous Provinces which had led to them behaving as if they were “Federal units” rather than constituent parts of Serbia. Serbia, it was claimed was now “the only nation in Yugoslavia without its own state”.³⁵ The Memorandum referred to the idea of a form of nationalism having been imposed “from above”, and it alluded to the fact that whilst other Yugoslav nations developed their national identities with official support the same privilege was not extended to the Serbian people. The Memorandum claimed that President Tito’s communist regime was, from its inception in the 1920’s, both anti-Serbian and anti-Yugoslav,³⁶ and it claimed that the previously unified Serbian nation was dispersed among the several Republics.³⁷ The Memorandum found that this strategy made it impossible for there to be established a Serbian state within the SFRY, thereby ensuring the political and economic domination of Slovenia and Croatia over Serbia.

2.46 The Memorandum went on to charge many in the SFRY of being “anti-Serbian” because they had supported or tolerated the Albanian protests in Kosovo in 1980 and 1981 and described events in Kosovo

³⁴ See SANU Memorandum, note 32 *supra*, at p. 91.

³⁵ *Ibid.*, p. 81.

³⁶ See for example pp. 76-77, *ibid.* where it is argued that the constitutional system set up under Tito and Kardelj allowed Croatia and Slovenia to maintain political and economic domination.

³⁷ The SANU Memorandum focussed on the “great number of Serbs living outside Serbia..more than the total populations of some other nations” see p. 87, *ibid.*

during this period as “physical, political, legal and cultural genocide of the Serbian population”.³⁸ The Memorandum also claimed that in Croatia a covert programme was underway for the assimilation of the Serb population, the ultimate purpose being the “Croatization” of ethnic Serbs.³⁹ One of the main arguments in support of the Memorandum’s principal thesis was based on a common conception of the special position of the Serbs as compared to other peoples.⁴⁰ The Serbian people in the SFRY constituted a primary entity, uniquely endowed with rights which bypassed the political and geographical divisions enshrined in the 1974 Constitution: “The integrity of the Serbian people and their culture throughout Yugoslavia has emerged as the crucial issue of their survival and development”⁴¹; “[The Serbian nation] .. is now the only nation in Yugoslavia without its own state”.⁴² This approach had been initiated in the late 1960s and elaborated by one of the most prominent Serbian intellectuals, the writer Dobrica Ćosić who was to become Yugoslav President in the 1990s, and derived from mystification, the cult of sacrifice and an obsession with history.⁴³

2.47 To redress the problem facing the Serb people, the SANU Memorandum proposed a review of the SFRY Constitution under which the Autonomous Provinces would become integral parts of the Republic of Serbia. Other defects would also have to be addressed, namely the fact that under the 1974 Constitution the SFRY had become “a very loose state community”. Thus the Memorandum called for the strengthening of the federal state of the SFRY.⁴⁴ This option, generally referred to in the SFRY as the “Unitarian option”, was unlikely to be acceptable to other Republics in the SFRY, fearing the domination of Serbian interests in a unitarian state.

2.48 The ideas adopted by the Memorandum drew on other views expressed by the Serbian intellectual community. In the 1980’s prominent Serbian historians spoke out, and later, other commentators including Serbian scientists, writers and journalists lent their support to the idea that

³⁸ *Ibid.*, at p. 82 *et seq.*

³⁹ *Ibid.*, at pp. 84-87.

⁴⁰ D. Ćosić, *Stvarno i moguće* (“The Real and the Possible), Ljubljana-Zagreb, 1988, at p. 190: “There are few European nations tortured by history as the Serbian nation was tortured.”

⁴¹ SANU Memorandum, note 32 *supra* at p. 85.

⁴² *Ibid.*, p. 81.

⁴³ D. Ćosić, note 40 *supra* at p. 188: “The Serbian nation is known in the present time for its great sacrifices and sufferings for freedom, which makes the essence of the idea of the Serbian collective spirituality and moral”.

⁴⁴ SANU Memorandum, note 32 *supra* at pp. 92-93.

the Serbs had been “tricked”, “stinted”, “killed”, “persecuted even after being subjected to genocide”,⁴⁵ and that Serbs were the eternal winners in war but the losers in peacetime.⁴⁶ Theories about a conspiracy against the Serbs began to emerge.⁴⁷ And in the growing Serbian propaganda campaign old communist dogmas and beliefs – such as equality among peoples and ethnic groups, brotherhood, unity and solidarity – were abandoned in favour of Serbian nationalist slogans and references to the Serbian Orthodox creed, to Kosovo, and to Serbian historical myths.⁴⁸

2.49 The Memorandum was criticised in the Communist Party controlled media between the autumn of 1986 and the spring of 1987, both within the Republic of Serbia and in the other Republics of the SFRY, and there were calls for the SANU leadership to resign.⁴⁹ The Memorandum was also condemned by some of Belgrade’s leading communists including the President of the Republic of Serbia, Ivan Stambolić.⁵⁰ Nevertheless, certain militant groups of Serbs in Kosovo and the rest of Serbia found support in the message contained in the SANU Memorandum.⁵¹ Some commentators have suggested that, but for Slobodan Milošević, the Memorandum might have languished. However, he was able to harness and develop further the nationalist sentiments of which the Memorandum was an expression.⁵²

2.50 Despite criticism from certain quarters as described above, the 1986 SANU Memorandum was followed by a fervent nationalist campaign in the Serbian media. Articles appeared and speeches were given which promoted Serbian nationalism, demonized the Albanians, the Muslims and the Croats and invoked their genocidal tendencies, and validated the Chetnik movement. Following the publication of the Memorandum, nationalist goals were expressed more freely and openly.

⁴⁵ See “Hate Speech: The Stimulation of Serbian Discontent and Eventual Incitement to Commit Genocide”, Appendices, vol 5, appendix 3 at paras. 30-32.

⁴⁶ See for example Hate Speech note 45 *supra*, Appendices, vol 5, appendix 3 at para. 19. See also Woodward, note 16 *supra* at pp. 75 and 92.

⁴⁷ See for example Hate Speech *ibid.* at paras. 36-37.

⁴⁸ See Bennett, note 5 *supra* at p. 81 *et seq.*

⁴⁹ See Thomas, note 29 *supra* at p. 41.

⁵⁰ Stambolić stated that the chauvinist message of the Memorandum was “diametrically opposed to the interests of Serbs throughout Yugoslavia.”, Norman Cigar “Genocide in Bosnia, the policy of ethnic cleansing” Texas A&M University Press 1995, p. 24.

⁵¹ *Ibid.*, p. 42.

⁵² See Norman Cigar “Genocide in Bosnia” note 50 *supra* at p. 32.

*The Demonization of the Croats*⁵³

2.51 With the growing Serbian propaganda efforts and the emergence of extreme Serbian nationalism also came the promotion by Serb interests of the idea that the Croats had always had – and now maintained – a genocidal intent against the Serbs. In 1986 this theory was articulated by Vasilije Krestić, a Professor of History at the University of Belgrade and member of the Serbian Academy of Sciences and Arts in a newspaper article entitled “On the genesis of the genocide against the Serbs in the Independent State of Croatia (NDH)”.⁵⁴ In that article, he stated that: “it is certain that the genesis of the genocidal acts committed against the Serbs in Croatia is to be found in the 16th and 17th century, when the Serbs started to settle in Croatian countries.”

2.52 Professor Krestić refers to other examples of Croatian-Serbian conflicts which took place in the second half of the 19th century and beginning of the 20th century in Croatia, and consistently blames the Croats for the conflicts, accusing them also of wishing to destroy the Serbs. Subsequently, other Serbian historians and journalists, influenced by the ideas of Professor Krestić and his colleagues, as well as the ideas set out in the 1986 SANU Memorandum, gave vent to the theory that the Croatian people were collectively to blame for the large number of Serbs that were killed by the Ustashas during the period 1941-45 and were accordingly, by their very nature, genocidal in character and adhering to a continuing genocidal intent against the Serbs.

2.53 From the early 1980's, a growing number of Serbian newspapers ran inflammatory articles about the Ustasha concentration camp in Jasenovac, where terrible crimes had been committed against Serbs, Jews, Roma/Gypsies, Croats and others during the Second World War.⁵⁵ These articles, authored by Serb historians and commentators such as Milan Bulajić and Velimir Terzić exaggerated the numbers of those murdered in the camp, claimed that 700,000 Serbs had been killed.⁵⁶ These figures were subsequently increased to one million, and then several million, until finally it was said that the precise number of Serbs killed “could not be

⁵³ See generally Hate Speech, note 45 *supra*, Appendices, vol 5, appendix 3, in particular paras. 30-38.

⁵⁴ “*Književne novine*” 716, Belgrade, 15 September 1986.

⁵⁵ See Hate Speech, note 45 *supra*, Appendices, vol 5, appendix 3 at paras. 29-31.

⁵⁶ See also interview with Terzić in *Intervju* (Belgrade) August 5 1983, 9; and see Bulatović “Koncentracioni logor Jasenovac” 1990, 413 cited in “Heavenly Serbia” note 31 *supra* at p. 201.

determined”.⁵⁷ These claims did not accord with serious studies into the number of victims murdered in the camp which had been carried out in the 1980’s. These studies had taken place against a background of longstanding uncertainty about the exact number of victims.⁵⁸ In 1946 it had been claimed that 46,000 people had died in Jasenovac. In the following decades the estimated number of victims increased and official figures gave the number as between 600,000 and 700,000. An investigation into the matter in the 1960’s found 59,000 names but the results were not made public.⁵⁹ Studies carried out in the 1980’s using demographic and historic analysis showed that the number of victims was probably between 83,000 and 100,000. This approximate figure was reached in two separate investigations, one carried out by a Croatian demographer, Žerjavić⁶⁰ and the other by a Serbian demographer, Kočović.⁶¹

The Validation of the Chetnik Movement

2.54 Alongside the propaganda campaign for the strengthening of the Federal state and the demonization of the Croats, there emerged also a belated effort to validate the Chetnik Movement. Until the 1980’s this had been a taboo subject. The intention of Serb nationalists was to reinterpret the generally negative attitude of both communist historiography⁶² and Western European historical analysis towards the Chetniks, who had been Britain’s allies when the Second World War had broken out but who had subsequently collaborated with the Italians and the Germans, and committed atrocities against Moslems, Croats and anti-Fascist Serbs.

2.55 In public debate in Serbia, the Chetnik movement was glorified, and their crimes ignored.⁶³ This was intended to convince the Serbian public that crimes committed in the name of “national aims” were justifiable. The

⁵⁷ M. Bulajić, *Ustaški zločini genocida* (Ustashes’ Crimes of Genocide); V. Terzić, *Slom Kraljevine Jugoslavije 1941* (“The Break-up of the Kingdom of Yugoslavia in 1941”) I-II, Beograd 1982; See also R. Bulatović, *Koncentracioni logor Jasenovac s posebnim obzirom na Donju Gradinu* (“Concentration Camp Jasenovac, with special regard to Donja Gradina”), Sarajevo, 1990.

⁵⁸ See generally Anzulović, note 31 *supra* at pp. 103-104.

⁵⁹ See Goldstein, note 8 *supra* pp. 200-201.

⁶⁰ V. Žerjavić, *Gubici stanovništva Jugoslavije u Drugom svjetskom ratu* “The Losses of the Yugoslav Population in World War Two”, Zagreb 1989; “Obsessions and Megalomania about Jasenovac and Bleiburg”, Zagreb 1992, p. 43 ff.

⁶¹ B. Kočović, *Žrtve Drugog svetskog rata u Jugoslaviji*, “Victims of World War Two in Yugoslavia”, London 1985.

⁶² See for example J. Tomašević “The Chetniks: War and Revolution in Yugoslavia 1941-1945, Stanford CA 1975.

⁶³ See Terzić, note [46] *supra*.

books of Veselin Đuretić (including “*Saveznici i jugoslovenska ratna drama*” (“Allies and the Yugoslav War Drama”)), and a novel by Vuk Drašković (“*Nož*” (“The Knife”)) a distinguished writer and later, politician and former leader of an important Serbian party – Srpski Pokret Obnove – sought to resurrect the reputation of the Chetniks.⁶⁴

Historic Revisionism and Serb Propaganda

2.56 The period 1985-1990 was characterized by these and other efforts at promoting Serb nationalism. These efforts escalated after 1990, often reaching absurd levels. By the beginning of 1991 Serbian propaganda was relentlessly seeking to demonstrate the historic enmity of the Croats for the Serbs. In April 1991 a Member of the Serbian Parliament – Milan Paroški – made a well-publicised and widely reported speech in the village of Jagodnjak in Baranja (north-eastern Croatia). He declared that anyone who claimed the land as theirs “is a usurper, and you have the right to kill him like a dog”.⁶⁵ Baranja was occupied by Serbian forces in August 1991, within six months of that speech, and remained under Serbian control until 1996.⁶⁶

2.57 These and other examples of historical revisionism might only have been interesting and peculiar cultural phenomenon for observers to note. However, subsequent events, particularly after Slobodan Milošević seized power in 1987, revealed the contribution which they made to the genocidal acts which followed. The demonization of the Croats as harbouring genocidal intentions against the Serbs, coupled with the promotion of the idea of the Serbs as victims, played a significant role in preparing the ground for the policy of ethnic cleansing and other acts of genocide.⁶⁷

2.58 Throughout Serbia – but in particular in Belgrade – hate speech was tolerated, and became an acceptable, even desirable, form of public communication.⁶⁸ Many prominent personalities from Serbian political and cultural life participated in this hysteria in the period 1986-1991. Hate speech was one of the crucial elements which incited some Serbs to commit

⁶⁴ See generally Anzulović “Heavenly Serbia”, note 31 *supra*, chapter 5.

⁶⁵ “Vjesnik”, (Zagreb), 23 April 1991. See Video tape transcript clip 3, Appendices, vol 5, appendix 2.

⁶⁶ In relation to UNTAES see below at paras. 2.155-158.

⁶⁷ See Hate Speech note 45 *supra*, Appendices, vol 5, Appendix 3 in particular paras. 35-37.

⁶⁸ See Bennett note 5 *supra* at p. 97 *et seq.* See also “Hate speech”, note 45 *supra*, Appendices, vol 5, appendix 3 particularly paras. 17-22 in relation to the role played by Serbian newspapers.

genocide in Croatia in 1991 and in Bosnia and Herzegovina in the following years.⁶⁹ Hate speech became an important factor in the preparations for Serbian territorial expansion, undertaken by Serbia, Montenegro, the JNA and a part of the Serb population of Croatia and Bosnia and Herzegovina in the period 1991-93. The ideas described above were repeated, and they had profound effects: they convinced the listeners not only that they were true, but also that every action taken on the basis of “an eye for an eye” was now justified and that the domination of one ethnic group over another could be a legitimate and desirable goal. Revisionist history encouraged the Serbs to see themselves as superior to other ethnic groups within the SFRY, and therefore entitled to greater rights than others. According to such history the Serbs had contributed the most towards the creation of the SFRY, and the SFRY had treated them unjustly in return. The Serbs had liberated all the other Yugoslav peoples, who returned the favour with exploitation, genocide and the destruction of Serbia. The desire for revenge focused in particular on the events of 1941, “for which no one has ever been held to account”. In this context the Serbian people began to show “justified anger”, first towards the Albanians in Kosovo, then towards the Croats, and finally towards the Bosnian Moslems.

2.59 Despite the nationalist rhetoric which tended to portray Serbs as victims in the SFRY, Serbs were significantly over-represented in Federal administrative organs in proportion to their representation in the population of the SFRY. In 1991 for example, the total number of people working for the Federal Ministry for Foreign Affairs and diplomatic consular representation was 2,238, of whom 1,210 or 54.07% were Serbs, while 127 or 5.6% were Croats.⁷⁰ This was at a time when Serbs represented approximately 36% of the population of the SFRY and Croats, 19-20%. The figures also show that other non-Serbian nations were very poorly represented in Federal organs of the SFRY.

PHASE TWO: SLOBODAN MILOŠEVIĆ’S RISE TO POWER

2.60 Against this background, and contributing to it, in 1987 Slobodan Milošević moved to centre stage in Serbian politics. He had been a bank manager and member of the Communist Party during his career. As a young man, he was effective in building up support because, it was said, he provided what “people wanted to hear”.⁷¹ He was also effective in

⁶⁹ See generally Hate Speech *ibid* Appendices, vol 5, appendix 3 and by way of example paras. 47 and 50.

⁷⁰ See Table 8 in “Croatia in Yugoslavia 1918-1991” contained in “Greater Serbia from Ideology to Aggression” Croatian Information Centre, Zagreb, 1993.

⁷¹ For an account of Milošević’s rise to power see Bennett note 5 *supra*, pp. 96-101.

exercising control of the media.⁷² In the spring of 1987 he was elected President of the Central Committee of the Serbian communist party making him, in effect, the leading figure in Serbian politics. Within a few months, by the autumn of 1987, he had “purged” the party’s Central Committee and the Local Committee of Belgrade of liberal spirits and had begun to rule with the “firm hand” with which he was later to become associated.⁷³ During this time, he provided overt support to the Serbs against the Albanians in Kosovo. Indeed, on 24 April 1987 on a visit to Kosovo he gave a famous (and inflammatory) speech addressing the local Serbs at which he repeated the slogan that “Nobody is allowed to beat this people”.⁷⁴ The speech was widely viewed as a signal that under his leadership Serbian interests would prevail – whether in Kosovo or elsewhere in the SFRY. The speech and the slogan were widely broadcast in the Serbian media, and as a result a majority of the Serb populations – in Serbia and in the other Republics – identified him as the defender of their interests in Serbia and the SFRY. Milošević’s aim at this point was to head a mass nationalist movement and build a political base from which he could dominate Serbian politics.⁷⁵

The End of Regional Autonomy

2.61 Serbian President Milošević carried out a campaign of agitation aimed at promoting Serbian nationalism. In the summer of 1988, supported by militant groups of Serbs from Kosovo, he organized mass rallies in the larger towns of Serbia, at which his followers threw yogurt at those local officials who, in the name of autonomy, were opposed to Milošević’s centralising tendencies (this was the so-called “Yogurt Revolution”).⁷⁶ In the following months, there were widespread resignations of local officials in the Autonomous Provinces of Kosovo and Vojvodina (and later in the Republic of Montenegro). These resignations led to the replacement of government officials in Serbia, Vojvodina and Kosovo by supporters of President Milošević, resulting in the loss of political autonomy in the two

⁷² “The Yugoslav Drama” Mihajlo Crnobrnja (former SFRY representative to the European Community), I B Tauris Publishers London New York 1994 at p. 118. Crnobrnja points out that even while Communist party boss in Belgrade Milošević effectively took control of the main Serbian newspapers and television.

⁷³ *Ibid.*, p. 96.

⁷⁴ See Thomas, note 29 *supra* at p. 44.

⁷⁵ *Ibid.*, pp. 44-45.

⁷⁶ See Bennett p. 99 and see Slobodan Milošević, “Godine raspleta”, 1989, 5th edition, p. 261. See also Silber and Little “The Death of Yugoslavia”, Penguin, BBC Books, 1995 at pp. 60-63.

Provinces.⁷⁷ In Montenegro, a pro-Serbian leadership – supportive of President Milošević – was established in January 1989.⁷⁸ In March 1989 a Serbian Constitutional Act abolished, in contravention of the Federal Constitution of the SFRY, the autonomy of Kosovo and Vojvodina, centralising power within the Socialist Republic of Serbia. In the ensuing demonstrations in Kosovo, according to official figures 24 Albanians were killed, while unofficial figures set the figure far higher.⁷⁹ With these changes in Kosovo, Vojvodina and Montenegro, Serbia came to control 4 votes in the Presidency of the SFRY (out of 8). This development can be seen as marking the beginning of the constitutional crisis in the SFRY.

2.62 President Milošević made it clear that he would be willing to go further in promoting Serbian interests, that he was equally interested in matters outside Serbia,⁸⁰ and that it would not be long before he began to exert Serbian pressure on the leaderships of the SFRY and the other Republics. A 1988 statement provided coded anticipation of future events:

“The solution for the problem in Yugoslavia would be provided by the policy to which the majority of the people in this country has committed itself, both institutionally and non-institutionally, statutorily and non-statutorily, on the streets and at homes, both along populist and elitist lines, with and without arguments, in any case, in a way that makes it clear that it is a case of politics for Yugoslavia, in which the people will live in a single state, on an equal basis, with greater affluence and a richer culture”.⁸¹

2.63 A year later, on 28 June 1989, at the celebration of the 600th anniversary of the Gazimestan Battle in Kosovo, President Milošević gave a speech about the lessons of the battle in Kosovo, and how they could be applied to “contemporary battles fought by the Serbs”. For the first time Serbian President Milošević stated expressly that the use of force would not be ruled out to protect Serbian interests.⁸² He also stated that, six centuries after the battle:

⁷⁷ See Bennett, note 5 *supra* pp. 99-100.

⁷⁸ *Ibid.*, p. 99.

⁷⁹ See Bennett, p. 100.

⁸⁰ See Marcus Tanner “Croatia, A Nation Forged in War” Yale University Press 1997, pp. 217-220.

⁸¹ S. Milošević, *Godine raspleta*, note 76 *supra*.

⁸² See “The Serbs History, Myth and the Destruction of Yugoslavia” Tim Judah, Yale Nota Bene 2000, at p. 164.

“we are facing new battles. Not armed battles, though this too may be the case. We cannot win them without determination and valour.”⁸³

This statement by Milošević was interpreted by observers in Croatia and Bosnia and Herzegovina as a declaration that force would be used to impose Serb domination within the SFRY.

2.64 During 1990, against the background of the dissolution of the USSR, multiparty elections were held throughout the SFRY. Many parties, particularly in the most economically developed Republics, proposed a loose confederation for the SFRY to replace the Federal structure of the 1974 Constitution. It would have permitted the Republics to choose their own form of government, including multiparty democracy rather than communism.⁸⁴ These proposals were seen as a means of protecting the interests of the individual Republics – and the rights of ethnic groups – against the centralizing and Serb-dominating policies of President Milošević. New Governments were elected in Croatia and Slovenia, committed to the maintenance of the sovereign rights of the Republics and a looser, less-centralised federal structure.

2.65 In response to these developments Serbian President Milošević asserted that a confederal structure would call into question the existing borders between the Republics. Other figures in the Serb leadership also rejected the idea of a confederation.⁸⁵ Expressing support for the rightful claims of the Serbian ethnic minority in Croatia and in Bosnia and Herzegovina, Milošević announced that if the SFRY was to be organized other than in accordance with the Serbian scheme to which he was committed – a strong, centralized state – he and his followers would take steps to give effect to a Greater Serbia. President Milošević said:

“... we hold that each nation has the equal right to decide freely about its destiny. Such a right can be constrained solely by the same, equal right of other nations. As far as the Serb people are concerned, it wants to live in one State. Hence, division into several States which would separate the Serb people and force it to live in different sovereign States is, from our point of view, unacceptable, that is – let me be clear – out of the question. The

⁸³ See Video tape transcript Appendices, vol 5, appendix 2, Clip 2.

⁸⁴ See Bennett note 5 *supra* at p. 109.

⁸⁵ Borisav Jović in “Last Days of the SFRY (Excerpts from a Diary)” Appendices, vol 5, appendix 4.3, notes on 1 January 1991 that “For us a state must be unitary or federal. A confederation is not a state and as a nation we refuse to consider that... This means in practice that we contest the Republics’ right to secede, because that right does not belong to them, but rather to the nations.”

Serbian nation will live in one State and every nation wanting to live with the Serbian people in the same State on an equal basis is welcome. For us, confederation is not a State. [...] [A]s far as the Serbian nation is concerned, a solution according to which it would be separated into several States, cannot be discussed.”⁸⁶

The implication of the speech was clear: the Serbs would continue to live in the SFRY, or they would live in a new Yugoslav state which would encompass the large parts of Croatia and Bosnia and Herzegovina in which they were a majority – or significant minority – of the population.

2.66 The decline of communism throughout Europe gave rise to the search for new ideologies for Serbian communists, in particular nationalism. Hatred towards others was accompanied by a “blood and soil” ideology (“Serbia is where Serbian graves can be found” was an oft-repeated expression). At Serb nationalist rallies in 1989, those in the crowd, in particular individuals wearing traditional Chetnik uniforms, shouted “We want arms!” Wishing to break the constitutionally guaranteed autonomy of Kosovo and Vojvodina, Milošević claimed that “Serbia will be a State, or otherwise it will not exist at all”.

Intensification of the Propaganda Campaign against other Yugoslav Republics

2.67 After the November 1990 election campaign in Serbia and Montenegro, Serbian propaganda intensified against the other Republics of the SFRY. The first to be affected was Slovenia, which in the 1980’s had adopted the most liberal economic and social policies of the SFRY. Public opinion in Slovenia was increasingly sensitive to the growing populist campaign emanating from Serbia, and opposed to the policies of Serbia under President Milošević. As a result Serbia put pressure on Slovenia, boycotting its products and accusing it of having “separatist” designs and “seeking the collapse of Yugoslavia”. Serbia also brought pressure to bear on Croatia. The Serbian media described the development of multi-party system in other Republics as a “reawakening of retrograde ideas”. Serbian politicians and the media continually claimed that these developments reflected the “re-establishment of the Ustasha movement”.

2.68 In November 1989, Serbia exerted pressure outside its borders for the first time. Pro-Serbian demonstrators from Kosovo (by arrangement with the Serbian authorities) called for a “rally of truth” in Ljubljana in Slovenia on 1 December. The stated intention was to inform the Slovenian

⁸⁶ BBC Summary of World Broadcasts, 17 January 1991, Annexes, vol 4, annex 30

public about the “true” happenings in Kosovo; the real intention was to remind the Slovenian Government of the consequences of its pursuing an independent line. The demonstrators also announced that they would stop off in Zagreb. This was the first attempt to export a Serb nationalist ideology to areas which were not majority Serb.

The 14th Congress of the League of Communists of Yugoslavia (LCY)

2.69 In January 1990 the 14th Congress of the League of Communists of Yugoslavia was held in Belgrade.⁸⁷ The Congress marked the moment at which the rupture of the SFRY became a real possibility, and was widely recognised as such.⁸⁸ The Congress was charged “with the task of finding a solution for the deepening social crisis” – namely the differences between the Republics – of which some (Slovenia, Croatia) sought greater independence, whereas others (Serbia) sought to centralize power within the federal structures. Since all decisions of the League were to be voted by consensus of the Republican delegations, it was apparent that Serbian President Milošević could not impose his conception of centralization and Serbian domination on the other member Republics of the SFRY. The Slovenian and Croatian communists had already made preparations for democratic elections, and were increasingly committed to greater political and economic sovereignty for the individual Republics. After four days of fruitless discussion, the Slovenian delegation left the 14th Congress, and the Croatian delegates declined to accept the proposal of the Serbian and Montenegrin delegations for the Congress to continue. The Congress collapsed.

2.70 Following the Congress, positions among the Serb leadership appeared to harden. Borisav Jović notes that, following a meeting of the SFRY Presidency on 13 February 1990, Serbian President Milošević said to him “There is going to be war by God!”⁸⁹

2.71 In the autumn of 1990, Serbian President Milošević began to make other plans to maintain Serbian control over the SFRY and the Republics. Power in the SFRY could not be assured by Serbia through control of the constitutional structures. The Presidency of the SFRY had no power, and

⁸⁷ A Congress would normally be held every few years in order to frame party policy, this Congress was called by Milošević as an extraordinary meeting.

⁸⁸ Milošević intended to use the Congress to impose his model of a unified, disciplined party which did not tolerate dissent (the Serbian model) and defeat those such as Kučan who wanted more local autonomy, see further Bennett note 5 *supra* at p. 110.

⁸⁹ Jović, note 85 *supra*, vol 5, appendix 4.3, note of 13 February 1990; Chapter 3, para. 3.3.

the policies of the Republics were increasingly being made within the Republics themselves. The possibility of the use of all kinds of pressure – including military force – in the interests of the goal of a “Greater Serbia” was actively explored. The Serbian leadership became progressively closer to the leadership of the JNA.⁹⁰ Since Serbian and Montenegrin officers were dominant in commanding positions in the JNA, they were easy to win over, while the officers from other ethnic groups had to be either forced to obedience or removed from positions of authority.⁹¹

The Relativisation of the Borders between Republics by Serbia

2.72 As the disputes between the Republics became more intense, significant differences emerged as to the location of territorial borders. As described above, the territorial borders of the Republics had not been changed since 1945, save for minor adjustments. Moreover their maintenance was expressly provided for by the 1974 Constitution of the SFRY.⁹² Two opposing views emerged. For Serbia, the only internationally recognised borders were the outer borders of the SFRY. From a Serbian perspective all borders of the individual Republics, were merely “administrative” in character and could be modified.⁹³ According to this view, which was contrary to the 1974 Constitution, these borders did not express the sovereign limits of the Republics, since only the SFRY was sovereign. It followed that the insistence by some of the Republics – Slovenia and Croatia – that they were sovereign within their existing borders was unacceptable for Serbia.⁹⁴ This view was maintained in Serbia even after the dissolution of the SFRY and the formation of the FR Yugoslavia. Professor Ratko Marković, a Professor at Belgrade Law School and Serbian politician, in a paper published in 1994 describes the borders between the federal units as not having the status of state borders and commented that

⁹⁰ Chapter 3, para. 3.3 *et seq.*

⁹¹ Chapter 3, paras. 3.15-3.16.

⁹² See Part One *infra* at para. 2.15.

⁹³ See “Ethnic Composition of the Population of Serbia and Montenegro and the Serbs in SFR of Yugoslavia”, University of Belgrade, Belgrade 1993 at p. 17, describing the Serbs as “internees of the administrative interior boundaries between the Yugoslav federal units” and criticising the European Community’s aspirations to recognize “the administrative boundaries between Yugoslav federal states as the untouchable state borders.”

⁹⁴ See the Introduction to a 1991 book on the issue published in Belgrade by Miodrag Zečević, Bogdan Lekić, “Državne granice i unutrašnja teritorijalna podela Jugoslavije”(International Borders and Internal Territorial Division of Yugoslavia) Građevinska knjiga Beograd 1991 which refers to an attempt by some Republics to declare their administrative-territorial borders to be international borders.

the federal units within the federation are not foreign states *vis-à-vis* each other and that internal borders were not unchangeable.⁹⁵

2.73 Serbia considered that no Republic could determine the fate of peoples who wanted to stay in the SFRY. If individual Republics (Slovenia and Croatia were the most likely) opted for “secession” – the proclamation of autonomy or independence – the borders of the “secessionist” Republics would be determined by the rest of the SFRY.⁹⁶ In the process of determining the borders, the principle of the self-determination of those people who did not want to leave the SFRY – in particular the Serbs – should be paramount and would mean in practice that these peoples would decide on the borders for all the others. Serbian nationalists went so far as to claim that, by entering the SFRY, the right of the people to self-determination was extinguished, and the only legitimate option that existed was to remain in the SFRY.

2.74 Some Serbian politicians advocated the view that Serbia alone was entitled to decide on the borders of the SFRY and the Republics, since the creation of Yugoslavia after World War One was due exclusively to the role played by Serbia. According to this view, the states which had been part of the Austria-Hungarian Empire in 1918 were actually Serbian territorial gains. A leading proponent of this view was Professor Kosta Čavoški, a prominent intellectual and Professor of the Law School in Belgrade. In April 1991 he wrote:

“The Serbian people, of course, cannot accept [these borders], because if they did so, it would annul all the results of the liberation wars fought between 1912 and 1918. Therefore, the Serbian people must show in advance its determination not to accept the existing inter-republican borders if Yugoslavia is split up.”⁹⁷

This view was endorsed by the leadership of Serbia.

2.75 Further claims were made on the basis of the alleged culpability of others, especially the Croats, towards the Serbian people. This was also addressed by Professor Čavoški:

⁹⁵ See “What are Yugoslavia’s Internal Borders?” published in “The Creation and Changes of the Internal Borders of Yugoslavia” published by the Ministry of Information of the Republic of Serbia, Beoprint 1994, at p. 9.

⁹⁶ See for example Speech of Borisav Jović speaking to political activists of Vranje, BBC Summary of World Broadcasts, January 18 1991, Annexes, vol 4, annex 31.

⁹⁷ Srpski nacionalni program (“The Serbian National Program”), Special edition “IPM” Srbija, April 1991, p. 23.

“Since in the former Independent State of Croatia (NDH) genocide was committed against the Serbian people, according to my opinion, the situation before 1941, in other words the census from 1931, must be taken as the basis for delimitation of the borders on the territories in Croatia and Bosnia and Herzegovina. This has to be taken into consideration, since no people, not even the Croatian people, should benefit from the crimes that it had committed against other peoples”.⁹⁸

2.76 Pro-Milošević politicians in Serbia began to propose the revision of borders on grounds of ethnicity. They stressed the fact that no less than 24% of the Serbs in the SFRY lived outside Serbian borders. Whilst correct, that fact omitted to mention that the same situation applied, for example, to Croats, 22% of whom lived in Republics of the SFRY other than Croatia. Numerous Serbian politicians and intellectuals proposed the location of the new border between Croatia and Serbia. In the first half of 1991 the most prominent advocate of the new border was Vojislav Šešelj, a Serbian politician and President of the Serbian Radical Party who subsequently became a member of the Parliament of the Republic of Serbia and Deputy Prime Minister of the Republic of Serbia (and who was re-elected to Parliament in the elections of December 2000⁹⁹).

In his public appearances he proposed as a new border, the “line” running through Virovitica-Karlovac-Ogulin-Karlobag¹⁰⁰ He said:

“The western border is the Karlobag-Ogulin-Karlovac-Virovitica line. The rest of them are already internationally recognised. There can be no changes unless a new war takes place. These are Karlobag, Ogulin, Karlovac and Virovitica. The blue areas are populated by a Serbian majority. You can see that Croats don’t have much territory left. We don’t have any paramilitary formations in this narrow Serbia. We only enlist volunteers and send them to Serbian Slavonia, Baranja, western Sirmium and Krajina. They are directed to the command of local Serbian commanders. There they follow combat orders.

⁹⁸ *Ibid.*, p. 20.

⁹⁹ Šešelj was promoted in August 1990 to the rank of Chetnik commander or vojvoda by Momčilo Đujić, wartime commander of the Chetniks in the Knin region. The two later fell out in 1993. Đujić is wanted in Croatia for numerous crimes committed against Croats, Thomas p. 141.

¹⁰⁰ See Tanner note 80 *supra* at pp. 245-246.

The army troops protect Serbian people there, so that our units do not have to take action.”¹⁰¹ (See Plate 7).

He also said:

“The Serbian Radical Party and the Serbian Chetnik Movement believe that within the borders of the free and independent Serbian State should be included, in addition to the existing territories, the smaller Serbian federal [territories] as well as Serbian Macedonia, Serbian Montenegro, Serbian Herzegovina, the town of Dubrovnik, Serbian Dalmatia, Serbian Lika, Banija and Kordun, Serbian Slavonia and the Baranja. We believe that the western borders of the Serbian State extend along the line Karlobag-Ogulin-Karlovac-Virovitica. We do not know what lies behind this line.”¹⁰²

This statement – supported by Serbian President Milošević¹⁰³ – confirmed the extent to which the territorial definition of “Greater Serbia” (set out at Plate 7/bis) had, by 1991, achieved general political acceptance.

The “Amputation” of Croatia

2.77 The 1986 SANU Memorandum, the statement of Šešelj and the practice of President Milošević coalesced around an idea that came to be referred to as the “amputation of Croatia”.¹⁰⁴ According to this idea, some 50 % of the existing territory of the Croatian Republic would be cut away from the existing boundaries of the Republic of Croatia and included within an extended Serbian state.¹⁰⁵ For its Serbian proponents the idea had the double benefit of allowing the international community to form the impression that Croatia would be able to express its right to self-determination, whilst at the same time ensuring that Serbia would secure significant territorial gains and bring Serbs within Croatia into the territory

¹⁰¹ See Video Tape Transcript, clip 4, Appendices, vol 5, Appendix 2, See vol 3, Plate 2.6; vol 3 Plates 10.3 and 10.4.

¹⁰² Srpski nacionalni program, *supra* note 97, p. 34.

¹⁰³ See Silber and Little note 76 *supra* at p. 161.

¹⁰⁴ Borisav Jović reports Serbian President Milošević as having referred to the “amputation” of Croatia in a conversation with him on 28 June 1990, note 85 *supra*, Appendices, vol 5, appendix 4.3.

¹⁰⁵ See Annexes, vol 3, Plate 2.6.



7A ŠEŠELJ DURING A PRESS CONFERENCE ON THE PREMISES OF SERBIAN RADICAL PARTY INDICATING THE FUTURE BORDERS OF “GREATER SERBIA”, 1 JULY 1991



7B MAP OF “GREATER SERBIA” USED BY ŠEŠELJ, 1 JULY 1991

GREATER SERBIA ACCORDING TO
VOJISLAV ŠEŠELJ



- borders of Yugoslavia and Yugoslav Republics
- western border of Greater Serbia
- towns at the western border of Greater Serbia

SOURCE: STATEMENT OF VOJISLAV ŠEŠELJ AT THE PRESS CONFERENCE OF THE SERBIAN RADICAL PARTY, WHICH WAS BROADCAST ON SERBIAN TELEVISION ON 1 JULY 1991

of Serbia.¹⁰⁶ The core of the “amputation” consisted of those parts of Croatia in which Serbs were the majority or a significant minority of the population (but the “amputation” was also to include larger towns falling within “Greater Serbia” – such as Dubrovnik, Split, Zadar, Šibenik and Osijek – in which there were relatively few Serbs). The original core of 11 districts with a Serbian ethnic majority gradually grew due to the further addition of smaller Serbian enclaves, but also of those areas, where the Serbs had never been the majority population. A map published on 1st March 1991 in the Serbian weekly paper *Nin* provided the clearest possible indication of the Serbian intent to extend its territorial limits into the Republic of Croatia.¹⁰⁷ (See Plate 8).

2.78 The “Greater Serbian” territorial plans were also elaborated and outlined by others with public responsibilities in Serbia, speaking on behalf of scientific institutions or political parties. In March 1991 Jovan Ilić, Professor at the Belgrade University and President of the Serbian Geographic Society, in an interview for the Belgrade daily paper, openly pleaded for new borders should the SFRY collapse:

“The basic principle of the boundary determination should be an ethnic principle, because the main argument between the Croats and the Serbs has a religious and national background.”¹⁰⁸

In an interview given in October 1991 Professor Ilić also pleaded for a mass migration of the various populations:

“If the border determination is done at the level of towns, and not at district level, then it can be done well. There is a sustained territory in the area around the town of Zadar and Biograd na moru, along the Kninska Krajina, from Lika, Banija and Kordun to the river of Sava, where the Serbs are the majority population; in some towns there are 90 Serbs out of 100 inhabitants... It is possible to put in place certain migrations of the population, only if this would guarantee stability and peace in Yugoslavia. It would be an additional effort, which would secure peace even for the next generations.”¹⁰⁹

¹⁰⁶ Borisav Jović reports a conversation with Dobrica Ćosić on 11 September 1990 in which the latter refers to the drawing up of an ethnic map of Serb territory which included Bosnia and Herzegovina and Croatia in order to show the areas where the Serbs were in the majority, note 85 *supra*, Appendices, vol 5, appendix 4.3.

¹⁰⁷ See also above at para. 2.76.

¹⁰⁸ “Nin”, (Belgrade), 8 March 1991.

¹⁰⁹ Intervju, 11 October 1991, Annexes, vol 4, annex 18.

Inherent in this statement is the assumption that peoples of different ethnicities could not live together. The clear implication was that non-Serb populations should not remain in these areas. They could leave voluntarily, they could be forced out, or they could be destroyed. During 1991 this view became dominant in Serbian policy and public opinion and was endorsed by the political authorities at the highest levels. At a meeting of the SFRY Presidency and the “Supreme Command Staff” on 15 March 1991, Borisav Jović, at that time Serbian representative and President of the SFRY Presidency, is reported by former President Mesić to have said:

“The Serbs have the right to live in Yugoslavia, and if someone wants to secede, then the Serbs have the right to live in a State regardless of [what] it is called. You in Croatia will have to understand this.”¹¹⁰

2.79 Mihajlo Marković, a prominent public figure, member of the Serbian Academy of Sciences and Arts, one of the authors of the 1986 Memorandum, and Vice-President of the Socialist Party of Serbia, addressed the problem of the new borders in an interview with *Politika* (a pro-government newspaper) on 30 August 1991. Seemingly, Marković was ready to accept Croatian independence:

“Those nations, who want to leave, will do so, and those who prefer to stay, will stay in Yugoslavia.”

But at the same time he set the territorial conditions:

“Yugoslavia must determine its new borders... That new border must follow the line of the border determination between the Serbian and the Croatian people. The JNA must take control of the new border”.¹¹¹

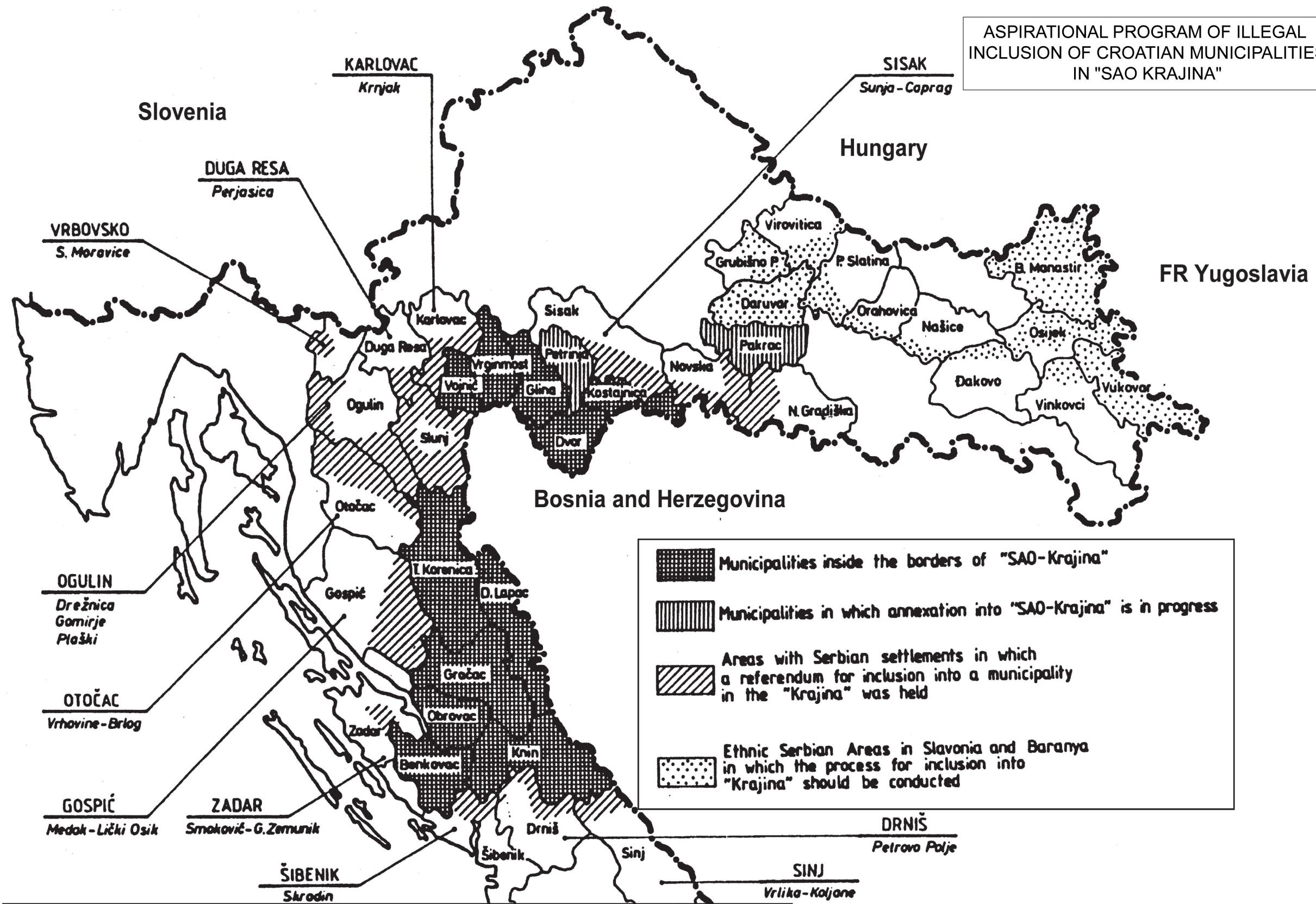
At the time Marković was Serbian President Milošević’s most important political adviser. It is notable that at precisely the time that the JNA had embarked on its genocidal campaign in Croatia – summer 1991 – he was treating the Army as though it was the “Serbian Army”, subject to control by the Government of the Republic of Serbia, under instructions of President Milošević.

2.80 In contrast to the Serbian ideas about the transformation of borders and territory, the other Republics, primarily Croatia and Slovenia, argued for the retention of the existing borders, which had been in place unchanged

¹¹⁰ Stjepan Mesić, “Kako je srušena Jugoslavija” (“How Yugoslavia was Brought Down”), Mislav Press Zagreb 1994, at p. 26, Appendices, vol 5, appendix 4.2.

¹¹¹ *Politika*, 30 and 31 August 1991, Annexes, vol 4, annex 16.

ASPIRATIONAL PROGRAM OF ILLEGAL INCLUSION OF CROATIAN MUNICIPALITIES IN "SAO KRAJINA"



SOURCE: Redrawn from original in "NIN" weekly, Belgrade, 1 March 1991

since World War Two and in most cases before that,¹¹² and for their international recognition. The legal basis for this view was the 1974 Constitution according to which the Republics were defined as states and not administrative units,¹¹³ with guaranteed territorial and border integrity.¹¹⁴ The Constitutions of each of the Republics contained similar provisions. This opinion, which was first formulated by Croatia and Slovenia, was later accepted by Macedonia and Bosnia and Herzegovina, and for a short period of time even by the Montenegrin leadership. It is to be noted that this view was confirmed later in 1991 by the Arbitration Commission established under the European Community Conference on Yugoslavia (known as the Badinter Commission).¹¹⁵

The Instrumentalization of the Serbs in Croatia and the Creation of the Serb Democratic Party

2.81 The Serbs in Croatia reacted in different ways to the political changes and the appearance of opposition parties in 1989. The Serbs living in the larger cities in Croatia, especially the intellectuals, had a more realistic understanding of Croatian aspirations than those living in villages and in towns with a Serb majority. Some of the “urban” Serbs became involved in the Croatian opposition parties, and others were sympathetic. By contrast, in the parts of Croatia where they were a majority, the attitude of some Serbs to the development of a multi-party system in Croatia was one of concern and distrust. Under the influence of the media onslaught from Belgrade, and allegedly fearing a repetition of the events of 1941,

¹¹² See Part One *infra* at paras. 2.06-2.10.

¹¹³ Article 3 of the 1974 Constitution provided in part that: “The Socialist Republics are states based on the sovereignty of the people....”.

¹¹⁴ Article 5 of the 1974 provided that the borders between the Republics could be changed only on the basis of an agreement between the Republics, see further Part One above at para. 2.15.

¹¹⁵ All the Republics of the former Yugoslavia accepted the authority of that Commission. In Opinion No. 3 of 11 January 1992, the Badinter Commission expressed its view on the nature of the borders between the Yugoslav republics. The Commission found that the outer borders of Yugoslavia “must be respected in any case” Then it found that the: “demarcation between Croatia and Serbia, or between Serbia and Bosnia and Herzegovina, or between other neighboring countries, can be changed only by free and common agreement... In the absence of such an agreement, the former border determination gains the status of a border protected under international law. This is the conclusion made according to the principle of respecting the territorial *status quo*”. Badinter Commission Opinion No 3. See V. Degan, *Samoodređenje naroda i teritorijalna cjelovitost država u uvjetima raspada Jugoslavije* (“Self-determination of the nations and the Territorial Integrity of the states in the time of the downfall of Yugoslavia”), *Zakonitost* 46, No. 4, pp. 543-569.

some Serb communities began to “organize themselves”.¹¹⁶ Often this was with the assistance of public authorities in the Republic of Serbia and the JNA, which was by then already under strong Serbian influence.¹¹⁷ In 1989 and 1990 some Serb communities also started to arm themselves, and to draw up “emergency plans”.¹¹⁸

2.82 In February 1990 the Serb Democratic Party (SDS) was formed by Serbs in Croatia.¹¹⁹ In their documentation they claimed that the “regional partition in Croatia was outdated” and that it “did not respond to the historic interests of the Serb nation”. The Party proposed a new administrative partition; this later developed into a request for complete autonomy or a later separation.

2.83 In different parts of Croatia, some Serb communities organized election campaigns that called into question the trend towards democratisation in Croatia and the SFRY. In February 1990 “truth meetings” were organized in four Serb villages in the area of Vukovar, as in the other parts of the SFRY. The Communist authorities stopped this with the explanation that “mono-national assemblies would only worsen the relatively stable situation”. But the Serb meeting in Vojnić on 4 February 1990 accepted the idea, for the first time, of forming a so-called “Serb Autonomous Region” (SAO) in Croatia. In March 1990 in Petrova Gora on Kordun, about 70 kilometers south of Zagreb, local rebel Serbs arranged a rally near the well-known Partisan monument. Before a crowd of nearly ten thousand Serbs including those from the villages in Bosnia and Herzegovina and some from Serbia, they declared their dissatisfaction with the programmes of nearly every Croatian party. “Greater Serbian” aspirations could be heard (several groups were shouting “This is Serbia!”). The crowd responded especially positively to the production of a large sheet of paper with the outline of Yugoslav borders drawn; within the borders was a blank space. The image was intended to indicate a unified Yugoslavia, without any Republics or any Republican borders. Every reference to Yugoslavia, the JNA or Serbia was greeted with euphoria. They read out a message to the Serbian public:

“we dismiss all individual dreams of a confederation and this is the last warning for those who want to destroy Yugoslavia...”

¹¹⁶ See Thomas, note 29 *supra* at page 55 and see “The Serbian Krajina” Mile Dakić, Iskra Knin 1994 (“Information Agency of the RSK”), Chronology of Important Events for 1989 and 1990 for instances of Serb organisation.

¹¹⁷ Chapter 3, para 3.27 *et seq.*

¹¹⁸ Mile Dakić, note 116 *supra*.

¹¹⁹ The SDS was formed by Jovan Rašković and other Serb nationalists, see Tanner note 80 *supra* at p. 224.

2.84 Following the elections of April 1990 in the Republic of Croatia, which were won by the Croatian Democratic Union (HDZ),¹²⁰ and the establishment of a new Government of the HDZ headed by Franjo Tuđman, the Serbs became more radical in their attitudes in those areas where they were a majority or formed a significant percentage of the population. The Serb nationalist SDS extended its influence at the expense of the Communists, who renamed themselves the Social Democrats. Within a few months the Social Democrats had lost almost all support in the Serb areas. The distrust of the Serbs in Croatia became even greater with the adoption of the traditional Croatian flag and national coat of arms, without any communist symbol, which was “viewed” by the political authorities in the Republic of Serbia as heralding a return to the Ustasha flag and coat of arms (notwithstanding the fact that a similar flag and coat of arms had been used for centuries).¹²¹ A significant part of the Serbian population in the Republic of Croatia was obtaining its news information exclusively from the Serbian media, which was misrepresenting the situation in Croatia: as described above and in Chapter 3, they were constantly claiming that the new Government of the Republic of Croatia was an Ustasha government and that it was preparing a genocide on the Serbs.¹²²

PHASE THREE: THE CONFLICT AND GENOCIDE IN CROATIA

2.85 Published documents and some memoirs, especially those of Milošević’s closest associate Borisav Jović, later member and President of the Federal Presidency,¹²³ and the SFRY Defence Minister Veljko Kadijević,¹²⁴ indicated that conflict between Serbia and Croatia was inevitable. By 1991 Serbia’s policy had two alternative objectives: to prevent Croatia from achieving independence from the SFRY and maintaining it under Serbian control exercised through Federal institutions, alternatively (if that policy failed) ensuring that an independent Croatia existed within significantly reduced borders than that of the Republic of Croatia within the SFRY. The latter objective was premised on a Serbian desire to ensure that a large part of the territory of the Republic of Croatia should remain subject to Serbian control, even if that meant the use of force and, ultimately, the displacement or destruction of significant parts of the

¹²⁰ Tanner p. 227.

¹²¹ *Ibid.*, at p. 223.

¹²² See Bennett, note 5 *supra* at p. 129.

¹²³ Jović, B, *Poslednji dani SFRJ. Izvodi iz dnevnika* (“The Last Days of SFRY. Extracts from Diary”). Belgrade, 1995. Appendices, vol 5, appendix 4. 3.

¹²⁴ Kadijević, V, *Moje viđenje raspada – vojska bez države*, “As I See the Disintegration- An Army without a State” Belgrade, 1993, Appendices, vol 5, appendix 4.1.

Croatian population. Such displacement or destruction required the involvement of the JNA and Serbian paramilitaries.

2.86 An important element of the Serbian policy was the encouragement and logistical support of Serb rebellion in the Republic of Croatia, with the aim of subordinating the Republic of Croatia to a centralized SFRY under Serbian President Milošević, within the frame of a “Greater Serbia”. Not all Serbs,¹²⁵ and not all Serb-populated areas, joined the rebellion against the new Government of the Republic of Croatia which was elected in May 1990.¹²⁶

2.87 The representatives of the SDS claimed to be seeking “autonomy” for the Serb nation, but it remained unclear how such autonomy was to relate to Serbia. The SDS did not present the Croatian public with an official detailed document, nor did most of the Serbs in Croatia participate in any democratic, electoral or parliamentary process in the course of which such matters would have been addressed.¹²⁷ From the summer of 1990 until the summer of 1991, when Serbia’s genocidal campaign began, mass protests and demonstrations were organized on the territory of the Republic of Croatia. Their purpose was mainly to encourage Serbs to mobilise. The only thing that could be considered a program was a statement by the first President of the SDS, Jovan Rašković:

“for every step which Tuđman takes distancing Croatia from [SFRY] we shall make a step towards distancing ourselves from Croatia”.¹²⁸

2.88 In the meantime the Belgrade media continued to prepare the Serb population for the impending Croatian “genocide” against them, in particular during the 1990 election campaign and subsequently. Notwithstanding the fact that no one had been injured, the leadership of the Serb Democratic Party (SDS) consciously intensified the perception of threat to the Serbian community in Croatia. In May 1990 unknown perpetrators allegedly injured a young SDS activist in Benkovac, near Knin. Rašković used the opportunity to proclaim a total break in relations between the SDS and the Croatian Government and Parliament, alleging “intimidation” of Serbs.¹²⁹ Rather than take up their parliamentary seats in

¹²⁵ See Bennett note 5 *supra*, p. 164.

¹²⁶ Examples include Serbs from Gorski Kotar, where Serb propaganda was not so strong, so that the Croatian politicians agreed to reasonable suggestions on time, and the rebellion was stopped.

¹²⁷ The SDS boycotted the Sabor in which it had won 5 seats during the elections, see Tanner, note 80 *supra*, at p. 229 and Bennett, note 5 *supra*, at p. 130.

¹²⁸ See Goldstein, note 8 *supra* at p. 217.

¹²⁹ See Bennett note 5 *supra* at p. 130.

the Sabor, on 1 July 1990 the SDS MP's formed the Union of communes of Lika and northern Dalmatia.¹³⁰ There followed further incitements, encouraging large sectors of the Serb population in parts of Croatia, in particular Eastern Slavonia, to rebellion.

The Serb Rebellion in Croatia

2.89 On 25 July 1990, the Government of the Republic of Croatia passed amendments to the Constitution of the Republic of Croatia: the term "socialist" was removed from the name of the country, a new coat of arms and flag was adopted, and the titles of the President of Croatia (instead of the President of the Presidency of the Socialist Republic of Croatia) and Minister (instead of Republic Secretary) were introduced. On the same day, at a mass rally in the village of Srb, on the border with Bosnia and Herzegovina, Milan Babić of the SDS announced the establishment of a "Serb National Council", turning the Union of Serbian districts which had been set up on 1 July into the "government" of a break away state.¹³¹ The establishment of the Council was premised on a refusal by the Serb community to recognize any of the constitutional changes taking place in Croatia. The first act of the Knin-based "Assembly" was to declare the sovereignty and independence of the Serb nation in Croatia. The Council issued a Declaration on the sovereignty and autonomy of the Serbs in Croatia, and it announced that there would be a "referendum" on the question of Serb autonomy in Croatia.¹³²

2.90 The following month, in August 1990, SDS members seized all weapons¹³³ from the local storage depots of the Territorial Defence in those regions which they controlled. This was often done with the help of the local police officers who then renounced their loyalty to the Croatian government. The Croatian government attempted unsuccessfully to negotiate with the representatives of the local Serbs, in an effort to secure the return of the weapons and calm the situation. The "Serb National Council" announced that a "referendum on Serb autonomy" would take

¹³⁰ See Tanner note 80 *supra* at p. 231 and also Bennett note 5 *supra* at p. 130.

¹³¹ See Tanner note 80 *supra* at p. 232.

¹³² BBC Summary of World Broadcasts, 27 July 1990, Annexes, vol 4, annex 29. The "referendum" was first announced by Rašković at the Srb rally, see Tanner at p. 232.

¹³³ Milan Martić, Minister of Police, and later Minister of Defense and President of the self-proclaimed Serb autonomy in Croatia, speaks about this in 1991. Different from 1990 when the weapon robbery had to be hidden according to Martić in 1991 there are no reasons "for me not to say that the break in of the citizens into the police weapon depots a year ago was staged" (Borba, 19 August 1991). See also Bennett at p. 136.

place in August 1990.¹³⁴ Several dozen Croatian police officers traveled to Knin with helicopters to prevent the “referendum”. The JNA threatened to attack them and forced them to return to Zagreb.¹³⁵ The self-styled “Serb Council for National Resistance” claimed to be terrified because of the “arrival of the Ustashas”. People began to flee, and the mayor of Knin, Milan Babić, by now a key figure among the Serbian rebels in Croatia, declared on Serbian Radio Knin that “a war situation” had arisen.¹³⁶

2.91 The Serbs blocked the roads and rail lines in northern Dalmatia, in the area of Knin, Obrovac and Benkovac, using tree-trunks and barricades.¹³⁷ Although the Croatian press and politicians sought to portray these events as the acts of drunken extremists,¹³⁸ it appeared that these developments and the provocation of the Croatian government had been planned and organized in Belgrade. Moreover, it now became apparent that the JNA was arming the local Serb population, a precursor to the support that was to be provided by the JNA to Serb rebels in Croatia during the autumn of 1991 and subsequently.¹³⁹

2.92 The direct consequences of the “tree-trunk-revolution” were significant: rail traffic through Knin stopped; the ports of Zadar, Šibenik and Split were blocked and there was a significant decrease of traffic. As soon as the first incidents took place in mid August, many tourists left the Croatian summer resorts.¹⁴⁰

The 1990 “Referendum” on Serb Autonomy and its Aftermath

2.93 A “referendum” on Serb autonomy in Croatia took place on 19 August 1990. It was supported by the Socialist Republic of Serbia and the political authorities of Belgrade. There were no proper voting lists, so that many people in Belgrade voted.¹⁴¹ The result, almost 100% in favor of autonomy, provided the basis for further measures. The “Serb National Council” pronounced all municipalities with substantial or majority Serb populations to be “autonomous”. Shortly afterwards, Babić proclaimed the birth of the “Autonomous Region of Krajina”. In the following months the

¹³⁴ See Bennett note 5 *supra*.

¹³⁵ Tanner note 80 *supra* at p. 233; Silber and Little note 76 *supra* at p. 108.

¹³⁶ See Tanner note 80 *supra* p. 233; Silber and Little note 76 *supra* at p. 109.

¹³⁷ See Bennett note 5 *supra* p. 136 and Tanner note 80 *supra* at p. 233.

¹³⁸ See Tanner note 80 *supra* at p. 233.

¹³⁹ See Goldstein note 8 *supra* p. 218 and Chapter 3 para. 3.59 *et seq.*

¹⁴⁰ See Tanner note 80 *supra* at p. 278 and footnote as to the “incalculable” loss of earnings from tourism in the region as a result of the war.

¹⁴¹ See Goldstein note 8 *supra* at p. 219.

Serbs repeatedly blocked road and rail lines in Knin and Eastern Slavonia, but there were no casualties until 31 March 1991,¹⁴² notwithstanding the constant rumours and propaganda about the “genocidal objectives” of the Croats.

2.94 On 22 December 1990 the new Constitution of the Republic of Croatia was proclaimed, completing the program of constitutional liberal-democratic reforms. The Constitution envisaged a multi-ethnic Croatia with safeguards for minority communities. The reaction of the Serbian community in Knin was to adopt a resolution on the establishment of the “Serb Autonomous Region of Krajina (SAO Krajina)”, with its own “Constitution”.¹⁴³

2.95 The territorial extent of the “SAO Krajina” may be seen in the map at Plate 8. It is to be noted that those territorial limits correspond with the boundaries proposed by Šešelj.¹⁴⁴ The Serbs in “SAO Krajina” immediately stopped paying taxes to the Croatian Government, and the police stations of the “SAO Krajina” separated themselves from the policing system of the Republic of Croatia.

2.96 The situation in Croatia was further inflamed by Serbian newspaper reports claiming that Croatia was organizing “terrorist activities”, and preparing for a war against Serbia and Serbians. These reports also claimed that the JNA units were being put into combat readiness.¹⁴⁵ In January 1991 the Presidency of the SFRY sought to take measures to decrease the growing ethnic tension in Croatia.¹⁴⁶ For its part the Republic of Croatia sought the disarmament of the rebel Serbs in Croatia, whilst the Serbs – with the support of the JNA – were adamant that the newly formed Croatian police forces should be disarmed.

2.97 On 25 January 1991 TV Belgrade broadcast a film entitled “The Truth about the Armament of the HDZ in Croatia”.¹⁴⁷ The film was made under the guidance of the information service of the Federal Defence Secretariat/Yugoslav Secret Service (KOS) and produced by the JNA film

¹⁴² The first 2 victims of the war according to Judah, note 82 *supra* at p. 175.

¹⁴³ The Statute of the “SAO Krajina” was adopted by the self-styled “Temporary presidency” of the Municipal Union of Northern Dalmatia and Lika and the Serbian National Council on 21 December 1990, see Dakić note 116 *supra* “Chronology of Important Events”.

¹⁴⁴ See para. 2.76 above.

¹⁴⁵ For Croatia’s building of its armed forces and the JNA response see Judah, pp. 172-3 and Chapter 3, paras. 3.29-3.30.

¹⁴⁶ Chapter 3, *ibid.*

¹⁴⁷ Referred to in Bennett note 5 *supra* at p. 144.

company.¹⁴⁸ The film sought to justify the proclamation of a state of emergency in Croatia and called for the arrest of leading Croatian officials – in particular the Defense Minister Martin Špegelj – on the grounds that he was illegally arming the Croatian police.¹⁴⁹ The JNA was placed on full alert.¹⁵⁰ However, the eight-member Presidency of the SFRY rejected the proposal of the Republic of Serbia and the JNA to proclaim a state of emergency, with the Republics of Slovenia, Croatia, Macedonia, and Bosnia and Herzegovina voting against.¹⁵¹ Jović resigned and Milošević made a number of speeches confirming that the refusal of the other republics to declare a state of emergency “had pushed Yugoslavia into the final stages of its agony”.¹⁵²

2.98 At the same time, Serbian President Milošević gave a speech in which he said:

“I have asked the Serbian government to carry out all preparations for the formation of additional forces whose volume and strength would guarantee the protection of the interests of Serbia and the Serbian people (...). The citizens of Serbia can be sure that the Republic of Serbia is capable of ensuring the protection of its own interests and those of all its citizens and the entire Serbian people. The Republic of Serbia, the citizens of Serbia and the Serbian people will resist any act of dismantling our homeland.”¹⁵³

In a televised speech reported on 17 March 1991, the following day, Milošević declared that:

“Under the existing conditions, the Republic does not recognise the legitimacy of the Federal Presidency.”¹⁵⁴

¹⁴⁸ See BBC Summary of World Broadcasts, 28 January 1991.

¹⁴⁹ A warrant for his arrest was issued by the Federal Secretariat for National Defence on 30 January 1991 BBC Summary of World Broadcasts, 1 February 1991. See Silber and Little note 76 *supra* p. 118-120.

¹⁵⁰ Bennett note 5 *supra* at p. 145.

¹⁵¹ See Bennett note 5 *supra* at p. 146.

¹⁵² See Orlando Sentinel Tribune, March 17 1991, Annexes, vol 4, annex 34, Jović later revoked his resignation.

¹⁵³ BBC Summary of World Broadcasts, 18 March 1991, Annexes, vol 4, annex 35.

¹⁵⁴ *Supra* note 152.

The following month, in April 1991, he told the Serbian Assembly that the reserve police were being mobilised to:

“enable us in every case to be secure, and to be able to defend the interests of our Republic and, by God, the interests of the Serbian people outside Serbia.”¹⁵⁵

2.99 Generally, however, Serbian President Milošević tended to be cautious in making public statements about specific plans for example to mobilise Serbs in other Republics: in an article in November 1991 he was reported as saying:

“Are we going to tell everyone what we are going to do on the radio? We can’t do that. But if we need to fight, we’ll really fight. We may be no good at working or trading but at least we know well how to fight”.¹⁵⁶

Slovenian and Croatian Proposals for Confederation

2.100 On 12 February 1991 President Tuđman of Croatia and President Kučan of Slovenia issued a joint declaration setting out proposals for the future of the SFRY along the lines of a confederal arrangement and emphasizing that the SFRY could only survive as a voluntary league of sovereign Republics.¹⁵⁷ On 28 February 1991, the “Serb National Council” and the Executive Board of the “SAO Krajina” adopted a “Resolution on the Secession of the “SAO Krajina” from Croatia”.¹⁵⁸ Jovan Rašković, head of the SDS and “President” of the “SAO Krajina”, publicly stated that the Republics’ borders were merely those imposed by President Tito.¹⁵⁹

Escalation of Violence: the Buffer Zone Policy

2.101 In March 1991 local Serbs disarmed the Croatian police in the Western Slavonian town of Pakrac and purported to declare the district of Pakrac a part of Babić’s “Krajina” (see Map at Annexes, Vol 3, Plate

¹⁵⁵ From *Bogami ćemo da se tučemo* (“By God, we will fight”), “*Nin*”, (Belgrade), 12 April 1991, 40 – also from stenographic record of the Serbian parliament. See United Press International 6 July 1991, Annexes, vol 4, annex 38.

¹⁵⁶ “*Nin*” 8 November 1991, cited in Tanner, note 80 *supra*, see page 243 and note at page 317.

¹⁵⁷ See Tanner note 80 *supra* at p. 239.

¹⁵⁸ See “The Serbian Krajina, Historical Roots and its Birth” ISKRA 1994, Chronology of Important Events. A resolution on purported secession was adopted by the municipalities of the “SAO Krajina” on 19 March 1991.

¹⁵⁹ *Supra* note Rašković Srb rally.

4.3A). This led to the intervention of the Croatian police. The SFRY Presidency (Jović) ordered the Croatian police to withdraw.¹⁶⁰ The JNA purported to take on the role of mediator between the opposing sides (the first time this had occurred). In fact it was protecting the Serbian side.¹⁶¹ This became a model for similar interventions by the JNA in the following months of spring and summer of 1991. At the end of March 1991, the military police units of the “SAO Krajina” occupied Plitvice.¹⁶² During the military exchange between the Serb rebels and Croatian police, one Croatian policeman and one Serb died. These were the first casualties of the conflict on Croatian territory. In April 1991 JNA units occupied the area of Plitvice with the stated purpose of creating a “buffer-zone”; in reality they were providing assistance to the Serb rebels in the establishment of permanent defenses on Croatian territory.¹⁶³ This marked the beginning of the Serbian effort to establish new borders for the “SAO Krajina”.(See Plate 8).

2.102 Other incidents began to occur in Croatia between the rebel Serbs and the Croatian authorities. At the end of April 1991 local Serbs blocked access roads around Borovo Selo (near Vukovar), with the assistance of Šešelj’s paramilitaries which had arrived from Serbia.¹⁶⁴ Two Croatian policemen were kidnapped. This led to the intervention of the Croatian police, who were themselves ambushed. Twelve Croatian policemen from the Osijek police force were killed at Borovo Selo, and more than twenty were wounded.¹⁶⁵ This prompted the arrival of the JNA at Borovo Selo, ostensibly with a view to creating another “buffer-zone” between the Serbian and Croatian communities. The effect was to prevent the Croatian authorities from exercising control in the territory of the Republic of Croatia.¹⁶⁶

2.103 Slavonia was of particular interest to the Republic of Serbia. In particular, low-lying Eastern Slavonia, which bordered Serbia, was amongst the richest regions in Croatia and the SFRY, with extensive natural resources, including oil. It also had significant Serb populations (See Plate 9). In October 1991, Jovan Ilić, the president of the Serbian

¹⁶⁰ See Financial Times 4 March 1991, Annexes, vol 4, annex 33.

¹⁶¹ Tanner note 80 *supra* at p. 242, who points out that the army tank’s barrels were pointed at the Croatian police.

¹⁶² Bennett note 5 *supra* at pp. 150-151.

¹⁶³ Bennett note 5 *supra* at p. 152; Tanner note 80 *supra* at p. 244.

¹⁶⁴ See Tanner note 80 *supra* at p. 246, Chapter 3, paras. 3.33 and 3.51 and see Serb Paramilitary Groups Active in Croatia (1991-95), Appendices, vol 5, appendix 5.

¹⁶⁵ See Tanner note 80 *supra* at pp. 246-247.

¹⁶⁶ See Tanner at p. 247.

Geographic Society, explained the rationale for a specific Serbian proposal to redraw the borders of Slavonia:

“[...] I feel that it would be a just solution if a large part of Eastern Slavonia were to be united with Serbia and that the Serbs from the [crisis] areas and Western Slavonia, who want to be citizens of the Third Yugoslavia, move into that area. Vinkovci, Vukovar and Osijek, as the important towns would be included in that part of Slavonia so that the urban Serbs from Zagreb, Rijeka and other Croatian towns would have a place to move to...”¹⁶⁷

In the same interview – for the Belgrade weekly *Intervju* – Jovan Ilić proposed a solution to the “problem of the Serbs in Western Slavonia”.¹⁶⁸ This involved an exchange of populations, in which:

“...the part of Eastern Slavonia which remains a part of the Third Yugoslavia [i.e. Serbia] has to be considerably larger and to include the municipalities of Slavonski Brod, Đakovo, Donji Miholjac, Valpovo, Našice and everything else that lies east of that line. The Serbs from Western Slavonia, Croatian towns and the Diaspora would move into that area, everyone who wants to, except the Serbs in the SAO Krajina, which [itself] remains a part of the Serbian nation.”

2.104 The timing of these interviews indicates that this thinking provided the intellectual rationale for the military action which was to follow, including the mass displacement and destruction of a large part of the Croatian population.

The Collapse of the Presidency of the SFRY

2.105 At this time the usual rotation in the Presidency of the SFRY Presidency was due to be carried out. In accordance with the 1974 Constitution,¹⁶⁹ in mid-May 1991 the Serbian representative (Borisav Jović) was to be replaced by the Croatian representative (Stjepan Mesić). This did not happen. Serbia and Montenegro, with the support of Serbian controlled members of the SFRY Presidency voted against the election of Mesić, leading to a split 4-4 vote in the Presidency (with the representatives of Bosnia and Herzegovina, Croatia, Macedonia and Slovenia voting in favor of the rotation). It was apparent that the vote against was supported by high-ranking JNA officers, acting in coordination with the Serbian and

¹⁶⁷ See Annexes, vol 4, annex 18 (Intervju, 11 October 1991).

¹⁶⁸ *Ibid.*

¹⁶⁹ Article 327 of the 1974 Constitution of the SFRY. See also Tanner p. 247.

Montenegrin representatives in the Presidency. Evidently this was a moment of constitutional crisis: it marked the beginning of the dissolution of the SFRY, and the crucial step in the Serbian takeover of the apparatus of the state. And it was clear at the time that the internal constitutional rupture was a cause for international concern. In particular the European Community sent the President of the Council (Jacques Santer) and the President of the European Commission (Jaques Delors) to Belgrade to try and seek a solution. This was followed by an official statement of the EC's position in the first week of June: the EC declared its support for the unity of the SFRY while also calling for the rotation in the Presidency to be respected.¹⁷⁰ A Bosnian-Macedonian initiative to solve the crisis by establishing a so-called "Four plus Two" plan, incorporating a confederal relationship between Croatia, Slovenia and the other four Republics which would themselves remain in a federation, was unsuccessful.¹⁷¹

2.106 On 25 June 1991, both the Croatian and the Slovene Parliaments proclaimed their dissociation from the SFRY. This was followed by Slovenian forces seizing control of frontier crossings with Austria, Italy and Hungary and hoisting the Slovene flag.¹⁷² On 27 June, units of the JNA headed towards Ljubljana airport and fighting broke out between Slovene forces and federal troops. After fighting had broken out in Slovenia, the European Union sent further representatives, a foreign ministerial "troika", to Belgrade on 28 June 1991 and secured agreement that Mesić would be installed as President and that Croatia and Slovenia would "freeze" their independence declarations for three months.¹⁷³ This duly occurred at a midnight session of the SFRY Presidency on 30 June - 1 July 1991, but by this time Mesić found that he was not in control of the JNA. Fighting broke out again in Slovenia, and the JNA was now under exclusive Serbian control.

2.107 To summarise, it became increasingly clear during this period that the non-Serbian federal authorities had no authority over the Serbian controlled elements in the SFRY Presidency and other organs.¹⁷⁴ President Mesić's lack of authority at this time is evidenced by the way in which his order of 11 September 1991 that all JNA units return to the barracks was ignored despite the fact that this formally constituted a legally binding

¹⁷⁰ See Tanner p. 248.

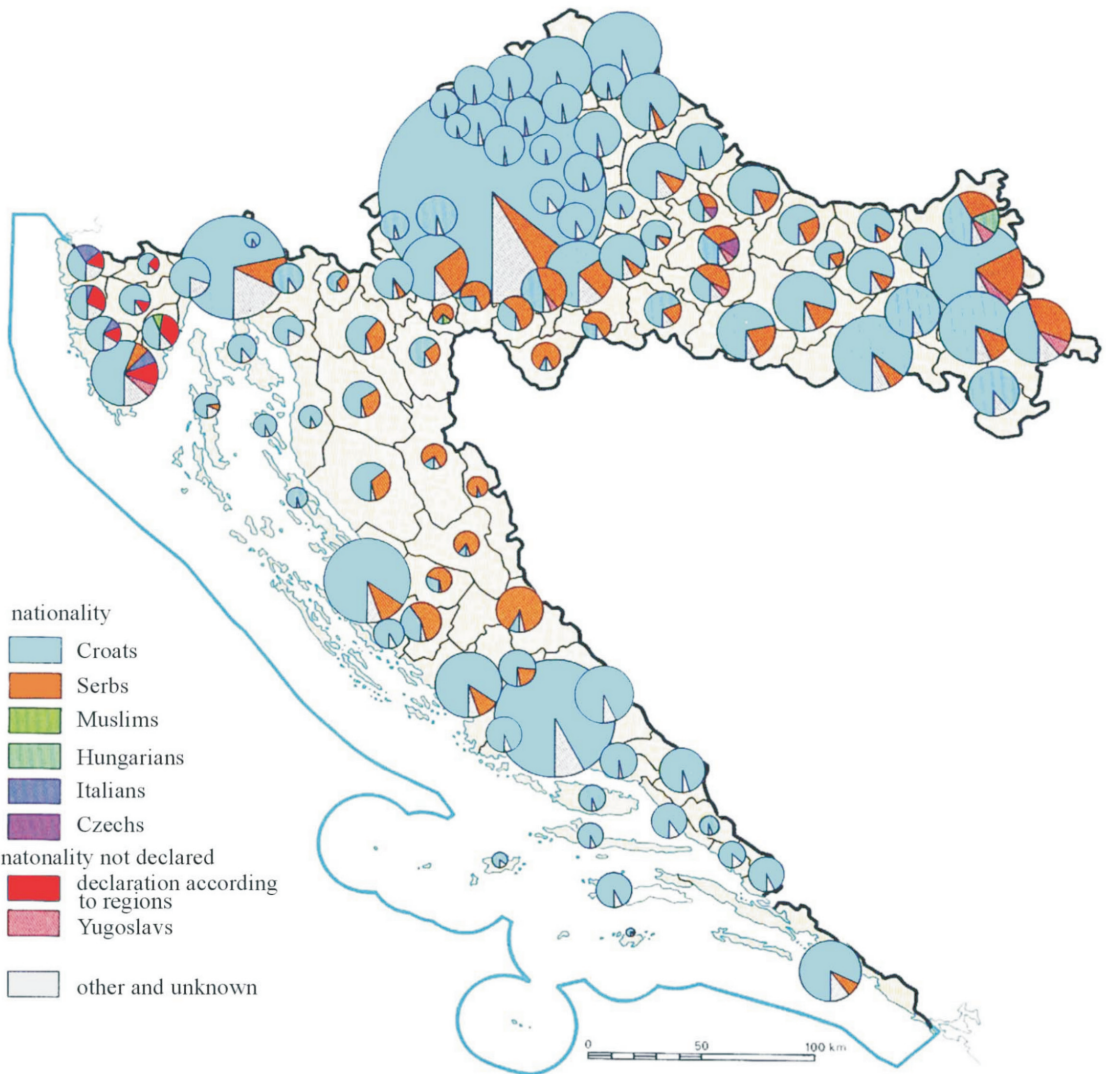
¹⁷¹ See Tanner p. 248.

¹⁷² Tanner note 80 *supra* p. 249.

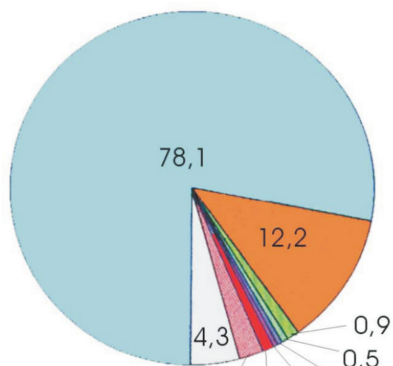
¹⁷³ *Ibid.*, p. 251.

¹⁷⁴ This tendency had been in evidence at earlier stages, for example Kadrijević had refused to communicate with the non-Serbian part of the SFRY Presidency in March 1991 following the Presidency vote against the proclamation of emergency measures sought by the JNA, see Tanner, note 80 *supra* at p. 243 and note at p. 317.

CROATIA - POPULATION ACCORDING TO NATIONALITY/ETHNICITY IN 1991



- nationality
- Croats
 - Serbs
 - Muslims
 - Hungarians
 - Italians
 - Czechs
- nationality not declared
- declaration according to regions
 - Yugoslavs
 - other and unknown



Croatia in 1991
(total number of inhabitants, in percentage)

- according to the preliminary results of the census
- the share of Croats in all municipalities; the share of other categories shown if over 5%, otherwise included in the category "others and unknown"
- size of circles proportional to number of inhabitants in municipalities
- size of a circle for Croatia is half a size proportional to the number of inhabitants

Order of the Supreme Commander of the Armed Forces. The President of the Federal Executive Council, Marković, demanded the resignation of the Federal Defense Secretary General Kadijević and his Deputy Admiral Brovet. This too was refused.¹⁷⁵ President Mesić's true position is illustrated by the fact that in October 1991 the SFRY payroll office stopped paying his presidential salary, apparently by order of Jović and Kostić.¹⁷⁶

2.108 The decline in authority of the President of the Presidency of the SFRY and the increasing control exercised by the Serbian authorities, is also indicated by the way in which peace negotiations were conducted during this period. An example of this is the way in which the signing of a cease-fire agreement was dealt with on 1 September 1991. The Agreement, which was concluded in Belgrade, was signed by the Presidents or by the Presidents of the Presidencies of the six Republics, the President of the Federal Executive Council (Ante Marković) and by President Mesić as the President of the Presidency of the SFRY. The formulation used for President Mesić was not that which would normally have been used however: he signed "For the Presidency of the SFRY, acting also in its capacity of Collective Supreme Commander of the Armed Forces". In normal circumstances and under the SFRY's constitutional framework, this addendum to the title of President of the Presidency of the SFRY would have been unnecessary because the function of Supreme Commander clearly derived from the 1974 Constitution of the SFRY. The same formulation was also used in another agreement signed on the same day.¹⁷⁷

2.109 An example of the growing power of Serb authority within the federal structures is indicated by the way in which the signing of the Igalo Agreement on Ceasefire was arranged. This Agreement was signed by Lord Carrington (Chairman of the EC Conference on Yugoslavia),¹⁷⁸ President Tuđman of Croatia, Serbian President Milošević and, on behalf of the federal authorities not any member of the Presidency or head of

¹⁷⁵ President Mesić had also called for Kadijević's resignation in early October following the air attack on Banski Dvori in Zagreb, this was ignored, Tanner p. 258.

¹⁷⁶ See "How Yugoslavia was Brought Down" Stjepan Mesić, *supra* note 110 at p. 289, Appendices, vol 5, appendix 4.2.

¹⁷⁷ The other agreement was the Memorandum of Understanding on the Extension of Monitoring Activities of the Monitor Mission to Yugoslavia. There are other examples of negotiations in which the Presidency of the SFRY does not play a role but the Federal National Defence Secretary and members of the JNA leadership are actively involved, see for example the Report of the Secretary General pursuant to Security Council Resolution 721 of 1991 and his Report pursuant to Security Council Resolution 749 of 1991 at para. 4.

¹⁷⁸ See below at paras. 2.117 *et seq.*

government, but by the Serbian General Veljko Kadijević, the Federal National Defense Secretary.¹⁷⁹

The Serbian Takeover of the Federal Institutions of the SFRY and the JNA

2.110 During the collapse of the SFRY Presidency as described above, the leadership of the Socialist Republic of Serbia had taken control of the federal institutions of the SFRY, which were located in Belgrade, and was directing the activities of the JNA. These developments, which are described in detail in Chapter 3, culminated on 4 October 1991 with President Mesić being deposed by the members of the Presidency from Serbia, Montenegro, Vojvodina and Kosovo.¹⁸⁰ They had called a meeting in Belgrade which they knew Mesić, who was in Zagreb, would be unable to attend because of the fighting in Croatia.¹⁸¹ Subsequently, after expelling Slovenia from the Presidency and in that way obtaining a 4:3 majority in the Presidency, Branko Kostić of Montenegro was appointed acting President.¹⁸²

2.111 Stjepan Mesić has noted that he was formally recorded by Branko Kostić as having been President until only 30 September 1991.¹⁸³ In November 1991, the deposed President Mesić wrote to the UN Secretary General Perez de Cuellar and a number of other international statesmen and heads of state requesting that the UN send peacekeeping forces to Yugoslavia. He wrote in his capacity as “last President of the SFRY Presidency” reminding the Secretary General of the way in which he had been appointed and how Serbia and the “pro-Serbian JNA” had rendered completely impossible the functioning of the federal institutions. He went on to make the point that for “the four members of the Presidency” (that is to say the non-Serbian controlled members) and himself, the execution of their functions had been made impossible, even in relation to securing a

¹⁷⁹ Kadijević also signed an agreement on 23 November 1991 together with President Tuđman, President Milošević and UN Special Envoy Cyrus Vance, for reports of these signings see “Vjesnik” 8 November 1991, p. 2 and “Vjesnik” of 25 November 1991, p. 1.

¹⁸⁰ On October 4 the Serbian controlled members of the SFRY Presidency had purported to declared a state of emergency or “war danger” in contravention of the procedures laid down in the constitution, described in “How Yugoslavia was Brought Down” Stjepan Mesić, *supra* note 110, at pp. 268-269, Appendices, vol 5, appendix 4.2.

¹⁸¹ See Tanner note 80 *supra* at pp. 256-7.

¹⁸² He was appointed to the post by his own vote and that of the three Serb members of the Presidency representing Serbia, Vojvodina and Kosovo.

¹⁸³ See Stjepan Mesić note 110 *supra*, p. 320, Appendices, vol 5, appendix 4.2. On his own request in December 1991 he sought to terminate his Presidency with effect from 8 October 1991.

peaceful forum for the resolution of the crisis in the SFRY. He stated that it was “senseless to keep speaking of the SFRY [Presidency] because it does not exist...”¹⁸⁴

2.112 By the time Mesić had been deposed widespread fighting had erupted in Croatia and Serbia’s genocidal campaign was underway. As described in detail in Chapter 3, by September 1991 the JNA was under the control of Serbia, Serbian paramilitary groups had been established to engage in armed activities in Croatia, and by Order of 13 September 1991, those paramilitary groups had been formally incorporated into the JNA.¹⁸⁵ A genocidal campaign was underway in Banovina and Eastern Slavonia. The genocidal acts which occurred during the campaign are described in detail in Chapters 4 and 5.

The Referendum on Independence of Croatia

2.113 As a background to these developments, on Sunday 19 May 1991 a referendum was held in Croatia on the question of independence. 83.6 percent of registered voters cast their votes, with 93.2 percent (2,845,521 people) voting in favor of independence. With the disintegration of the constitutional order of the SFRY, the citizens of the Republic of Croatia voted for Croatia’s dissociation from the SFRY, leaving the possibility that Croatia might join a confederation of sovereign states with other Republics.

2.114 On 25 June 1991, on the same day that the Slovenian Parliament proclaimed independence, the Sabor in Zagreb proclaimed Croatia “a sovereign and independent state”.¹⁸⁶ Following the escalation in the fighting in Croatia particularly in Eastern Slavonia, the EC Troika returned to Belgrade and President Tuđman formed a cabinet of national unity in August.¹⁸⁷

The Serbs Vote for Association with Serbia

2.115 The Serbs in the “SAO Krajina” gave their response to the Croatian declaration of independence: on 27 June 1991 the unification of the “SAO

¹⁸⁴ See Stjepan Mesić, *ibid.* at pp. 312-314, Appendices, vol 5, appendix 4.2.

¹⁸⁵ Chapter 3, para. 3.63 *et seq.*

¹⁸⁶ See “Declaration on the Proclamation on the Sovereign and Independent Republic of Croatia” Annexes, vol 4, annex 8; “Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia” Annexes, vol 4, annex 9. See also Tanner p. 249.

¹⁸⁷ See “Decision on the Sovereignty and Independence of the Republic of Croatia” 8 October 1991, Annexes, vol 4, annex 10.

Krajina” with the self proclaimed Serb entity in Bosnia and Herzegovina, the so called “Union of Bosnian Krajina” was proclaimed. The Declaration stated that the “United Krajina” will direct all its activities in the interest of the integration of Serbian people with the aim of making one State in which all Serbs from the Balkan peninsula will live.” Subsequently, on 19 December 1991, the “Parliament of the SAO Krajina” proclaimed the establishment of the “Republic of Srpska Krajina” (“RSK”).

2.116 The decision of 27 June 1991 was the catalyst for the genocidal campaign described in Chapters 3, 4 and 5. Following this campaign, 10,572 persons died and 1,419 persons are still missing and unaccounted for. The final part of this Chapter deals with political events at the national and international level which occurred in the period the establishment of the EC Peace Conference in August 1991 following the commencement of the campaign.

SECTION THREE: INTERNATIONAL MEDIATION

2.117 The EC Conference on Yugoslavia, chaired by former British Foreign Secretary, Lord Carrington and held in The Hague, was established in August 1991 following the escalation in the fighting in Croatia in order to try and resolve the growing conflict. The participants included the Presidents of the six Republics of the SFRY and General Kadijević. It was set up under the auspices of European Political Cooperation (EPC) together with a five member Arbitration Commission, which was to become known as the Badinter Commission after its Chairman, who was the Chair of the French Conseil Constitutionnel.¹⁸⁸ The Commission’s task was to examine a number of questions posed by the Conference and by Serbia, as well as to examine four applications made by Republics of the former SFRY for recognition as new states and to comment on the constitutional law of Croatia.¹⁸⁹ All the Republics of the former SFRY accepted the authority of the Commission.

¹⁸⁸ The Conference and the Commission were established by two EPC Declarations dated 27 August and 3 September 1991. As an external relations matter dealt with under the EPC, the Conference technically fell outside the framework of the “EC” proper but is generally referred to in the literature as the “EC Conference”.

¹⁸⁹ The Commission issued 10 Opinions together with Comments and an Interlocutory Decision.

2.118 The EC Conference opened in the Hague on 7 September 1991. When the meeting adjourned on 12 September, a Declaration was adopted stating that internal borders could not be changed by force and that the rights of minorities had to be guaranteed. The Conference continued to meet periodically during September 1991. Amidst the escalation in the fighting the mandate of the EC monitors was extended indefinitely on 13 October. On 18 October 1991, Lord Carrington presented a set of proposals to the participants: there was to be no change in Yugoslavia's internal borders and in return Croatia was to lift the blockade on remaining JNA bases to enable the JNA to withdraw completely from the Republic. The plan was acceptable to all Republics except Serbia. The conflict in Croatia worsened with the result that a further package was put forward consisting of a ceasefire, an end to the blockade of Army bases and the withdrawal of the JNA from Croatia. Serbia then put forward a package of counter proposals including the according of special status within Yugoslavia to "Serbs regions" in Croatia. The proposed compromise offered in response would have afforded similar rights to Albanians in Kosovo as well as other groups within the SFRY and this was unacceptable to Serbia which then increased its efforts to capture as much Croatian territory as possible, and rid that territory of its non-Serb population.

2.119 On 5 November 1991, Lord Carrington brought forward revised proposals which included a two tier association of sovereign Republics and a state of equal Republics similar to the "Four plus Two" package put forward by Macedonia and Bosnia and Herzegovina in June 1991. Serbian President Milošević rejected the proposals but said that Serbia would agree to the deployment of a UN force in Croatia although heavy fighting continued, in particular around Vukovar which eventually fell on 18 November 1991. On 8 November 1991, the EC agreed to impose trade sanctions on the SFRY.¹⁹⁰ On 12 November 1991 the EC declared its condemnation of the further escalation of attacks on Vukovar, Dubrovnik and other Croatian towns.

2.120 In its first Opinion, the Badinter Commission expressed the view that by November 1991 the SFRY was in the process of dissolution.¹⁹¹ The European Community had agreed in October 1991 that, in principle, Republics were entitled to independence and on 16 December 1991 the Council of the European Community decided to offer the possibility of separate diplomatic relations to those SFRY Republics seeking independence provided that they met certain conditions including acceptance of various human rights commitments including those contained

¹⁹⁰ The EC agreed to lift sanctions against all the Republics except Serbia and Montenegro on 2 December 1991.

¹⁹¹ Opinion No 1 of December 1991; see *infra* para. 2.117.

in the United Nations Charter, the Helsinki Act and the Paris Charter and also including acceptance of the inviolability of frontiers.¹⁹² The Badinter Commission was asked for advice on applications from the Republics and the EC decided to reach a decision on the matter on 15 January 1992. On 15 January 1992, the Presidency of the European Community announced that the EC and its Member states had decided to recognise Croatia and Slovenia as independent states (the EC Peace Conference having heard a report from the Badinter Commission on the two Republics' adherence to the EC Guidelines for Recognition).¹⁹³

2.121 In its Opinion No. 3 of 11 January 1992, the Badinter Commission had expressed its view that the outer borders of the SFRY "must be respected in any case" and that the: "[demarcation] between Croatia and Serbia, or between Serbia and Bosnia and Herzegovina, or between other neighboring countries, can be changed only by free and common agreement. In the absence of such an agreement, the former border determination gains the status of a border protected under international law. This is the conclusion made according to the principle of respecting the territorial *status quo*".¹⁹⁴

2.122 Increasingly the role of the EC Peace Conference was incorporated into the broader international effort to resolve the crisis undertaken by the United Nations whose role is described below. The work of the EC Conference on Yugoslavia was continued in effect by the UN-EC International Conference on the Former Yugoslavia (ICFY) which began its work in August 1992. The Co-Chairmen of the Steering Committee were Cyrus Vance and Lord Owen (who replaced Lord Carrington as Chairman of the EC-sponsored peace process). The role of the UN is discussed further below. The Conference on Security and Cooperation in Europe (CSCE) also played in active role in seeking to resolve the conflict, for example by deciding in July 1991 to send an EC-based mission to supervise the ceasefire which was in place at that time and to dispatch a CSCE good offices mission to assist political dialogue.

¹⁹² "Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union" Extraordinary EPC Ministerial Meeting, Brussels, 16 December 1991: EPC Press Release 128/91 and Declaration on Yugoslavia, Extraordinary EPC Ministerial Meeting Brussels 16 December 1991: EPC Press Release 129/91.

¹⁹³ Croatia was subsequently admitted to membership of the United Nations in May 1992.

¹⁹⁴ See V. Degan, Samoodredenje naroda i teritorijalna cjelovitost država u uvjetima raspada Jugoslavije ("Self-Determination of the Nations and the Territorial Integrity of the States in the Time of the Downfall of Yugoslavia"), *Zakonitost* 46, No. 4, pp. 543-569.

2.123 The European Community Monitoring Mission (ECMM) was established and undertook monitoring work throughout the conflict in the SFRY.

THE INVOLVEMENT OF THE UNITED NATIONS: UNPROFOR

2.124 On 8 October 1991, the UN Secretary General appointed Cyrus Vance as his Special Representative for Yugoslavia. An agreement (the “Vance Plan”) was adopted in Geneva on 23 November 1991.¹⁹⁵ Following the cease-fire agreement of November 1991, the proposal for the deployment of a UN peacekeeping operation, pursuant to the “Vance Plan”, was formally agreed in December 1991.¹⁹⁶

2.125 All sides involved in the conflict accepted this plan: the Governments of the Republic of Croatia and of the Republic of Serbia, the JNA, and, after strong pressure from Belgrade, representatives of the Serb community in Croatia. Under the “Vance Plan”, a UN protection force (UNPROFOR) was to be assigned to parts of Croatia, designated as “UN Protected Areas” (UNPA).¹⁹⁷ These protected areas (see Volume 3, Plate 2.7) were areas in which the Serbs were either a majority or a significant minority, and areas where the “tensions between the communities had led to a conflict”.¹⁹⁸ “The Plan” provided for the demilitarization of these areas, with all armed forces withdrawing completely, including the JNA. Police monitors would control the activities of local police forces, and stop discrimination on the basis of ethnicity. Working with UN humanitarian agencies, UNPROFOR would also secure the return of refugees and displaced persons to their homes. The creation of the UNPAs was not intended to prejudice or otherwise affect the outcome of any political settlement in the former SFRY.

2.126 Multi-party elections were due to be held in Bosnia and Herzegovina in December 1991. As the crisis in Bosnia deepened,¹⁹⁹ Serbian President Milošević wished to disengage from Croatia in order to

¹⁹⁵ The Agreement Between the Special Representative of UNSG (Vance) and representatives of Croatia, Serbia and the former SFRY.

¹⁹⁶ A proposal for a UN peace-keeping operation in Croatia was published as Appendix III to the UN Secretary General’s report of 11 December 1991.

¹⁹⁷ See UN Security Council Resolution 721 of 27 November 1991 (sending peacekeepers to Croatia) and UN Security Council Resolutions 727 of 8 January 1992, 740 of 7 February 1992 and 743 of 21 February 1992 establishing UNPROFOR. UNPROFOR’s mandate was extended by UN Security Council Resolutions 749 of 7 April and 752 of 15 May 1992.

¹⁹⁸ Baletić, Z. and others, “Croatia between Aggression and Peace”, AGM, Zagreb, 1994.

¹⁹⁹ A referendum was held in March 1992 and independence was declared on 6 April 1992.

concentrate on that situation. He put pressure on the rebel Serbs in Knin to accept the “Plan” for this reason.²⁰⁰ He was able to accept the “Vance Plan” as it effectively left the rebel Serbs in control of areas they had seized during the conflict.

2.127 Following a further cease fire agreement on 2/3 January 1992, and under the terms of UN Security Council Resolution 743 of 21 February 1992, UNPROFOR was established for an initial period of 12 months (its mandate was extended in subsequent Security Council Resolutions). The UN protected areas were divided into four sectors: see Plate 2.7 (in Volume 3). The South Sector included the hinterland of northern Dalmatia and eastern Lika. The North Sector included the area of Kordun and Banovina, and the East Sector the area of Eastern Slavonia, Baranja and Western Sirmium. All three sectors were the parts of Croatia that were at the time controlled by the rebel Serbs. Only the West Sector, that included the western part of Slavonia, was mainly under the control of the Government of Croatia (with only a small area around Okučani under the control of the rebel Serbs). Under the “Plan”, the status of the UNPA’s would not be changed until an “an overall political solution of the Yugoslav crisis” was found, an approach which Croatia was unhappy with. As described in Chapter 3, when the JNA withdrew from Croatia towards the end of May 1992, it left much of its weaponry with the Serb Territorial Defence and police.²⁰¹

2.128 In addition to the UNPA’s, UNPROFOR also found it necessary to take control of the so-called “pink zones”. This was the term used to describe parts of Croatian territory outside the UNPA’s which remained under Serb control after the cessation of hostilities in January 1992. In order to avoid the outbreak of further hostilities, the Republic of Croatia agreed to accept UNPROFOR assistance in reinstating Croatian authorities in these areas despite the fact that under the “Vance Plan” it had been intended that these areas should be handed back unconditionally following JNA withdrawal. In the end the “pink zones” effectively became an integral part of the UNPA’s and stayed under the control of Serb rebels.

2.129 Under the “Vance Plan”, the UNPA’s were supposed to be demilitarised but this demilitarisation did not materialise. Secure under the protection of the UNPROFOR, the Serbs consolidated the consequences of their genocidal campaign, ridding occupied areas of non-Serbs and destroying non-Serb property (including cultural and religious monuments)

²⁰⁰ Borisav Jović reports a “difficult and dramatic” meeting on 2 February 1992 attended by Milošević during which the leadership of the “RSK” accepted the Vance Plan, note 85 *supra*, Appendices, vol 5, appendix 4.3; see also Tanner, note 80 *supra* at p. 288.

²⁰¹ Chapter 3, para. 3.96.

in such a way as to make conditions of life impossible for the Croat and other populations.²⁰² These actions which are detailed in Chapters 4 and 5,²⁰³ were specifically condemned in a UN Report on the situation of human rights in the territory of the former Yugoslavia in February 1993.²⁰⁴ In the Report, Special Rapporteur Mazowiecki, who had visited the UNPAs, found that “the *de facto* authorities of the self-proclaimed Serbian region of “Krajina” (“RSK”) are vigorously pursuing a policy of ethnic cleansing.”²⁰⁵ In his next report submitted in November 1993, the Rapporteur referred to the deliberate and systematic shelling of civilian objects in Croatian towns and villages and to the resulting deaths and injuries among the civilian population.²⁰⁶ The intention to prevent on a permanent basis the return of the refugees, who were mainly of Croatian nationality, was also evident.²⁰⁷ In Baranja, for example, a group of Croats remained in 1991, but by 1995 they had left. Furthermore, the “RSK” was able to provide military assistance to “Republic of Srpska” (“RS”) in Bosnia and Herzegovina during the assaults on the Bosnian safe area of Bihać in 1994 and 1995.²⁰⁸

²⁰² In Security Council Resolution 757 of 30 May 1992 (which introduced wide-ranging sanctions against the FRY) the Security Council expressed its deep concern at persistent ceasefire violations, at the continued expulsion of non-Serb civilians and at the obstruction of and lack of cooperation with UNPROFOR in parts of Croatia.

²⁰³ See generally Chapters 4 and 5.

²⁰⁴ The Report was submitted by Tadeus Mazowiecki, Special Rapporteur of the Commission on Human Rights, E/CN.4/1993/50 appointed to investigate first hand the human rights situation in the territory of the former Yugoslavia pursuant to Commission Resolution 1992/S-1/1 of 14 August 1992. See also General Assembly Resolution A/RES/49/196 of 9 March 1995 in which the Assembly expressed its serious concern at the prevalence of lawlessness in the Serbian-controlled territories of Croatia and the lack of adequate protection for Croatian and non-Serb populations remaining in Serb controlled municipalities.

²⁰⁵ February 1993 Report *ibid*, para. 143.

²⁰⁶ Fifth Periodic Report on the situation of human rights in the territory of the former Yugoslavia, E/CN.4/1994/47 of 17 November 1993 at para. 161. Similar findings were made in a Report of 4 November 1994, A/49/641, S/1994/1252.

²⁰⁷ General Assembly Resolution A/RES/48/153 of 7 February 1994 adopted on 20 December 1993 urged an immediate end to the practice of ethnic cleansing and in particular that the authorities of the FRY use their influence with the self-proclaimed Serbian authorities in Croatia to bring the practice to an immediate end and reverse the effects of that practice.

²⁰⁸ “With No Peace to Keep” George Stamkoski, Grainpress 1995, at p. 46.

UNITED NATIONS CONDEMNATION OF HUMAN RIGHTS VIOLATIONS
AND ETHNIC CLEANSING IN THE FORMER SFRY²⁰⁹

2.130 The United Nations monitored the situation of human rights in the former SFRY on a regular basis throughout the crisis. Reference is made to UN reports of specific incidents and human rights violations in Chapters 3, 4 and 5 of this Memorial. In order to place these sources in context, this section makes general reference to some of the key resolutions and reports adopted during this period.

2.131 In August 1992 the United Nations Commission on Human Rights appointed the former Polish Prime Minister, Tadeusz Mazowiecki as Special Rapporteur to investigate the situation on human rights in the former Yugoslavia. He made his report on 28 August 1992 and recommended among other things that a human rights tribunal should be established to investigate “mass and flagrant” human rights violations. He noted that ethnic cleansing²¹⁰ was “the cause of most such violations”.²¹¹

2.132 The Special Rapporteur continued to monitor the situation in the former SFRY. He investigated the situation in the UNPA’s and the plight of ethnic Croats and other non-Serbs in these areas was recorded. In his 1994 report, for example, the Special Rapporteur noted continuing human rights violations against Croats and other non-Serbs in parts of Sectors South and East.²¹²

2.133 Both the UN Commission on Human Rights and the General Assembly, in condemning the practice of ethnic cleansing in the former SFRY, found that the Serbian leadership in the territories under their control, the JNA and the political leadership of the Republic of Serbia “bear primary responsibility for this reprehensible practice”.²¹³ The Commission on Human Rights called on all states to consider whether the acts committed in Bosnia and Herzegovina and Croatia “constitute genocide, in

²⁰⁹ For extracts of relevant UN Resolutions and Reports on the situation of human rights in the former SFRY, see Annexes, vol 4, annex 5.

²¹⁰ The Commission on Human Rights adopted a definition of ethnic cleansing in its Resolution 1992/S-1/1 in which it declared that ethnic cleansing is “aimed at the dislocation or destruction of national, ethnic, racial or religious groups”.

²¹¹ See Report on the situation of human rights in the territory of the former Yugoslavia, E/CN.4/1992/S-1/9 at para. 6.

²¹² See Report E/CN.4/1994/110 at paras. 107-109.

²¹³ Commission on Human Rights, second special session, Resolution “The situation of human rights in the territory of the former Yugoslavia” 1992/S-2/1 of 1 December 1992, para. 3 and UNGA Resolution A/RES/47/147 of 26 April 1993 adopted on 18 December 1992 at para. 3; endorsed in UN General Assembly Resolution A/RES/47/147 of 26 April 1993, para. 16 see Annexes, vol 4, annex 5.

accordance with the Convention on the Prevention and Punishment of the Crime of Genocide”.²¹⁴

2.134 In October 1992, the Security Council decided to establish a Commission of Experts to examine and analyse information with a view to providing the Secretary General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the former SFRY.²¹⁵ The Commission was duly established and proceeded to investigate what had happened at Vukovar and Ovčara among other violations.

2.135 Non-governmental organisations were also active in monitoring human rights violations in the former SFRY throughout the conflict. In August 1992, Helsinki Watch published a report in which they examined the instances of ethnic cleansing various parts of the former SFRY including Serbian-controlled areas of Croatia. The Report noted that: “During the war in Croatia, Serbian forces engaged in practices which closely resemble those used to “cleanse” areas of non-Serbs in Bosnia and Herzegovina”²¹⁶ It went on to point out that “In Croatia, Serbian civilian, paramilitary, police and military authorities have systematically expelled non-Serbs from their homes in Serbian-occupied areas of the country”.²¹⁷

2.136 A cease fire agreement between the Croatian Government and the “RSK” was concluded in March 1994 under the auspices of the International Conference on Former Yugoslavia (ICFY). Nevertheless a programme of “ethnic cleansing” continued as indicated by the adoption in December 1994 of UN General Assembly Resolution 49/43 which strongly condemned the Serbian self-proclaimed authorities in the Serbian controlled territories of Croatia “for their militant actions that have resulted in “ethnic cleansing” of the United Nations Protected Areas, and their consistent refusal to comply with the relevant Security Council resolutions”.²¹⁸ The Resolution also requested the FRY to “cease immediately any military and logistic support to the self-proclaimed authorities in the Serbian-controlled parts of Croatia”(paragraph 3).

²¹⁴ Commission on Human Rights, second special session, Resolution “The situation of human rights in the territory of the former Yugoslavia”1992/S/2/1 of 1 December 1992, paragraph 12. Annexes, vol 4, annex 5.

²¹⁵ Security Council Resolution 780 (1992) S/RES/780, 6 October 1992, see para. 2.

²¹⁶ Helsinki Watch Report on the former SFRY dated August 1992, p. 52.

²¹⁷ *Ibid.*, at p. 52.

²¹⁸ UNGA Res 49/43 of 9 December 1994 , at para. 4 , Annexes, vol 4, annex 4.

THE DISSOLUTION OF THE SFRY AND THE PROCLAMATION OF THE
CREATION OF THE FEDERAL REPUBLIC OF YUGOSLAVIA (FRY)

2.137 On 29 November 1991 the Badinter Commission gave formal expression to a state of affairs which independent observers and commentators already recognised. In its Opinion No. 1 of that date it stated *inter alia*

“ – that the Socialist Federal Republic of Yugoslavia is in the process of dissolution;”²¹⁹

This “process of dissolution”, which began in May 1991, plainly implied that the disappearance of the SFRY was accompanied by the emergence of new international actors, namely the emergence into independent statehood of the former Republics of the SFRY, including the Socialist Republics of Serbia and Montenegro that became the FRY. This process was finalised – as stated in Opinion No. 8 of the Badinter Commission – in the establishment of five independent states, all being successor states to the former SFRY.

2.138 On 27 April 1992 the Republic of Serbia and the Republic of Montenegro proclaimed the formation of the FRY. In a declaration of that date, the FRY stated that:

“The Federal Republic of Yugoslavia, continuing the State, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally.”²²⁰

2.139 The first President of the FRY was Dobrica Ćosić.²²¹ The Constitution of the FRY was adopted on 27 April 1992. The preamble to the 1992 Constitution refers to the “unbroken continuity of Yugoslavia”. The Constitution provides that the FRY shall be a sovereign federal state composed of the Republic of Serbia and the Republic of Montenegro and provides that the FRY may be joined by other member Republics as provided for by the Constitution. The capital is Belgrade. The Constitution provides *inter alia* for the rule of law, the recognition and guarantee of the

²¹⁹ Opinion No. 1, 92 ILR 162, 166.

²²⁰ UN Doc. A/46/915). Neither Croatia nor any of the other Republics of SFRY which became independent accept that FRY was the “continuation” in a legal sense of the SFRY.

²²¹ He was ousted on 6 June 1993 following a vote of no confidence by the Federal Council of the Yugoslav Assembly. The current President is Dr. Vojislav Koštunica (elected 7 October 2000).

rights and freedoms of man and the citizen recognized under international law, and the rights of minorities.²²²

2.140 Article 16 provides that the FRY shall fulfill in good faith the obligations contained in international treaties to which it is a contracting party and provides that international treaties which have been ratified and promulgated in conformity with the constitution and generally accepted rules of international law shall be a constituent part of the internal legal order.

2.141 Article 99 lays down the powers of the Federal Government which include formulating and conducting domestic and foreign policy and enforcing federal statutes, laws and other general enactments. Article 100 provides that the Federal Government is made up of a Prime Minister, Deputy Prime Minister and Federal Ministers. Section VIII of the Constitution deals with the army of the FRY and provides that the Army shall be under the command of the President of the Republic pursuant to decisions of the Supreme Defence Council.²²³

2.142 In its Opinion No. 10 of 4 July 1992, the Badinter Commission gave the view that FRY was a new state which could not be considered the sole successor to the SFRY.²²⁴

2.143 On 22 May 1992 the Republics of Croatia and Slovenia, which had declared their independence on 25 June 1991, were admitted to membership of the United Nations,²²⁵ together with the Republic of Bosnia and Herzegovina.²²⁶ On 30 May 1992 the Security Council adopted Resolution 757 (1992), noting:

“that the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted.”

²²² FRY Constitution Articles 9-11, Annexes, vol 4, annex 15.

²²³ Article 135 of the Constitution.

²²⁴ Opinion No 10 is reproduced in 31 ILM (1992) 1488 at 1526.

²²⁵ Security Council Resolution 753 (1992) and General Assembly Resolution 46/238 (Croatia); Security Council Resolution 754 (1992) and General Assembly Resolution 46/236 (Slovenia).

²²⁶ Security Council Resolution 755 (1992) and General Assembly Resolution 46/237. On 8 April 1993 the Republic of Macedonia was admitted to membership of the United Nations: Security Council Resolution 817 (1993) and General Assembly Resolution 47/225 (admitted under the provisional designation of “the former Yugoslav Republic of Macedonia”).

2.144 On 4 July 1992, the Arbitration Commission of the Peace Conference on Yugoslavia in its Opinion No. 8 expressed the opinion:

“that the process of dissolution of the SFRY referred to in Opinion No. 1 of 29 November 1991 is now complete and that the SFRY no longer exists.”²²⁷

In reaching that view, Opinion No. 8 took note of Security Council Resolutions 752 and 757 (1992) and noted that “Serbia and Montenegro ... have constituted a new State” and that “the former national territory and population of the SFRY are now entirely under the sovereign authority of the new States”.²²⁸

2.145 On 19 September 1992 Security Council resolution 777 (1992) stated that the FRY “cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia”. It also recommended to the UN General Assembly that the FRY “should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly”. General Assembly Resolution 47/1, adopted three days later, took the same approach.²²⁹ Immediately following the adoption of General Assembly Resolution 47/1 the FRY Prime Minister announced in the General Assembly:

“I herewith formally request membership in the United Nations on behalf of the new Yugoslavia, whose Government I represent.”²³⁰

However, the FRY took no further action at that time to apply for membership of the United Nations. The Security Council and the General Assembly subsequently adopted resolutions limiting the involvement of the FRY in the work of the UN.²³¹ The FRY was granted membership of the United Nations on 31 October 2000.²³²

²²⁷ Opinion No. 8, 92 ILR 199, 202.

²²⁸ *Ibid.* (emphasis added).

²²⁹ Security Council Resolution 777 of 19 September 1992 and General Assembly Resolution 47/1 of 22 September 1992.

²³⁰ UN Doc. A/47/PV.7, 141, at p. 149.

²³¹ Security Council Resolution 821 (1993); General Assembly Resolution 47/229.

²³² See General Assembly Press Release of 1 November 2000 GA/SM/210 Annexes, vol 4, annex 6.

REPLACEMENT OF UNPROFOR WITH UNCRO

2.146 On 23 September 1994, the Croatian Sabor passed a resolution on the future of UNPROFOR in Croatia, expressing dissatisfaction with the presence of UNPROFOR in Croatia. The Sabor insisted that the UN mandate could not be extended and was considered to be terminated. The Croatian Parliament then called on the President to negotiate a new mandate with the UN in accordance with the conditions laid down in the Resolution which included: dissolution and disarming of all armed groups, allowing the safe return of those expelled and working towards the restoration of the Republic of Croatia's authority in all the occupied zones. There was some concern in Croatia that the UN operation would lead to a situation similar to that in Cyprus, resulting in a permanent institutionalised partition. The Sabor's resolution was followed on 30 September 1994 by UN Security Council Resolution 947, which was regarded as failing to meet these demands. The Croatian government agreed to an extension of the UN mandate for three months.

2.147 Following the escalation of events in Bosnia in the latter part of 1994, which effectively stalled further peace talks between Croatia and the "RSK", Croatia announced that it wished to terminate the UNPROFOR mandate. In his report to the Security Council of 17 September 1994, the Secretary General clearly indicated UNPROFOR's shortcomings, stating that the original mandate had proved difficult to implement and that demilitarization of the UNPA, the restoration of Croatian authority in the "pink zones" (see Plate 2.7) and the establishment of border controls and assistance for the return of displaced persons remained unfulfilled. On 12 January 1995, President Tudman wrote to the UN Secretary General informing him of the decision to terminate the UNPROFOR mandate on 31 March 1995 (when the existing mandate expired). This was followed by UN Security Council Resolution 981 of [date] by which the UN Protection Force in Croatia was renamed the United Nations Confidence Restoration Operation "UNCRO" with a mandate lasting until 30 November 1995. UNCRO, among other things, was to monitor the ceasefire agreement of March 1994 as well as control the movement of military personnel, equipment and supplies over the borders of Croatia, Bosnia and Herzegovina and the FRY for which it was responsible.

2.148 Despite the change of name, the UN operation was still unable to move towards a resolution of the situation: the rebel Serbs simply did not wish to negotiate on the basis of remaining within the Republic of Croatia. The Serb rebels rejected the so-called "Z-4 Plan" which had been drafted by international mediators and which proposed the status of a state within a state for the Knin region. The mandate of UNCRO was terminated on 15 January 1996. The end of the mandate required the withdrawal from former

Sectors West, North and South of all UN military units as well as their accompanying civilian components

OPERATIONS “FLASH” AND “STORM”

2.149 The existence of major-Serb held areas, particularly the self-proclaimed “RSK”, in the heart of the state was a critical obstacle to the political and economic development of the country.²³³ Accordingly, the Republic of Croatia resolved to address the problem directly through the use of military force and in 1995 Croatian forces, in two key operations, regained control of the UN Protected Areas.²³⁴

2.150 During Operation “Flash” (Bljesak) in April 1995 the Croatian army and police re-took all of Western Slavonia. Operation Flash followed a number of incidents including the closure of the Zagreb-Belgrade motorway by the “RSK President” Milan Martić and the revenge killing of a number of Croats who were travelling along the motorway at Okučani.

2.151 The second major operation was Operation “Storm” (Oluja). In August 1995, during Operation Storm, Croatian forces liberated the area of the Northern and Southern UN Sectors from Serb forces in a period of less than five days, thus bringing to an end the so-called “RSK”.²³⁵

2.152 During this period in 1995, Croatian Serbs were incited to leave the newly liberated territories as an organized action by the rebel authorities acting under the control of the FRY. However, some of them also fled due to a fear of war, a fear of prosecution for war crimes committed against Croats and a fear of reprisals.

DAYTON AGREEMENT (1995)

2.153 On 21 November 1995 the General Framework Agreement for Peace in Bosnia and Herzegovina, more commonly referred to as the Dayton Agreement (or Dayton Accords) was initialed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic

²³³ See discussion of this point in “Croatia’s Territorial Consolidation and Prospects for the Future” by Mladen Klemenčić and Clive Schofield in *Geojournal* 38: 393-398 1996 Kluwer at p. 395.

²³⁴ Smaller-scale operations had already taken place in which Croatian forces had regained control of areas in the UNPAs including the retaking of Maslenica bridge (and other sites near Zadar) linking Dalmatia with northern Croatia in January 1993.

²³⁵ With the exception of a strip of land near Vukovar.

of Yugoslavia in Dayton, Ohio.²³⁶ The Agreement was subsequently signed in Paris on 14 December 1995.²³⁷ The Agreement contains a General Framework Agreement addressing such matters as recognition, respect for human rights and co-operation with UN and other international agencies in the implementation of the peace settlement including in the investigation and prosecution of war crimes and other grave violations of international humanitarian law. To the Framework Agreement are attached 11 Annexes dealing with specific matters ranging from military matters, including the need to establish a multinational military Implementation Force (IFOR), to refugees and to elections.

2.154 The central role played by the Serbian leadership is indicated by the fact that although the Federal Republic of Yugoslavia was one of the state Parties which was to sign the Agreement, its Head of Delegation was not an official from the Federal Government, but the President of Serbia, Slobodan Milošević - who signed the Agreement together with President Tuđman of Croatia and President Izetbegović [of Bosnia and Herzegovina].

UNITED NATIONS TRANSITIONAL ADMINISTRATION FOR EASTERN SLAVONIA, BARANJA AND WESTERN SIRMIMUM (UNTAES)

2.155 The United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) was established pursuant to Security Council Resolution 1037 (1996) of 15 January 1996 as a peace keeping operation for an initial period of 12 months. The establishment of UNTAES was requested by the parties to the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium which was signed on 12 November 1995 by representatives of the Croatian Government and the Serbs.²³⁸ UNTAES was fully deployed in the region from May 1996, based in Vukovar. In his first report on UNTAES, the UN Secretary General described the mission's objectives: these included bringing the Region, demilitarized and secure, under the sovereign control of the Government of Croatia; retaining the multi-ethnic character of the Region and enabling all refugees and displaced persons to enjoy the right to return freely to their homes and live there in conditions of security. Free and fair elections were also to be organised not later than 30 days before the end of the transitional period.²³⁹

²³⁶ 30 ILM (1996).

²³⁷ UN Ref: A/50/790-S/1995/999.

²³⁸ Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, Annexes, vol 4, annex 11.

²³⁹ Report of the Secretary General on the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, S/1996/472 of 26 June 1996.

2.156 UNTAES had an administrative and a military component.²⁴⁰ The Transitional Administration was to govern the region during the transitional period. This would include ensuring the possibility for the return of refugees and displaced persons and re-establishing the normal functioning of public services in the region. The Agreement also requested the UN Security Council to authorize an international force to maintain peace and security in the region and assist in the implementation of the Agreement. The Agreement provided for the demilitarization of the region “not later than 30 days after deployment of the international force”.²⁴¹ Among the matters addressed by UNTAES were the provision of assistance in implementing agreements between Croatia and the FRY concerning the restoration of highway and railway links, and facilitating the establishment of Croatian immigration and customs facilities at the border with the FRY.

2.157 An Agreement on the Procedures for Return, signed by the Government of Croatia, UNTAES and the United Nations High Commissioner for Refugees (UNHCR) was concluded in 1997.

2.158 Pursuant to the Basic Agreement, elections in the region were held beginning on 13 April 1997.²⁴² The mandate of UNTAES expired on 15 January 1998 and the operation was considered to have been a major success.

AGREEMENT ON NORMALIZATION OF RELATIONS (1996)²⁴³

2.159 On 23 August 1996, the Republic of Croatia and the FRY signed an agreement on normalization of relations. Under the terms of the Agreement, each agreed to “respect, in accordance with international law, the sovereignty, territorial integrity and independence of the other”; that they would “carry out the regulation of their frontiers and the delimitation through mutual agreement only”; and that they would settle disputes through peaceful means and refrain from the threat or use of force (Article 2). Within 15 days from signing the Agreement, the Contracting Parties

²⁴⁰ As to the mandates of these two components, see in particular Security Council Resolution 1037 (1996) of 15 January 1996 setting out the mandate for demilitarization etc.

²⁴¹ Article 3 of the Agreement. This began on 21 May 1996 and was completed on 20 June 1996, see Report of the Secretary General on the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium, S/1996/472 of 26 June 1996, at para. 14.

²⁴² See letter of the UN Secretary General of 29 April 1997 (S/1997/343) addressed to the Security Council conveying the conclusions of the Transitional Administrator regarding the successful holding of elections in the region, Annexes, vol 4, annex 7.

²⁴³ Annexes, vol 4, annex 12.

were to establish full diplomatic and consular relations (Article 3). The Parties also agreed to resolve the issue of the succession of the SFRY on the basis of the rules of international law and through agreement (Article 5).

2.160 The Agreement also addressed a number of other issues including the question of missing persons and the rights of refugees: the Parties also undertook to “speed up the process of solving the question of missing persons” and to exchange all available information about those missing (Article 6) and to “ensure conditions for the free and safe return of refugees and displaced persons to their places of residence or other places that they freely choose” and to ensure to these persons the return of their property or just compensation. Also in relation to the question of refugees, the Parties undertook to ensure full security to the refugees and displaced persons who returned and to assist them in ensuring the necessary conditions for a “normal and safe life” (Article 7).

2.161 The Agreement also provided for a further agreement on compensation for property damage and for the establishment of a joint commission to facilitate implementation of Article 7 and addressed such matters as transport, movement of non-nationals and the need for mutual agreements in a number of areas.

THE FRY BECOMES A MEMBER OF THE UNITED NATIONS (2000)

2.162 In October 2000, the FRY formally applied for United Nations membership, thereby belatedly accepting the situation as laid down by the competent United Nations organs in the resolutions above-cited. On 31 October 2000 by its Resolution 1326 (2000) the Security Council recommended to the General Assembly that the FRY be admitted to membership of the United Nations. On 1 November 2000 by its Resolution 55/12 the General Assembly decided to admit the FRY to membership of the United Nations. On that date the FRY became a new member of the United Nations, as an equal successor (along with Croatia, Slovenia, Bosnia and Herzegovina and the Former Yugoslav Republic of Macedonia) to the former SFRY.²⁴⁴ On 14 November 2000 the General Assembly adopted Resolution 55/24 (on Bosnia and Herzegovina), in which it welcomed the mutual recognition among the successor states of the former SFRY within their internationally recognized borders and went on to stress the

²⁴⁴ See Statement of the President of the General Assembly on the occasion of the admission of the FRY to membership of the United Nations (“The admission of the FRY to the United Nations signifies a new era in cooperation between the new Member State and the other members of the United Nations, including its neighbours and other successor States of the former SFRY”): Press Release GA/SM/210, 1 November 2000.

importance of full normalization of relations among those states including, *inter alia*, the settlement of all issues relating to the succession of the former SFRY “on the basis of the legal equality of all five successor states, in order to contribute to the achievement of a lasting peace and stability in the area.”²⁴⁵

²⁴⁵ See UN General Assembly Resolution 55/24 of 14 November 2000 on the Situation in Bosnia and Herzegovina, A/RES/55/24, at the 11th recital to the preamble.

CHAPTER 3

THE JNA AND THE PARAMILITARY GROUPS

3.01 Chapter 2 set out the general historical framework and the timetable under which the Serbian genocide in Croatia has been perpetrated. This Chapter describes how the conditions under which the violations of the Genocide Convention under the direction of the Serbian leadership could take place through the instrumentalities of the Yugoslav People's Army (JNA) and the paramilitary forces, under the direction and effective control of the Republic of Serbia. It describes the transformation of the JNA into an armed force promoting Serbian objectives (Part 1, para. 3.2 *et seq*) and the establishment, arming, financing and control of Serb and Serbian paramilitary groups active in Croatia (Part 2, para. 3.43 *et seq*). It concludes with a brief overview of the opening of the genocidal campaign in various parts of Croatia, indicating the extent to which the JNA and paramilitary groups worked together (Part 3, para. 3.72 *et seq*).

SECTION ONE:

THE JNA AND ITS TRANSFORMATION INTO A SERBIAN ARMY

3.02 From 1945 to mid-1991 the JNA was the Army of the SFRY, acting only under the direct authority and control of the Presidency of the SFRY and the SFRY Ministry of Defence. In mid-1991, with the collapse of the SFRY Presidency, the Serbian leadership of the "rump Yugoslavia" took over control of the JNA, following changes of structure and personnel dating back to 1988. From spring 1991 onwards the JNA operated as a *de facto* "Serbian Army" promoting Serbian interests (including the ambitions of the FRY, which was at that point in *statu nascendi*, for a "Greater Serbia"). The "Serbianized" Army formally changed its name into the Yugoslav Army (VJ) following the proclamation of the FRY on 27 April 1992. Even after that date some orders of the Army of the FRY were adopted in the name of the SFRY, indicating the direct continuity between the Serbian-controlled JNA and the Army of the FRY.¹

¹ See below para. 3.41.

3.03 In summary terms, the transformation of the JNA from an Army of the SFRY into a “Serbian Army” can be traced back to the period immediately after the publication of the 1986 SANU Memorandum.² In 1987 and 1988 the JNA was restructured into new Military Regions, including the newly established 1st Military Region to encompass the entirety of region that corresponded with the plan for “Greater Serbia” as envisaged in the 1986 Memorandum.³ In May 1990 the JNA disarmed the Territorial Defence (TO) of Croatia,⁴ transferring armaments from the barracks and storage depots of the Republic of Croatia to the depots and barracks of the JNA, and later to Serbian paramilitary groups in parts of Croatia which had a relatively high proportion of Serbs amongst the population. At the same time, the results of multi-party elections in the Republics of Slovenia and Croatia, also in 1990, caused the JNA to actively promote the unity of the SFRY in the face of the aspirations of Slovenia and Croatia for independence. The maintenance of the SFRY (as well as greater centralization and Serbian dominance) was synonymous with the promotion of Serbian interests. In the period from April to June 1991 and again in September 1991 changes were made to the command structures of the JNA: non-Serb officers in the upper echelons of the JNA were systematically replaced with Serb officers supportive of the emerging plans to establish a “Greater Serbia”. After the short conflict in Slovenia, in June and July 1991, and the JNA’s withdrawal from Slovenia, it became apparent that the aim of maintaining the original borders of the SFRY was no longer possible. Having failed to achieve this objective, the JNA acting pursuant to the objectives of the Serbian leadership which had assumed control over the “rump Yugoslavia” – in fact a FRY in *statu nascendi* – following the collapse of the SFRY, took steps to establish the borders of a new Yugoslavia according to the plan for “Greater Serbia”. These borders would encompass those areas of the Republics of Croatia and Bosnia and Herzegovina within which lived significant Serbian populations or which were of economic or geo-strategic interest to the Serbian leadership.⁵ To achieve this the JNA – in conjunction with, and supported by, Serb paramilitary groups, some of which were formally integrated into the JNA – pursued a course which led to the expulsion and destruction of Croats. That course led to acts against the Croat populations residing in these regions, which violated the Genocide Convention.

3.04 During 1991 the preparation for and the perpetration of genocide by the JNA and the paramilitaries within its control and command may be

² See Chapter 2, para. 2.49 *et seq.* See also Annexes, vol 4, annex 14.

³ See Annexes, vol 3, Plate 6.1 and Plate 6.2. For Map of “Greater Serbia” see Plate 2.6.

⁴ See *infra*, para. 3.24 *et seq.*

⁵ See Annexes, vol 3, Plate 3.1.

divided into three distinct phases. The first phase continued until early March 1991, where by its non-intervention and covert support the JNA gave the rebel Serbs of the “SAO Krajina” the time and space to consolidate their control of the territory over which they had proclaimed their sovereignty.⁶ General Kadijević, the SFRY Minister of Defence, stated that the JNA’s aim during this stage was to protect Serbs in the territory of the Republic of Croatia from the attacks of Croatian Armed Forces, to enable the local Serbs to prepare their defence, and to prepare the JNA for the war against Croatia.⁷

3.05 The second phase of the JNA’s involvement ran from early March to July 1991. During this period, the Serbs of “SAO Krajina” attempted to enlarge their territorial acquisitions beyond the areas in which they enjoyed a majority, to other areas where Serbia had economic or geo-strategic interests. During this phase the JNA became a key player, initially trying to promote the impression that it was acting as a “neutral” force, enjoined with the task of creating a “buffer zone” between Croat and Serb populations, and subsequently as a protector and accomplice of the rebel Serbs. The incidents at Borovo Selo, Pakrac and Plitvice are examples of this.⁸

3.06 Subsequently, the JNA moved to the third phase of its engagement after July 1991. To achieve its objectives, the JNA located armoured and mechanised units close to potential combat areas to assure their early intervention. Other units of the JNA were located in and around the Republic of Croatia so they could engage in direct and decisive interventions.⁹ Preparations for these deployments commenced as early as 1990: they are reflected in an Order dated 15 May 1990 which provided for a major re-classification and restructuring of military units.¹⁰ This Order was issued the day after the JNA instructed the TO’s to hand over their weapons.¹¹

3.07 It was during this third phase that ethnic cleansing and genocidal acts began to be systematically performed through cooperation between the JNA and rebel Serbs. In the final phase during the autumn and winter of 1991 – described in the following Chapters 4 and 5 – the JNA with Serb paramilitary groups destroyed a significant part of the Croat population in

⁶ See Chapter 2, para. 2.89 *et seq* and below para. 3.28.

⁷ Veljko Kadijević, *Moje viđenje raspada*, 1993, p. 127; Appendices, vol 5, appendix 4.1.

⁸ Chapter 2, paras 2.102.

⁹ Veljko Kadijević, *Moje viđenje raspada*, 1993, p. 127; Appendices, vol 5, appendix 4.1.

¹⁰ See below para. 3.26.

¹¹ See below para. 3.24 *et seq*.

violation of the Genocide Convention. This was done under the direction of the Serbian leadership in Belgrade. In carrying out these activities the JNA invited volunteers from the paramilitary groups, and incorporated them into the JNA's command structure.

THE JNA'S HISTORY

3.08 The JNA emerged from the Yugoslav communist party and the Partisan forces of Josip Broz Tito active in the Second World War. After that War, though the JNA leadership was not directly involved in political decision-making, it played a major role in the overall federal leadership of the SFRY. The adoption of the 1974 Constitution provided an opportunity to reconcile two views. The first promoted a strong, centralised, well-equipped Army; the second promoted a de-centralised Army within the Republics. The 1974 Constitution caused a shift towards the latter view: establishing a de-centralised military structure, comprising on the federal level of the JNA together with the distinct Territorial Defence Forces (TOs) established in each of the Republics, and subject to their staffing and control. The SFRY Constitution provided that the JNA and the TOs were at par, and during a war the TO forces were to act in a complementary manner.¹² While the JNA acted under the control of the Presidency of the SFRY, the TO's acted under the control of the Republics or Provinces, in peacetime.

3.09 While national defence was a Federal responsibility, the SFRY had a decentralised command and control system. The SFRY itself considered that the Federal Government would be unable to control military forces throughout the SFRY, and envisaged that the Governments of the Republics would co-operate with the military authorities of the SFRY for regional defence.¹³ Decentralized training and mobilisation also required dispersed military training facilities throughout the country.¹⁴ Weapons caches and supply stores were also dispersed throughout the Republics to ensure ready access in the event of invasion from outside the SFRY. This strategy was known as Total National Defence (ONO), and it sought to ensure a wide distribution of trained soldiers, weapons, and ammunition across the various Republics. This required the co-ordination of the Army,

¹² See *The Strategy of All-People's Defence and National Self-defence SFRY*, The Federal Secretariat for National Defence, Centre of the Armed Forces for strategic research and studies "Maršal Tito", Belgrade, 1987, Annexes, vol 4, annex 49.

¹³ David C. Isby, Yugoslavia 1991 – Forces in conflict, 3 *Jane's Intelligence Review* 394 (1991).

¹⁴ *Ibid.*

Territorial Defence Forces (TO) and the local population, and was adopted as Law in 1969.¹⁵

3.10 The Armed Forces of the SFRY comprised the Army, the Navy, the Air Defence Forces, border troops and the Territorial Defence (TO).¹⁶ It was supposed to be “the unique armed forces of the working class ... and to provide nation-wide defence and social protection...”. The JNA was the “common armed force of all nations and nationalities...” and the “strike force of the united armed forces”.¹⁷ Operationally, the Federal Ministry of Defence in Belgrade controlled the JNA. The Federal Ministry of Defence was itself subordinate to the collective Presidency of the SFRY, whose decisions were based on a majority of its eight members.¹⁸ If the Presidency were to collapse – as it did in 1991 – the JNA would be without Federal control.

3.11 By 1991 the core of the JNA comprised a cadre of some 70,000 regular officers and soldiers, augmented by some 150,000 short-term conscripts.¹⁹ The JNA was closely connected with the League of Communists. As with other communist countries, the Communist apparatus was tightly integrated into the strategic scheme, and party structures at all levels were geared to support military and societal mobilisation for war.²⁰ Military structures accommodated a shadow chain of command responsible to the League of Communists.

3.12 Against that federal background, each Republic maintained its own TO headquarters over which the Federal JNA General Staff exercised strategic control, leaving tactical control to the regional or local leadership.²¹ The TO units were a reserve force usually made up of veterans

¹⁵ ONO was codified in Art. 240 of the 1974 Constitution, which states that the armed forces consist of the JNA and the TO.

¹⁶ See also James Gow, “The Yugoslav Army: An Update”, *Jane’s Intelligence Review* 501 *et seq.* (November 1993); Milan Vego, “Yugoslav Ground Forces”, *Jane’s Intelligence Review* 247 *et seq.* (June 1993).

¹⁷ *Supra* fn 12.

¹⁸ After 1991 the reorganised JNA came under the *de facto* command of President Milošević, who was reportedly personally involved in the appointment of successive Chiefs of Staff and also of other senior officers. From 1991 he was also reported to have become increasingly involved in strategic and major tactical decisions, including the type and level of military supplies and assistance given to Serbs in Bosnia and Herzegovina and Croatia.

¹⁹ David C. Isby, “Yugoslavia 1991: Forces In Conflict”, 3 *Jane’s Intelligence Review* 397 (1991).

²⁰ *Ibid.*, p.394.

²¹ *Ibid.*, at 395.

of active JNA service, and a cadre of professional soldiers.²² The TO units drew their strength locally, and reflected the ethnic makeup of the local area. The TO was

“a broad ... organisational forum of all working people and citizens for the armed combat and execution of certain tasks of the society’s self-protection, and the broadest organisational form for the armed defence of all peoples”.²³

THE JNA AND THE POLITICAL CHANGES FROM 1990

3.13 The JNA occupied a privileged position in the SFRY, with its officers enjoying privileges as compared with other government employees.²⁴ Reforms in the 1980s resulted in cuts in the Army’s budgets in the face of growing criticism of the JNA’s role in the political affairs of the SFRY. This led the Army to ally itself increasingly with Serbian conservatives, who opposed political reform and greater autonomy for the Republics, and undergo a process of ‘Serbianisation’ beginning in the mid-1980’s.²⁵ The victory of a non-communist party with a strong national orientation (the HDZ) in the elections of 1990 in the Republic of Croatia led to an even closer convergence between the JNA and some dissatisfied Serbs. The SFRY Defence Minister General Kadijević and other SFRY officials were openly hostile to the HDZ, publicly referring to it as Ustasha in character and declaring that they would not allow it to take power.²⁶ The JNA equated the loss of communist control with a threat to the SFRY.²⁷ The close relationship between the JNA and Serbia is reflected in the diary

²² *Ibid.* at 397-398.

²³ See *supra* fn 12, pp. 54-56. On the role of the TO, See also The Federal Secretariat for National Defence, Centre of the Armed Forces for strategic research and studies, Strategy for Armed Defence, 1983, Annexes, vol 4, annex 120.

²⁴ See The Washington Post, 4 December 1990.

²⁵ The process of “Serbianisation” was carried out in a number of ways: *inter alia* by a continuous ideological, political and social homogenisation of the Officer Corps aimed at ‘pro-Yugoslav’ socialisation, which was carried out by long active service away from home Republics and the glorification of Serbian history in Federal military academies. See Davor Domazet, “How Aggression Against Croatia and Bosnia and Herzegovina Was Prepared or the Transformation of the JNA into a Serbian Imperial Force”, *Croatian International Relations Review*, vol V, No. 14-1999, p 3.

²⁶ See BBC Summary of World Broadcasts, October 5, 1991, Annexes, vol 4, annex 40.

²⁷ Several retired generals under the aegis of the JNA formed the League of Communists – Movement for Yugoslavia (LC-MY). The organisation was a staunch supporter of the Yugoslav Communist League. The LC-MY was committed to fight for socialism and Yugoslavia. The JNA organization of the Yugoslav League of Communists joined the Movement on 17 December 1990. See The decision at the 10th Conference of the League of Communists of the JNA, 17 December 1990.

entry of Borisav Jović at the time a Serbian representative in the Presidency of the SFRY, about the meeting held in Slobodan Milošević's office on 10 January 1990:

“Meeting at Slobodan's. Present: Pera, Slobodan, Bogdan, Zoran and I. We reached an agreement on everything in an open, friendly discussion of nearly three hours. The main battle should be played out at the 14th Congress of the SKJ, to preserve the integrity of the SKJ and democratic centralism, at least formally. The goal is to isolate the Slovenes, to keep Croatia and Macedonia and possibly Bosnia and Herzegovina as well from joining them. JNA representatives will be the standard bearers and we will back them, so that we are not leading the way, because that could have a negative effect on the Croats and Macedonians. The Army accepts this sort of role.”²⁸

3.14 It is against this background that the JNA's transformation into an armed force supporting Serbian interests occurred between 1987 and 1991. It was reflected in particular in changes to (a) the JNA's ethnic composition and management, and (b) its restructuring in 1988.

(a) The Ethnic Composition of the JNA and the Officer Corps

3.15 As the JNA was created as a unifying force, the SFRY Ministry of Defence sent conscripts on service out of their home districts to avoid the dominance of any ethnic group in regular army units located within a particular Republic. Despite these efforts, a characteristic feature of the JNA's professional soldiers was the disproportionate ethnic and national composition of the JNA corps: Serbs accounted for 63.2% of the Corps, whereas the Croats amounted to just 6.3%. The imbalances became more marked after 1986, when the Serbs accounted for almost 70% of the JNA Officer corps.²⁹

3.16 This disproportion was also reflected at the Officer level, especially in the ranks of General and Commissioned Officers. Although in 1991 there were a number of Generals in the JNA from Croatia and Bosnia and Herzegovina and, most were ethnic Serbs, so that the overall balance of the Officer Corps sharply favoured Serbian ethnic interests. Although Serbia was entitled to 56 Generals it had 77; by contrast Croatia had only 22 of the

²⁸ See Borisav Jović, *Poslednji dani SFRJ*, Politika, Belgrade (1993). The entry for 26 January 1990 confirms that General Kadijević is sharing information with Serbian members of the Presidency but not others who may be “separatists”; Appendices, vol 5, appendix 4.3.

²⁹ *Supra* fn 25, pp. 2-3.

30 Generals to which it was entitled. Moreover, most of the 22 Croatian generals were of Serbian ethnicity, whose allegiance to the “Greater Serbian” ideal became readily apparent with the onset of the war. The imbalances were equally great at the level of Colonel (commander of a brigade-regiment): there were 1511 Serb Colonels (as compared with the 850 there should have been) and just 219 Croatian Colonels (as compared with the 463).³⁰

*(b) Restructuring of the JNA in 1988
and the Adoption of a New Military Strategy*

3.17 A further shift towards the promotion of Serbian interests was achieved with the restructuring of the JNA in 1988, according to the “Jedinstvo” (“Unity”) plan.³¹ This Plan had as its primary objective the limitation of the potential role of the TOs, by removing their significant powers and making them subordinate to the Military regions.³² The 1988 restructuring was inspired by the events in Kosovo between 1981 and 1989, when the JNA (through its 52nd Corps) was able to maintain Serb domination in Kosovo notwithstanding the fact that 90% of the population was non-Serb.

3.18 Until 1988 the organisational structure of the JNA provided for 6 Armies and Independent Corps. Their territorial locations generally corresponded to the internal borders of the Republics (see Plate 10). In 1988, the six Armies were replaced with new battlefield regions, entitled Military Regions. Three Military Regions and a Naval Region were established (See Plate 11). Prior to the 1988 restructuring each Republic had its own JNA group and units located within its territory, the commander of which was usually a national of the Republic in which it was located. The creation of three Military Regions no longer corresponded with the borders of each of the Republics, and the Republics had less influence on the local command of the JNA.³³ The restructuring

³⁰ *Revija Obramba*, Ljubljana, No. 4-1991, p. 56-61, Teodor Geršek, “Kdo drži v rokah jugoslavensko armado”.

³¹ The SFRY Presidency approved the plan “Unity”. The plan came into effect on 25 December 1988. See Federal Secretariat of National Defence, The headquarters of the SFRY Armed Forces, the 1st Administration, DT no: 374-172/87, 31 Oct 1988, to the 5th Army Command, Order; Annexes, vol 4, annex 126 and Federal Secretariat of National Defence, the headquarters of the SFRY Armed Forces, the 1st Administration, DT no: 374-184/87, 10 Nov 1988, to the 5th Army Command, Annexes, vol 4, annex 121.

³² See Federal Secretariat of National Defence, the Headquarters of the SFRY Armed Forces, Order, 14 March 1989, Annexes, vol 4, annex 58.

³³ *Supra* fn 25, p.4. See also Annexes, vol 3, Plate 9.1.

subordinated the TO which were under the control of each of the Republics to the battlefield commands of the JNA. The JNA justified this change to avoid “the duality of strategic, operative, and tactical commands”.³⁴ These changes were badly received by the Republics, with the exception of Serbia, which considered the restructuring to be a limitation on their rights under the 1974 Constitution.

3.19 The northwestern part of the Republic of Croatia had been the base for the JNA’s 5th Army and Military and Naval Region until 1988 (see Plate 10). The restructuring divided Croatia in two. The new 5th Military Region (whose Command began to function in December 1988, based in Zagreb) encompassed the whole of Slovenia and that part of the territory of the Republic of Croatia which fell west of the line corresponding to that linking the towns of Virovitica-Karlovac-Karlobag (the line identified by the 1986 SANU Memorandum as being the western limit of “Greater Serbia”).³⁵ The rest of Croatia, the southern part falling within “Greater Serbia”, was divided between the 1st Military Region and the Naval Region. The 1st Military Region was based in and controlled from Belgrade, and its area included the whole of Slavonia (East and West), which was under the command of the 17th Corps in Tuzla. The Naval Region with its headquarters in Split, covered the Adriatic coast and a part of Northern Dalmatia.³⁶ The consequence of the restructuring was that the new 1st Military Region clearly corresponded with the western and northern borders of “Greater Serbia”, along the line connecting Virovitica-Karlovac-Karlobag.³⁷

3.20 As stated above the restructuring of the army was accompanied by the adoption, in May 1987, of a new “Strategy of All-People’s Defence and

³⁴ See Federal Secretariat for National Defence I, “Razvoj oružanih snaga SFRY” 1945-1985, Book 7/I, Belgrade, 1990, p. 375-376, Annexes, vol 4, annex 50.

³⁵ These were the areas the Military Region inherited from the former 5th Army (Croatia) and the 9th Army (Slovenia). The 5th Military Region comprised four Corps: the 14th and 31st Corps based in Slovenia; the 13th Corps based in Rijeka, and responsible for the northern part of Istra and the Croatian coast and the 32nd Corps in Varaždin, responsible for North-western Croatia. Most of Kordun was under the command of the 6th Proletarian Infantry Division with its headquarters in Karlovac; and Zagreb and its surroundings formed a separate Command for the defence of Zagreb. The 5th Corps of the Airforce and Air-defence, which was based in Zagreb, supported the 5th Military Region. See Report on the Combat Readiness of the 5th Army, December 1988, Annexes, vol 4, annex 122.

³⁶ Northern Dalmatia was under the command of the 9th Corps based in Knin; the 5th Naval sector with headquarters in Pula was responsible for the northern part of the Adriatic coast; the 8th Corps with headquarters in Šibenik was responsible, for the central part of the Adriatic coast; and the 9th Corps with headquarters in Kumbor, in Boka Kotorska was responsible for the southern part of the Adriatic coast.

³⁷ See Chapter 2, para. 2.76.

National Self-defence of the SFRY”.³⁸ The Strategy envisaged that the JNA would continue to have a role as protector of the socialist system. In a Chapter of the Strategy entitled ‘Extraordinary Circumstances’ (in other words, a situation pertaining prior to a state of emergency) any potential destabilisation of the SFRY could be addressed by permitting the JNA to:

- threaten to use force against the hostile internal or international forces; or
- directly participate in eliminating “extraordinary circumstances.”³⁹

This Strategy changed the potential terms of engagement of the JNA. For the first time it could intervene directly in events which might, for example, include efforts by one of the Republics to establish an independent state.

3.21 The restructuring of the JNA and the 1987 Strategy for Deployment in “Extraordinary Circumstances” were accompanied by other developments. JNA officers who had indicated support for the idea of “Greater Serbia” were elevated.⁴⁰ According to the SFRY Defence Minister General Kadijević, the JNA’s new organisational structure would reduce control of the Republics over the TO’s and the JNA.⁴¹ The relevant structures are set out in Volume 3, Part 2.

PURPOSE OF REORGANISATION AND THE PREPARATIONS FOR THE GENOCIDE

3.22 The JNA had two war plans to be invoked in a case of aggression against SFRY. These two variants were known as S-1 (which addressed potential threats from the eastern bloc) and S-2 (which addressed potential threats from the West, i.e. NATO). With the sweeping changes across Eastern Europe in the early 1990’s the JNA increasingly anticipated a threat only from NATO, believing that NATO’s forces would most likely strike from Hungary and Bulgaria.⁴² The JNA developed a military doctrine premised upon counter-attack, which would force the NATO forces to retreat. The JNA carried out several exercises practising these manoeuvres.

³⁸ *Supra* fn 12.

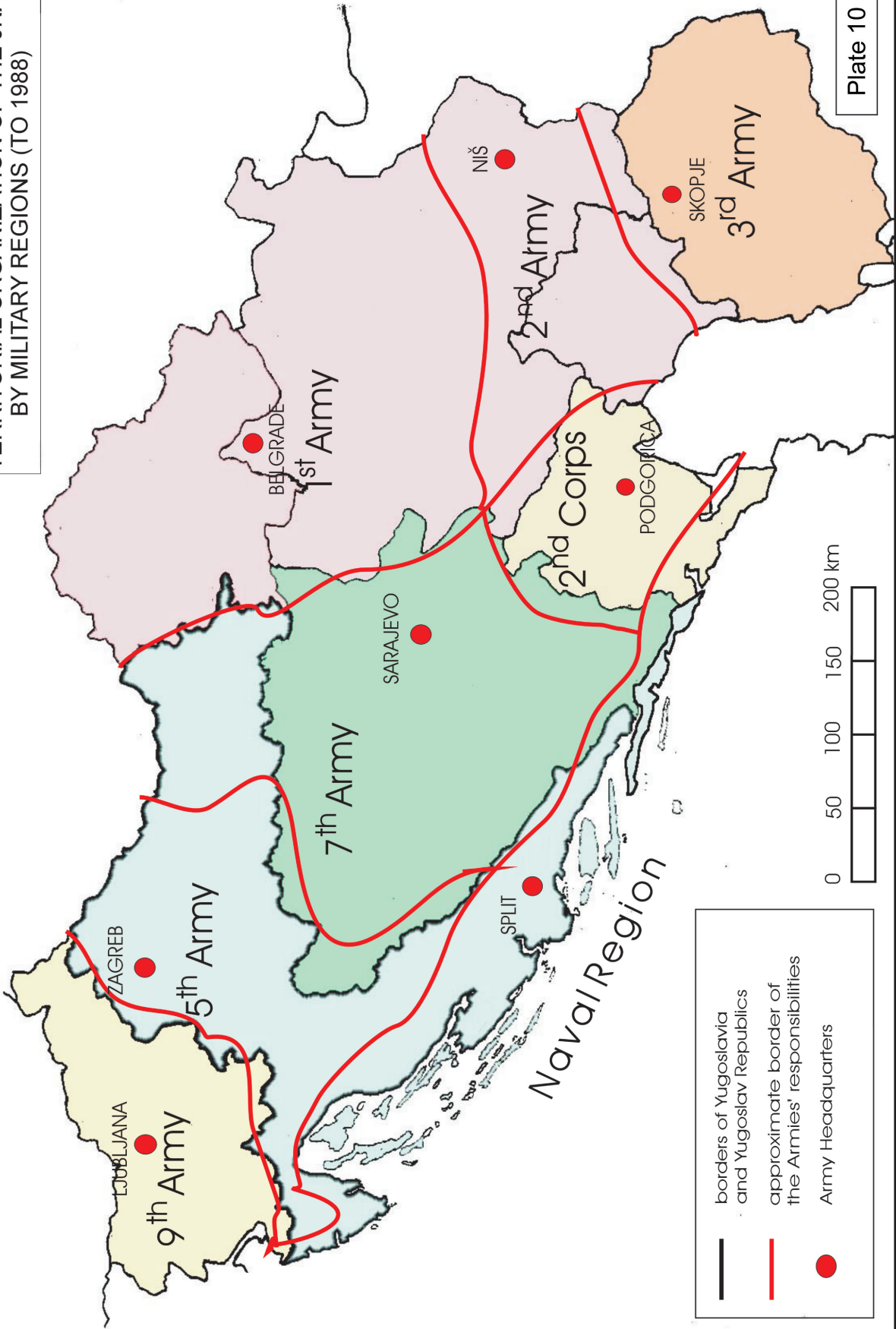
³⁹ *Supra* fn 25, pp. 5- 6. See also *supra* fn 12.

⁴⁰ *Supra* fn 25, p. 4.

⁴¹ *Supra* fn 25, p. 4 citing General Kadijević at p. 78.

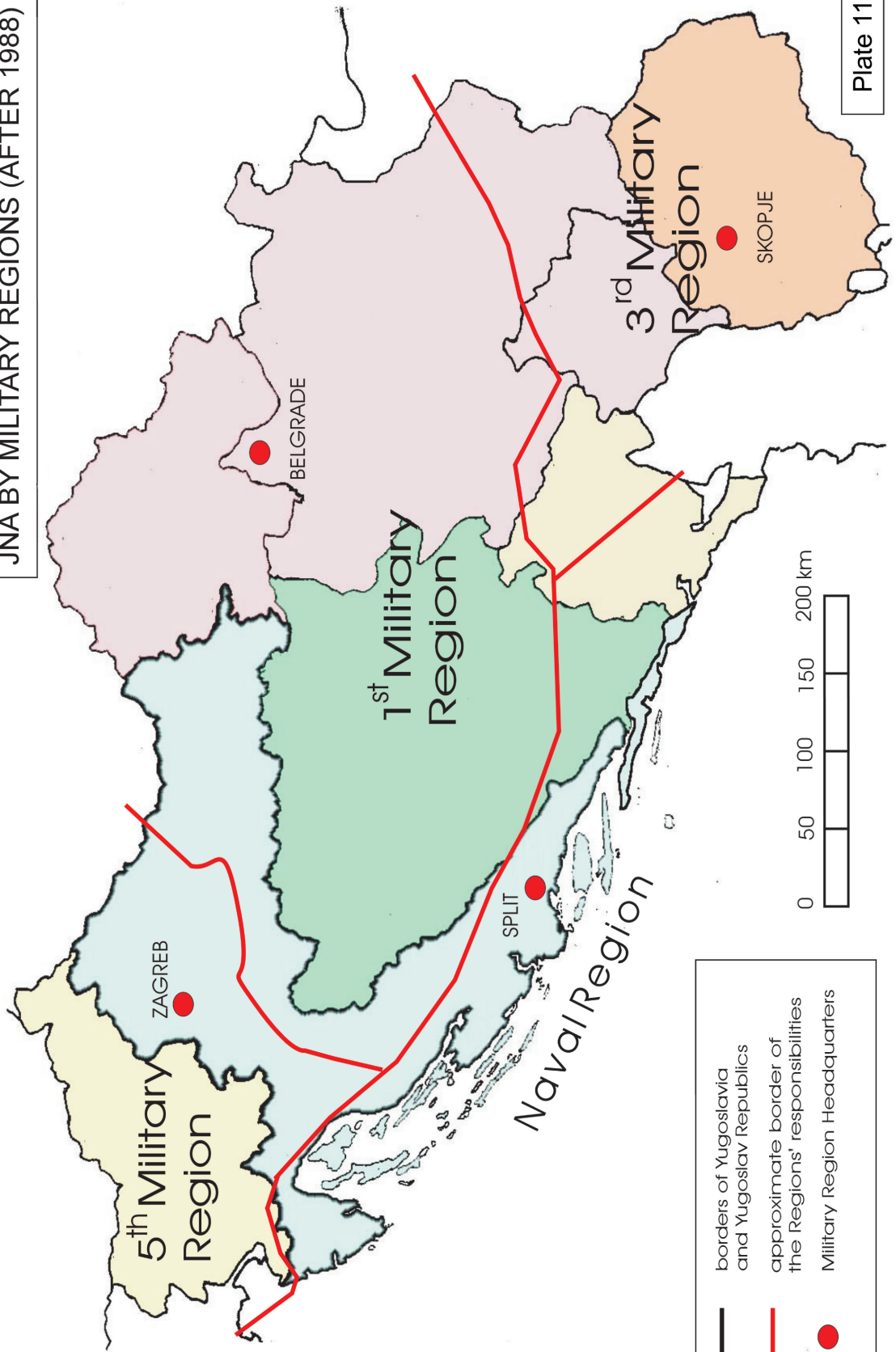
⁴² See Command of the 30th Partisan Division, Top Secret No. 651-10, Order for the mobilisation of the 5th Corps, 23 September 1991, Annexes, vol 4, annex 51.

TERRITORIAL ORGANIZATION OF THE JNA
BY MILITARY REGIONS (TO 1988)



-  borders of Yugoslavia and Yugoslav Republics
-  approximate border of the Armies' responsibilities
-  Army Headquarters

TERRITORIAL ORGANIZATION OF THE
JNA BY MILITARY REGIONS (AFTER 1988)



- borders of Yugoslavia and Yugoslav Republics
- approximate border of the Regions' responsibilities
- Military Region Headquarters



These exercises were to inform the JNA's activities in Eastern Slavonia and elsewhere in Croatia in 1991.⁴³

3.23 The restructuring of the JNA, the adoption of the 1987 Strategy and the above-mentioned military exercises provided a means for the Socialist Republic of Serbia and the Serbian leadership to position the JNA as a defender of the *status quo*, committed to the maintenance of the unity of the SFRY, in the face of any future moves towards independence in Slovenia and Croatia. Accordingly, the JNA treated the "Krajina" rebellion in 1990 as a spontaneous uprising of "unarmed Serbian people" in response to Croatian nationalism, its response being to protect these people. The Belgrade regime hoped that Croatia would attack JNA garrisons, so that radical action taken by the JNA could be interpreted as action taken in defence.⁴⁴

3.24 The introduction of the multi-party system and the subsequent victory of a non-communist party in the Republic of Croatia in April 1990 provided the catalyst for the JNA's new role. On 17 April 1990 the Defence Minister of the SFRY orally ordered the commandants of the Military districts and the TO's of the Republics and the Autonomous Provinces to evaluate the security of all buildings of the Territorial Defence that held weaponry and ammunition.⁴⁵ The following month, acting under orders from Belgrade – but without the knowledge of the Presidency of the Socialist Republic of Croatia – the JNA confiscated the weapons of the TO of the Socialist Republic of Croatia.⁴⁶ On 14 May 1990 the Chief of Staff of the JNA ordered that weapons be removed from the premises of the TO and

⁴³ *Supra* fn 25, pp. 7-9. An example of the exercises was an exercise carried out in May 1990, called "Romanija-90", under the command of the 5th Military Region. The "Red" (JNA) was to execute the strategic offensive on the battlefield in the final stage of the war and the "Blue" (NATO) was to execute a strategic defense. The object of the training was to improve the commanding structure and experiences in the operative (corps commands) and strategic levels (military region command). The combat actions executed by the JNA in Croatia from September 1991 onwards corresponded to the task of the "Red", whilst the Croatian army was the "Blue". See The Report on Monitoring and Evaluation of the "KŠRV" "Romanija-90" of the 5th Military Region Command, Annexes, vol 4, annex 123.

⁴⁴ *Supra* fn 25, p. 10; see also Kadijević, p. 133. Appendices, vol 5, appendix 4.3.

⁴⁵ The existence of this order can be seen in the Order of the SFRY Presidency to the Presidencies of the Republics, No.150/3-3/690, 31 May 1990, Annexes, vol 4, annex 52.

⁴⁶ Command of the 1st Military Region, 15 May 1990, Order; Annexes, vol 4, annex 48. See also Smail Čekić, Military Preparations for the Aggression Against the Republic of Bosnia and Herzegovina, *Agresija na Bosnu i Hercegovinu i borba za njen opstanak 1992 – 1995*, Law Faculty of the University in Sarajevo, Sarajevo, 1996, p. 80.

placed under the control of the JNA.⁴⁷ When the JNA's buildings were filled the remaining armaments were left in the TO buildings but the ammunition was removed by the JNA.⁴⁸ The transfer was to be completed by 21st May 1990. This decision was endorsed by the Presidency of the SFRY. It is interesting to note the observations of Borisav Jović, then President of the Presidency of the SFRY:

“We take measures to ensure that weapons are taken from civilian Territorial Defence (TO) depots in Slovenia and Croatia and transferred to military depots. We will not permit Territorial Defence weapons to be misused in any conflicts or for forcible secession. Practically speaking, we have disarmed them. Formally, the head of the General Staff did this, but it was actually under our order. Extreme reaction by the Slovenes and Croatians, but they have no recourse.”⁴⁹

3.25 The JNA's actions were to leave the TO's of the Republics of Croatia, Bosnia and Herzegovina, and Slovenia virtually without arms. The SFRY Defence Secretary, General Kadijević, justified the action by stating that the weapons were under the exclusive authority of the federal JNA and not the Republics, who had no rights over these weapons. He stated that the weapons could be returned if the Republics ensured good conditions of protection.⁵⁰ The Presidency of the Republic of Croatia demanded the return of the weapons at a session of the Presidency of the SFRY on 8 June 1990.⁵¹

3.26 After the removal of the weapons of the TO of the Republic of Croatia the JNA also made significant organisational and structural changes in the 1st and 5th Military Region situated on the territory of the Republic of Croatia and in the Naval Region. The Armoured and Mechanized Brigades of the JNA were upgraded from category “B Class” to “A Class”, while in several mechanized Brigades the armoured and mechanized battalions were integrated into their structures.⁵² This upgrade was a rare occurrence, and significantly enhanced the firepower and mobility of these Regions.

⁴⁷ See Federal Secretariat of National Defence, the Headquarters of the SFRY, 14 May 1990, Annexes, vol 4, annex 53.

⁴⁸ *Ibid.*

⁴⁹ Borisav Jović, *Poslednji dani SFRJ*, Prizma, Kragujevac, 1996, p. 146, Appendices, vol 5, appendix 4.3.

⁵⁰ Borisav Jović, *Poslednji dani SFRJ*, Prizma, Kragujevac, 1996, pp. 146-147 Appendices, vol 5, appendix 4.3.

⁵¹ *Kronologija rata*, Zagreb, 1998, p. 25.

⁵² In the 1st Military Region the 329th Armoured Brigade was transformed from “B Class” to “A Class”. This implies a larger number of people and tanks within a brigade. The armoured brigade of “B Class” uses up to 30 percent of armoured vehicles in everyday

3.27 The most significant changes were made in the JNA's new 5th Military Region. By June 1990 its 6th Proletarian Infantry Division and the Command for the defence of Zagreb had been dissolved. The regions around Zagreb, Kordun and Banovina were put under the command of the newly formed 10th Corps of the JNA, with its headquarters in Zagreb, a move which not foreseen by the "Jedinstvo" (Unity) plan.⁵³ With hindsight it is apparent that these developments and those referred to in the previous paragraphs were intended to prepare the JNA for the role it was to assume from the summer of 1991. In particular, the JNA was now in a position to limit the activities of the Croatian Ministry of Interior, which in the spring of 1990 was attempting to suppress the rebellion of the Knin Serbs who were being encouraged and supported from Serbia. In his memoirs, the then President of the Presidency of the SFRY, Borisav Jović, noted that the SFRY Defence Minister General Veljko Kadijević had said in June 1990:

"...that they had decided on forming special motorised Corps. in the regions Zagreb, Knin, Banja Luka and Herzegovina which will be able, if needed, to act the same way as in Kosovo."⁵⁴

3.28 As a consequence of these changes, of the four Corps of the JNA which had their headquarters in Croatia (9th, 10th, 13th and 32nd of the 5th Military Region) only the last two were deployed in areas where Croats were in a majority of the population. Although the 10th Corps had its headquarters in Zagreb most of its units were located in areas with majority Serb populations. The Knin Corps was, for the most part, located in an area with a Serbian majority. When the Serbs in Knin rebelled,⁵⁵ the peaceful displacement of the JNA enabled the local Serbs to organise their defence

activities, while the "A Class" uses over 60 percent. The 221st Motorised Brigade of the Knin Corps and the 10th Motorised Brigade of the Mostar Corps. Incorporated armoured and mechanized battalions.

The units of the "A" class were about 60-100%, the "B" class from 15-60%, and the "R" class up to 15% complete in the wartime structure of the units. The "A" class units' personnel basis were soldiers who regularly served the army. According to Yugoslav doctrine, those units very quickly transformed to wartime formations and were ready for almost immediate use. In the circumstances as they were in Croatia 1990-1991 until the outbreak of open conflict, units of this type performed tasks ordered by the Federal Secretariat for National Defence, Order, 15 May 1990, Annexes, vol 4, annex 47.

⁵³ The 140th Motorised Brigade "R" of the 32nd Corps and the 31st Mechanised Brigade "R" were joined into the 140th Mechanized Brigade of "A Class", which means that the 140th Mechanized Brigade was reorganized, while the 31st Mechanized Brigade was shut down. There were also upgrades made to the 32nd Corps, where the 265th Mechanized Brigade, the 13th Corps, and the 13th Proletarian Motorised Brigade were upgraded into "A Class.". See *ibid*; See also Command of the 5th Military Region, DT No. 2-14, Report about the realisation of the plan "Jedinstvo-2 and 3", in 1990, 24 January 1991, Annexes, vol 4, annex 54.

⁵⁴ Borisav Jović, *Poslednji dani SFRJ*, 1996, p. 152, Appendices, vol 5, appendix 4.3.

⁵⁵ See Chapter 2, paras. 2.80-2.92.

and administrative structures. The mere act of creating a “buffer zone” between disputing communities reflected the JNA’s acceptance that the Serb rebels were in some way equal in legitimacy to the democratically elected government of the Republic of Croatia. The Serbs in “Bosanska Krajina” and in Serbia supported the JNA’s role.⁵⁶ The presence of the JNA’s 9th Corps in the Knin region, a predominantly Serb area made it possible for the Serbs to establish and arm their paramilitary forces. Led by members of the Serbian Democratic Party,⁵⁷ the Serbs recruited a paramilitary force to include retired JNA officers.⁵⁸ These developments moved with greater speed following the proclamation on 21 December 1990 of the “Serbian Autonomous Region of Krajina” (“SAO Krajina”).⁵⁹ The JNA supplied paramilitaries with arms. (see below at para. 3.54 *et seq.*) The paramilitaries formed units to block communications, control movements, and carry out surveillance activities, which were co-ordinated from Knin and supported by the JNA. Although the General Staff of the JNA in Belgrade was fully aware of these and other activities it chose to ignore them.⁶⁰ In this way the developing “situation” in the Knin region was directly attributable to the involvement of the JNA.

3.29 In January 1991 the Presidency of the SFRY took a decision to disarm the paramilitary units, having received a communiqué from the SFRY Ministry of Defence on the unauthorised establishment of armed paramilitary forces.⁶¹ In January and February 1991 the JNA newspaper – “*Narodna armija*” – dedicated two issues to the arming of the HDZ’s “terrorist” formations in Croatia, including the TO, but made no mention of

⁵⁶ Borisav Jović, *Poslednji dani SFRJ*, 1996, pp. 178-179. Appendices, vol 5, appendix 4.3.

⁵⁷ See Chapter 2, para. 2.82.

⁵⁸ See Command of the 9th Corps of the Airforce and Air Defence, Security Service, to the Security Department KRV (Command of Air-Force and Anti-Aircraft Defence) and PVO (Anti-Aircraft Defence), Notice about the state on the terrain around Zadar and Knin, 10 December 1990, Annexes, vol 4, annex 55 and Command of the 9th Corps of the Airforce and Air-defence, Security Service, from the 27th of March 1991, to the Security Department KRV and PVO, OA (Operative Action) “Štit”, notices about the activity of SDS on the terrain around Zemunik.

⁵⁹ See Plate 8 (also Vol 3, Plate 2.5); See Chapter 2, para 2.94. The “SAO Krajina” included the municipalities of Knin, Obrovac, Benkovac, Gračac, Titova Korenica, Dvor na Uni, Glina, Vojnić and Hrvatska Kostajnica. In February 1991 they were joined by the Municipalities of Vojnić, Vrginmost and Pakrac.

⁶⁰ See Federal Secretariat for National Defence, Top Secret No. 6-1, 10 January 1991, which contains information about unauthorised forming of armed forces. Annexes, vol 4, annex 56.

⁶¹ See The Order of the Presidency of the SFRY, fn No.3, 9 January 1991, Annexes, vol 4, annex 57.

the arming of the rebel Serbs.⁶² At the same time the JNA Military Court in Zagreb brought charges against the Croatian Minister of Defence, General Martin Špegelj, for incitement to armed rebellion.⁶³

3.30 The JNA's attack on the Croatian police forces and support for the Serbian paramilitaries was reflected also in the views of General Kadijević, the SFRY Defence Minister. On 6 December 1990 he was reported as having said that the Territorial Defences constituted "a base and the skeleton of the republics' armies", and that

"territorial defence, the way it was founded at the end of the Sixties and at the beginning of the Seventies, is, objectively a great fraud...."⁶⁴

The Minister of Defence's views were perceived as a threat to Croatians and Slovenes, who favoured a semi-confederate model for SFRY, which would guarantee protection of their national interests. The statement was also seen as a direct attack on Presidents Tito's legacy, the same legacy that the JNA was purportedly guarding.

3.31 In March the Government of Croatia learnt that the Staff of Supreme Command had been operationalised, but unconstitutionally and without the required authorization of the SFRY Presidency.⁶⁵ The Staff of Supreme Command for the armed forces was only intended to operate in times of war. Its operationalisation reduced the competence of the Republics' TO, and the Territorial Defence of Bosnia and Herzegovina, Serbia and Montenegro were drawn into the war against Croatia.⁶⁶ Its operation was clearly unconstitutional, as there had been no proclamation of war or a state of emergency by the Presidency of the SFRY, the prerequisite for its existence.

⁶² See "*Narodna Armija*" (*Belgrade*), Special Issue, 26 January 1991, "Istina o naoružavanju terorističkih formacija HDZ u Hrvatskoj"; "*Narodna Armija*" (*Belgrade*), 28 February 1991, "Istina o naoružavanju terorističkih formacija HDZ u Hrvatskoj (2)". Annexes, vol 4, annex 148.

⁶³ See Chapter 2, para. 2.97.

⁶⁴ See "*Narodna Armija*" (*Belgrade*), 6 December 1990, pp. 5-9, "Biće razoružane sve oružane formacije uspostavljene izvan jedinstvenih i ustavom SFRY definisanih oružanih snaga", Annexes, vol 4, annex 147.

⁶⁵ Antun Tus, "Rat u Sloveniji i Hrvatskoj do Sarajevskog primirja", *Rat u Hrvatskoj i Bosni i Hercegovini 1991-1995*, p. 68.

⁶⁶ *Supra* fn 32, pp. 3- 5.

THE JNA'S ATTEMPT TO PROCLAIM A STATE OF EMERGENCY

3.32 As described in Chapter 2, during the March 1991 session of the Presidency of the SFRY the Federal Defence Minister General Kadijević, requested the Presidency of the SFRY to proclaim a state of emergency and suspend all “normative acts that are against the Constitution of the SFRY and the federal laws”.⁶⁷ This was apparently a result of the March 1991 events in Pakrac.⁶⁸ The request was not adopted, although it was supported by the Serbian controlled representatives of the Republics of Serbia and Montenegro and the Autonomous Provinces of Vojvodina and Kosovo. Having failed to obtain the declaration of a state of emergency the JNA implemented a contingency plan for “the protection and defence of the Serbian people out of Serbia and the gathering of the JNA within the borders of the future Yugoslavia”,⁶⁹ implying that FRY in *statu nascendi* would territorially correspond with the planned “Greater Serbia”. This represented another step towards the JNA’s transformation from its obligations under the 1974 Constitution, towards its new role as a Serbian Army demonstrating its support for the rebel Serbs in Croatia and serving the cause of “Greater Serbia”. Between April and July 1991, in application of this contingency plan, the JNA’s 10th Corps organised the transfer of arms and ammunition from its warehouses in Lika directly to the Serbian Democratic Party.⁷⁰ Further structural changes were made in April 1991, when the Secretariat for National Defence of the SFRY agreed to transfer additional units of the JNA to Croatia⁷¹ and to Bosnia and Herzegovina.⁷²

⁶⁷ Veljko Kadijević, *Moje viđenje raspada*, 1993, p. 113; Borisav Jović, *Poslednji dani SFRJ*, 1996, pp. 286-295.

⁶⁸ See Chapter 2, para. 2.101. See also Financial Times, 4 March 1991, Annexes, vol 4, annex 33.

⁶⁹ Emphasis added. Veljko Kadijević, *Moje viđenje raspada*, 1993, pp. 113-114.

⁷⁰ Srpska Vojska Krajine, General Staff, Security department, Top Secret No. 321-99 from the 16th of October 1994, to the General Staff of the Republika Srpska, Request for the authentication of dates and interview. See Letter of Dušan Smiljanić, Annexes, vol 4, annex 65.

⁷¹ A part of the elite 63rd Parachute Brigade was sent to Zagreb from Niš. The 2nd Armoured Battalion of the 51st Mechanised Brigade in Pančevo was sent to Banovina near Petrinja to supplement the 622nd Motorised Brigade. The 2nd Mechanised Battalion of the 36th Mechanised Brigade in Subotica and the 2nd Mechanised Battalion of the 453rd Mechanised Brigade in Sremska Mitrovica were sent to Eastern Slavonia, to the Vukovar and Vinkovci area where they were put under the command of the 17th Corps. See Command of the 17th Corps, DT No. 11/1-93, 14 May 1991, Order, Annexes, vol 4, annex 59; Reconnaissance and Control Report of the 622th Mechanized Brigade and the 4th Armored Brigade; Anton Tus, “Rat u Sloveniji i Hrvatskoj do Sarajevskog primirja,” *Rat u Hrvatskoj i Bosni i Hercegovini 1991-1995*, pp. 68-69.

⁷² “*Narodna Armija*” (*Belgrade*), 23 May 1991, pp. 15-16, “Ljudi i tehnika odoljevaju svim iskušenjima”.

3.33 At the time of the acceleration of the collapse of the SFRY presidency in May 1991⁷³ and the murder of twelve Croatian policemen in Borovo Selo,⁷⁴ the General Staff of the JNA in Belgrade acted to place the JNA in a state of “combat readiness” and prepared to mobilise additional units should the Federal and Republic authorities prove to be unable to perform their tasks.⁷⁵ This decision led to the mobilisation of reserves. A few days later, by Order dated 14 May 1991, units of the JNA’s 1st Military Region in Slavonia and Baranja were informed that preparedness levels were being raised to the highest level. The Order stated that in case of attacks on military objects, the 17th Corps command could retaliate against the responsible parties. It also provided that armoured and mechanised units and artillery and air-defence units could be used to repel attacks.⁷⁶ The Order was premised upon an expectation by the JNA that its barracks would be attacked by Croat forces, thereby providing a legitimate reason to “repel” the attack and subjugate the elected government in Zagreb.⁷⁷

3.34 Following the short military conflict in Slovenia, in which the JNA relinquished control over state border and customs posts (the loss of Slovenia from the SFRY was in no way inconsistent with the idea of establishing a “Greater Serbia”), the JNA forces were withdrawn from Slovenia and re-deployed in areas in and around Croatia. These forces were directly involved in the genocidal activities described in Chapters 4 and 5. By tacitly accepting the departure of Slovenia the JNA was abandoning its commitment to maintain the unity of the SFRY and shifting its support to the “Greater Serbian” version of Yugoslavia. Borisav Jović writes in his diary on 20 June 1991:

“That same day [24 June] (in another meeting), we will meet with Kadijević and Adžić and ask them to give us a precise answer on whether they will conduct a redeployment of the military along the new (Serbian) borders of Yugoslavia, in order to prevent major

⁷³ See Chapter 2, paras. 2.105/2.106.

⁷⁴ See Chapter 2, para. 2.102.

⁷⁵ See “*Narodna Armija*” (Belgrade), 9 May 1991, p. 5, “*Podići borbenu gotovost JNA*” Annexes, vol 4, annex 148. See also Annexes, vol 3, Illustrations 9.2 and 9.3.

⁷⁶ Identical measures were adopted in the units of the 5th Military Region and the 5th Corps of the Airforce and Air-defence, See facsimile of the Command of the 10th Corps, DT No. 36-3, Order, 10 May 1991 in Božidar Javorović, *Narodna zaštita grada Zagreba u Domovinskom ratu*, Defimi, Zagreb, 1999, pp. 69-70, Annexes, vol 4, annex 60.

⁷⁷ In June 1991, the JNA intensified its operations in Eastern Slavonia, by involving the river war fleet, which began to control bridges and forts on the Danube, from Bezdan to Ilok. The fleet also provided artillery support to the ground units in the surroundings, see “*Narodna Armija*” (Belgrade), 7 August 1991, p. 11, “*Odjekuje neka druga pjesma*” Annexes, vol 4, annex 149.

losses by the Serb nation and to defend its territory. If we do not receive clear guarantees of defence, then we will have to organize ourselves and abandon the army.”⁷⁸

On 27 June 1991 Jović writes about Milošević and the meeting with General Kadijević:

“Slobodan and I at Kadijević’s. Slobodan insists several times (correcting yesterday’s mistake) that the military must defend the future borders of Yugoslavia: “Why should it defend Slovenia’s borders, that are temporary. We must defend that which will be permanent.” He persist in mentioning only Slovenia, perhaps for tactical reasons toward the military, which is intoxicated with the unity of a Yugoslavia that no longer exists, but for us it is clear that also relates to a Croatia without Serb territory in it.”⁷⁹

And by 30 July 1991 General Kadijević’s position, and that of the JNA, is clear:

“Veljko, Slobodan, and I are sitting in my office. Before the Presidency session with the Presidents of the Republics on the future of Yugoslavia. Veljko wants to report to us, “clearly and definitively”, on his position and final orientation:

The JNA should be transformed into a military force of those who wants to remain in Yugoslavia, comprising at least: Serbia, the Serb nation, plus Montenegro. Those are the principles on the basis of which the withdrawal and the change of leadership should be conducted.”⁸⁰

3.35 In the meantime, the JNA had already taken steps in that direction. On 28 June 1991 General-Colonel Blagoje Adžić, Chief of General Staff, signed a Special ‘Instruction’ authorising the use of armoured and mechanised units to *inter alia* control the borders of Croatia; put down subversive demonstrations; destroy diversionist, renegade terrorist and other groups; put down any armed rebellion; and prevent civil war.⁸¹ The circumstances in which the Order was adopted made it clear that it was to be used only against Croatian Government forces, and not against the rebel

⁷⁸ Borisav Jović, *Poslednji dani SFRJ*, Prizma, Kragujevac, 1996, Appendices, vol 5, appendix 4.3.

⁷⁹ Borisav Jović, *Poslednji dani SFRJ*, Prizma, Kragujevac, 1996, Appendices, vol 5, appendix 4.3.

⁸⁰ Borisav Jović, *Poslednji dani SFRJ*, Prizma, Kragujevac, 1996, Appendices, vol 5, appendix 4.3.

⁸¹ See Federal Secretariat for National Defence, Instruction on the use of armoured and mechanised units, Int. No. 697, 28 June 1991, Annexes, vol 4, annex 62.

Serbs. The armoured-mechanised units ensured the JNA's superiority over the Croatian police and the few infantry units of the ZNG (Croatian National Guard Corps).

3.36 Also in June 1991 significant changes were made to the leadership and command structure of the JNA,⁸² whose Officer Corps was by then about two-third Serbian.⁸³ General-Colonel Konrad Kolšek, a Slovene, was replaced by General-Colonel Života Avramović, a Serb as commander of the 5th Military Region. The command of the 5th Airforce and Air-defence Corps, which had responsibility for the area of the 5th Military Region, was commanded by General Major Marjan Rožič (Slovene). The command was subsequently taken over by the Serbian Head of Staff, Colonel Ljubomir Bajić.⁸⁴ By this time the Commanders of every armoured and mechanised JNA brigade located in Croatia and in the adjoining areas were Serbs or Montenegrins. The same was true for most of the Motorised Brigades. The "Serbianisation" of the command structures of the JNA reflected the lack of confidence in non-Serb commanding officers within the federal JNA. The national structure of the CO's staff in the JNA in Slovenia and Croatia at this time was absolutely weighted in favour of Serb officers who accounted for 57% of the officer cadre, whereas the Croats made up just 12%.⁸⁵ The changes are reflected in the diary of Borisav Jović on 8 August 1991:

"We really have no alternative but to intensively expel the Croats and Slovenes from the military, pull the military back to territory that we will definitely defend, and furiously purge it of HDZ forces. Anything else is a rambling approach and a waste of time. Little by little, but slowly, this is in fact taking place."⁸⁶

3.37 In July and August 1991 the JNA mobilised its 5th Corps in Banja Luka,⁸⁷ its 12th Corps in Novi Sad,⁸⁸ and its 2nd Corps in Montenegro.⁸⁹ The

⁸² See Los Angeles Times, 16 July 1991, Annexes, vol 4, annex 38.

⁸³ See Newsweek, 15 July 1991.

⁸⁴ "Narodna Armija" (Belgrade), 6 July 1991, p. 4, "Nova postavljenja" Annexes, vol 4, annex 149.

⁸⁵ *Ibid.*, p. 6, "Napadnuto je sve jugoslovensko." Annexes, vol 4, annex 149.

⁸⁶ Borisav Jović, *Poslednji dani SFRJ*, Prizma, Kragujevac, 1996, Appendices, vol 5, Appendix 4.3.

⁸⁷ "Narodna armija" (Belgrade), 22 August 1991, pp. 20-21, "Mobilizacija na nišanu stranaka."

⁸⁸ "Narodna Armija" (Belgrade), 10 July 1991, p. 18, "Prekaljeni tenkisti i artiljerici."

⁸⁹ "Narodna Armija" (Belgrade), 13 July 1991, p. 44, "Odbrana otadžbine sveta dužnost.", Annexes, vol 4, annex 149.

mobilisation of the JNA's 52nd Corps in Kosovo was also provided for.⁹⁰ Some of these mobilisations were carried out by commanders of JNA's combat units, ignoring regular procedures and commands of superior authorities.⁹¹ However, as the mobilisation was not as successful as the JNA anticipated it was decided that the military service of conscripts should be extended by 20 days for the September 1990 conscripts.⁹²

3.38 By July 1991, armoured-mechanised units of JNA's 1st Military Region were stationed at the borders of Croatia. This was a clear demonstration of force by the JNA, aimed at heading off independence and providing support to Serb rebels. The same month the JNA occupied bridges across the Danube separating the Republic of Croatia from the Republic of Serbia. By an Order dated 5th July 1991 all armoured-mechanised units at the border of Croatia were ordered to familiarise themselves with the local topography and possible attack directions, so that "during the execution of their tasks" they would be able to foresee the engagement of the opposition forces, their manoeuvres and their objectives.⁹³

3.39 By the end of July 1991 the transformation of the JNA had been achieved. Any pretence that it was playing a neutral role between different ethnic groups had disappeared altogether. Within Croatia the JNA was commanded by Serbs. Outside Croatia the collapse of the Presidency of the SFRY had led to a vacuum of political authority, which was filled by the authorities of the Republics of Serbia and Montenegro and the Autonomous Provinces of Kosovo and Vojvodina, all under the control of Slobodan Milošević and his supporters in Belgrade. The JNA had been transformed into an Army to promote Serbian objectives, including territorial objectives. The totality of the transformation was reflected in a speech given by retired JNA General Đoko Jovanić on 31 July 1991 to celebrate the 50th anniversary of the 1941 insurrection in Croatia, where he called upon those present to re-unite the JNA's 6th unit from Lika Division with the aim to

⁹⁰ "Narodna Armija" (Belgrade), 6 July 1991, p. 42, "Branjećemo jedinstvenu Jugoslaviju"; "Narodna Armija" (Belgrade), 6 July 1991, p. 42, "Odlučnost da se brani zemlja." Annexes, vol 4, annex 149.

⁹¹ Comments of the Defence Minister of Bosnia, reported in "Narodna Armija" (Belgrade), 7 August 1991, p. 7, "U korist sopstvene štete" and "Narodna Armija" (Belgrade), 14 August 1991, p. 13, "Vojni rok samo u BiH i Makedoniji". Annexes, vol 4, annex 149.

⁹² "Narodna armija" (Belgrade), 22 August 1991, pp. 6-7, "Podrška poverenja armiji." Annexes, vol 4, annex 149.

⁹³ See Command of the 17th Corps, Order, 5 July 1991, Annexes, vol 4, annex 63.

“finally bring to an end the started work – the liberation from the vampire Ustahas”.⁹⁴

3.40 By this time the activities of the JNA were completely controlled by the President of Serbia – Slobodan Milošević – in Belgrade.⁹⁵ In September discussion turned to the issues of renaming the JNA. Borisav Jović records the views of General Kadijević in his diary on 24 September 1991:

“Veljko then concludes the following: The military will lose the war against Croatia unless motivation and the success of mobilization are ensured. That cannot be achieved with a semi-legitimate Yugoslavia. Serbia and Montenegro should declare that the military is theirs and assume command, financing, the war, and everything else. All the generals on the General Staff, except one, are Serbs, and they all support this approach and think the same way.”⁹⁶

Jović then explains why renaming is not possible at this stage, for strategic and political reasons:

“[W]e cannot accept the demand that the military drop “Yugoslav” from its name. That would mean Serbia and Montenegro would completely lose all their advantages, both political and military, in the existing conflict and dispute. How do they think that a Serbian-Montenegrin army can wage war with Croatia and defeat it?”⁹⁷

The same rationale for maintaining the use of the name “Yugoslavia”, in relation to the Army and more generally, to promote a “Greater Serbia” was given by Šeselj, when he said:

“[It] is one army for the whole territory... We cannot cross the Serbian borders with a Serbian army! Do you want the Desert Storm here? I would have everyone shot who wants a Serbian army today! I, the main enemy of the state, imprisoned by Milošević himself! I want a Serbian army when I get a Serbian state! Now we want to set the borders. Diplomatically we are O.K.

⁹⁴ See “*Narodna armija*” (Belgrade), 31 July 1991, p. 14, “Otpor nasilju”, Annexes, vol 4, annex 149.

⁹⁵ See as example the transcript that shows that Serbian politicians Slobodan Milošević, and Radovan Karadžić have together planned political and military actions, without the knowledge and involvement of the SFRY Presidency, Annexes, vol 4, annex 64.

⁹⁶ Borisav Jović, *Poslednji dani SFRJ*, Prizma, Kragujevac, 1996, Appendices, vol 5, appendix 4.3.

⁹⁷ Borisav Jović, *Poslednji dani SFRJ*, Prizma, Kragujevac, 1996, Appendices, vol 5, appendix 4.3.

because we want Yugoslavia without Slovenes and Croats... We must fight for a Serbia that covers all Serbian territories! We shall call such a Serbia Yugoslavia as long as that is in our interest. It's in our interest to avoid the war with Moslems and Macedonians. We will have Yugoslavia with 20 federal states if necessary! Now it's important that we are no longer with Croats and Slovenes. In the war you cannot have elections....⁹⁸

3.41 With the final collapse of the SFRY Presidency in October 1991, the Serbian leadership obtained full control of the JNA. With the proclamation of the FRY on 27th April 1992 the JNA formally became the Yugoslav Army (VJ). But even then the new Army continued to accept Orders emanating from the SFRY, which was treated as being entirely synonymous with the FRY.⁹⁹ And several officers of the JNA involved in the action at Vukovar were promoted by the new authorities of the FRY, providing direct evidence of the approval of – and ratification by – the FRY for the events occurring in Croatia in November 1991.¹⁰⁰

CONCLUSION

3.42 The first Part of this Chapter demonstrates the transformation in the composition and role of the JNA. By October 1991 the JNA was acting as an army to promote the establishment of a “Greater Serbia”, controlled by the Serbian leadership. The consequences of this transformation become abundantly clear in Chapters 4 and 5, which provides in graphic detail the acts which the JNA was prepared to take to establish Serb control in Eastern Slavonia and other parts of Croatia, including ridding the area of Croats by their physical destruction and other genocidal acts where necessary.

⁹⁸ See Appendices, vol 5, appendix 2, Video Clip 13.

⁹⁹ See, for example, Order of the General Staff of the SFRY, Armed Forces 1st Administration, Operations Centre to the Commands of the 5th, 10th, 13th and 17th Corps and four Military Regions, 11/5/92, Annexes, vol 4, annex 90.

¹⁰⁰ See Order of the Chief of Staff of the Supreme Command, 19 November 1991, Annexes, vol 4, annex 104. See also photographs, Annexes, vol 3, 10.9 and 10.10.

**SECTION TWO:
THE SERB AND SERBIAN PARAMILITARY GROUPS ACTIVE IN
CROATIA AND THEIR RELATIONS WITH THE JNA**

3.43 The “liberation from the vampire Ustashes”¹⁰¹ by means of the genocidal campaign which began in the summer of 1991 was not perpetrated by the JNA alone. The JNA was assisted in its efforts by a large number of paramilitary groups (comprising “special forces”, “militias”, “paramilitary units” and “police units” of the “SAO Krajina”).¹⁰² In its findings of fact the Trial Chamber of the ICTY described the situation as follows:

“[T]he JNA experienced a shortage of manpower, especially when it came to play the role of an occupying force in hostile territory, as was the case in Croatia.... In consequence, increasing reliance was placed on Serbian paramilitary forces [...]. These paramilitary forces operated in conjunction with the JNA and were used as infantry shock troops to make up for declining numbers in the regular army. They included Željko Ražnjatović’s Serbian Volunteer Guard (later known as “Arkan’s Tigers”) and Vojislav Šešelj’s Chetniks [...]. The JNA ... actively cooperated with and assisted these paramilitary units during 1991 and 1992 in operations in Croatia and Bosnia and Herzegovina and freely supplied them with arms and equipment.”¹⁰³

3.44 As described below and in Appendix 5, some of the paramilitary forces emerged in Serb villages and towns in Croatia, and others came from Serbia, Montenegro, Bosnia and Herzegovina, and Vojvodina. They were present throughout the area, as the Map at Plate 12. The witness statements referred to in this Memorial testify to the involvement of paramilitary groups across Croatia. In 1990 and 1991 the paramilitary groups were established with the support of the Serbian leadership, and their activities endorsed by them.¹⁰⁴ Through the JNA, and by other means, the Serbian leadership provided financial and logistical support to the paramilitary groups, training them, providing them with armaments and even paying their salaries. By an Order dated 13 September 1991 the paramilitary groups could be integrated into the JNA and treated formally as part of the JNA.¹⁰⁵ Pursuant to that Order many individual members of paramilitary

¹⁰¹ *Supra*, para. 3.39.

¹⁰² See below para. 3.49 *et seq.*

¹⁰³ *Prosecutor v. Tadić* (Judgment) (ICTY Case IT-94-1-T), 7 May 1997, para. 111 (112 *ILR* 1, 48).

¹⁰⁴ See below at para. 3.51 *et seq.* and Appendices, vol 5, appendix 5.

¹⁰⁵ See below para. 3.58 and 3.63 *et seq.*

groups were integrated into the JNA. In all senses the Government of Serbia, and after 27 April 1992 the Government of the FRY, had “effective control” of many of these groups, who were commended for their activities.

EMERGENCE OF PARAMILITARY GROUPS

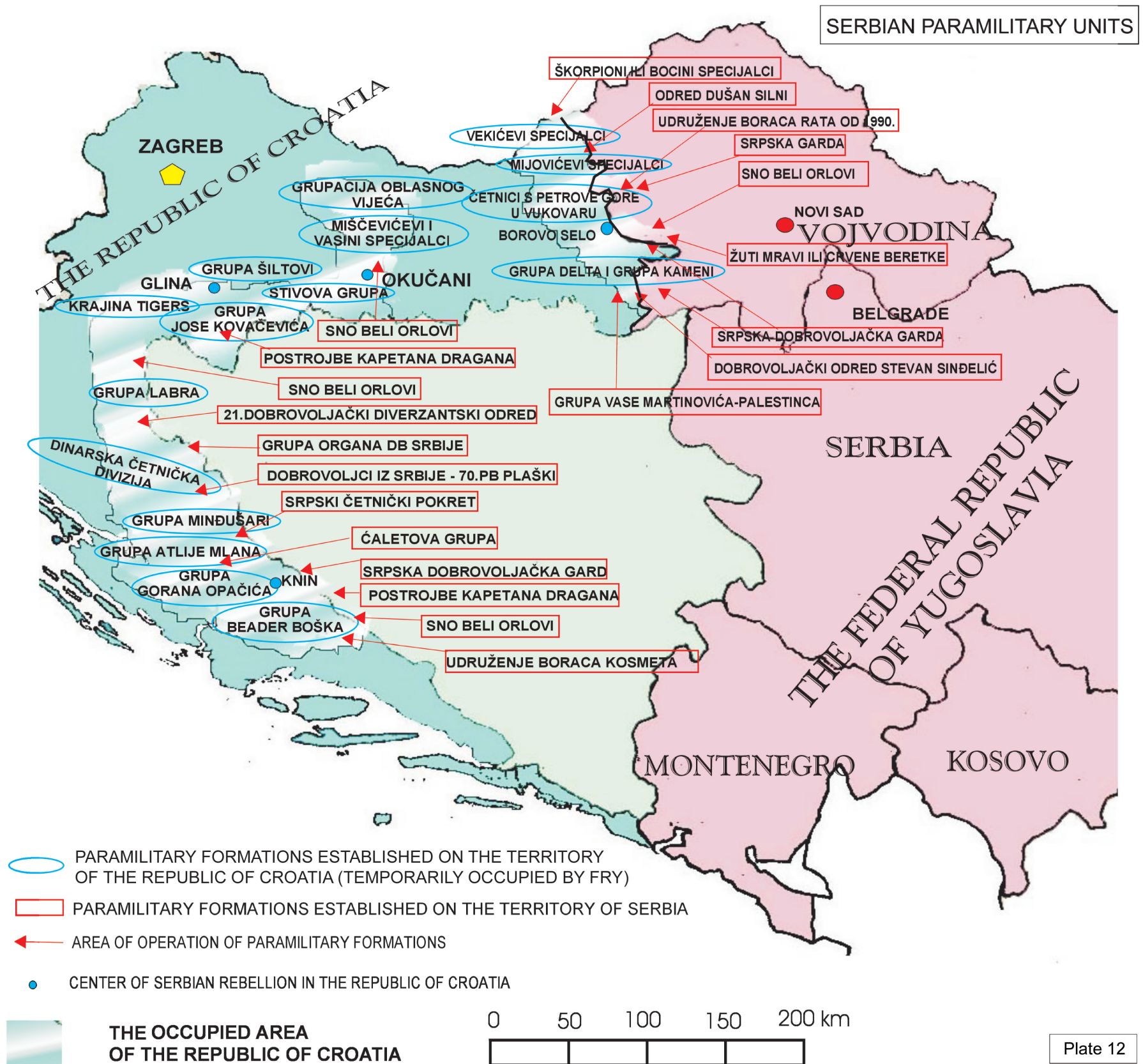
3.45 After the Knin rebellion in May 1990,¹⁰⁶ the Serbs in Croatia began arming themselves with the support and encouragement of the JNA and the Serbian political authorities. This support manifested itself in several forms, including financial, logistical and personnel support.¹⁰⁷ Initially, villages inhabited by a majority Serb population became outposts of both the JNA and newly established Serb paramilitary groups. Following the disarming of the Croatian TO, in May 1990, these groups’ acquired weapons. As described in detail in Chapters 4 and 5, beginning in the summer of 1991 JNA units and paramilitary groups began their genocidal campaign against Croatian citizens in a bid to ‘remove’ them from territories falling within “Greater Serbia”. All efforts by Croatian forces to stop this campaign were thwarted by the JNA. As early as 5 July 1991 in Mirkovci and Tenja, the JNA openly sided with the Serbian paramilitary groups and created a protective zone within which Croatian authorities were to be excluded.

3.46 By mid July 1991 the rebel Serbs in Croatia were on their way to building extensive paramilitary structures under the patronage and protection of the JNA’s armoured and mechanised units. A majority of the paramilitary units that operated in the “Krajina” were supported both logistically and financially by the Government of Serbia and the JNA. Though the process had commenced in mid 1990, it was only with the JNA’s active involvement in these parts of Croatia that it gained momentum. This part of the Chapter begins by describing the paramilitary groups that were formed and supported by the Republic of Serbia (A), and then explaining their relationship to the JNA and the Serbian leadership of the “rump Yugoslavia” and the FRY (B).

¹⁰⁶ See Chapter 2, para. 2.88.

¹⁰⁷ See below at para. 3.54 *et seq.*

No.	Name of the paramilitary formation	Area of establishment
1.	Srpska garda	FRY
2.	SNO Beli Orlovi	FRY
3.	Odred Dušan Silni	FRY
4.	Udruženje boraca Kosmeta	FRY
5.	Udruženje boraca rata od 1990.	FRY
6.	Srpska dobrovoljačka garda	FRY
7.	Postrojbe kapetana Dragana	FRY
8.	Srpski četnički pokret	FRY
9.	Škorpioni ili Bocini specijalci	FRY
10.	Dobrovoljački odred Stevan Sindelić	FRY
11.	Žuti mravi ili Crvene beretke	FRY
12.	Grupa organa DB Srbije	FRY
13.	Grupa Vase Martinovića-Palestinca	FRY
14.	Čaletova grupa	FRY
15.	Dobrovoljci iz Srbije -70.pbr Plaški	FRY
16.	21.dobrovoljački diverzantski odred	FRY
17.	Dinarska četnička divizija	Croatia
18.	Miščevićevi i Vasini specijalci	Croatia
19.	Vekićevi specijalci	Croatia
20.	Mijovićevi specijalci	Croatia
21.	Četnici s Petrove Gore u Vukovaru	Croatia
22.	Grupa Beader Boška	Croatia
23.	Grupa Atlije Milana	Croatia
24.	Grupa Gorana Opačića	Croatia
25.	Grupa Šiltovi	Croatia
26.	Stivova grupa	Croatia
27.	Grupacija Oblasnog vijeća	Croatia
28.	Grupa Mindušari	Croatia
29.	Grupa Labra	Croatia
30.	Krajina Tigers	Croatia
31.	Grupa Delta i Grupa Kameni	Croatia
32.	Grupa Jose Kovačevića	Croatia



SERBIAN PARAMILITARY UNITS
(translated from Plate 12)

No.	Name of the paramilitary formation
1	Serbian Guard
2	Serbian National Renewal White Eagles
3	"Dušan the Mighty" Detachment
4	Society of the Kosmet Fighters
5	Society of the War Fighters since 1990
6	Serbian Volunteer Guard
7	Captain Dragan Formation
8	Serbian Chetnik Movement
9	Scorpions or Boco Special Forces
10	Stevan Sinđelić Volunteer Detachment
11	Yellow Ants or Red Berets
12	National Security Group Organ of Serbia
13	Vase Martinović-Palestinian Group
14	Ćale Group
15	Volunteers from Serbia - 70th Infantry Brigade Plaški
16	21st Volunteer Diversion Detachment
17	Dinaric Chetnik Division
18	Miščević and Vaso Special Forces
19	Vekić Special Forces
20	Mijović Special Forces
21	Chetniks from Petrova Gora in Vukovar
22	Beader Boško Group
23	Atlija Milan Group
24	Goran Opačić Group
25	Shield Group
26	Stiv Group
27	Regional Council Group
28	Ear-ring Group
29	Labra Group
30	Tigers Group
31	Delta Group and Stoney Group
32	Joso Kovačević Group

(A) AN OVERVIEW OF THE PRINCIPAL PARAMILITARY GROUPS

3.47 According to Croatian intelligence sources, 32 different volunteer paramilitary units operated in the Republic of Croatia in the period from 1990 to 1997. Sixteen of these groups were organised in the Republic of Serbia, and the other 16 operated from the “Krajina”.¹⁰⁸ The “police” and “Territorial Defence” units of the “SAO Krajina” inherited weapons from the TO of the Republic of Croatia and received supplies from Serbia. However, these forces were *ad hoc*, loose formations, which, without the JNA’s support, would have been unable to perpetrate the genocide that occurred.

3.48 As described in Appendix 5, the paramilitary organisations existed in several forms. Some were highly organised and operated in several areas of Croatia, in close cooperation and direct coordination with the JNA. Others were loosely organised and acted in specific areas. Although the creation of some of the groups preceded the conflict, which erupted in the summer of 1991, others were formed to respond to particular incidents or needs during the conflict. The Serbian paramilitary groups were organised by the Serbian Government, by political parties, and by local police or political or community leaders. The members of these organisations were drawn from the JNA, Territorial Defence Forces (TO) and local militia and police. They also included local civilians, expatriates, and even foreign nationals. According to some reports, the paramilitary organisations also included criminals released from prisons solely for the purpose of forming these units.¹⁰⁹ According to the Report of the UN Commission of Experts, the paramilitaries, often operating with the JNA, were responsible for genocidal acts of the kind described in Chapters 4 and 5 of the Memorial,

¹⁰⁸ See Annexes, vol 3, Plate 6.7. Paramilitary units formed in the territory of Serbia include “Serbian Guard”; “Serbian National Renewal (SNO) – White Eagles”; “Dušan the Mighty Detachment”; “Association of Kosmet (Kosovo and Metohija) Fighters”; “Association of Fighters of the 1990 War”; “Serbian Volunteer Guard – Tigers”; “Captain Dragan Formation”; “Serbian Chetnik Movement”; “Scorpions” or “Boca’s Special Forces”; “Stevan Sindelić Volunteer Detachment”; “Yellow Ants” or “Red Berets”; Serbian National Security Services Group; “Vase Martinović – Palestinian – Group”; “Ćale Group”; Volunteers from Serbia – members of the 70th Infantry Brigade “Plački”; “21st Volunteer Diversion Detachment” and Paramilitary units formed in the “SAO Krajina” and other places in the territory of the Republic of Croatia include “Dinaric Chetnik Division”; “Miščević’s and Vase’s Special Forces”; “Vekić’s Special Forces”; “Mijović’s Special Forces”; Chetniks from Petrova Gora in Vukovar; “Beader Boška Group”; “Milan Atljia Group”; “Goran Opačić Group”; “Šilt’s Group”; “Stiv’s Group”; “Regional Council” Group; “Mindušar Group”; “Labra Group”; “Krajina Tigers”; “Delta Group” and “Kameni Group” and the “Joso Kovačević Group.”

¹⁰⁹ See Final Report of the United Nations Commission of Experts established pursuant to Security Council resolution 780 (1992), S/1994/674/Add.2 (vol I), 28 December 1994, Annex IIIA, Special Forces.

including the killing of civilians, torture, rape and other forms of sexual violence, destruction of property, and looting.

3.49 The UN Report classifies the paramilitary forces operating in the region into four categories: Special Forces; Militias; Paramilitary units; and police augmented by armed civilians.¹¹⁰

- i **Special Forces** tended to operate with substantial autonomy under the command of an identified leader. They operated in several areas and sometimes engaged in joint operations with the Army. These groups were supplied, and often trained, by the governments they served. Many of these Special Forces reported solely to senior political officials.¹¹¹
- ii **Militias** consisted of members of the former Territorial Defence Forces, and tended to operate, in the geographic area from which they originated under the command of the regular army.¹¹²
- iii **The Paramilitary Units** were forces under the command of a local leader. Their area of operation was generally confined to the town or village from which the members were drawn, although they did operate alongside similar groups in other towns or villages.¹¹³
- iv **The police augmented by armed civilians** operated within a given county, under local, sometimes political leadership. These forces frequently acted with autonomy, although they were reportedly under the control of the Ministry of Interior or other political organisations.¹¹⁴

For purposes of this Chapter and the Memorial, all these categories, including the so called “Army of the Republic of Srpska Krajina (RSK)” which emerged after the proclamation of the “RSK”, are referred to as Serb paramilitary groups. The more important Serb groups active in Croatia – “Arkan’s Serbian Volunteer Guards” (“The Tigers”), the “Serbian Guard”, the “Dušan the Mighty Detachment”, the “White Eagles”, “Captain Dragan’s Group”, Vojislav Šešelj’s “Chetnik Movement”, Martić’s “Šiltovi Group” and his Police “Martićevci” – are described in Appendix 5. The “21st Volunteer Commando Task Force” (referred to as the “21st DOD”) of

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

the 21st Kordun Corps of the “RSK Army”, which was formally established on 1st August 1993, is of particular note, since its membership was largely drawn from the Yugoslav Army of the FRY and its establishment and activities in Croatia until December 1994 were directly controlled and supported by the Yugoslav Army. Its structure, activities and relationship with the FRY and the Yugoslav Army are described in detail in Appendix 5B.

3.50 Although the first reports of paramilitary activity only appeared in April of 1991 it is now clear that some of these organisations were formed as early as 1990. In their establishment and activities two individuals from the Republic of Serbia played a key role: Željko Ražnjatović (popularly known as “Arkan”) and Vojislav Šešelj were amongst the most significant figures active in the paramilitary network in Croatia. Forces under their leadership played a central role in the genocide, as described below and in Chapters 4 and 5.

3.51 Vojislav Šešelj¹¹⁵ began organising volunteers to support the Serbian rebels in Knin in late 1990; by the summer of 1991 his activities enjoyed official approval from Serbia.¹¹⁶ In May 1991 Šešelj’s group was responsible for the killing of 12 Croatian policemen in Borovo Selo.¹¹⁷ He

¹¹⁵ Vojislav Šešelj was born in 1950 in Eastern Herzegovina. By 1990, he began his rise in the Serbian political arena. In June 1991, Šešelj was elected to the Serbian Assembly. Šešelj’s campaign was reported to have been supported and funded by Slobodan Milošević. Evidence of Milošević’s support was the uncritical, prime time coverage Šešelj received on the Milošević controlled, state-run television, which, for many Serbs, is the only source of information. As a member of parliament, Šešelj continued his attacks and threats against Albanians, Croatians, Muslims, and the West and became more popular. He and his party made strong showings in the federal elections in May 1992 and the Serbian parliamentary elections in December 1992, where they won nearly 30 per cent of the seats in parliament, resulting in a coalition with Milošević.

The coalition between Milošević’s ruling Socialist Party of Serbia (SPS) and Šešelj’s Serbian Radical Party (SRS) thrived till May 1993, when Milošević endorsed an international peace plan and seemed to abandon his support of the Bosnian Serbs. Šešelj, criticised the government for turning its back on fellow Serbs, resulting in placing the coalition in jeopardy. In late September 1993, Šešelj called for a vote of no-confidence in the Serbian government led by Milošević’s SPS. This prompted Milošević to dissolve the Serbian Parliament and call for elections in December 1993. The SPS then began a public attack on Šešelj. The authorities arrested several members of the SRS on charges of murder, rape, kidnapping and illegal arms possession. None of those detained, however, were charged with crimes that occurred outside the territory of the “rump Yugoslavia”. Šešelj responded to the charges regarding his paramilitary activities by alleging that Milošević’s government was backing these activities.

Šešelj’s counter-attacks on Milošević were not widely heard, since he was denied access to the state-run media, and the SRS did not hold public meetings fearing a ban. This resulted in a poor showing for Šešelj and the SRS, where they won only 39 seats.

¹¹⁶ Robert Thompson, *Serbia under Milošević*, Hurst & Co., London, pp. 96-97.

¹¹⁷ See Chapter 2, para. 2.102.

described the killing as a triumph for Serbs and promised that more killings would follow in the quest to expand Serbia's borders. In July 1991 Šešelj's Serbian Radical Party (SRS) announced its intention to march to Croatia to murder its "genocidal fascists", receiving the tacit approval of Serbian President Milošević.¹¹⁸ In August 1991, in an interview with the German magazine *Der Spiegel* Šešelj said that his troops were sent "from Belgrade to the crisis areas" in Croatia and Bosnia and Herzegovina with the task of organizing Serb rebellions:

"If there are 20 to 30 Chetniks in every village, this is sufficient to encourage the people there".¹¹⁹

There is substantial evidence that Šešelj and his paramilitary formations had direct links to, and the support of, the Serbian governments and the JNA. He himself stated that:

"We, the Chetniks, are that army today. Army officers are commanding our Chetniks. We have painted over almost all helmets...On the army helmets we painted the two headed Serbian eagle. Each and every officer of that army is commanding our men. A lot of soldiers fled the army so they used our men. The army would attack with tanks, mortars and cannons. Our men would then take house by house. This army took down the stars let us keep our Chetnik hats".¹²⁰

He also stated that it was the Army who gave them weapons.¹²¹ And during his campaign for election to the Parliament of the FRY in 1993 he indicated that several members of the Milošević government were involved in recruiting individuals for paramilitary operations in Croatia.¹²²

3.52 Arkan's¹²³ first reported involvement in Croatia came on 29 November 1990, when he and three others were arrested in Dvor na Uni by

¹¹⁸ See The Guardian, 2 July 1991, Annexes, vol 4, annex 36.

¹¹⁹ *Supra* fn 109.

¹²⁰ See Appendices, vol 5, appendix 2, Video Clip 13.

¹²¹ Thompson, p.97.

¹²² Thompson, p.93. He mentioned in particular Radmilo Bogdanović (Minister of the Interior in 1991); Mihalj Kertes (a former SFRY Deputy Interior Minister, then Serbian minister without portfolio); Jovica Stanišić (Head of the Secret Police) and his subordinates Radovan Stojičić (a Deputy Serbian Interior Minister); and Franko Simatović, (a senior Serbian Secret Police Commander).

¹²³ Željko Ražnjatović (*nom de guerre*-Arkan) was born in 1952, and is said to have carried on criminal activities throughout Europe. He was wanted in several European countries for crimes ranging from robbery to murder. While travelling through Europe, he allegedly worked for the Yugoslavian Federal Secretariat for Internal Affairs (SSUP) or the secret police. See Thompson, p. 94.

Croatian authorities and charged with arms offences, whilst reportedly attending a meeting with Serbian insurgents.¹²⁴ Arkan was tried and convicted, but released from prison pending appeal. When fighting began in Croatia, Arkan and the “Tigers” were deployed in Eastern Slavonia where they were engaged in action in and around Vukovar in the summer and autumn of 1991.¹²⁵ There is overwhelming evidence of Arkan’s ties with the Governments of Serbia and the FRY, with the self-declared Serbian Republics, and with the JNA. He was appointed as leader of the “Serbian Volunteer Guard” (known as “the Tigers”) by the FRY’s counter-intelligence organisation, and the Federal Department for National Defence.¹²⁶ Serbia’s Defence Minister also stated that Arkan was protected by Interior Ministry officials.¹²⁷ Arkan had a close relationship with General Boro Ivanović, the former commander of the JNA barracks in Osijek, as well as with Radovan Stojičić (known as “Badža”), the former Serbian Deputy Minister for Internal Affairs, with whom he co-ordinated the combat activities of his paramilitary units in the Eastern Slavonian battleground. Arkan entered the political arena during the 1992 Serbian elections. Along with three of his deputies, he was elected to the Serbian Parliament as representatives from Kosovo, even though he had no known ties there.¹²⁸ At Plate 13 he may be seen attending the funeral of Radovan Stojičić Badža in the company of President Milošević.¹²⁹ Arkan himself was assassinated in Belgrade on January 15, 2000.

3.53 The forces of Šešelj and Arkan were directly involved in the genocidal activities in Croatia.¹³⁰ Both men and their forces were active with the JNA in events in and around Vukovar and Eastern Slavonia later in the autumn of 1991.¹³¹ During the siege of Vukovar, Arkan publicly

¹²⁴ Thompson, p. 95. This meeting is said to have been attended by Milan Martić, then the Secretary of the SUP (Secretariat for Internal Affairs) of the “Krajina SAO”, Marko Dobrijević, then the secretary of the Serbian Democratic Party (SDS); and Nebojša-Nešo Mladinić and Dušan Orlović, active organisers of the uprising in the Knin region.

¹²⁵ See Appendices, vol 5, appendix 2, Video Clip 8.

¹²⁶ This is supported both by Šešelj and by Dragoslav Bokan, the leader of the “White Eagles”.

¹²⁷ *Supra* fn 109.

¹²⁸ Fuelling concerns that ethnic cleansing was eminent in Kosovo during the 1992 campaign, he delivered a speech, in the presence of Milošević, swearing that he was an enemy to Albanian infants. While campaigning, he drove a car with license plates that said ‘Vukovar’ as a reminder of his role in the attack on that city.

¹²⁹ When Stojičić, a Deputy Minister of Police, was assassinated in Belgrade by unknown perpetrators, Arkan and Milošević together attended his funeral and may be seen together in the photograph at Plate 13. Arkan himself was subsequently assassinated.

¹³⁰ See Chapter 4, para. 4.143 *et seq.* and Chapter 5, para. 5.197; See also Appendices, vol 5, appendix 5.

¹³¹ See Appendices, vol 5, appendix 2, Video Clip 9.

stated that his men were under the command of the JNA.¹³² In some areas Arkan exercised command over all the forces operating in the area: both the paramilitary groups, and the JNA. In other counties these forces operated under the command of the JNA. Sometimes these units operated independently or in conjunction with other paramilitary groups. In some instances, Šešelj and Arkan would incite the Serb villagers. They would often warn the non-Serb residents before entering the village and demand that they surrender their weapons. Because of the reputations of Arkan and Šešelj's forces these warnings often prompted non-Serb civilians to leave the village. Upon entering a village, sometimes under the cover of shelling, particularly in those counties where they were operating simultaneously with the JNA, Šešelj's and Arkan's troops would carry out their genocidal activities. In almost all counties in which Šešelj's and Arkan's troops were operating there are allegations of killing of civilians, rape, looting, destruction of private or cultural property, and prison camps. After occupying an area, and after initial killings, Šešelj's and Arkan's troops would usually turn over control to a local paramilitary group or to local Serb leaders. In some instances, however, members of Arkan's and Šešelj's units remained and performed "administrative" functions.

(B) THE "CONTROL" OF THE PARAMILITARY GROUPS
BY THE JNA AND THE SERBIAN LEADERSHIP

3.54 The JNA was actively involved in cooperation with, and supporting the activities of, Serb and Serbian paramilitary groups. As described in the paragraphs above, the JNA disarmed the Croatian TO's in May 1990 and then made some of the weapons available to rebel Serbs, who subsequently rearranged themselves into paramilitary groups. The "buffer" role played by the JNA in late 1990 and early 1991 allowed Serb rebels to organize themselves, including through the establishment of paramilitary groups. These activities were a prelude to the JNA's direct support for, and then reliance on, paramilitary groups. Some of the paramilitary groups evolved into the "TO of the RSK", which itself then evolved into the "Army of the RSK". The JNA supported the paramilitary groups, the "RSK TO", and then the "RSK Army".

3.55 Such support and reliance served several purposes for the JNA and political leaders in Belgrade. It clouded the issue of command and control, enabling the JNA to reduce the chance of its identification and providing its officers and soldiers with a shield when perpetrating the destruction of a significant part of the Croatian population on the occupied territory after August 1991. Notwithstanding the fact that many of the paramilitary

¹³² See photograph, Annexes, vol 3, 10.6.



SLOBODAN MILOŠEVIĆ, PRESIDENT OF FRY, AND ŽELJKO RAŽNJATOVIĆ ARKAN, SERBIAN PARLAMENTARIAN AND PARAMILITARY LEADER, AT THE FUNERAL OF RADOVAN STOJIČIĆ BADŽA, SERBIAN DEPUTY MINISTER OF INTERIOR AND LIAISON BETWEEN SERBIAN PARAMILITARIES IN CROATIA AND SERBIAN LEADERSHIP, BELGRADE (FRY), APRIL 1997

groups did not wear uniforms or other conventional military badges or symbols, making identification difficult, it is clear that the JNA coordinated their activities with paramilitary groups in several counties in Croatia, and in each of the regions described in Chapters 4 and 5. It is no coincidence that these regions fell within the strategic arc the Serbs needed to link the Serbian populations of Bosnia and Herzegovina and Croatia within a contiguous Serbian state, and within the area identified by the 1986 SANU Memorandum as forming part of “Greater Serbia”.

3.56 The activities of the paramilitary groups were controlled by the JNA, the Serbian leadership of the “rump Yugoslavia” and then the Government of the FRY. In many of the activities described in Chapters 4 and 5 the paramilitary groups worked hand-in-hand with the JNA, under the authority of the Serbian leadership. It is unquestionable that the Serbian leadership was aware of, and supported and coordinated the activities of, the Serb paramilitary groups. Often the Serb paramilitary groups operating in Croatia wore JNA uniforms and used JNA arms and other equipment.¹³³ The Belgrade authorities were regularly informed about events and activities in the occupied areas of the Republic of Croatia.¹³⁴

3.57 There is overwhelming evidence of coordination and collaboration between the JNA and Serb paramilitary groups in the witness statements relied upon in Chapters 4 and 5. There is video evidence of Arkan planning a genocidal offensive on the outskirts of Vukovar. Whilst addressing troops Arkan stated that the JNA would proceed in tanks and:

“...[We] must launch a blitz attack to secure their passage. The army...they would shell the first line of houses. But the tanks will not go in...so we must save the day. Scouts told us that Serbs are in the cellars and Ustashas are on the first floor. This makes our task more difficult, it’s not a typical mop up, we can’t just throw bombs into cellars. If we do that, we will kill our own people. We must be careful not to kill our own, our Serbian brothers!

All team leaders, when you enter the houses to mop them up, use rocket launchers to neutralize the first floor! The cellars must remain intact! We will take them by going from house to house!”¹³⁵

There are clear expressions of public support for the activities of these groups from leading Serbian politicians. Political support for the rebel Serbs in the “Krajina”, including the paramilitary groups, was manifested

¹³³ *Supra* fn 109; See also photograph, Annexes, vol 3, 10.7.

¹³⁴ See Operational Report of the “RSK”, 10 April 1995, Annexes, vol 4, annex 67.

¹³⁵ See Appendices, vol 5, appendix 2, Video Clip 9.

in several forms. Serbian paramilitary formations were publicly encouraged (either in the press or by the speeches made at public gatherings and rallies) in Belgrade and other towns. Commanders of the Serbian paramilitary formations and political representatives of the “RSK” often went to Belgrade to receive instructions. There were frequent communications and meetings between the Serb leaders of “SAO Krajina”, later the “RSK” and the Serbian leadership, including Slobodan Milošević,¹³⁶ and with Serb leaders from other parts of the former SFRY. They were even summoned to a meeting of the Serbian controlled Presidency in February 1992.¹³⁷ At a subsequent meeting in Belgrade Slobodan Milošević suggests the manner of organising and financing the army of the “RSK”.¹³⁸ Serbian political support subsequently extended to detailed proposals for the unification of Serbia, Montenegro and “Republic of Srpska Krajina”,¹³⁹ with a conference being convened in Belgrade, FRY in December 1994.

3.58 As described below there is documentary evidence proving that the JNA and the Serbian leadership provided armaments, finance and logistical support to the rebel Serbs and their paramilitary groups. The close connection between the JNA and the paramilitary groups is further proved by the existence of an Order authorising the integration of “volunteers” from paramilitary groups into the JNA, and a subsequent decision integrating some or all members of certain paramilitary groups into the JNA.¹⁴⁰ And once Serb control had been established over large parts of Croatia, by December 1991, the JNA and then after the formal proclamation of the FRY the Yugoslav Army continued to provide direct support to the military forces of the rebel Serbs. This continued after the signing of an unconditional ceasefire in Sarajevo on 2 January 1992, and

¹³⁶ See as examples Transcript of the Conversation between M. Martić and G. Hadžić, Annexes, vol 4, annex 68 and A letter to President Milošević from the “RSK”, June 1993, Annexes, vol 4, annex 69.

¹³⁷ See Order, Presidency of the SFRY to Milan Martić, ‘Secretary of the Interior of the RSK’ summoning him for a meeting of the Presidency on 27 February 1992, in Belgrade to discuss the arrival of the UNPROFOR, 21 February 1992 Annexes, vol 4, annex 70.

¹³⁸ See The Official Record of the Conversation Between Representatives of the “RSK” and the President of the Republic of Serbia Slobodan Milošević, 12/11/92 Annexes, vol 4, annex 71.

¹³⁹ See The Resolution of the “National Assembly of RSK”, 18/8/94, Annexes, vol 4, annex 72.

¹⁴⁰ See General Staff of the Armed Forces of the SFRY, III Administration, 13 September 1991, Instruction about the entrance of volunteers in the JNA, Annexes, vol 4, annex 73. See also General Staff of the Armed Forces of the SFRY, III Administration, 13 September 1991, Instruction about the entrance of volunteers in the JNA, 10 December 1991, Annexes, vol 4, annex 74, at para. 6.

after the arrival of UNPROFOR in May 1992 and the “departure” of the JNA/Yugoslav Army from Croatian territory on 19 May 1992.

*Orders from the JNA and Government of Serbia/FRY
Relating to the Provision of Logistical, Matériel
and Financial Support to Paramilitary Groups*

3.59 The JNA provided weapons to paramilitary groups from 1990 onwards. As described above, the weaponry of the TO of the Republic of Croatia was transferred to JNA barracks in May 1990. It was later distributed by the in JNA in the 1st Military Region to municipalities with Serb majorities where Serb TO's and Volunteer units had started rebelling against the democratically elected government of the Republic of Croatia. The delivery of ammunition was diverted from the Croatian TO for the use of Serb paramilitary groups: for example, ammunition ordered by the Headquarters of the TO Split from the factory “Prvi Partizan” in Titovo Užice was delivered to the “VP” Golubić, which later became a training centre for Serb paramilitary groups. Out of date weaponry discarded by the JNA was passed on to paramilitary groups: for example, the Command of the 1st Military Region proposed putting ten T34 tanks at the disposal of paramilitaries.¹⁴¹ When the JNA formally left the territory of Croatia in May 1992 weaponry was left behind for the use of Serb paramilitary groups.¹⁴²

3.60 There is evidence that Serb paramilitary groups requested¹⁴³ – and were supplied with – weapons and ammunition from the Republic of Serbia and the FRY. These requests often came through the Headquarters of the “SAO Krajina”,¹⁴⁴ which was obviously flooded with requests from local Serb rebels. Novak Višeković from Srijemske Laze (Sirmium), a member of one of the paramilitary groups, testified about the supply of weapons.¹⁴⁵ According to his statement weapons were distributed in Srijemske Laze three times: First as early as February 1991, then in March 1991 and finally

¹⁴¹ See Command of the 1st MR, 10/3/92 to the “TO RSK” Annexes, vol 4, annex 75.

¹⁴² See Command of the 1st Brigade TO Glina, 19/5/92 to the “ZNŠTO” Command Banija, Annexes, vol 4, annex 76.

¹⁴³ See Request of “SAO Krajina” to the Ministry of Defence, Republic of Serbia for ammunition, military equipment and medical supplies, 18/ 11/91, Annexes, vol 4, annex 127.

¹⁴⁴ See The Serbian Ministry of Defense in its letter of 11 December 1991 asks that the requests for the supplies go through the “SAO Krajina” Headquarters, Annexes, vol 4, annex 77.

¹⁴⁵ Witness Statement of Novak Višeković is available on video tape.

in June 1991. The weapons first came from Belgrade, and were then transported by the JNA.

3.61 The Serbian leadership also provided financial and other support to the “RSK”. In February 1992, for example, the Serbian Ministry of Defence transferred funds directly to the “SAO Krajina” Territorial Defence Headquarters for Knin and Lika.¹⁴⁶ Support also came directly from the Federal budget of the FRY,¹⁴⁷ and was requested and obtained from the FRY Federal Ministry of Defence.¹⁴⁸

3.62 Support to the “RSK” also came in the form of fuel and other supplies.¹⁴⁹ The FRY continued these supplies in 1993 and 1994.

Orders Providing for the Integration of Members of Paramilitary Groups into the JNA and other Cooperation Agreements

3.63 As stated above the JNA began to integrate “volunteers” to overcome its man power crisis. In accordance with a “Special Instruction” issued for enlisting volunteers, they were to be treated equally with regular conscripts. Every volunteer had to submit an admission form whereby he accepted “...to follow the existing federal laws and other Acts, and orders that regulate relations and life and work in the Yugoslav People’s Army. Subsequently the Federal Secretariat of National Defence also passed orders admitting “temporary contract soldiers” and engaging “volunteers.”(See below paras. 3.80)

3.64 Subsequently, a number of individuals associated with paramilitary groups were formally integrated into the JNA as volunteers.¹⁵⁰

3.65 There was close co-operation between the paramilitary units and the rebel Serbs. There was also coordination between these groups and the JNA. This is apparent, for example from the letter of consent dated 25 November 1991 issued by the President of the Municipal Assembly of

¹⁴⁶ See Command of the Ministry of Defence of the Republic of Serbia, 8/2/92 whereby funds were transferred to the “SAO Krajina” Territorial Defence Headquarters for Knin and Lika, Annexes, vol 4, annex 78.

¹⁴⁷ See “Notification on the amount of money allotted to the Republic of Srpska Krajina”, Federal Ministry of Defence, 30 September 1993, as per which a sum of 480,259 billion dinars was allotted to the “RSK”, Annexes, vol 4, annex 79.

¹⁴⁸ See The Decision of the Federal Ministry of Defence for transfer of funds, Annexes, vol 4, annex 80.

¹⁴⁹ See Letter from the “RSK Government” to *Jugopetrol* in Belgrade, 28 May 1992 for the supply of fuel, Annexes, vol 4, annex 81.

¹⁵⁰ See below paras. 3.80 *et seq.*

Petrinja permitting the participation of Arkan's "Tigers" in the "fighting", who were to be under the command of the JNA. The document states *inter alia*:

"We agree that the members of Željko Ražnjatović-Arkan's unit participate in combat at JNA and TO positions in the Petrinja municipality. The unit will be under the command of a senior officer and will be a part and under the command of the 2nd Motorized Battalion, of the 622nd Motorized Brigade Commander Bogdan Ercegovac...."¹⁵¹

Other orders and documents show that paramilitary groups that formed part of the Territorial Defence of the "SAO Krajina" were under the authority of, or acted in association with,¹⁵² the JNA, and that JNA officers were assigned to the TO of the "SAO Krajina"¹⁵³ or assisted in the formation of TO's of "SAO Krajina".¹⁵⁴ Representatives of the "Army of the RSK" were summoned to meetings at the JNA headquarters in Belgrade.¹⁵⁵ In this regard also the material relating to the "21st DOD", in particular the notebooks of Captain Milić I. Martinović, describe the close relationship between the "Army of the RSK", the Yugoslav Army and the FRY.¹⁵⁶

¹⁵¹ See Letter of "Consent" issued by the President of the Municipal Assembly of Petrinja, 25/11/91, Annexes, vol 4, annex 82.

¹⁵² See "The order of the commander of 1st Operational group, 19/10/91 Annexes, vol 4, annex 83.

¹⁵³ See Order of the commander of the 6th Operative Group appointing Major Miloš Cvjetičanin as Commander of TO Korenica, 17/1/92, Annexes, vol 4, annex 84.

¹⁵⁴ See Command of the 2nd Lika Brigade to "SAO Krajina" Ministry (Milan Martić), which states that the Federal Secretariat of National Defence ordered the formation of the 2nd Lika Brigade, 12/11/91, Annexes, vol 4, annex 85.

¹⁵⁵ See Command of the Federal Secretariat for the National Defence of SFRY regarding a meeting to be held on 3 December 1991 with the Serbian Army of Krajina in Belgrade, 30/11/91, Annexes, vol 4, annex 86.

¹⁵⁶ See above para. 3.49 and Appendices, vol 5, appendix 5B.

Restructuring of the Serb Paramilitary Groups into the “Army of the Republic of Srpska Krajina (RSK)”

3.66 The “ratification” by the JNA and the Serbian leadership of the activities of the paramilitary groups is clearly reflected in the JNA’s contribution (with the support of the Federal Secretariat for National Defence of the “rump Yugoslavia” and then the FRY) to the restructuring of the paramilitary groups and TO’s operating in Serb occupied “Krajina” into the Army of the self-proclaimed “Republic of Srpska Krajina” (“RSK”). This occurred in preparations for the “withdrawal” of the JNA (now known as the Yugoslav Army) from the Croatian territory after 19 May 1992, and continued subsequently.

3.67 In March 1992 the “rump Yugoslavia”’s Federal Secretariat for National Defence issued directives to the TO’s of the “RSK” during the JNA’s mobilization and the demobilization on the territory of the “Republic of Srpska Krajina”,¹⁵⁷ and adopted orders re-organising the TO units of the “Republic of Srpska Krajina.”¹⁵⁸ The following month, in April 1992, Belgrade issued an order assigning high ranking JNA officers to the headquarters of the TO of the “Republic of Srpska Krajina”.¹⁵⁹ An Order of 11 May 1992 directs that senior officers, soldiers and civilians from certain JNA units who were born on the territory of the “Republic of Srpska Krajina” are to “reinforce” the TO and “RSK” and remain within the territory.¹⁶⁰

3.68 Even after its withdrawal from the Republic of Croatia, the JNA, which by now had evolved into the Yugoslav Army, continued to station officers on Croatian territory and send new officers to the “Army of the Republic of the Srpska Krajina”. Other contemporaneous JNA/Yugoslav Army documents identify groups of officers and soldiers seconded to the

¹⁵⁷ See General Staff of the Armed Forces of SFRY, III Administration, DT No. 1116-1, instructions for the work of staffs and units of the TO on the preparations and realisation of demobilisation and remobilization, 12 March 1991, Annexes, vol 4, annex 87.

¹⁵⁸ See Federal Secretariat of National Defence, Top Secret No. 1349-1 from 24th March 1992, order for organisational and formational changes in the TO RS Krajina, Annexes, vol 4, annex 88, and Federal Secretariat of National Defence, General Staff of the Armed Forces of SFRY, III Administration, Top Secret No. 1943-2 from 28th April 1992, to the General Staff “TO RSK”, Annexes, vol 4, annex 89.

¹⁵⁹ See Extract of list of the activities of military personnel, members of the “VRSK”, Annexes, vol 4, annex 91, this document shows that even after the JNA left the territory of the Republic of Croatia the greater part of the officer personnel was from the Yugoslav Army.

¹⁶⁰ See Order of the General Staff of the SFRY, Armed Forces 1st Administration, Operations Centre to the Commands of the 5th, 10th, 13th and 17th Corps and four Military Regions, 11/5/92, Annexes, vol 4, annex 90.

“RSK”;¹⁶¹ provide for individual Yugoslav Army soldiers and officers to be sent to the paramilitary formations on the occupied territory of the Republic of Croatia;¹⁶² and indicate the deployment of conscripted soldiers from the FRY to occupied territory of Croatia.¹⁶³ Some of the Yugoslav Army’s highest military commanders served in the “Army of the RSK”, including Generals Čeleketić,¹⁶⁴ Lončar,¹⁶⁵ Novaković and Mrkšić.

3.69 The FRY Ministry of Defence paid salaries to the active military person and civilians in the “Army of the RSK”. By letter sent on 10 February 1992 Milan Martić, then “Minister of Interior” of the “RSK”, asked the Serbian Minister of Interior to ensure that funds assigned to the “TO of Krajina Territorial Defence” be transferred to the “RSK” Ministry of Interior.¹⁶⁶ Other documents confirm actual payments.¹⁶⁷

3.70 Soldiers of the JNA and then the Yugoslav Army who were seconded or transferred to active service in occupied Croatia, including under the direction of the military forces of the “RSK”, continued to benefit from the service conditions and status applicable in the FRY. They were provided with daily reimbursement during combat activities from 24 November 1991,¹⁶⁸ travel allowances and reimbursements of expenses.¹⁶⁹

¹⁶¹ See Command of the Combat Airforce and Anti-Aircraft Defence, 1/4/92, Annexes, vol 4, annex 92 and Command of the 18th Corps, 13/4/93, Annexes, vol 4, annex 93.

¹⁶² See as an example Order for the transfer of personnel, Federal Secretariat for National Defense, 24/1/92, Annexes, vol 4, annex 94.

¹⁶³ See Command, Federal Secretariat for National Defence of the Yugoslav Army, 27/1/93, Annexes, vol 4, annex 95.

¹⁶⁴ See Order of the commander of “RSK” by which, Colonel Čeleketić was appointed as the Commander of the Western Slavonian Corps, from 12 February 1993, Annexes, vol 4, annex 128;. See also The decree of the “President of the RSK”, 22 February 1994 where Milan Martić appoints Colonel Milan Čeleketić a major general, Annexes, vol 4, annex 130 and a similar appointment by the Yugoslav Army, 21 December 1994, which also promotes Milan Čeleketić to the rank of major general, Annexes, vol 4, annex 129.

¹⁶⁵ See The decree of the “President of the RSK”, Milan Martić, from 16 December 1994 that promotes the colonel, Dušan Lončar, to the rank of major-general, Annexes, vol 4, annex 131.

¹⁶⁶ See Letter of Milan Martić, “Minister of Interior of the RSK” to the Serbian Minister of the Interior, 10/2/92, Annexes, vol 4, annex 139.

¹⁶⁷ See as example the Report of 25 February 1994, Annexes, vol 4, annex 140.

¹⁶⁸ See Decision of the Federal Secretariat for National Defence, 24/11/91, Annexes, vol 4, annex 96.

¹⁶⁹ See Decision of the Federal Secretariat for National Defence, 24/11/91, Annexes, vol 4, annex 97.

CONCLUSIONS

3.71 It is apparent from Part 2 of this Chapter that the Serb and Serbian paramilitary groups, which were active in Croatia, were established with the support of the Serbian leadership with a view to contributing towards the creation of a “Greater Serbia”. It is also clear that the Serb and Serbian paramilitary groups were financed, armed, supported and controlled by Serbia, and that they carried out their activities in close cooperation with the JNA and then the Yugoslav Army of the FRY. On occasion they were even formally integrated into the command structure of the JNA, or integrated as volunteers.

SECTION THREE: AN OVERVIEW OF THE COMMENCEMENT OF THE GENOCIDAL ACTS IN CROATIA

3.72 As shown in Chapter 2, Serbia’s genocidal campaign in Croatia was premised upon the creation of “Greater Serbia”, which envisaged the inclusion of over half of the territory of Croatia. Within that border Serb control would be established, including by the removal or destruction of the Croat and other non-Serb populations. By spring 1991 the federal institutions of the SFRY had entered the final stage of their dissolution, and the SFRY itself was being transformed into a “rump Yugoslavia” under the control of the Serbian leadership which was subsequently – after the proclamation of independence of other Republics – proclaimed as the FRY. The Serbian leadership in Belgrade was also by now, in mid-1991, in control of the JNA. When Croatia opted for independence in June 1991 the Serbian leadership took active steps to incorporate large parts of Croatian territory into “Greater Serbia” through a military campaign, which envisaged ‘cleansing’ that area of its Croat population.

3.73 The military campaign was carried out by the JNA and Serb and Serbian paramilitary groups. The details of the campaign, and in particular the techniques used to remove and destroy the Croat population, are described region-by-region, community-by-community, in Chapters 4 and 5. But the overall approach was remarkably similar throughout Croatia. The JNA and the paramilitary groups would begin by threatening to engage in artillery shelling of a particular locality, and might actually then begin to do so. If there were no Serbs at a particular locality the shelling would be more brutal. Occupation would be followed by the deliberate killing of non-Serb civilians, and especially Croats, on a massive scale. Upon entering a mixed locality they would take steps, usually in collaboration with the local Serb population, to identify Croats and other non-Serbs and their property. Croatian and other non-Serb owned property would be systematically

looted or destroyed. Significant numbers of the Croat population would be subjected to motiveless and brutal attacks, including rapes and sexual crimes, and motiveless killings, the purpose of which was to induce a state of terror in the Croat civilian population. These crimes would often be accompanied by overt ethnic abuse and threats to “cleanse” the locality of Croats. Local Serb “authorities” would be established and would impose a regime of humiliation and dehumanisation on the remaining Croat population, who would be required to identify themselves and their property with white ribbons and other distinctive marks. The Croat populations that did not flee or were not killed were denied access to materials necessary to meet their basic needs, including medical supplies, and their movements would be restricted. They would be put to forced labour; and their property would be destroyed or looted, and Croatian cultural and religious monuments would be damaged or destroyed. Schools and other public utilities would be required to adopt Serbian cultural traditions and language. The Serbian “authorities” would organise transportation to expel the remaining Croatian civilian population. Those who left under these conditions were required to complete documents assigning their property to the local Serb administration. Large numbers were transported to prison camps in Serb-occupied territory or in Serbia itself. Many of those who remained were exterminated. These acts are described in details in Chapters 4 and 5, by reference to witness statements and other materials. In the section below the genocidal campaign across Croatia is summarised.

3.74 Serbia’s genocidal campaign began in the summer of 1991 when, under the protection of the JNA, Serbian paramilitary groups based in the “SAO Krajina” began their genocidal campaign against the Croatian population. After early incidents in Eastern Slavonia in March-April 1991, Banovina became the next trouble spot in June 1991 with the formation of the 1st Dvor Detachment, a paramilitary group formed by Serbs in the County of Dvor na Uni.¹⁷⁰ The Croatian villages of Zamlača and Struga were completely destroyed.¹⁷¹ Part of the 329th Armoured Brigade of the JNA, which was located directly in the area, merely observed the destruction and failed to take any steps to prevent it.¹⁷² Notable in this regard was the “protection granted by the JNA to Serbian paramilitary units which attacked the police station at Glina in May 1991.

¹⁷⁰ See *Bulletin of the 33rd Infantry Brigade*, Dvor na Uni, December 1991, p. 3, Annexes, vol 4, annex 132.

¹⁷¹ “SAO Krajina”, County of Dvor na Uni, Staff of the TO, 2nd Battalion, to the Commander of Staff, Conclusion, 12 September 1991, Annexes, vol 4, annex 98.

¹⁷² See Report to the Assistant of the Head of Staff for the ONP 329th Armoured Brigade, to the Command of the 329th Armoured Brigade, Annexes, vol 4, annex 99.

3.75 On 1 August 1991 Serbian paramilitary units attacked the police station in Dalj, in Eastern Slavonia. The JNA's 51st Mechanised Brigade, supported by the Airforce, openly sided with the paramilitary groups. As a result, there were many dead and several hundred Croats were expelled from the villages of Dalj, Aljmaš and Erdut. According to the JNA newspaper, which was seeking to justify the JNA's involvement and incite future crimes and genocidal acts against Croats, the villagers of Erdut had "the most monstrous and morbid plans created by the sick minds of the Ustashas..." whereby, "as per detailed lists, in specified locations, every living Serbian was to be squeezed to the last drop of blood, which would then be stored in bottles".¹⁷³ Several months later, one of the officers openly presented a completely different view of that same event, according to which "the unit's... first task was to attack the Croatian forces in Erdut across the Bogojevo bridge. The tanks moved to attack and wreaked havoc among the enemy lines. We got to Aljmaš on the backs of Croatian fighters".

3.76 In July 1991 part of the JNA's 14th Corps from Slovenia was transferred to the Prijedor-Derventa-Zenica region of Bosnia and Herzegovina.¹⁷⁴ It was reinforced by the presence of other forces.¹⁷⁵ Thus, it was in the presence of the JNA's 14th Corps that the rebel Serbs from Western Slavonia that "proclaimed" the Serbian Autonomous Region ("SAO") of Western Slavonia on 13 August 1991, purporting to attach themselves to the "SAO Krajina". On 16 August 1991, Serb paramilitary units attacked the Croatian police and the Croatian National Guard at Okučani. It was at this point that the JNA in the region was transformed into a Serbian Army. The 265th Mechanised Brigade intervened on the side of the rebel Serbs. The following week the JNA sent further reinforcements in the form of the 329th Armoured Brigade to Western Slavonia, which continued to support the rebels by purporting to act as a 'buffer zone'.¹⁷⁶ The JNA's attacks were centred on the Croat populations in the region, with the objective of linking the areas within a contiguous arc and bringing Serb populations within the planned "Greater Serbia".

¹⁷³ See "*Narodna Armija*" (Belgrade), 22 August 1991, p.13, Annexes, vol 4, annex 149.

¹⁷⁴ See Order, General Staff of the Armed Forces of the SFRY, I Administration, No. 51-1, 25 July 1991, Annexes, vol 4, annex 100.

¹⁷⁵ The 1st armoured Brigade, and the Airforce Brigade were sent to Banja Luka. See "*Narodna Armija*" (Belgrade), 10 August 1991, p. 11, "Srdačan doček u Banjaluci" and "*Narodna Armija*" (Belgrade), 14 August 1991, p. 4, "Ponovo krila nad Zalužanima", Annexes, vol 4, annex 149.

¹⁷⁶ See "*Narodna Armija*" (Belgrade), 22 December 1991, p. 26, "The man from the crisis Spots", Annexes, vol 4, annex 150.

3.77 The end of conscription from the Republics of Croatia and Slovenia, and the poor response to calls for mobilisation in Macedonia and Bosnia and Herzegovina as well as in Serbia, left JNA's units in Croatia and Slovenia weak. With many discharged soldiers not being replaced the JNA lacked sufficient numbers to fully enforce "Greater Serbian" aspirations. In August 1991, the Sabor (Croatian Parliament) demanded the withdrawal of the JNA to its barracks and then out of Croatia.¹⁷⁷ However, as the JNA ignored these demands, Croatian forces began surrounding JNA barracks. The Croatian forces intensified this pressure after an Order dated 11 September 1991, issued by the Presidency of the SFRY, demanding the withdrawal of JNA units to their barracks was rejected by the JNA as being illegal.

3.78 With the blockade of the JNA barracks, and the improved armaments of the Croatian Forces, the JNA's agenda became clearer. The Staff of the Supreme Command of the JNA in Belgrade stated by way of "warning to civilians to withdraw from ...inhabited towns" and that:

"...For every attacked and conquered object of the JNA – immediately one object of vital significance for the Republic of Croatia will be destroyed [and] for every attacked and conquered garrison – vital objects in the town, where the garrison is located, will be destroyed..."¹⁷⁸

This stance was endorsed by the Vice-President of the now defunct Presidency of the SFRY, Dr. Branko Kostić, a representative of Montenegro, who by this time had in practise taken on the position of President and was openly acting on behalf of the Republic of Serbia and the emerging FRY.¹⁷⁹ Acting unconstitutionally the SFRY Presidency adopted emergency procedures allowing the Presidency to reach decisions based on a majority of those present and voting, even when all the members of the Presidency of the SFRY were unable to assemble.¹⁸⁰

3.79 By October 1991 the JNA's overt goal was the removal of non-Serb populations from areas of "Greater Serbia" within Croatia, with the full cooperation of the Serbs in "SAO Krajina".¹⁸¹ For this purpose the JNA

¹⁷⁷ See "*Narodna Armija*" (*Belgrade*), 7 August 1991, p. 5, "Teror nad istinom", Annexes, vol 4, annex 149.

¹⁷⁸ See "*Narodna Armija*" (*Belgrade*), 2 October 1991, p. 7, "Poslednje upozorenje", Annexes, vol 4, annex 150.

¹⁷⁹ See "*Narodna Armija*" (*Belgrade*), 5 October 1991, p. 3, "Neposredna ratna opasnost uslovljava rat", Annexes, vol 4, annex 150. See also the Proclamation in the Official Gazette of the SFRY on 18 October 1991, Annexes, vol 4, annex 135.

¹⁸⁰ See The Guardian, 4 October 1991. Annexes, vol 4, annex 39.

¹⁸¹ Veljko Kadijević, *Moje viđenje raspada*, 1993, p. 134.

envisaged the use of fifteen or more armoured, mechanised and infantry brigades, in addition to ground forces already deployed. According to General Veljko Kadijević, the operational strategy involved a total aerial and naval blockade of Croatia and the “liberation” of Serbian areas in Croatia, and the JNA’s garrisons, located deep in Croatian territory.¹⁸² To this end he instructed the JNA to intersect Croatia along the following four lines: Gradiška-Virovitica; Bihać-Karlovac-Zagreb; Knin-Zadar; and Mostar-Split. The largest group of armoured-mechanised forces would liberate Eastern Slavonia, and then proceed westward, to merge with the forces in Western Slavonia and head for Zagreb and Varaždin, on the Slovenian border.¹⁸³ Upon reaching specified objectives, the JNA was to secure and defend the borders of “SAO Krajina” in Croatia, pull out the remaining units from Slovenia and ultimately withdraw from the rest of the Republic of Croatia.¹⁸⁴ In short the JNA’s aim was threefold: to establish control over the crisis areas, to protect the Serb population from genocide, and to liberate the members of the JNA and their families, the preconditions for this was the “defeat of the Ustasha forces”.¹⁸⁵ The fulfilment of these objectives – a “hidden agenda” – was the occupation and partition of the Republic of Croatia.

3.80 Though the response to mobilisation in Vojvodina was 93%, in Serbia it was only about 26%.¹⁸⁶ Consequently, to overcome the problem of manpower, the JNA began to integrate volunteers. In accordance with the Special Instruction issued for enlisting volunteers, they were to be treated equally with regular conscripts. Every volunteer had to submit an admission form whereby he accepted “...to follow the existing federal laws and other Acts, and orders that regulate relations and life and work in the Yugoslav People’s Army...”¹⁸⁷ By this Order – of singular importance in establishing the “effective control” of the Serb-controlled JNA over Serbian paramilitary forces – the JNA incorporated into its fold various Serbian paramilitary groups, who now fought alongside the JNA, united in the common goal for the creation of “Greater Serbia”.¹⁸⁸

¹⁸² *Supra* fn 25.

¹⁸³ The plan did not provide for the ‘liberation’ of Slovenia.

¹⁸⁴ Veljko Kadijević, *Moje viđenje raspada*, 1993, pp. 135-136, vol 5, appendix 4.1.

¹⁸⁵ *Supra* fn 26. See also “*Narodna Armija*” (*Belgrade*), 5 October 1991, p. 5, “U Hrvatskoj je na djelu neonacizam”, Annexes, vol 4, annex 150.

¹⁸⁶ Ivan Veselinović, “Razbijanje Jugoslavije i uloga Jugoslavenske narodne armije”, *Stvaranje i razaranje avnojevske Jugoslavije*, Belgrade, 1997, p. 300.

¹⁸⁷ See General Staff of the Armed Forces of the SFRY, III Administration, 13 September 1991, Instruction about the entrance of volunteers in the JNA, Annexes, vol 4, annex 73.

¹⁸⁸ See the Federal Secretariat of National Defence, Top Secret, which talks of the immediate admission of temporary contract soldiers into the JNA, 17 December 1991,

3.81 Along with the incorporation of the Serb paramilitaries into the JNA, a number of JNA Officers were sent to the TO's Staff in "SAO Krajina" and the operative zones of Banovina, Kordun and Lika, with the task of leading the local Serb paramilitary groups.¹⁸⁹ By this time the self-styled Territorial Defence of "SAO Krajina" had been restructured and formally incorporated into the JNA. On 30 September 1991 a retired General-Colonel of the JNA, Ilija Đujić, was appointed commander of the "TO of SAO Krajina".¹⁹⁰

3.82 Several armoured-mechanised groups, including the JNA's 12th Corps, the 1st Guards Proletarian Mechanised Division and the 24th Corps were deployed in Eastern Slavonia. The JNA's campaign in this region was underway by 25 August 1991, with the 12th Corps engaged in combat in the Vukovar region. In September 1991 the JNA's 3rd Guards Proletarian Mechanised Brigade attacked Vinkovci. According to the Commander of the 3rd Proletarian Guards Mechanised Brigade, within three days his forces had "liberated" all the villages between Šid and Mirkovci.¹⁹¹ By October 1991 these forces had been joined by the 252nd Armoured Brigade, and the Serbian volunteer units "Šumadija" and "Lepenica" which went on to occupy the villages of Đeletovci, Bapska and Šarengrad.¹⁹² The commander of the division, General Major Dragoljub Arandžević – in an interview with the JNA newspaper "*Narodna Armija*" – stated that his unit had cleared, and was now holding the area between the Danube and the Bosut, where rebel Serb administrations were beginning to take shape.¹⁹³ These statements reflected the common goal shared by the JNA and the rebel Serbs, namely to remove or exterminate the non-Serb population from areas of Croatia within the borders of "Greater Serbia". An example of this objective was reflected in the "treaty" of 14 October 1991 between the JNA's 1st Guards Proletarian Mechanised Division and the inhabitants of

Annexes, vol 4, annex 133 and the Order of the Presidency of the SFRY on the engagement of volunteers, 13 December, 1991, Annexes, vol 4, annex 134.

¹⁸⁹ See Federal Secretariat of National Defence, Order No. 24-175 of the Head of Personnel Administration to the "SAO Krajina", Staff of the TO, 20 September 1991. Annexes, vol 4, annex 136.

¹⁹⁰ See "SAO Krajina", Decision of the President, No. 1/1-91 from 30 September 1991, Annexes, vol 4, annex 101.

¹⁹¹ See "*Narodna Armija*" (*Belgrade*), 19 October 1991, p. 8, "Nema mira u Mirkovcima", Annexes, vol 4, annex 150.

¹⁹² See Command of the 1st pgmd, Top Secret No. 851-18 to the Command of the 252nd Armoured Brigade, from 4 October 1991, Annexes, vol 4, annex 102.

¹⁹³ See "*Narodna Armija*" (*Belgrade*), 2 October 1991, p. 4, "Kao nekad, pod razvijenom ratnom zastavom", Annexes, vol 4, annex 150.

Ilok, whereby the non-Serb citizens were made to leave the town or face the consequences.¹⁹⁴

3.83 Beginning on 25 August 1991 the JNA's 12th Corps began a massive attack on Vukovar and surrounding villages. The assault was coordinated by the JNA and Serb paramilitaries:¹⁹⁵ in mid September the JNA press was writing about the Serbian paramilitary groups which were greatly contributing to the "final liberation" of Vukovar. The siege of Vukovar proved to be difficult for the JNA's units of the 1st Military Region. The absence of military logic, and the way in which the siege was prosecuted, incontrovertibly demonstrated that the conflict in Croatia was no longer a bid to prevent "secession" but rather a genocidal campaign to rid the area of its Croatian inhabitants. Military logic dictated that the JNA and the Serb paramilitaries should have surrounded Vukovar with fewer forces and continued westward. However, the JNA and paramilitary units persisted with the siege, which lasted about 86 days. The military operations against the city were carried out by two groups: Operative Group "North" under the command of JNA General-Major Andrija Biorčević, and Operative Group "South" under the command of JNA Colonel Mile Mrkšić, supported by a unit of the 1st Airforce Corps. The overall operational Commander was JNA General Života Panić, the commander of the 1st Military Region.¹⁹⁶ The city fell on the 18th November 1991.¹⁹⁷

3.84 The JNA's 5th Corps, cooperating with Serb paramilitary groups, was engaged in the expulsion of Croats and other non-Serbs from Western Slavonia throughout September 1991. After occupying Okučani in early September, the JNA moved towards Novska and Pakrac. The forces of the JNA's 265th Mechanised Brigade and the JNA's 329th Armoured Brigade

¹⁹⁴ Treaty of 14 October 1991 between the representatives of the town of Ilok and the JNA, Annexes, vol 4, annex 103. See also Chapter 4, para. 4.62 *et seq.*

¹⁹⁵ The JNA forces included the elite 1st Guards Proletarian Mechanised Division, the 12th, 36th, 51st, and 453rd Mechanised Brigade, the Guards Motorised Brigade, the 80th Motorised Brigade, the 252nd Armoured Brigade, the 20th Partisan Brigade, the 16th Mixed Artillery Brigade, and the 63rd Parachute Brigade. These units were accompanied by Serbian TO from Sremska Mitrovica and Kragujevac, volunteer units from Belgrade, Novi Sad, Ruma, Indija, Sombor, Smederevo and Smederevska Palanka in Serbia. The paramilitary units involved in the fall of Vukovar involved Šešelj's "Chetniks", Arkan's "Tigers", and TO units from Negoslavci and Vukovar. See Appendices, vol 5, appendix 5.

¹⁹⁶ See Federal Secretariat of National Defence, Order of the Federal Secretariat, 19 November 1991, Annexes, vol 4, annex 104.

¹⁹⁷ Most of Vukovar was razed to the ground. One incident, in particular, symbolises this battle; the mass grave at Ovčara, where some more than 200 Croats were taken by Serbs from the Vukovar Hospital and summarily executed and then left in a shallow mass grave. See Chapter 4, para. 4.171 *et seq.*

bolstered the forces of the JNA's 5th Corps. Although these forces had the unconditional and complete support of the local Serbian population, the forces were unable to push through Croat lines to join the JNA's 32nd Corps in Varaždin, Bjelovar and Virovitica.

3.85 They were supported by the TO's of "SAO Western Slavonia", who operated in the area around Lipik-Pakrac-Daruvar. These forces committed genocidal acts against the Croatian population in an attempt to ethnically cleanse the area around Daruvar and Podravska Slatina. This continued until the arrival of the Croat forces in early November 1991, forcing a retreat, which was halted by the signing of the Sarajevo cease-fire on 2 January 1992.

3.86 The 5th Military Region that was responsible for Central Croatia planned a series of attacks. The strategy was obvious in Kordun, where the JNA hoped to reach the imaginary western border of "Greater Serbia" by systematically cleansing the region of its non-Serb population. However, the plans of the 5th Military Region fell through, primarily because of the surrender of the 32nd Corps on 22 September 1991 and the blockade of most of the forces of the 10th and 13th Corps. Another contributing factor was the weak response to calls for the mobilisation of reserves.

3.87 The Serb paramilitary units in Kordun and Banovina were under the command of the JNA's 3rd Operative Zone. From 19th October 1991 they acted and were used as organic components of the JNA units.¹⁹⁸ Combat activities in certain areas of Lika were taken over by the JNA's 9th Corps, and the rest of Lika and Kordun was under the command of the third Operative Group, established under the command of the 5th Military Region. With the support of local Serb units, the JNA was able to occupy Slunj and banish all Croats living there.

3.88 In Lika, the Serb forces mainly engaged in artillery strikes against Croatian settlements, often supported by the Airforce. Until mid-November 1991, the combat activities were mainly lead by the JNA's 9th Corps, who was also responsible for the actions of the paramilitary units in the area.¹⁹⁹

3.89 In northern Dalmatia, combat activities were led by the JNA's 9th Corps supported by local Serbian TO's. The 9th Corps was one of the few operative groups, which did not lack manpower, as it was situated in a majority Serb area, and also recruited from Montenegro, as well as through

¹⁹⁸ See Command of the 1st Operative Group, Top Secret No. 100-233, 19 October 1991, Annexes, vol 4, annex 105.

¹⁹⁹ The 9th Corps was assisted in its operations by the 9th and 10th Armoured Battalion, the 1st Battalion of the 4th Proletarian Motorised Brigade and the 1st Battalion of the 592nd Motorised Brigade.

large scale enlisting from the area of Šumadija (north-western Serbia).²⁰⁰ After expelling the Croats from the villages of Kijevo and Kruševo, by early September the Corps began attacking Adriatic cities. Through October 1991, the 9th Corps commanded by General-Major Vladimir Vuković and Colonel Ratko Mladić, together with the 8th Naval Sector, the 1st Airforce Corps, and paramilitary groups and volunteer units, launched aggressive attacks with a view to “cleansing” the hinterland and the cities of Šibenik and Zadar.²⁰¹ After this operation, Colonel Mladić was promoted to the rank of Major General and later became the Commander of the Serbian forces in Bosnia and Herzegovina.

3.90 Southern Croatia was under the command of two Operative Groups of the JNA. The 37th Užički Corps’s task was limited to securing the airport in Mostar and intimidating the non-Serbian population.²⁰² The forces of the 2nd Corps and the 9th Naval Sector were located around Dubrovnik and were commanded by General-Lieutenant Colonel Jevrem Cokić.²⁰³ The indiscriminate shelling of Dubrovnik began on the 1 October 1991. The city was surrounded and completely cut off from the rest of Croatia. General Cokić admitted that the Republic of Montenegro put at his disposal militia forces in addition to the federal reserves under his command, to carry out this operation.²⁰⁴ At the end of October 1991, the civilian population was given an ultimatum to leave the city.²⁰⁵ As the ultimatum was not accepted, the shelling continued until December 1991.

THE FINAL STAGES OF THE JNA’S OPERATIONS IN THE REPUBLIC OF CROATIA

3.91 By December 1991, the Serbian leadership recognized that it had arrived at a stalemate. Large parts of Croatian territory were now under the control of the JNA and Serb paramilitary groups, and a majority of the Croatian population had been removed or destroyed. However, the establishment of the full borders of “Greater Serbia” as envisaged by the 1986 SANU Memorandum had not been attained. After the surrender of the

²⁰⁰ See “*Narodna Armija*” (Belgrade), 9 October 1991, p. 35, “Snažni udari armije” Annexes, vol 4, annex 150; Veljko Kadujević, *Moje viđenje raspada*, 1993, p. 139.

²⁰¹ See Maps relating to the JNA’s attack on Zadar and Šibenik, Annexes, vol 3, Plate 6.3 and 6.4.

²⁰² See Command of the 9th Corps, Operative No. 14, from 23 September 1991, Annexes, vol 4, annex 106.

²⁰³ See “*Narodna Armija*” (Belgrade), 9 January 1992, p. 14, “Istina je probila sve barijere”, Annexes, vol 4, annex 151.

²⁰⁴ *Ibid.*

²⁰⁵ See Chapter 5, para. 5.236.

JNA's 32nd Corps on 22 November 1991, an agreement was reached between the Croatian Government representatives and the JNA, according to which the forces of the 5th Military Region would withdraw from Croatian territory, leaving the Croatian forces the armament removed from the TO.²⁰⁶ This withdrawal was completed by the 30th December 1991.²⁰⁷ Serbia and the JNA hoped that the imminent arrival of UN peacekeeping forces would freeze the situation and enable them to consolidate their extensive territorial acquisitions, thereby maintaining the *status quo*.

THE CONTINUING SUPPORT OF THE JNA/VJ TO THE REBEL SERBS AND THE PARAMILITARIES

3.92 Whilst withdrawing from Croatian territory, the JNA took several measures to protect the territorial gains it had made on behalf of Serbia. The JNA created new border units and police brigades.²⁰⁸ More significantly, it restructured the armed forces of the Serb paramilitaries from an army of reservists and volunteers into an army, which adjusted its structure to new needs by removing different flaws of that organization. This was carried out pursuant to an Order dated 27 February 1992, issued by the Head of the JNA General Staff in Belgrade.²⁰⁹ The Order provided for the establishment of a "Headquarter Staff of the Territorial Defence of the Republic of Srpska Krajina" ("GŠ TO RSK") and a regional Staff of the TO in Banovina, with brigades in Glina, Petrinja and Kostajnica, as well as county staffs in Glina, Kostajnica, Dvor na Uni, Petrinja and Sisak.²¹⁰ To achieve this task, in March 1992, the General Staff of the JNA in Belgrade sent the General Staff of the "GŠ TO RSK" an "Instruction" containing guidelines for the preparation and realisation of demobilisation and re-mobilisation, of the TO's staffs and its units after the withdrawal of JNA units from the Kordun area.²¹¹ Each of these instruments reflects the close relationship between the JNA, the Serb paramilitaries on the territory of Croatia, and the political authorities in Serbia.

3.93 Subsequent orders of the General Staff of the JNA in Belgrade included several organisational changes in the "TO of the Krajina",

²⁰⁶ See the Agreement between the official delegates of the Government of the Republic of Croatia and the JNA, 22 November 1991, Annexes, vol 4, annex 107.

²⁰⁷ See "*Narodna Armija*" (Belgrade), 4 January 1991, p. 4, "Izmještanje do kraja izvršeno", Annexes, vol 4, annex 151.

²⁰⁸ See Command of the 8th Operational Group, 31 March 1992, to the Command of the 10th Corps, Annexes, vol 4, annex 109.

²⁰⁹ See Annexes, vol 4, annex 110.

²¹⁰ *Ibid.*

²¹¹ See Annexes, vol 4, annex 111.

whereby the “Krajina TO” was to take over the tasks of the JNA units. At the regional level there were established TO staffs, artillery divisions, mixed anti-armour divisions, light artillery batteries of the Air-defence units and rear-echelon bases.²¹² Orders also related to the establishment and administration of special militia units under the command of the SFRY Defence Ministry. An Order of the General Staff of the Armed Forces of the SFRY, dated 28 April 1992 (i.e. the day after the proclamation of the FRY), established the administration of militia brigades to be formed in Serb-held territories of occupied Croatia in Knin, Korenica, Vojnić, Petrinja, Okučani, Vukovar, Beli Manastir and Benkovac.²¹³

3.94 By Order of 22 April 1992 several JNA Officers (ranking from 1st class captains to colonels) were sent to the “TO of Krajina (RSK)” to train soldiers of the “Krajina army” (“VRSK”) and create a command structure. According to the above-mentioned Order, the three ‘Serbian Autonomous Regions’ of (“SAO Krajina”, “SAO Western Slavonia” and “SAO Slavonija, Baranja and Western Sirmium” were militarily united into the “Republic of Srpska Krajina”, which became the first of the two Serbian ‘countries’ to be created outside Serbia,²¹⁴ with the objective of being merged into the Republic of Serbia as part of “Greater Serbia”.

3.95 After the arrival of UNPROFOR, in mid-May 1992, only the militia units in the “Krajina” area remained armed, whilst the forces of the JNA and its successors were demobilized.²¹⁵ By Order of 11 May 1992 – again from the JNA of the SFRY – the General Staff ordered the JNA to withdraw its materiel and manpower from Bosnia and Herzegovina and Croatia by 19 May 1992.²¹⁶ With the implementation of this Order the JNA’s “official” role in Croatia came to an end.

3.96 The JNA’s formal withdrawal did not, however, signify the end of its – or its successor’s – involvement with, and support for, Serb paramilitaries and political organisations in the Republic of Croatia. From May 1992 until August 1995 the FRY’s involvement in Croatia manifested itself in various forms, including continued military assistance, financial

²¹² See Annexes, vol 4, annex 88.

²¹³ See Order of the Federal Secretariat, 28 April 1992, Annexes, vol 4, annex 112.

²¹⁴ The other being Republika Srpska in Bosnia and Herzegovina.

²¹⁵ See “RSK”, General Staff of TO, Top Secret, Order, 7 May 1992, Annexes, vol 4, annex 113.

²¹⁶ See Order of Federal Secretariat of National Defence, Operative Centre, No. 53-3, 11 May 1992, to the Command of the 5th, 10th, 13th and 17th Corps and 4th Military Regions, Annexes, vol 4, annex 90.

aid, logistical and personnel support.²¹⁷ This was most evident in Eastern Slavonia, given its geographical proximity to the FRY, where the JNA continued to station armoured and mechanised units from the Novi Sad Corps, right up to the demilitarisation of the former Sector East in 1996.

3.97 Army officers of the FRY were posted to the “RSK”²¹⁸ on the basis of Article 271 of the Law on service in armed forces.²¹⁹ The service of military officers of the FRY in the “Krajina” was treated as though it was service in the Republic of Serbia.²²⁰ The JNA and its successor continued to regulate the status of these officers, was responsible for the payment of salaries, travelling allowance, and sanctioning reimbursements for the expenses of living away from family, transportation and by regulating their service condition.²²¹ Serbian Army officers serving in the “Krajina” were given an additional allowance of 20% of their basic pay in recognition that they were serving “under more difficult (special) conditions” at the behest “of the Head of General Staff of the Army of Yugoslavia”.²²² A refusal to serve in the “Krajina” could result in various sanctions including dismissal from active military service. Officers who had served their terms in the “Krajina”, and wished to return to the Yugoslav Army required the consent of the General Staff of the “Serbian Army of Krajina”, without which they could not be re-transferred.²²³

3.98 The Yugoslav Army’s support to the “Krajina Army” was also reflected in the fact that several military specialists from the Republic of Serbia were sent to the “RSK”. For example, the personnel in the 105th Airforce Brigade who were largely from Yugoslavia.²²⁴ As late as 1995 the FRY was still supporting military efforts in “Krajina”: the downing of a U.S Air Force F-16 plane, in June 1995, demonstrated the continuing

²¹⁷ See Letter of Request to the General Staff of the Yugoslav Army for arms and equipment, Annexes, vol 4, annex 137; Report of the 18th Corps on the state of Combat readiness to the General Staff of the “VRSK”, 13 October 1993, Annexes, vol 4, annex 138 and Order from the Commander of the “VRSK”, 30 December 1993, Annexes, vol 4, annex 141.

²¹⁸ The self-styled “Republic of SAO Krajina” was proclaimed on 19 December 1991 by the so-called Constitutional Parliament of the “SAO Krajina”.

²¹⁹ See Command of the 18th Corps, Top Secret, 13th April 1993, General Staff of the RSK, Annexes, vol 4, annex 114.

²²⁰ See para. 3.92 above.

²²¹ See above paras. 3.68 *et seq.*

²²² See for example Military Unit 4001, Belgrade, Int. No. 15/18-116-84, 5 May 1994, official papers, Annexes, vol 4, annex 115.

²²³ See “RSK”, General Staff of the Serbian Army, Confidential No. 5/1-135 to the General Staff of the Yugoslav Army, 22 September 1994, Annexes, vol 4, annex 116.

²²⁴ See General Staff of the Army of Srpska Krajina, Top Secret No. 41-326, 14 May 1994, to the General Staff of the Yugoslav Army, Annexes, vol 4, annex 117.

support of the FRY, as Western official stated that all anti-aircraft batteries in Serb held territories throughout the former Republics were a part of an integrated air-defence system headquartered in Belgrade, and under the direct command of the Chief of Staff of the Yugoslav Army.²²⁵

3.99 The “Krajina’s” continuing dependence on the FRY with regard to the organisation and financing of its paramilitary forces was the agenda of a high level meeting in Belgrade on 12th November 1992 between Zdravko Zečević, the ‘Prime Minister’ of “Krajina”, President Slobodan Milošević of the Republic of Serbia, the Serbian Prime Minister and the Governor of the National Bank of Yugoslavia. At the meeting, President Milošević agreed to continue financing the “Army of the RSK” and the militias, as had been done previously. He also agreed that the Republic of Serbia would finance the maintenance of equipment, as well as the active senior officers and civilians who remained in “Krajina”. Based upon this undertaking, the “Krajina” government requested the Ministry of Defence of the FRY for the requisite sums of money for 1992 and 1993.²²⁶ In fact, the Federal Ministry of Defence of the Federal Republic of Yugoslavia informed that a rebalance of federal budget was made in order to provide 480.259 billion Yugoslav dinars for the “Republic of Srpska Krajina (RSK)”.²²⁷ Clearly, during the entire existence of the Serbian quasi-state on the territory of the Republic of Croatia, the FRY continued to provide its financial and logistical base.

²²⁵ The Washington Post, 4 July 1995, Annexes, vol 4, annex 45.

²²⁶ Republic of Srpska Krajina, the Presidency of the Government of Belgrade, Official notes of the talks with the representatives of the “Government of RSK” with the president Slobodan Milošević, Republic of Srpska Krajina, Ministry of Defence, Minister, DT No. --/95 from the 7th of February 1995, to the “Government of RSK”, Report on the work of the Ministry of Defence in 1994, Annexes, vol 4, annex 119.

²²⁷ *Supra* fn 147.

CHAPTER 4

GENOCIDAL ACTIVITIES IN EASTERN SLAVONIA

4.01 The sheer scale of the atrocities that took place in the territory of Croatia during the period covered by this Memorial does not allow for an exhaustive presentation of every relevant event. The evidence in support of Croatia's claim has for convenience been split into two parts. This Chapter focuses in detail upon events in Eastern Slavonia, primarily in the period between the May 1991 and November 1991. The evidence collected from victims and witnesses of genocide, and confirmed by independent observers and commentators, provides an important case study of the genocide perpetrated against Croats, one which is reflective of events in other parts of Croatia in the same period. Chapter 5 summarises events in other parts of Croatia in a more general manner, focusing upon the extent to which the patterns of genocide which occurred in Eastern Slavonia were repeated elsewhere. These two Chapters are intended to describe the relevant events: the legal implications in terms of the charge of genocide which flow from the evidence outlined in these Chapters are addressed in Chapter 8 below.

1. INTRODUCTION

Geography

4.02 Eastern Slavonia, that is the Croatian Podunavlje, is the north-eastern part of Croatia at the Danube River and borders with Serbia. This region was the prime target of Serbian expansionists once armed hostilities began in earnest in the summer of 1991: see Plate 14 (see also Volume 3, Plate 4.2).

Demographic Change

4.03 The demographic changes brought about by Serbian action in the region between 1991 and 1995 were profound. In 1991, prior to the hostilities and the occupation of Eastern Slavonia, this region was divided into nine administrative municipalities: Beli Manastir, Osijek, Vinkovci, Donji Miholjac, Đakovo, Županja, Valpovo, Našice and Vukovar. According to the 1991 Census¹, ethnic Croats comprised the major part of

¹ The 1991 Census was the last official census of the SFRY.

the population in all nine municipalities.² Besides ethnic Croats, there were also other nationalities in Eastern Slavonia.

4.04 After the territory of Eastern Slavonia was occupied, the structure of the population altered dramatically. Before the occupation in Eastern Slavonia as a whole 70,24% of the population were Croats, and 17,15% Serbs. By 1993 in the occupied area only 2% were Croats and 97% Serbs. The specific changes in relation to the individual towns are dealt with below. At the same time, 57,028 housing units were completely or partially destroyed. The figure includes 32,924 housing units in the Osijek-Baranja County and 24,104 housing units in the Vukovar-Srijem County. 7,994 units were damaged or destroyed in Vukovar alone. There was also extensive damage to and destruction of ecclesiastical objects (see Volume 3, Plate 8.2).

4.05 The drop in population can in part be explained by exile. From the territory of the Vukovar-Srijem County, altogether 50,873 persons were displaced.³ From the area of the Osijek-Baranja County, 33,557 persons were displaced.⁴

4.06 According to the latest figures on the total number of still “missing persons” from the area of Eastern Slavonia is 886 persons,⁵ though this is considered to be an understatement.

4.07 At the time of writing, 61 mass graves have been found in Eastern Slavonia: see Volume 3, Plate 7. 2,028 people have been exhumed of whom 1,533 have been identified. In the Osijek-Baranja County, 171 persons were exhumed and 135 of them were identified. In the Vukovar

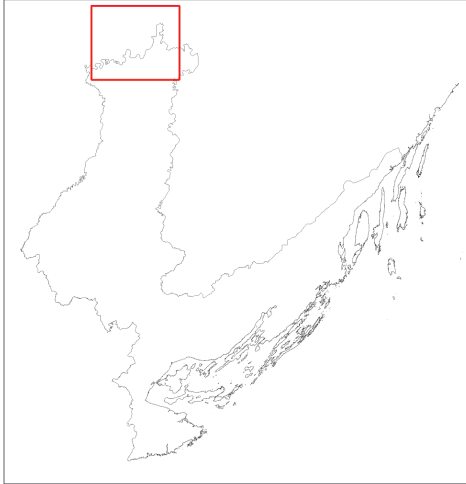
² Croat communities made up the absolute majority in the municipalities of Vinkovci (79.6%), Osijek (61.7%), Vukovar (48%), Beli Manastir (41.9%), Županja (87.62%), Donji Miholjac (83.63%), Đakovo (91.73%), Valpovo (90.61%), and Našice (80.55%). The percentage of the ethnic Serbs in Vukovar was 37.2%, in Beli Manastir 25.5%, in Osijek 20.0%, in Vinkovci 13.0%, in Županja 2.46%, in Donji Miholjac 11.80%, in Đakovo 3.78%, in Valpovo 2.86% and in Našice 10.98%. According to the same Census, the municipality of Vukovar had 84,189 inhabitants, 36,910 of which were Croats and 31,445 were Serbs. The town of Vukovar had 44,639 inhabitants, 21,065 of who were Croats and 14,425 were Serbs. The municipality consisted of the town of Vukovar and 28 villages; in 15 of them, Croats comprised the majority population, Serbs had the majority in 10 villages, and Hungarians, Ukrainians and Ruthenians each in one village. See the Ethnic statistics for Eastern Slavonia, Annexes, vol 2(I)

³ According to the figures of the Office for Displaced Persons and Refugees-regional office in Vinkovci.

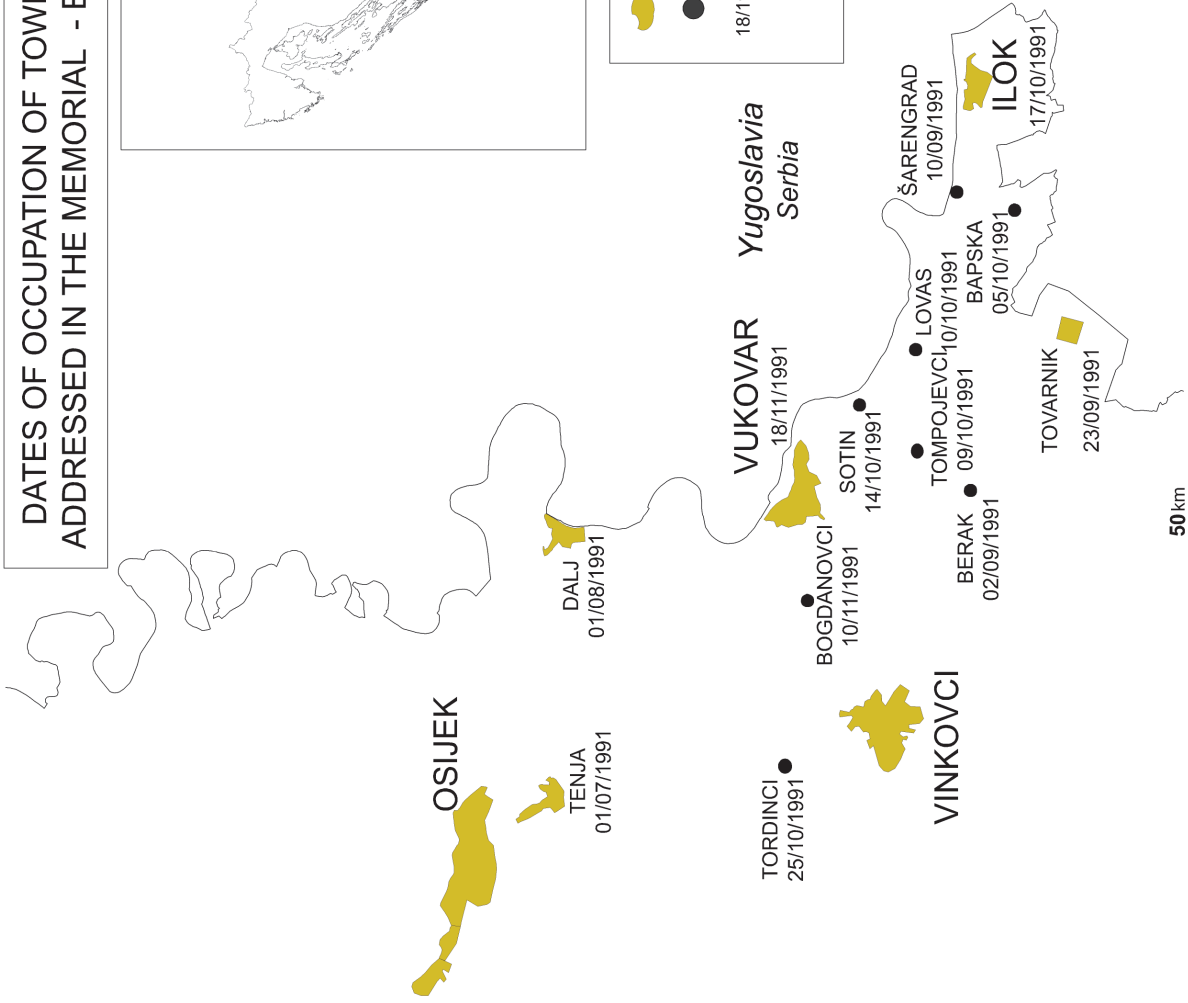
⁴ According to the figures of the office for Displaced Persons and Refugees-regional office in Osijek.

⁵ 125 persons from the Osijek-Baranja County, 761 persons from the Vukovar-Srijem County.

**DATES OF OCCUPATION OF TOWNS AND VILLAGES
ADDRESSED IN THE MEMORIAL - EASTERN SLAVONIA**



	TOWN
	VILLAGE
18/11/1991	DATE OF OCCUPATION (DD/MM/YY)



Srijem County 1,857 persons were exhumed, and 1,418 of them were identified. Further mass graves are still being discovered. Moreover, many of the mass graves, which came into being in the relevant period, acted as temporary burial sites only. The JNA often dug up the bodies and moved them to other parts of the occupied territory or Serbia. For example, dead bodies from the villages Tordinci were taken to Serbia and dead bodies from Tikveš were taken to Beli Manastir.

General Themes

4.08 Throughout Eastern Slavonia and elsewhere in Croatia the implementation of the strategy of ethnic cleansing and genocide followed a typical pattern. The individual experience of the villages is dealt with below and in the following Chapter. The common approach of the JNA involved a clear pattern implying co-ordination and premeditation. Prior to the occupation of a village the JNA would send an ultimatum to the Croatian inhabitants of the village to lay down their weapons or else face the village being levelled to the ground. At the same time, promises were made that the Croatian civilians would not be harmed if they did not offer armed resistance. Generally no resistance was offered. In some cases a small degree of militia resistance was offered, there being no significant arsenal available to the Croatian population at that time. The JNA would then engage in an artillery attack, followed by the infantry of the JNA entering the village together with Serb paramilitary groups. After the JNA and these units had captured a village, they embarked upon a campaign of terror making it either physically or psychologically impossible for Croats to continue living there. Mass and non-selective executions of Croatian civilians (men, women and children) would take place. The remainder of the population was subjected to variants of martial law, imprisonment, forced exile or deportation to camps. In many of these villages the remainder of the Croat population, which was often very small, was forced to display white ribbons, either on their sleeves or on the doors of their houses. The common form of abuse levelled at Croats, especially as a preamble to acts of violence, was that they were “Ustashas”. During the occupation, many Croats fled to the neighbouring towns, which had not (yet) been captured. Some were killed in ambushes by Serb paramilitary units on the way.

4.09 All of these operations were ostensibly designed to establish rebel Serb authorities in the villages, towns and cities of this region, part of the “SAO Krajina”. Territorial Defence and Police Departments were set up to represent the rebel Serbian military authorities. A Local Committee and Civilian Protection Authority were set up as part a rebel Serb civil administration. However, the “Serbianisation” of the region went far beyond the establishment of military and administrative hegemony. It

involved the large-scale destruction of the Croatian population as an ethnic group. The process started with the brutal torturing and mass killings of Croatian civilians. It progressed to the exiling of remaining Croatian inhabitants by force from the village. Croats were forced to sign documents verifying their voluntary consent that all their property should be left to the “SAO Krajina”. At the same time light and heavy Serbian artillery was used to destroy all traces of Croatian architecture, culture and religion. Targets of destruction included Catholic churches, monasteries, graveyards, monuments, TV and radio transmitters, railways and factories.

4.10 The consistent pattern of atrocity in these regions is the clearest possible evidence of a genocidal policy on the part of the Serbian occupying forces. The evidence set forth in this Memorial – including in particular witness statements of persons directly involved and corroborating independent reports – discloses the direct involvement of the JNA and a very high level of co-operation between the JNA and the paramilitary groups responsible for inflicting some of the most extreme violence. It is clear beyond doubt that the JNA military commanders not only failed to intervene to prevent paramilitary genocidal acts, but actively provided logistical and direct military support. In many instances, there is clear evidence that paramilitary organisations were involved in joint planning with the JNA and in most instances, operations were jointly carried out. There is contemporary videotaped evidence of Serbian paramilitary leader Željko Ražnjatović – Arkan issuing instructions to uniformed soldiers on how to co-ordinate activities of the JNA and the paramilitaries during the attack and how to ensure that the killing of civilians was confined to those of Croat ethnicity.⁶

4.11 The Serbian strategy was largely successful in its aim of destroying the Croatian population in the occupied regions. The demographic evidence establishes that many of the towns and villages which had a predominantly Croatian population prior to their occupation, had become almost exclusively Serbian by 1993 as a result of genocidal acts.⁷

Military Organisation of the JNA in Eastern Slavonia

4.12 The military occupation of Eastern Slavonia involved the use of JNA forces already stationed in Croatia as well as forces from Bosnia and

⁶ Chapter 3, para. 3.57.

⁷ As shown in the following paras. (references to village or town concerned): Tenja paras 4.20 and 4.30; Dalj para. 4.31; Berak para. 4.38; Bogdanovci para. 4.47; Šarengrad para. 4.56; Ilok para. 4.62; Tompojevci para. 4.73; Bapska paras. 4.81-4.82; Tovarnik para 4.94; Sotin para. 4.107; Lovas para. 4.116; Tordinci para. 4.133; Vukovar para. 4.140.

Herzegovina and FRY. Firstly, the 17th Corps of the JNA, which had previously been responsible for that part of the Republic which included Eastern Slavonia transformed itself into an occupying Serbian Army. In addition, battalions from other parts of the JNA, particularly the 12th Corps, which were moved from Serbia into Croatia, reinforced the 17th Corps.

4.13 The roots of the occupation were foreshadowed in the reforms to the army organisation in 1988. Until then, Eastern Slavonia was the area of the 7th Army with headquarters in Sarajevo. Thereafter a system of military regions was introduced. The 7th Army was dissolved and the area became part of the so-called Central battlefield, technically referred to as the 1st Military region with headquarters in Belgrade. In contrast to the former system of armies with division composition, the Military Regions were organised in Corps. According to this system, Eastern Slavonia was the responsibility of the 17th Corps with headquarters in Tuzla. The area presided over by the 17th Corps also included Baranja and Northeast Bosnia. The striking power of the 17th Corps was the 12th Proletarian Mechanised Brigade of the JNA, which had its headquarters and the main force in Osijek. Other parts of the brigade were stationed in Vukovar and Našice. In Đakovo, there was the 158th Mixed Anti-armoured Artillery Brigade; in Slavonski Brod the 670th Pontoon Battalion; in Vinkovci the 12th Mixed Artillery Regiment and the 17th Light Artillery Regiment of the Anti-Aircraft. The 51st Border Battalion, also in the composition of the 17th Corps, was located in the Baranja. The 17th Corps bordered on the 12th Corps in the East, at the river Danube, which had its headquarters in Novi Sad. Near the Republican borders of Serbia and Croatia, the 12th Corps had two mechanised brigades, the 36th in Subotica and the 453rd in Sremska Mitrovica, which played a major role in the war against Croatia. In the West, the 17th Corps bordered on the 5th Corps from Banja Luka, which had authority over Western Slavonia. Both neighbouring corps, the 5th and the 12th Corps, were part of the 1st Military Area.

4.14 On 4 October 1991, a state of emergency was declared by the unconstitutional “Yugoslav Presidency”⁸ as result of a request by the Headquarters of the Supreme Command of the Armed Forces of the SFRY. The 17th Corps of the JNA was reinforced with the 2nd Mechanised Battalion of the 36th Mechanised Brigade from Sremska Mitrovica and the 1st Mechanised Battalion of the 453rd Mechanised Brigade from Subotica. Both of these Battalions came from the 12th Corps of the JNA and were to constitute the external occupying force. They were assigned to the areas of

⁸ Chapter 2, para. 2.110.

Vinkovci and Vukovar and subordinated to the Command of the 17th Corps of the JNA.⁹

Outbreak of Violence

4.15 In April and May 1991, Serb rebels in Croatia, supported by manpower from Serbia that came over the Danube, were engaged in the destruction of the constitutional system of the Republic of Croatia. In some villages, with a substantial proportion of Serbs in the population, barricades were set up at surrounding roads. For towns like Borovo Selo and Tenja, such actions were a prelude for the imposition of paramilitary government.

4.16 Armed hostilities started on 1 May 1991, when the Serbian flag was hoisted in Borovo Selo. Members of a police patrol who attempted to bring it down were attacked. On the following day a group of policemen were sent to the village as reinforcements to the failing local administration. Twelve of them were murdered by paramilitaries. Within hours after the event, units of the JNA descended upon the locality, ostensibly to establish a “buffer” between the Serb and Croat communities. The manner of the intervention was to be a decisive turning point in the role of the JNA in the region. The Army carried out no investigation into the murders. Moreover, it stopped the Croatian police from carrying out any investigation or arrests, thereby protecting and promoting the emergence of paramilitary groups. The JNA effectively occupied Borovo Selo and obstructed a return to law and order. Encouraged by the JNA the Serb population in surrounding villages engaged in rioting, road blocking and sabotaging railway lines. Under the protection of the so-called JNA “buffer zones”, villages with majority Serb populations such as Mirkovci and Tenja, became rebel Serb strongholds. In this manner, the unrest spread into the broader area of Vinkovci and Osijek.

4.17 In July 1991 the Battalions of the 12th Corps of the JNA crossed the border between Croatia and Serbia. The Commander of the 12th Corps, Major General Mladen Bratić, justified this troop movement on the basis that he had to prevent “extremists” from tearing down bridges. The official paper of the JNA “*Narodna Armija*” explained that their aim was to “prevent a fratricidal war and to protect the borders of Yugoslavia, but also to engage in the fight against paramilitary units, which are every day more and more present in that area”.¹⁰ In this statement “paramilitary units”

⁹ Command of the 17th Corps, DT.No. 11/1-93 from 14 May 1991, Order, Annexes, vol 2(I), annex 158.

¹⁰ *Narodna Armija*, 13 July 1991, p. 15, “Mupovci svakodnevno provociraju vojnike” (“Members of the MUP provoke the soldiers every day”); *Narodna Armija* 7 August 1991, p. 4, “Razlozi za zadovoljstvo” (“Reason for satisfaction”); *Narodna Armija*, 13 July 1991, p. 20 “Izdaja nam otvorila oči” (“Betrayal opened our eyes”); *Narodna*

meant Croat Police units, not rebel Serb units. In the broader area of Osijek, Vinkovci and Vukovar, the reinforced 12th Proletarian Mechanised Brigade of the JNA under the command of Colonel Boro Ivanović occupied the roads leading out of the towns, with the excuse that it was engaged in an “exercise”.¹¹ Having established protectorates, such as Tenja (see paragraph 4.20 below) where the Serbian population was in a majority, the JNA worked with Serb paramilitary groups to attack other villages where the majority of the population was ethnic Croat. On 6 July 1991, after an “agreement” with rebel Serbian paramilitary units, the overwhelming majority of the Croat inhabitants of Antin left the village. The 93 Croats that remained were confined to house arrest outside working hours and had to wear white ribbons on their sleeves. At the time of writing it is still unknown what happened to 15 of them. On 7 July 1991, the units of the JNA carried out a mortar attack on the village of Čelije, the inhabitants of which were exiled from the village under the control of the JNA. After the population of Čelije had been banished, the village was completely destroyed and burned down. Today, the village no longer exists.

4.18 At the beginning of August 1991, the JNA started to carry out direct military operations against Croatian villages. The first to be attacked were Dalj (see paragraph 4.32 below), Erdut and Aljmaš. The main force involved was the 51st Mechanised Brigade of the JNA from Pančevo under the command of Colonel Enes Taso.¹² On arriving at Aljmaš the unit was involved in the killing of 58 Croatian civilians. The entire remaining Croatian population was banished to Osijek. The major part of the Brigade entrenched itself in the village Bijelo Brdo, which was inhabited by Serbs. The JNA’s 2nd Mechanised Battalion stayed in Erdut.¹³

4.19 After Erdut, Dalj and Aljmaš had been occupied, communications systems were introduced to parts of the 12th and 17th Corps of the JNA “with the purpose of following paramilitary units”, as they called the Croatian Army, and “the joint operations against them”.¹⁴ Until the end of

armija, 20 July 1991, p. 23, “Opstojavaju vojnički mostovi” (“Military bridges survive”); *Narodna Armija*, 17 July 1991, p. 10, “Do jednog za otadžbinu” (“Everybody for the homeland”); *Narodna Armija*, 31 July 1991, p. 12-13, “Prvo ratno iskustvo” (“First war experience”), Annexes, vol 4, annex 149.

11 *Narodna armija*, 16 July 1992, p. 18, “Trijumf s malo gorčine” (“Triumph with a bitter taste”).

12 Military Court Osijek, Kir-36/92, 6 March 1992, Hearing of I.K., former Commander of the Mechanized Platoon in the 51st Mechanized Brigade of the JNA Annexes, vol 2(I), annex 20.

13 Ibid. Also *Narodna Armija*, 22 August 1991, p. 13, “Razoružanje ili rat” (“Disarmament or war”), Annexes, vol 4, annex 149.

14 Command of the 17th Corps, No. 11/1566-2 from 4 August 1991, Order, Annexes, vol 2(I), annex 159.

August, the JNA's 36th Mechanised Brigade of the JNA, reinforced by rebel Serb paramilitary groups, occupied Baranja.¹⁵ In September 1991, the JNA started an all out military assault on Eastern Slavonia. Between 28 September and 17 October 1991, the villages of Sotin (paras. 4.107-4.115), Ilok (paras. 4.62-4.72), Šarengrad (paras. 4.56-4.61), Lovas (see paras. 4.116-4.133), Bapska (paras. 4.81-4.93) and Tovarnik (paras. 4.94-4.106) were captured by the JNA and Serb paramilitary groups. The campaign culminated in the massacre at Vukovar after 18 November 1991 (paras. 4.160 *et seq.*).¹⁶

2. TENJA

4.20 The village of Tenja is located in Eastern Slavonia around 6 km southeast of Osijek. According to the 1991 census, 7,663 inhabitants lived in Tenja, of whom 2,813 were Croats, and 4,177 Serbs. The rest of the population was made up of other nationalities.¹⁷

4.21 Tenja is one of the early examples of the Serb paramilitary groups creating a Serb stronghold in a village where Serbs made up a majority of the population. The degree of violence in which the Serbs engaged in order to achieve their aim went far beyond what was "militarily" necessary given the ever dwindling numbers of the Croatian minority.¹⁸ At the same time the village provided a primary base for the JNA to launch its attack on Osijek from August onwards. After 20 April 1992 no Croats were left in the village. The JNA occupied the city and on 6 October 1991 together with Serb rebels from Tenja massacred the Croat inhabitants of the farm town "Orlovnjak".

4.22 On 1 July 1991, barricades were erected so as to restrict admissions to the local Serb population only. A self-proclaimed Serbian region "Baranja-Slavonia-Srijem" was established with Goran Hadžić as the "President",¹⁹ after which Serb rebel inhabitants gathered in the old part of Tenja in order to organise the setting up of the barricades. By 7 July 1991, Tenja was isolated, without any intervention from the JNA. Serb

¹⁵ *Narodna Armija*, 9 October 1991, p. 11-12, "Duž linije što spaja i razdvaja" ("Along the line that connects and separates"), Annexes, vol 4, annex 150.

¹⁶ Veljko Kadijević, "Moje viđenje raspada" ("*As I See the Downfall*"), 1993, p. 135-136, Appendices, vol 5, appendix 4.1.

¹⁷ Ethnic statistics for Tenja, Annexes, vol 2(I).

¹⁸ Witness Statement of J.P., Annexes, vol 2(I), annex 4: "I have heard Božo Vidaković saying that as long as he is in the village of Tenja there is going to be no Croats."

¹⁹ Chapter 2, para 2.102 *et seq.*

paramilitaries formed the headquarters of a “Territorial Defence” under the leadership of Jovan Rebrača, in order to organise military matters. In addition they formed a “Civil Defence”, under Mile Jajić, to deal with administrative matters. Branko Grković commanded the police station.

4.23 In the months after the establishment of a Serbian “authorities”, Tenja underwent a brutal transformation in its social values. For example, L.B., was ill towards the end of July. She asked her Grandmother R.T., a Serb by nationality, to take her to the clinic. A doctor, Goran Hadžić, told her “there was no medicine for the Croats and that she should die because they had to save the medicine for the Serbs”.²⁰ According to the witness M.K.,²¹ one of the extremist Serbs, who emerged as a leader in atrocity in the early days, was his neighbour Božo Vidaković known as “Trafikant”. On one occasion Vidaković told the witness that “it was a little difficult to kill someone for the first time, but after you had done it once it was not difficult to kill someone later”. According to M., Vidaković would be responsible for a number of the killings in the village, including the murder of L.B. husband, S.B. (see below).

4.24 After the occupation, the new Serb authorities began searching the Croatian houses under the pretext of searching for weapons. They listed all Croatian residents, recording their sex, age, and other figures. Widespread looting of Croatian property took place. That process is testified to by L.B., who experienced the theft of every moveable piece of property from her house, by her Serbian neighbour. This was after her husband was murdered.²²

4.25 The residents of Croat nationality were compelled to forced labour. They were made to perform difficult and humiliating tasks and were in effect deprived of all their freedom and personal dignity, as they were made to live like slaves.²³ All this took place under armed guard.²⁴ Croatian women were routinely raped, along with having to labour in the fields and gardens. While the Croat K.C. was made to clean the police station, she was indecently assaulted by one of the officers. According to

²⁰ Witness Statement of L.B., Annexes, vol 2(I), annex 5.

²¹ Witness Statement of M.K., Annexes, vol 2(I), annex 1. and Witness Statement of P.Š., Annexes, vol 2(I), annex 6.

²² Witness Statement of L.B., Annexes, vol 2(I), annex 5.

²³ Witness Statement of P.Š., Annexes, vol 2 (I), annex 6.

²⁴ Witness Statement of D.M., Annexes, vol 2(I), annex 7: “While we were digging the trenches the guard kept us at gunpoint and we had to do everything they asked from us”. See also: Witness Statement of M.R., Annexes, vol 2(I), annex 8.

her friend M.M., Mrs. C.'s experience drove her to attempt suicide.²⁵

4.26 The residents of Croatian ethnicity were forbidden to move freely on the street. They had to stay inside the houses with the shutters down save when they went to work. When Croats passed Serbs on the street they had to turn their heads away and not look at their faces.²⁶ It was also forbidden to watch any Croatian Television channels. On at least one occasion when soldiers found out that someone was doing so, they shot at their house.²⁷

4.27 Arbitrary arrests and maltreatment of Croats started immediately after the barricades were set up. For example, from 7 July the witness Z.B. was detained in the police station for six days during which time he and others were frequently beaten and forced to kneel down and eat grass. A police officer, Dragan Rudež, used a hosepipe in order that the victims of the beating who were about to pass out could be revived so that the beating could continue.²⁸ Amongst the detainees were M.B., F.C., D.B., M.D. with his father and mother, A.M., M.N., F.B., M.C., K.K., V. and I.V., J.M., and many others who were also physically maltreated and beaten. As to the conditions of detention and interrogation, the witness R.J., describes how two persons stood each at one side of the table with telephone cables in their hands.²⁹ Each time he stopped talking or denied an answer, one of the interrogators nodded to the other one and said, "Refresh his memory", after which they started beating him all over his body. A.M. spent five days in the prison. He was taken for questioning each day, during which time he was tortured; when he lost consciousness due to the beatings, they spilled water over him and continued beating him. He was given only water and no food.³⁰ The witness J.S. was physically tortured: beaten all over his body with hands, feet and police batons by the persons present, while they tied the testicles of the other questioned person and hit him there.³¹

²⁵ Witness Statement of M.M., Annexes, vol 2(I), annex 9.

²⁶ Witness Statement of M.K., Annexes, vol 2(I), annex 10.

²⁷ Witness Statement of I.I.*, Annexes, vol 2(I), annex 11.

²⁸ Witness Statement of Z.B., Annexes, vol 2(I), annex 12.

²⁹ Witness Statement of R.J., Annexes, vol 2(I), annex 2.

³⁰ Witness Statement of A.M., Annexes, vol 2(I), annex 13.

³¹ Witness Statement of J.S., Annexes, vol 2(I), annex 14.

4.28 From the very beginning of the occupation, the random murder of Croatian civilians was committed. The victims included Ivica Prodanović, Đuro Kiš, Stevo Bačić, Ivo Valentić, Vlado Valentić, Ante Golek, Josip Medved, Franjo Fuček, Marko Knežević, Mara Knežević, Kata Tot, Anuška Horvat, Josip Prodanović, Jure Šarić, Josip Hodak, Stjepan Penić, Seka Penić, Francika Pogović, Pero Mamić, Mato Nađ, Marija Cerenko, Manda Banović, Betika Gotovac, and Andrija Gotovac. Croatian residents that have survived testify about the brutal murders. According to the witness Z.M., Mato Nikolaš was murdered after he failed to attend work for two days. Mato was found dead in his attic, completely naked and stabbed more than 20 times. His body was taken to the access road to Čelije. There it was dropped into a hole where it lay with other unburied bodies, which had previously been dumped in the same manner.³² On the night on 19 September 1991, three armed men entered her house, forced her husband out, and killed him in the centre of Tenja. She later discovered that Vidaković was responsible. “They would not even let me see him before they buried him. They told me that there was nothing to be seen and he was buried in the village of Čelije”.³³ J.K. testifies about the murder of local postman Josip Medved. He was in a neighbouring garden when he heard the Serbian soldiers ordering Josip Medved to dig a hole. When he finished digging, he started screaming and calling for help, but soon there was silence. The Serbian soldiers had killed him.³⁴ One elderly man of Croatian nationality, nicknamed “Herco”, was killed while he was cutting the grass in the local park.³⁵ L.R. testifies as to how a local Serb, Milan Macakanja, forced Ana Horvat and Mr and Mrs Penić into a truck, beating them with police batons all over their bodies. They have been missing since then. He also saw the dead body of Đuro Kiš in the cinema, which was being used as a detention centre. He was half-naked, his hands tied with barbed wire and with a gunshot wound in his forehead.³⁶ Further, Đ.B. saw the bodies of Croatian civilians being taken with tractors and buried in black plastic bags in the local graveyard in Čelije. The bodies were buried in a makeshift grave which he was forced to dig.³⁷

4.29 The key involvement of the JNA with the Serb paramilitary groups in Tenja occurred on 6 October 1991 and related to an attack on the village-

³² Witness Statement of Z.M., Annexes, vol 2(I), annex 15. Z.M. also has the information about the murders of Stevo Bačić, Ivo Prodanović, Jozo Božičević, Mato Nađ, and Mira Pekež.

³³ Witness Statement of L.B., Annexes, vol 2(I), annex 5, who testifies about the murder of her husband.

³⁴ Witness Statement of J.K., Annexes, vol 2(I), annex 16.

³⁵ Witness Statement of J.P., Annexes, vol 2 (I), annex 4.

³⁶ Witness Statement of L.R., Annexes, vol 2(I), annex 17.

³⁷ Witness Statement of Đ.B., Annexes, vol 2(I), annex 18.

farm “Orlovnjak”. The farm was located 4 km southeast of Osijek between the village Novi Seleš, the municipality of Antunovac and Tenja. The Serbian paramilitary units of Tenja acted in co-operation with the parts of the 12th Motorised Brigade of the JNA, Osijek, which was partly transferred from the town to Tenja. “Orlovnjak” was a cattle-raising farm owned by the agricultural company Osijek. Before the war, 161 inhabitants of different nationalities, who were employed at the IPK Osijek, lived there. After the barricades were set up in Tenja, the Serbs from the farm joined forces with their people in the village and other Serbian bases. A smaller number of residents of Croatian nationality stayed to look after and feed the large number of cattle that were left on the farm. In the morning hours of 6 October 1991, the Serbian unit composed of approximately 100 soldiers armed with heavy and infantry anti-armoured weapons, commanded by Savo Grnović, were deployed in the northeast side of the farm. They waited for the attack of the JNA unit that was approaching the farm from the east and southeast sides.³⁸ At the time, there were around 20 male and female civilians and around 10 defenders still left in Orlovnjak. After artillery fire was opened from the northeast side, the Serb paramilitary infantry unit attacked and soon after that occupied the farm. When they got into the “Orlovnjak” the units killed a number of civilians including Ante Perković, Stjepan Bartolović, Mato Škrebek, Emil Dujmović, and defenders: Darko Kišurek, Ivo Vadljak, and Milan Gajčić. All of the dead were shot in the back of their heads.³⁹ On 18 February 1997, a mass grave was exhumed on the farm and the remains of three persons were identified.⁴⁰ Although the village was captured by rebel Serbs, the operation and the killing was made possible by the 12th Proletarian Mechanised Brigade of the JNA who effectively blocked any assistance which might have come from Croatian forces based in Osijek. This was a clear example of the JNA using its control of the surrounding roads as a means of creating an opportunity for the Serb paramilitaries to carry out operations designed to liquidate Croatian populations. At the time the JNA’s 12th Brigade was still described as carrying out “exercises” in the locality.

4.30 The final expulsion of the Croat population in Tenja took place on 20 April 1992 by way of forced exile. The remaining residents of Croat nationality were summoned according to a previously drafted list. They were forced at gunpoint to deposit the key to their house and their property with the local police. Thereafter they were forced into two buses and banished to Osijek (98 persons).

³⁸ See map at vol 3, Plate 5.1.

³⁹ The letter from the Ministry of Defence of the Republic of Croatia, Annexes, vol 2(I), annex 163.

⁴⁰ List of exhumed mass graves of the Government Office for Detained and Missing Persons of the Republic of Croatia, Annexes, vol 2(I), annexes 165 and 166.

3. DALJ

4.31 The village of Dalj is located near Osijek. According to the 1991 Census it had 5,515 citizens of whom 1,085 were Croatian and 2,882 were Serbian.⁴¹ The rest of the population was made up of other nationalities. After the occupation the number of Croatian citizens decreased to 500, although a further 104 citizens were forced into exile on 18 April 1992. The number of citizens of Serb nationality increased as a result of migration from Western Slavonia. These settled in the houses of murdered and exiled Croatians.

4.32 The attack on Dalj started in the morning of 1 August 1991. It was carried out by JNA Corps from Novi Sad and the Požarevac Armoured Battalion. They were assisted by the JNA's Danube War Fleet ships, which bombed the main defence points of the village and also by artillery attack from Vojvodina (Serbia). JNA tanks (51st Mech. Brigade from Pančevo under the command of Lieutenant Colonel Enes Taso)⁴² came from the territory of Vojvodina over the Bogojevo Bridge. In addition the JNA was reinforced by the paramilitary Serb formations from Vojvodina. Such a combined force easily broke the resistance of the Police of the Ministry of the Interior (MUP) of Croatia and the members of the Croatian National Guard (ZNG). Although the group of MUP and ZNG members that survived the attack laid down their weapons and surrendered, many of them were subsequently executed. Those dead included Mario Vuković, Dario Dujmović, Dražen Kiš, Ivica Horvat, Đuro Lončarek, Dragan Cesarec, Josip Glibušić, Stanislav Guljušić, Ivan Dizdar, Darko Sekulić, Tomica Belčević, Mladen Pelinkaš, Željko Roguljić, Josip Kamenjija, Antun Mihaljevac and Josip Kraštek.⁴³ The JNA was directly involved in the campaign.⁴⁴

4.33 During the attack a great number of Croatian civilians were also killed. The witness H.S. saw her husband I.S. shot dead as he checked on the damage to their house. When she went to a Serbian

⁴¹ Ethnic statistics for Dalj, Annexes, vol 2(I).

⁴² Ministry of Defence (MORH) from 10 Sep. 1994; official record of the informative conversation with I.K., former mech. platoon leader of the JNA 51st Mech. Brigade, Annexes, vol 2(I), annex 3; *Narodna Armija*, 2 August 1991, p. 13, "Razoružanje ili rat" ("Disarmament or War"), Annexes, vol 4, annex 149.

⁴³ Some Records of the autopsy of the bodies of the members of ZNG and MUP of RH in the file of the County Court in Osijek no. K-95/94, Annexes, vol 2(I), annex 168.

⁴⁴ Witness Statement of A.K., Annexes, vol 2(I), annex 21. A. K. was part of a group that tried to escape from Dalj on 1st August 1991. When they go to the intersection leading to the village of Aljmaš, the JNA blocked their path. About 200 civilians, many of them small children, had to lie in a ditch throughout the night. Eventually they got a boat to Osijek.

doctor, Žarko Medić, to get a death certificate, he attributed the death to a heart attack. On the 2 August a tractor loaded with dead bodies was brought to the witnesses' house to take her husband away. When she came to the Catholic cemetery to bury her husband she saw 37 corpses, 7 of which were completely naked.⁴⁵ Other survivors witnessed at least eighteen dead bodies buried in a mass grave in the Catholic graveyard. A reporter from Reuters at a press conference in Osijek also confirmed this. In addition, twenty-five corpses from Dalj were transported to the hospital in Osijek. During Government negotiations on August 13 1991, the Serb representatives from Dalj admitted that either 56 or 57 Croats had been killed in the village.⁴⁶ Two of 25 bodies transferred to Osijek hospital were of identified civilians: Petar Đevlekaj, a banker of Albanian origin, and Nikola Tadijan, a baker's assistant and an ethnic Croat. Autopsy reports have been discovered from Osijek hospital which relate to two civilians. In relation to Nikola Tadijan the reports state that he was shot from behind by rifle fire. In relation to Petar Đevlekaj, the report states that he was executed by two shots to the head. There were contusions and lacerations on his body, which were inflicted by beating prior to death.⁴⁷ On 27 February 1998, three bodies were exhumed from a hidden grave. On 3 March 1998, a further 11 bodies were exhumed from another grave.⁴⁸

4.34 Immediately after the occupation, the Serbian paramilitaries formed the so-called "Territorial Defence Headquarters (TO)" as a local military authority and the Local Committee (MZ) as a civilian authority. Under the management and orders of the TO Headquarters the torture and murder of Croatian citizens took place. According to the witness S.D. the Serbs from Dalj brought in Serbs from other areas to carry out the beatings and torture. At the same time, Serbs from Dalj carried out atrocities upon Croats in other nearby places. Once hostilities began in Vukovar, captured soldiers and civilians were brought to Dalj and tortured and murdered.⁴⁹

4.35 In addition, the TO Headquarters organised forced labour, house arrests and looting under the guise of "official" searches.⁵⁰ Random acts of violence occurred. Armed men shot at H.S.'s house in October

⁴⁵ Witness Statement of H.S., Annexes, vol 2(I), annex 22.

⁴⁶ Mass Killing and Genocide in Croatia 1991/92, p. 112.

⁴⁷ Croatian Medical Journal, War Suppl. 1, 1992 which states that on 3 August 1991 autopsies were performed on Petar Đevlekaj and Nikola Tadijan at the Ward for Pathology and Forensic medicine in the Osijek hospital.

⁴⁸ List of exhumed mass graves of the Government Office for Detained and Missing Persons of the Republic of Croatia, Annexes, vol 2 (I), annex 166.

⁴⁹ Witness Statement of S.D., Annexes, vol 2 (I), annex 23.

⁵⁰ Witness Statements of E.M., Annexes, vol 2(I), annex 24; and M.P. Annexes, vol 2, annex 25.

1991, causing her to flee from the village. In order to escape she needed an exit permit which was only obtained on the condition that she assigned all her property to the Local Committee. The witness M.A. had the same experience. Other Croatian civilians fled to Osijek and Hungary without permits. Many were captured by the local paramilitaries as they did so. Today such people form the bulk of the 300 inhabitants of Dalj still categorised as “missing persons”. It appears that the numbers killed were greater than the official statistics.⁵¹

4.36 During the course of the occupation the parish of St. Joseph’s church (built in 1912) was mined and the church was completely destroyed leaving only a pile of bricks.⁵² The witness M.D. was being held as a prisoner in a house next to the church at the time. The windows and the doors of the house caved in as a result of the detonation and he and other prisoner had to be moved. After the first explosion only the tower was left standing. The next day, the Serbs mined the tower.⁵³

4.37 At the beginning of 1992 the “TO Headquarters” drew up a list of the remaining Croats and ordered that their banishment be organised. In the evening hours of 18 April 1992, the members of the TO Headquarters accompanied by members of the paramilitary Serbian formations (Arkan’s “Tigers”) set out by bus from the entrance into Dalj, from the direction of Erdut. They began forcibly removing Croatian citizens at gunpoint from their houses.⁵⁴ A second bus arrived from the outskirts of Dalj, coming from the direction of Borovo Selo, and paramilitaries began to banish the Croatian population. The people were forced to sign statements relinquishing all rights to their property.⁵⁵ After they were forced into two buses, around 11:30 p.m., the people were taken to the temporarily occupied village of Sarvaš where they were forced out of the buses and told to walk onto the mined road towards Nemetin. At the same time the Serbian paramilitaries fired automatic weapons above their heads. Before entering the bus, all banished citizens were forced to sign a statement confirming that they were leaving their entire belongings and estates to the MZ Dalj.⁵⁶ 104 citizens were banished from Dalj on that night.

⁵¹ Witness Statement of A.K., Annexes, vol 2(I), annex 21.

⁵² Diocese Đakovo and Srijem War Damages 1991-1994, Đakovo 1994.

⁵³ Witness Statement of M.D., Annexes, vol 2(I), annex 26.

⁵⁴ Witness Statement of E.M., Annexes, vol 2 (I), annex 24.

⁵⁵ Witness Statement of M.A. Annexes, vol 2(I), annex 27.

⁵⁶ Witness Statements of H.S., Annexes, vol 2(I), annex 22 and M.A., Annexes, vol 2(I), annex 27.

4. BERAK

4.38 The village of Berak is situated in Eastern Slavonia approximately 16 km south of Vukovar. In 1991 its population was mostly Croatian. Out of 926 residents, 515 were Croats, 348 were Serbs, with the remainder made up of other nationalities.⁵⁷ In May 1992, the rest of the residents of Croatian nationality were forcibly exiled from Berak and then forced to walk over a minefield to Vinkovci. Out of 515 Croats who lived in Berak in 1991, 440 were exiled during the occupation and 30 persons disappeared from a “basement” which housed many of the remaining inhabitants from October to December 1991. The whereabouts of 14 Croats remains unknown.

4.39 From May 1991 there had been unrest in the village, most significantly because of a Serb boycott of the schools. Weaponry was being sent by the JNA to Berak and distributed to extremist Serbs by a retired general, Perica Vučetić.

4.40 On 2 September 1991, the members of the JNA and Serb paramilitaries together seized Berak. Once JNA tanks had secured the centre, a megaphone was used to order Croats to surrender their arms. Before the order could be complied with the tanks opened fire on Croat houses. There were no members of the Croatian Army in the village. According to J.G., the JNA wanted to provoke an armed conflict, but there was no resistance.⁵⁸ Most of the civilians fled into the woods. According to J.B., at least four others who were killed were Ivica Ore, Tomislav Gvozdanović, Ivica Potočki and Jozo Mrkonjić.⁵⁹ After the occupation of the village, the command of the TO was established. The Commander was Veselin Rakinić. The Commander of the police was Žarko Kvočka. The Local Committee of Berak was also established, the head of which was Đorđe Vuletić. During the first month after the seizure, a police curfew was introduced to apply only to Croats and freedom of movement was limited to those who possessed passes. On 6 September 1991, a member of the TO of Berak, Ilija Čučković, killed Kata Garvanović in the street. Examples of random violence included the beating of the witness M.H.*.⁶⁰

⁵⁷ Ethnic statistics for Berak Annexes, vol 2(I).

⁵⁸ Witness Statement of J.G., Annexes, vol 2 (I), annex 28.

⁵⁹ Witness Statement of J.B., Annexes, vol 2(I), annex 29.

⁶⁰ Witness Statement of M.H., Annexes, vol 2(I), annex 30: “I was beaten with boots over my face, lips and they knocked out 12 of my teeth. They beat me over my back, spinal cord, over my whole body”.

4.41 On 30 September 1991, 104 Croatian inhabitants of the village, mostly women and old people, were rounded up and brought to the warehouse of a co-operative farm. Thereafter they were brought to the basement of a house belonging to D.P., which was used as a camp. They were guarded by members of the TO including Zoran Kvočka, Mile and Pajo Rušnov, Drago Tepšić and Pero Šijuk. Kvočka told them, "You will stay here until you die of hunger".⁶¹ On 6 October 1991 27 men were transferred to Begejci. During that journey, the soldiers extinguished cigarettes on their hands and foreheads and beat them with iron wires. In Begejci they were placed in barns with 180 other Croats where they were subjected to forced labour and torture, being required to dig their own graves.⁶² In the meantime 44 women, older men and children from the original basement-camp disappeared. Some of their bodies were eventually found in a mass grave between Orolik and Negoslavci, in a valley called "Šarviz."⁶³

4.42 The survivors of the basement camp later testified to the intense brutality to which they were subjected during their period of imprisonment. The TO carried out acts of physical abuse, regardless of age and gender. In the evening, the prisoners were lined up, men and women separately, and individuals were selected for interrogation. During questioning, the witness M.M. was physically beaten all over her body by a Serbian paramilitary using his rifle butt. When she begged those responsible to stop beating her on her fingers, she was told that she would not need them anymore.⁶⁴ M.K. was taken to the street together with A.R. and ordered to lie down on the ground, after which they were hit with rifle butts. P.B.* witnessed the physical abuse of Marijan Marinčić during the questioning in the camp. To this date Marijan Marinčić is a missing person. On 28 October 1991 R.B. had a rat, placed beside her face in order to bite on it. This went on for over 6 hours.⁶⁵ When she was brought back to the basement, she was covered with bruises and bites. A 71-year-old woman, M.B.*, was brought outside the basement and stripped in front of the soldiers. She was later killed and dismembered and her remains were thrown into a well. The same fate befell L. and T.G., who were killed the same day. Their

⁶¹ *Ibid.*

⁶² Witness Statement of K.M.*, Annexes, vol 2(I), annex 31.

⁶³ Witness Statement of M.M., Annexes, vol 2(I), annex 34; Records of the exhumation of human post-mortem remains from 25 March 1998, after which the following persons have been identified: Ivica Potočki, Marija Manjoš, Anka Čučić, Ljubica Marić*, Kata Garvanović, Tomislav Gvozdanić, Nada Juratovac, Jozo Mrkonjić, Ivica Ore and Janko Latković Annexes, vol 2(I), annex 167.

⁶⁴ Witness Statement of M.M., Annexes, vol 2 (I), annex 32.

⁶⁵ Witness Statement of M.M., Annexes, vol 2 (I), annex 34.

bodily remains (arms and legs) were found near the well.⁶⁶ On her release from the basement camp, N.J. hung herself.⁶⁷

4.43 On the 1 December 1991 the surviving members of the basement-camp were allowed to return to their homes. Their possessions had been plundered. They were compelled to forced labour. Z.L. suggested to her husband, J. that they go and sleep somewhere other than their house, but he would not leave. On 23 March 1992 she came home to find that he was missing. She eventually found him in the playground lying on a rock. His head had been cut in two.

4.44 In Berak, there were instances of sexual abuse of Croatian women. On 20 October 1991, L.M., M.H. (born 1947) and her mother-in-law (born 1922) were raped in front of a large group of people, who were watching. The mother-in-law was taken away the next morning and never returned.⁶⁸ During the next month, L.M. and M.H. were, either individually or together, taken away on several occasions and raped throughout the night:

“Sometimes they took me or L. during the night and raped us, I was their special target because I had 6 sons and they were threatening me because I had delivered 6 Ustashas. I could not stand it anymore. A few of them were jumping over me torturing and raping me and laughing all the time. All of them, except from J., could have been my children, and J. said that he did it for fun. His son N. and M.Š. were raping me. M.Š.’s uncle M. called ‘F.’ (1947) only jumped over me but he couldn’t do anything.”⁶⁹

4.45 The witness P.B.* also testified to having been raped by 7 men. She was accosted by JNA reservists, with White Eagle marks. They had shouted after her in the street, “We will exterminate their seed. There is no place for their bones”:

“They immediately stripped me, and made me kiss and lick their penises. Seven of them raped me, mostly by forcing me to engage in oral sex. The whole time I was blindfolded. They raped me. The hardest thing for me was to swallow the sperm and urine. The whole time somebody was shouting, “Fuck your Ustasha mother, where is the gold your son stole”. He caught my breasts a few

⁶⁶ Witness Statement of M.H., Annexes, vol 2(I), annex 30, and Z.L., Annexes, vol 2(I), annex 33.

⁶⁷ Witness Statement of Z.L. Annexes, vol 2(I), annex 33.

⁶⁸ Witness Statement of M.H., Annexes, vol 2 1), annex 30.

⁶⁹ *Ibid.*

times and hit me in the abdomen, when I couldn't swallow anymore, they threw me out onto the concrete floor."⁷⁰

She was forced to endure oral sex for more than two hours, and also to swallow semen and urine. After she was raped, they made her run and started shooting at her.

4.46 During February 1992, the first Serb families from Western Slavonia arrived in Berak. They were moved into the houses of the exiled Croatian inhabitants. In May 1992, the Croatian inhabitants were exiled from Berak. Accompanied by UNPROFOR they reached Mirkovci, from where they had to walk over a minefield to Vinkovci.⁷¹ According to J.B. the Serbs had ethnically cleansed the village, only a few families of non-Serb nationality stayed there. As in other villages, the exiles were forced to sign statements declaring that they voluntarily gave up their property to the Serb authorities⁷²

5. BOGDANOVCI

4.47 The village of Bogdanovci is situated in Eastern Slavonia, approximately 8 km southeast of Vukovar. According to the 1991 census, 1113 persons lived in the village, 914 of who were Croats and 19 Serbs, while the rest belonged to other ethnic groups.⁷³ During the occupation, 84 Croatian civilians were killed or disappeared, and by 1 January 2000 the destiny of 38 of them was still unknown.⁷⁴ The rest of the Croatian inhabitants were exiled from the village by force. On 17 October 1997 and 14 November 1997, exhumations were conducted in Bogdanovci, when 22 persons were exhumed, 21 of which were identified.⁷⁵

4.48 The first attack on the village of Bogdanovci was carried out on 13 August 1991 with 6 mortar grenades fired from the neighbouring village of Bršadin, where Serbs were in a majority. On 23 August 1991, Serbian

⁷⁰ Witness Statement of P.B., Annexes, vol 2(I), annex 35.

⁷¹ Witness Statement of A.P., Annexes, vol 2(I), annex 36.

⁷² Witness Statement of J.B., Annexes, vol 2(I), annex 29.

⁷³ Ethnic statistics for Bogdanovci Annexes, vol 2(I).

⁷⁴ Witness Statement of A.C., Annexes, vol 2(I), annex 38: "My husband I. and other 60 men did not want to leave their homes, and now nobody knows what happened to them...The Serbs took my son I. to "Velepomet"...So far, there was no living sign of him, I do not know whether he is dead or alive...Many Croatian captives were forced to a market where they were slaughtered, the blood ran knee-deep".

⁷⁵ List of exhumed mass graves of the Government office for Detained and Missing Persons of the Republic of Croatia, Annexes, vol 2 (I), annex 166.

paramilitary units seized the crossroads to Vukovar (4 km from Bogdanovci) and used around 10 armoured vehicles to attack Bogdanovci. On the 25 August the tower of the local church was directly hit with a shell. The roof frame was damaged.⁷⁶ The attacks continued every few days throughout September. This included the use of JNA mortar bombs, despite the fact that the village did not contain a Croatian Army unit and was essentially undefended (save for a few army officers and civilian volunteers). According to the witness M.K. the main JNA bombardment came from the direction of Bršadin and the “Đergaj” forest which is near Bršadin. During these attacks the Catholic Church was destroyed together with the local school of Bogdanovci. In addition, the paramilitaries had come into possession of anti-aircraft weapons which they used on the village.⁷⁷ On 17 September 1991, two cluster bombs were fired at the village. A further cluster bomb fell on 30 September 1991. On that occasion 20 Croatians were wounded.

4.49 On 2 October 1991, Serb paramilitary groups and the JNA carried out a combined artillery-tank and infantry attack from the direction of the village of Marinci and Petrovci. Approximately 40 tanks and armed vehicles were involved. There were approximately 150 JNA soldiers. During this attack many Croats hid in the basements of their houses, only to be murdered by hand grenades which were thrown into the houses. Đurica Katić, Zdravko Katić and Ivan Križanović were killed while hiding in the basement of A.M.’s house. A grenade was thrown through the window. Ana and Ilija Tadić and Kata Ceranac were killed in the basement of Ž.M.’s house.⁷⁸ In the same manner a grenade was thrown into the basement of A.Z.’s house and Stana Šimić, Ana Zvonarević and Marta Grubanović were killed. M.M. and M.Š. were seriously wounded. As he attempted to escape from the exit of the basement Josip Dominković was killed by fire from artillery weapons.⁷⁹ The experience of the day is attested to by M.M.:

“One of the Yugoslav soldiers asked them if anybody was still in the cellar and M. tried to explain to him that her husband was still in the cellar and that he could not get out because his leg was injured from the shelling. This soldier then cautiously entered the cellar, while two other soldiers questioned them, and the fourth soldier was standing a little further and holding his gun towards

⁷⁶ Witness Statement of A.T., Annexes, vol 2(I), annex 39.

⁷⁷ Witness Statement of M.K., Annexes, vol 2 (I), annex 40.

⁷⁸ Witness Statement of M.B., Annexes, vol 2(I), annex 41.

⁷⁹ Witness Statement of V.S., Annexes, vol 2(I), annex 42: “.....The bodies I mentioned could not be buried for a long time, so they started to smell.....we spilled petroleum over them and burned them”.

the centre of the village and looking towards them from time to time. After the first soldier had returned from the cellar, he told them to return to the cellar. They all obeyed him and when they were back in the cellar, the Yugoslav soldiers threw several bombs into this room (M. believes it was three or four), [and M. does not remember a big flash] and a suffocating smoke after their explosion, she also knows that she fell after being hit and did not feel anything at that moment. M. believes that she lost consciousness after this, and during the night she felt somebody pulling her and after this she also heard an inarticulate voice and recognised her daughter. Her daughter was asking her to help her get a certain object off her neck which would not let her breathe, they recognised then that this object was the body and leg of their killed relatives Ana Zvonarević and Marta Grubanović who were lying next to them. Since it was night and dark in the room, M. did not know if there were more survivors beside her daughter and her, and because of the pain and fear, none of them dared move. Not until morning at daybreak and before M. had heard somebody calling out from outside the cellar, did she see that everybody except her daughter and her were dead in the cellar, and she also saw that her husband J. was killed with a bullet to his head, and this was done when the Yugoslav soldier had gone to the cellar the previous night to see who was hiding in the cellar. Due to fear M. did not answer any of the calls, until their neighbour B.V. came to the cellar in order to help them and called their fellow-townsmen S.T., and then they first helped M. and got her out of the cellar after which they took her to the neighbouring house of the C. family.”⁸⁰

4.50 In the evening of the same day, Zvonko Vuković, Dominko Ceranac and Silvester Edelinski were murdered. Stjepan Bartulović was thrown into the well in front of his house. Marko Penić was killed during the shelling.⁸¹ According to A.T., during the attack on 2 October 1991, near the chapel, members of the Serbian aggressor army also killed the civilians Vinko Marić and his wife Zora Marić, who in their car tried to flee from Bogdanovci.⁸² M.M. later found out that the several Croatian police officers were killed while trying to enter the village to provide assistance. Thereafter it was thought that there was no possible way out.⁸³

⁸⁰ Witness Statement of M.M., Annexes, vol 2(I), annex 43.

⁸¹ Witness Statement of Z.P., Annexes, vol 2 (I), annex 44.

⁸² Witness Statement of A.T., Annexes, vol 2 (I), annex 39.

⁸³ Witness Statement of M.M., Annexes, vol 2 (I), annex 43.

4.51 Knowing of the mass killings of Croatians in other villages, many inhabitants tried to flee to safer Croatian territory before the attack. On the road to Marinci, around 10 people were killed. The dead included Vinko Marić, Zora Marić, Pavo Šad and Ilija Marić.⁸⁴ A.C. was one of the people who managed to escape, “My husband I. (born in 1931), as well as 60 other men, did not want to leave their homes, and we never again heard of them”.⁸⁵

4.52 The following days saw several cases of torture. The witness M.B. describes how a Croat called “Kuštro” was stretched on a tree in front of the church and tortured until he died.⁸⁶ Each time the members of the JNA and the Serb paramilitary groups entered the village, they came to the Croat’s houses and tested whether the tubes were hot; in this way, they found out whether there were civilians in the house. Then they shouted: “Croats out!” Every civilian who came out of the basement, was killed. Then they tossed bombs into the basements and executed those who were afraid to come out.⁸⁷ Throughout these attacks the only people who were killed or wounded were ethnic Croats.

4.53 On 10 November 1991, after relentless attacks using heavy artillery and infantry, the units of the JNA from Niš and Mačva, supported by the Serb paramilitary groups, occupied the village of Bogdanovci. As far as the witness Z.P. could remember they used 30-50 vehicles and 300 soldiers. During the attack at least 15 members of the Croatian National Guard Corps were killed. In addition ten members of an Albanian family in Vladimir Nazor Street were killed.

4.54 The witness Đ.B. gives an account of the violence that was meted out on Croatian civilians:

“On 10 November 1991, when the army of the JNA from Niš and Mačva entered the village I was in the basement at M.A.'s house. That day the village was captured. 5 soldiers of the JNA tested whether the pipes were hot. 15 people were in that basement, and when the attack started, I went to the barn door. I knew that they would come to execute the civilians in Croatian houses, because they did it before, during the 6 previous attacks on the village. They used to come to the houses and tested whether the pipes were hot and in that way found out whether civilians

⁸⁴ Witness Statements of A.T., Annexes, vol 2(I), annex 39, and Z.P., Annexes, vol 2 (I), annex 44.

⁸⁵ Witness Statement of A.C., Annexes, vol 2(I), annex 38.

⁸⁶ Witness Statement of M.B., Annexes, vol 2(I), annex 41.

⁸⁷ Witness Statement of Đ.B., Annexes, vol.2 (I), annex 45.

were hiding in the house. Then they shouted: “Croats, out!”, under “Ustasha” they understood all Croats, even a newborn Croatian child. Everybody that came out of the basement was killed instantly, after which a hand grenade was thrown into the basement, and in that way those who did not want to come out were executed. I saw that they went to every Croatian house. Because it was dark and it was raining, I could not see how close to the basement they had come. I had a hunting gun, from which I fired in their direction as soon as I saw them, so I thought that they retreated, because they thought that resistance would be offered. But soon they came back and threw three hand grenades into the basement. Stjepan Matijašević was killed, and several persons were wounded. My wife then came out of the basement and asked whether I was alive. I said that everybody from the basement should come to the barn, after which we organised ourselves. We were 16, three were seriously wounded, and we started to flee from the village. We went over the field towards the river Vuka, and we lay there until Ivan Matković, called “Lasta” came, who told us that the village had been captured and that the following persons were killed: Pero Matić and Josip Jerković, and that T.K. was seriously wounded. The 16 of us fled to Nuštar, where we surrendered.”⁸⁸

4.55 The occupation was designed to make continued Croatian life in Bogdanovci impossible. The whole village was seriously damaged, but Croatian infrastructure was the particular target: family houses of Croatian civilians, farm buildings important for their livelihood, and many sacral objects (the Church Raising of the Holy Cross, the fire station, the Community centre, the Farming Co-operation etc.). Đ.B. also testifies about the behaviour of the members of the JNA in Bogdanovci. He witnessed a bomb being tossed into the basement of M.A.’s house, on which occasion Stjepan Matijašević was killed.⁸⁹

6. ŠARENGRAD

4.56 The village of Šarengrad is situated in Eastern Slavonia near the town of Vukovar. According to the 1991 Census the population was predominantly Croatian (approx. 90%). Out of 1005 inhabitants, 904 were ethnic Croats, and 48 were ethnic Serbs.⁹⁰ The rest of the population was made up of other nationalities. Out of 904 villagers of Croatian nationality

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ The Ethnic statistics for Šarengrad Annexes, vol 2(I).

who lived in Šarengrad in 1991, 798 were exiled and during the occupation 4 persons disappeared and their destiny is still unknown. After these events 80% of the population was Serb.

4.57 At the beginning of September 1991, the JNA attacked Vukovar, Osijek and Ernestinovo. JNA planes flew over Šarengrad. On 7 September 1991, the 2nd Guard's Proletarian Mechanised Brigade of the JNA, with the help of the special formations of the Serb Territorial Defence⁹¹ and the Serb paramilitary groups attacked the village. They launched artillery attacks from the Serbian side of the Danube. The 252nd Armoured Brigade of the JNA was involved in the attack on Croatian side of the Danube. Units from the brigade eventually occupied the village.⁹² During the day the tower of the Catholic Church was hit. The JNA repeatedly fired at it until half of the church was completely destroyed.⁹³ The parish house and the Carmelite Nunnery was completely destroyed. The attack lasted the whole night and was mounted with increasing intensity.

4.58 On 8 September 1991, the JNA issued an ultimatum that all Croatian weapons had to be surrendered by the next morning. The next day at 9.00 a.m., the weapons were put down in front of the local school, and the inhabitants surrendered. On 10 September, a mortar attack was carried out on the village, after which two armoured vehicles came to the village and seized it without resistance. During the mortar attack, Jure Saračević, Josip Vuletić and two members of the Croatian National Guard Corps were killed.⁹⁴ The members of the JNA searched the Croatian houses and granted several inhabitants permission to leave the village. However, 4 km from Šarengrad the exiles were ambushed by Serb paramilitaries. Mijo Mijić and Josip Kolak were killed. M.M. was shot in his chest and taken to the hospital in Novi Sad. Other Croatian civilians were also killed for no reason.⁹⁵ The same night, the inhabitants of Šarengrad saw that the village of Bapska was on fire and they heard firing. Panic ensued causing people to gather some of their possessions and run from the village.

⁹¹ 1st "pgmd" Command, Conf. No. 851-18 from 4 October 1991, Command 252, Order "Op.br.", Annexes, vol 2(I), annex 162.

⁹² *Narodna Armija*, 13 November 1991, "I dezertteri se vraćaju" ("And the deserters are returning"), p.19, Annexes, vol 4, annex 150.

⁹³ "The Wounded Churches in Croatia – Destruction of Sacral Buildings of Croatia 1991-1995". The wounded church in Croatia, Destruction of sacral buildings in Croatia, 1991-1995, Zagreb, 1996: The Church of the Holy Peter and Paul in the parish of Šarengrad was built in 1698 and is a cultural monument.

⁹⁴ Witness Statement of Ž.M., Annexes, vol 2 (I), annex 46.

⁹⁵ *Ibid.*: "In a turn on the road leading to Šid, the driver Ivan Mijić hit by a bullet and killed. Also killed were Miroslav Kolak and the wife of A.V. Antun Mijić's son was wounded. He was hit in his shoulder... He fell and cried for help. Nobody dared to help him. He died."

4.59 On 11 September 1991, many of the remaining population fled the village and joined the group of 12,000 exiled people in Ilok. Eventually that group was exiled from Ilok, as well. A large number of young people went on to Bosnia and Herzegovina and Vojvodina (Serbia), but were captured by the members of the Serb paramilitary groups and transported to concentration camps in Serbia. Thereafter many Serbs from other parts of Slavonia were brought into the village. Two captains from the JNA were involved in this migration. A decree of martial law was subsequently imposed on the Croats who remained.⁹⁶

4.60 412 Croatian inhabitants stayed in Šarengrad, many of whom were too old to travel. In the next few months these people were exposed to physical and psychological maltreatment, humiliation and robbery. A.G. (born in 1925) was one of the people who were too old to travel: “One night they chased me into a house and questioned me; afterward they kept me tied, almost nude, in my yard while pointing several guns at me.”⁹⁷ M.G. witnessed Serb soldiers who had found a military uniform behind the house of A.G. and forced her to put it on. They then chased her around the village to the local school, where they beat her.⁹⁸ I.G. was beaten and accused of being a Croatian policeman even though he was not.⁹⁹ Croatian children were forced to attend Serbian school in Ilok. They had to learn from Serbian books, write in Cyrillic letters and speak the Serbian language. Many children, like B.Ž., simply stopped going to school for fear of bullying and subjection to education based on the “Greater Serbian programme”. Her godfather was later arrested and her godmother was raped.¹⁰⁰ The witness O.Š.* was detained with another 30 inhabitants and brought to a makeshift prison, where he was beaten throughout the night. All the captives were compelled to undertake forced labour (clean soldiers’ boots, clean uniforms). An older married couple was beaten to death over a number of hours in front of their son A., who was forced to stand and watch while in handcuffs. O.Š. sat next to A. who had to sit beside the corpses of his parents throughout the night.¹⁰¹ All Croats in the village were forced to wear white ribbons.¹⁰²

⁹⁶ Witness Statement of P.Š.* Annexes, vol 2(I), annex 47.

⁹⁷ Witness Statement of A.G., Annexes, vol 2(I), annex 48.

⁹⁸ Witness Statement of M.G., Annexes, vol 2 (I), annex 49.

⁹⁹ Witness Statement of I.G., Annexes, vol 2 (I), annex 50.

¹⁰⁰ Witness Statement of B.Ž., Annexes, vol 2(I), annex 51.

¹⁰¹ Witness Statement of O.Š., Annexes, vol 2(I), annex 52.

¹⁰² Witness Statement of A.L., Annexes, vol 2(I), annex 53.

4.61 On 26 March 1992, the remaining 170 Croatian inhabitants were exiled from Šarengrad. They were forced into a bus, intended for the transport of exiles.¹⁰³ A.G. saw people being dragged and kicked out of their houses, many of them old, some in wheelchairs.¹⁰⁴ They were forced to sign statements that they were voluntarily leaving their town and were assigning all their property to the settled Serbs.¹⁰⁵

7. ILOK

4.62 The town of Ilok is situated in Eastern Slavonia, 31 km southeast of Vukovar. Aside from Vukovar it was the biggest town in the region. It is the most eastern town in Croatia and is surrounded by Serb territory on three sides. According to the 1991 Census, the town had 6,775 inhabitants of whom 4,248 were of Croatian and 484 of Serb nationality (approx. 18% of the entire population). The rest of the population was made up of other nationalities.¹⁰⁶ During the war Ilok was the initial site of refuge for Croats banished from other parts of Eastern Slavonia. However, during the attack on Vukovar, the Ilok authorities capitulated in the face of JNA demands that 15,000 Croats should leave the town. The mass exodus took place on 17 October 1991. The few Croats who remained in the town experienced a brutal regime.

4.63 Before the conflict Ilok was a flourishing cultural and agricultural centre, where Croats and Serbs lived in essentially peaceful co-habitation. In the spring of 1990 some Orthodox gravestones were vandalised. According to a doctor in the town, “The Serbian local authorities tried to prove that Serbs were endangered in the town of Ilok. However, people stuck to their usual routine and there was no indication that the Serbs were endangered or hated. Life continued in a peaceful manner until the spring of 1991, when the first Serbian extremists arrived”.¹⁰⁷

4.64 On 7 May 1991, members of the JNA seized access to the bridge over the Danube. Thereafter JNA ships patrolled the riverbanks of the town. On 25 July the JNA began an artillery attack on Ilok from ships on the Danube with no warning or reason. On that occasion a few family

¹⁰³ M. Kevo-D. Hečimović; *The War for Croatia- a war chronicle of Eastern Slavonia*, Vinkovci/Osijek, 1992.

¹⁰⁴ Witness Statement of A.G., Annexes, vol 2 (I), annex 48.

¹⁰⁵ Witness Statement of L.C., Annexes, vol 2 (I), annex 54.

¹⁰⁶ Ethnic statistics for Ilok, Annexes, vol 2(I).

¹⁰⁷ *Mass Killing and Genocide in Croatia 1991/92: Forcible Displacement of the Complete Population of the Town of Ilok and Surrounding Villages – A testimony of a medical doctor, an inhabitant of Ilok, now a displaced person in Zagreb* p. 164.

houses, the church and the convent were ruined. At this stage about 80% of the women and children were evacuated, but they returned in August. Due to the events in the neighbouring villages the citizens of Bapska, Šarengrad, Tovarnik, Lovas and other villages were at that time also being evacuated to Ilok. There were approximately 7,000 refugees in the town. After the attack on Vukovar, Ilok slowly became completely cut off from the outside world. From 14 September 1991 Ilok was in complete isolation. On 10 October 1991 negotiations began between the local Croatian government and the JNA. The Army representative was Major General Dragoljub Arandelović. The local Croat leaders were concerned to avoid the degree of bloodshed that occurred in other areas. A 'referendum' held in the town was supported by 76% of the Croat population. An agreement with the JNA on the resettlement of all citizens of Croatian nationality from Ilok was made.¹⁰⁸ In return for the 'voluntary' exodus of about 15,000 Croatian civilians the JNA promised to secure a safe passage into Croatian held territory.

4.65 On 17 October 1991, a convoy about 15 km long, of approximately 15,000 Croatian civilians was formed and left Ilok. European Union Observers were present. The exit of the convoy from Ilok lasted the whole day. During the crossing of the bridge, the convoy was exposed to humiliation and molestation by the JNA and paramilitary Serbian forces who took the opportunity to rob them of the few valuable possessions that they were able to leave with. All of the public vehicles were confiscated, despite assurances of the JNA that they would assist the evacuation.

4.66 On the same day as the forced exodus (17 October 1991) formations of the JNA came into Ilok. A small number of Croatian people that did not want to leave their homes, were exposed to physical and psychological harassment, molestation, constant robbery, groundless imprisonment and killing. This policy was not simply the design of the rebel Serb paramilitary groups. The witness F.D. emphasises that the JNA commanders co-operated with the paramilitaries. He cites, in particular the JNA's Colonel Bjelić and Commander Todorović, and Lieutenant Colonel Filipović. Under the control of these officers the local police were able to carry out the random killing of Croats who had stayed behind. According to F.D. the murdered included:

1. Lončarević – elderly lady – they killed her by shooting her in the ears, then they burnt her and threw her in the canal, she was killed in the yard, in front of the house.
2. Cinkovski – young man killed in Pajzoš in the wine cellar, he was beaten to death.

¹⁰⁸ Annexes, vol 2 (I), annex 161.

3. Demiter, a Slovak – he was killed by the military police.
4. Mato Bošnjak– killed on the road when he was coming back to his house in Zmaj Jovina Street.¹⁰⁹

4.67 The experiences of the remaining Croats in Ilok are described by the witness P.V.:

“They took all Croatian men and we had to perform working duties or military duties. People would work for days without any food or any compensation. The Serbs would humiliate us all the time. For example they would urinate in our drink portions and then they offered us to drink that. Our people had to clean the streets not because of the cleanliness but because of the humiliation. We were not allowed to gather publicly. When we walked on the streets for example the Serbs would spit on us from the church, they would hit us with rocks and insult us.

We were not allowed to go into the field, they took our mechanical devices so everything we had on those fields was deteriorating. We had absolutely no rights. We could not get a job, they disconnected the phones to the Croats. We had nobody’s protection, not even the protection of the so-called police, nor the protection of the UNPROFOR.

One day the Serbs barged into my house and they took the cross, the rosary and the Catholic calendar off the wall and they destroyed it all. We could not complain to anybody. They turned my house upside down, they pointed a knife at my back”.¹¹⁰

4.68 B.K. also testifies about the intensity of the physical violence. Two Serbian masked civilians came into his house by force and tortured him:

“One grabbed my hair and the other twisted my hands behind my back and he handcuffed me. The one who held me by the hair had a knife in his hand. He cut my lower lip and chin with it. Then he cut out the cross with four Serbian C signs on my forehead. The blood was flowing down my face. After that he put the knife under my throat and he told me that he would butcher me. I did not know if he put the blunt or the sharp side of the knife under my throat. I was bleeding all over my face and clothes and I did not know if he cut my throat or not. Only later I saw that he turned the knife on

¹⁰⁹ Witness Statement of F.D., Annexes, vol 2 (I), annex 55.

¹¹⁰ Witness Statement of P.V., Annexes, vol 2 (I), annex 58.

its blunt side. Then he hit me with his boot on both of my legs. They took off the handcuffs and then they went".¹¹¹

4.69 S.M. was arrested because she mistakenly said "glazbeni" (meaning "musical" in Croatian) instead of "muzički" (musical in Serbian). After being taken to the police station she had a knife put to her throat and was threatened with death. D.T.'s grandmother and grandfather were attacked in their home with axes. His grandfather was killed and his grandmother had her eye cut out.¹¹²

4.70 As a result of the exodus on 17 October over 2,500 Serbs were moved into the deserted town of Ilok and into the 640 deserted Croatian homes and 60 flats.¹¹³ Milka Vladić was shot at as she went to Church. The church door was blown up with explosives.¹¹⁴ Generally freedom of movement was severely curtailed. D.M. struggled to remain in the town until 1995. However in the end she could "not bear the psychological pressure" and fled as Serb families successfully removed her from her house.¹¹⁵ A Serb family also moved into the house of F.D.¹¹⁶

4.71 The involvement of the JNA in surrounding and ultimately expelling all the Croats from the town is entirely clear. The main force involved was the JNA's 1st Guard Proletariat Mechanised Division under the command of Major General Dragoljub Arandelović, as evidenced by the "agreement" made on 14th October 1991 in Šid (Serbia).¹¹⁷ In the cleansing of Ilok the 1st Mechanised Battalion, the cannon battalion, the anti-armoured battalion of the 1st Guard Proletariat Mechanised Brigade of the JNA forged with the detachment of the Territorial Defence from Titovo Užice, Serbia.¹¹⁸ The scouts and the military police of the 252nd Armoured

¹¹¹ Witness Statement of B.K., Annexes, vol 2(I), annex 57.

¹¹² Witness Statement of D.T., Annexes, vol 2(I), annex 56.

¹¹³ Mass Killing and Genocide in Croatia 1991/92: p. 168.

¹¹⁴ Witness Statement of M.V., Annexes, vol 2 (I), annex 59.

¹¹⁵ Witness Statement of D.M., Annexes, vol 2 (I), annex 60.

¹¹⁶ Witness Statement of F.D. Annexes, vol 2(I), annex 55.

¹¹⁷ Agreement from 14th October 1991 between the representatives of the town of Ilok and the JNA Annexes, vol 2(I), annex 161; *Narodna Armija*, 2 October 1991, p 4" Kao nekad pod razvijenom ratnom zastavom" ("As once under the unfurled war flag"), Annexes, vol 4, annex 150; *Narodna Armija*, 22 December 1991, p. 21, "Ti divni ljudi, hrabri mladi ratnici" ("Those wonderful people, young warriors"). The conversation with the commander of the 1st Guard proletariat mechanized brigade Colonel Milorad Vučić. He said that the people who left the town in fear were being extremely hostile.

¹¹⁸ *Narodna Armija*, 22 December 1991, p 21, "Ti divni ljudi, hrabri mladi ratnici" ("Those wonderful people, proud warriors"). A conversation with the commander of the

Brigade were also involved.¹¹⁹ The commander of the Guard division, Major General Dragoljub Arandelović, in the interview for the newspaper “*Narodna Armija*” boasted that his formation “cleansed and firmly holds the space between the Danube and the Bosut, and that in this region the authorities were beginning to form”.¹²⁰

4.72 In Ilok the exhumations of the mass graves were carried out on 1 June 1998, and from 6 – 8 September 1999, when the remains of 17 bodies were exhumed. Only 3 persons have been identified.¹²¹

8. TOMPOJEVCI

4.73 The village of Tompojevci is situated in Eastern Slavonia in the territory between Vukovar and Lovas. According to the 1991 Census, the village had a Croatian majority. Out of 510 inhabitants, 402 were Croatian and 27 Serbian.¹²² The rest of the population was made up of other nationalities. From the 412 citizens of Croatian nationality from 1991, 385 of them were expelled during the occupation. The others are either missing or murdered.

4.74 On 1 October 1991, Tompojevci was shelled for the first time. On 9 October 1991 it was occupied, after the JNA units attacked the village from the direction of Čakovci and Bokšić. Immediately after the occupation, the JNA and the Serb paramilitary groups established a local military government. There is no direct knowledge as to which JNA units were involved in the occupation. However, on the basis of a published army report it appears that artillery regiment of the JNA’s 1st Guard Proletarian Mechanised Division was used to bombard the village. Thereafter the units of this division occupied the village.¹²³

4.75 The JNA in Tompojevci was responsible for the serious damage and robbery from the church of St. Mary Magdalene, built in 1856 and renovated in 1906:

1st Guard proletariat mechanized brigade Colonel Milorad Vučić, Annexes, vol 4, annex 150.

¹¹⁹ *Narodna Armija*, 13 November 1991, “I dezerteri se vraćaju” (“The deserters are also coming back”), p 19, Annexes, vol 4, annex 150.

¹²⁰ *Narodna Armija*, 2 October 1991, p 4, “Kao nekad, pod razvijenom ratnom zastavom” (“As once under the unfurled war flag”), Annexes, vol 4, annex 150.

¹²¹ List of the exhumed mass graves of the Government Office for Detained and Missing Persons of the Republic of Croatia, Annexes, vol 2 (I), annex 166.

¹²² Ethnic statistics for Tompojevci Annexes, vol 2(I).

¹²³ *Narodna Armija*, 16 July, p. 18 “Trijumf s malo gorčine” (“The Slightly Bitter Triumph”).

“The situation in the village was really terrible. The church was shelled. Its interior was completely devastated. Holy pictures lay around as well as everything else. The army made a public toilet out of the church.”¹²⁴

4.76 According to L.M. after the JNA came into Tompojevci, their police went round Croatian houses. Later they moved into some empty houses which were left by those who had fled. They used to stay there for a few days. They took whatever they needed from these houses. Afterwards these houses were unrecognisable. The doors and the windows were broken. They even threw pigs into the rooms.¹²⁵

4.77 Before the expulsion of the Croatian population in May 1992, the rebel Serb authorities imposed martial law. A curfew was imposed on Croatian citizens between the hours of 6 pm to 6 am. According to the witness I.B.: “We were living like prisoners in our own houses, as if we were not human. We were living in our village as prisoners in a camp without any rights at all.” Serbian paramilitaries entered the houses to molest the inhabitants and threatened to kill them.¹²⁶ Movement passes were introduced only for Croats into the village. In effect, the Croatian citizens had to have an approval of the local government for each occasion that they left their houses.¹²⁷ Normal life was impossible given that water supplies and electricity were cut off from the Croatian households. The rebel Serbs engaged in daily provocation of Croatian citizens. They would throw bombs into their yards. At night they would beat on their windows threatening to slay them.¹²⁸ Branko Vranješ and two of his friends, all of them of Serb nationality and in JNA uniforms, told S.L.*: “I shall expel all Croats from the ‘SAO Krajina’”. M.L. was interrogated by the local leader Đuro Kljajić throughout the night, a man who had been a friend of the family before the Serbs took power:

“He came to my house at night and asked me to give him family albums. He took the photo of my son Ž.’s First Communion. On that same night he came once again around 10 pm with two armed men whom I don’t know. On that occasion he said that Ustashas destroyed Vukovar and that I ran away because my friend Ivica Ore, his two sons and uncle were killed in Berak. He went away and then came again around 2 am and took me for a

¹²⁴ “The Wounded Church in Croatia, the Destruction of the Sacral Objects in Croatia, 1991-1995”, Zagreb, 1996, p. 174.

¹²⁵ Witness Statement of L.M., Annexes, vol 2 (I), annex 61.

¹²⁶ Witness Statement of I.B., Annexes, vol 2 (I), annex 64.

¹²⁷ Witness Statement of V.V., Annexes, vol 2(I), annex 62.

¹²⁸ Witness Statement of S.L., Annexes, vol 2(I), annex 63.

hearing in their Territorial Defence which was placed at Hunter's inn. He questioned me about the arms and wanted to know where my sons and my husband were. I said that the army took the arms. He was yelling at me saying that Latin letters won't be written in this village anymore and that people won't go to church. I said I knew the Cyrillic alphabet and he was yelling at me and scolding me and after an hour and a half they took me home."¹²⁹

4.78 The witness M.H. was present when the body of his cousin Đ.H. was exhumed. He was murdered and later buried in a ditch by Z.S. and B.R., both of Serb nationality.

4.79 Croatian citizens were also forced to undertake forced labour. So-called work platoons were formed, which all remaining Croatian citizens were required to join regardless of their age or ability to perform the assignments. During the course of the work beatings took place which the Serbs referred to as the "payday". On 16 March 1992 Nedjeljko Vulić was called to his "payday" and he never returned home again.¹³⁰ Several other Croats were murdered or disappeared, among them were: Ivan Šarić, Josip Mesaroš, Rozalija Horvat, Nedjeljko Horvat, Nedjeljko Vulić and the married couple Stracenski.

4.80 Croatian citizens were forced under gunpoint to sign the following statement on 17 March 1992: "I voluntarily leave the village, because I wish to settle in the Republic of Croatia (RC), and with this leave my entire property to the 'SAO Krajina' Government." They were then forced into two buses and banished from the village.¹³¹ Serbian families from Western Slavonia settled in the houses of the expelled Croats. Those who refused to leave, in spite of being threatened and abused, were murdered by the Serb families from Western Slavonia. This was the fate of Rozalija Horvat and Josip Mesaroš who were killed by a Serb family, who later settled in their house. V.V. and his family were expelled from their house by the newly settled Serbs (Nedo Romić and Dušan Zlatar). They were only allowed to take the bare necessities with them. According to the data at the disposal of the Office for Displaced Persons and Refugees of the Government of Croatia, 299 people were banished.

¹²⁹ Witness Statement of M.L., Annexes, vol 2(I), annex 65.

¹³⁰ Witness Statement of I.B., Annexes, vol 2(I), annex 64.

¹³¹ Witness Statement of L.M., Annexes, vol 2(I), annex 61: "When I left, I had to sign a paper saying that I leave my property to the so-called 'SAO Krajina'. I told them: 'I do not have anything to sign!' A soldier put a 'scorpion' on one side of me and another soldier put another on the other side." See: Witness Statement of M.L., Annexes, vol 2(I), annex 65: "They told us that we have to leave our houses in five minutes and get on a bus... They also ordered us to leave the houses open."

9. BAPSKA

4.81 The village of Bapska is situated in Eastern Slavonia, 26 km southeast of Vukovar. It lies between the village of Šarengrad and Šid. Before the occupation, Bapska had a Croatian majority (91%). According to the 1991 Census, the village of Bapska had 1,624 citizens of whom 1,478 were of Croatian nationality, 33 of Serbian nationality and the remaining of other nationalities.¹³²

4.82 Of the 1,478 citizens of Croatian nationality according to the 1991 Census, 1,369 were expelled during the occupation and two persons disappeared. At 1 January 2000 the destiny of one Croat is still unknown.

4.83 On 3 October 1991, at 3:00 pm the JNA gave the inhabitants of Bapska an ultimatum that all armed men should surrender their weapons. A Serb civilian was sent to the village with a piece of paper on which the ultimatum was written. The time complying with the ultimatum was 6:00 pm of that same day. The ultimatum was not complied with. Consequently on 4 October 1991 at 12:00 noon, cannon fire from several directions attacked the village. The attack lasted until 7:00 pm. Around four hundred missiles fell on the village; many of them were selectively fired at several family and farm buildings. The library and the Roman Catholic Church were damaged and many civilians were injured.

4.84 On 5 October 1991, during the morning hours, another cannon attack began which lasted until 12:30 pm when the JNA tanks came to the village and started shooting at the residential houses. The commander of the JNA's 1st Guard's Proletarian Mechanised Division, Major General Dragoljub Arandelović, ordered the 2nd Guard's Proletarian Mechanised Brigade of the JNA to take over the task of occupying the village, with the assistance of the "special forces of the Territorial Defence".¹³³ The 252nd Armoured Brigade of the JNA offered support with their tanks within the village.¹³⁴ The 1st Guard's Proletarian Mechanised Division had captured the village by 14 October 1991.

4.85 After the occupation of Bapska more than 1,000 Croatian citizens fled in the direction of Šid (Serbia). However, after getting to the outskirts of Šid a group of Bapska refugees was stopped by the Serb police and they were imprisoned and taken to the sports hall "Partizan". On the 14 and 15

¹³² Ethnic statistics for Bapska Annexes, vol 2(I).

¹³³ 1st "pgmd" Command, str.pov.br.851-18 from 4 October 1991, to the Command 252, Order "Op.br.", Annexes, vol 2 (I), annex 162.

¹³⁴ *Narodna Armija*, 13 November 1991, "I dezerteri se vraćaju" ("And the deserters are returning"), p.19, Annexes, vol 4, annex 150.

October 1991, Serb soldiers came to the hall and read the names of the citizens from Bapska from their list and separated fifteen people including: I.B., M.K., I.R., Z.F., M.F., J.Š., S.B., Đ.B.. These people amongst others were used as a “human shield” to protect Serb forces as they entered neighbouring villages. Others who fled from the village took refuge in the surrounding woods. According to Ž.Ž., the woods were full of lost and frightened people. Josip Vuletić, the commanding officer of the Croatian army in Ilok, Šarengrad, Bapska and Mohovo was killed. The civilians, who were killed, were as follows: Mato Rumberger, Ivan Mijić, Miroslav Kolak (Krca), Nada Vrbanić, Borislav Sabol.

4.86 After the occupation, during November and December 1991, the Serb forces started systematically to burn and destroy Croatian family houses and farm buildings. About 70 properties were destroyed. Members of the Croatian population were exposed to psychological and physical violence. M.K.’s husband and friend J. were shot for no reason. The husband survived but his friend did not. At least 17 people were murdered. Croatian families were prevented from buying food.¹³⁵

4.87 The so-called “SAO Krajina Government” was established and rebel Serb authorities formed (Local Committee Bapska and the Local Committee Board Bapska). From 15 October 1991 to December 1991, according to the direct orders of the Commander of the TO Bapska Major Vasić and his assistant Captain 1st Class, Nikola Krtinić, the Croatian population was forced to undertake forced labour and had to report to the Local Committee building daily with special passes. The houses of Croatian owners were marked with white ribbons.¹³⁶ The phone lines of Croat houses were cut off while the lines out of Serb houses remained intact.¹³⁷

4.88 The intensity of the abuse of the Croatian men during the early morning line-up for the daily forced labour is testified to by the experience of A.L. before his death. At the beginning of November 1991 (the exact date is unknown), during a line-up before the LC Bapska building, Legler was forced to drive a tractor through a minefield in order to pick corn. He was unable to drive and therefore was extremely hesitant in

¹³⁵ Bora Sabo, Miroslav Kolak, Ivica Mijić, Nada Vrbanić, Mato Rumberger, Zdravko Tustonić, Josip Radovanović, Branko Todorević, Andrija Bošnjaković, Jozef Trobojčević, Stjepan Divljaković, Pera Foro, Bora Sapro, Ilija Divljaković, Ivica Cvitković, Pava Solaković and Stjepan Rukavina.

¹³⁶ Witness Statement of K.B., Annexes, vol 2(I), annex 66: “We, the Croats, had to put up white rags to mark the Croatian houses.”

¹³⁷ Witness Statement of A.K., Annexes, vol 2(I), annex 67.

carrying out the task. He was then approached by the Commander of the TO, Nikola Krtinić, who started beating him on the head with the metal part of his gunstock. When L. fell to the ground the commander continued to kick him and beat him all over until he had lost consciousness. The following morning A.L. had hung himself in his home.¹³⁸

4.89 Since a large number of the Croatian citizens of Bapska refused to leave the village, in spite of the daily and systematic abuse, they were tortured even more. Their houses were searched, robbed and burnt on a daily basis, all under the pretext that the rebel Serb authorities were looking for weapons. One witness who experienced harassment was I.F. He states that the Serbs chased him out of his house one evening, having beaten him and knocked his teeth out. When he returned the following morning he found the house in flames and he was beaten and taken to F.B.'s residence where they also took other citizens according to a list and tortured and beat them.¹³⁹ I.L. was also tortured on several occasions, once after the occupation where he was kicked by a mob of soldiers under the order of a JNA officer because they found a fireman's helmet in his house. On the 12th December 1991 the torture took on a greater intensity:

“They made me lie down in a shell hole and drove the tractor on me. With the right wheel they pressed my abdomen. My two ribs broke....Then one of the soldiers (they were in the JNA uniforms) pulled out a knife from his boot and stabbed me in my left arm....Then another JNA soldier wounded me with an axe. He hit me with the cutting edge on my buttocks. That was a deep and wide wound. I couldn't and I wouldn't go to see a doctor because I was afraid to leave my house, I think that they would kill me. After being stabbed with a knife and hit with the axe they told me to climb a haystack and that they would set me on fire. They talked between themselves and they said on code “33”, then they “fed” submachine guns (reloaded) and shot around me. Then they ordered me to climb down and they put a bomb in my clothes on my chest. They told me they would blow me up....It was terrible for me also because all that torture was happening in front of my old mother who was screaming all the time: “Don't kill my child.” They stopped the search and left me alive”.¹⁴⁰

¹³⁸ Witness Statements of A.Š., Annexes, vol 2(I), annex 68, and J.K., Annexes, vol 2 (I), annex 69.

¹³⁹ Witness Statement of I.F., Annexes, vol 2(I), annex 70.

¹⁴⁰ Witness Statement of I.L., Annexes, vol 2 (I), annex 71.

Despite the torture I.L. and his family still did not leave his house. He also refused to sign a statement that he would relinquish his estate to the "SAO Krajina". He was therefore taken from his house by force on 8 April 1992, and put on a truck together with more men and women and forced to leave the village.

4.90 Many Croatian women were also systematically abused and tortured. For example the witness P.M.* states that the Serbs robbed her house daily. On 13 January 1994, two of the Serb soldiers began to commit sexual violence:

"When they were done, one of them took me to one room. There he raped me. I tried to defend myself at which he hit me on the back with a rifle and slapped me once. That way he managed to rape me. The other robber had a stocking on his head and went into the room of my eighty-one year old mother K.I.*. He hit her on the head with his hand, after which she fell to the floor and he raped her then. After this he asked her for money, since she had none he searched her and tore her navel with his bare hands. They left after this. They threatened that we do not report them to the so-called militia since they were co-operating".

Since the family still refused to leave their houses, in spite of the abuse, robberies and rapes, they were banished from the village together with P.'s daughter on 17 May 1995. Their house was given to a Serb family from Okučani and they were driven away to Šid on a cart wagon.¹⁴¹

4.91 There were other incidents of sexual maltreatment of men. This is testified to by the witness F.K.* who was taken with others from Bapska to Paragovo and imprisoned in a wine cellar:

"I was taken for questioning and beating three times. They beat me with sticks, legs, and fists. Four military policemen beat me. Usually four men beat one. They were beating my genitals, kidneys, everywhere. Especially they beat the genitals. They knew that I had three children and that my wife was pregnant. They were saying that as they were beating me. Once they beat my genitals about 30 times and they were saying: "Fuck your Ustasha mother ..., You won't make any more little Croats." Their goal was ethnic cleansing, and that us, Croats, would be as few as possible".¹⁴²

¹⁴¹ Witness Statement of P.M., Annexes, vol 2 (I), annex 72.

¹⁴² Witness Statement of F.K., Annexes, vol 2 (I), annex 74.

4.92 Members of the JNA and the paramilitary units damaged the local church of St. George the Martyr (built in 1764) on 25 October 1991. It was subsequently turned into a police station and its basement into a prison. In April 1992 the wholesale destruction of all Catholic monuments was organised. All crosses in the village were destroyed together with the chapel of St. Mary, the chapel “Na Pajzošu”. Several tombstones, including the tombstone in the chapel of St. Mary were mined. The Chapel of St. Mary was a landmark of cultural significance. It was built from 12th to the 14th century and renovated in 1976-77.¹⁴³ According to the witness A.Š., in April 1992 Veselko Galić ordered Ivan Duvnjak, Josip Bohnička and Stjepan Šomoljanski to destroy all the crosses in the village and around it with a pick. Milan Mijatović, normally responsible for utility services in the village, tore the crosses down with a tractor:

“On that occasion, all crosses in the village which stood at the following locations were destroyed: crossing of the B. Radić and the S. Radić Streets, crossing of the V. Nazor Street and the M. Gubec Street, crossing of the Palih Boraca Street and the Šidska Street, at the end of the Šidska Street beside the road leading to Šid, at the extension of the Palih Boraca Street, at the extension of the Poljski put, at the extension of the M. Gubec Street on the road of Poljski put, near the road at the extension of the S. Radić Street leading to Šarengard, as well as the chapel of “St. Anne”, which is located on the road Bapska-Šarengard at the crossing of the road which leads to the farm “Dunavka”.¹⁴⁴

4.93 The great exodus of the Croatian population from Bapska occurred in April 1992. Based on a prepared list they were expelled from their houses. They were forced to sign statements that they were relinquishing their entire estate to the “SAO Krajina”. Serbs from Western Slavonia were settled in their houses. The banishment was organised in two steps, during which 150 Croatian citizens were exiled. They continued to forcibly depopulate and expel Croats. In May 1995, under a threat to their lives a group of 69 Croats were expelled from their homes.¹⁴⁵

¹⁴³ The Wounded Church in Croatia, the Destruction of Sacral Monuments in Croatia, 1991-1995, Zagreb, 1996.

¹⁴⁴ Witness Statement of A.Š., Annexes, vol 2 (I), annex 68.

¹⁴⁵ A list of expelled Croatian residents of Bapska was drawn up by the UNHCR on 29 June 1995, and delivered to the Office for displaced persons and refugees of the Government of the Republic of Croatia, Annexes, vol 2(I), annex 168A.

10. TOVARNIK

4.94 The village of Tovarnik is located in Srijem on the eastern border of the Republic of Croatia, 23 kilometres south-east of Vukovar. According to the 1991 census, 3001 people lived in the village. 2136 of them were Croats (71%), and 670 people were Serbs. The rest of the population was made up of other nationalities.¹⁴⁶ The village of Tovarnik is located along the main road that connects Šid with Vukovar or Vinkovci. Hundreds of JNA armoured vehicles and soldiers passed through Tovarnik from Serbia via Vukovar.¹⁴⁷ Of 2136 Croatian inhabitants, who lived in Tovarnik in 1991, 1865 were exiled. By 1 January 2000, the fate of 19 persons remained unknown. It is estimated that during September and October 1991, at least 61 Croatian civilians were killed in Tovarnik. The Government Office for Detained and Missing Persons of the Republic of Croatia carried out exhumations from 22 to 23 January 1998 and from 27 to 28 January 1998. A total of 48 bodies, among who 44 were identified, were exhumed.¹⁴⁸

4.95 The first incident in Tovarnik took place on 21 September 1991 in the evening, when a large convoy of JNA armoured vehicles, while passing through the village, opened fire and destroyed civilian houses which were placed along the road. On 22 September 1991 a tank assault on Tovarnik began. The 3rd Guard Proletarian Mechanised Brigade of the JNA under the command of the Lieutenant Colonel, Slobodan Antičić¹⁴⁹ (a part of the 3rd Armoured Battalion 252 “okvr”)¹⁵⁰ carried out the attack. Complete occupation took place on 23 September 1991 when the Infantry of the JNA and the Serb paramilitary group the “White Eagles” entered the village. After they occupied Tovarnik, the village was under the control of the JNA’s 2nd Guard Proletarian Mechanised Brigade.¹⁵¹ Immediately after the Serbian Army had entered the village, an operation to entirely cleanse the village of Croats began.¹⁵² The degree of ethnic malice within the ranks of the JNA is testified to by the witness J.V.:

¹⁴⁶ Ethnic statistics for Tovarnik Annexes, vol 2(I).

¹⁴⁷ Mass killing and genocide in Croatia, 1991/92, page 106.

¹⁴⁸ The list of the exhumed mass graves of the Government Office for Detained and Missing Persons of the Republic of Croatia, Annexes, vol 2 (I), annex 166.

¹⁴⁹ *Narodna Armija*, 4 December 1991, page 25 “Beskrajna vera u komandanta Antonića” (“Endless belief in the commanding officer Antonić”), Annexes, vol 4, annex 150.

¹⁵⁰ *Narodna Armija*, 2 November 1991 “Primer odanosti i hrabrosti” (“Example of loyalty and courage”), page 13; *Narodna Armija*, 9 November 1991 “Vera u ljude i tehniku” (“Belief in people and technology”) page 25, Annexes, vol 4, annex 150.

¹⁵¹ Command 1pgmd, Conf. No. 851-18 from 4 October 1991, to Command 252, Order Op.br, Annexes, vol 2(I), annex 162.

¹⁵² Witness Statement of Đ.M., Annexes, vol.2 (I), annex 78, who testifies that the leading commander of the Serbian Army, Ranko Miličević, said to him: “If this is going to be Serbia, no Croat will stay here.”

“The first army that stopped at my house – the reserve of the JNA – captured my husband and took him to the camp in Begejci, although he was a civilian. He did not participate in anything, nor did he have any weapons. The first soldier that entered my house asked me my nationality, and when I said “A Croat” they started shouting at me telling me that Milošević told them before they went off to war that they were going to the front line and that their task was to kill and destroy everything Croatian, and that they would push us Croats into the Adriatic sea. They told me that it would be better for me if I was a Serb, which I refused because there were no Serbs in my family, I told them that I was a Croat and that I would remain thus.”¹⁵³

4.96 On the day of the occupation there was an execution in front of the Catholic Church. On that occasion seven civilians were killed: Željko Vrančić, Berislav Šimunić, Antun Šimunić, Mato Živić, Manda Živić, Janko Budim and Franjo Kuzmić. J.I. had direct experience of the murder of unarmed civilians. She and her neighbours hid in a basement but were found by the Serbian “soldiers”:

“On the second night the soldiers found us and took us to a Serbian house. It was the house of M.S. Six of us among the imprisoned persons were adults. We sat until midnight. Then they (the soldiers) came and ordered us to go to sleep. We spent the night there. In the morning we got up and took our bags. We were told to leave the bags because we would not need them. They took us to a building. There were six of us: Franjo Kuzmić, Mara Kuzmić (his wife), Janja Jurić, Marko Šijak, another woman and I. They lined us up in the yard near that old building. We sat down when we saw what was going to happen to us, only two people among us stood still. They began to kill us one by one. When it was my turn, he did not kill me. He stabbed me in my arm, and when I shrieked, he stabbed me again. I fainted. When I regained consciousness, I did not know where to go. Everybody around me was dead.”¹⁵⁴

4.97 As in other villages the genocidal activities of the JNA encouraged and overlapped with the ethnic based violence of the rebel Serb paramilitary groups. The evidence of the JNA officer who served in Tovarnik, M.P. shows in the clearest possible terms that the JNA was under orders to carry out gratuitous attacks upon Croatian life and culture:

¹⁵³ Witness Statement of J.V., Annexes, vol 2(I), annex 76.

¹⁵⁴ Witness Statement of J.I., Annexes, vol 2(I), annex 75.

“I was in Tovarnik for three days and a lot of horrible events were imprinted on my memory, although I try to forget them. I also remember isolated individuals who particularly stood out in the killings of civilians – I know that they laughed and ridiculed people and they killed them. I remember a reservist, whose surname was U., and his group that particularly stood out in the killing of people – they massacred civilians using knives.

[...]

I remember well the order of Major Bajat that every civilian had to be killed and that nobody should bring any body to him. I saw when 10 people were executed by a firing squad in front of the building of the Municipality. A group of reservists killed them, but I don't know any specific information about them. I know that they were members of Vlado's group. I witnessed all of those events that occurred in the town of Tovarnik. [...]

During those days, I also saw situations when reservists threw bombs in shelters, that is in the basements of particular houses, and then, they would fire automatic weapons.

There were, in Tovarnik, corpses lying on a road and in yards. The burial of the dead wasn't allowed. I'll never forget the number of dead people – 48. I counted so many dead women, children and older men. I saw that killing with my own eyes.”¹⁵⁵

4.98 Serb civilian and military authorities were established in the village. The Territorial Defence was commanded by Vlatko Glavašić. The police station was set up in the house of Dr. Živorad Cvejić. The Commander of the police station was Janko Milanković. The head of the Local Committee was Aleksandar Trifunović, who was later substituted by Jovan Medić. According to J.V. the rebel authorities restricted movement around the village and ordered the remaining Croatians to wear white bands round their arms and to fasten white cloth to their gates. As to the “Serbianisation” of culture, the witness M.D. noted: “Everything was written in Cyrillic script. They changed everything to the Cyrillic script on the second or third day. The name on the Local Committee building was written in Cyrillic script. They wrote on the walls: “Serbia all over to Tokyo.”¹⁵⁶ Croatians had to report to the Serb police in front of the local committee every morning. They were then compelled to force labour. The experience of the Croatians under the new regime is described by M.G.:

¹⁵⁵ Witness Statement of M.P., Annexes, vol 2(I), annex 79.

¹⁵⁶ Witness Statement of M.D., Annexes, vol 2 (I), annex 83.

“Then he [a police officer] said: ‘Let two at a time step out!’ They lined us up in front of the Z.’s house and asked us what we were, were we Croatian women?...Later on they asked us if we knew that all Croats should be murdered and everything that’s Croatian destroyed. Three tanks were on the street burning the houses which weren’t knocked down.”¹⁵⁷

4.99 The basement of Dr. Živorad Cvejić’s house served as a prison for many of the Croatian population. The testimony of the only civilian, who survived, B.H.* described the treatment that took place:

“It was hell there. They beat Ante Markanović so hard that he died of the injuries. He was lying dead with us in one room for three days. The smell of a dead human body is the worst smell in the world. He beats you, he tortures you, gives you neither food nor water, and then you have to sleep next to a dead man...”¹⁵⁸

4.100 In Tovarnik, levels of gross inhuman violence were reached, often as a prelude to the killing of the victims. Castration also became a pre-occupation of the torturers. Between 28th September and 1st October 1991 B.H. witnessed the castrations of P.D.*, B.K.* and M.B.*:

“They were castrated by Dragica Gorijašćanin from Tovarnik ... First they grabbed P. and pushed him down by the road. He was the weakest. They were all beaten. Four men pushed him down and took his trousers off. She castrated him. We had to watch. I was watching, but I was so scared that I didn’t see much. I don’t know if she cut off everything or just scrotums. P. was screaming. The Chetniks were laughing and yelling in pleasure. Dragica was laughing too, she was happy with what she was doing. I felt as if her laughter could be heard in Zagreb too. One of the Chetniks had a wooden stick and he hit P. a few times across his neck. P. showed no signs of life any more. Then three Chetniks shot at P. The fourth Chetnik took a pistol and shot him in the head.

Then they did the same with other two victims, but I was in shock so I don’t remember who was the first. The procedure was the same: they pushed the victims down, took the trousers, castration, screaming, laughing, hitting with wooden stick, shooting with rifle and shot from the pistol in the end. I was standing there with P.M. and I thought that they would do the same to me.

¹⁵⁷ Witness Statement of M.G., Annexes, vol 2 (I), annex 80.

¹⁵⁸ Witness Statement of B.H., Annexes, vol 2 (I), annex 81.

After she did the job, Dragica turned to the car she had come in and got in and her hands were covered with blood. In the car was the captain in a JNA uniform. The Chetniks were in JNA uniforms with Chetnik marks. The captain had a cap on his head, he was between 45-50 years old. I hadn't seen him before or since. He had brought Dragica and took her away.

The Captain could see from the car everything that was going on, he was 15 meters away, or even less. I could see him too, including the marks he had. He got out of the car and opened the door for Dragica when she approached him and then he got into the car again. Then we started to load the dead and we put them on the tractor [on which] we had come.¹⁵⁹

4.101 L.S. also testified about the brutal torture and molesting of detained Croatians. She was an eye-witness of the physical abuse of her brother I.J. who was beaten to death and his wife R. who had all of her fingers broken afterwards.¹⁶⁰ During the first days of the occupation 70 Croatian villagers were taken to the concentration camp at Begejci. More than a hundred of them had first undergone torture in the basement-prison. During the transport to the camp, several of the prisoners were executed. S.T. remembers that two of the Serb guards were saying that they would go to do some "cleansing work". Marin Lović and Baja Hapčak were executed by firing squad.¹⁶¹ In the camp the torture and abuse continued. Prisoners were forced to masturbate one another and then forced into homosexual intercourse, after which they were beaten again.¹⁶² Back in Tovarnik, M.D. was kept in the village to carry out forced labour, most notably burying the Croatian dead (see below). Serbs from outside Tovarnik carried out the torture that he and others were subjected to. During one night he and a tin-smith were "beaten in shifts":

"Three individuals were present during the torture. One was standing behind me, one on my left side, the other on the right. They were holding sticks. The police commander, Ljubo was at the other side of the room, at the table.....I was interrogated about a lot of stupid things. They told me that I had to remember everything. I told them that I did not know what I was supposed to remember and that I would tell them everything I knew. They told me to put my hands on the table. Then they beat my hands. They made me shout: 'Serbia all over to Tokyo.' Then they made me

¹⁵⁹ *Ibid.*

¹⁶⁰ Witness Statement of L.S., Annexes, vol 2(I), annex 77.

¹⁶¹ Witness Statement of S.T., Annexes, vol 2(I), annex 82.

¹⁶² Mass killing and genocide in Croatia, 1991/92, page 107-108.

shout louder. At one moment the commander said it was enough. He asked me to turn around, so he could ask me something. Then the other one told me to turn towards him. When I turned this other one hit me on the back so I immediately fell on the floor. They started kicking me and hitting me with night-sticks. I was lying down on the floor. I doubled up, so whatever happened, it happened.”¹⁶³

4.102 It was a common practice in the village for the Serb paramilitary groups to force Croats to bury their fellow dead. One of these grave diggers was M.D. He confirms the existence of the mass graves and numerous murders of Croatian civilians. He was responsible for the collecting of the corpses of the killed Croatian civilians. He went all over the village to collect them with his tractor. Afterwards he drove them to the Catholic cemetery. On 30 September 1991 he was burying bodies together with three other prisoners. They buried 24 persons of Croatian nationality. The corpses were disfigured and had already been dead for a few days.¹⁶⁴ Due to this disfigurement, he was only able to recognise some of the dead: Franjo Kuzmić, Mara Kuzmić, Felka Glibo, Jelka Strolina, Aco Popović, Đuro Miklošević, Janko Budim. The witness had to bury killed Croats on one more occasion. Eventually they ran out of space in the graveyard and had to start digging trenches in the area outside the Catholic cemetery. Here they buried the Reverend Ivan Burik.¹⁶⁵

4.103 Another gravedigger was B.H. He testified about burying Ante Markanović during which four prisoners (B.H., D.M., M.B. and M.Č.) were separated and under threat of arms forced to load the body of the deceased into the trailer. They were taken afterwards to the Catholic cemetery where they were ordered to dig a large hole. Since the witness realised that they were also to be killed after the digging, he managed to escape, and later on, passing by that same grave, he saw the corpses of each of his fellow workers.¹⁶⁶

¹⁶³ Witness Statement of M.D., Annexes, vol 2(I), annex 83.

¹⁶⁴ *Ibid.*: “Worms were coming out of their bodies. It was stinking terribly. Serbian soldiers even gave us 4 or 5 masks.”

¹⁶⁵ *Ibid.*: “The three of us were loading them into the tractor. I asked: ‘Who is this?’ My son answered: ‘Dad, that is I.S.’s old man, P.’...I couldn’t recognize him because half of his head was missing and his tongue was out, but my little son managed to recognize him”.

¹⁶⁶ Witness Statement of B.H., Annexes, vol 2(I), annex 81: “They had brought us to the graveyard and ordered us to dig a grave....Our people were already buried there in a long trench, some 15 to 20 people....While we were stepping out of the trailer I helped M.B., who was beaten up, to get off and I saw that one of the soldiers had taken his left out during the ride... During the whole ride their words, which said that no one had ever returned from the cemetery, were ringing in my ears.”

4.104 The St. Matthew's church in Tovarnik (1804) was badly damaged on 22 September 1991 by tank shelling fired from close range. The graveyard Chapel of the Eminence of the Holy Cross was completely destroyed. Villagers who have survived testify about the killing of the local priest Ivan Burik.¹⁶⁷ The Serbian paramilitary units "White Eagles" had established their command in the house of I.D. near the Catholic church, and it was one of the members of the "White Eagles" who killed the priest in the parish house. The building of the Croatian police station and the railway station were set on fire on 21 September 1991. The transmitter of the Croatian television was completely destroyed the same day, while the Cultural centre was set on fire on 22 September 1991.

4.105 In December 1991 the rebel Serb authorities reached a decision that only 5% of Croatian population could stay in the Tovarnik area. According to the witness Đ.M., the commander of Tovarnik, Ranko Miličević had declared, "If this is to be Serbia, no Croats will live here". To achieve that aim the Serbs carried out mass expulsions.¹⁶⁸ There is not any precise information on the number of Croats who live in the Tovarnik area today, but according to the estimation made in 1992, 95% of Croats were expelled from that area. Less than 100 of them stayed there. Those who stayed are mostly older people.

4.106 Even after the first wave of expulsion the rebel Serbs continued to banish people. On 24 April 1992 paramilitaries entered the home of A.G. and ordered him and his family to leave the village. R.Đ. was banished on 27 October 1992 after a Serbian family from Western Slavonia had moved into her house.¹⁶⁹ The Croatian inhabitants were not allowed to leave their yard; nor could they meet or visit each other. They were only allowed to go to the shop. Croats were not allowed to move around the village without white rags around their arms.¹⁷⁰ Many Croatian families left the village because they had exhausted all their food supplies, and new supplies were not available to them.¹⁷¹ Although only older persons stayed in the village, the physical torturing by

¹⁶⁷ Witness Statement of M.D., Annexes, vol 2(I), annex 83: "We couldn't find the reverend anywhere. Someone came to the idea that we should look in the basement... We found reverend lying in the basement on the ground. In the middle of his chests there was a hole whose radius was 5 centimeters, you could tell that a whole clip had been fired at him."

¹⁶⁸ Witness Statement of I.Đ., Annexes, vol 2(I), annex 84: "They wouldn't let me carry anything. I wanted to put my shoes on, but they took it off, and they said to me: "Just get up on your feet, get out, go to Šid."

¹⁶⁹ Witness Statement of R.Đ., Annexes, vol 2(I), annex 85.

¹⁷⁰ Witness Statement of A.I., Annexes, vol 2(I), annex 86.

¹⁷¹ Witness Statement of A.G., Annexes, vol 2(I), annex 87.

the settled Serbs continued. It was estimated that only 28 Croats were left in the village.

11. SOTIN

4.107 The village of Sotin is situated in Eastern Slavonia near Ovčara, approximately 8 km southeast of Vukovar. According to the 1991 Census it had 1,324 citizens, 789 were Croatian, 372 were of Serbian.¹⁷² The rest of the population was made up of other nationalities. The exodus of the remaining Croats from Sotin occurred on 27 December 1991 and 7 April 1992, when every remaining Croat was expelled from Sotin. Of the 789 citizens of Croatian nationality according to the 1991 Census, 717 were expelled during the occupation and 40 people disappeared. As of 1 January 2000, the fate of 33 Croats was still unknown. 12 bodies were exhumed from a mass grave on 7 October 1998, of which 7 have been identified.¹⁷³

4.108 During the spring and summer of 1991 the JNA moved freely within the region and skirmished between the JNA and the Croatian defence forces occurred. During one of these bouts of violence Dražen Luketić was killed. His funeral took place in the village on 28 August 1991. It was disrupted by a rocket attack by the JNA which was launched from Vojvodina (Serbia). This was followed by an attack by 3-4 JNA aircraft. Two women, A.I. and S.H. were wounded. The coffin was left on the street. These events prompted mass evacuations from Sotin, Tovarnik and Lovas. On the following day the JNA launched a further attack. This was carried out by the JNA's 1st Armoured Battalion under the command of Major Cvetan Dimitrov from the 1st Guard's Proletarian Mechanised Brigade, with the help of units of the 453rd Mechanised Brigade of the JNA.

4.109 The attack lasted from 29 August to the 14 October 1991 when Sotin was finally occupied. However, during that period no resistance was offered since the village was threatened with destruction if a shot was fired. The conduct of the JNA served little military purpose and can only be explained by a desire to inflict maximum damage on the local Croatian civilian population.

4.110 The JNA tanks that entered the village on 14 October 1991 were from 252nd Armoured Brigade, which was reinforced by the JNA's 1st Guard's Proletarian Mechanised Division. The JNA Brigade was under the

¹⁷² Ethnic statistics for Sotin, Annexes, vol 2(I).

¹⁷³ List of exhumed mass graves of the Government Office for Detained and Missing Persons of the Republic of Croatia, Annexes, vol 2 (I), annex 166.

command of Colonel Jovan Vučković. They burnt and destroyed houses, stores and other establishments owned by Croats. H.V.* was hiding within his family in a basement. Their Serb neighbour demanded that they come out or he would throw a bomb:

“The two of us went out of the basement and we had to lie down on our bellies just near the water tap and there the two people searched through our pockets. In the meantime, while his wife, mother-in-law and his granddaughter were standing there, the two men entered the basement and took sexual advantage of his mother-in-law. After that the two of us were forced on the road and we had to kneel down and so they put a noose around our necks and over the back, passing it between our legs, and we had to stretch our hands and then they tied us up. Tied in that way, we came to the house of B.U. We stopped there, because it was fired upon from the tank on the house of A.T., and then neighbour M.B. forcibly brought the Bakša couple. After that we walked behind the tank, we came to my house and my neighbour Ž.M., who was at the same time the member and the commander of that group, told me to go with M.B. and to show him where my brother’s rifle was. We went there so that I could show him where the rifle was, but it was not there. Somebody has hidden it somewhere else during the evacuation from Sotin. As I came into the camp, I met my brother and he told me where he had hidden the hunting rifle, 40 bullets and a hand-grenade, and I think that all of this is still there. Since they did not find the weapon, the neighbour who was a commander (the above mentioned) ordered the last tanker to fire 2 shells at my house and I had to watch that. After that they fired at my brother’s son’s house, the godfather J.S. and that same tank must have been from the village Sotin since he aimed at the most sensitive parts of the houses”.¹⁷⁴

Civilians of Croatian nationality were tied up and were forced to walk behind the tanks as the destruction of the Croatian life of the village took place. S.L. was tied to the barrel of the gun and lost consciousness as his captors shot through it.¹⁷⁵ Several of the witnesses attest to the fact that the local Serbians were showing the JNA which houses to destroy.¹⁷⁶

¹⁷⁴ Witness Statement of H.V., Annexes, vol 2 (I), annex 90.

¹⁷⁵ Witness Statement of S.L., Annexes, vol 2 (I), annex 91.

¹⁷⁶ Witness Statement of P.H., Annexes, vol 2 (I), annex 92.

At the same time the Catholic Church was destroyed, while the Orthodox church remained untouched.¹⁷⁷ The destroyed church was the 18th Century Church of the Holy Virgin Mary and the Helper of Christians.

4.111 Croatian civilians were arrested without reason and were subsequently exposed to abuse, beating and psychological torture. S.L. and other Croatian guards were taken to a gym hall where they were tortured over several days and then taken on to a Serbian prison:

“At night they would take us two by two to a Hunting house where they would torture us. They broke my knees there, with an iron bar. Then they would take the two of us back, and get another two. It lasted the whole day. The next day we had to clean the gym because the floor was covered with blood....In the evening, it was already dark; they put us in some trucks and took us to Sremska Mitrovica, to a hall in the prison. The floor was covered with oil. I saw there lots of people from my village that I knew. It was October 4 or 5, 1991. We pretended not to know each other. The torturing continued. We had to pass through a cordon. Reservists of the JNA were beating us. I saw F.Z.* and M.Z.* there, they were father and son, and the soldiers forced them to masturbate one another. They were standing about 10 meters away from me. I saw how the soldiers beat them and tortured them. I had heard noise and what the three of them had been saying to each other....Then they had ordered them to take off their clothes and they had had to do that. Then the soldiers had ordered them to masturbate one another, which they had refused to do, and the soldiers started to beat them again. It lasted for a long time. The reservists had been saying the Ustashas were homosexuals and that was all they know how to do. They were screaming that they would destroy Croatian semen. F. had 5 children. The reservists left them naked as they were, and ordered that they mustn't dress. So they were like that. They couldn't and wouldn't masturbate one another, but they were forced to try...¹⁷⁸

4.112 Those who were not detained and tortured were the subjects of daily threats. There are two Serb witnesses – J.J. and M.T. – who are able to testify that Croats were warned on 27 September 1991 to leave the village or suffer the consequences. On the same day the following people were taken out of the village by a force comprising JNA and paramilitary troops: Marko Filipović, Kata Filipović, Marko Kušić, Manda Kušić, Andrija Rajs, Andrija Raguž, Marko Raguž and his daughter Mira,

¹⁷⁷ Witness Statement of B.M., Annexes, vol 2(I), annex 93.

¹⁷⁸ Witness Statement of S.L., Annexes, vol 2 (I), annex 91.

Mirela Raguž and Ivo Matijašević. The destiny is unknown (see the account of B.M. below). According to T. there was a vineyard called Stara Ciglana, which is located 1500 meters from Sotin in the direction of Tovarnik. At one point in the war people were unable to go any more than 500 meters from the area due to the smell of decaying bodies. During the winter of 1991 some 1500 Serbs were brought to the village from Western Slavonia.

4.113 V.G.* was hiding with her family on 30 September 1991 when two soldiers came into their house. At first they wanted to look under a mattress for weapons. However, when she threw down the mattress one of the soldiers told her to take her clothes off:

“I remember that I had a black track suit on, and I refused to take it off, then he approached me and tore the tracksuit off me. He ordered me to lie down and then he raped me. The whole time this other soldier kept a gun pointed at me. That lasted for about 10 minutes. After that the soldier that held a gun pointed at me, raped me. During that time, this other one held a gun pointed me”.

On 31 September 1991 one of the soldiers who had raped her returned to the house. He took her mother upstairs and raped her. Thereafter the witness went upstairs and was forced to get down on her knees and was raped from behind.¹⁷⁹

4.114 The rebel Serb authorities introduced curfews together with obligatory passes so as to restrict the movement of Croats in the village. The women had to carry out forced physical labour without payment. The witness B.U. was forced with her sister and her father to do forced labour in the slaughterhouse throughout 1992 without being paid. During this period all Croatian citizens had to wear white ribbons around their arms and mark their houses with white sheets.¹⁸⁰

4.115 Croats were randomly killed and without reason. The witness M.M. recounts one such example. At the end of September, prior to the first wave of banishment, Dražen Tolp and another man known to her as Đaković were dragged out of their car and shot at close range. The witness and her husband were able to see the nature of the murder because they retrieved the bodies with the help of a Serb and buried them.¹⁸¹ The

¹⁷⁹ Witness Statement of V.G., Annexes, vol 2 (I), annex 94.

¹⁸⁰ Witness Statement of B.U., Annexes, vol 2 (I), annex 89.

¹⁸¹ Witness Statement of M.M., Annexes, vol 2 (I), annex 88.

witness B.M. gives a detailed account of the murdered and the missing.¹⁸²

12. LOVAS

4.116 The village of Lovas is located in Eastern Slavonia, approximately 16 km southeast of Vukovar. According to the 1991 census, of 1,681 citizens 1,441 were of Croatian and 133 were of Serbian nationality. The rest of the population was made up of other nationalities. The national population structure was such that 85.7% were Croats and 7.9% Serbs.¹⁸³ In the village of Lovas, from 2 to 9 July 1997 the mass grave of sixty-eight people at the local graveyard was exhumed, of whom sixty-seven were identified.¹⁸⁴ Of the 1441 Croatian inhabitants who lived in Lovas in 1991, 1182 were banished during the occupation. Around 1500 Serbs were brought into the village from Western Slavonia, Bosnia and Hercegovina and Vojvodina in Serbia.

4.117 In the beginning of autumn 1991, after the attack and occupation of the villages of Sotin and Tovarnik, the majority of the inhabitants (around 2,000) of those villages escaped to Lovas. The authorities in the city pleaded for a peaceful policy and insisted on the maintenance of appropriate relationships, so that Serbs would not feel endangered in the village on account of their minority status.¹⁸⁵ On 27 September 1991, a group of three representatives of Lovas was formed. They held negotiations with the JNA (Lieutenant Colonel Milić Jovanović and Colonel Želimir Petrović)¹⁸⁶ aimed at preventing the destruction of the village. On that occasion the JNA issued an ultimatum that the entire armaments of the village had to be handed over on 28 September 1991 failing which the village would be attacked and destroyed. During the night, the local residents (mostly women and children) left for Ilok. Around 600 local residents stayed in the village. The next day the negotiations continued. The representatives of Lovas informed the JNA Colonel, Želimir Petrović, that the weapons would be handed over and that the local residents had taken refuge in Ilok. After that, the JNA Colonel suggested that all refugees return guaranteeing their safety. Three days after the negotiations, almost

¹⁸² Witness Statement of B.M., Annexes, vol 2(I), annex 93, for a full list of the dead and the missing.

¹⁸³ Ethnic statistics for Lovas, Annexes, vol 2(I).

¹⁸⁴ List of exhumed mass graves of the Government Office for Detained and Missing Persons of the Republic of Croatia, Annexes, vol 2(I), annex 166 and Record of exhumation, Annexes, vol 2(I), annex 168B.

¹⁸⁵ Mass Killing and genocide in Croatia 1991/92 at page 172.

¹⁸⁶ *Ibid.*, p. 173.

all local residents of Lovas came back, although the village was without electricity, the telephone connections were cut, and water was available only occasionally.

4.118 On 30 September 1991, the JNA deployed armoured and artillery weapons from the southern and western side of the village. Given the promise of the JNA during negotiations, the local residents were taken entirely by surprise. In the middle of the day a strong attack with artillery and mortar fire was launched at the grain silos of the village. The bombardment was repeated every day from 1 until 10 October 1991.

4.119 On 10 October 1991, an artillery attack was launched against the part of the village (Brdo and Žabar) where the Croatian houses were. At the same time, the infantry entered from the northern side of the village. From that moment the liquidation of the civilians of Croatian nationality began. The JNA's 252nd Armoured Brigade from Kraljevo was the main force which occupied the village,¹⁸⁷ with the help of the Serbian paramilitary unit "Dušan Silni" lead by Ljuban Devetak and Željko Krnjajić. There was no resistance in the village, because there was no army there and the locals had given up their arms as part of the "negotiations".

4.120 During the first stages of the attack at least 23 unarmed Croatian civilians were killed, while one woman was wounded. Other victims were executed by firing squad when the infantry of the JNA entered the village. 20 Croatian houses were burned down and the local Catholic Church was burned and levelled to the ground. Immediately prior to the attack Serbian inhabitants of Lovas marked their houses so that they would not be hit.¹⁸⁸

4.121 Many of the local residents, especially the women and children, hid in the basements of their houses. On several occasions bombs were thrown into the basements. In this manner, a bomb was tossed into M.P.'s basement with 8 civilians in it and into J.J.'s basement with 6 civilians in it. Local Serbs joined the army and showed them which houses to go to.¹⁸⁹ M.M. testifies about her experience in a basement, where she was hiding with her children:

¹⁸⁷ "Narodna armija", 13 November 1991, "I dezertteri se vraćaju" ("Even the Deserters are Coming Back"), p.19., Annexes, vol 4, annex 150.

¹⁸⁸ Witness Statement of S.P., Annexes, vol 2(I), annex 97.

¹⁸⁹ Witness Statement of L.S., Annexes, vol 2(I), annex 98.

“On 10 October 1991 at 7.30 am, when the attack started, I went into the basement with three children. The Serbs fired at the house and killed two neighbours, Dragutin Pejić and Mijo Božić...They had no arms, they were civilians. In fact, they took them out of the basement and killed them... They tossed a bomb into our basement. We were terrified because of the shock we experienced and the sound which the bomb made. Because of the tremendous fear we experienced my daughter did not have her period for a year. Passing by the dead bodies, my children and I, and another 12 of us, ran to a cornfield during the night. A truck took us to Ilok.”¹⁹⁰

4.122 N.M. also testifies about her experience on the day of the occupation. She was hiding in her basement with her family when the JNA came into her yard:

“My husband was the first who stepped out. One Chetnik tossed a bomb into the basement. My husband was taken to another street and killed. I was sent to the basement again, where I stayed until 3.00 pm. When I got out, I saw my neighbours’ houses on fire. Until Saturday morning, I did not know that my husband had been dead for two days. My neighbour told me that. I saw them taking the dead bodies on a trailer and driving them to the graveyard. They dropped them into a hole and covered them with an excavator”.¹⁹¹

Like this witness’ husband several men of Croatian nationality were taken out of the houses at gunpoint, separated from their children, and then killed: see Plate 15 (Mass grave at Lovas). Mato Keser was separated from his three small children and then murdered in front of them. Alojzije Polić, Josip Polak, Stipo Mađarević, Pavo Đaković, Stipo Pejić, Juraj Poljak, Josip Kraljević and Mato Adamović were killed in a similar way. P.M. saw Kata Pavličević come out of her house with a Serb, R.G., only to be shot and left lying in the gutter.¹⁹² According to S.P., a member of the JNA took Anka Jovanović to a barn and set her on fire.¹⁹³

4.123 On 17 October 1991, Ljuban Devetak, the commander of the Serbian paramilitaries in Lovas, ordered all Croatian male local residents between the ages 18-65 to gather in front of the Community building to be

¹⁹⁰ Witness Statement of M.M., Annexes, vol 2(I), annex 99.

¹⁹¹ Witness Statement of N.M., Annexes, vol 2(I), annex 100.

¹⁹² Witness Statement of P.M., Annexes, vol 2(I), annex 101.

¹⁹³ Witness Statement of S.P., Annexes, vol 2(I), annex 97.

assigned labour. Around 100 people came. They were forced into the yard where they were subjected to the following experience as described by the witness P.V., who was one of their number:

“The Chetniks went through the village and collected the residents, mainly Croats between the ages of 18 and 55. I think that there were about 70 of us. We had to spend the entire night sitting, not moving, on the benches in the yard of the collective – when someone moved they would take them to the dining area and kick and punch them and beat them with metal pipes, steel wires with machine nuts on top, rifle butts. They took people away the entire night. They mounted a machine gun in front of us, and 11 Chetniks armed with automatic rifles guarded us. We were told that if anyone moved they would kill all of us with the machine gun. They continued with the tortures the next morning and they beat some of the people in front of us. They would call out the name of the victim and they were taken to the middle, then they were kicked and punched and beaten with metal pipes, steel wires with machine nuts on top and rifle butts”.¹⁹⁴

4.124 The following day they were interrogated and cruelly tortured. Some men were stabbed with knives. The witness S.P. explains what happened:

“ In the morning of 18 October 1991... they started taking out their frustrations on us. First, Petronije slapped me repeatedly and then hit me with his boot in the chin, which left a scar and two teeth were broken; he continued beating me. At the same time, Ljuban Devetak started calling people, who were then taken out and beaten with iron tubes and stabbed with bayonets before us.”¹⁹⁵

11 of the men were beaten to death: Luka Balić, Josip Turkalj, Marina Mađarević, Đuka Luketić, Mirko Filić, Ivan Sabljak, Marko Sabljak, Mato Hodak, Marko Vidić, Ivan Vidić, and Ivan Đaković.

4.125 Thereafter 50 men were singled out and forced to go and clear a minefield, which was laid in a clover field. This was to be the “minefield massacre” of Lovas. On his way to the field, Boško Bođanac was shot because he was unable to keep up due to being stabbed in the leg during the previous night’s torture.¹⁹⁶ According to L.S., “The Chetniks were quarrelling who was going to kill him, and they shouted to prevent us turning around and watching. After that we heard automatic

¹⁹⁴ Witness Statement of P.V., Annexes, vol 2 (I), annex 95.

¹⁹⁵ Witness Statement of S.P., Annexes, vol 2(I), annex 97.

¹⁹⁶ *Ibid.*



15A EXHUMATION OF A MASS GRAVE IN LOVAS, EASTERN SLAVONIA,
25 JUNE 1997



15B EXHUMATION OF A MASS GRAVE IN LOVAS, 25 JUNE 1997

gunfire. The man was killed on the spot”.¹⁹⁷ Once they entered the field, the men were forced to hold each other’s hands and kick aside the clover as they walked forward. These anti-personnel mines were laid in a sequence to the effect that the detonation of one mine would lead to the detonation of all of them. The group stopped when they saw the mines. The detonation of the one mine caused the consequent chain reaction. 21 people were killed instantly and 12 were wounded as the result of the explosions. Thereafter the Serbian soldiers told those alive to shout out so that they could be rescued. However, those who shouted were simply shot at and more people killed and wounded. The accounts of two survivors, Z.T. and L.S. are given below:

“...They moved around 60 m away from us so they would be safe if we activated a mine. At one point, we saw a green long wire with the mines tied to it. The wire was approximately 15 cm above the ground and hidden but we could see it although it was green. Around which were a couple of mines secured to sticks and a couple of “pašteta”(special anti-personnel mines). There were a lot of explosions and detonations. I saw a boy falling into the mines. His name was Ivan Kraljević. There are two versions: that he himself jumped on the mines and another that a Serbian soldier pushed him with his leg. As he fell down he activated the minefield-the explosion was in a chain reaction because they were stepping mines. Many of them were killed then. I got shrapnel in my lungs. When that happened they asked if there were any seriously wounded. When those who were seriously wounded lifted their arms up, they were shot. A bullet wounded my arm. As the minefield was activated, at the same time a larger number of mines exploded. Ivan Conjar and Mato Hodak got killed beside me. Mato Hodak did not die instantly but he asked to be killed for he was seriously wounded and then I heard the shootings”.¹⁹⁸

“As far as I remember, somebody ordered one of us to pull the string. It was then that K. (one of our guys) allegedly threw himself on a mine. According to the others, a Chetnik came from behind and pushed him onto it. I was standing on the opposite side so I could not say for sure. One or two mines exploded. There was a panic. People started screaming in pain. Several of them fell. There were some wounded. They (Chetniks) started shooting at us from behind our backs. I threw myself on the ground. When they stopped, probably to reload their guns, we heard an order from the road. They ordered the wounded to raise their hands. I heard a

¹⁹⁷ Witness Statement of L.S., Annexes, vol 2(I), annex 98.

¹⁹⁸ Witness Statement of Z.T., Annexes, vol 2(I), annex 102.

clicking sound, they were reloading their weapons. I raised my hand because I was wounded in my back. And then I realised what was going to happen, so I lie down again, and lowered my arm. They resumed shooting. In this second round even more people were killed. I lay in the grass, and therefore could not see anything. Then there was a silence. I heard the sound of a vehicle coming down the road. Then somebody opened a car door and yelled: "Stop shooting! Stop! It's enough." The shooting stopped. Then the man ordered soldiers to go and fetch a truck from the village and take all of the wounded to Šid. Later I found out that he was an officer. I lifted my head a bit and saw dead bodies lying around me, and I heard the wounded who cried for help".¹⁹⁹

Those who got killed were buried after three days in a narrow canal near the graveyard. They were laid one beside another and shallowly covered with soil. Although there are several accounts that a JNA officer stopped the shooting once the explosions had occurred, the witness P.V. emphasises "that the Chetniks and the JNA soldiers were working together".²⁰⁰

4.126 On 18 October 1991 the Serbs used the remaining captured Croats as a human shield in order to enter the remaining Croat houses. According to B.F., who was one of the people who made up the wall, it was in this way that the Serbs protected themselves from possible resistance.²⁰¹ In due course much of the property in the Croatian households was plundered.

4.127 Between 19 October 1991 and the New Year violence against civilians continued. During the period some sixty-eight innocent people were murdered. The majority of the executions were carried out at the Catholic graveyard. The dead included the following: Petar Luketić with his sons Ante and Đuka, Đuka Krizmanić, Alojzije Krizmanić, Zoran Krizmanić, Luka Balić, Josip Jovanović, Marin Balić, Katica Balić, Marija Luketić, Rudolf Jonak, Darko and Željko Pavić, Andrija Devčić, Pero Rendulić, Stipo Dolački, Zvonko Martinović, Marko Damjanović, Anica Lemunović, Ivan Conjar, Božo Vidić etc. The witness N.K. testified about many brutal murders. He was ordered to drive around the village with his tractor and trailer and collect the corpses. He had to pick up the body of his son Đ.K. and his nephew Z.K. together with six others:

¹⁹⁹ Witness Statement of L.S., Annexes, vol 2(I), annex 98.

²⁰⁰ Witness Statement of P.V., Annexes, vol 2(I), annex 95.

²⁰¹ Witness Statement of N.K., Annexes, vol 2(I), annex 103.

“Their dead bodies were then transported to the cemetery where an excavator dug a long canal. Bodies were then thrown into that canal. They didn’t let us arrange them. Bodies were left in the canal in the way as they were being thrown from a tractor-trailer. We were guarded by several Chetniks (whom I didn’t recognise because they weren’t from our village) who prevented us from arranging the dead in the canal. On that job, besides me, were the following locals: M.S., T.L. and S.F. M.S. wrote the names of the victims”.²⁰²

4.128 All Croatian residents had to wear a white bands and hang white rags from the doors of their houses.²⁰³ Their movement was limited by introducing a police curfew from 5.00 pm until 7.00 am. Every Croat was bound to carry a pass. The population was forced to undertake forced labour.²⁰⁴ Every employee in the “police” and other authority structures had an assigned housekeeper (a Croatian woman). Such housekeepers included Š.A.*, M.P.*, D.L.*, A.Š.*, all of who were raped during the course of their forced services. Š.A. served the paramilitary commander, Ljuban Devetak.²⁰⁵ The other Croatian women were taken by force to perform work in the fields or in woods and they were verbally humiliated and touched with the excuse that they wanted to search them. On one occasion, when they were taken to the wood, they showed them a dead body in order to frighten them, and said: “One day you will end up like this”.²⁰⁶ P.M. and others were given the task of making a 70 meter long blockhouse in three days or be killed.²⁰⁷ The name of the local school was changed (it was named after an Orthodox saint), children had to learn and write in Cyrillic letters, and talk in ekavian dialect.²⁰⁸

4.129 During this period the Serb paramilitaries engaged in sexual violence towards Croats. Rape and other forms of sexual abuse and humiliation often took place. A.M.* testified that in November 1991 a Serb soldier gave her an ultimatum: “If you do not sleep with me,

²⁰² *Ibid.*

²⁰³ Witness Statement of P.M., Annexes, vol 2(I), annex 101: “It was forbidden to lock the houses and we had to have a white band around our arms. A white sheet had to be placed also at the gates.”

²⁰⁴ Witness Statement of V.R., Annexes, vol 2(I), annex 105: “Only the Croats worked; the Serbs stayed in the village and the Serbian settlers moved into the houses, unless all Croats were gone.”

²⁰⁵ Witness Statement of F.D.*, Annexes, vol 2(I), annex 106.

²⁰⁶ Witness Statement of Z.B., Annexes, vol 2(I), annex 107.

²⁰⁷ Witness Statement of P.M., Annexes, vol 2(I), annex 101.

²⁰⁸ Witness Statement of V.R., Annexes, vol 2(I), annex 105.

your mother and father will disappear and you will disappear over night” After this he threw her on the bed and raped her which he repeated during the following days. On another occasion, a Serb soldier raped her by pointing a rifle at her forehead until she agreed to take off her clothes and have sex with him. According to the witness the paramilitaries made a habit of collecting groups of Croatian women from the village and then raping them.²⁰⁹ P.M. testified to other sexual abuse of Croatian women.²¹⁰

4.130 In the period just before Christmas the violence intensified. According I.F., on 22 December 1991, policemen from Knin came to the village and collected about 20 Croatian people and began to beat them with metal rods and wooden boards over their entire body. They brought them into the offices of their local government:

“To two of the twenty they drilled holes into the soles of the feet with a power drill, and they drilled a hole below my brother’s knee, I think it was his right one. They also removed 11 of my brother’s teeth, from the right side, he had white gold fillings on these teeth, two other prisoners also lost one tooth each. They removed the teeth with ordinary workmen’s pliers, and they would use a spoon to put salt onto the wounds. They paid particular attention to five of the prisoners : M.M., E.F., V.B., D.R., I.J., they would beat them in the head and the entire body, and especially in the genital area.

My brother and M.M. were tied to two steel posts with handcuffs for 24 hours. I saw my brother in Lovas again, 90% of his body was covered by bruises. He and V.B. had to spit into each other’s faces. They also forced one other to slap and hit. The other 15 were imprisoned until 25 December 1991. They were beaten upon their bodies. B., age 30, was especially beaten in the genital area.”²¹¹

4.131 M.M. was also subjected to torture by the Knin police:

They took me to the basement after the first beating, where they continued their physical abuse. While they were beating us, a Chetnik by the name of Z. took a cup with salt in it, and emptied it into my mouth, although they had already beaten out three of my teeth and I was covered with blood.

²⁰⁹ Witness Statement of A.M., Annexes, vol 2(I), annex 108.

²¹⁰ Witness Statement of P.M., Annexes, vol 2(I), annex 101: “One evening around 21:00, while they were taking me for questioning, I saw through a slot in the door of I.F.’s house how the Serb soldiers forced three girls to serve them naked.”

²¹¹ Witness Statement of I.F., Annexes, vol 2(I), annex 96.

After that, they took me out of the basement into the garage in the yard. I found Đ.R. and his mother in that garage, and after a short period, they also brought M.F. to that garage. Then Radovan Tepevac, aka Obrad, handcuffed us and kicked us with his feet.²¹²

4.132 The established Serb civilian and military administration decided that only 8% of the Croats could remain in the village.²¹³ After the violence at Christmas 1991, the remaining Croats began to flee. Serb families from Western Slavonia moved into their houses. The older Croatian inhabitants, who did not want to leave, were executed. This was the fate of P.K. and her daughter E.K. who were killed after [P.'s] husband was taken to a camp in Sremska Mitrovica. In the camp he was beaten to death. He also died after he had been beaten. His wife and daughter were killed after their house was burnt down.²¹⁴ According to the Administration of the Municipality Lovas of the Vukovar-Srijem County 1,571 people were banished, and around 60 family houses were burnt down or destroyed.

13. TORDINCI

4.133 The village of Tordinci is situated in Eastern Slavonia at the crossroads leading respectively to Vinkovci, Vukovar and Osijek. Tordinci is approximately 20 km west of Vukovar. According to the 1991 census, 1017 inhabitants lived in Tordinci, of which 858 were Croats and 70 were Serbs, while the rest were members of other ethnic groups.²¹⁵ Of the 858 inhabitants, who lived in Tordinci in 1991, 829 were exiled, and up to 1 January 2000, 29 of them are still missing. There are no direct informations on the seizure of Tordinci. According to the happenings around the village, it is clear that a unit from the composition or the reinforcement of the 1st Guard's Proletarian Mechanised Division seized the village.

4.134 The first attack on Tordinci village was on 25 July 1991 around 2.00 am. Five mortar shells, fired from the village of Pačetin (where Serb inhabitants were in a majority) by the JNA and rebel Serb paramilitary groups, hit the village. Four shells hit the centre of the village, one of them hit the roof of the medical clinic, while the fifth shell hit a Croatian house

²¹² Witness Statement of M.M., Annexes, vol 2(I), annex 109.

²¹³ Witness Statement of D.J., Annexes, vol 2(I), annex 110: "...Ljuban Devetak said that in the former state in Lovas were 8% Serbs, but now it will be the contrary, there will be only 8% Croats, maybe none..."

²¹⁴ Witness Statement of S.V., Annexes, vol 2(I), annex 111.

²¹⁵ Ethnic statistics for Tordinci Annexes, vol 2(I).

and destroyed it completely. After the first artillery attack there was no further action in relation to Tordinci until the night between the 19 and 20 August 1991 when a mortar attack from Pačetin and Mlaka began again. Around 40 mortar shells were fired at the village. After this attack, artillery bombardment on Tordinci continued every day. On 7 September 1991, the JNA's first combined artillery and infantry attack was carried out. On 8 September 1991, the mortar attack was aimed at the Catholic Church, where at that time a mass was taking place. The church was seriously damaged.

4.135 On 25 October 1991, there was a combined infantry and artillery attack from the direction of Gaboš, Ostrovo, Pačetin and Antinska Mlaka. The same day, the village was captured by the JNA, and Serb paramilitary groups, as well as by the armed rebel Serb inhabitants. The JNA Commander during the attack was Boro Ivanović from Bobota. During the occupation 11 Croatian inhabitants of Tordinci were killed: Ivan Tomšić, Stanko Sesar, Andrija Božić, Ivica Lovaković, Martin Jožić, Ivan Mrđa, Josip Maletić, Andrija Ištoković, Adam Mišetić, Andrija Katić, Ivica Pecelja.²¹⁶ On the second day, when the village was completely captured, Serb paramilitary groups under the command of Željko Ražnjatović - Arkan and the Military Police of the JNA entered the village. They began executing, torturing and capturing Croatian civilians, without any conceivable military or other justification.

4.136 According to the witness T.R., bodies of dead Croatian inhabitants were lying in the streets. In his street alone he saw 4 or 5 corpses. Many of the bodies were thrown down the well in a bid to conceal the murder. S.V. testifies to the numerous murders of unarmed civilians. He saw rebel Serbs taking a group of Croats, who were wearing only undershirts, to the nearby wood "Budžak", from where long lasting machine-gun bursts could be heard. After that, an excavator driven by D.O. was used to bury the dead. Serbian inhabitants actively took part in torturing and beating the captured Croatian population. T.R. was one of a group of Croatians who were detained in the village centre on 26 October 1991 and beaten and tortured by rebel Serbs.

4.137 A.I. was also brutally tortured. They took him to a manure yard, threw him into it and pushed the barrel of a gun into his mouth. They smashed two teeth, put a knife under his throat and with a police baton beat him all over his body. He was then forced to drink out of a water bowl for dogs, which was full of blood.²¹⁷

²¹⁶ Witness Statement of T.R., Annexes, vol 2(I), annex 112.

²¹⁷ Witness Statement of A.I., Annexes, vol 2(I), annex 113.

4.138 A mass grave, containing approximately 209 Croats was discovered near the Catholic Church. These were inhabitants of Tordinci and the surrounding villages (Antin etc.). The registrar of Tordinci was to list the people in the mass grave, but because of the number of corpses, he was unable to complete the task. Till today the identity of some of these persons is not known. In 1993, the bodies were removed from the grave and transported to an unknown place in Serbia. During this process, members of the Serbian paramilitary groups and the JNA (Armoured Tank Unit of the "C" Artillery under the command of Boro Ivanović) blocked the access roads to Tordinci. Columns of JNA trucks were used to transport the remains of the dead and only 5 bodies of the inhabitants of Tordinci and 9 inhabitants of the village Antin were left in the grave. These were subsequently exhumed and identified, while the others are still registered as missing.

14. VUKOVAR

4.139 In the plans for "Greater Serbia", Vukovar was assigned a leading place in the "new Serbian region of Eastern Slavonia, Baranja, and Western Slavonia". Prior to its almost complete destruction Vukovar was the planned capital of the region. Even after it was essentially razed to the ground, a JNA general spoke of rebuilding the city into a future capital. The extent of the genocide that occurred in Vukovar in November 1991 exceeded any other area during the hostilities. During the three month siege leading up to the November occupation, approximately 1,700 people were killed, of which 70% were civilian. Some 260 civilians were taken from the Vukovar hospital and executed in the grounds of the Ovčara concentration camp on 20 November 1991. As many as 2000 other people were killed after the occupation of the city. The JNA commanders, supported by Serb paramilitary groups, sought to dismantle all signs of Croatian life and culture in the city. The events in Vukovar revealed the true character of the JNA and its transformation into a military force promoting Greater Serbia, and actively participating in the genocide of Croats.

4.140 Vukovar is located in Eastern Slavonia, on the banks of the Danube River, marking the border between the Republic of Serbia and the Republic of Croatia. The city lies approximately 34 km south east of Osijek. It is the capital of the Vukovar municipality comprised of some 28 villages and stretched over about 600 km. In the 1991 census, the population of the Vukovar municipality, was 84,189, of which 43.8% were Croatian, 37.4% Serbian and the rest were Hungarian (1.6%), Yugoslavs (7.3%), and others (9.9%). In the same 1991 census, the population of Vukovar City, was 44,639 of which 21,065 were Croatian, 14,425 Serbian, 4300 Yugoslav and

4,500 others.²¹⁸ Even after the peaceful reintegration of the region, in January 2000 only 7,500 of the original 21,000 Croatian population have returned to the City. It is difficult to estimate the total number who were killed. The Government Office for Detained and Missing Persons, has a list of people still missing. The current number is 511.

4.141 As early as the Middle Ages, in the period before the Ottoman breakthrough to the Pannonian plain, Vukovar was the centre of the so-called Vukovar County, which was under the rule of the Croatian authorities. After the liberation from Turkish occupation in 1745, Vukovar became the administrative centre of Srijem County, which was reintegrated into the Croatian State. As a result of the Turkish occupation, a number of different ethnic groups migrated to the City. The most numerous group was Croatian. There was also a sizeable German population which was forced to leave the City during the Second World War. The Serbian population in the region increased significantly after the Second World War as a result of state organised migration from less developed regions. Vukovar was regarded as a town where all nationalities got along well. (Before the conflict the mayor of Vukovar, Slavko Dokmanović, was a Serb) There is no evidence to suggest that Serbs were unsafe in Vukovar before the conflict. Indeed a clear majority of the Vukovar municipality had voted for an independent Croatia in the referendum of 2 May 1991.²¹⁹

4.142 The occupying army which participated in the Vukovar campaign was comprised of the following units of JNA: the 1st Guard Proletarian Mechanised Division, the 12th, 36th, 51st and 453rd Mechanised Brigade, the Guard Motorised Brigade, the 80th Motorised Brigade, 211th and 252nd Armoured Brigade, the 20th Partisan Brigade, the 16th Mixed Artillery Brigade, and the 63rd Parachute Brigade. After the fall of Vukovar the 80th Motorised Brigade from Kragujevac was on garrison duty in the town.²²⁰ The decisions of Belgrade to deploy the elite Guard Mechanised Division, under the command of Mile Mrkšić, was an indication of the level of ethnic based violence which was to follow. It was a unit that was based outside the Military Regions and directly subordinated to the Federal Secretary of the National Defence in Belgrade.²²¹ One of the Generals of the Guard Division, Major General Dragoljub Arandelović had previously boasted in an interview to the gazette “Narodna Armija” that his unit had “Cleansed”

²¹⁸ Ethnic statistics for Vukovar Annexes, vol 2(I).

²¹⁹ See: the account of the Nobel Peace Prize nominee, Dr Vesna Bosanac, who was the head of the Vukovar Hospital: “Mass Killing and Genocide in Vukovar”, 1991/92.

²²⁰ *Narodna Armija*, 7 November 1991, p. 21, “Udahnuti život gradu” (“To Breathe Life into the Town”), Annexes, vol 4, annex 150.

²²¹ *Narodna Armija* 28 November 1991, p. 13, “Ime koje se pamti po slobodi” (“A name remembered by liberty”), Annexes, vol 4, annex 150.

and is strongly holding the area between the Danube and Bosut, and that in that region government organs are beginning to form (emphasis added)".²²² These ground forces were reinforced by war ships of the River Combat Fleet, part of the 63rd Infantry Brigade from Niš, the 252nd from Kraljevo and the air force.

4.143 These JNA forces were assisted by the units of the Serbian TO from Srijemska Mitrovica, Kragujevac, the volunteer units from Belgrade, Novi Sad, Ruma, Indija, Sombor, Smederevo and Smederevska Palanka from Serbia. Of the rebel Serbs the units from Negotlavci and Vukovar also participated in the attacks.²²³ The Serb paramilitary groups involved in the genocidal activities were Arkan's "Tigers", the "Šumadija Squad" and the "Dušan Silni". Notwithstanding the fact that these paramilitary groups were made up of local people, they were under the command of JNA officers and supported by JNA troops. According to Professor Mark Wheeler, who testified at the ICTY trial of Dokmanović, Serb paramilitaries and the JNA co-operated in the sacking of Vukovar.²²⁴ The involvement of paramilitary groups was also reflected in the comments of the Federal Secretary of National Defence, General Veljko Kadijević, when he congratulated the forces on their victory in Vukovar, paying tribute to the "officers, soldiers and volunteers" who jointly participated in the military operations.²²⁵

4.144 The JNA unit with primary responsibility for the subsequent occupation of City was the Guards Brigade, commanded by Colonel Mile Mrkšić. After the siege of Vukovar, he was promoted to the rank of general in the JNA and later became the Supreme Commanding officer of the Army of the "Republic of Srpska Krajina".²²⁶ When the "Krajina" was liberated by the Croat Army in August 1995, Mrkšić returned to FRY.

4.145 Subordinate to Colonel Mrkšić was Major Veselin Šljivančanin, who had direct operational command of JNA forces in the latter stages of the siege of Vukovar.²²⁷ Major Šljivančanin was the security officer for the Guards Brigade of the JNA, and he also commanded a military police

²²² *Narodna Armija* 2 October 1991, p. 4, "Kao nekad, pod razvijenom ratnom zastavom" ("As Once Under the Unfurled War Flag"), Annexes, vol 4, annex 150.

²²³ *Narodna Armija* 2 November 1991, p. 22, "Srušen mit o Mitnici" ("The Destroyed Myth of Mitnica"), Annexes, vol 4, annex 150.; *Narodna Armija* 7 November 1991, p. 26, "Doprinos TO Negotlavci u oslobađanju Vukovara" ("The Contribution of the TO Negotlavci in Liberating Vukovar").

²²⁴ Agence France Presse, Jan. 20, 1998, Annexes, vol 4, annex 46.

²²⁵ BBC Summary of World Broadcasts, Nov. 23, 1991 Annexes, vol 4, annex 43.

²²⁶ BBC Summary of World Broadcasts, May 22, 1995 Annexes, vol 4, annex 44.

²²⁷ Witness Statement of E.M., Annexes, vol 2(I), annex 127, who acted as the courier to Major Šljivančanin.

battalion, which was part of the brigade. Later, he was promoted to the rank of colonel and sent to command an army brigade in Montenegro (FRY). After the fall of Vukovar he explained to journalists that the motives of the JNA in the city had been underpinned by a wish “to safeguard our soldiers and civilians that the Croatian forces were holding as captives. We wanted that the people of Vukovar could live in peace”.²²⁸ Šljivančanin was primarily responsible for ordering and supervising the execution of the 260 civilians who were taken from the Vukovar hospital on 20 November after the surrender on the previous day.

4.146 Another part of the brigade that took an active role in the siege and occupation of the city was the JNA’s special infantry unit commanded by Captain Miroslav Radić, a close associate of Major Šljivančanin. He now lives in Serbia. Lt. Col. Miodrag Panić headed an elite motorised army unit sent from Belgrade.²²⁹ He sought to justify the destruction of Vukovar by saying that Vukovar was the “fortress of fascism”.²³⁰

4.147 The struggle of the JNA to achieve an all out conquest of Vukovar started on 25 August 1991, after an initial artillery attack on the suburb of Borovo Naselje. In the case of Vukovar, a purely military strategy would have dictated a blockade of the town by minor forces; thereby affording an opportunity for more substantial forces of the JNA to move forward into the Croatian hinterland. What emerged was a priority not only to control the region, but also to entirely extinguish the Croatian population that lived in it. This is clear from the witness statement of V.Đ., a JNA parachute commando who was transferred to one of the Serb “special police forces”:

“...in October, we set off by personnel carriers to clean up Vukovar. [...] Slobodan Trošić led our group. He introduced us to the chief commander Jovan Savić who told us that he was an active soldier, a native of one village near Slavonski Brod and that he was serving in Pančevo. He was a sergeant by rank. One morning before an operation, he delivered us a lecture and he told us that he had been on battlefields in Sarvaš, Dalj, Beli Manastir where he had killed Croats regardless of their old age, age, gender and whether they were civilians or members of the National Guard. He said that he butchered women, children, he had killed them at a close range with a gun in the mouth, he had locked up people in rooms that he blasted later on ... During one cleaning

²²⁸ United Press International, 21 November 1991 “Army seeks to justify destruction of Vukovar” by Nešo Đurić, Annexes, vol 4, annex 41.

²²⁹ *Ibid.*

²³⁰ *Ibid.*

operation of the town, I was in the rear with my group. We went from Sajmište to Mitnica. Our task was to clear all houses and basements. In one house, we found two members of the National Guard and about 10 civilians. Some of them were older and some of them were younger. Jovan Savić killed one civilian right away and he blindfolded members of the National Guard and brought them in one room. He placed civilians between them, he put bombs, with the safeties pulled out, in hands of members of the National Guard, he locked up the room, came outside and told us to wait for him to finish the job. After a while, an explosion was heard and Savić went inside and we heard several machine-gun bursts and screams. After a while, he stepped outside and said that those inside were quiet and that we could proceed.”²³¹

According to this witness’s statement the “procedure” was repeated several times that day.

4.148 In the Spring and Autumn of 1991, villages such Sotin, Ilok, Šarengrad, Lovas, Bapska and Tovarnik, which are dealt with in the paragraphs above, had been captured relatively easily, albeit with great violence. The assaults on these villages were characteristic of the military excesses against a civilian population that were to occur on a greater scale in Vukovar. In all these campaigns the JNA used a highly inappropriate arsenal of heavy weaponry against a predominantly civilian defence force that it was known were only armed with hunting guns and a small assortment of other light weaponry. Thereafter the JNA participated either directly or indirectly in a wide range of brutalities designed to achieve ethnic cleansing and extermination of Croats. After the occupation of the aforementioned villages, a relatively stable borderline was determined between Croatian and Serbian forces, with the exception of Vukovar, which had a free corridor towards Vinkovci. The difference between Vukovar and the territory seized in the early summer days of the conflict is that the Croatian population refused to flee the town, staying put largely in the basements of their own houses and other public buildings, most notably the Hospital building.²³²

4.149 The bombardment of Vukovar by the JNA was probably the most sustained attack on an urban area in Europe since the Second World War.²³³ The estimate daily round of missiles is 10,000. The head of the Vukovar Hospital, Dr Vesna Bosanac attempted to estimate the loss of life which the siege caused:

²³¹ Witness Statement of V.Đ., Annexes, vol 2(I), annex 119.

²³² *The Guardian* (London), November 1991 Annexes, vol 4, annex.

²³³ *Ibid.*

“From 25 August to 20 November 1991 there were 1850 wounded (70% civilians) of all nationalities.....In my opinion, about 1,100 persons got killed during these 3 horrible months and only about 30% of them were Croatian soldiers or policemen while about 70% were civilians, including many elderly women and children”.²³⁴

4.150 Aside from the extensive loss of life and injuries the three months of military assault destroyed almost the entire fabric of Croatian cultural life. The old baroque city nucleus with all of its cultural, historic, religious, business, and residential buildings, was completely destroyed. From among approximately 9,000 family houses, less than a thousand houses were left standing. 5,580 flats were also destroyed. The following buildings were demolished: the Catholic Churches of St. Philip and Jacob (1730) and St. Roko (1740); the Eltz castle (1749), the Hall of workers (1897), the Town hall (1818), the buildings of the Srijem County (1777), the Court house (1900), the museum, the house in which the Nobel prize winner Lavoslav Ružička was born, the library with 90,000 volumes, the Bauer collection of paintings, three grammar and six primary schools and four cemeteries. It is estimated that about 90% of all other buildings were destroyed.²³⁵

4.151 Most of the city's inhabitants spent 3 months in basements. Some were in the basements of their own houses. Others were in collective shelters in major buildings in the various parts of town, such as for example “Olajnica” I and II, the basement of the “Varteks” store, the shelter in Strossmayer Street, the basement in the “Vladimir Nazor” elementary school. In the majority of these collective shelters there were more than 500 people. Owing to the duration and intensity of the attacks, civilians lived without electricity, water, and food. Many people rarely stepped out on to the streets. Many civilians were killed when they tried to get food, water from cisterns and wells. The dead included children. Dragana Jelača, 8 years old, died from shelling when she came out of her house to get some fresh air. She had wounds to her chest, lungs, liver, spleen, left kidney, guts and both thighs. Two sisters, 7 and 11 years old, were badly hurt when they left their shelter to go to the toilet after 4 days of confinement.²³⁶

4.152 It became a defining aspect of the siege that countless bodies of dead people could not be buried due to the danger of the shelling. Corpses remained on the streets, in yards and basements. The Croatian volunteer soldiers transported 520 dead people to the hospital for identification. 158

²³⁴ Mass killings and Genocide in Croatia 1991/92, page 229: statement of Dr. Vesna Bosanac.

²³⁵ *Ibid.* at p.217.

²³⁶ *Ibid.* page 230, statement of Dr. Juraj Njavro.

among them were Croatian soldiers, 24 were members of the Croatian police, and 338 were Croatian civilians (men, women, and 8 children). This mass group of corpses was taken to the “German catholic cemetery” near the Eltz castle where approximately 300 bodies were buried. The bodies were also taken to the sport stadium “Sloga”. Around 70 coffins were left on the grass and field around the stadium. When there were no coffins left, marks with numbers and names in bottles had to be hung from the necks of 529 dead bodies.²³⁷ They were left unburied on the town meadows. Even the hospital was unable to properly dispose of the people who died there. A number of bodies were left in the car park of the Harbour headquarters across the road from the hospital. Belgrade later tried to suggest that the dead bodies were Serbians. This point is contradicted by Doctor Bosanac who had to make the difficult decision of simply leaving the bodies in the car park.²³⁸

4.153 On 5 September 1991 the JNA captured a suburb of Vukovar, Sajmište. 90 civilians were killed in the process of the occupation. In the next few days the JNA and the paramilitaries engaged in mass looting and violence. At least 30 more civilians were killed. The building of the Velepromet commerce was established as a concentration camp which would subsequently house prisoners from Vukovar after the surrender on 19 November. Organised killing and torture would later take place in the camp. At the time the JNA also captured Petrova Gora. The Muslim JNA soldier, E.M., who became the courier to Major Šljivančanin estimated that before the final fall of Vukovar at least 50 people were killed at the Velepromet Camp. The witness gives an account of the JNA conduct in Petrova Gora:

“Every day 4-5 people were brought and killed. They were killed either by weapons or slaughtered. Sometimes even mass killings took place. Captain Miroslav Radić was the commanding officer...[He] commanded people to be killed in a house near the store. In Nada Dimić Street, an elderly lady, a Croat who lived with her daughter was killed by Spasoje – nick-named “Štuka” – from Ruma. He raped the daughter and what happened to her afterwards I don’t know. Spasoje was a member of my platoon....The local Serbs, the Serbs from Vukovar, were also involved in the killing”.²³⁹

²³⁷ *Ibid.* page 229, statement of Dr. Vesna Bosanac.

²³⁸ *Ibid.*

²³⁸ *Ibid.*, page 230, statement of Dr. Juraj Njavro.

²³⁹ Witness Statement of E.M., Annexes, vol 2 (I), annex 127.

4.154 In the subsequent days attacks on the city, including air attacks, were launched from these newly acquired JNA sites in Petrova Gora and Sajmište. According to Dr. Bosanac two 250 kg bombs were dropped directly on the hospital “although it was clearly and appropriately marked by Red Cross signs at all times (two red crosses 30 x 30 metres in size were placed on each side of the hospital).”

4.155 Even before the actual centre of the city was taken, killing and torture had begun. The witness A.S.* states how she was targeted because her name appeared on a list of Croats who were to be killed:

“On 16 September 1991 M.L., called M., from Vukovar, came to my backyard from Zrinjska Street [...] and spoke to me: ‘A., what are you doing?’ [...] M. told me that he was going to kill me, that is, that he was sent by the Serbo-Chetnik formation that gave him a list of Croats that should be killed. On that occasion he showed me the list and my photo that was clipped to the list, while he covered two photos with his hand, and I could not see them, that is, I could not determine the identity of the other persons. On the list that M. showed me, and some of the names he read to me, I saw that there were about thirty persons on it. He told me that he killed Marijan Bodrožić, and what I, personally, later found out to be true, although I saw Marijan lying down in M.T.’s garden, Z. 7, while Marijan’s house is at Z. 3.

During the conversation with M. I tried to talk normally in a way that I tried to persuade him that it was not necessary for him to do so, since I know him personally and also his family, but he did not want to come to his senses, but he started using vulgar language, telling me that I was “the Ustasha whore and that I should be fucked, and later killed”. I told him then that I was an older woman and that I could be his mother, and if he wanted to have intercourse, that there were younger women who would gladly have intercourse with him. [...] Then he came to the bed, where I was already sitting, made me lie on my back, and tore off my clothes completely, lay between my legs, and with his fingers he pushed his penis into me, and kept lying on me one or two minutes.”²⁴⁰

4.156 The witness T.C.* gives an account of what took place in the suburb of Vukovar, Čakovci. She recalls how one man was shot by a sniper as he fed his dog. Vinko Lucić and his wife Luja were dragged from their house and killed in front of it:

²⁴⁰ Witness Statement of A.S., Annexes, vol 2 (I), annex 126.

“Chetniks killed at her own house Anica Kovačević and her son Josip Kovačević (10 years old). Anica was killed on a couch and Josip was killed in his bed...Some time later, Ivan Karagić was killed in his yard. He was killed by Miloš Šobota and his son Dragan Šobota. After all this, one day at about 4 p.m. Radivoj Ivković, called Šiljo (about 25 years old), entered my house. He locked the house door and the kitchen door. I can not say who was outside. He started shouting, then he grabbed me and told: “You are the first one, I’ll kill you!” Then he tied my hands behind my back with some wire. He pushed me on a couch and ordered me to take off my clothes. As I could not do it with my tied hands, he tore it and raped me. Then he said me: “Stand up now!” As I was afraid, tied and destroyed I could not do it. Then he searched the whole house, he was looking for weapons allegedly. I had no weapons because my husband died in 1987 and I did not either hear or see my daughter for one year. As I had not any pension I worked for years by all these Serbs that did it to me”.²⁴¹

4.157 There are several accounts of Croats being crucified. One by M.D. in relation to the fate of a person called Cigo who lived in the Koreja district. “He was crucified on a wagon and they (the Serbs) fired a mortar at him”. A similar fate befell the husband of the witness F.J. who describes how Serbian soldiers crucified her husband (he was alive) on a railroad wagon and fired a tank shell at him.²⁴² G.K.* was captured on 15 September 1991, not far away from her house together with N.F.*, M.K.*, and Z.R.* (all of them Croatian women). The Serbs locked them up in the basement and forced them to undress completely. Each one of them was raped.²⁴³ J.P., witnessed the killing of his nephew Z.P. as he hid in a deserted property. Members of the Serbian paramilitary formations stopped him as he attempted to supply food to civilians. They forced him to lie on the ground. Then one of the soldiers went into a nearby house and took out an electric chainsaw. The soldiers then proceeded to cut off Z.’s arms, legs and finally his head with his uncle looking on helplessly from his hiding place. He watched four Serbian paramilitary soldiers throwing parts of the body into a nearby ditch and walk away singing.²⁴⁴

²⁴¹ Witness Statement of T.C., Annexes, vol 2(I), annex 128.

²⁴² Witness Statement of F.J., Annexes, vol 2(I), annex 129.

²⁴³ Witness Statement of G.K., Annexes, vol 2(I), annex 130.

²⁴⁴ Witness Statement of J.P., Annexes, vol 2(I), annex 118.

Mitnica

4.158 Other than the genocidal events that took place in Vukovar city proper, atrocities were also committed in the city's suburbs. Vukovar is made up of several suburbs that included Mitnica, Borovo Naselje, Centar, and Ovčara. Before the final surrender of the city on 19 November 1991, all communications were cut off between three key suburbs of the city namely Mitnica, Vukovar Town Centre and Borovo Naselje. Each part of the municipality had to defend itself. The first part of the city to be captured was Mitnica, which fell on the afternoon of 18 November. Negotiations for surrender began immediately between the commanders of the Mitnica Defence and the JNA.²⁴⁵ The JNA arrested all Croat men between the ages of 14-70 years, and even civilians were labelled as POW's and transported to Ovčara,²⁴⁶ Camp Sremska Mitrovica²⁴⁷ via Negoslavci, Šid and Adaševci. As the ICRC and EC monitors accompanied the convoys, they were unable to observe what happened to the remaining civilians, some of whom were transported to Camps at Stajićevo and Begejci. The witness M.M. describes a conversation with one participant – Jovo Savić – who described his role at Mitnica:

“Then on several occasions, I was with him when he talked to which battlefields in Croatia he had been. He told us that at Mitnica in Vukovar he butchered people, shot them in the mouth with a gun, threw bombs into basements where women, children and old people were. He said that he had locked up a group of people in one toilet and gave them bombs, with safeties taken out, to hold and that after a while those bombs exploded. When he held a speech to an armed unit in Novi Grad, he said that everything had to be cleaned from Croats and Moslems and that everyone should fight for Greater Serbia and for Slobodan Milošević...”²⁴⁸

4.159 M.F. testifies about the strength of the artillery attacks on Mitnica, where there were no military objects but only civilians. He was a

²⁴⁵ Witness Statement of A.D., Annexes, vol.2 (I), annex 132.

²⁴⁶ Witness Statement of P.B., Annexes, vol 2(I), annex 146, who remembers 3 convoys coming into Ovčara, the first of which was from Mitnica. This later proceeded to Mitrovica. According to A.D. soldiers were taken to Ovčara and civilians to Velepromet.

²⁴⁷ Witness Statement of S.R., Annexes, vol 2 (I), annex 133, who surrendered at Mitnica and was taken to Mitrovica, where they were beaten by 2 rows of Chetniks with sticks, rifles and truncheons. They were stripped, and about 100 were put in a room roughly 50 sq. mt. in size. P.B. also went to Mitrovica where he says they were strip searched and beaten. From there he was transferred to Niš and interrogated by the KOS (Serbian Counter Intelligence Service), who obtained forcible confessions.

²⁴⁸ Witness Statement of M.M., Annexes, vol 2(I), annex 122.

member of the artillery unit commanded by Žarko Tkalčević. In the end of August, or more precisely, at the beginning of September, the unit was redeployed near Negoslavci from where it attacked Mitnica. This unit included six 120 mm mortars. The unit launched approximately 300 shells to the area of Mitnica every day, given that it operated during days as well as nights.²⁴⁹ The area of Mitnica was also shelled from the directions of the barracks, Danube, graveyard, Vučedol, which practically means from every side. M.Š. testifies about it as well as about numerous civilians of Croatian nationality who died as the result of constant shelling (according to the statement of M.Š., Milan Lukinić, Franka Brešić, Bruno Brešić, Željka Brešić, who was five months pregnant, and Tomo Babel were among numerous civilian victims).²⁵⁰

Borovo Naselje

4.160 When the JNA troops entered Borovo Naselje, there were about 4000 people in the shelters.²⁵¹ The majority of these were elderly and crippled. About 1000 civilians were in the shelter at the Borovo Commerce. According to D.G., as the Serbian forces entered the area they were killing those who did not leave their basements by throwing bombs through windows. The Commerce shelter was at one point set on fire by the JNA. There were at least 850 people there, including women, children and invalids. Those Croatian guards who went to put out the fire did not return.²⁵² K.O. was one of the wounded who sought refuge in the Commerce building. He had previously had an arm amputated as a result of being hit by shelling outside his home. During the attack on the Commerce building he remembers that the JNA used tear gas. They also shot into the building killing at least 7 or 8 people. This was in spite of the fact that a white flag was hung from the windows.

4.161 The JNA commanded by Colonel Košutić and Serb paramilitary groups surrounded the shelter on the 19 November 1991 and demanded that the people of Borovo Naselje surrender. After being assured that no one would be harmed, the defenders gave up their weapons and surrendered,²⁵³ though they insisted that detailed and completed lists of all the people present should be made. This task was never completed as the JNA immediately started separating the defenders from the rest of the civilians. All men between the ages of 18-60 were categorised as “defenders”.

²⁴⁹ Witness Statement of M.F., Annexes, vol 2(I), annex 125.

²⁵⁰ Witness Statement of M.Š., Annexes, vol 2(I), annex 124.

²⁵¹ Witness Statement of D.G., Annexes, vol 2(I), annex 134.

²⁵² *Ibid.*

²⁵³ Witness Statement of P.S., Annexes, vol 2(I), annex 135.

According to D.K. a person was categorised as a Croatian soldier on the basis that they were capable of carrying a gun. The JNA filled 13 buses with these “Croatian soldiers and Ustashes”.

4.162 The bulk of the men were taken to Stajićevo near Zrenjanin (Serbia). There were about 1,300 prisoners in the camp, 170 of them were wounded and 210 of them were sick. There were 23 children and about 150 prisoners that were 60 to 80 years old.²⁵⁴ The prisoners were kept in an old abandoned building made for cattle. The physical abuse started as soon as they got off the bus. They had to come out one by one and they had to walk towards the stables with “their hands on their backs and their heads tilted down”. The members of the JNA and the Serb paramilitary groups beat them with nightsticks, rubber sticks, hands, legs, and boards. They were on the concrete so many of them suffered from frostbite. About 900 prisoners sat on the concrete with their legs contorted, their heads down and their hands on their backs. Every lifting of the head was punished with beatings. Ten to twelve prisoners shared a space of 2,5 x 2,5 square meters.²⁵⁵ They were taken to interrogations and beatings almost every day, especially at night and many people were also executed.²⁵⁶ According to the witness D.K. at least 10-20 people were killed in the first few days. Thereafter, D., like many of the prisoners, was taken onto Sremska Mitrovica in December 1991, where the torture continued. At least 2 men from his room were beaten to death.²⁵⁷ K.O. (the witness with the amputated arm) was also taken to Sremska Mitrovica. At one point he was tortured by 4 guards who pulled at the stump on his arm until the wound opened. He wet his pants. At a later stage he had his foot put in a plaster cast because his heel was broken. However, the nurses put glass wool in the plaster cast in order to torture him.²⁵⁸

4.163 The women, children and remaining men in Borovo Naselje, who were considered capable of fighting, were put into buses and a convoy was sent towards Dalj. Upon reaching Dalj, Croat women were separated from Serb women. At one point when the prisoners were in a hall in Dalj the exhausts of the Serb truck were diverted into the premises for over two

²⁵⁴ Witness Statement of Dr. N.K., Annexes, vol 2(I), annex 136.

²⁵⁵ Witness Statement of Z.K., Annexes, vol 2(I), annex 157A: “I was put in the stable on half square meters. My legs were underneath my body and I became stiff. I got the “boarding and lodging” in the concrete feeding-trough where horses used to eat before.”

²⁵⁶ Witness Statement of V.H., Annexes, vol 2(I), annex 137: “... We all shivered with cold, fear, pain, but ... they had no mercy. One person went to relieve himself and they shot him with the machine-gun, and they beat the other one and the reservist jumped on his neck with a boot.”

²⁵⁷ Witness Statement of D.K., Annexes, vol 2(I), annex 138.

²⁵⁸ Witness Statement of K.O., Annexes, vol 2(I), annex 139.

hours.²⁵⁹ Some of the accompanying men were abducted and taken to an unknown destination. The women proceeded to a concentration camp in Negoslavci (Serbia). J.Z. testifies to the experience of the women in the camp:

“...only women, without the children, were forced into some kind of liquor warehouse. There was a lot of broken glass on the floor. They made us to take off our shoes and walk barefooted on the glass...They cursed my Ustasha mother and one woman tried to protect me telling them not to swear at me. At one moment, being provoked, she cursed their Chetnik mother. One Chetnik grabbed her hair, drew out a knife and slaughtered her...”²⁶⁰

Central Vukovar

4.164 On 18 November 1991, the JNA infantry and the Serbian paramilitary formations entered the Centre of Vukovar. The JNA tanks passed through the City and shot at every Croatian house and every shelter where Croat citizens were hiding. The JNA infantry called upon survivors in the basements to come out on the road and surrender. M.R. was one such survivor. She was hiding in the basement of her house with her husband and children when the JNA tanks stopped in front of the house and shelled it first. Then they called her to come out. Her husband, S.R., came out first and he warned the soldiers that the children were in the basement:

“...I hear a body falling. My husband is lying dead on the steps, blood is running, I scream, the children yell...I scream and beg them not to kill my children. I gathered all my sons. I dragged my husband from the steps to the couch. I was covered with blood, the brain was coming out, and it was so warm on my palm. Screaming I took a rag and I wrapped up his head so the children would not see the brain. I kept kissing him and I wiped the blood until the children stopped me and begged me to run saying: ‘Mom, let’s run away, daddy is dead, let’s run away’. We went upstairs... He searched for the gasoline and he put everything on fire. The house was burning, everything was smouldering...”²⁶¹

4.165 In the immediate presence of the JNA officers, members of the Serb paramilitary groups engaged in horrific violence. They came into the house of V.O. First they killed his mother (born in 1926), shooting her in the temple. They then opened continuous fire on her dead body. The

²⁵⁹ Witness Statement of D.G., Annexes, vol 2(I), annex 134.

²⁶⁰ Witness Statement of J.Z., Annexes, vol 2(I), annex 140.

²⁶¹ Witness Statement of M.R., Annexes, vol 2(I), annex 141.

same soldiers continued to walk down the street breaking windows on the various basements and then throwing hand grenades inside the basements. According to O., the Barković family of 8 civilians was killed in this way.²⁶² The paramilitaries also came to the front of N.L.'s basement. They called over the megaphone for her and her family to come out with their hands on their heads. The witness' son, B.L., was shot as he came out of the front of the door. They then cut off his left leg. He lay dying in front of her and she was not allowed to help him. The paramilitaries then brought out three completely nude men and they said: "... You see this now, recognise them because the same thing will happen to you." Thereafter the witness and the rest of her family were forced to walk through the City. It was full of dead bodies and at times they had to walk across corpses. They were later taken to the concentration camp Velepromet.²⁶³

4.166 L.D. testifies to a similar experience of blood-strewn streets. Having been forced out of a basement shelter, which the JNA and the members of the Serb paramilitary groups entered:

"...many dead, bloody people were found and one woman had a cut abdomen, her baby was taken out and replaced with a dog with the sign: "This is what Croatian mothers give birth to." The container was full of hands, heads, legs, sticking out, ... and you could smell the bad stench."²⁶⁴

4.167 Other Croat prisoners who were apprehended in the street of Vukovar were taken to the area called "drvena pijaca" (Rade Končar Square). Although they were given a guarantee that nothing would happen to them, the JNA killed a Croat prisoner in front of the crowd, shooting a bullet through his head. The prisoners were then taken to the Lužac area where they were beaten and abused. Further executions took place. The witness, B.R., saw about 40 members of the Croatian Army with their hands tied on their backs with a wire. It appeared that they had all been shot, although some of them were still alive. The group of prisoners was then taken on to the village of Bršadin and thereafter the village of Dalj. Then in both places the torturing and killing continued.²⁶⁵

4.168 B.B.* was captured as a civilian on the day of the occupation:

²⁶² Witness Statement of V.O., Annexes, vol 2(I), annex 131.

²⁶³ Witness Statement of N.L., Annexes, vol 2(I), annex 142.

²⁶⁴ Witness Statement of L.D., Annexes, vol 2 (I), annex 143.

²⁶⁵ Witness Statement of B.R., Annexes, vol 2 (I), annex 115.

“When they captured me, they took all my clothes off, they tied my hands and legs and they put a shirt in my mouth so that my lungs would burst. Then they would slowly cut my genitals, [and] around my left ear and my left hip. I was tied all night and I lay on the concrete. They put out cigarettes on my stomach and arms....Since I was all worn out due to the beatings, one military policeman threw me into a manhole. There I hooked on the fittings and that saved me from falling to the bottom. An hour and a half later I got out of that hole and I went through the village of Lužac. I bumped into the machine-gun nests and I was captured there for the second time....They brought me into a basement full of water and coals and 15 more people were there. They beat us with spades, shovels and rifle-butts. When I lapsed into unconsciousness they poured water on me and then they continued to beat me....They knocked my teeth out, the bone under my eye was crushed and my jaw was fractured....My wounds suppurated...”²⁶⁶

4.169 The witness M.M.*, another civilian, was also captured on the day of the occupation. She was first taken to the Velepromet building, and later driven in buses to Šid and Šabac (Serbia). In March 1992 she and her family (mother, little sister and brother) taken back to Vukovar:

“There I met J. (elderly woman) and she invited me to visit her. There we spent the night. As her house was near the road, reservists noticed me. First entered two of them – Braco and Mihajlo (about 40 years, called “Faca”). They asked if they could speak to me, then they entered the room, ripped my clothes and raped me one after another. They were telling me: “Come on Ustasha girl, now you will see how Serbs are doing it.” Then came Ljubo Stojančić (17 years) and an unknown man (40 years, blond, high, thin, called Crnogorac). Then they too raped me. (All of them were neighbours from the street and I fought with each of them.) During the rape I was bleeding. Iko ordered Crnogorac to bring a beer bottle and they forced me to sit down on it. The rape lasted from 9 pm to 2 am [...] Crnogorac, Braco, Mihajlo and Ljubo raped me again and they invited two more men – Savo and Lapo who lived in the same street. It lasted to 3, 4 am Then Faca stayed alone (it was his apartment) and they raped me till the morning. All that time my sister was in the room, they covered her with coats and blankets, she was screaming. When Faca stopped torturing me I fell asleep. I heard screams but I could not do

²⁶⁶ Witness Statement of B.B., Annexes, vol 2(I), annex 144.

anything. When I woke up, little girl was red due to crying and said: “He touched me down there.” She was crying and telling that it hurted her down there. I looked at her panties and there was blood on them (she is visiting a physician even now). Then I went to the headquarters and reported them to Pajić. [...] The following evening Crnogorac entered though the window, threatened me with a knife, pushed me on the bed and raped. All that happened in front of my little sister (even today the little girl remembers it very well, better than me). Crnogorac was coming every evening (it lasted for two weeks). I had not my period all that time. The little girl was very afraid of night. She was telling: “Now they will come and torture us.” The rape was happening always in front of her.”²⁶⁷

4.170 The witness B.I. gives a further account of executions which he witnessed, as well as the attempt to kill him:

“On 21 November 1991 we were forced to surrender to save the civilians, the military police then put us in trucks and drove us towards Trpinja and Bobota. At the butcher’s shop “Životinja” a group of about 35 people were thrown out. Then I heard gunshots and these people never returned. [...] On 22 November 1991 after midnight they took my group out to be shot, in the rain. I was taken by Z.M. who said: “March Ustasha”.

There were 6 other people in my group, but I cannot remember their names. The group were taken by Dragan Nikić and Sava Savić from Savulje. Mačvan took us to a meadow where there were two tractors, one had the equipment necessary for digging and the other was equipped for earth moving, but I was not allowed to look left or right. There was a massive grave dug out in which I saw many corpses. In front of me was the group led by Savić, I saw as he killed everyone in his group with a Kalashnikov. These people were shot next to this canal-grave and as they were shot their bodies fell into the grave.

After those people were killed a second group came that was led by Dragan Nikić from Avulse and Savić. As I was waiting in line, I saw how Dragan Nikić killed the people with a chainsaw. [...] As I was watching I was not thinking about anything, I was merely waiting to be killed. Dragan Nikić slaughtered a young girl in my hall, she was a blonde by the name of J., daughter of M.J. but I do not know her father’s name. [...] Then Nikić said: ‘I have 500 Ustasha bitches on my soul and I have a room for 5000

²⁶⁷ Witness Statement of M.M., Annexes, vol 2 (I), annex 117.

more.’ While he was talking he looked me in the eyes. When my turn came, Zdravko Mačvan took a knife in one hand and lifted my head, with his other hand he ran a knife along my throat and I fell into the grave with the other dead bodies, and then he shot me twice. I still have two bullet scars on my right upper arm. The cross on my rosary saved my life. That cross was made of metal and happened to come between my throat and the knife, it was almost cut in two, only one edge remained intact, and the cross became embedded in my throat..”²⁶⁸

Vukovar Hospital

4.171 Before the war, the Vukovar hospital (established in 1857) had 421 hospital beds, 93 doctors and 1200 employees. It became a central location in the struggle for the city that it endeavoured throughout the three month period to keep alive the thousand plus injured people that were admitted to its wards. In the last days of the siege, several hundred people had sought refuge at Vukovar Hospital, in the belief that it would be evacuated in the presence of neutral international observers. This evacuation had been agreed upon in Zagreb, in negotiations between the JNA and the Croatian government on 18 November 1991.²⁶⁹ The head of the hospital Dr. Vesna Bosanac went to negotiate with the JNA on the 18 November 1991 to the same effect.²⁷⁰

4.172 On the afternoon of 19 November 1991, JNA units arrived at Vukovar Hospital and took control of it. This action occurred in contravention of a “Protocol of Agreement on Neutralisation of the Hospital of Vukovar” which stated that the evacuation would take place in the presence of international observers. Those inside the hospital offered no resistance. The EEC monitors were supposed to arrive on 19 November 1991, but by that evening the hospital had been taken over by the JNA forces, under the command of Major Šljivančanin. The ICRC representative, Nicolas Borsinger, who tried to enter the hospital was prevented from doing so by them: see photograph at Volume 3, Plate 10.8..When refused entry to the hospital he said: “You have noticed that the International Committee is not able to perform its task. It can’t be held responsible for what happened here. I was prevented from entering the

²⁶⁸ Witness Statement of B.I., Annexes, vol 2(I), annex 155.

²⁶⁹ Written Agreement on neutralization and free evacuation of the hospital: Reprinted in Mass Killing and Genocide in Croatia 1991/92. The agreement was signed by the JNA and the government of Croatia under the auspices of the ICRC and the EEC Monitoring Mission, Annexes, vol 2(I), annex 160.

²⁷⁰ Mass Killing and Genocide in Croatia 1991/92 at page 229 (Dr. Bosanac).

hospital grounds.” (see Appendices, vol 5, appendix 2). The hospital remained in the sole control of the JNA and Serb paramilitaries.²⁷¹

4.173 On the 20 November 1991, Major Šljivančanin ordered the nurses and doctors in the Hospital to assemble for a meeting. While the medical staff was attending the meeting, the JNA and Serb paramilitary soldiers removed about 400 men from the hospital. Among those removed were wounded patients, hospital staff, the city’s defenders, political activists, and other civilians. By the time the meeting ended, the soldiers had removed almost all of the men who were at the hospital. Approximately 100 people were subsequently transferred to the concentration camps at Velepromet and Ovčara.²⁷² Another 300 people were loaded onto buses where they were held under JNA guard. Later that morning, the buses left the hospital and drove to the JNA barracks in the south of the city. The men were kept inside the buses at the barracks for about two hours, where the Chetniks taunted them. During that time, on orders from Major Šljivančanin, about 15 of the men were removed from the buses, apparently because the men were part of the hospital staff or were related to staff members. The remaining people were not seen again. It is thought that at least 260 civilians from the hospital were then taken to Ovčara and Velepromet and executed.

Ovčara

4.174 The evidence in support of the assertion that the 260 were murdered is as follows. The buses with the men were driven to a building at the Ovčara farm, about four kilometres south-east of Vukovar. There JNA soldiers and Serb paramilitaries took the men from the buses and forced them to run between two lines of soldiers, who beat the men as they passed. The witness E.Č. was part of the group. During the bus ride to the farm he realised that he knew one of his Serbian captors, V.K. He told him ironically that he should not have gotten on the bus and that it did not look good for him. He saw at least two people beaten to death as their heads were smashed against the concrete floor. Inside the farm building, the soldiers continued to beat the men for several hours, with a new set of soldiers coming in every few minutes to continue the beatings. At all material times, Slavko Dokmanović, the President of the Vukovar Municipality, was present. Č. would have, in all likelihood, have

²⁷¹ BBC Summary of World Broadcasts, 22 November 22, 1991, Annexes, vol 4, annex 42, stating that the ICRC representatives were thrown out of the Hospital in spite of the agreement to the contrary.

²⁷² Witness Statement of E.Č., Annexes, vol 2(I), annex 145, who was taken to Velepromet and the witness statement of S.G. (28), Annexes, vol 2(I), annex 157 C who was taken Ovčara.

received the same fate as those who were killed. However, in Ovčara he was saved by a Chetnik who had done business with him before the war.²⁷³

4.175 The men taken from the Vukovar hospital were held in the building at Ovčara. The Serb authorities listed identifying information about each man and then divided the men into groups of between ten and twenty. The soldiers loaded each group in turn into a truck, which left the farm and then returned empty a short while later. The truck travelled south from the Ovčara farm building on the road leading to Grabovo. Approximately one kilometre south-east of the building, the truck moved onto a dirt field road which ran between a cultivated field and a wooded ravine. At the head of the ravine, approximately 900 metres from the Ovčara-Grabovo road, the soldiers removed the men from the truck. At this spot, JNA and Serb paramilitaries under the command and supervision of the JNA's Colonel Mile Mrkšić, Captain Miroslav Radić, Major Veselin Šljivančanin, and Slavko Dokmanović²⁷⁴ were assembled on the site. On the evening of 20 November 1991, these soldiers shot and killed about 260 men. After the killings, the bodies of the victims were buried in a mass grave at the same location.²⁷⁵

4.176 The witness P.B. worked as a tractor driver in Ovčara. He recalls seeing blood stained tractor-trailers the next morning:

“The remaining prisoners were locked in an old hangar, which is located in the new part of the Ovčara economy. B. stated that there was talk that about 170 persons from this convoy were

²⁷³ Ibid. Dokmanović was the President from 1990 until mid-1991. In November 1991, after the fall of the city of Vukovar, he resumed this position. He committed suicide on 29 June 1999, whilst awaiting judgment of the ICTY on his case.

²⁷⁴ In September 1998, the Prosecutor for the International Criminal Tribunal for former Yugoslavia, wrote to the UN Security Council, demanding that immediate measures be taken to ensure that the Federal Republic of Yugoslavia transferred Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin who were publicly indicted by the Tribunal, to its custody. The 3 men were indicted in November 1995 for their alleged involvement in the killing of hundreds of unarmed men forcibly removed from Vukovar hospital in November 1991. They are believed to be residing in Serbia. In December, the Belgrade Military Court held a hearing investigating the events surrounding the fall of Vukovar and called the three suspects as witnesses. Several days later, the Tribunal issued a deferral order, requesting that Yugoslavia halt its investigations and hand over any information to the Tribunal. To date nobody has been brought to justice for the mass killings (see AI Index: 01/02/98).

²⁷⁵ Report on Evacuation of the Vukovar Hospital and the Mass Grave at Ovčara, United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1993). For detailed information regarding the preliminary site exploration conducted at Ovčara, see Physicians for Human Rights, Reports of Preliminary Site Exploration of a Mass Grave Near Vukovar, Former Yugoslavia and Appendices A-D (19 January 1993).

killed and buried in a previously dug ditch with a dredger. The man who dug the ditch is C.J. (he is still in Ovčara) and according to his statement and estimate about 50 persons could fit in the ditch that he dug. B. said that the Chetniks and the army dug and expanded the ditch themselves, as well as burying those killed. During the evening residents of the Ovčara heard shooting. The following morning when B. came to work he saw a blood stained tractor on the economy premises".²⁷⁶

4.177 All of these men were alive after the end of hostilities in Vukovar. All of these men were taken under JNA guard first to the JNA barracks and then to the Ovčara farm. This much is confirmed by Major Šljivančanin's courier, the witness E.M. M. testified to the fact that Captain M.R. told him that people were executed at Ovčara:

"The execution platoon was formed from the third company of the Guard's Brigade from Belgrade.....Štuka and Dragan Vidačak were members of the platoon. I came to Ovčara later in the afternoon and I saw the soldiers stamping on the ground. I overheard that the people were thrown into the pits and covered with wood and soil. Afterwards I learned from Captain Radić that approximately 1040 persons were killed in Velepromet warehouse and approximately 200 in Ovčara".²⁷⁷

4.178 Of the 300 men taken from Vukovar Hospital on the morning of 20 November 1991, 260 remained missing until the discovery of a mass grave in the area in 1996. During the exhumation (30 August – 2 October 1996) 145 persons were identified, and the destiny of 60 Croat patients taken on the same day in the unknown direction is still unknown. The second group of the wounded and civilians from the Vukovar hospital was taken to Velepromet.

Velepromet

4.179 During the first 3 or 4 days of the occupation about 15,000 people were placed in the warehouse at Velepromet: see Plate 16. They were interrogated, tortured and killed by the members of the JNA and the Serb paramilitary formations. They were especially cruel to the members of the Ministry of the Interior and the Croatian Army. Salt was put on open wounds of the injured soldiers. According to the statements of witnesses, about 350 prisoners of Croatian nationality were killed at "Velepromet". A certain number of members of the Ministry of the Interior and the Croatian

²⁷⁶ Witness Statement of P.B., Annexes, vol 2(I), annex 146.

²⁷⁷ Witness Statement of E.M., Annexes, vol 2(I), annex 127.

Army (about 180) and civilians (about 4,000) were then sent from the Velepromet to Ovčara farm where they separated the civilian population from the fighters and they took the civilians to the camps in Negoslavci, Orolik, Sremska Mitrovica.

4.180 The witness M.L. was captured and taken to the Velepromet. On the first night (18 November 1991) she saw the shooting of a group of 12 Croats. Immediately before the execution they beaten and mutilated. During the shooting itself they were tied up:

“I saw, the rivers of blood were flowing, eyes, hair, teeth, livers, brains were falling out everywhere around... Before that those same people were beaten so hard that their bodies were completely in blood and when they took their clothes off so they could shoot them I saw that some of them were bleeding from their genitals. They cut off the fingers of some of them, ears, genitals and those parts of the body were thrown around.”²⁷⁸

A similar account is given by the witness A.H.²⁷⁹ M.L. was also the witness to a further execution by firing squad that happened that same night. Another group of Croats, 25 of them, was separated and shot. She also describes how N.B. and Č. (the witness does not state the name) were thrown and crashed into the walls with their hands tied and how they banged them against the doors.

4.181 The witness F.G. describes what happens after he was taken from the hospital at Vukovar to the warehouse:

“After that we had to leave the basement and they took down our names after which they started separating us. The one who was taking down our names told everybody to go to a certain truck. The trucks were standing south of the hospital, in a one-way street leading from Borovo to the town centre. ... I was sent to the same truck as my brother J., who is today still listed missing. The son of the newsman M.S. from Vukovar, Z.S. aka “K.”, came to our bus. He told us that we would be either executed or slaughtered. He had a special grudge against me since my uncle, L.G.; had been among the first to initiate the defence of Vukovar. [...] We arrived at the warehouses of “Velepromet” in trucks where soldiers, conscripts, of the JNA were waiting for us. ... All of a sudden the young army – conscripts – disappeared and the local Chetniks appeared. They

²⁷⁸ Witness Statement of M.L., Annexes, vol 2 (I), annex 147.

²⁷⁹ Witness Statement of A.H., Annexes, vol 2(I), annex 149.

started yelling that we should get outside. We got off the truck after which we had to stand in a circle and they told us that those who had fought should stay on one side and the others on the other. I was standing in the group of people who had fought.

...Radivoje Jakovljević aka "Fridge"...approached me and pulled me by my hair and turned me around so was facing him. Then he took his knife, took a swing with it as if to stab me in the head, but I duck so that he missed and instead cut the left side of my forehead and the scar is visible even today. He also stabbed me under my right eyebrow. I begged him to shoot me, but was shouting that I have to suffer before I die. He was saying that he would pick my eyes out. ... Another Chetnik came and they forced me to the ground and held my arms and legs. The accused Radivoje Jakovljević approached me and wanted to cut my head off with a knife...but another officer of the former JNA, whom I do not know, saved me....I saw approximately fifteen decapitated bodies in that hole. I also saw heads scattered around in that hole.²⁸⁰

4.182 The witness J.R. describes how he was the witness when S. (the witness does not state the last name) was called out of the group of prisoners and was taken to the neighbouring room and not long after that a blunt blow was heard, followed by the sigh of the prisoner and the fall of the body onto the concrete. The next morning, as he was passing by the room, he saw on the concrete a blown out human brain and stale blood that was covered with petroleum. The witness states that the killings lasted the whole night of 18/19 November 1991.²⁸¹

4.183 A.H. attempted to get a group of women and children to the hospital. However, before she could get them there the group were arrested by the JNA and taken to the Velepomet Concentration Camp. The witness was subsequently falsely accused of killing 50 children and through much of the next few months was under sentence of death. She gives a detailed account of the excessive violence that took place at Velepomet:

"Bulidža, Simo Samardžija, Kamenko (they called him "Kameni" – "Stony") escorted people to the place of execution. They maltreated and beat me every day, and on the fifth afternoon they took me out to watch how they court martial people. On that day they took out G.K., a young Croatian soldier from Vukovar. The Chetnik called Bulidža jumped on his back. The young man fell on his stomach and Bulidža cut off his head and

²⁸⁰ Witness Statement of F.G., Annexes, vol 2 (I), annex 121.

²⁸¹ Witness Statement of J.R., Annexes, vol 2(I), annex 148.



Plate 16

16 "VELEPROMET" RETAIL WAREHOUSES CONVERTED TO DETENTION FACILITY AND A PLACE OF EXECUTIONS, VUKOVAR

held it up in the air and impaled it. He did all of that in front of me. Later he brought out a young man from Zagreb (I did not know him). They never told us their names, we knew only their nicknames. Zoran Stanković, Miki Ikac and Predrag Petrinjac held the guy, and Vojvoda Milan Novković “Capalo” switched on a circular saw. They cut the guy in half. [...] Every day they maltreated, provoked and humiliated us...They would beat me in front of my daughter, and she had to stand still, and vice versa. They used to say: “Look Ustasha what we can do.” They told my daughter that her child was with them, and that she would never see him again. They took her to the railway track with the intention to kill her. They would put me against the wall and shoot over my head, or beside me...Executions were held day and night. The place of execution was fifty meters away from the joiner’s workshop where people were held, so that all of those who were in the “Velepromet” could watch the executions taking place, even those who stripped us of our things and jackets, with the explanation that we would not need them any more. [...]”²⁸²

4.184 The witness M.G. describes how Serbian soldiers in the yard of the Velepromet took out 4 of her teeth. They completely undressed a nun and tortured her. The witness’ daughter, A.G., was undressed and kicked. They beat her head with rifle-butts in to head and put out cigarettes on her naked body. M.G. also describes how one night about 20 captured boys of Croatian nationality were killed. They were aged from 17 to 24 years old. The JNA later drove trucks over the bodies of the dead.²⁸³ The witnesses D.P., F.G. and F.K. saw the execution of one young Croat. One of the Serb paramilitaries took him out from the hangar and took him to the yard where he cut off, first one ear and then another. After that he grabbed his hair and cut his throat with a knife.²⁸⁴ According to witness testimonies, the rebel Serbs and the newly arrived members of the Serbian paramilitary groups would enter the hangars where the men and the women with children were separated. They would choose the prisoners take them out of the hangar and kill them. The witness F.V. describes how he survived the execution of Croatian prisoners when he was with no reason separated from the hangar and included in a small number of men; they were simply told that they would be executed. Walking in a row, a Serb who once had worked with him noticed and saved him. His stood and watched the group

²⁸² Witness Statement of A.H., Annexes, vol 2(I), annex 149.

²⁸³ Witness Statement of M.G., Annexes, vol 2(I), annex 150.

²⁸⁴ Witness Statement of D.P., Annexes, vol 2(I), annex 120; F.G. and F.K. also testify about the murder of the young Croat: Annexes, vol 2(I), annexes 121 and 114.

being executed ten to fifteen meters from him. Seized by fear and shock he was unable to move.²⁸⁵ The Croatian women who stood with their children in the area of Velepromet were the witnesses of numerous executions and massacres of captured men. Z.M. and M.S. testify about this. With their children, they watched a drunken member of the Serbian paramilitary formations first physically abuse and then shoot in cold blood three Croatian prisoners. Then he turned and threatened a group of women and children who were standing nearby with his weapon.²⁸⁶

4.185 Women of Croatian nationality that were imprisoned in the Velepromet were taken to interrogations during which they were exposed to sexual abuse. Group rapes took place. B.V.* was raped the second day on her arrival in the barracks. Four soldiers raped her one after another on the floor of the office. Throughout the rape they insulted her and hit her in the face.²⁸⁷ B.V. also testifies that Serbian soldiers took M.M.* to the room next door to her. Afterwards they boasted that 15 of them “took turns” on her. M.M. confirmed that she had been raped later on. After a while, women of Croatian nationality were taken to barracks in the town where sexual abuse continued. B.V. saw a group of soldiers rape V.I.*. I. had been previously raped in Velepromet.

4.186 On 1 December 1991, the military police of the JNA transported prisoners from Velepromet to the JNA barracks in Vukovar. The maltreatment and battering took place daily. Serbs, who tortured, battered and killed prisoners in the “Velepromet” camp, came to the barracks and

²⁸⁵ Witness Statement of F.V., Annexes, vol 2 (I), annex 123: “...then they really came and took V. to execute him, and with him they also took me outside. Then they told us they were taking us to be executed. Then they also took another young man of approximately eighteen years of age...I saw how that person fired his weapon at those three men he was leading, I saw them falling to the ground...”

²⁸⁶ Witness Statements of Z.M., Annexes, vol 2(I), annex 15 and M.S., Annexes, vol 2(I), annex 157 B: “...since it was daylight I watched and I saw all three persons falling to the ground near the channel...this person came back to us and threatened us with his weapon. I was frightened that they would kill us, so I pulled the children down, because their life was the only thing that mattered to me.”

²⁸⁷ Witness Statement of B.V., Annexes, vol 2(I), annex 151: “...V.I. (about 26 years old) a mother of a 5-years-old son was been kept back for a long time. When she came back, she told me that they had raped her for the second time. The first time she was raped in the “Velepromet”. Now she told me that they forced her to undress in front of them otherwise they would tear her to pieces. When she came to us, at first she didn’t want to talk to anybody, she just cried. They raped me the second day on arrival to the barracks... Five of them took me away – I didn’t know anybody. They were between 25 and 30 years old. Two of them had their breath smelling on alcohol...”

there continued venting their frustrations. J.L. testifies about groundless and brutal murders of captured Croats.²⁸⁸

Catholic Churches

4.187 Catholic churches were the subject of specific targeting. More than a thousand grenades were fired at the Franciscan monastery and the Churches of St. Philip and Jacob and St. Rok. The priests and all the clerical staff spent months in the cellar of the monastery where they organised their living, work and the saying of masses. During the short breaks between the shelling, they tried to save the lavish library of the monastery and move it to the cellar. The library was one of the most valuable in Croatia and it had over 30,000 books. Besides the shelling, the church and the monastery were a target of the air strikes of the JNA. On 5 October 1991, a JNA aircraft threw a cluster bomb at the monastery, damaging it heavily. After the occupation of Vukovar, members of the JNA and the Serbian paramilitary formations forced the priests and clerical staff into buses and trucks and took them to Sajmište. When getting out of buses, they were physically tortured, cursed at and humiliated. They were beaten with wooden bats and kicked. The majority of the priests and clerical staff were about 70 years old. They forced to take off their clothes and were made to sleep on concrete floors. Like other prisoners the priests were subjected to interrogations. They were forced to sing Serbian songs and cross themselves in the Orthodox way. Priests B.S.K. (priest of the Vukovar parish), A.P. (priest of the Borovo parish) and I.M. (curate of Borovo parish) were taken to the concentration camp in Sremska Mitrovica (Serbia) from where they were exchanged on 11 October 1992.

Mass Graves

4.188 In Vukovar three mass graves were found: Ovčara, Novo groblje (new cemetery) and in Nova Street. 200 corpses were found at Ovčara, of which 145 persons were identified. This grave coincides with the evidence concerning the people who were taken from the hospital. In Novo groblje 938 remains were found, of which 722 persons were identified. In Nova Street 10 remains were found, of which 6 persons were identified.²⁸⁹ In addition a grave containing three people was found in Borovo Selo. These

²⁸⁸ Witness Statement of J.L., Annexes, vol 2 (I), annex 152.

²⁸⁹ List of exhumed mass graves of the Government Office for Detained and Missing Persons of the Republic of Croatia, Annexes, vol 2 (I), annex 164.

numbers are paralleled only in the Prijedor County in Bosnia and Herzegovina.²⁹⁰

4.189 Although large numbers of civilians died as a result of the armed conflict, according to Croatian investigators some showed signs that they had been extra-judicially executed or otherwise unlawfully killed.

4.190 According to the information of the Government Office for the Detained and Missing Persons of the Republic of Croatia, the destiny of 511 persons from Vukovar is still unknown.²⁹¹ As stated above, other estimates suggest that at least 3000 people are missing.²⁹²

Terror Continued after 1991

4.191 In the period between 1991 and 1995, the rebel Serb ‘authorities’ continued to commit genocidal acts against the remaining Croatian population in Vukovar.

4.192 A number of Croat women were detained in improvised prisons in the cellar of a house in Ivan Lola Ribar Street from March 1994 till July 1996. These women were physically and mentally mistreated and raped. The detained women were raped by several members of the rebel Serb “Authorities.” The women were taken to a café on Svetozar Marković Street where they were detained in rooms on the top floors and forced to perform sexual acts for which they were ‘paid’ 20 German Marks. The witness H.E.*²⁹³ describes the improvised prison, which was under the command of Željko Rudeš. She also describes many instances of rape and physical maltreatment at the prison and the café.

²⁹⁰ Final Report of the United Nations Commission of Experts established pursuant to Security Council resolution 780 (1992), Annex X, Mass graves, S/1994/674/Add.2 (Vol. V), 28 December 1994.

²⁹¹ List of the Government Office for the Detained and Missing Persons of the Republic of Croatia.

²⁹² Mass Killing and Genocide in Croatia 1991/93, page 221.

²⁹³ Witness Statement of H.E., Annexes, vol 2(I), annex 116.

CHAPTER 5

GENOCIDAL ACTIVITIES IN THE REST OF CROATIA

INTRODUCTION

5.01 Chapter 4 of the Memorial provided detailed testimony and documentary evidence of the genocide perpetrated by the Serbian leadership in Eastern Slavonia, acting through the JNA, in collaboration with Serb and Serbian paramilitary groups. This Chapter documents the genocide of Croats which occurred in other parts of the Croatian territory. These areas, like Eastern Slavonia, had been identified by the 1986 SANU Memorandum¹ and Serbian leadership² as falling within “Greater Serbia”. The evidence set forth in this Chapter illustrates the systematic pattern of genocidal acts which occurred in Western Slavonia (Part 1, paras. 5.3-5.64), Banovina (Part 2, paras. 5.65-5.122), and Kordun and Lika (Part 3, paras. 5.123-5.186) and Dalmatia (Part 4, 5.187-5.241).

5.02 Croatia wishes to emphasise, once again,³ that this Chapter does not purport to be an exhaustive account of every act of genocide that occurred in these areas. The process of collecting evidence began in 1991 and continues. The sheer scale of the task makes an exhaustive inventory of genocide difficult at this stage. The steps taken by the Serbian forces to destroy evidence of their crimes have also hampered the process considerably, as has the subsequent – total – failure to cooperate on the part of the FRY. Nonetheless, the events described in this chapter, and set out more fully in the witness statements annexed in Volume 2 of this Memorial are sufficient in themselves to prove genocide. The evidence currently available demonstrates a clear pattern of genocidal activity throughout Serb-occupied territory in Croatia between August 1991 and August 1995. It also confirms that the genocide perpetrated in Eastern Slavonia during the period formed an integral part of an expansionist military strategy conceived and implemented by the Serbian leadership.

¹ Chapter 2, paras. 2.43-2.50.

² Chapter 2, paras. 2.72-2.80.

³ Chapter 4, para. 4.1.

SECTION ONE: WESTERN SLAVONIA

1. INTRODUCTION

Geography

5.03 Western Slavonia borders Eastern Slavonia in the eastern part of the Republic of Croatia. It covers approximately 3,166 km² of predominantly agricultural land, comprising five municipalities and 307 villages. The area includes the territory around the mountains of Psunj, Papuk and the eastern hill slopes of Bilogora. To the south the area extends to the Sava River, including the towns of Okučani, Novska and Nova Gradiška. In this sector, the Sava River is the natural boundary between the Republic of Croatia and the Bosnia and Herzegovina.

Demography

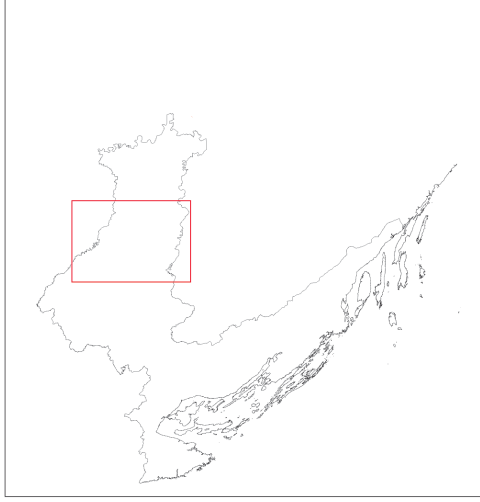
5.04 According to the 1991 census, the population of Western Slavonia was 157,332, of whom 86,618 (55.1%) were Croats, 45,401 (28.8%) were Serbs, 8552 (5.4%) were Czech, 1430 (0.9%) were Hungarians and the remaining 15,331 were other nationalities. As a consequence of the operations of the Serb paramilitary groups and the JNA in the area of Western Slavonia (see Plate 17; and Annexes, vol 3, Plate 4.3C), 5 mass graves were found, from which 20 bodies were exhumed and identified (see Annexes, vol 3, Plate 7.2). Nearly all of the identified corpses were Croats. The average age was 55. The number of missing persons in the entire region of Western Slavonia is at least 83.

Outbreak of Hostilities

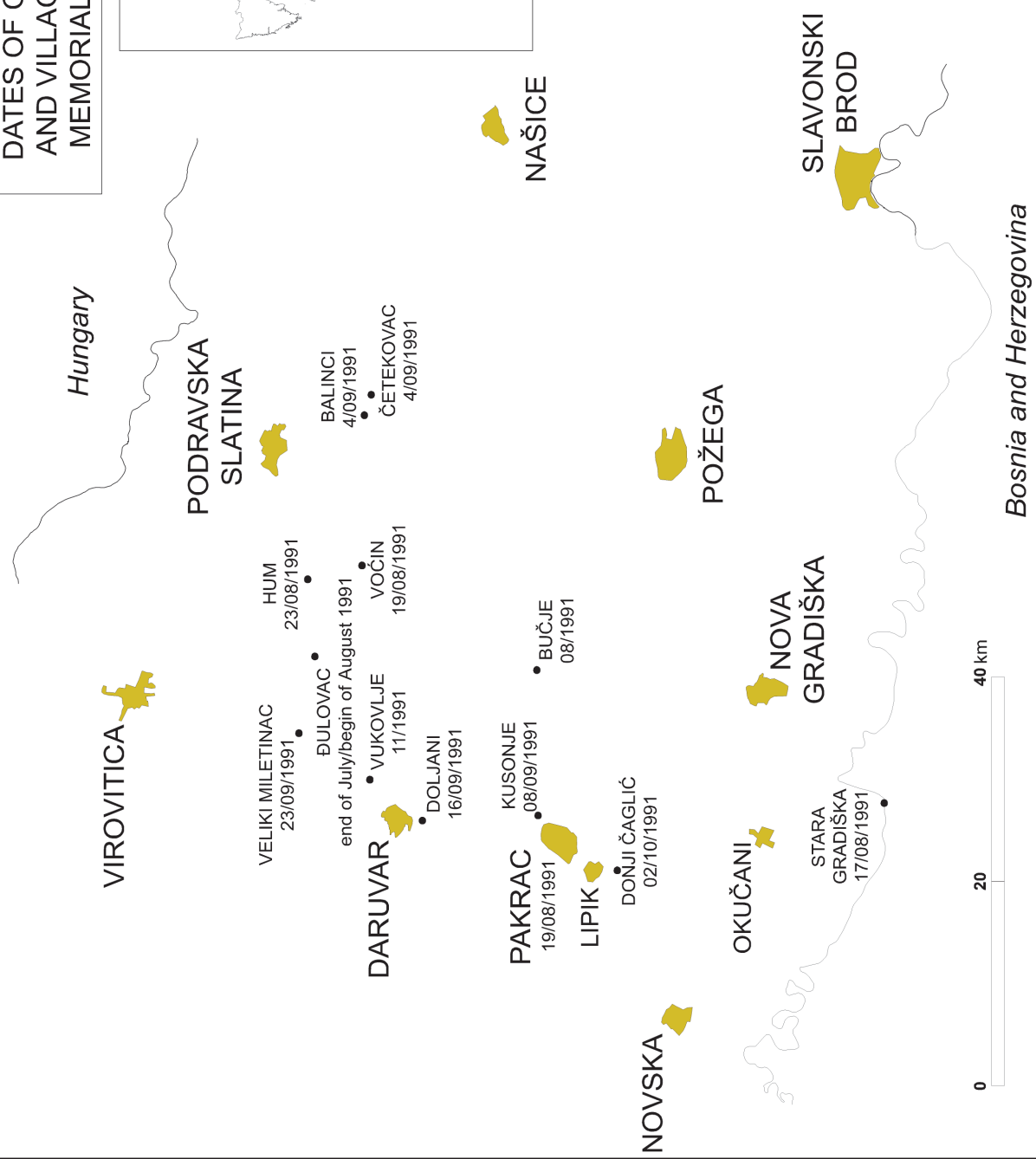
5.05 The municipality of Pakrac contained the greatest number of Serbs in the region; it became a major centre for the Serbian Democratic Party (SDS) after the beginning of multi-party democracy in Croatia in February 1990. A number of SDS public events took place that year, which were significant for two reasons: first, for their promotion of ethnic conflict and second, for the supportive presence of senior JNA officers on SDS platforms. The notable events included the celebration of WW II Veterans day⁴ on 4th July 1990, Uprising Day⁵ on 27th July 1990, and a major SDS

⁴ Veterans' Day was a big holiday in communist Yugoslavia and was celebrated since the end of World War II until the establishment of the Croatian State.

**DATES OF OCCUPATION OF TOWNS
AND VILLAGES ADDRESSED IN THE
MEMORIAL - WESTERN SLAVONIA**



	TOWN
	VILLAGE
18/11/1991	DATE OF OCCUPATION (DD/MM/YY)



rally on 16th June 1990, presided over by the SDS leader Jovan Rašković. The speakers reminded the Serbs present of the sufferings endured by them during the Second World War. In August 1990 the SDS established a private cattle farm for the purpose of collecting funds and arms for a rebellion. The venture was in part funded by the JNA, according to the information received from the Pakrac Police Station. On 29th September 1990, Serb rebels were involved in preventing the planned transport of arms from Pakrac police station to the Ministry of Interior (MUP). Later the police in Pakrac, with the knowledge of the JNA, supplied these weapons and other weapons to the Serbian paramilitaries.

5.06 After the vote of the Croatian Parliament to separate from SFRY on 20th February 1991, the Municipal Assembly of Pakrac voted to reject the parliamentary resolution and to annex the Municipality to the so-called SAO Krajina.⁶ The Police Station in Pakrac was turned into the “Municipal Secretariat of the Interior”, under the jurisdiction of the “Secretariat of the Interior Krajina”. In the subsequent days, the non-Serb police force was disarmed and an autonomous Serb government established. The Croatian Army intervened on 2nd March 1991 to try to re-establish constitutional order.⁷ As a result of the intervention, JNA forces were deployed to the area, only to retreat after several days. Towards the end of 1991 the collaboration between the Serb rebels and the JNA became even more obvious. In November 1991, the JNA assisted the rebels to acquire arms from a TO barracks near Podravska Slatina that had previously been compounded as a result of the Federal Government order.⁸ At the same time, the JNA and the SDS organized the formation of the 12th Slavonian Assault Brigade for Slavonia and Baranja in the area of the municipalities of Daruvar, Grubišno Polje, Virovitica, Pakrac, Požega and Podravska Slatina.⁹

⁵ Uprising Day was by a decision of the Communist Party celebrated in Croatia on 27 July, also until the establishment of the new Croatian state.

⁶ Decision on the annexation of the Municipality Pakrac to “SAO Krajina” from 22 February 1991: Annexes, vol 2(II), annex 237.

⁷ The Chronology of War in Croatia, Bosnia and Herzegovina 1989-1998, p.42.

⁸ Witness Statement of M.L., Annexes, vol 2(II), annex 169.

⁹ War Crimes by the Serbian military and paramilitary formations in Western Slavonia and Banovina (1991-1995), p. 12.

Military Organisation of the JNA in Western Slavonia

5.07 In an approach similar to its operations in Eastern Slavonia, the JNA amassed troops in the region on the pretext of preventing ethnic conflict, thereby frustrating the efforts of the Croatian TO at the same time as assisting in the early atrocities of the Serbian paramilitaries. Western Slavonia was one of the few areas in which there were no peacetime compositions of the JNA. In administrative terms, the region was under the authority of the 5th Corps, which had its headquarters in Banja Luka and was commanded by Colonel General Nikola Uzelac. However, the main part of the 5th Corps forces was stationed south of the Sava River, in the territory of Bosnia and Herzegovina. Thus, when the Serb rebels first attacked the police station in Pakrac on 1st March 1991, most of the JNA forces were out of Croatia. The then President of the Presidency of SFRY, Borisav Jović from Serbia, issued a unilateral order that the JNA establish “buffer zones” without first consulting the other members of the Presidency. This action effectively prevented the Croatian police from reasserting law and order. The JNA’s 265th Mechanized Brigade from Bjelovar and minor units from Virovitica and Zagreb arrived in Pakrac. Eventually the Command of the 32nd Corps established its Headquarters in the town.

5.08 On 13th August 1991, rebel Serbs in Western Slavonia proclaimed the “Serbian Autonomous Region (SAO) of Western Slavonia” and joined the “SAO Krajina”. On 16th August, paramilitary units attacked Okučani and the surrounding villages. Members of the Croatian police and the National Guard Corps attempted to defend themselves from the rebel forces. However, the Croatian army was at a disadvantage from the beginning due to the JNA’s seizure of arms after the order of 23rd May 1990.¹⁰ What followed was a decisive moment in the transformation of the status of the JNA in the region. First, the combat unit of the JNA’s 265th Mechanized Brigade from Bjelovar under the Command of Lieutenant Colonel Milan Čeleketić intervened on the side of the Serb paramilitaries.¹¹ Thereafter, a part of the 329th Armoured Brigade of the JNA came to Okučani from Bosnia and Herzegovina. The purpose of these manoeuvres was “to reach a full co-operation” with the Serbian rebels.¹²

¹⁰ Order for the disarmament of the TO, SSNO OS SFRY from 14 May 1990 and the document of the Presidency of SFRJ from 31 May 1990 from which it becomes evident that the Presidency accepts and supports the Order for the disarmament of the TO, Annexes, vol 2(II), annex 231. Also Chapter 3, paras. 3.324-325.

¹¹ *Narodna Armija*, 22 December 1991, p. 26, “Čovjek kriznih žarišta” (*The man from the crisis spots*); Annexes, vol 4, annex 150.

¹² Veljko Kadrijević, *As I See the Downfall*, 1993, p. 138-139; Appendices, vol 5, appendix 4.1.

5.09 At the beginning of September 1991, the JNA captured Okučani and directed operations towards Novska and Pakrac. The main army unit involved was the 329th Armoured Brigade, reinforced by subordinate units, including parts of the 16th Proletarian Motorized Brigade, the 5th Partisan, the 2nd Partisan and the 343rd Motorized Brigade. These forces worked directly with local Serbs, including reservists from “Bosanska Krajina”.¹³ Subsequently the 5th Corps was also reinforced by units from Serbia, including the 46th Partisan Brigade from Čačak, a Battalion of the 84th Motorized Brigade from Zaječar and the Division of multi-barrel rocket launchers of the 150th Combined Artillery Brigade from Vranje.

5.10 Throughout the war, units of the JNA’s 5th Corps, together with local forces of rebel Serbs lead by the Command of the Territorial Defence of the “SAO Zapadna Slavonia”, perpetrated several mass crimes against the Croat population. The aim was to remove non-Serbs from the area around Daruvar and Podravska Slatina. At the end of October, both units were stopped by the Croatian army. By the beginning of November, the units were pushed back to Okučani, towards the Sava River. A truce was signed in January 1992.

5.11 The “Army” of the “Republic of Srpska Krajina” benefited consistently from the support of the JNA. Such support included the supply of military equipment and weaponry.¹⁴ The close relationship between the two armies is clearly demonstrated from the numerous documents and reports annexed to this Memorial.¹⁵ After the JNA retreated from Croatia parts of the JNA joined the “Army of the Republic of Srpska Krajina”.¹⁶

¹³ *Krajiški vojnik*, official paper of the 1st Krajina Corps of the Army of the Republic of Srpska, July 1993, p. 32, “Heroji i vitezovi” (*Heroes and knights*); Srpska vojska (Serbian Army), official paper of the Army of the Republic of Srpska, Sarajevo, from 9 May 1994, p. 14: “Ratni put popločan pobjedama” (*The victorious war path*); Annexes, vol 4, annex 152.

¹⁴ Request for ammunition and other equipment, delivered to the “Ministry of Defense of the Rep. of the Srpska Krajina” on 18 Sep. 1991 (delivered to Lieutenant Colonel Tomislav Simonović); Annexes, vol 2(II), annex 234.

¹⁵ For example: Report of the “Headquarters of the TO Krajina” from 21 and 22 Sep. 1991 to the “Supreme Commander of the Armed Forces of Krajina”. The mentioned report is about the combined operations of the paramilitary units and the JNA, as well as the report on the operations itself, the losses, etc. Annexes, vol 2(II), annex 235.

¹⁶ For example, Lazo Babić was an officer in the JNA in the 5th Corps of the JNA, Mile Novaković was Chief of the Operative Center of the 5th Military Region, while Milan Čeleketić was since September Chief of Staff of the 265th Armored Mechanized Brigade of the JNA. See Chapter 3, paras. 3.97-3.98 .

Destruction of Cultural Monuments

5.12 During the course of the hostilities, over 50 Catholic churches and chapels were plundered and damaged, 30 of which had previously been categorised as cultural monuments. 18 churches were destroyed. At least 19 others were heavily damaged. The majority of these buildings were built before the 19th century. For example, the Parish Church of St. John the Baptist in Slavonski Kobaš was built in the 15th century: it was heavily damaged by the rebel Serbs and the JNA. The Parish Church of the Appearance of the Holy Virgin Mary in Voćin was built in around 1500: it was almost completely destroyed during the Serbian retreat from Voćin. The JNA and the rebel Serbs destroyed the Parish Church of St. Vid in Okučani. A local market was established on the site where the church once stood.¹⁷

Concentration Camps

5.13 Two major concentration camps were established in Western Slavonia at Bučje and Stara Gradiška. Further details of these camps are provided in Appendix 6 of Volume 5.

Ethnic Cleansing

5.14 On 9 June 1993, the rebel Serb “Government” of the Municipality of Pakrac introduced a “Resolution” urging Serbs from other parts of the country to return to “the ethnically clean Serbian villages of Pakrac”. The “Resolution” stated that villages representing “the ethnically clean Serbian area” were now in existence and that the return of Serbs was to begin once “the Croatian army, police and symbols had been removed from the Serbian villages”.¹⁸ The evidence of ethnic cleansing in the Municipality of Pakrac and other parts of Western Slavonia are detailed below. Croat inhabitants of the villages of Uskok, Donji and Gornji Varoš and Pivare in Nova Gradiška area all moved away in the face of threats and intimidation. The Croats living in the villages along the Sava River in the area of Slavonski Brod also moved as a result of the incessant crossings by Serb reservists from Bosnia and Herzegovina into Croatia who continued to loot

¹⁷ The Wounded Church in Croatia, the Destruction of Sacral Buildings in Croatia (1991-1995), Zagreb, 1996.

¹⁸ Decision on the return of expelled Serbs to ethnically clean Serbian villages, Annexes, vol 2(II), annex 239.

and kill Croats.¹⁹ When the army entered the village of Gornji Varoš, its residents were ordered to move out of their houses or they would be killed.²⁰

2. MUNICIPALITY OF PAKRAC²¹

Pakrac

5.15 The town of Pakrac had a population of 27,589, of which 9896 were Croats and 12813 were Serbs. On 19th August 1991, Serb paramilitaries launched a combined artillery attack on the entire territory of the municipality of Pakrac with the objective of capturing the towns of Pakrac and Lipik, together with the main roads that led to the villages. The JNA's Banja Luka Corps from Bosnia and Herzegovina is known to have assisted in the attack. Much of the Pakrac town was destroyed from the shelling. The town was completely isolated, with no electricity, water, telephones, gas or other basic supplies. There was no telephone communication or gas supplies for the next year.

5.16 During the battle for control of Pakrac Municipality, the Croatian police and Serb paramilitaries dominated different areas. The main stronghold of the Serb forces was in Pakrački Vinogradi, a suburb of Pakrac.²² On 7th September 1991, the home of L.Š. was attacked and six Croat men were abducted and "disappeared". They were Mile Pavić*, Željko Nađ, Drago Nađ, Marijan Šmit, Stipe Skeledžija and Goran Djak.²³ On 14th September 1991, Antun Kroupa was also seized from his home and also remains missing.²⁴

¹⁹ An example is the crime committed in the village of Mačkovac when at a family house four persons were brutally killed and set on fire – witness statement of A.T., Annexes, vol 2(II), annex 170.

²⁰ Witness Statement of M.M., Annexes, vol 2(II), annex 171.

²¹ The area of the Municipality of Pakrac is the largest municipality in Western Slavonia. According to the Census it had 27,589 inhabitants who lived in 66 villages and two towns, Pakrac and Lipik. In 1991 the population consisted 12,813 (46.4%) Serbs, 9,896 (35.5%) Croats, 869 (3.1%) Italians, 718 (2.6%) Czechs, 869 (3.1%) Italians, 273 (1%) Hungarians and a remainder of 3,020 (11%) comprising other ethnic groups who considered themselves Yugoslavia. Taking into account many of the 11% of the population who considered themselves Yugoslavian, this area was clearly dominated by a Serbian majority. In the towns of Pakrac and Lipik, 50% of the population was also Serbian. The situation was the same in the mountain areas of Psunj and Papuk.

²² Witness Statement of N.B., Annexes, vol 2(II), annex 172.

²³ Witness Statement of S.P. *, Annexes, vol 2(II), annex 173.

²⁴ *Ibid.*

5.17 During the night of 15th September 1991, the P. family home was attacked.²⁵ At the time, 8 adults and 3 children were hiding there. Croats in the area had begun staying at each other's homes because of the abductions that had begun in the previous days. One of the attackers was a JNA officer. He threatened and insulted members of the household. He fired shots in the hallway and into a room where people were sleeping. A paramilitary Serb, who identified himself as a member of the B. family, then entered the house. He told the Croats that he and other members of the same group had recently killed Zvonko and Dragica Hunjek and would do the same to them. M.B.* was taken away. Three of the household members managed to escape. The others were taken into custody and held at the police station. It was later discovered that Zvonko and Dragica Hunjek had been murdered in their home. M.B. was raped and tortured after which she was murdered. Her ears were cut off and her skull was shattered. H.H. buried the bodies.²⁶

5.18 Nenad Bojić and Milan Kovačević (known as "Sikirica") later confessed to this violent attack. Kovačević admitted the murders, as well as the murder of the married couple Đuro and Roza Tepeš. The police found an axe in his home with traces of blood. He and his accomplice, Nenad Bojić, were detained by the Serbian paramilitaries in Bučje, along with several other Serbs who were ostensibly held on account of being drunk and disorderly. According to Nenad Bojić, he was imprisoned because "he left his [guard] position in Trokut and later because he was drunk".²⁷ However, the killers were released within a matter of days.

5.19 On the night of 3rd October 1991, Milan Kovačević and Nenad Bojić having been released from custody, attacked the house of I.N. I.N.'s wife, daughter and grandchildren managed to escape. It is believed that I.N. was thrown into the well, around which there were traces of blood. Milan Kovačević and Nenad Bojić then forced the door of B.D.'s house. The home was occupied by the P. family. B.D., his wife L., their daughter L.Š. and two other children occupied the house at the time. A.P.* and B.D. resisted the attackers. The others escaped and ran to a nearby roadblock where they pleaded with the Serb paramilitaries to provide assistance. The paramilitaries not only refused to help, but in fact arrested the group and took them into custody for eight days. Upon the group's return, they discovered a large pool of blood and a grave in the back yard. Given that B.D. had escaped, it was assumed that A.P. was buried there. His family asked for confirmation from the Serbs as to whether this was the

²⁵ Witness Statement of A.P.*, Annexes, vol 2(II), annex 174.

²⁶ Witness Statement of H.H., Annexes, vol 2(II), annex 175.

²⁷ Witness Statement of N.B., Annexes, vol 2(II), annex 172.

case. No information was disclosed. The family were refused permission to exhume the grave in order to confirm that the body was A.P.

5.20 Nenad Bojić and Milan Kovačević were again taken into temporary custody, but ultimately escaped punishment. Milan Kovačević gave a statement, that was originally hand-written, indicating that he was released from prison because “he was not dangerous to the Army and the Serbs but to the Ustashas and their families”.²⁸ He also emphasised that the army would not cause him difficulty as his son was a member of the JNA.²⁹ In March 1995, the witness I.B. saw Milan Kovačević on Banja Luka (Bosnia and Herzegovina) television saying, “If the war starts again I will butcher again”.³⁰

5.21 The bodies of murdered Croat civilians were exhumed on November 8th 1995 in five locations at Pakrački Vinogradi. The following people were identified: Dragica Hunjek, Zvonimir Hunjek, Marta Božić, Ivan Šmit, Zdravka Šmit, Rozika Teteši, Đuro Teteši, Zoran Šmit (10 years old), Mile Pavić, Stjepan Karačun, Zvonko Nadaždi,³¹ Lazar Grubinić, Marija Lacek, Jozo Nadaždi, Blaž Djak. Corpses were also found in Pakrac and were identified as Helena Svečnjak, Marija Svečnjak, Ankica Nemet, Terezija Brus, Nevenka Vučković, Fanika Pihir, Josip Heidelberg. The forensic analysis of the bodies suggests that predominantly the cause of death was close range shooting rather than the effects of shelling. During the period from between 1992 and 1998, a total of 49 people were exhumed and identified in the territory of Pakrac. There are records pertaining to the death of 176 civilians in the municipality.³² Most other Croat people left the area. At the same time, Serbs from the Bjelovar-Bilogora and Virovitica-Podravina counties migrated to the area in accordance with the Resolution of the Municipality of Pakrac.

Veberov Sokak

5.22 Veberov Sokak is another suburb of Pakrac which was controlled by Serbs in 1991. On 15th December 1991, a massacre of Croat civilians occurred in the house of V.Z.

²⁸ Witness Statement of Milan Kovačević, Annexes, vol 2(II), annex 176.

²⁹ Note of Milan Kovačević’s interview, Annexes, vol 2(II), annex 176.

³⁰ Witness Statement of I.B., Annexes, vol 2(II), annex 177.

³¹ Milan Kovačević admitted to the witness J.P. that he killed Z.N. and the Š. family with an axe. See Witness Statement of J.P., Annexes, vol 2(II), annex 178.

³² “Dead Civilians in the former municipality of Pakrac”, Annexes, vol 2(II), annex 240.

At the time 6 people were sheltering there: Vladimir Zvonarić, Ivo Latinski, Ante Validžić, his wife, Ante Maca, Ana Zvonarić and M.Z. Serbian rebels came into the hallway and fired machine guns. Grenades were thrown into the kitchen. M.Z. and M.V. were wounded. Vladimir Zvonarić, Ana Zvonarić, Antun Validžić and a neighbour Ivan Latinski were killed.³³ The attackers subsequently returned to the house to ensure that everyone was dead.³⁴

5.23 The perpetrators of the killings, Željko Sokolović and Mirko Đurić, later gave statements. Željko Sokolović testified that his assignment was to search Croat family households and confiscate weapons. In the event that no weapons were found, he was ordered to kill:³⁵

“... When I was on the threshold of the house, I turned around and I fired half a burst of bullets through open doors at people that were in the house. On that occasion, I heard a howl and I moved on. When I reached the [...] step, I turned around again and I fired the second burst. My colleague Đurić took 4 bombs and threw them one after another into the house...”

5.24 Mirko Đurić, who admitted throwing bombs, stated as follows:

“... At the moment when we found Latinski and Validžić in the kitchen, Sokolović suddenly lifted his rifle and shot them in the back from a distance of 1.5 meters... Sokolović turned the barrel of the rifle and said to me: “Why are you standing here agape,... - come on, throw that bombs...”³⁶

Kusonje

5.25 The village Kusonje is in the municipality of Pakrac, Western Slavonia. It is 2.5km northeast of Pakrac. In 1991, the village had 1101 inhabitants, of which 891 (80.92%) were Serbs and 99 (8.99%) were Croats.

³³ Witness Statement of M.Z., Annexes, vol 2(II), annex 179.

³⁴ Witness Statement of M.V., Annexes, vol 2(II), annex 180.

³⁵ Witness Statement of Željko Sokolović: “... When I was on the threshold of the house, I turned around and I fired half of burst through opened doors at persons that were in the house. On that occasion, I heard a howl and I moved on. When I reached the second, the third step, I turned around again and I fired the second burst. My colleague Đurić took 4 bombs and threw them one after another into the house...” Annexes, vol 2(II), annex 181.

³⁶ Witness Statement of Mirko Đurić, Annexes, vol 2(II), annex 182.

5.26 On 8th September 1991, a group of 21 Croat soldiers (the majority of whom were members of the National Guard; two of whom were policemen) were ambushed by Serb paramilitaries on the road leading into the village.³⁷ Although these soldiers were ostensibly part of Croatia's armed response to the Serb rebellion, they were not engaged in military action at the time. Ž.L. was part of a joint JNA paramilitary unit that had allowed another Croatian truck to pass without incident the day before. However, the Serb troops knew that the truck of soldiers was due to arrive on 8th September and had been given orders that the truck should be "destroyed".

5.27 At the beginning of the ambush, the Croatian soldiers took shelter in Croat houses in the village. Many of them were killed. A pitched battle waged for the rest of the night.³⁸ On the following day, Serb forces destroyed the houses where the last soldiers were hiding. Those who survived were then tortured, despite already suffering serious wounds. The torture included physical mutilation before the wounded were finally killed. Several of the victims' ears and noses were cut off (A.T., V.K., P.G.). Another victim's eyes were cut out (M.P.). Another was castrated (G.P.*).³⁹ Two people's fingers were cut off and their rings stolen. Other forms of torture included the throwing of concrete blocks onto prisoners' legs and injecting poisonous fluids into their bodies.⁴⁰ According to S.V., most of the torture victims were naked.⁴¹ The massacre was videotaped by Željko Mandić, a journalist from Pakrac. It is believed that the videotape was given to UNPROFOR.⁴² The dead were buried in a mass grave which was discovered on the 28th of January 1992. In the subsequent days, it is understood that members of the JNA detained the perpetrators of the massacre. There is no evidence that they were prosecuted for their crimes by the Serb authorities.⁴³ On the second anniversary of the massacre (8th September 1993), 3 people died and 11 were wounded when a bomb exploded as a group of Croat civilians tried to place a wreath by the houses where the soldiers had been killed.⁴⁴

³⁷ Witness Statement of Ž.L., Annexes, vol 2(II), annex 183.

³⁸ *Ibid.*

³⁹ Witness Statement of S.V., Annexes, vol 2(II), annex 184.

⁴⁰ *Ibid.* Witness Statement of Ž.L., Annexes, vol 2(II), annex 183.

⁴¹ Witness Statement of S.V., Annexes, vol 2(II), annex 184.

⁴² Witness Statement of Ž.L., Annexes, vol 2(II), annex 183.

⁴³ VHS/280192/III-8, Video record of the exhumation, autopsy and identification, (The cited documentation is at the disposal of the Office for the cooperation with International Court of Justice and ICTY)

⁴⁴ Witness Statement of V.S., Annexes, vol 2(II), annex 185.

3. MUNICIPALITY OF PODRAVSKA SLATINA

Voćin

5.28 The town of Voćin is located in the municipality of Podravska Slatina, Western Slavonia, southwest of Podravska Slatina. In 1991, Voćin had 1569 residents, of whom 1009 (64.31%) were Serb and 426 (27.15%) were Croats.

5.29 Before the beginning of 1991, Serbs and Croats in the town coexisted peacefully. The witness F.D. was the coach to the local football team, which combined people of all ethnic backgrounds in its ranks. A deterioration in ethnic relations occurred after the visit of Jovan Rašković to Voćin on 14th January 1991.⁴⁵ At the beginning of August, rebel Serbs erected barricades, enabling them to control entry and exit into Voćin. On 18th August 1991 the President of the Local Committee, Miro Agić held a meeting with the aim of negotiating a local peace between Serbs and Croats.⁴⁶ Serbs deliberately sabotaged the meeting and on 19th August, the rebel Serb Territorial Defence (TO) Headquarters were established. The police station was occupied and the Croatian flag destroyed. Serbian and JNA flags were hoisted in its place.⁴⁷ All Croats were forced to attend a meeting in the town centre where they were informed by Serb paramilitaries that they were not allowed to leave and that they would be massacred if anyone fired a bullet.⁴⁸ All Croats in the town were summonsed to report to the police station for interviews.⁴⁹ According to a witness, A.H., paramilitaries from the Republic of Serbia represented themselves as the JNA.⁵⁰ The local Serbs told their Croat neighbours that they were no longer allowed to associate with them.⁵¹ All Croats were listed by street address and house number. This list was drawn up by V.S. and his brother under threats to their life. They listed a total of 94 Croatian families, none of whom wished to leave their homes. Subsequently they had to change their names.⁵²

⁴⁵ Witness Statement of F.D., Annexes, vol 2(II), annex 186. Thereafter the witness was ostracised by his players and eventually threatened with death by the field.

⁴⁶ Witness Statement of Đ.D., Annexes, vol 2(II), annex 187.

⁴⁷ Witness Statement of A.V., Annexes, vol 2(II), annex 188; and J.M., Annexes, vol 2(II), annex 189.

⁴⁸ Witness Statement of M.S., Annexes, vol 2(II), annex 190.

⁴⁹ Witness Statement of Đ.D., Annexes, vol 2(II), annex 187.

⁵⁰ Witness Statement of A.H., Annexes, vol 2(II), annex 191.

⁵¹ Witness Statement of M.P., Annexes, vol 2(II), annex 192.

⁵² Witness Statement of V.S., Annexes, vol 2(II), annex 193.

5.30 Croat houses were searched on a daily basis. Croats were subjected to food rationing and on certain occasions, a complete denial of bread.⁵³ They were also denied medicines, even though supplies were available.⁵⁴ Dr. V.M. told D.D. that there was no medicine available for “Ustasha” children.⁵⁵ On another occasion, the doctor ordered the nurse to administer an expired vaccine to a 1-year-old Croatian girl.⁵⁶ Croats were abducted by the paramilitaries. On 14th August, B.I. was taken from his place of employment at the local hotel to “Sekulinci” warehouse.⁵⁷ On 19th August, two other Croats, K.D. and F.D., were also taken to the warehouse. They were tied to a tree and beaten by several people. F.D. sustained a broken foot, three broken vertebra and cracked ribs. While being tortured, he heard a woman being raped. Contemporaneously, I.D. and A.Š. were taken to the police station where they were maltreated and beaten.⁵⁸

5.31 In September 1991, Serb forces raided the town and abducted 35 Croat men. These men were detained in the basement of a bank for the remainder of the day. Many were beaten. Fifteen of the prisoners were then taken to join a forced labour group, where they had to work at gunpoint. On 3rd December 1991, Ljubiško Novaković selected 4 young Croat men from the work group: Goran Salač, Ivica Bon, Vlado Supan and Drago Ivanković. These 4 men were later shot.⁵⁹

5.32 On 18th September 1991, armed attackers invaded the home of V.M. A.V. and Ž.T. were present. A.V. was dragged out of the house. He has not been seen since then.⁶⁰

5.33 According to Dr. Jerry Blaskovich, an unidentified 23 year old Croat man returned to the town on leave without knowing that it had been seized by the Serbs. The man was arrested upon arrival. He was suspended by handcuffs from a tree in front of the Catholic church. Serbian soldiers then slashed his face with an electric saw before cutting off his lower limbs.

⁵³ Witness Statements of J.M. Annexes, vol 2(II), annex 189; and M.S., Annexes, vol 2(II), annex 190.

⁵⁴ Witness Statement of D.V., Annexes, vol 2(II), annex 194.

⁵⁵ Witness Statement of D.D., Annexes, vol 2(II), annex 195.

⁵⁶ Witness Statement of D.V., Annexes, vol 2(II), annex 194.

⁵⁷ Witness Statement of K.T., Annexes, vol 2(II), annex 196.

⁵⁸ Witness Statement of F.D., Annexes, vol 2(II), annex 186.

⁵⁹ Witness Statement of M.S., Annexes, vol 2(II), annex 190.

⁶⁰ Witness Statement of I.D., Annexes, vol 2(II), annex 197.

He was still alive when they cut him in half. The Serbs then proceeded to pour gasoline over the man's body and set him on fire.⁶¹

5.34 In December 1991 the Serbian forces began to retreat. Between 12th and 14th December at least 35 Croats were taken from the town. These people remain missing. A number of old people were killed because they were unable to escape. Franjo and Marija Matanči were murdered in their courtyard and their house was destroyed.⁶² Four Serb paramilitaries entered the house of Mirko Medved and killed him.⁶³ A number of Serb civilians later told the Belgrade press that Croats were systematically beaten and murdered in the town.⁶⁴ According to the statement of R.M., the order to execute genocidal acts against the Croatian population was issued by Borivoj Lukić, a commander of the rebel Serb paramilitary unit.⁶⁵

5.35 On 13 December 1991, the Catholic Church of St. Mary, built some time in the 14th century, was destroyed.⁶⁶ The church had been partially damaged after several tank grenades were fired at it. It was then mined with explosives and completely destroyed. Prior to its destruction, the church had been used by Serbs as a weapons warehouse. Croats were forbidden to practice their religion in the Church or bury their dead in the graveyard.⁶⁷ This intentional destruction of the Catholic church happened immediately before the Croatian Army entered and regained the town.

Hum

5.36 The village of Hum is located in the municipality of Podravska Slatina, Western Slavonia, to the southwest of Podravska Slatina. In 1991, the village had 243 inhabitants, of whom 84 were Croats and 127 were Serbs. The remaining 13.17% of the population belonged to other ethnic groups.

⁶¹ The Anatomy of Deceit, Dr. Jerry Blaskovich, Modern Times, 1998, p. 87

⁶² Witness Statement of D.D.: "When we entered the courtyard of Franjo Matanči we found the slaughtered Franjo and Marija behind the rock, where they were still twitching in their death pains, with blood running from their throats". Annexes, vol 2(II), annex 195.

⁶³ Witness Statement of M.S., "...J.S., who was with us, peaked outside and saw that those four killed Mirko Medved .", Annexes, vol 2(II), annex 190.

⁶⁴ Chronology of War, HIC, Zagreb 1998, p. 350, – segment from the newspaper article, interview with the refugee Pero Ajkić from Voćin and an anonymous person from Voćin.

⁶⁵ Witness Statement of R.M., Annexes, vol 2(II), annex 198.

⁶⁶ Witness Statement of J.T. "...into the Catholic church were brought truckloads of different tank, cannon and other heavy munitions..." Annexes, vol 2(II), annex 199.

⁶⁷ Witness Statement of A.Š., Annexes, vol 2(II), annex 200.

5.37 On 23rd August 1991, the rebel Serbs erected a barricade at the Kusac crossing towards Levinovac. They later moved it to the entrance of the village.⁶⁸ A Croat, Željko Galović, was apprehended as he drove up to the barricade. He was taken to Voćin. The witness M.K.* saw Galović 's dead body on a cargo truck three days later. At first, the Serb paramilitaries suggested that the deceased had hung himself whilst in custody. M.K. later discovered that a policeman had killed Galović.⁶⁹

5.38 After the establishment of Serb paramilitary control, Croats were denied food supplies and electricity, whilst such amenities were freely available to Serbs. The movement of Croats was restricted by threats of death if they ventured beyond the village borders.⁷⁰ Anyone attempting to leave was arrested.

5.39 On 24th August 1991, several armed and masked rebel Serbs arrived in Hum. Amongst others, F.B. and D.J. were abducted. They were taken to "Sekulinci" camp where they were detained for thirty-three days. They were locked inside a metal container and tortured on a daily basis. D.J. was eventually released. F.B. remained a prisoner. The Serbian Marko Kovač was subsequently heard admitting that he had slaughtered the prisoner.⁷¹ F.B.'s decomposed corpse was found seven months later on 25th March 1992, near Sekulinci.

5.40 During September 1991, Željko Galović was arrested and taken to the house of M.E., the location of the rebel headquarters. He has not been seen since that time.

5.41 On 13th December 1991, Serb paramilitaries raided the home of Roman Ridl. Ivan Banovac was also sleeping there. Both men were murdered and set on fire. M.B. found them the following day.⁷² Witnesses heard Marijan Đuzel's being shot in his house. The following morning his family found his corpse.⁷³ Marko Vujović was also murdered

⁶⁸ Witness Statement of N.I., Annexes, vol 2(II), annex 201.

⁶⁹ Witness Statement of M.K., Annexes, vol 2(II), annex 202.

⁷⁰ Witness Statement of I.K.: "...we could not go anywhere, not leave our houses, not visit our neighbors, nor our fields. If they caught two Croats talking, they threatened to kill us. If they found someone working in the field they would kill him." Annexes, vol 2(II), annex 203.

⁷¹ Witness Statement of A.Ž., Annexes, vol 2(II), annex 204.

⁷² Witness Statement of M.B., Annexes, vol 2(II), annex 205.

⁷³ Witness Statement of A.Ž., Annexes, vol 2(II), annex 204.

on that night.⁷⁴ According to M.B., his corpse was also burnt.⁷⁵ In the wake of the eventual Serbian withdrawal from the village, a large number of houses and commercial objects were burnt down or destroyed.⁷⁶

Četekovac

5.42 The village of Četekovac is situated in the municipality of Podravska Slatina, Western Slavonia, to the southwest of Podravska Slatina. In 1991, the village had approximately 300 inhabitants, of whom 97.11% were Serb, 2.25% were Croat and 0.64% were Slovaks.⁷⁷

5.43 On 4th September 1991, paramilitaries, armed with weapons obtained from JNA warehouses, took over the village.⁷⁸ According to R.M., Borivoj Lukić was in charge of the whole operation, and ordered the genocide that was committed against the Croats.⁷⁹ The witness S.B. was one of a group of 12 Croats who were captured by Serbs and forced to parade through the village as a human shield.⁸⁰ Ivanka Starčević was shot. Adam Kroupa lay down on the ground to protect himself from gunfire. A Serb soldier shot him in the back. Duško Butorac was beaten to death.⁸¹ At least 17 stables and a large number of homes were set on fire. The church in Četekovac was destroyed.⁸² During the assault on Balinci and Četekovac one rebel Serb group each was entrusted with the task of “cleaning” the houses in the villages. A third group was to ensure that no one escaped from the two villages.⁸³

⁷⁴ Witness Statement of N.I., Annexes, vol 2(II), annex 201.

⁷⁵ *Ibid.*

⁷⁶ Witness Statement of I.K.: “...on this way I saw the local Chetniks from the neighbor villages and Voćin shoot certain groups of people on the path, in the houses, in the ditches, at the side of the road, these citizens were from Hum, Četekovac and Voćin. It was a horrible sight, I saw how they murdered people for no reason, and I could not stand to see it.”, Annexes, vol 2(II), annex 203.

⁷⁷ 1991 Census, Republic’s Institute for Statistics.

⁷⁸ Witness Statement of B.D., Annexes, vol 2(II), annex 206.

⁷⁹ Witness Statement of R.M., Annexes, vol 2(II), annex 198.

⁸⁰ Witness Statements of S.B., Annexes, vol 2(II), annex 207, and Đ.I., Annexes, vol 2(II), annex 208.

⁸¹ Witness Statement of M.B., Annexes, vol 2(II), annex 209.

⁸² Witness Statement of M.B.:” I saw that this Z. destroyed our church in Četekovci. He fired at the church from a rocket launcher and knocked down the roof and the tower. He told me to go to the church to take out the Croats because despite all their parytaing to God, nobody was there.” *Ibid.*

⁸³ Witness Statement of M.K., Annexes, vol 2(II), annex 202.

5.44 A number of Croats tried to escape from the village, but were ambushed and killed on the highway by paramilitaries. Among the dead were Franjo Sabo, Marko Sabo, Zlatan Pinčar, Marija Matičić, Josip Tomac, Terezija Troha and Milan Mlakar.⁸⁴ All of the dead were unarmed. Although there are no known living witnesses to the massacre, a video recording exists of the events.⁸⁵

Balinci

5.45 The village of Balinci is located in the municipality of Podravska Slatina, Western Slavonia, to the southeast of Podravska Slatina. In 1991, the village had 295 residents, of whom 145 were Croats and 139 were Serbs.⁸⁶

5.46 On 4th September 1991, Serb paramilitary forces attacked the village at the same time that they attacked Četekovac. They had specific orders to cleanse the area of Croats. Josip Butorac was gratuitously shot as he came out of his cellar.⁸⁷ When the paramilitaries met in Balinci, they found an old man. One of the Serbs instructed him to start running, after which a sniper shot him in the back and killed him. Subsequently, the unit retreated to the warehouse in Sekulinci where they boasted about shooting anything that moved.⁸⁸ At least 20 Croat civilians and 2 police men were killed in Balinci and neighbouring Četekovac. Amongst them were Ivan Biskupović, Juraj Borovac, Ika Biskupović, Rozika Vlatković, Miro Lovrinc, Josip Butorac, Ivan Rukavina, Manda Rukavina, Nikola Magdić and Ivica Biskupović.⁸⁹ All of the dead were civilians and predominantly older people. The Croatian army, accompanied by television cameras, discovered the bodies of the murdered people on 5th September 1991.⁹⁰ The conclusion of the autopsy report carried out at Osijek General Hospital was as follows:

⁸⁴ “War Crimes of the Serbian Military and Paramilitary Forces in Western Slavonia and Banovina 1991-1995”.

⁸⁵ VHS/050991/III-11, No 155, (The cited video cassette is at the disposal of the Office for the cooperation with International Court of justice and ICTY).

⁸⁶ 1991 Census, the Republican Institute for Statistics.

⁸⁷ Witness Statement of M.B.: “... because this R. was the last one ,and my husband was still alive.”, Annexes, vol 2(II), annex 210.

⁸⁸ Witness Statement of M.K., Annexes, vol 2(II), annex 202.

⁸⁹ “War Crimes of the Serbian Military and Paramilitary Forces in Western Slavonia and Banovina 1991-1995”; The witness A.M. buried Nikola Magdić, Vol 2(II), annex 211.

⁹⁰ Mass Killing and Genocide in Croatia 1991/92, p. 117.

“The killing of 20 villagers was a deliberate massacre of civilians. The victims were found in their doorways and yards, shot in the back or the side, half of them were elderly people (more than 59 years of age) and five of them were women – it is not likely that they were using firearms at the time of death. Shooting a 91 year old woman, executing a 65 year old man by stabbing, or setting a 36 year old man on fire, are crimes of unprecedented brutality and ruthlessness”⁹¹

Donji Čaglić

5.47 The village of Donji Čaglić is located in the municipality of Pakrac, Western Slavonia.

5.48 On 2nd October 1991, armed Serb paramilitaries entered the village. Milorad Gašparović was one such paramilitary. He subsequently confessed to the brutal murder of the Croat civilians that took place. The paramilitaries entered the home of Z.B. 8 civilians were removed from the basement. One who remained undiscovered heard the conversation in the yard. The oldest of the Croats asked the armed and masked soldiers: “What have we done to you, we haven’t done anything to anyone.” One of the Serb paramilitaries answered: “You really are true ‘Ustahas’.” They then executed the Croats by firing squad. The victims were Zlatko Hrunka, Đuro Žili, Anka Marošević, Zora Barbača, Marijan Adžijević and Nikola Anić.⁹² On the same day, Paulina Žili, Barica Žili, Ruža Sinjaković and Ana Zaneti were also murdered. The houses of the victims were also destroyed.⁹³

5.49 The bodies of the murdered civilians were transported by Vlado Gašparović's tractor and taken to a prepared trench about 30 meters from the rectory. This trench became a mass grave. A JNA vehicle designed for the purpose was used to make the trench.⁹⁴ The massacre was carried out by the local Serb paramilitaries and JNA reservists from the Banja Luka Corps⁹⁵ on the orders of Marica Gašparović, a representative of the civil authorities in the village. On 6th October 1991, the JNA entered the village

⁹¹ *Ibid.*, p. 118.

⁹² Witness Statement of N.M., Annexes, vol 2(II), annex 212, who, together with other Serbs, took part in the described massacre of the civilians.

⁹³ Witness Statement of N.M.: “... he stuck the knife into the basement door at the police station in Donji Čaglić, knowing that detained civilians are in the basement.”
Ibid.

⁹⁴ Witness Statement of R.M., Annexes, vol 2(II), annex 213.

⁹⁵ Witness Statement of S.R., Annexes, vol 2(II), annex 215.

and forced the remaining Croat population to leave. Thereafter, the village was completely destroyed to ensure that any surviving Croats would be unable to return to their homes.

4. MUNICIPALITY OF DARUVAR

Đulovac

5.50 The village of Đulovac is situated in the municipality of Daruvar, Western Slavonia. It lies approximately 20 km to the east of the town Daruvar. In 1991, Đulovac had 646 inhabitants of whom 285 were Croats, and 260 were Serbs.⁹⁶ Before the conflict Đulovac was called Miokovićevo.

5.51 Serbs began to erect barricades on the roads from Đulovac to Daruvar and Virovitica in early August 1991. Movement to and from the village was forbidden.⁹⁷ Late in September 1991, members of the Šešelj's units known as "Beli orlovi" ("White eagles") began to arrive in Đulovac.⁹⁸ The JNA supported the occupation, primarily by endorsing the policy of barricades and later by supplying arms and food. According to the witness B.B., JNA reservists led by a JNA captain subsequently came from Novi Sad in November.⁹⁹

5.52 Soon after the occupation began, rebel Serbs captured five civilians: F.B., I.K., K.M., I.B., A.T. and a Catholic priest, I.H.. All 5 were detained in a veterinary station in Đulovac. All except the priest were physically and psychologically maltreated. On 18th August 1991, the same fate befell the civilians Đuro Blažević, Mirko Zelić and Ivan Keserica. After being tortured in the veterinary station, they were taken to the Bučje concentration camp. None have been seen since. On the same day, Croats A. and A. S. were also tortured in the veterinary station. The Serbs threatened to set A.S. on fire. They put a pistol in his mouth and a knife to his throat.

5.53 Others who were abducted and held prisoner without charge were A.I., I.H., J.H., D.H., I.G., I.G., P.T., V.P., J.K., J.M., B.B. and I.B. The witness B.B. provides an

⁹⁶ 1991 Census, Republic's Institute for Statistics.

⁹⁷ Witness Statement of M.S., Annexes, vol 2(II), annex 216.

⁹⁸ Witness Statement of R.J., Annexes, vol 2(II), annex 217.

⁹⁹ Witness Statement of B.B., Annexes, vol 2(II), annex 218.

example of the treatment they received. He was beaten with a telephone wire, a baton, a pole made of hazel-tree and a hose:

“Before they would batter us, they handcuffed us to a stand that was used for binding cattle and they roped us around the waist so that when we began to fall unconscious during the torture, we wouldn’t fall directly on concrete, but we would remain hanging on that rope. The frequency of the torture depended on military successes....They also mentally traumatised in that they would take us to a birch-tree where they tied us up and they told us that we were going to be executed by a firing squad. After that, they would return us to the shed. There were sometimes as many as 18 of us locked up in that shed, in a space that was no more than 3x3 m. The numbers consistently changed as people were brought and taken away....A lot of those people that were imprisoned with me were killed...”¹⁰⁰

5.54 On 23rd September 1991, S.A.* was taken from Veliki to the veterinary station in Đulovac. He was kept there for one month, after which he was transported to a prison in Bijela and then to Bučje and finally to Stara Gradiška. Throughout his captivity, he was subjected to torture. This included the removal of his tongue, the extraction of his teeth and the laceration of his body and hands. He was beaten on a daily basis, often until he lost consciousness. A. also witnessed others being tortured.¹⁰¹ On 27th September 1991, three civilians from Koreničani, Ivo Golub, Ivan Gyordji and Pavle Tršek, were taken to the veterinary station in Đulovac. After transportation to Bučje in November 1991, they disappeared.

5.55 On 7th September 1991, Franjo Žmegač was attacked by a number of paramilitaries who cut his body with axes and knives. He died from his wounds. He was subsequently found and buried by a witnesses. Apart from lacerations all over his body, his nose and jaw had been fractured and the arteries and veins in his neck cut. His house had also been set on fire.¹⁰² According to M.S., the Serbs video-taped the murder and it was later viewed by some of the victim’s neighbours.¹⁰³

5.56 The most extreme violence occurred when the Serb paramilitaries began to retreat from Đulovac on 12th December 1991. The B. family home was raided by a group of Serbs. The witness F.S., overheard the attackers shooting members of the family. F. locked

¹⁰⁰ Witness Statement of B.B., Annexes, vol 2(II), annex 219.

¹⁰¹ Witness Statement of S.A., Annexes, vol 2(II), annex 220.

¹⁰² Witness Statement of S.H., Annexes, vol 2(II), annex 221.

¹⁰³ Witness Statement of M.S., Annexes, vol 2(II), annex 216.

herself in the bathroom and climbed up into an adjacent attic, just as the Serb paramilitaries threw two bombs through the bathroom window.¹⁰⁴ Before the paramilitaries retreated from the town, they killed at least 10 Croat civilians. The dead included Franjo Blažan, Nada Blažan, Milan Blažan, Jakov Bijelić, Andja Bijelić, Jelka Hasak, Jaga Prša, Alfred Sautner, Ana Sautner and Ankica Smiljčić.¹⁰⁵ These killings occurred during a period when the JNA was still in control of the village.

Doljani

5.57 The village of Doljani is in the municipality of Daruvar, Western Slavonia. In 1991 the village had 1,003 inhabitants, of whom 361 (35.99%) were Croat and 219 (21.83%) were Serb. The remainder of the population comprised other ethnic groups.

5.58 The village was attacked by the JNA and Serb paramilitary groups on 16th September 1991. Four non-Serb civilians were killed in the attack. I.M.* and his son I.* were hiding in a shed. A gunman burst in and opened fire with an automatic weapon. The same night, their neighbours, August Hašek and Božena, were also killed. They were found dead in front of the shed the following day.¹⁰⁶ Božena Hašek was shot in the chest. Her son August was lying with his head in her lap with a part of his skull cracked open.¹⁰⁷

5.59 Like many of the inhabitants of the village, the witness A.K.* was hiding with her family during the heavy fire. The family was in the basement of their home. No one was sure what was happening outside, but through the rolling shutters they could see a tank with a Yugoslav flag on it. Serb paramilitaries forced the family out into the yard and ordered them to lie on the ground. A young man, aged around the 18 or 19, ordered A. to go to the kitchen and undress. He pointed his gun at her until she took off all her clothes. He then raped her. Two other Serb paramilitaries also raped her.¹⁰⁸

¹⁰⁴ Witness Statement of F.S., Annexes, vol 2(II), annex 223.

¹⁰⁵ Witness Statement of B.B., Annexes, vol 2(II), annex 218.

¹⁰⁶ Witness Statement of I.M., Annexes, vol 2(II), annex 224.

¹⁰⁷ Witness Statement of A.M., Annexes, vol 2(II), annex 225.

¹⁰⁸ Witness Statement of A.K. "...After he pointed his gun at me, I had no other choice but to do what he ordered me. Then, one of them entered the kitchen and raped me, after him another one came and did the same thing", Annexes, vol 2(II), annex 226.

Vukovije

5.60 The village of Vukovije is located in the municipality of Daruvar, Western Slavonia and lies a short distance from Đulovac. In 1991, 103 people lived in the village, 71 of whom were Croats and 25 of whom were Serbs. The remainder were mostly Muslim and Czech.¹⁰⁹ By the end of the war, the Croat inhabitants had been almost completely banished.

5.61 On 8th November 1991, armed members of the Serb paramilitary units burned J.K.'s barn, and appropriated his tractor. The family, which had been hiding in the basement, subsequently fled.¹¹⁰ On the same day, the property of Z.J., M.O.,¹¹¹ S.N. and N.P. were set on fire.¹¹²

5.62 Due to the escalating violence, many of the Croat inhabitants grouped together. On 19th November 1991, Mijo Novaković, Ivka Novaković and Štefica Kopriva were discovered and shot in the back of the head by the Serb paramilitaries. M.H. later found their dead bodies on the steps of the house.¹¹³

Veliki Miletinac

5.63 The village of Veliki Miletinac is situated in the municipality of Daruvar, Western Slavonia. In 1991, the village had only 99 inhabitants, of whom 55 were Croats and only 5 were Serbs. The remaining 39 inhabitants were members of other ethnic groups.

5.64 On 23rd September 1991, Serb paramilitary groups opened fire on several Croat houses in Veliki Miletinac. The attackers shouted: "Ustashe, come out of the house". I.A.* tried to escape from the village, but was shot. He was later found dead in a cornfield, along with P.M. His parents, A.A.* and S., were then arrested and escorted to Brđane by soldiers who wore hats with five-pointed red stars and "small crosses". A nail was stabbed into the hand of A.A. Upon her release, she was initially prohibited from burying her son, I. At length, after obtaining a permit, she was allowed to bury him without ceremony. Her strangled dead body was found by M.M. following the liberation

¹⁰⁹ Census from 1991, Republican Institute for Statistics.

¹¹⁰ Witness Statement of J.K., Annexes, vol 2(II), annex 227.

¹¹¹ Witness Statement of M.O. , Annexes, vol 2(II), annex 228.

¹¹² Witness Statements of J.K., Annexes, vol 2(II), annex 227.

¹¹³ Witness Statement of M.H., Annexes, vol 2(II), annex 229.

of the village on 11th November 1991.¹¹⁴ Her husband, I. had been taken to a concentration camp, where he was tortured. The methods of torture included the removal of his tongue and extraction of his teeth.¹¹⁵

SECTION TWO: BANOVINA

5. INTRODUCTION

Geography

5.65 The region of Banovina covers 1, 795 km² to the southwest of the Sisak part of the Sava River. The lower part of the rivers Una, Kupa and Glina also flow through the region. The countryside is characterised by a range of hills, with an average height of 300 km above sea level. The highest peak is Zrinska Gora (615m). A large part of the area is covered by forests, especially the municipalities of Dvor na Uni and Hrvatska Kostajnica. The major town and economic centres of Banovina are Petrinja (meat industry), Glina and Hrvatska Kostajnica (timber industry). The population is mainly rural and engaged in farming or cattle breeding.

Demography

5.66 In 1991, the region comprised the municipalities of Sisak, Petrinja, Glina, Dvor na Uni and Hrvatska Kostajnica. The population at that time was 173,265, of whom 84,142 were Croats and 71,063 Serbs. Glina, Dvor na Uni and Hrvatska Kostajnica were predominantly populated by Serbs (Glina: 34.9% Croats and 60.66% Serbs; Dvor na Uni: 9.58% Croats and 86.51% Serbs; Hrvatska Kostajnica: 28.92% Croats and 62.91% Serbs).¹¹⁶ There was a Croat majority in Sisak (64.76% Croats and 22,77% Serbs), while in Petrinja the population comprised an equal balance of Croats (44.4%) and Serbs (44.9%). The entire area of Banovina was occupied during the conflict. Only one part of the Sisak municipality remained under Croatian jurisdiction.

¹¹⁴ Witness Statement of A.A., Annexes, vol 2(II), annex 230.

¹¹⁵ Witness Statement of S.A., Annexes, vol 2(II), annex 220.

¹¹⁶ Republican Census of the Public Institute for Statistics from 1991.

The Outbreak of Hostilities

5.67 As a reaction to political changes in the Republic of Croatia the Serbian Democratic Party (SDS) members started with mass psychological mobilization of all Serbs with the aim of creating a “Greater Serbia”. Accordingly, a meeting of SDS¹¹⁷ was held in Banovina at the former Marshal Tito Square in Petrinja on 25th June 1990. The meeting was attended by several thousand Serbs. Dr. Jovan Rašković, the Chairman of the SDS, spoke at the meeting and openly incited the crowd to disobey the democratically elected government of the Republic of Croatia. The SDS had not had a significant presence in Banovina prior to the meeting. It had not contested the April elections in the area. However, between June 1990 and December 1990, most villages of Banovina with a Serb majority founded SDS committees.¹¹⁸

5.68 On 27th September 1990, an official letter from the Ministry of Interior (MUP) of Croatia¹¹⁹ ordered the withdrawal of 60% of the weaponry of the reserve forces from all police stations to the Central Police Department in Sisak. The SDS organised a demonstration to block the government order. A crowd of 1,500 people ensured not only that the government plan was blocked, but that the weapons were taken from the police stations and distributed to the embryonic paramilitary forces in the region.¹²⁰ At the same time in the neighbouring villages of Glina and Dvor na Uni, the Serb paramilitaries seized the entire arms’ stores of the local police stations.¹²¹

5.69 In the following months, the local SDS, influenced by the so called Executive Council of “SAO Krajina” in Knin, formed local Secretariats in Dvor na Uni, Hrvatska Kostajnica and Glina. These bodies subsequently declared that the jurisdiction of the Croatian Government in that area ceased to be valid. In the early months of 1991, the newly self-appointed government was given support to act with impunity by the JNA. During that period, military helicopters provided weapons to the SDS, who than

¹¹⁷ Official Note of the Police Department (PU) Sisak from 26 November 1991, Annexes, vol 2(II), annex 297.

¹¹⁸ Witness Statement of Đ. Č.: The witness confirms that the local SDS “ was founded with aim to expel Croats from the Una River to the Kupa River and establish a state of arms”, Annexes, vol 2(II), annex 242.

¹¹⁹ Official letter of the MUP RH from 27 September 1990, Annexes, vol 2(II), annex 298.

¹²⁰ Official note of the PU Sisak-Moslavina; official note of the PU Zagreb from 16 April 1992, Annexes, vol 2(II), annex 299 and annex 300.

¹²¹ *Narodna Armija*, 11 October 1990, pp. 4-5, 15, “Vojska je prigrlila narod” (The Army has Embraced the People), “Ukradeno oružje”(Stolen Weapons), Annexes, vol 4, annex 147.

distributed it to the Serbian population in the area.¹²² A “Serbian Territorial Defence force” was established at the local level.¹²³ A paramilitary training centre was opened in Šamarica on 18th June 1991 for the purpose of training the volunteer formations of the Territorial Defence, as well as the special units of the “Police of SAO Krajina”.¹²⁴

5.70 On 26th July 1991, the Serb paramilitaries and the JNA began operation “Žaoka” (“Sting”) with the purpose of defeating all Croatian forces in the area (see vol 3, Plate 18; also vol 3, Plate 4.4). The villages of Zamlača, Struga Banska, Divuša, Unčani and Kozibrod were attacked with mortar and artillery fire, which lasted all day. The attack commenced with approximately 120 mortar missiles, shortly followed by up to 600 missiles over the course of the day.¹²⁵ Operation “Žaoka” caused a significant number of civilian deaths and the forced exile of most of the Croat population.¹²⁶ After the operation, the JNA Commander of the 3rd Battalion submitted a report on the operation to the military headquarters, indicating that all platoons had completed their tasks without losses.¹²⁷ Thereafter, villages and towns in the region of Banovina suffered daily assaults, despite the absence of any military justification.

5.71 The civilian government of the Banovina municipality, with a Serbian majority, started making decisions for joining these municipalities to the “SAO Krajina.” On 31 March 1991, at a secret meeting in the Community Memorial House in Šamarica, the SO Glina decided to join Glina to the so-called “SAO Krajina”.¹²⁸ On 5 May 1991, a Community of the Local Committees (MZ) with a Serbian majority of the Municipality Petrinja was established.¹²⁹ On the same day, the Assembly of that municipality decided to join the MZs of the Municipality Petrinja with a Serbian majority to the “SAO Krajina”.¹³⁰ They also decided to call a

¹²² Witness Statement of M.C., Annexes, vol 2(II), annex 243.

¹²³ The decision on establishing the Headquarters of Territorial Defence (ŠTO) of the Municipality Dvor na Uni, Annexes, vol 2(II), annex 301.

¹²⁴ The overview of the situation in the Training Centre “Šamarica”, Annexes, vol 2(II), annex 302.

¹²⁵ Witness Statement of D.V., Annexes, vol 2(II), annex 244.

¹²⁶ See paras 5.102-5.106

¹²⁷ Report of the Commander of the 3rd Battalion to the war headquarters on the operation “Žaoka”, Annexes, vol 2(II), annex 303. For details of the loss of civilian life as a result of operation “Žaoka” see paras 5.102-5.106.

¹²⁸ Official note of the PU Sisak-Moslavina from 31 May 1994, Annexes, vol 2(II), annex 304.

¹²⁹ Decision on forming the Community of MZ Petrinja, Annexes, vol 2(II), annex 305.

¹³⁰ “Decision of the Assembly of the Community of MZ with a Serbian majority of the Municipality Petrinja for the joining with SAO Krajina”, Annexes, vol 2(II), annex 306.

referendum on 12 May 1991 and to hold it in the entire area of “SAO Krajina”.¹³¹ On the basis of the referendum results, the Central Commission made a Report to the “Assembly of the SAO Krajina”¹³² in which it concluded that the conditions for reaching a Decision for the joining of the “Serbian Autonomous Region (SAO) Krajina” with the Republic of Serbia had been established, and that “Krajina” could remain in Yugoslavia together with Serbia.¹³³ According to this decision, the Banovina Municipalities of Glina, Dvor na Uni and Petrinja were also considered a part of the “SAO Krajina”.

Military Organisation of the JNA in Banovina

5.72 Prior to its direct involvement in the war, the JNA was secretly arming Serb paramilitaries.¹³⁴ In the summer of 1991, the JNA began to openly support the expansionist agenda of the Serbian leadership.

5.73 The region of Banovina was under the jurisdiction of the Command of the 10th Corps of the JNA. The main part of the army had its headquarters in the town of Petrinja. The Petrinja barracks housed the 257th and 622nd Motorized Brigade, the 6th Combined Artillery Regiment, the 6th Combined Anti-armour Artillery Regiment and the 671st Pontoon Battalion. In the spring of 1991, the JNA capacity in Petrinja was reinforced with the 1st Armoured Battalion of the 51st Mechanised Brigade from Pančevo.¹³⁵ In addition, the Mechanised Unit of the 329th Armoured Brigade from Banja Luka was stationed in the south of Banovina, around the area of Dvor na Uni. The arrival of these reinforcements coincided with the Serbian rebellion in the region. On 21st October 1991, the 592nd Motorised Brigade was sent from the barracks in Šabac (Serbia) to the area of Banovina battlefield.¹³⁶

¹³¹ Decision on calling a referendum from 5 May 1991. Annexes, vol 2(II), annex 307.

¹³² Report of the conducted referendum in the area of “SAO Krajina” from 14 May 1991, Annexes, vol 2(II), annex 308.

¹³³ Decision for the joining of the “SAO Krajina” with the Republic of Serbia from 16 May 1991, Annexes, vol 2(II), annex 309.

¹³⁴ Witness Statement of Z.M., Annexes, vol 2(II), annex 245.

¹³⁵ The Command of the 5th Military Region from 12 May 1991, the report of the tour and control of the 622nd Motorised Brigade and the 4th Armoured Brigade; Annexes, vol 2(II), annex 310; Anton Tus, “The War in Slovenia and Croatia Until the Sarajevo Truce”, “The War in Croatia and Bosnia and Herzegovina 1991-1995”, pp. 68-69.

¹³⁶ Order for march and the order for defence of the Command of the 592nd Motorised Brigade, Annexes, vol 2(II), annex 311.

**DATES OF OCCUPATION OF TOWNS
AND VILLAGES ADDRESSED IN THE
MEMORIAL - BANOVINA**



SISAK

GLINSKA
POLJANA
04/10/1991

PETRINJA

DONJE JAME
03/10/1991

GORNJE JAME
03/10/1991

NOVO SELO GLINSKO
mid October 1991

KRALJEVČANI
14/07/1991

JOŠEVICA
June 1991

MAJUR
03/09/1991

HRVATSKA
KOSTAJNICA
12/09/1991

KOSTRIČI
September 1991

BAČIN
September 1991

HRVATSKA
DUBICA

*Bosnia and
Herzegovina*

DVOR

TOWN (yellow shape)

VILLAGE (black dot)

DATE OF OCCUPATION (DD/MM/YY)

18/11/1991



5.74 At the end of July 1991, the regional headquarters of the TO Kordun and Banovina¹³⁷ were formed. On 20 August, the operative zones of the Territorial Defence “SAO Krajina” had been established. In September, the areas of Kordun and Banovina were merged into a unified 3rd Operative Zone under the command of Rade Vujaklije.¹³⁸ The units of the rebel Serbs in Kordun and Banovina were put under the command of the JNA on 19th October 1991. A JNA Order issued by Major General Špiro Niković confirms that the Serb rebel and paramilitary forces were to be “engaged as part of the composition of the JNA units”.¹³⁹

5.75 After the signing of the Sarajevo Agreement on 10th January 1992, and the arrival of UNPROFOR, the JNA agreed to retreat from the territory of Banovina. The official order to retreat was made on 11th May 1992.¹⁴⁰ However, the JNA ensured that the “SAO Krajina” police who remained were provided with substantial technical and combat equipment.¹⁴¹ The administrative functions of the “police” and military units of “SAO Krajina” continued to be conducted by officers of the Yugoslav Army (the JNA’s successor), who were paid by the headquarters of the Yugoslav Army and assigned to their duties in the occupied territory of Banovina.¹⁴² Up until 1995, the VJ continued to supply financial help, logistical support and senior officers to the army of the rebel Serbs.¹⁴³

¹³⁷ “SAO Krajina”, Government No. 157/91 from 26 July 1991, Annexes, vol 2(II), annex 312.

¹³⁸ “SAO Krajina”, Commander of the TO “SAO Krajina”, No. 2/1 from 9 October, Order; “SAO Krajina”, Government, President. No. 1/1 from 5 October 1991, Note, Annexes, vol 2(II), annexes 313 and 314.

¹³⁹ Command of the 1st OG, No. 100-233 from 19 October 1991; Chapter 3, para 3.63 Annexes, vol 2(II), annex 315.

¹⁴⁰ SSNO; GŠ OS SFRJ; Operative Centre No. 53-3 from 11 May 1992, to the Command of the 5th, 10th, 13th, 17th Corps and the 4th VO, Order, p.21; Annexes, vol 2(II), annex 316.

¹⁴¹ Record of the Commander of the 1st Brigade TO Glina Colonel Marko Vrcelj on taking over the weapons and military equipment of the 592nd Motorised Brigade from 19 May 1992 and the Petrinja Bulletin No. 1/92, Annexes, vol 2(II), annex 317 and Annexes, vol 4, annex 152.

¹⁴² Decision with which Colonel Stanko Letić (CO of the 39th Corps) acknowledges the right to expenses refund due to separate life from family, Annexes, vol 2(II), annex 318.

¹⁴³ Witness Statement of M.S.; Order of the GŠVJ on transfer from 5 November 1993, Annexes, vol 2(II), annex 246 and annex 319.

Destruction of Cultural Monuments

5.76 During the period in which Banovina was temporarily occupied, numerous Catholic monuments were destroyed, including parish churches, chapels, parish houses, monasteries and graveyards. As many as 57 sacral objects were destroyed or damaged. Amongst the most significant cultural losses were the Parish Church of St. Nicholas the Blessed, in Hrvatska Kostajnica (built in 1706), the Monastery and Church of St. Anthony of Padua in Hrvatska Kostajnica (1729), the Parish Church of St. Catherine the Virgin Martyr in Divuša (1699), the Parish Church of the Assumption of the Holy Virgin Mary in Gora (1687), the Parish Church of St. Bartholomew the Apostle in Hrastovica (1841), the Parish Church of St. Francis Xavier in Gornji Viduševac (1827), the Monastery and Church of St. Anthony of Padua in Hrvatski Čuntić (1699), the Parish Church of St. Elias the Prophet in Maja (1829), the Chapel of St. John the Baptist in Pecki (18th century), the Chapel of St. Nicholas the Bishop in Skela (18th century), the Chapel of St. Simon and Judas Tadeus in Strašnik, the Church of St. Lawrence the Martyr (1780) and the Church of St. Catherine in the Petrinja municipality (19th Century).¹⁴⁴

Mass Graves

5.77 39 mass graves have been discovered in Banovina (see Vol 3, Plate 7.3).¹⁴⁵ To date, 241 bodies have been exhumed of which 175 have been identified. The largest grave was found in the area of Skelište in Baćin. 56 bodies were exhumed of which 38 were identified. In Petrinja, at Marinka, a grave was found with 22 bodies. Around the “Villa Gavrilović”, 17 bodies were exhumed. In Plavičevac 10 bodies were exhumed.

¹⁴⁴ Wounded Church in Croatia, pp.323-324, 332-341, 393-394. See Vol 3, Plate 8.4.

¹⁴⁵ Mass graves in Banovina Annexes, vol 2(II) annex 320.

6. MUNICIPALITY OF GLINA

5.78 The municipality of Glina had 23,040 inhabitants, of whom 8,041 were Croats and 13,975 were Serbs. The remaining 1,024 comprised other ethnic groups. Croats made up the majority of the population in the north whilst Serbs were in the majority in the South. There were also a number of majority Croat villages in the middle area of the region. These villages, including Joševica, Dolnjaki, Prijeka, Maja and Svračica, made up the so-called Majska bazen.¹⁴⁶

Glina

5.79 In 1991 the town of Glina had 6933 inhabitants, of whom 1448 were Croats and 4831 were Serbs. The Police Department records at Sisak state that during the occupation approximately 18 Croats were killed or remain missing and over 1000 people were forced into exile.¹⁴⁷

5.80 On 26th June 1991, between 300 and 500 Serb paramilitaries attacked the main police station in Glina. 16 officers were captured and taken to prison in Knin where they were tortured.¹⁴⁸ In the wake of the attack, a number of Croat homes and buildings were mined. A bomb was tossed into an inn owned by I.M.¹⁴⁹ In August 1991, members of the Serb paramilitary units, supported by the JNA forces, captured Glina and its surrounding villages. In Glina, the witness A.B. remembers the JNA and Serb paramilitaries lining Croats up in the street and threatening to kill them. Systematic looting took place, especially at night. One morning, the dead bodies of Zvonko and Štefica Brdarić were found in a local well.¹⁵⁰ Most Croats felt compelled to flee the town on account of the violence. On one occasion, a judge visited the home of P.T. and forced him to sign a statement which said that he agreed to leave his entire property to the “Republic of Srpska Krajina” (“RSK”).¹⁵¹

¹⁴⁶ Specifications of the Banished, Killed and Missing Persons from the area of Municipality of Glina, 23 June 1993 Annexes, vol 2(II), annex 321; the total dead or missing is estimated to be 249 people.

¹⁴⁷ *Ibid.*

¹⁴⁸ Witness Statements of Ž.L. and M. Š.*, Annexes, vol 2(II), annexes 247 and 248.

¹⁴⁹ Witness Statement of I.M., Annexes, vol 2(II), annex 249.

¹⁵⁰ Witness Statement of A.B., Annexes, vol 2(II), annex 250.

¹⁵¹ Witness Statement of P.T., Annexes, vol 2(II), annex 251.

Novo Selo Glinsko

5.81 The village of Novo Selo Glinsko is located in the municipality of Glina, Banovina, 6 km from the town of Glina. In 1991, the village had 239 inhabitants, all of whom were Croats.

5.82 During the grenade attacks on the village by the JNA and the Serbian paramilitaries on 26th September 1991, the civilian Stjepan Horvatić (born in 1919) was killed. His body was exhumed on 13 March 1996.¹⁵² By the end of September, most inhabitants had fled from the village. Only 33 Croat civilians remained.¹⁵³ On 2nd October 1991, members of TO of Luščani and Brnjeuška, together with members of the so-called special units, entered Novo Selo Glinsko and killed 32 inhabitants.¹⁵⁴ The only survivor of this event was A.H. who managed to escape. While running towards Graberje, he heard five heavy explosions from the direction of the village.¹⁵⁵ A Serb - M.P. - was ordered by local Serbs to show the Serb paramilitaries the route to the village. P. confirmed that when the Serbs arrived, the Croat people were forced into the street. He subsequently heard shooting.¹⁵⁶ After the massacre, the Serb paramilitaries buried the dead near the village and set the village ablaze.¹⁵⁷

¹⁵² Record of the County Court in Sisak from 13 March 1996, Annexes, vol 2(II), annex 322.

¹⁵³ Witness Statement of Ž.V., Annexes, vol 2(II), annex 252.

¹⁵⁴ Witness Statement of M.P.: «...we heard short shots, then heavy detonation and an explosion... they assembled the women and killed them in the basement of a house in the neighborhood, by firing a «Zolja» missile into the room; whereas the men were allegedly killed in the assembly place», Annexes, vol 2(II), annex 253.

¹⁵⁵ Witness Statement of A.H., Annexes, vol 2(II), annex 254.

¹⁵⁶ Witness Statement of M.P., Annexes, vol 2(II), annex 253.

¹⁵⁷ Witness Statement of Ž.V. and Witness Statement of M.P.: «...at the end of 1997 he met Đ.P., who during the war buried the bodies of the murdered civilians, during which P. stated the murdered citizens of Novo Selo Glinsko were buried not far from the place of their execution...», Annexes, vol 2(II), annex 252 and annex 253.

Witness Statement of A.H.: «...he heard from the village five heavy explosions, one from his house, one from the school, one from the community house and one from the end of the village towards the village of Luščani.», Annexes, vol 2(II), annex 254.

Witness Statement of I.B.*: «...the entire village was burned down and the roofs of several houses that withstood were taken off». Annexes, vol 2(II), annex 255. See also Judicial Document Annexes, vol 2(II) annex 323.

5.83 Of the 239 inhabitants that lived in the village in 1991, 206 were banished and the remaining 32 are listed as killed or missing.¹⁵⁸ On 13th March 1996, the human remains of 9 civilians were exhumed in Novo Glinsko Selo. Six of the bodies were identified.¹⁵⁹

Joševica

5.84 The village of Joševica is located in the municipality of Glina, Banovina, 5 km south of the town of Glina. In 1991, the village had 133 inhabitants, of whom 126 were Croat and 2 Serbs.

5.85 From June 1991 the so-called “Šiltovi” paramilitaries began to control access into and out of the village.¹⁶⁰ According to N.Š., the JNA assisted with this blockade.¹⁶¹ On 5th November 1991, Serb paramilitaries burned Đuro and Gina Kreštalica alive by setting fire to their house. Nikola Kreštalica was shot when he tried to escape from the house.¹⁶² The burnt corpses remained in the yard for three days, after which they were buried by S.Š. Following these murders, the remaining Croat residents were afraid to leave their homes.¹⁶³

5.86 On 16th December 1991, the Serb paramilitary units returned to the village, moving from house to house firing at Croatian citizens. Twenty-one Croat people (ranging in age from 14 to 90) were murdered,¹⁶⁴ including Mara Šiftar and her children Luka, Pajo and Ljubica, and Milka Kreštalica (born in 1909).¹⁶⁵ N.Š. returned from a day working in the fields, to find that his wife and neighbour had both been shot in the head.¹⁶⁶ A.Š. was shot in the temple and the mouth, but survived the

¹⁵⁸ Specification of the Banished, Killed and Missing Persons from the area of municipality of Glina and the Witness Statement of I.B.: «...in the village there are no citizens...» Annexes, vol 2(II), annex 321 and annex 255.

¹⁵⁹ Record of the County Court in Sisak 13 March 1996, Annexes, vol 2(II), annex 322.

¹⁶⁰ Witness Statement of P.K.; Annexes, vol 2(II), annex 256.

¹⁶¹ Witness Statement of N.Š., Annexes, vol 2(II), annex 257.

¹⁶² Witness Statement of Đ.Š.: “.. the house of Nikola Kreštalica was nothing but ashes, and Nikola was lying dead in front of his house; on the ashes were two burnt bodies...”. Annexes, vol 2(II), annex 258. See also Witness Statement of P.M. *, Annexes, vol 2(II), annex 259.

¹⁶³ Witness Statements of I.Š. and P.M., Annexes, vol 2(II), annex 260 and 259.

¹⁶⁴ Witness Statement of I.M. who gives a list of killed persons, Annexes, vol 2(II), annex 261.

¹⁶⁵ Witness Statement of P.M., Annexes, vol 2(II), annex 259.

¹⁶⁶ Witness Statement of N.Š., Annexes, vol 2(II), annex 257.

atrocities. Her three grandsons (age 16 to 19) and a cousin were murdered.¹⁶⁷ For three days after the massacre, the remaining Croat citizens were not allowed to bury the dead. The murdered people were eventually buried in the cemetery in Glina.¹⁶⁸

5.87 On 4th December 1991, the paramilitaries mined and destroyed the Chapel with the Statue of Our Lady of Lourdes (1908).¹⁶⁹ The Church of St. Elias had already been destroyed in Maja.¹⁷⁰

5.88 On 20th December 1991, the majority of the remaining citizens left the village without possessions, having been forced to obtain passes to “authorise” their migration. Only ten people remained in Joševica. Serbs from the neighbouring villages looted the deserted houses. When there was nothing more to appropriate, the Serbs broke up the fences and sold the wood.¹⁷¹ During 1992, the Croats who had remained were physically and psychologically abused. N.Š. was beaten and his teeth were knocked out.¹⁷² L.F.* was beaten on numerous occasions and his wife raped before being murdered. In all, 4 more Croats were murdered: Stjepan Štajduhar, Kate Kreštalica, Stjepan Mihaljević and L.F.*. By the end of 1993, there were no Croats left in the village.¹⁷³ On 8th and 9th August 1996, twenty-three bodies were exhumed at the cemetery in Glina. Subsequent post mortems revealed that they were all shot in the head.¹⁷⁴

¹⁶⁷ Witness Statement of A.Š. and her medical records from the General Hospital “Dr. Ivo Pedišić”, Annexes, vol 2(II), annex 262.

¹⁶⁸ Witness Statement of P.K. “...they left the murdered people unburied. The uniformed men would not allow us to bury them nor to leave our houses.” Annexes, vol 2(II), annex 256.

¹⁶⁹ Witness Statement of I.M., Annexes, vol 2(II), annex 261.

¹⁷⁰ *Ibid.*

¹⁷¹ Witness Statement of N.Š. “...when there was nothing left to take from the house, they even tore the fences and robbed them...on 20 December 1991 the entire population except for ten left the village”, Annexes, vol 2(II), annex 257.

¹⁷² Witness Statement of N.Š., *ibid.*

¹⁷³ Witness Statement of L.F. “... my dead wife L. was lying on the bed, her head was blown up and I noticed that they had raped her, I knew then that there was no life for me left in the village”, Annexes, vol 2(II), annex 263; see also Witness Statement of N.Š. “...after the murder of Stjepan Štajduhar, Kate Kreštalica, Stjepan Mihaljević and LF there were no Croats left in Joševica”, Annexes, vol 2(II), annex 264.

¹⁷⁴ Witness Statement of N.Š., Annexes, vol 2(II), annex 264; and Record of the Municipal Court in Sisak, 8-9 August 1996., Annexes, vol 2(II) annex 324 and 325.

Gornje and Donje Jame

5.89 The villages of Gornje Jame and Donje Jame are situated approximately 9 km north of Glina. In 1991, the 44 inhabitants comprised 24 Serbs and 17 Croats. In the village of Donje Jame, the inhabitants were almost exclusively Croatian: out of 133 inhabitants, 130 were Croats. Only one was of Serb origin. Records from the police administration in Sisak state that during the occupation of the village, approximately 30 Croats were killed or “disappeared” from the two villages whilst at least 117 Croats were forced into exile.¹⁷⁵

5.90 On 3rd October 1991, Serb paramilitaries entered the village of Gornje Jame and removed the following Croat residents: Ivan Fabac, Stjepan Fabac and Nikola Fabac. Their bodies were found the next day in a wood about 1km from the village. They had all been shot in the head. The victims’ relations had to bury the dead in the woods. Later, Mara Krakar, a 70 year old women, was found dead by the roadside; Milka Rožić and her deaf and mute daughter, Jaga Rožić, were found dead in their house, as were Draga Rastovski and Katica Rastovski.¹⁷⁶ The same day, in the adjacent village of Donje Jame, Stjepan Dvorneković, Stjepan Jakovljević, Mijo Krakar, Živko Milošić, Nikola Vrbanac and Gojko Pavlović were also killed. According to the witness J.F., the murders were carried out by a combination of the “Šiltovi” paramilitary group and people in JNA uniforms.¹⁷⁷

5.91 On 11th December 1991, in the village of Gornje Jame, Mato Kireta’s house was set on fire. The 11 Croat people inside the house disappeared: Mato and Kata Kireta, Slavica and Darko Dvorneković, Mara, Željka and Nikolina Fabac, Mara Kuštreba, Milka Rastovski, Jela Vrbanac and Janko Fabac. The whereabouts of these people remain unknown.¹⁷⁸

5.92 J.F. and J.F. remained in the village of Gornje Jame. However, their constant maltreatment at the hands of the JNA forced them into exile on 4th January 1992.¹⁷⁹ In 1996, the bodies of Stjepan Dvorneković, Stjepan Jakovljević, Mijo Krakar, Katica Rastovski, Nikola

¹⁷⁵ Specification, Annexes, vol 2 (II) annex 321.

¹⁷⁶ Witness Statement of J.F., Annexes, vol 2(II), annex 265.

¹⁷⁷ Witness Statement of J.F.: “No one in the village was armed. No battles were fought. This could only happen because of the idiotic and pathological hatred of Croats by Serbs”, *ibid.*

¹⁷⁸ List of Detained and Missing Persons, Vol 2 (II) annex 327 and 328.

¹⁷⁹ Witness Statement of J.F. The witness was hit in the head on 1st January 1992 to the point where he lost part of his hearing in his right ear, Annexes, vol 2(II), annex 265.

Vrbanac, Nikola Fabac, Ivan Fabac, Stjepan Fabac, Živko Milošić and Gojko Pavlović were exhumed and buried in the graveyard in Mala Solina.¹⁸⁰ On 22 November 1991, the commander of the “Krajina police special unit” Siniša Martić – Šilt, was on a reconnaissance mission in the area of Gornje and Donje Jame and recorded that he did not notice any “Ustasha formations”.¹⁸¹ This shows that the members of the Serb paramilitary formations knew that there were no Croatian forces present in the area and that their operations were directed to the maltreatment and killing of the Croatian civilians.

Skela

5.93 The village of Skela is located in the municipality of Glina, Banovina. In 1991 the village had 109 inhabitants, of whom 95 were Croats and 2 Serbs. On 29th August 1991, the JNA and Serb paramilitaries set fire to the whole village.¹⁸² Those who escaped have stated that at least 10 people were killed, but no remains have been found to date.¹⁸³ According to the Sisak police records, 7 people remain missing. The remainder of the population of the village was banished.¹⁸⁴

¹⁸⁰ Record of the County Court in Sisak on the exhumation of the mortal remains in Donje and Gornje Jame from 22 April 1996, 27 April 1996 and 20 September 1996, Annexes, vol 2(II), annexes 326, 327, 328.

¹⁸¹ Report by Siniša Martić, Annexes, vol 2(II), annex 329.

¹⁸² Witness Statement of Z.R. The witness buried Jana Papić who was found dead in her home, Annexes, vol 2(II), annex 266.

¹⁸³ Mass Killing and Genocide in Croatia 1991/92, p. 126.

¹⁸⁴ Specification, Annexes, vol 2 (II) annex 321.

7. MUNICIPALITY OF PETRINJA¹⁸⁵

5.94 The first attack on Petrinja was perpetrated on 2 September 1991 at 12.00. It was an artillery and mortar attack initiated from the barracks of the JNA in Petrinja, “Vasilj Gačeša “ and “ Šamarica”, against the building of the Ministry of Interior (MUP) and civilian facilities. After that, the Armored Mechanized Battalion of the JNA, supported by infantry units of the Territorial Defense Petrinja, attacked and broke the defense lines in the center of Petrinja. On this occasion, many members of the MUP, the Croatian National Guard Corps and civilians were killed, and a great number of housing buildings were destroyed and seriously damaged by artillery missiles from a short distance. A great number of churches (St. Lawrence Church, St. Catherine Church) were damaged and destroyed. A number of civilians were captured, who were then taken to the JNA barracks “Vasilj Gačeša”.¹⁸⁶

5.95 On 16 September 1991, Petrinja was attacked again. On that occasion, a great number of civilians were killed, of whom part was buried at the graveyard, or in those locations they were found, that is, in front yards and gardens. During the attack against Petrinja, around 25 members of the MUP and the Croatian National Guard Corps of the Republic of Croatia were captured by members of the Territorial Defense and the Police of the “SAO Krajina” at the location called “Vila Gavrilović “. After they had captured and disarmed them, they executed them by firing squad. Four members of the MUP and the Croatian National Guard Corps survived the execution, although with serious injuries. Among them was D.C., who gave a witness statement on the aforesaid events.¹⁸⁷ The mortal remains of the 19 executed persons were exhumed on 14 September 1995¹⁸⁸

¹⁸⁵ The municipality of Petrinja had 35,565 inhabitants, of which 15,790 were Croats, 15,969 were Serbs and the remaining 3,806 were members of other ethnic groups. As with the municipality of Glina, the northern part was mostly inhabited by Croats, while there was a majority of Serbian inhabitants in the south. The Croatian villages Kraljevčani, Dragotinci, Prnjavor Čuntićki and Hrvatski Čuntić were situated in the central part of the southern area of the municipality. As Serbian villages surrounded these villages, they were the first to be subjected to violence.

¹⁸⁶ Witness Statement of P.M., Annexes, vol 2(II), annex 267.

¹⁸⁷ Witness Statement of D.C., Annexes, vol 2(II), annex 268.

¹⁸⁸ Record of the Investigation Department of the County Court in Sisak from 14 September 1995, Annexes, vol 2(II), annex 330.

Kraljevčani

5.96 The village of Kraljevčani is located in the municipality of Petrinja, Banovina, approximately 17 kilometers to the south of the town of Petrinja. In 1991, the village was populated by 151 inhabitants, of whom 87 were Croats and 64 were Serbs.

5.97 On 12th July 1991, members of the JNA and Serb paramilitary formations mounted a mortar attack on Kraljevčani. This attack was sustained for the entire day. On 14th July 1991 a JNA tank unit entered the village and destroyed Croatian houses and farm buildings. A.K.'s husband was seriously wounded. The JNA refused to take him to hospital in Sisak when they discovered that he was Croat.¹⁸⁹ Thereafter, many of the Croats fled toward Dragotinac and Petrinja. 13 elderly people stayed in the village to look after the houses and to feed the cattle.¹⁹⁰ With the knowledge that those Croats remaining in the village were essentially helpless, Serbians maltreated them¹⁹¹ and looted the vacated properties.¹⁹²

5.98 On 15th August 1991, a member of the Serbian paramilitaries shot 5 civilians of Croatian nationality: Marko* and Ana Krznar,* Nikola and Ana Šustić and Marija Turković.¹⁹³ Marko Krznar was decapitated. His wife Ana was raped and her breasts cut off.¹⁹⁴ The different parts of the bodies had to be collected and put in a bag. The family members of the dead

¹⁸⁹ Witness Statement of A.K., Annexes, vol 2(II), annex 269.

¹⁹⁰ Witness Statements of M.T.* and A.K., Annexes, vol 2(II), annexes 270 and 269.

¹⁹¹ Witness Statement of N.T. "...they threatened us (...) to slaughter us all at this place..." The witness recounts an event where a number of Croatian barns were burnt and a dead pig was left on the road with a Serbian Cyrillic symbol of 4 C's, Annexes, vol 2(II), annex 271.

See also Witness Statement of M.T.: "[A Chetnik] told me, 'Bear in mind what happened in the last war and remember what you Croats did. You will not live to see Christmas here. You better run – not to Petrinja, but across the Kupa'", Annexes, vol 2(II), annex 270.

¹⁹² Witness Statements of N.T. and A.K. "...we were afraid to sleep alone in the houses so we decided to stay together...", Annexes, vol 2(II), annex 271 and 269.

¹⁹³ Mass Killings and Genocide in Croatia 1991/92, p.123, Croatian Medical Journal, 1992, No. 33, pp. 43-47; see also the Witness Statements of A.K. and N.T., *ibid.*

¹⁹⁴ Witness Statements of M.T. and A.K.: His dead body was without its arms, legs and head. We panicked, seized with fear", *ibid.*

buried them under JNA supervision.¹⁹⁵ As a result of the killing, the remaining Croat residents left the Kraljevčani.¹⁹⁶

Glinska Poljana

5.99 The village of Glinska Poljana is located in the municipality of Petrinja, Banovina, approximately 10 km northeast of the town of Glina. In 1991, the village had 361 inhabitants, of whom 277 were Croats and 74 were Serbs.

5.100 In the summer of 1991, the movement of Croats in and out of the village was seriously curtailed by a requirement to carry passes.¹⁹⁷ On 4th October 1991, between 400 and 500 soldiers in reserve JNA uniforms entered the village, led by a JNA tank and military truck.¹⁹⁸ Many Croat citizens were forced to act as a human shield as the army entered nearby villages. Serb paramilitaries looted Croat households and beat Croat citizens. The witness I.D. lost his sight in one eye, when he was kicked in the head by one of the Serb paramilitaries.¹⁹⁹

5.101 On 27th October 1991, the majority of the remaining Croat population in the village was forcibly removed. After days of physical and mental maltreatment at the hands of the Serbs, the Croats were taken to Moščenica and handed over to the Croatian authorities.²⁰⁰ The Croat inhabitants who returned to the village were killed. The remains of Nikola Starčević, Mara Starčević and Bara Starčević were found on 2 October 1992.²⁰¹ The following residents were also killed: Mara Dobrinčić, Franjo Kovačević, Kata Kovačević, Josip Dvorneković, Jana Hodalj, Nikola Mileković, Marica Mileković, Stjepan Mileković, Ivo Kovačević and Vid

¹⁹⁵ Witness Statement of N.T. "...we came across the smashed bodies, they picked the parts of the bodies in a bag and sheet...", Annexes, vol 2(II), annex 271.

¹⁹⁶ Witness Statements of M.T. and A.K. "...we decided to flee while we were still able to because we would be the next victims of such crime...", Annexes, vol 2(II), annex 270 and 269.

¹⁹⁷ Witness Statement of I.D., Annexes, vol 2(II), annex 272.

¹⁹⁸ Witness Statement of I.D.: "that made me conclude that the JNA had started co-operating with local Chetniks", *ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.* "... every young Serb was allowed to enter the room... and the beat in the room whom they wanted to..."

²⁰¹ Official Note and Record of Investigation from 2 October 1992, Annexes, vol 2(II), annex 331.

Dvorneković. Their remains were exhumed during 1996.²⁰² Jana Starčević, Mijo Dobrinić, Stjepan Kovačević, Stjepan Kovačević, Katica Mileković and Marijan Smokrović remain listed as missing by the Commission for Detained and Missing Persons.²⁰³

8. MUNICIPALITY OF DVOR NA UNI²⁰⁴

Dvor na Uni, Zamlača and Struga Banska

5.102 In 1991, the town of Dvor na Uni comprised 2351 inhabitants, of whom 135 were Croats and 1993 were Serbs. The ethnicity of the remainder of the population included 7 Montenegrins, 3 Macedonians, 20 Slovenes, 1 Czech and 1 Hungarian. The village of Zamlača had 232 inhabitants, of whom 161 were Croats and 51 were Serbs. The village of Struga Banska had 254 inhabitants, of whom 239 were Croats and 8 were Serbs.

5.103 On 24th June 1991, St. John the Baptist's Day, members of Serb paramilitary units blocked all roads and entrances to the villages in the municipality. Croats unable to get to work were dismissed the next day.²⁰⁵ The main JNA/paramilitary attack began on 26th June (codename "Žaoka"), commencing with approximately 120 mortar missiles. This was followed by up to 600 missiles during the rest of the day.²⁰⁶ A human shield of Croat civilians from Zamlača was forced by the Serb paramilitaries to walk for 6 hours towards Struga Banska. At Struga Banska, the JNA troops present failed to intervene or provide medical assistance.²⁰⁷ From the villages of Zamlača and Struga, a number of civilians died whilst part of the human shield including P.K. and M.B.²⁰⁸ Three Croat

²⁰² Survey of the documentation of Mr. Grujić managed by the Office for Detained and Missing Persons of the Government of the Republic of Croatia, Annexes, vol 2(II), annex 332.

²⁰³ List of missing persons in the Office for Detained and Missing Persons from 12 July 1996., Vol 2 (II) annex 332.

²⁰⁴ The municipality of Dvor na Uni had a population of 14,555 inhabitants, of which 1,395 were Croats, 12,591 were Serbs, and 569 members of other ethnic groups (including Macedonians, Montenegrins and Muslims). Of 64 villages, only 6 were inhabited by a majority of Croatian inhabitants – Divuša, Golubovac Divuški, Kozibrod, Struga Banska, Unčani and Zamlača – all of which were situated in the eastern part of the municipality.

²⁰⁵ Witness Statement of M.V., Annexes, vol 2(II), annex 273.

²⁰⁶ Witness Statement of D.V., Annexes, vol 2(II), annex 244.

²⁰⁷ Witness Statement of A.K., Annexes, vol 2(II), annex 274.

²⁰⁸ *Ibid.*

policemen were stripped naked and shot.²⁰⁹ Another Croat policeman, T.B., was almost beaten to death.²¹⁰ Milan Begić from Zamlača was also killed.²¹¹ In a press release, the JNA subsequently described its role as that of creating a “buffer zone”.²¹²

5.104 Later in the day, two Serb paramilitaries came to the hospital in Dvor na Uni and attacked a number of Croat patients being treated for injuries sustained as members of the human shield. Mile Pušić was taken out to the front of the hospital and his throat was cut.²¹³ Milan Bartolović, Petar Špančić and M.M. were driven away from the hospital to the Žirovac River, where Bartolović and Špančić were shot. The witness M. managed to escape by jumping into the river.²¹⁴

5.105 During the occupation, the Chapel of St. John in Struga Banska was heavily damaged.²¹⁵ When the cannon fire hit the building, the paramilitaries celebrated.²¹⁶

5.106 On 29th July 1991, members of the JNA ordered Croats to leave the village. Approximately 1500 people were forced into exile. Local Serbs entered the area and looted the vacant houses.²¹⁷

Divuša

5.107 In 1991, the village of Divuša comprised 147 inhabitants, of whom 93 were Croat, 48 were Serb, 3 were Macedonian and 2 were Slovene.

5.108 In the beginning of August 1991, Ljuba Vidaković from Divuša was killed. Her sister-in-law had left her at the front of the house when she went shopping. When she came back, Ljuba had been shot twice in the

²⁰⁹ *Ibid.*

²¹⁰ Witness Statement of T.B., Annexes, vol 2(II), annex 275.

²¹¹ Witness Statement of M.B., Annexes, vol 2(II), annex 276.

²¹² “Zamlača and Struga under JNA control”, Annexes, vol 4, annex 152.

²¹³ Witness Statement of A.Š., Annexes, vol 2(II), annex 277.

²¹⁴ Witness Statements of M.M. and A.Š., Annexes, vol 2(II), annex 278 and 277. M.M. believed that there was some kind of arrangement between the paramilitaries and the hospital staff in order to facilitate the killings.

²¹⁵ Witness Statements of J.S. and T.B., Annexes, vol 2(II), annex 279 and 275.

²¹⁶ Witness Statement of V.B., Annexes, vol 2(II), annex 280.

²¹⁷ Witness Statements of D.L. and M.V., Annexes, vol 2(II), annexes 281 and 273.

head.²¹⁸ Afterwards Ankica and Jura Jugović's house was set on fire with the two of them in it. During the occupation, the Serb paramilitaries looted and burnt many Croatian houses. They also destroyed the 17th Century Catholic church of St. Catherine.²¹⁹

Other Locations

5.109 Other atrocities in the municipality of Dvor na Uni included the following:

1. **Kozibrod** (147 Inhabitants: 141 Croats, 2 Serbs). On 10th August 1991, Željko Ivanković and his mother Jelka were killed, and their remains were later exhumed.²²⁰
2. **Unčani** (383 inhabitants: 268 Croats, 91 Serbs). At the beginning of October 1991, Anka Solomun and Matija Solomun were killed. Anka (78 years) was forced to wrap herself in a Croatian flag and was beaten to death. Her son, Matija (57 years) was also beaten. When he tried to escape, he was killed with a pickaxe.²²¹
3. **Gvozdansko** (181 inhabitants: 41 Croats, 124 Serbs.). Three Croat civilians were executed and burned in their homes: Mate Grebarević (60 years), Ana Grebarević (60 years) and Boško Šesto (50 years).²²²

²¹⁸ Witness Statement of L.V., Annexes, vol 2(II), annex 282.

²¹⁹ Witness Statement of J.S., Annexes, vol 2(II), annex 279.

²²⁰ *Ibid.*

²²¹ Mass Killing and Genocide in Croatia 1991/92, p. 127.

²²² *Ibid.*, p.128.

9. MUNICIPALITY OF HRVATSKA KOSTAJNICA²²³*Hrvatska Kostajnica*

5.110 In 1991, the town of Hrvatska Kostajnica had 3,480 inhabitants, of whom 1,087 were Croats, 1,889 Serbs, 88 Muslims and others.

5.111 Hrvatska Kostajnica was occupied on 12th September 1991, after several days of heavy attacks by JNA units and Serb paramilitary groups. Civilians who surrendered were taken to prisons in Manjača in Bosnia and Herzegovina and to Mečenčane or Glina, along with members of the Croatian police. The destiny of several of them is unknown. According to the list of missing persons who disappeared during 1991, 104 persons remain unaccounted for.²²⁴ On 13th September 1991 Dražen Kostrić and Josip Jurčević were killed by Serb paramilitaries.

Baćin

5.112 The village of Baćin is located between the villages of Hrvatska Kostajnica and Hrvatska Dubica. In 1991, the village had 414 inhabitants, of whom 393 were Croats, 6 were Serb, 2 were Muslim and the remainder comprised other ethnic groups.

5.113 On 28th October 1991, approximately 60 ethnic Croats from the surrounding villages were assembled at the fire station at Hrvatska Dubica, under the excuse that they would be exchanged. They were then taken to a meadow near the Una River and executed by firing squad. The dead bodies were put into a pre-prepared mass grave.²²⁵

²²³ The former municipality of Hrvatska Kostajnica, according to the present administrative distribution, is composed of four municipalities: Majur, Hrvatska Dubica, Donji Kukuruzari and Hrvatska Kostajnica. In 1991 it had 14,851 inhabitants, of which 4,295 were Croats, 9,343 were Serbs and 1,213 were members of other ethnic groups. Of the 39 villages in the municipality, only 9 of them had a Croatian majority, those were: Graboštani, Mračaj, Stubalj, Kostrići, Selište and Kostajnički Majur, which were situated in the center of the municipality, northern of Hrvatska Kostajnica, Dubica, Baćin and Cerovljani, in the east of the municipality.

²²⁴ List of missing persons from the Hrvatska Kostajnica municipality issued by the Commission of the Hrvatska Kostajnica municipality on 1 March 1993, Annexes, vol 2(II), annex 333. See also Witness Statement of E.M., Annexes, vol 2(II), annex 282 B.

²²⁵ Witness Statement of V.J. "...they were all killed by shoot firings and their bodies were buried by a mechanical shovel..." also of J.J. "...the Forestry Office of Kostajnica sent a mechanical shovel for the burial of the bodies in the area of Baćin...", Annexes, vol 2(II), annex 283 and 284.

5.114 From 13th March to 1st April 1997, 56 bodies were exhumed. 38 of these were identified.²²⁶

Kostrići

5.115 The village of Kostrići is located approximately 3 km north of the town of Kostajnica. In 1991, the village had 15 citizens, all of which were Croats.

5.116 On the morning of 19th November 1991, members of the Serb paramilitaries murdered every single person in the village. The youngest victim was Dario Jurić who was only three years old. The oldest victim was ninety-three-year old Pero Bašić. In addition, the following Croat residents were killed: Vera, Tomislav (aged 5 years) and Zlatko Jurić, Ankica-Jelka, Marija and Pero (51 years) Bašić, Jure and Anka Kozić, Milka Jurić, Marija Kostrić (64 years), Ferdinand and Mara Krizman, Kata Bunjevac and Marija Jurić.²²⁷ N.B. testifies that the local “Krajina police” instructed him to bury the dead. He also confirms that the village was set on fire on two occasions thereafter.²²⁸ During 1996 and 1997 the following persons were exhumed and identified: Petar Bašić (51 years), Jelka Bašić, Milka Jurić, Marija Jurić, Marija Kostrić, Anka Kozić and Jure Kozić.

Kostajnički Majur

5.117 The village of Kostajnički Majur is located in the municipality of Hrvatska Kostajnica, approximately 3 km northwest of the town of Hrvatska Kostajnica. In 1991, the village had 532 inhabitants, of whom 457 were Croat and 50 were Serb.

5.118 In June 1991, local Serbs erected barricades and began to shell the village. The majority of Croats fled the village at that time. Their empty homes were destroyed. The JNA subsequently occupied the village with infantry and violence escalated. At the beginning of August 1991, Ana Serdar was burned to death in her home.²²⁹ M.G. was part of a

²²⁶ The record of the investigative exhumation conducted from 13 March until 1 April 1997 on the location of Hrvatska Dubica – Skelište, Annexes, vol 2(II), annex 334.

²²⁷ Report of the Killed and Missing Persons in the Municipality of Hrvatska Kostajnica-Kostrići, Annexes, vol 2(II), annex 335. See also Witness Statement of M.V., Annexes, vol 2(II), annex 285.

²²⁸ Witness Statement of N.B., Annexes, vol 2(II), annex 286. See also Mass Killing and Genocide in Croatia 1991/92, p. 127.

²²⁹ Report of Killed and Missing Persons in the area of Hrvatska Kostajnica Municipality-Kostajnički Majur, Annexes, vol 2(II), annex 336.

group of men were abducted from the village and imprisoned in Kukuruzište. As they walked along the road they were forced to shout, “This is Serbia”. Milan Lazić was shot when he tried to escape.²³⁰

5.119 On 7th October 1991, Marijan Mateković, Drago Petrović, Josip Filar and Goran Filar were taken from their homes to the prison in Mečenčane. They have not been seen since that time.

5.120 On 14th October 1991, Serb paramilitaries forced Croat village residents to dig their own graves in their yards. The Serbian paramilitaries then shot them. The victims included: Ivan Švaga, Dragica Švaga and Antun Mateković. Nikola Švaga was also murdered. On 14th November 1991, Matija Jamić was murdered in his yard. On 1st November, Nikola Delić was killed by Martić’s paramilitaries. On 17th November 1991, Nikola Kostrić and his wife Anka were murdered in their house. On the same day Milka Solomun was found dead. Antun Solomun and Milan Pandža disappeared and remain missing.²³¹

5.121 During 1996, the remains of the following were exhumed: Nikola Delić, Ivan Gavrić, Matija Jamić, Nikola Kostrić and his wife Anka, Antun Mateković, Milka Solomun, Nikola, Ivan and Dragica Švaga. Of the 457 Croats who lived in Kostajnički Majur in 1991, 408 were banished by 1993 and the village was completely burnt down.²³²

Other Locations

5.122 Other atrocities in the municipality of Hrvatska Dubica included the following:

1. **Stubalj** (282 Inhabitants: 272 Croats, 2 Serbs) Marijan and Ana Medić and Marija Letić were murdered on 14th and 15th November 1991 respectively. On or around 26th November 1991 Petar Vujčić was murdered.²³³
2. **Graboštani** (201 Inhabitants: 177 Croats, 9 Serbs). Stevo and Roza Karanović were murdered on 5 January 1992.²³⁴

²³⁰ Witness Statement of M.G., Annexes, vol 2(II), annex 287.

²³¹ Report of Killed and Missing Persons in the area of Hrvatska Kostajnica Municipality-Kostajnički Majur, Annexes, vol 2(II), annex 336. See Witness Statement of D.M., Annexes, vol 2(II), annex 288.

²³² Information Document County of Sisak-Moslavina from 7 July 1993 and see Witness Statement of M.M., Annexes, vol 2(II), annex 337 and 289

²³³ Witness Statements of P.L. and F.K., Annexes, vol 2(II), annex 290 and 291.

²³⁴ Witness Statement of F.K., Annexes, vol 2(II), annex 291.

3. **Panjani** (221 Inhabitants: 32 Croats, 175 Serbs). On 8th September 1991, 4 civilians were murdered in the village: Anđelka Bišćan, Mladen Bišćan, Gojko Badrić and Jagoda Brkljačić.²³⁵ The events in the village as follows:
- “They tortured the entire Bišćan family in the courtyard, after that they massacred them. They took Mladen’s eyes out with a knife, cut off his nose and then stabbed him. After that they stabbed Anđelka and her mother (...) after that they put the Bišćan family on a pile, poured gasoline over them and put them on fire”.²³⁶
4. **Cerovljani** (512 inhabitants: 271 Croats, 202 Serbs, 2 Muslims). The witness G.B.* heard from people who had escaped from the town that Đuro Petrović, Nikola Likić and Barica Blinja had been killed.²³⁷ The witness, A.B., found the burnt corpses of two of the victims. He also states that Asim Prazina was led from the town by the paramilitaries with a rope around his neck. He has not been seen since that time.²³⁸
5. **Hrvatska Dubica** (2062 inhabitants, 1042 Croats, 794 Serbs). Many of the people who were massacred in Baćin came from the town. T.K. was part of a group hiding in a basement before being removed and taken to the fire station.²³⁹ Inside the fire station, the Croats were in a state of extreme panic. There was a clear sense that something awful was going to happen. Many begged their captors to spare them. T. managed to escape, but was found by the side of the road by local Serbs in JNA uniforms and beaten until he lost consciousness.²⁴⁰ In addition, Ivica Dragičević and Rade Gajić were killed in front of their home and then burned. Idriz Čaušević, Ivan Krivajić and Ivan Matijević were also killed. The town’s Catholic church was destroyed, just prior to the arrival of UNPROFOR.²⁴¹

²³⁵ Mass Killing and Genocide in Croatia 1991/92.

²³⁶ Witness Statement of M.I., Annexes, vol 2(II), annex 292.

²³⁷ Witness Statement of G.B., Annexes, vol 2(II), annex 293.

²³⁸ Witness Statement of A.B., Annexes, vol 2(II), annex 294.

²³⁹ Witness Statement of T.K., Annexes, vol 2(II), annex 295. The group in the basement included I.K., A.Đ., J.V., M.D., K.V., M.P., M.S.

²⁴⁰ *Ibid.*

²⁴¹ Witness Statement of J.J., Annexes, vol 2(II), annex 284.

6. **Predore:** Franjo Flekač was murdered on 15 September 1991, while Marko Flekač and Josip Flekač were wounded and taken to a hospital that day. However, they were not permitted to stay there and were forcibly discharged. Tires were put around their necks and they were set on fire by members of the Serbian paramilitary. J.J. and others were tortured by paramilitaries. They were beaten, had water poured over them, and were made to lie on the ground whilst Serbian soldiers marched over them. Two other men were slaughtered and J. was forced to lie on top of them.²⁴²

SECTION THREE: KORDUN AND LIKA

10. INTRODUCTION

Geography

5.123 The region of Kordun borders with Banovina. It is located between the far south of the Karlovac municipality, and Plitvica Bridge where Lika begins. Kordun includes the municipalities of Vrginmost (now Gvozd), Vojnić, and Slunj and also parts of municipalities Karlovac, Ozalj and Duga Resa.

5.124 The region of Lika stretches from the Plitvica Bridge in the north to the Knin municipality in the south. The Velebit Mountain in the west divides Lika from the coast. To the east, the region stretches to the border of Bosnia and Herzegovina. At the time of the war Lika included the administrative municipalities of Ogulin, Otočac, Gospić, Titova Korenica (now Korenica), Gračac, and Donji Lapac.

Demography

5.125 In 1991, Kordun and Lika had a combined population of 283,405 inhabitants, of whom 165,562 were Croats, 100,167 were Serbs, 1,885 were Muslim, 352 were Albanian, 41 were Czech and 5,584 described themselves as Yugoslavs. In the municipalities of Vrginmost and Vojnić in Kordun the Serbs were in a majority. Vojnić had 8,236 inhabitants, of whom 89.44% were Serbs and only 1.21% Croats. Vrginmost had 16,599 inhabitants, of whom 70.66% were Serbs and 24.36% were Croats. Given

²⁴² Witness Statement of J.J., Annexes, vol 2(II), annex 296.

the demography of the region, the SDS was to enjoy extensive support in the period 1990/1991.²⁴³

5.126 Lika is a sparsely populated area. In 1991, 117,983 residents lived in 6,640 square kilometers (17.7 residents per one square kilometre). The region had 56,271 Croats and 51,680 Serbs. The municipalities of Titova Korenica, Gračac and Donji Lapac had a Serbian majority, and there was also a Serb majority population in the eastern parts of the municipalities of Otočac, Ogulin and Gospić.

Outbreak of Hostilities

5.127 As in other regions, Serb extremist politics developed considerably in the period leading up to the first democratic elections in April 1990. According to the so-called War Presidency of the Vrhovine Community of local committees, “the enormous political step was made to awaken the Serbian national identity and organise the people to protect their interest through the democratic forms of struggle against a growing pro-Ustasha and later an open Ustasha threat”.²⁴⁴

5.128 The first serious incident that occurred between the rebel Serbs and the units of the Croatian Ministry of the Interior took place in Plitvice at the end of March 1991: see Plate 19 (also Vol 3, Plate 4.5). Local Serb paramilitary police units blocked the road between Slunj and Titova Korenica. The special unit of the Croatian police intervened successfully, but were prevented from taking effective action by the arrival of the JNA armoured units from the 1st and 5th Military Regions.²⁴⁵ Thereafter, the 5th Military Region units of the JNA cooperating with the 9th Corps effectively created an autonomous zone incorporating the Serb majority populations in Knin and Lika.²⁴⁶

5.129 On 12 May 1991, the “SAO Krajina Assembly” held a ‘referendum’ for the “SAO Krajina” to join the Republic of Serbia. On 14th

²⁴³ Decision by the so-called “War Presidency of the Vrginmost municipality” from 27 July 1991 on renaming the “SJS” Vrginmost into the “SJB” Vrginmost and integration with the “Secretariat of the Interior of SAO Krajina”, Annexes, vol 2(III), annex 399.

²⁴⁴ Letter from the War Presidency of the Community of Local Committees to the 3rd Operations Group Command, Annexes, vol 2(III), annex 400.

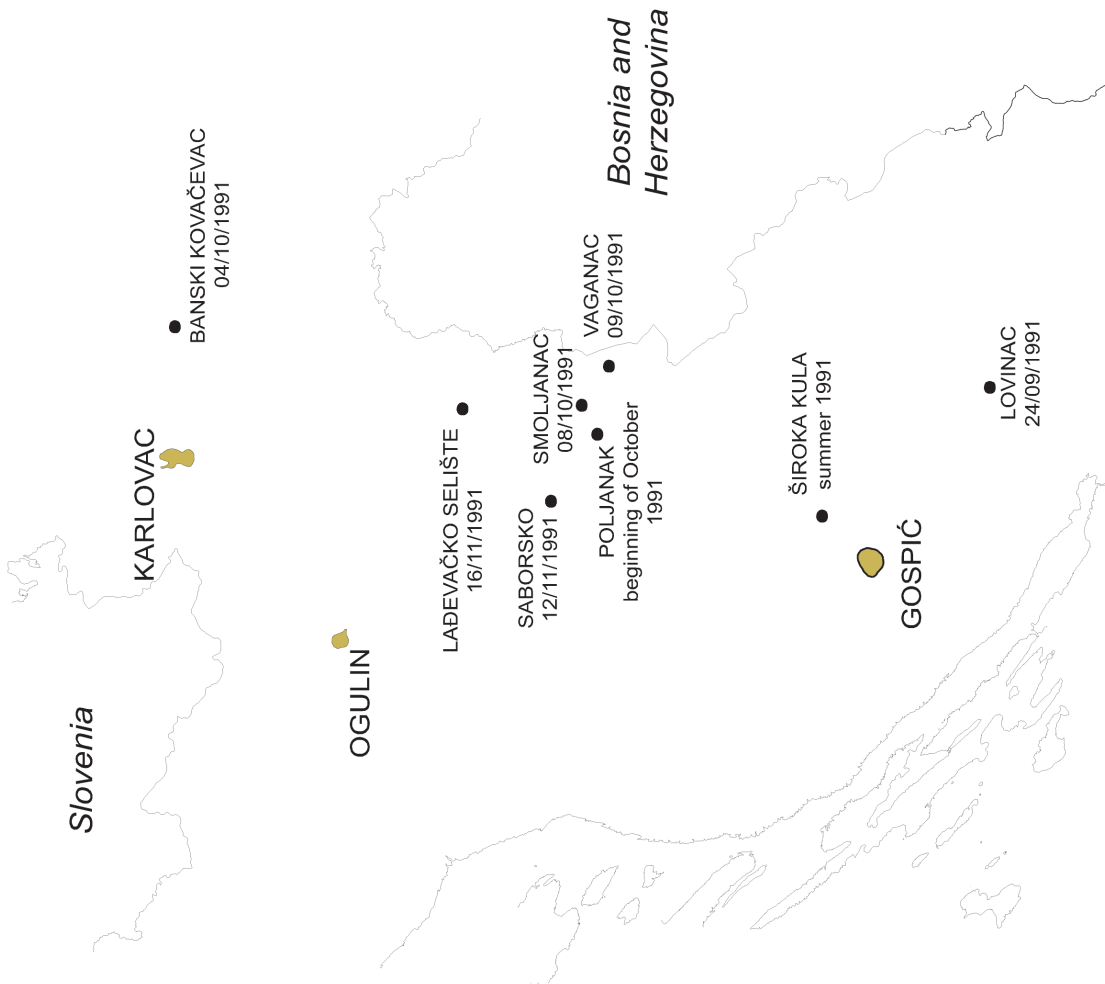
²⁴⁵ *Narodna Armija* from 4 April 1991, pp. 4-5, “Armija vraća mir” (“The Army brings back Peace”), Annexes, vol 4, annex 148; *Srpska vojska*, Gazette of the “Army of Republika Srpska”, Sarajevo, 9 May 1994, p. 14, “Ratni put popločan pobjedama” (“The War Path Paved with Victories”), Annexes, vol 4, annex 152

²⁴⁶ The Command of the 9th Corps, DT-1-4, from 5 April 1991, to the Command of the 9th bVP, The Order for Defence Op. No. 1, Annexes, vol 2(III), annex 401.

**DATES OF OCCUPATION OF TOWNS
AND VILLAGES ADDRESSED IN THE
MEMORIAL - KORDUN AND LIKA**



TOWN
 VILLAGE
 18/11/1991 DATE OF OCCUPATION (DD/MM/YY)



May 1991, the Central Commission in charge of the referendum submitted its Report²⁴⁷ to the 'Assembly', which stated that all conditions had been met, and that the "SAO Krajina Assembly" should make the Decision for the joining of the "SAO Krajina" with the Republic of Serbia where both would remain a part of Yugoslavia.²⁴⁸ According to the Decision, "SAO Krajina" included the Kordun municipalities of Vojnić and Vrginmost as well as the Lika municipalities of Gračac, Korenica, and Donji Lapac. In July 1991, the retired JNA General of World War II, Đoko Jovanić from Lika, at the celebration of the fiftieth anniversary of the uprising in Croatia, called upon the crowd "to re-establish the Sixth Lika Brigade and finally finish the started liberation from the blood-hungry Ustashas."²⁴⁹ From the beginning of August 1991 the Serb rebellion started in earnest.²⁵⁰ According to witness Đ.T., at a certain point in August the JNA started covertly supplying arms to the local Serbs. He estimates that the total supply included between 700 and 800 rifles, automatic rifles and pistols, approximately 15 to 20 rocket launchers, 20 snipers, explosives and a large quantity of other weapons and ammunition, as well as mortars and hand grenades. JNA trucks and helicopters transferred the weapons.²⁵¹ In September 1991, another consignment of arms was flown into the region.²⁵² Local Serbs began to do military training in Pančevo in Serbia and in Knin.²⁵³

Military Organisation of the JNA in Kordun and Lika

5.130 Before the war, the JNA had its main barracks in the town of Slunj. The base was part of the 5th Military Region. There were also large numbers of JNA units in the town of Karlovac and its surrounding area. The main forces in the Kordun were the JNA's 580th Combined Artillery Brigade and the 471st Combined Anti-armoured Artillery Brigade of the 5th Military Region. The Mechanized Battalion of the 4th Armoured Brigade of the 10th Corps was present, as was the 13th Corps (which was comprised of

²⁴⁷ The Report about the referendum staged in the area of "SAO Krajina" from 14 May 1991, Annexes, vol 2(III), annex 402.

²⁴⁸ Decision for the joining of "SAO Krajina" with the the Republic of Serbia from 16 May 1991, Annexes, vol 2(III), annex 403.

²⁴⁹ *Narodna Armija* from 31 July 1991, p. 14, "Otpor nasilju" ("Resistance to Violence"), Annexes, vol 4, annex 149.

²⁵⁰ "SAO Krajina", To Headquarters, no. 68/4 from 6 August 1991, to the Supreme Commander of the TO "SAO Krajina", Report from 5/6 August 1991, Annexes, vol 2(III), annex 404.

²⁵¹ Witness Statement of Đ.T., Annexes, vol 2(III), annex 338.

²⁵² Witness Statement of M.Č., Annexes, vol 2(III), annex 339.

²⁵³ Witness Statement of Đ.T., Annexes, vol 2(III), annex 338.

the 8th Proletarian Motorized Brigade, a part of the 35th Partisan Division, the 127th Engineer Regiment, and the 540th Pontoon Battalion of the JNA). The main JNA forces in Lika were the 653rd “NC” (Training Centre) in Ogulin, the 236th Proletarian Motorized Brigade and the bulk of the 35th Partisan Division from the 13th Corps in Gospić.

5.131 In the summer of 1991, the ‘Ministry of Defence’ of the “SAO Krajina” made a decision on the formation of the Regional Headquarters of the Territorial Defence for Kordun and Banovina within the framework of a unique ‘Territorial Defence Headquarters’ of the “SAO Krajina”. Subordinated to the Headquarters were the ‘Territorial Defence’ headquarters for Kordun and all other Territorial Defence Headquarters formed in the Kordun municipalities.²⁵⁴ By the decision on the formation of operative zones of the TO “SAO Krajina” from 20th August 1991, the Regional Headquarters of the Territorial Defence for Kordun and Banovina was renamed into the 2nd Operations Zone of the “SAO Krajina” Territorial Defence of Vojnić, Vrginmost, and Slunj.²⁵⁵ The same decision established the formation of the 1st Operative Zone (Dalmatia-Lika) for the area of the Knin, Benkovac, Obrovac, Gračac, Donji Lapac, and Korenica municipalities as well as the 3rd Operative Zone for the area of Banovina. On 30th September, the areas of Kordun and Banovina were joined into a common operative zone commanded by Colonel Rade Vujaklija.²⁵⁶ In the middle of November, the area of Kordun was placed under the command of the Operations Group-3 that was directly subordinated to the Commander of the 5th Military Region, General Avramović.²⁵⁷

5.132 In the autumn of 1991 the army openly distributed weapons from its warehouses in the regions. General Aleksandar Vasiljević commanded the whole operation from the “Security Administration” of the Federal Secretariat for the National Defence (SSNO) supported by the local members of the SDS.²⁵⁸

²⁵⁴ “SAO Krajina”, the Government, No: 157/91-1 from 26 July 1991, Order, Annexes, vol 2(III), annex 405.

²⁵⁵ “SAO Krajina”, the Government, the President, No: 189/91-1 from 20 August 1991, Order, Annexes, vol 2(III), annex 406.

²⁵⁶ “SAO Krajina”, the Territorial Defence Commander, No: 1/1-91 from 30 September 1991; “SAO Krajina”, the Territorial Defence Commander, No: 2/1-91 from 30 September 1991, Order; “SAO Krajina”, the Government, the President, No: 1/1-91 from 5 October 1991, Notification, Annexes, vol 2(III), annexes 407, 408, 409.

²⁵⁷ The 5th Military Region Command, No: 09/75-1034 from 10 November 1991, to the Command of the Tactic Group-2, Order, Annexes, vol 2(III), annex 410.

²⁵⁸ Witness Statement of M.Č., the Air Force Major of the former JNA. See also Witness Statement of S.Š., who describes the distribution of JNA weapons to the paramilitaries in Lika, Annexes, vol 2(III), annexes 339 and 340.

5.133 Colonel Dušan Smiljanić was one of the JNA's commissioned officers who played an important role in arming the Serbs. In the letter he wrote to General Mladić he described the structure of the JNA in Lika, the JNA's links with SDS, and the role played by the JNA's Supreme Command in arming the rebel Serbs.²⁵⁹

“At the beginning of August 1991, the operational team “PROBOJ-2” was formed at the request of the UB (Security Administration) and was under my command. It was composed of the OB (Security Agency) of the various branches with the following task:

- arming of the Serbian people
- the central task: the help and participation in the Military organization
- resisting the Croatian Service in the areas of Lika, Banija and Kordun

This team worked until the end of 1991. I was a subordinate to the UB, and I submitted a report to the Head of the 2nd VO (military region), RV (Airforce) and PVO (Anti Aircraft Defence) Security Service. Beside that I was connected with the MO (Ministry of Defence) of the Republic of Serbia, concerning the role of that Ministry in the war being conducted at the time...”

5.134 In early 1992, the JNA was restructured and the 6th Operations Group (OG) was formed in the area of Lika and 8th OG in the area of Kordun.²⁶⁰ Likewise, in February and March 1992, organisational and mobilization changes occurred in the TO's of the rebel Serbs, where Zone headquarters of the Kordun TO and Zone headquarters of the Lika TO were formed.²⁶¹

Destruction of Cultural Monuments

5.135 In the occupied area, nearly all Catholic objects were systematically destroyed or damaged, including parish churches, chapels, parish houses, monasteries and graveyards (see vol 3, Plate 8.5). In the area of the present Karlovac County, a total of 31 sacral monuments were damaged and 4 were destroyed, namely in Cetingrad (Church of the Assumption of the Holy

²⁵⁹ Letter of Dušan Smiljanić, Annexes, vol 2(III), annex 411.

²⁶⁰ Command of the 10th Corps, DT No. 3/15-33 from 8 January 1992, to the Command of the OG-8, Order, Annexes, vol 2(III), annex 412.

²⁶¹ SSNO, GŠ OS SFRY, III Administration, DT No. 892-2 from 2 rch 1992, to the TO Headquarters of “RSK”, Order, Annexes, vol 2(III), annex 413.

Virgin Mary from the 19th century), in Banski Kovačevac (Church of St. Peter from the 18th century), in Lasinja (Church of St. Anthony of Padua from the 19th century), and in Saborsko (Church of St. John “Nepomuk” from the 19th century). Six monuments were seriously damaged, namely in Skakavac (Church of St. Rok the Confessor from the 19th century), in Drežnik Grad (Church of St. Anthony from Padua from the 19th century), in Rakovica (Church of St. Jelena the Crusader from the 19th century), in Saborsko (Church of St. Marija of “Rozarija” from the 18th century), in Gornji Lađevac (Church of Holy Virgin Queen of Earth from the 20th century) and in Slunj (Church of the Holy Trinity from the 16th century). A Paulist Monastery, Karlovac-Kamensko, also suffered serious damage.

5.136 In the area of the Lika-Senj County, all together 17 sacral monuments were damaged. In Vranik the Church was completely pulled down (Church of St. Francis from the 19th century). 7 churches were partially destroyed, namely in Bilaj (Church of St. Jacob the Apostle from the 19th century), Lički Novi (Church of St. Anthony from Padua from the 17th century), in Lički Osik (Church of St. Joseph from the 19th century), in Lovinac (Church of St. Michael from the 18th century), Ričice (Church of St. Marija Magdalena from the 19th century), in Sveti Rok (Church of St. Rok from the 18th century), and in Otočac (Church of The Holy Trinity from the 18th century).²⁶²

Mass Graves

5.137 In the area of Kordun and Lika, 11 mass graves of Croat civilians were found: see vol 3, Plate 7.4. Altogether, 44 bodies were exhumed, 42 of which were identified. The biggest mass grave was at the location Saborsko-Popov Šanac, where 15 bodies were exhumed, and 14 of them identified.

11. MUNICIPALITY OF VRGINMOST

5.138 The municipality of Vrginmost is located in the Kordun region. In 1991 the municipality had 16,599 inhabitants, of whom 11,729 were Serb and 4,043 were Croat. Approximately 95% of the Croats lived in 11 villages: 5 in the north and 6 in the south constituting ethnic Croat enclaves in what was otherwise a Serb dominated area. Today, the municipality is called Gvozd.

²⁶² Damage to Cultural Monuments on Croatian Territory, Appendices, vol 5, appendix 7.

Crna Draga

5.139 In 1991, the village of Crna Draga had 291 inhabitants, of whom 284 were Croats, 6 Yugoslav, and one individual of unknown ethnicity. There were no Serbs in the village of Crna Draga. The village was occupied in October 1991. Most of the residents fled the area, but some stayed nearby in the woods. Members of the Britvec family who remained in the village, were subsequently found dead. I.B. later found the corpses of Ivo and Bara Britvec lying in their bed. He had been shot in his head, chest and stomach; she had been shot in her chest and stomach.²⁶³ The matter was investigated and linked to a Serbian Brigade Command. S.Č., who was a security officer for the 2nd Battalion, also testifies to this. After returning from the scene of the crime to the Brigade Command, he talked with Mile Novaković, the commander of the 19th Brigade, who told him that the murder of the Britvec family was the concern of the Brigade Command and not his concern.²⁶⁴

Novo Selo Lasinjsko and Lasinja

5.140 In 1991, 80 Croats and only 8 Serbs lived in Novo Selo Lasinjsko and 516 Croats and 6 Serbs lived in Lasinja. In October 1991, the combined JNA and paramilitary forces passed through the area and forced its entire Croatian population into exile.²⁶⁵ The village of Novo Selo Lasinjsko was set on fire. Lasinja was completely destroyed, including the Church of Saint Antun Padovanski, which was mined after being used as a sniper nest.

12. MUNICIPALITY OF SLUNJ

5.141 The former Slunj municipality, which today consists of the municipalities Slunj, Cetingrad and Rakovica, had according to the 1991 Census 18,962 citizens, of which 12,091 were of Croatian and 5,540 of Serbian nationality, i.e. 63,76% Croats and 29,22% Serbs. During the summer and autumn 1991, the members of the Serb paramilitary formations and the JNA robbed, burnt down and destroyed the villages with a Croatian majority. By November 1991, most of the villages were

²⁶³ Witness Statement of I.B., Annexes, vol 2(III), annex 341.

²⁶⁴ Witness Statement of S.Č., Annexes, vol 2(III), annex 342.

²⁶⁵ Witness Statement of R.M.: "We knew for a longer time that the villages were empty, as well as Lasinja, and that there would be no resistance. The people left these villages because of the constant mortar and artillery attacks which were constantly directed at the villages for a long period before the final attack.", Annexes, vol 2(III), annex 343.

occupied. The villages of Cvitovići, Vukovići, Gnojnice, Leđevac, Grabovac and other smaller Croatian villages were completely destroyed. The Croats fled their houses towards Saborsko, Slunj and Ogulin or in the direction of Cazin and Bihać in Bosnia and Herzegovina. Later, Saborsko was also completely destroyed, as well as Slunj. The homes of the expelled Croats were robbed or set on fire.

Lipovača

5.142 The village of Lipovača is located in the municipality of Slunj, Kordun. In 1991, the village of Lipovača had 267 inhabitants, of whom 222 were Croat, 44 were Serb and one described himself as Yugoslav.

5.143 All citizens left the village almost at the same time after the occupation of the village. Only sixteen Croats remained. They were exposed to daily abuse and physical and psychological torture. On 28th October 1991, 7 Croat civilians were murdered. They were Mate and Roža, Mirko, Franjo, Mira and Marija Brozinčević and Katarina Cindrić.²⁶⁶ After this crime, four civilians fled from the village to Bosnia, and only five Croats remained: Ana Pemper, Barbara Vuković, Juraj Šebalj, Juraj Conjar and Milan Smolčić. All of them were murdered on New Year's eve of that year.²⁶⁷

Lađevac

5.144 The villages of Donji and Gornji Lađevac are located in the municipality of Slunj, Kordun. In 1991, Donji Lađevac had 445 inhabitants, of whom 431 were Croat and 2 were Serb. Gornji Lađevac had 561 inhabitants, of whom 546 were Croat, 3 were Serb and the remainder belonged to other ethnic groups.

5.145 The majority of Croats left the village in November 1991 due to intimidation from the occupying paramilitaries. Those who remained were exposed to systematic violence and looting.²⁶⁸ On 21st December 1991 Jure Vuković was killed. J.M. was beaten by a group of paramilitaries

²⁶⁶ Witness Statement of M.Š., Annexes, vol 2(III), annex 344.

²⁶⁷ Witness Statement of I.Š., Annexes, vol 2(III), annex 345.

²⁶⁸ For a graphic example of the level of harassment see Witness Statement of M.P., Annexes, vol 2(III), annex 346. Paramilitaries came to his house and threatened to gouge out his wives eyes and knock her teeth out. He was taken to a field where it appears that he was handed over to an inexperienced paramilitary recruit who was ordered to kill him as a sort of 'test'. The recruit shot the gun above the witness' head and told him to run away.

who forced him to bury the murdered corpse of Jure Vuković.²⁶⁹ In the hamlets of Dubrava, Polje and Čamernica, Marija Barić (born in 1910), Roza Barić, Anka Mrgan, Anka Rupa, Franjo and Joso Šajfer were murdered.²⁷⁰ The bodies of the three dead women were strewn with flour and left out for the pigs to feed on.²⁷¹ Serb paramilitaries beat and stabbed M.S. in the arm. He was taken to a house where his captors locked him in a room and threatened to kill him, but he managed to escape.²⁷²

5.146 On 18th January 1992, members of Serb paramilitary formations of the “SAO Krajina” murdered Jure Valentić in the hamlet of Lađevačko Selište. They poured gasoline over him and set him on fire inside a barn.²⁷³ Three days later Serb soldiers murdered Ivan Radočaj, Mile Radočaj, Ante Radočaj and Bare Radočaj in their house and then burned it down. The same perpetrators shot Roza Radočaj and Zora Potnar who were living next door. On 23rd January 1992, members of the Serbian paramilitary forces murdered Ivan and Anka Morosavljević.²⁷⁴ In November 1992, Slavko Klobučar was murdered.²⁷⁵ In February 1993 Pavo Samardžija was murdered.²⁷⁶ In June 1993 Dane Bogović was murdered.²⁷⁷ M.G.* was forced to strip naked by a paramilitary from Serbia. He indecently assaulted her and then beat her. When Pavo Samardžija intervened he was killed.²⁷⁸ After the constant abuse, life for the remaining Croats became unbearable, so that they were eventually transferred to the free territory of the Republic of Croatia with the help of the Red Cross and UNPROFOR. However, when left they were obliged to sign a document stating that they

²⁶⁹ Witness Statement of A.K., Annexes, vol 2(III), annex 348.

²⁷⁰ Witness Statement of I.M. who found Anka Rupa. When they tried to report the deaths they were threatened and were refused any protection in order to carry out the burials. Annexes, vol 2(III), annex 349.

²⁷¹ Witness Statement of A.K., Annexes, vol 2(III), annex 348. See also the Witness Statements of I.M., Annexes, vol 2(III), annex 349, and M.S., Annexes, vol 2(III), annex 350. M.S. found Roza Barić naked in her kitchen. Her body was cut into bits and the pigs that had been let into the house were eating them. The dead bodies of Anka Mrgan and Marija Barić were also naked.

²⁷² Witness Statement of M.S., Annexes, vol 2(III), annex 350.

²⁷³ Witness Statement of M.M., Annexes, vol 2(III), annex 351. The deceased was killed because the paramilitaries asked him documents regarding his lawnmower and he did not have them.

²⁷⁴ Witness Statements of M.G. and M.M., Annexes, vol 2(III), annexes 352 and 351

²⁷⁵ Witness Statement of M.G., Annexes, vol 2(III), annex 353.

²⁷⁶ Witness Statement of M.G., Annexes, vol 2(III), annex 347.

²⁷⁷ Witness Statement of J.T., Annexes, vol 2(III), annex 354.

²⁷⁸ Witness Statement of M.G., Annexes, vol 2(III), annex 353.

would not return.²⁷⁹ The following bodies were subsequently exhumed from 6 different mass grave locations: Dane Bogović, Zora Potnar, Roze Radočaj, Franjo Šajfar, Anka Rupa, Joso Šajfar, Marija Barić, Anka Mrgan, Roze Barić, Jure Vuković, Ivan Radočaj, Mile Radočaj, Bare Radočaj and Ante Radočaj.²⁸⁰

Other Locations

5.147 Other atrocities in the municipality include the following:

1. **Arapovac** (59 inhabitants, all Croats). According to the witness A.K., after the occupation of Slunj on 16th November 1991, only 7 Croats remained in Arapovac. All of them were subjected to violence. Ivo Pleš was taken from the village and has not been seen since.²⁸¹
2. **Gornji Popovac** (453 inhabitants: 445 Croats, one Serb). On 17 February 1993 two members of the Serbian paramilitary formations raped K.Z.*. On 17th April 1993 two different paramilitary assailants raped her again. According to the witness, another woman was raped at the same time.²⁸²
3. **Gornji Furjan** is a hamlet in the village of Donji Furjan. (village of Donji Furjan had 470 inhabitants, 376 Croats, 76 Serbs and Gornji Furjan had 143 inhabitants, 142 Croats and 1 Serb). The majority of the Croats in the village fled in November 1991. Some of them returned to their houses where they continued to live peacefully until April 1992. On 5th April 1992, members of the Serb paramilitary formations took away Marija Žgela, Vid Žgela, Pave Žgela, Vid Šegavac, Pavo Žgela and Mile Cindrić. They were murdered and buried in a mass grave.²⁸³

²⁷⁹ Witness Statement of M.P., Annexes, vol 2(III), annex 346.

²⁸⁰ Record of Exhumations on 16th, 17th, 18th and 19th June 1997, Annexes, vol 2(III), annex 416; Record of Exhumations on 25th, 26th and 27th September 1996, Annexes, vol 2(III), annex 418; Record of Exhumations on 2nd, 4th and 5th July 1996, Annexes, vol 2(III), annex 419.

²⁸¹ Witness Statement of A.K., Annexes, vol 2(III), annex 348.

²⁸² Witness Statement of K.Z., Annexes, vol 2(III), annex 356.

²⁸³ Witness Statements of A.Ž. and M.P., Annexes, vol 2(III), annexes 357 and 355.

13. MUNICIPALITY OF OGULIN

5.148 The municipality of Ogulin had 29,068 inhabitants, of which 17,576 (60%) were Croat, 10,088 (34,7%) were Serb, 5 Czech, 13 Hungarian, 3 Italian, and 2 did not claim an ethnic origin. During the war, Plaški was the main occupied area and Saborsko was under temporary occupation. The occupied territory was 325.51 km² (32% of the entire municipality), including 15 villages and 6,260 inhabitants. 1,285 Croats (7.15% of the municipal population) were expelled.

Saborsko

5.149 The village of Saborsko is located in the municipality of Ogulin, Lika, approximately 60 km southwest of the town of Karlovac. In 1991, the village had 852 inhabitants of whom 800 were Croat, 18 were Serb and 37 came from other ethnic groups.

5.150 The village was surrounded by Serb paramilitary formations from the beginning of August until its occupation on 12th November 1991. Many Croats left the village during this time. On 12th November 1991, Saborsko was attacked from all directions by a combined JNA and paramilitary force.²⁸⁴ The order to attack was given by Čedomir Bulat, the commander of TG-2²⁸⁵, and the decision to attack was taken by Bogdan Grba, the commander of the 1st Battalion of the Serbian paramilitary forces.²⁸⁶ During the occupation, the village was completely destroyed, including the Church of St. John Neopomuk (built in 1726) which was fired on by a tank and subsequently mined.²⁸⁷ Gravestones were also desecrated.²⁸⁸

5.151 Due to the intensity of the artillery and mortar attack, which was preceded by an hour of aircraft bombing, the small number of defenders of Saborsko were forced to retreat together with the population. When the JNA and Serb paramilitaries entered the village they set about destroying

²⁸⁴ Witness Statement of S.T., Annexes, vol 2(III), annex 358. The Serbian combatants included "SAO Krajina" Army, 200-300 local people, the "Martić's paramilitaries", the JNA and decommissioned JNA troops who had joined the "Serbian Army".

²⁸⁵ Čedomir Bulat's order for the attack, Annexes, vol 2(III), annex 414.

²⁸⁶ Decision on the attack of commander of the 1st battalion Bogdan Grba, Annexes, vol 2(III), annex 415.

²⁸⁷ Witness Statement of S.T., Annexes, vol 2(III), annex 358.

²⁸⁸ Witness Statement of P.M., Annexes, vol 2(III), annex 359.

Croat property and killing the remaining civilian population.²⁸⁹ Jeka Vuković, A.B., Petar Bićanić, Milan Bićanić, Nikola Bićanić, Ivan Vuković, Jure Štrk, Jure Vuković (son of Zdenko) and Jure Vuković (son of Milan) were hiding in a basement. They gave themselves up in the belief that their safety was more likely to be protected by the presence of the JNA. The Serb paramilitaries first separated the women and the men. The men were then lined up against a wall and shot. The women were told that they were free to go, but as they walked away they were shot in the back. Jeka Vuković was killed instantly. A.B. died later due to the injuries she had sustained. Another woman, also called A.B., was able to escape and therefore provides the account of the massacre.²⁹⁰ Another group of citizens was taken to the school in Lička Jasenica, where they were kept imprisoned for three days. During their imprisonment Nikola Medaković, one of commanders of the attack, told them that Saborsko no longer existed as it had been levelled to the ground.²⁹¹ Almost every survivor from Saborsko witnessed a murder. M.M. saw a neighbour killing his sister J. and her husband N.D.²⁹² Some of the people still don't know the destiny of their relatives.²⁹³

5.152 The ultimate result of the attack on Saborsko was that the village was completely obliterated and the population exterminated. Bodies of the murdered Croats were buried several days later in a mass grave prepared by an excavator.²⁹⁴ Common graves, as well as individual graves were subsequently found at several locations in and around the village.²⁹⁵ In "Popov Šanac," the remains of 15 Croats were recovered. 14 were identified. At "Borik" the remains of 2 civilians and 1 Croat soldier were recovered. The remains of six civilians were recovered from individual graves. The village was subsequently renamed "Ravna Gora". According to the Serb M.M., it was planned that the village would be ethnically cleansed. This is corroborated by the fact that the occupying forces brought road signs with the new name in Cyrillic script with them. M. testified to the fact that the occupying forces were given specific orders to kill civilians. It is plain that the JNA was complicit in the killings

²⁸⁹ Witness Statement of S.T., Annexes, vol 2(III), annex 358. Some of older soldiers were not thrilled at their victory, because there were no Croatian soldiers in the village and the subsequent arson and murder of civilians seemed pointless.

²⁹⁰ Witness Statement of A.B., Annexes, vol 2(III), annex 360.

²⁹¹ Witness Statement of M.D., Annexes, vol 2(III), annex 361.

²⁹² Witness Statement of M.M., Annexes, vol 2(III), annex 362.

²⁹³ Witness Statement of J.M., Annexes, vol 2(III), annex 363.

²⁹⁴ Witness Statements of A.Š. and M.M., Annexes, vol 2(III), annexes 364 and 365.

²⁹⁵ The locations are "Popov Šanac", "Borik", "Biljevina 282", "Biljevina 274", "Biljevina 277" and "Biljevina 272/a".

that occurred.²⁹⁶ On the day of the attack a number of civilians were killed in Saborsko and 11 people are still missing.²⁹⁷

14. MUNICIPALITY OF KARLOVAC

5.153 The municipality of Karlovac had 81,319 inhabitants, of whom 51,880 (64%) were Croat and 21,732 (27%) Serb. Until 8 August 1995, the borderline between the free and occupied territory of Croatia was three or four kilometres from the centre of Karlovac, in the barracks and military artillery ranges of the JNA. The town of Karlovac was during that period exposed to constant attacks from the barracks.

Karlovac

5.154 In 1991 the town of Karlovac had 59,999 inhabitants of whom 38,533 were Croats and 14,529 were Serbs.

5.155 The JNA launched its main attack on the town on 4th November 1991. From then until May 1992, the town and its surrounding villages were systematically destroyed. According to the order of JNA General, Svetozar Marjanović, cultural and sacral buildings were deliberately shelled.²⁹⁸ Between October and December 1991, 42 civilians were killed, including Žuta Lokva,²⁹⁹ 95 others were injured. In the cannon attacks, 629 private houses, 386 flats, 24 farming objects and 32 personal vehicles were destroyed or damaged. 78 cultural monuments and 12 sacral objects were also damaged or destroyed.

Banski Kovačevac

5.156 The village of Banski Kovačevac is in the Karlovac municipality, of Kordun, approximately 120 km east of the town of Karlovac. In 1991, Banski Kovačevac comprised 309 inhabitants, of whom 272 were Croat, 2 were Serb, and the remaining 30 were of other ethnic groups.

²⁹⁶ Witness Statement of M.M., Annexes, vol 2(III), annex 365.

²⁹⁷ Missing people are: Kate Grdić, Marko Grdić, Josip Kovačić, Mande Kovačić, Marija Krizmanić, Ivan Luketić, Ivka Sertić, Kata Sertić, Luka Sertić, Jure Štrk and Marija Vuković. Appendices, vol 6.

²⁹⁸ Witness Statements of M.L. and D.P., Annexes, vol 2(III), annexes 366 and 367.

²⁹⁹ Witness Statement of M.L., Annexes, vol 2(III), annex 366.

5.157 On 4th October 1991, the Serb paramilitary formations attacked Banski Kovačevac with artillery and mortars. The majority of the Croat citizens escaped and fled. Only 15 elderly people remained in the village. These people were subjected to periodic violence. According to the Serbian soldier B.M.*, one of the elderly people was maltreated by one of his comrades. Another Serbian soldier raped a Croatian woman A.C.*.³⁰⁰ On approximately 20th March 1992, Serbian soldiers forced the remaining Croats into a cellar, shot them, and then threw the bodies into a well. The Serbian soldier R.M., was on guard duty that night. He heard the cries of the Croat residents as they were shot.³⁰¹ Another soldier, A.G., was later informed that the killings were carried out with the knowledge and approval of the battalion and brigade commanders.³⁰² This fact is corroborated by the testimony of R.M., who states that the Brigade Colonel's brother was one of the soldiers who was subsequently ordered to dispose of the bodies. The dead included five women and one man: Bara Mihalić, Kata Mihalić, Veronika Krupić, Mara Lesar, Mara Đerek and Grga Mihalić. Their bodies were removed to an unknown destination. The bodies of these people remain missing, except that the body of a woman was found in a box on the outskirts of the village in the spring of 1992.³⁰³

15. MUNICIPALITY OF OTOČAC

5.158 The municipality of Otočac had 24,992 inhabitants of which 16,355 (65.44%) were Croats and 7,781 (31.13%) were Serbs.

Dabar

5.159 The village of Dabar is located in the municipality of Otočac, Lika, 12 km northeast of Otočac. In 1991, the village had 596 inhabitants, of whom 229 were Croats and 347 were Serbs. The remaining 20 inhabitants were from other ethnic groups.

5.160 On 27th August 1991, Serb paramilitaries abducted Grga Bičanić. He remains classified as "missing".³⁰⁴ On another occasion, M.Z.* was abducted. He was imprisoned and four of his fellow prisoners were

³⁰⁰ Witness Statement of B.M., Annexes, vol 2(III), annex 368.

³⁰¹ Witness Statement of R.M., Annexes, vol 2(III), annex 343.

³⁰² Witness Statement of A.G., Annexes, vol 2(III), annex 369.

³⁰³ Witness Statement of S.B., Annexes, vol 2(III), annex 370.

³⁰⁴ Witness Statement of S.D., Annexes, vol 2(III), annex 371.

subsequently killed.³⁰⁵ On 19th November 1991, the following Croats were abducted: Slavko, Marko and Joso Rajković, Kata and Ruža Rajković and two other family members both called Stipe Rajković. The bodies of these 7 people were subsequently handed over to the Croatian police.³⁰⁶

5.161 Due to constant threats by the Serbs, the Croats fled from their homes to neighbouring villages. They returned only secretly to feed their cattle. On one such occasion, rebel Serbs murdered M.D. and Marija Klišanić.³⁰⁷ By the end of the period of occupation, only 2 Croat houses remained standing.³⁰⁸

Vrhovine

5.162 The village of Vrhovine is located in the municipality of Otočac, Lika. In 1991 the village had 873 inhabitants, of whom 742 were Serbs and 65 were Croats.

5.163 On 28th September 1991, Serb paramilitaries carried out an armed assault on the village. The inhabitants were forced out of their homes. The houses were looted and set on fire. On 4th October 1991, "Martić's group" took Kata, Stipe, Mate Vlado and Martin Čorak to the Vrhovine Police Station, "SJB" Korenica.³⁰⁹ The next day S.Č. was taken from the village.³¹⁰ The fate of these people remains unknown.

16. MUNICIPALITY OF GOSPIĆ

5.164 The municipality of Gospić had a population of 29,049 of whom 18,613 (64.07%) were Croats and 8,976 (30.90%) were Serbs. The Serbs predominantly lived in the eastern part of the municipality.

³⁰⁵ Witness Statement of M.Z., Annexes, vol 2(III), annex 372.

³⁰⁶ Witness Statements of S.T., S.D. and M.Z., Annexes, vol 2(III), annexes 373, 371, 372.

³⁰⁷ Witness Statement of S.D., Annexes, vol 2(III), annex 371. The witness was the husband of one of the deceased. He also heard that Roža Bičanić was murdered.

³⁰⁸ *Ibid.*

³⁰⁹ Official record of the Police Section from 27 February 1992, Annexes, vol 2(III), annex 417.

³¹⁰ Witness Statements of I. and K.Č., Annexes, vol 2(III), annexes 374 and 375.

Široka Kula

5.165 The village of Široka Kula is located in the municipality of Gospić, Lika. It lies approximately 3 km from Lički Osik, which was the rebel Serbs' base in Gospić.³¹¹ In 1991, Široka Kula comprised 553 inhabitants, of whom 184 were Croat, 346 were Serb, while the remaining inhabitants belonged to other ethnic groups.

5.166 On 28th August 1991, after being surrounded for months, Serb paramilitary groups entered Široka Kula. Units of the JNA established posts around the village and began to arm the Serb inhabitants. Those Croats who stayed in the village were restricted in their freedom of movement. They were not allowed to buy food from the shops or work in the factory. The local paramilitary leader, Spaso Đukic, told them, "Any Croat who wishes to stay alive must move from Široka Kula".³¹²

5.167 In mid-September 1991, the following Croats from Široka Kula were imprisoned in Lički Osik: Ante Orešković, Anka Orešković and Petar, Ivica, Joso and Ante Nikšić. They were last seen burying the first civilian victim in the village, Kata Nikšić, under armed watch. They disappeared thereafter and remain registered as "missing".³¹³

5.168 On 25th September 1991, members of the rebel Serbs came to the house of M.N., and fired at him and his wife with a machine gun. K.N. was killed instantly. Her body fell on M.N. who saved himself by pretending to be dead.³¹⁴ The same day, M. and A.N. were also attacked. M.N. was stabbed in the neck, but survived. M.N. was wounded, but managed to escape, leaving A.N., his paralysed wife, and M.N. who was 89 years of age at that time in the house.³¹⁵ Neither have been seen since this time.³¹⁶

5.169 On 13th October 1991, Serb paramilitaries entered the O. household where a number of Croats were staying. They immediately killed M.O. who was 80 years of age at the time, together with M.

³¹¹ The weapon factory "Marko Orešković" in Lički Osik was critical to Serbian military capability in the area.

³¹² Witness Statement of M.O., Annexes, vol 2(III), annex 376.

³¹³ Letter to the Parliamentary Commissioner for the Exchange of Prisoners, Annexes, vol 2(III), annex 420.

³¹⁴ Witness Statement of M.N., Annexes, vol 2(III), annex 377. See also Mass Killings and Genocide in Croatia 1991/92, pp. 135-136

³¹⁵ Witness Statement of M.N., Annexes, vol 2(III), annex 378.

³¹⁶ A.N. was taken by Serbs from the house in a wheelbarrow – Letter from Members of the Families of the Dead and Missing from Široka Kula, 13th October 2000, Annexes, vol 2(III), annex 421.

and K.O. The paramilitaries took the dead bodies to a barn and set them alight.³¹⁷ Other people attempted to hide in the cellar, but they were eventually found. The following people were killed, A., A. and N.O., M. and V.N. (born 1978). D., I. and M.O., and M.N. survived the massacre. The same night, they fled in the direction of Perušić.³¹⁸

5.170 In the neighbouring house, Ivan Orešković Juško, who was 95 years old, was burned alive, while in the house next to his, the ninety-year old Marija Orešković was killed. Her body was thrown into her neighbour's burning house.³¹⁹ Mile and Ana Vojvodić were abducted and remain missing. Ivan and Marica Štimac were killed. Their house was set on fire with the bodies inside. Paramilitaries also killed Manda Bašan as she returned home from the village of Grubići. Ana Nikšić, who was 76 years of age, was killed in the hamlet of Nikšić Brdo. Kata Čaćić was killed in the hamlet of Čaćići.³²⁰

5.171 A woman, whose name was also M.O., whose husband was killed, managed to flee. She has testified that one Serb ordered: "Kill them all, don't leave any of them alive!"³²¹

17. MUNICIPALITY OF TITOVA KORENICA

5.172 The municipality of Korenica had 11,393 inhabitants of whom 17.52% were Croats, 75.35% were Serbs and the remaining inhabitants belonged to other ethnic groups

Vaganac

5.173 Vaganac comprised two small villages: Vaganac Donji and Vaganac Gornji, which are located in the municipality of Titova Korenica, Lika. In 1991, Vaganac Donji had 184 inhabitants, of whom 89 were Croat and 85 were Serb. The remaining 10 inhabitants were members of other

³¹⁷ Witness Statement of D.O., Annexes, vol 2(III), annex 379; see also Mass Killings and Genocide in Croatia 1991/92, pp. 135-136.

³¹⁸ Witness Statement of M.O., Annexes, vol 2(III), annex 380; and Letter from Members of the Families of the Dead and Missing from Široka Kula, 13th October 2000, Annexes, vol 2(III), annex 421.

³¹⁹ *Ibid.*

³²⁰ Witness Statement of D.O., Annexes, vol 2(III), annex 379; and Mass Killings and Genocide in Croatia 1991/92, pp. 135-136.

³²¹ Witness Statement of M.O., Annexes, vol 2(III), annex 376.

ethnic groups. No Serbs lived in the satellite village of Vaganac Gornji. Of its 304 inhabitants, 300 were Croats.

5.174 Attacks on Vaganac began 23rd June 1991. As a consequence, 300 Croats fled the area. On 8th and 9th October 1991, Serb paramilitaries and the JNA attacked Vaganac.³²² The remaining inhabitants were forced to flee. According to the witness J.J., those who remained were killed. The victims included Lucija Bilen, Manda Čančar, Dane Jandrić, Marija Kukuruzović, Milka Kukuruzović, Jeka Mikuljan, Ruža Mikuljan and Stipe Kukuruzović.³²³ The remains of Dane Jandrić, Marija Kukuruzović, Milka Kukuruzović, Jeka Mikuljan and Stipe Kukuruzović were exhumed on 14 August 1996, while the remains of Ruža Mikuljan were exhumed on 20th June 1996.³²⁴

5.175 On 15th October 1991, P.Đ.*, a priest from Vaganac, was escorted into the village by the JNA as part of a humanitarian mission to administer to the dead. M.P., the priest from Slunj, two nuns, four civilians from Vaganac and two hearse drivers accompanied him. When they arrived in the village, they were abducted by “Martić’s paramilitaries”. The JNA failed to intervene to protect them. They were taken to prison in Titova Korenica.³²⁵ P.Đ. describes the torture which he and his fellow Croats suffered whilst in custody:³²⁶

“They beat us with shoes between our legs and showed that they were enjoying it. Then they took me to the corridor and continued beating me with police batons and sticks. They also kicked me. They took me to the front of the police building. There were 40 civilians. I was covered in blood; they took off my clothes, spilled cold water over me, suffocated me with a water stream, ridiculed my nudity and beat me with everything they could find. The torture lasted for approximately half an hour. An hour later, another group of civilians from Korenica arrived, and they demanded that the whole procedure be repeated. Their wish was granted (...) Police Commander Čuić pushed a stick into my rectum.”

³²² They simultaneously attacked the villages of Poljanak and Smoljanac. See paras 5.176-5.179 and 5.180-5.181 below.

³²³ Witness Statements of J.J. and I.K., Annexes, vol 2(III), annexes 381 and 382.

³²⁴ Investigation Records (exhumation), Kir-632/96 and Kir-469/96, Annexes, vol 2(III), annexes 422 and 423.

³²⁵ Witness Statement of D.R., Annexes, vol 2(III), annex 383.

³²⁶ Witness Statement of P.Đ., Annexes, vol 2(III), annex 384.

Poljanak

5.176 The village of Poljanak is situated in the municipality of Titova Korenica, Lika, near the Plitvice Lakes National Park. In 1991, the village had 160 inhabitants of whom 145 were Croats, 5 were Serbs, and the remaining 10 were members of other ethnic groups.

5.177 A number of Croatian police officers were ambushed near the village on Easter Sunday, 1991, and one of the policemen, Josip Jović, was killed. Until then, the relationship between Croats and Serbs had been peaceful.³²⁷ Many Croats spent the night in the forest due to the unrest, but were able to return the following day. From this time onwards, the JNA began to surround the area.³²⁸ In September 1991, the first organised Serb paramilitary attacks upon civilians began. On 6th October, the neighbouring hamlet of Vukovići was attacked. The witness B.V. saw paramilitaries kill Tomo Vuković and an elderly woman.³²⁹ Most of the Croat part of Poljanak was set on fire on 8th and 9th October.³³⁰ Thereafter, the majority of Croat inhabitants routinely spent the night in the forest. Only the elderly and infirm remained in their homes. On 24th October 1991, the first day after the fierce attack, M.L. returned from the forest and found that his father I. and brother M. had been hung.³³¹ The same day, soldiers wearing JNA uniforms took M.L. to the prison in Korenica, where he was tortured. L. and 11 prisoners were subsequently taken to the camp “Manjača” in Bosnia and Herzegovina.³³²

5.178 The village was attacked again on 7th November 1991. Approximately 20 paramilitaries set many of the houses on fire. N.M. was shot. Kata Matovina was wounded and subsequently died in Saborsko.³³³ Another group of approximately 20 Serbs went to the hamlet of Vukovići, where they attacked the V. family household. B.V., a survivor of the massacre, testifies to the subsequent events. The Serb paramilitaries took all the residents of the house outside, except for N.V. who was bed ridden. The paramilitaries shot him where he lay and then threw a grenade at him. The others were kicked and beaten with rifle butts. 4 of the men, including the witness, were made to stand in front of a wall and were shot at by the paramilitaries. The following Croats

³²⁷ Witness Statement of M.L., Annexes, vol 2(III), annex 385.

³²⁸ Witness Statement of M.K., Annexes, vol 2(III), annex 386.

³²⁹ Witness Statement of B.V., Annexes, vol 2(III), annex 387.

³³⁰ Witness Statement of M.K., Annexes, vol 2(III), annex 386.

³³¹ Witness Statement of M.L., Annexes, vol 2(III), annex 385.

³³² *Ibid.*

³³³ Witness Statement of I.K., Annexes, vol 2(III), annex 382.

were killed instantly: Slavo Vuković, Dane Vuković, Josip Matovina, Nikola Matovina and Dane Vuković. B.V. fell to the ground and managed to avoid the bullets. On finding that he was still alive, the paramilitaries severely beat him.

5.179 Meanwhile, Milka Vuković and Lucija Vuković, who was disabled, were killed.³³⁴ M.V. later found the bodies of Nikola and Ivan Vuković – “their heads were smashed and their brains were scattered across the ground”.³³⁵ The witness only had time to cover their bodies with a blanket because she was so afraid that the paramilitaries would return.³³⁶ M. and B.V. escaped through the forest, thereby avoiding an ambush which had been laid for them. As they passed nearby, they were able to hear the frustrated shouts of the paramilitaries who felt aggrieved at not being able to kill them. The paramilitaries buried the dead in mass graves, the whereabouts of which are mostly unknown. The remains of Ivan, Nikola and Tomo Vuković were exhumed on 13th August 1996.³³⁷ The bodies of the other dead remain “missing”.

Smoljanac

5.180 Smoljanac is located in the municipality of Titova Korenica, Lika, near the Plitvice lakes. In 1991, the village comprised 256 inhabitants, of whom 246 were Croat and 3 were Serb. The remaining inhabitants were members of other ethnic groups.

5.181 In the Easter of 1991, Serbian paramilitaries set up barricades, restricted freedom of movement and prevented Croat children from going to school.³³⁸ Like Vaganac and Poljanak, Smoljanac was attacked on 8th October 1991 by members of the JNA and Serbian paramilitaries. The majority of the Croat inhabitants fled towards Slunj, while others hid in the forest. After the attack, the inhabitants returned to the village and found Joso Matovina and Ana Bujadinović dead.³³⁹ Most of the Croats then went into forced exile. A small number stayed in the vicinity of the village, in campsites located in the surrounding forests. They visited their houses to

³³⁴ Witness Statements of B.V. and M.K., Annexes, vol 2(III), annexes 387 and 386.

³³⁵ Witness Statement of M.V., Annexes, vol 2(III), annex 388.

³³⁶ *Ibid.*

³³⁷ Report of Exhumation, 13th August 1996, Annexes, vol 2(III), annex 424.

³³⁸ Witness Statement of M.B., Annexes, vol 2(III), annex 389.

³³⁹ Witness Statements of I.K., S.R., I.M. and P.B., Annexes, vol 2(III), annexes 382, 390, 391, 392.

feed the cattle.³⁴⁰ On 4th December 1991, 15 JNA soldiers and rebel Serbs entered the village and killed Marko Vuković, Marko Mesić, Mira Vuković, Ivica Rosandić, Ante Rumenović, Nikola Bičanić, Jure Bičanić and his wife Roža Bičanić.³⁴¹ Survivors were shot at when they tried to retrieve the bodies.³⁴² The remaining Croats were then forced to flee.³⁴³

18. MUNICIPALITY OF GRAČAC

5.182 The municipality of Gračac had 10,434 inhabitants of whom 8,371 (80.29%) were Serbs and 1,676 (16.06%) were Croats.

Lovinac

5.183 The village of Lovinac is located in the municipality of Gračac, Lika. In 1991, the village had 533 inhabitants, of whom 460 were Croats, 22 were Serbs and the remaining 51 belonged to other ethnic groups. The main centre of Serbian paramilitary operations was in Raduč, approximately 10 km from the village.

5.184 Lovinac was directly attacked for the first time on 20th July 1991. In that attack, Marija Matajić was killed, several civilians were wounded and a great number of houses and facilities were damaged. On 5th August 1991, Kaja Šarić, an elderly woman, was shot and later died in hospital.³⁴⁴ On the same day, 5 Croats were abducted from the village: Marko Pavičić (77 years), Stjepan Katalinić (54 years), Jure Sekulić (58 years), Martin Šarić (41 years) and Ivan Ivezić (34 years).³⁴⁵ On 13th August 1991, Mile Račić found their bodies near the village.³⁴⁶ Thereafter, the Croat inhabitants began to leave the village *en masse*.

5.185 A number of Croat civilians were murdered in the surrounding villages. Mate Kovačević was killed in St. Rok. Their bodies were

³⁴⁰ Witness Statements of S.R. and P.B., Annexes, vol 2(III), annexes 390 and 392.

³⁴¹ Witness Statements of I.K. and I.M., Annexes, vol 2(III), annexes 382, 391.

³⁴² Witness Statement of P.B., Annexes, vol 2(III), annex 392.

³⁴³ Witness Statement of I.M., Annexes, vol 2(III), annex 391.

³⁴⁴ Witness Statement of M.Ž., Annexes, vol 2(III), annex 393.

³⁴⁵ Autopsy Record, 15th August 1991, Annexes, vol 2(III), annex 425. All of them had been shot in the head.

³⁴⁶ Witness Statements of M.R. and M.Ž., Annexes, vol 2(III), annexes 394 and 393.

exhumed in 1996.³⁴⁷ In Smokrić, the two deaf-mute brothers Josip and Mile Pavičić were killed.³⁴⁸

5.186 In September 1991, the attacks intensified. J.B. found the dead body of her paralysed husband. He had been unable to flee the village because he was bedridden.³⁴⁹ Jakov and Ana Sekulić were killed and their bodies were set on fire.³⁵⁰ On 24th September 1991, around 350 Croat inhabitants of Lovinac fled over the Velebit mountain. Members of the JNA and the paramilitaries occupied Lovinac and the surrounding villages the same day and started burning down Croat properties.³⁵¹ A number of church structures were either damaged or destroyed, including the Church of St. Michael in Lovinac, the Church of St. Francis in Vranik, the Chapel of St. Anthony in Cvituča, the Church of St. Rok in St. Rok and the Church of St. Magdalena in Ričice.³⁵² The graveyard in Lovinac was desecrated. Not only were the tombstones destroyed, but also, according to the parish priest, Croat skeletons were dug up and removed:

“When it came to ethnic cleansing, they behaved towards us as if we were lice or bugs. Even the traces of dead Croats had to be removed. So they exhumed the skeletons and the skull...Lots of family vaults were demolished and tombstones were carted away. They ground down the tombstones and then used the material to erect monuments to their fighters in the villages.”³⁵³

³⁴⁷ Investigative Report, 22nd August 1996, Annexes, vol 2(III), annex 426.

³⁴⁸ Witness Statement of I.P. and the Special Report, Annexes, vol 2(III), annexes 395 and 427.

³⁴⁹ Witness Statement of J.B.: “...I saw that our house had been completely... consumed by fire. On the road in front of the house, I found the dead body of my husband, lying on his back with his legs bent. Trees logs, 2 to 4 metres long, had been piled on top of him and he had been set on fire. Only the lower part of his body had been consumed by the fire, He was wearing a white shirt...so I could see that he was bloody”, Annexes, vol 2(III), annex 396.

³⁵⁰ Witness Statements of I.S. and M.Ž., Annexes, vol 2(III), annexes 397 and 393.

³⁵¹ Witness Statement of I.S., Annexes, vol 2(III), annex 397.

³⁵² Witness Statement of I.S., Annexes, vol 2(III), annex 398.

³⁵³ *Ibid.*

SECTION FOUR: DALMATIA

19. INTRODUCTION

Geography

5.187 Dalmatia is located in the southwest of the Republic of Croatia. It stretches from the Adriatic Coast to the Dinaric mountainous regions around the town of Knin. The coastal areas encompassed the bigger cities: Split comprised 200,000 inhabitants, Šibenik 47,147, Dubrovnik 52,735; and Zadar 80,434 inhabitants.

5.188 The mountain hinterland of Dalmatia was less developed economically and much less densely populated. The largest towns were Knin, which had 14,352 inhabitants and Sinj, which had 11,378 inhabitants. The inhabitants of this region were mostly agriculturists, cattle-breeders and industrial workers.

5.189 The strategic position of Dalmatia, in particular the northern part where the majority of the Dalmatian Serbs lived, was of vital importance to both sides in the conflict. The main roads, railroads and energy sources of Croatia, including the “Peruća” hydro-power plant, were all fully or partly located within this region. It was possible for the JNA to cut off access between the two sides of the country by controlling the northern part of the region. The JNA commander-in-chief, Veljko Kadijević later explained that the two lines of occupation in Dalmatia were critical to the war campaign in Croatia as a whole: the first line was Knin – Zadar, the second was Mostar – Split.³⁵⁴ These lines of occupation directly corresponded to the western border of the plans for “Greater Serbia”: see Plate 20 (also Vol 3, Plates 4.6B and 4.6C).³⁵⁵ As Knin was the only town in the Republic of Croatia where the Serbs were in absolute majority (comprising 82.5% of the population), military and nationalist sentiments coalesced around Knin, which can fairly be characterised as the heartland of the Serbian Rebellion

³⁵⁴ Veljko Kadijević, “As I see the downfall”, *Politika*, Belgrade, 1993, p. 135; Appendices, vol 5, appendix 4.1.

³⁵⁵ Annexes, vol. 3, Plate 2.6.

Demography

5.190 According to the 1991 Census, 951,641 inhabitants lived in Dalmatia. Approximately 780,000 were Croats (about 82%) and 114,800 (12.06%) were Serbs.³⁵⁶ The coastal areas were populated almost exclusively by Croats. There was an obvious economic disparity between the relative wealth of the coast and the more humble agricultural and industrial economies of the hinterland. However, it is important to note that both Serbs and Croats lived in the mountain areas, especially in the larger towns. Croats accounted for the majority of the population in the southern part of the region (Imotski, Sinj, Drniš) whilst the Serbs made up the majority in the North (Knin, Benkovac and Obrovac). Knin was the only town in the Republic of Croatia in which the Serbs were the absolute majority (82.5%). While mixed Croat and Serb populations lived in the towns of the mountain area, the rural villages were mostly homogenous in their ethnic character.

The Outbreak of Hostilities

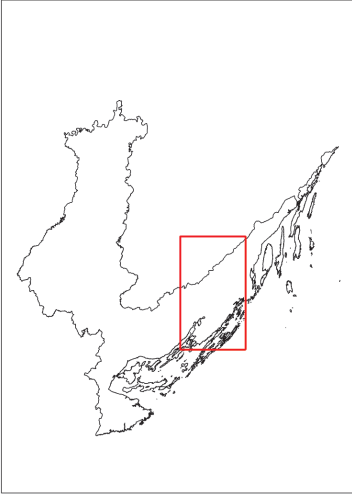
5.191 Major meetings and rallies, which marked the beginnings of the genocidal axis between Croatian Serbs and the Serbian leadership in Belgrade, took place in Knin region. One such rally was held in the Krka Monastery (15 km from Knin) and another was staged near the Orthodox Church in Lazarica between 8th and 10th July 1989. The witness S.C. remembers that local Serbs, together with supporters from Serbia, rode around the area in paramilitary uniforms publicly calling for the creation of a “Greater Serbia”.³⁵⁷ Critically, this meeting introduced a new level of ethnic hatred into Croatian public life. Slogans like “This is Serbia”, “Hey, Serbia, Knin loves you”, “Slobo, we are waiting for you” were openly brandished by the crowd. People wore Serbian traditional war uniforms and emblems and sang Serbian songs.³⁵⁸ The presence of the Serbian leader of the Second World War, Simo Dubajić, was highly symbolic, as earlier he had proclaimed, “I have called the people to rise up twice before. The first time was in the period between 1941 and 1945.

³⁵⁶ Unless stated otherwise all the demographic data in this chapter is derived from 1991 Census, compiled by the Republic of Croatia.

³⁵⁷ Witness Statement of S.C., Annexes, vol 2(III), annex 428.

³⁵⁸ “Greater Serbian campaign in Croatia”, Chronology of the War – Croatia and Bosnia and Herzegovina 1989 – 1998, p. 7.

DATES OF OCCUPATION OF TOWNS
AND VILLAGES ADDRESSED IN THE
MEMORIAL - DALMATIA

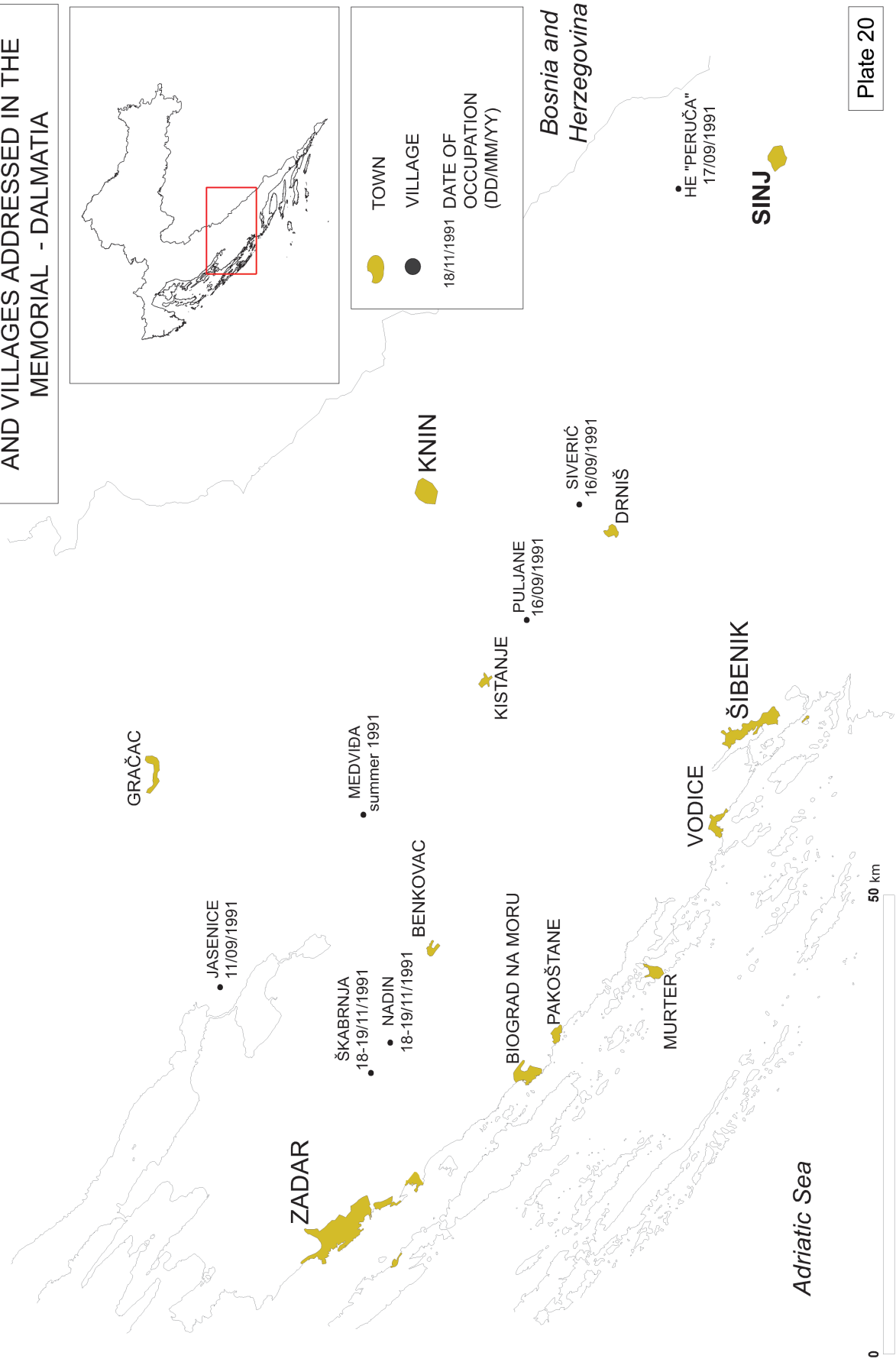


	TOWN
	VILLAGE
18/11/1991	DATE OF OCCUPATION (DD/MM/YY)

Bosnia and Herzegovina

HE "PERUČA"
17/09/1991

SINJ



50 km

Adriatic Sea

The second time was between 1966 and 1970. Now, since 1989 I am willing to do it again”.³⁵⁹

5.192 On 17th February 1990, the SDS was formed in Knin in anticipation of the first multi-party democratic elections.³⁶⁰ The party subsequently set up branches across Croatia, but it remained particularly well organised and represented in Dalmatia. After the first local elections in April 1990, the Knin Municipal Assembly, presided over by Milan Babić, introduced an alliance of the “Community of the Municipalities of the Northern Dalmatia and Lika.” In the Dalmatian Municipalities, the alliance included Knin, Benkovac and Obrovac.³⁶¹ These were Municipalities where the SDS had won the elections. On the 25th July 1990, in the village of Srb (Lika), the first Serbian “Parliament” was held and the “Declaration on sovereignty and autonomy of the Serbian people” was passed. The Declaration stated that the authority of the Croatian parliament was not to be acknowledged, nor were the Croatian Constitution and Croatian laws.

5.193 On the territories of the so-called “Community of the Municipalities of Northern Dalmatia and Lika” rebel Serbs began to ignore such legal institutions of the Republic of Croatia as the state-owned companies, the post-office, banks, the courts and the police. In August 1990, Serbs set up the first barricades on the roads of Knin and Benkovac, in what became known as the “tree-trunk revolution”. The original paramilitary groups in this region grew up as self-styled barricade guards. This development marked the starting point of violence towards local Croats that escalated into genocide after the spring of 1991 (on mass graves in Dalmatia see Vol 3, Plate 7.5). On 17th August 1990, Milan Babić declared a state of war.³⁶² Many of the weapons previously under the control of the Republic of Croatia’s local TO, and to the region’s police force, were distributed to the SDS membership.³⁶³

5.194 In Knin, the Chief Inspector, Milan Martić, who later became head of the “SAO Krajina” police and head of the “Martićevci” paramilitaries, refused to recognise the authority of the Zagreb Government.

³⁵⁹ “‘Knin photographed during tea’, interview with Simo Dubajić”, Nin, Belgrade, 12 March 1989, pp. 30-31., Annexes, vol 4, annex 152. See also The movement of “Great Serbia” in Croatia”, Chronology of the war – Croatia and Bosnia and Herzegovina 1989 – 1998, p. 7.

³⁶⁰ Chapter 2, para. 2.82 *et seq.*

³⁶¹ “The decision on forming and constituting the Community of the Municipalities of the Northern Dalmatia and Lika”, 27 June 1990, Knin Municipal Assembly, Annexes, vol 2(III), annex 579.

³⁶² Chapter 2, para. 2.90.

³⁶³ Report of the Public Security Center in Benkovac, 18 August 1990, Annexes, vol 2(III), annex 580.

Approximately 5,000 local Serbs went to the police station in order to support Martić's stance.³⁶⁴ It was at this point that the JNA blocked the path of special forces from Zagreb, although they later denied that the act was intended to sponsor the challenge of the Serbian rebels to the rule of law.³⁶⁵ The landmark declaration on the secession of the so-called "SAO Krajina" from the Republic of Croatia occurred on 18 March 1991.³⁶⁶ The Decision on the integration of the "SAO Krajina" with the Republic of Serbia occurred on 1st April 1991.³⁶⁷

5.195 The Croats in the territory under the control of "SAO Krajina" soon came under attack, especially in northern Dalmatia: Knin, Benkovac and Obrovac, where local Serb authorities took complete control. The Serb rebellion was not simply directed at the political manifestation of Croatia, but was directed against all aspects of Croatian cultural and economic life, including Catholic churches, cemeteries, monuments, business transactions and domestic properties. For example, on 6th March 1991, a bomb exploded under the house of the Šinko family, the only Croatian dwelling in the village of Strmica, 15 km outside Knin. Four days later, another bomb exploded in the 15th Century Catholic monastery of St. Anthony in Knin. Open discrimination of Croats on grounds of ethnicity or nationality, and even religion, was rife. S.C., a company manager in Knin, was told in February 1991 that his colleagues did not want to work with a Croat. He was dismissed a few months later and told that his dismissal was due merely to the fact that he was a Croat.³⁶⁸ A Knin work colleague threatened a Croat, J.C., at gunpoint. His Serb neighbours later told him to leave the area because it was Serbian territory now.³⁶⁹

5.196 By the spring of 1991, isolated forms of terrorism and discrimination began to formalise in a concerted attempt to rid the region of Croats. On 1st May 1991, "Martićevci",³⁷⁰ rioted and looted villages near Knin: Vrpolje (64% of Croats) and Potkonje (78.28% of Croats). Any

³⁶⁴ *Srpska vojska Krajine*, Issue 1, July 1995, p. 18, Annexes, vol 4, annex 152.

³⁶⁵ *Narodna armija*, 23 August 1990, p. 5., Annexes, vol. 4, annex 147. Public Announcement, the Federal Secretariat for National Defence (SSNO). It was emphasised that the army only acts "in accordance with its constitutionally determined function and responsibility".

³⁶⁶ "The decision on separating from the Republic of Croatia", 18 March 1991.

³⁶⁷ "The decision for the joining of the SAO Krajina with the Republic of Serbia", Annexes, vol 2(III), annex 403.

³⁶⁸ Witness Statement of S.C., Annexes, vol 2(III), annex 428.

³⁶⁹ Witness Statement of J.C., Annexes, vol 2(III), annex 429.

³⁷⁰ Appendices, vol 5, appendix 5 (Serb paramilitary groups active in Croatia (1991-1995)), para. 8.

Croats who resisted were imprisoned.³⁷¹ On the following day, in the village of Polača, 5 km to the southeast of Knin, a Croat police officer Franko Lisica was killed. On 6th and 7th May, a group of 20-30 people rioted in Knin and destroyed all commercial buildings that belonged to Croat firms and entrepreneurs. Bombs were thrown at the houses of Knin Croats. At this point, Croat citizens were forced to leave the towns of Knin and Benkovac *en masse* in fear for their lives.³⁷²

5.197 On 21st May 1991, Vojislav Šešelj came to the region and expressed clear support for the “SAO Krajina”.³⁷³ Šešelj was the President of the Serbian Radical Party from the Republic of Serbia and later became a vice-president in the FRY Coalition Government with Slobodan Milošević.³⁷⁴

Military Organisation of the JNA in Dalmatia

5.198 The key JNA force stationed in Dalmatia was the 9th Corps. Its headquarters were in Knin. The Corps was mostly deployed in the areas where the Serb majority populations resided. Until 1991, the Corps was staffed at a minimum level for peacetime conditions compared to other regions in the country. The coast was under the control of the 8th Naval sector, based in Šibenik.

5.199 After the introduction of multi-party democracy in April 1990, the military authorities began to prepare for the conflict. The JNA’s 221 Motorised Brigade from Knin was restructured into the more intensive «A» classification. Armoured and mechanised battalions were added to the Corps as part of the restructuring process. An armoured battalion was stationed at Benkovac. A further mechanised brigade was stationed at Knin.³⁷⁵ In August 1990, the JNA destabilised the authority of the democratically elected government by preventing helicopters containing Special Forces personnel entering the Knin territory. The deployment of the 9th Corps in the Knin military frontier enabled the rebel Serbs to consolidate their position in other parts of the Republic of Croatia without obstruction. Thereafter the JNA effectively facilitated the first stages of genocide by setting up “buffer zones” in order to prevent Croatian

³⁷¹ Witness Statement of S.I., Annexes, vol 2(III), annex 430.

³⁷² *Ibid.* See also photograph “Displaced Croatian civilians from Knin”, Annexes, vol 3, 15.8.

³⁷³ “The War Chronology – Aggression at Croatia and Bosnia and Herzegovina, 1989-1998”, *Croatian Information Centre*, Zagreb, 1998, p. 60.

³⁷⁴ Chapter 3, para. 374, Appendices, vol 5, Appendix Hate Speech para. 39.

³⁷⁵ SSNO, Headquarters of the Armed Forces of the SFRY, Administration, no. 1487-17/89 from 15 May 1990, Order, Annexes, vol 2(III), annex 527.

intervention.³⁷⁶ At no time did the JNA intervene to halt or punish the atrocities which ensued.

5.200 From the Autumn of 1991 onwards, the JNA joined forces with the “SAO Krajina Territorial Defence” in order to block completely access from Zagreb to the sea. The units of the 9th Corps were crucial to the success of the manoeuvre.³⁷⁷ The Corps was reinforced by members of paramilitary organisations. At the same time the Serb rebel groups were strengthened by the great number of JNA officers who were sent by the Belgrade military authorities to take over command posts.³⁷⁸ Besides its original formation, the 9th Corps was reinforced with the 9th and 10th armoured battalion, and the 1st battalion of the 592 motorised brigade. The JNA activity in the region included the destruction of the Kijevo on 26th August 1991, including the Church of St. Michael the Archangel.³⁷⁹ On 18th and 19th November 1991 the JNA was directly involved in the massacre in Škabrnja and Nadin (see below). In this way the JNA, under the control of Vladimir Vuković and Ratko Mladić, was successful in “cleansing” the hinterland of Šibenik and Zadar.³⁸⁰

Destruction of Cultural Monuments

5.201 Systematic destruction of cultural monuments, especially churches, took place throughout the region. Examples of villages where tanks were used to blow up sacral monuments at close range include Kijevo, Škabrnja and Lukari: see Annexes, vol 3, Plates 8.6 and 8.7.³⁸¹ In the area of the Zadar Archbishopric (including the church centres in Ražanac, Novigrad, Zadar, Zemunik, Benkovac and Biograd) 46 Catholic churches and other sacral objects were destroyed, while 69 Catholic churches and other sacral objects were heavily damaged. Lost monuments included the Church of the Appearance of the Holy Virgin Mary from the 19th century in Benkovac. It was levelled to the ground and a market was established on the site where it

³⁷⁶ The Command of the 9th Corps, DT-1-4, 5 April 1991, to the Command of the bVP, Order for Defence Op. No. 1, Annexes, vol 2(III), annex 528.

³⁷⁷ Veljko Kadrijević, *As I see the Disintegration*, 1993, p. 135-136, Appendices, vol. 5, appendix 4.1.

³⁷⁸ Federal Secretariat for National Defence, Order no.24-175, from 20 September 1991, Annexes, vol 2(III), annex 530.

³⁷⁹ Witness Statement of M.M., Annexes, vol 2(III), annex 431; and S.S., Annexes, vol 2(III), annex 462.

³⁸⁰ JNA attack on Zadar and Šibenik in October 1991, Annexes, vol 3, Plates 6.3 and 6.4.

³⁸¹ Witness Statement of S.S., Annexes, vol 2(III), annex 462 (Kijevo); Witness Statement of D.I., Annexes, vol 2(III), annex 506 (Škabrnja); and Witness Statement of J.Č., K.Č., Annexes, vol 2(III), annex 455 (Lukari).

had stood.³⁸² In the area of the Šibenik Bishopric (including the church centres in Knin, Drniš, Skradin, Tijesno, Vodice, Rogoznica, Ražine, Unešić and Šibenik) 38 Catholic churches and other sacral objects were destroyed, while 87 were damaged. In Split–Makarska Archbishopric (Cetina Deaconry) one Catholic church was completely destroyed (the church of Holy Salvation in the village of Vrlika) and eight were significantly damaged.

20. MUNICIPALITY OF ŠIBENIK³⁸³

Piramatovci

5.202 In 1991 the village of Piramatovci had 484 inhabitants of whom 93.6% were Croat. 412 people were exiled as a result of the occupation. Of those who stayed in the village, at least 3 people were murdered. The dead included an elderly married couple, Mara Ceranja and Jere Ceranja.³⁸⁴ An investigation into the death of Milan Pipunić by the Serbian Authorities falsely concluded that it was a suicide,³⁸⁵ since there were no “external signs of injuries”.³⁸⁶ Witnesses who saw marks of abuse on the body directly contradicted this conclusion.³⁸⁷ In the neighbouring hamlet Bilostanovi, Rade Bura, Marta Bura and Šimka Bura were found dead. All three of them were over 70. Their throats had been cut.³⁸⁸

³⁸² There are now grasslands where the Church stood. See: “The Wounded Church in Croatia – the Destruction of Sacral Objects in Croatia (1991-1995)”, Croatian Bishop’s Conference etc., Zagreb, 1996, p. 282.

³⁸³ The municipality of Šibenik had 85,002 inhabitants of whom 83.98% were Croats and 10.55% were Serbs.

³⁸⁴ Mass Killing and Genocide in Croatia, 1991/92 page 145. See also “Minutes of investigation”, District Court in Knin, 13 April 1992, Annexes, vol 2(III), annex 539.

³⁸⁵ Death Report, 18 March 1992, Annexes, vol 2(III), annex 540.

³⁸⁶ Investigation Record, Municipal Court in Benkovac, 14 March 1992, Annexes, vol 2(III), annex 541.

³⁸⁷ Witness Statement of J.B., Annexes, vol 2(III), annex 432. A key characteristic of the conduct of the Serbian authorities in Dalmatia which relied on the JNA for their power base, is that they often went through the formalities of investigating murders only to class them as “suicide”. The fact that these essentially farcical proceedings took place is in itself evidence of the existence of local government sponsored genocide under the auspices of the JNA.

³⁸⁸ Investigation Record, 22 June 1992, Annexes, vol 2(III), annex 542.

Cicvare

5.203 In 1991, the village of Cicvare comprised 91 inhabitants of whom 12.08% were Croat and 87.92% Serbs. Out of 11 Croats who lived there, 7 were forcibly exiled, whilst two were killed. One man was tied up to a post with a telephone wire and cloaked in the Croatian flag. He was then beaten until he collapsed. A few days later, he was found hung in his house.³⁸⁹ The investigating authorities again came to the conclusion that the death was a suicide.³⁹⁰ An elderly woman, Milka Cicvara died as a result of nine stab wounds.³⁹¹

Sonković

5.204 The village of Sonković had 695 inhabitants of whom 44.17% were Croat and 51.9% were Serbs. The Serbian authorities forcibly exiled 315 inhabitants. 6 Croats were killed, including Ante Matić, Grgo Matić, Marija Matić and Ana Matić.³⁹² Joso and Milka Palinić were found dead in their beds after a missile hit their house.³⁹³

Other Locations

5.205 Other atrocities in the Municipality of Šibenik included the following:

1. **Rupe** (976 inhabitants: 97.23% Croats). Seven hundred and sixty-five Croats were banished.³⁹⁴
2. **Ićevo** (168 inhabitants: 57.73% Croats and 39.28% Serbs). 3 elderly Croat women were killed: including Mara Dujić (daughter of Ivo) who was shot,³⁹⁵ Mara Dujić (daughter of

³⁸⁹ Witness Statements of B.C.: “the veins on his arms and legs were torn to pieces”, Annexes, vol 2(III), annex 433.

³⁹⁰ Investigation Record, County Court in Knin, 15 January 1992: “...Through the external examination it is established that he died a violent death due to committed suicide by contraction of the neck with a noose, that is by hanging. No signs of violence or anything that would suggest murder are found...”, Annexes, vol 2(III), annex 543.

³⁹¹ Witness Statement of B.C., Annexes, vol 2(III), annex 433; Mass Killing and Genocide in Croatia 1991/92 page 145.

³⁹² Investigation Record, County Court in Knin, 16 January 1992, Annexes, vol 2(III), annex 546.

³⁹³ Investigation Record, County Court in Knin, 2 January 1993, Annexes, vol 2(III), annex 544.

³⁹⁴ See photograph “The village of Rupe”, Annexes, vol 3, 12.3.

³⁹⁵ Death Report, 26th December 1991, Annexes, vol 2(III), annex 547.

Joso) who was slaughtered³⁹⁶ and Luca Dujić (90 years).³⁹⁷ In all 61 people were banished after the village had been occupied. In the neighbouring hamlet of Laškovića, one Croat, Ante Silov, was murdered.³⁹⁸

3. **Čista Velika** (533 inhabitants: 97,18% Croats). Two Croats were killed: Nikola Škarić (75 years)³⁹⁹ was set on fire in his own house, and one woman was slaughtered.⁴⁰⁰ 502 Croats fled.

21. MUNICIPALITY OF DRNIŠ⁴⁰¹

Puljane

5.206 The village of Puljane is situated in the Municipality of Drniš, Dalmatia, 15 km northwest of the town of Drniš. In 1991, Puljane had 155 inhabitants of whom all but one were Croat. 7 Croats were killed at one time and 3 others were murdered subsequently. 112 Croats fled from the village.

5.207 On 16th September 1991, the JNA and paramilitaries attacked the villages that surrounded Drniš. On 23rd November 1991 many of the younger people who remained were abducted by the JNA and taken into custody for periods ranging between 10 and 50 days. While they were in custody, the paramilitaries looted many of their houses.⁴⁰² Since 22nd January 1993, members of the police of the “Republic of Srpska Krajina”

³⁹⁶ Death Report, 26 December 1991, Annexes, vol 2(III), annex 548.

³⁹⁷ Mass Killing and Genocide in Croatia 1991/92, p. 145.

³⁹⁸ *Ibid.*

³⁹⁹ *Ibid.*

⁴⁰⁰ Witness Statement of Z.B., Annexes, vol 2(III), annex 523.

⁴⁰¹ The Municipality of Drniš had 24,169 inhabitants of whom 77.51% were Croats and 20.58% were Serbs.

⁴⁰² Witness Statement of K.S., Annexes, vol 2(III), annex 434. See also Witness Statement of G.B., who describes the experience of captivity: “At the beginning they would burst into the room, threaten us with weapons, shoot, provoke and beat even an 85 year old man..... they ... forced a Croat to beat another Croat...Once we didn’t get any water for two days. Anybody....could enter our room and beat us.... Things were like that for two or three months. While we were in the military barracks 5 civilians died due to bad living conditions, and the lack of medical help. A civilian called Ante Mujan...died as a result of beating. Quite often they were cases of mutilation. Once, for example, they cut off the ear of a man called B. after a failed exchange. They beat us with everything – chains, broomsticks, bags filled with sand, batons, sticks, and other objects.”, Annexes, vol 2(III), annex 520.

would come to the village 2 or 3 times a day and systematically harassed the remaining Croatian population. On 2nd February 1993, members of the Serbian paramilitaries murdered Josip Parać (born 1919),⁴⁰³ Ivan Bračić (born 1914), Ana Bračić (born 1921), Pavao Parać (born 1923), Marija Parać (born 1926), and Kata Parać (born 1920).⁴⁰⁴ A subsequent investigation revealed that the killers were members of a Serbian paramilitary formation whose leader was colonel Stevan Subotić, an active officer of the Army of Yugoslavia (FRY).⁴⁰⁵ The only punishment the murderers received was to be dismissed from their units on the basis that the army did not tolerate independent riflemen.⁴⁰⁶ As a result of the massacre the remaining inhabitants of Puljane fled from the village on the following day.⁴⁰⁷

Siverić

5.208 The village of Siverić is located in the Municipality of Drniš, Dalmatia, 2 km from the town of Drniš. In 1991, the village had 981 inhabitants of whom 881 (88.90%) were Croats.

5.209 The village was attacked on 16 September 1991. According to the witness I.F.*,⁴⁰⁸ around 150 missiles fell on the village. Most of the Croats escaped in the direction of Split. Only 120 people remained.⁴⁰⁹ The church St. Peter the Apostle was devastated, the parsonage set on fire, and the cemetery desecrated.⁴¹⁰ On 21 December 1991, paramilitaries burned down 11 residential properties, all of which belonged to Croats.⁴¹¹

⁴⁰³ Witness Statements of M.P. and J.P., Annexes, vol 2(III), annexes 435 and 436.

⁴⁰⁴ "Ivan Bračić and other murders", Secretariat of Interior, 1 March 1993, Annexes, vol 2(III), annex 531. See also Witness statements of M.P., A.B., M.S., J.P., Annexes, vol 2(III), annexes 435, 514, 437 and 436.

⁴⁰⁵ "Violence and the murders of the citizens of Croatian nationality", Security and Intelligence Agency, 1 March 1993, Annexes, vol 2(III), annex 532; Resolution of presence in combat, General-Major of the Serbian Army of Krajina Milan Čeleketić, 9 September 1994, Annexes, vol 2(III), annex 533.

⁴⁰⁶ Daily Report, Security and Intelligence Agency, 3 February 1993, Annexes, vol 2(III), annex 537.

⁴⁰⁷ Witness Statement of J.P., Annexes, vol 2(III), annex 436.

⁴⁰⁸ Witness Statement of I.F., Annexes, vol 2(III), annex 438.

⁴⁰⁹ Mass Killing and Genocide in Croatia 1991/92, Croatian University Press, Zagreb, 1992, page 160.

⁴¹⁰ "Wounded Church in Croatia – Destruction of the Sacral Buildings in Croatia (1991-1995)", Croatian Bishop's conference and others, Zagreb, 1996, p. 247.

⁴¹¹ Military Police MP Knin, "The minutes on the investigation", 1 February 1992, Annexes, vol 2(III), annex 534.

Life for those who remained in the village became impossible. P.H.* was beaten so many times that he eventually collapsed with a heart attack and died a month later.⁴¹² His wife B.* was subsequently raped.⁴¹³ A.F.* was beaten and raped on two occasions.⁴¹⁴ A.K.*, who was mentally retarded was raped on several occasions.⁴¹⁵ A snapshot of the violence routinely experienced by Croatian civilians is demonstrated in a UN Report into these events, which summarises 15 cases of serious assault over a period of 6 days between 10 and 16 May 1995.⁴¹⁶

Drniš

5.210 The town of Drniš had 5,645 inhabitants of whom 76.7% were Croat. Members of the Serb paramilitary groups tortured the inhabitants physically and psychologically and forced them to carry out forced labour. Non-combatants were abducted and taken into custody for interrogation. Ivan and Manda Mujan were beaten to death. Ivan Radas was found in his house unconscious in a pool of blood. His ears had been cut off. He died two days later in hospital.⁴¹⁷ The Croatian woman M.M.* was raped, after her husband had been brutally beaten.⁴¹⁸ The Croats who remained in Drniš hid in fear of their lives.⁴¹⁹ Rebel Serbs made a list of the Croats who remained and threatened them saying “this is nothing in comparison to what would happen to the Croats soon.”⁴²⁰ As a result of such and similar actions, 2,909 Croats were forcibly exiled from Drniš.

⁴¹² Witness Statement of B.H.*, Annexes, vol 2(III), annex 439.

⁴¹³ *Ibid.*

⁴¹⁴ Witness Statement of A.F. and I.F., Annexes, vol 2(III), annexes 440 and 438. A.F. reported the rape to the authorities of the “SAO Krajina”, but no investigation was conducted. Also Official Note, Police station Drniš, 4 March 1994, Annexes, vol 2(III), annex 581.

⁴¹⁵ Witness Statement of A.K., Annexes, vol 2(III), annex 441.

⁴¹⁶ UN, The Ministry of the Defence of the Republic of Croatia’s Office in Šibenik, 8th June 1995, Annexes, vol 2(III), annex 535: K.O. (robbery and murder threats), J.F.* (house raid and fuel robbery), M.R. (beaten, clothes, food robbery and putting knife against her throat), I.D.* (electricity cables robbery), A.M. (food, clothes, tools robbery, intimidation), M.D. (robbery and knife threats that they would kill his wife), M.R. (setting his barn on fire, devastation of the house), A.M. (building material robbery), J.M. (house robbery, putting knife against her throat and her daughters’ A. and S.), M.B. (beaten, robbery), V.O. (robbery, murder threats), M.M. (robbery, house raid).

⁴¹⁷ Witness Statement of M.P., Annexes, vol 2(III), annex 442.

⁴¹⁸ Witness Statement of M.M., Annexes, vol 2(III), annex 521.

⁴¹⁹ Witness Statement of M.P., Annexes, vol 2(III), annex 442.

⁴²⁰ Witness Statements of I.H.* and M.M., Annexes, vol 2(III), annexes 444.

Miljevci

5.211 The villages and hamlets around Miljevci (i.e. Bogatić Miljevački, Drinovci, Širitovci, Kaočine) had a total population of 1,305 of which 98.16% were Croats. 8 Croats were killed during the occupation: Mato Bačić and Marija Bačić were killed by a hand grenade,⁴²¹ Marija Mazalin was shot as she tried to hide in a hedge,⁴²² Paško Kozić and Vinko Galić were killed by members of the Serbian paramilitaries,⁴²³ Ivan Vlaić and Šime-Zdravko Lovrić were shot at point blank range.⁴²⁴ A blind man, Petar Džaja, was shot while he was tending to his cattle. The witness, A.M. was threatened with death by Šešelj's paramilitary group on a number of occasions.⁴²⁵ Almost all of the dead were over 60 years of age. Croats lived in constant fear: they were threatened with death by Serbian paramilitaries so they were forced to run away from the houses and sleep in the woods.⁴²⁶ 933 Croats were forcibly exiled from the area.

Other Locations

5.212 Other atrocities in the municipality of Drniš included the following:

1. **Trbounje** (418 inhabitants: 98.97% Croats). One Croat woman was killed⁴²⁷ in the village, while 404 were forced to leave due to continual robberies and violence.
2. **Kadina Glavica** (510 inhabitants: 70.98% Croats). Four Croats were killed. One of them was burned in his barn.⁴²⁸ Witness J.T. testified that his wife and a married couple, Ivan and Kata Grcić were killed.⁴²⁹ 60 Croats were forced to flee out of fear for their lives.
3. **Kričke** (717 inhabitants: 36.4% Croats, 62.6% Serbs). Three Croats were killed, namely Nikola Barišić, Krste Sikirica and

⁴²¹ Report, 3rd police station Drniš, 11 March 1996, Annexes, vol 2(III), annex 550.

⁴²² Record, 3rd police station Drniš, 12 March 1996, Annexes, vol 2(III), annex 549.

⁴²³ Witness Statement of M.M., Annexes, vol 2(III), annex 445; Witness Statement of J.G., Annexes, vol 2(III), annex 446.

⁴²⁴ Record, 3rd police station in Drniš, 11 March 1996, Annexes, vol 2(III), annex 582; Official report on bodies found, 3rd police station Drniš, 19 September 1996, Annexes, vol 2(III), annex 551.

⁴²⁵ Witness Statement of A.M., Annexes, vol 2(III), annex 447.

⁴²⁶ Witness Statement of A.B. and M.B., Annexes, vol 2(III), annex 519.

⁴²⁷ Witness Statement of N.K., who states inter alia that M.M. was found in a pool of blood with gunshot wounds to her thighs, Annexes, vol 2(III), annex 443.

⁴²⁸ Witness Statement of Š.P., Annexes, vol 2(III), annex 449.

⁴²⁹ Witness Statement of J.T., Annexes, vol 2(III), annex 448.

Kata Bitunjac. The latter was found unconscious, covered with a blanket. She had been beaten all over her body and subsequently died in hospital.⁴³⁰ On 28th August 1992, the Queen of the Peace church was mined and destroyed.⁴³¹ 233 Croats were eventually banished from the village.

4. **Žitnić** (510 inhabitants: 47.45% Croats, 50.39% Serbs). Members of the Serbian paramilitary units killed 5 Croats. One of them, Ante Mujan was taken to prison in Knin and beaten to death;⁴³² one woman, Cvita Miočić was burned.⁴³³ Three elderly people, namely Milenko Ercegovac, Anto Ercegovac and Marija Ercegovac, remain missing, it is believed that their bodies were thrown into a well.⁴³⁴ 247 Croats were forced to flee.
5. **Okraj** (485 inhabitants: 92.25% Croats). Eight Croats were killed in the village, including Ivan Džapo, Roko Agić, Manda Agić, Marija Dizdar,⁴³⁵ Ivan Vucić (son of Mate), Kata Vucić and Ivan Vucić (son of Marko). The bodies of Ivan Vucić, Kata Vucić, Ivan Vucić and another unidentified person were subsequently exhumed.⁴³⁶ 449 Croats were forcibly exiled from the village after systematic looting and arson.⁴³⁷
6. **Lukari** (214 inhabitants: 93% Croats). One Croat woman was killed,⁴³⁸ and one Croat woman was raped several times.⁴³⁹ 113 Croats were forced to flee.
7. **Razvođe** (507 inhabitants: 66.46% Croats, 31.55% Serbs). 4 Croats were killed, one of whom, Ana Duvančić, was killed while running across a minefield.⁴⁴⁰ She and her family were trying to escape after paramilitaries from Belgrade had

⁴³⁰ Witness Statement of M.V., Annexes, vol 2(III), annex 450.

⁴³¹ *Ibid.*

⁴³² Witness Statement of A.B., Annexes, vol 2(III), annex 515.

⁴³³ Official Record of Discovery of Place of Burial, 3rd police station Drniš, 9 August 1996, Annexes, vol 2(III), annex 583.

⁴³⁴ Witness Statement of A.B., Annexes, vol 2(III), annex 452.

⁴³⁵ Witness Statements Z.Č., D.A., J.B., Annexes, vol 2(III), annex 453.

⁴³⁶ Exhumation Record, 12 February 1993, Annexes, vol 2(III), annex 552.

⁴³⁷ Witness Statement of N.B.*, Annexes, vol 2(III), annex 454.

⁴³⁸ Witness Statements of J.Č. and K.Č., Annexes, vol 2(III), annex 455.

⁴³⁹ Witness Statement of N.B., Annexes, vol 2(III), annex 454.

⁴⁴⁰ Witness Statement of M.D., Annexes, vol 2(III), annex 456.

indecently assaulted them.⁴⁴¹ Z.S.* was raped at gunpoint.⁴⁴² 282 two Croats were forcibly exiled.

8. **Ljubotić** (113 inhabitants: 99.11% Croats). 43 Croats fled from the village, while one Croat was killed⁴⁴³ and at least one Croat woman raped.⁴⁴⁴
9. **Matase** (172 inhabitants, 95,75% Croats). One Croat was killed,⁴⁴⁵ while 106 were exiled.
10. **Otavice** (283 inhabitants: 95.75% Croats). 5 Croats were killed. Luka Reljanović was seen for the last time on 3rd February 1993. He was claiming that the paramilitaries were threatening to kill him.⁴⁴⁶ A corpse was found in the Čikola River on 23 March 1993. The “RSK” authorities took no steps to identify the body and officially concluded that it was a suicide.⁴⁴⁷ The other Croat civilians that were killed included, Nikola Cigić and Boško Lađević.⁴⁴⁸ 231 Croats were forcibly exiled.⁴⁴⁹ Serb paramilitaries destroyed the mausoleum of the most famous Croatian sculptor Ivan Meštrović.⁴⁵⁰

22. MUNICIPALITY OF KNIN⁴⁵¹

Kninsko Polje

5.213 In the Kninsko Polje (hamlet Marići), two Croats, Joško Čačić and Joško Marić were killed.⁴⁵² One of them was stabbed and the death was

⁴⁴¹ *Ibid.*

⁴⁴² Witness Statement of Z.S., Annexes, vol 2(III), annex 457.

⁴⁴³ Witness Statement of V.Z., Annexes, vol 2(III), annex 458.

⁴⁴⁴ Witness Statement of J.L. *, Annexes, vol 2(III), annex 459.

⁴⁴⁵ Witness Statement of V.Z., Annexes, vol 2(III), annex 458.

⁴⁴⁶ Witness Statement of I.G., Annexes, vol 2(III), annex 460.

⁴⁴⁷ Death Report, 23 March 1993, Annexes, vol 2(III), annex 553.

⁴⁴⁸ Witness Statement of I.G., Annexes, vol 2(III), annex 460.

⁴⁴⁹ Witness Statement of J.H., Annexes, vol 2(III), annex 461.

⁴⁵⁰ Vladimira Pavić, “Register of War Damages on Museums and Galleries”, Museum Documentation Centre, Zagreb, 1997, pp. 118-121.

⁴⁵¹ The Municipality of Knin had 42,954 inhabitants of which 9.05% were Croats and 88.2% were Serbs.

⁴⁵² Witness Statement of A.Ć., Annexes, vol 2(III), annex 468. In relation to J.Ć.’s murder, he states that the police deliberately placed a gun by his body and on

later declared a “suicide”. The deceased had stab wounds to his head, throat and chest.⁴⁵³

Kijevo

5.214 Kijevo had 1,261 inhabitants, of which 99.6% were Croats. In Kijevo and its neighbouring hamlets, 10 Croats were killed. A JNA soldier who was stationed in the village and witnessed the conduct of the paramilitaries observed that there was no resistance from Croats in any way and that the subsequent violence that ensued was entirely unnecessary.⁴⁵⁴ In July 1992, the bodies of Ivan and Jaka Ercegovac were thrown into a local well, where their daughter found them.⁴⁵⁵ In June 1992, Božica Slavić’s body was found in a meadow. In January 1993, Pera Gojević-Zrnić’s body was found on a country road.⁴⁵⁶ B.V. was tortured on a number of occasions, including one incident where she was forced to stand in a fire.⁴⁵⁷ Others who were killed included Toma Bilić, Marka Bilić, Ruža Slavić, Ivan Barešić and Mate Jakovica.⁴⁵⁸ In the hamlet of Vujići, the Croats were abused and terrorised on a daily basis and were compelled to undertake forced labour.⁴⁵⁹ 997 Croats were forced to leave Kijevo.

Ervenik

5.215 In 1991 the village of Ervenik had 1,570 inhabitants of whom 2.03% were Croats and 97.19% were Serbs. On 18 January 1992, members of the Serbian paramilitary units,⁴⁶⁰ killed a Croat called Drago Čengić, his wife and his two children and then burnt their corpses. One of the Čengić boys was 11 years old, the other was 4. Josip Čengić and his wife were also killed.⁴⁶¹ Slobodan Kovačević and Damir Travica confessed to these crimes

Serbian Radio Knin that night a news story was broadcast which falsely portrayed the deceased as a terrorist.

⁴⁵³ Record on the external examination of the corps, 1992, Annexes, vol 2(III), annex 554.

⁴⁵⁴ Witness Statement of S.S., Annexes, vol 2(III), annex Annexes, vol 2(III), annex 462.

⁴⁵⁵ Witness Statement of B. V., Annexes, vol 2(III), annex 463.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Ibid.*

⁴⁵⁸ Witness Statement of M.G.Z., Annexes, vol 2(III), annex 464.

⁴⁵⁹ Witness Statement of C.V., Annexes, vol 2(III), annex 465.

⁴⁶⁰ Witness Statement of S.K., Annexes, vol 2(III), annex 466.

⁴⁶¹ Witness Statement of D.T., Annexes, vol 2(III), annex 467.

in writing.⁴⁶² According to the witness D.R.,⁴⁶³ the perpetrators were charged, but only as a formality. They were released a few months later despite the confession evidence. All other Croats from Ervenik left the village, although survivors believe that Stana Ivanković (82 years) was also killed.⁴⁶⁴

Vrpolje

5.216 During the period of the occupation the Serbs denied the local Croat population either wages or food. People were sacked from their jobs purely because of their ethnic background. The friars' house next to St. Joseph's Parish Church was taken over by Serbs. The rectory was destroyed. In 1993, Serbian paramilitaries arrived with the intention of expelling all Croats from the village.⁴⁶⁵ As a result the remaining Croat population sought the assistance of UNPROFOR to flee from Vrpolje.⁴⁶⁶

23. MUNICIPALITY OF OBROVAC⁴⁶⁷

Jasenice

5.217 The village of Jasenice is located in the Municipality of Obrovac, Dalmatia, 5 km west of the town of Obrovac. In 1991 Jasenice had 1,308 inhabitants of which 97.85% were Croats. After its occupation on 11th September 1991, only about 10 elderly Croats remained in the village and its surrounding hamlets.⁴⁶⁸ These people were then systematically murdered. The witness L.M.⁴⁶⁹ saw Luka Modrić shot from point

⁴⁶² Witness Statements of S.K. and D.T., Annexes, vol 2(III), annexes 466 and 467.

⁴⁶³ Witness Statement of D.R., Annexes, vol 2(III), annex 518.

⁴⁶⁴ Mass Killing and Genocide in Croatia 1991/92, page 145.

⁴⁶⁵ Witness Statement of J.B., Annexes, vol 2(III), annex 516, who states: "Mile Vučković called "Čarapan" would bring Chetniks to Vrpolje and show them the houses of those Croats whom they planned to rob and those whom they planned to force out of the village."

⁴⁶⁶ Witness Statement of A.Ć., Annexes, vol 2(III), annex 468.

⁴⁶⁷ In 1991, the Municipality of Obrovac had 11,557 inhabitants of whom 32.54% were Croats and 65.52% were Serbs, see 1991 Census.

⁴⁶⁸ "Pjevali su dok su ih ubijali" (They sang while killing them), *Zadar Journal*, 20 April 1995, p. 9, Annexes, vol 4, annex 152.

⁴⁶⁹ Witness Statement of L.M., Annexes, vol 2(III), annex 469.

blank range, a fact that was confirmed by the subsequent autopsy.⁴⁷⁰ The special platoon of the police of the “RSK” boasted about the murder in front of the police station.⁴⁷¹ Thereafter, six elderly Croats were shot in the nearby hamlet of Meki Doci. They were: Božica Juričević (1927), Zora Zubak (1922), her husband Stipan Zubak (1920), Martin Bužonja (1927), Manda Maruna (1931) and Ivan Maruna (1922). The notes on the autopsies carried out on 30th June 1993 show that these civilians were shot at close range.⁴⁷² Two “RSK” police witnesses N.V.⁴⁷³ and M.G.

⁴⁷⁴ confirm that the local Serbian authorities were aware of these crimes and that there was a specific order not to investigate them.

Medviđa

5.218 The village of Medviđa is located in the Municipality of Obrovac, Dalmatia, 13 km southeast of the town of Obrovac. In 1991, it comprised 688 inhabitants, of whom 395 (57.41%) were Croats and 282 (40.98%) were Serbs.

5.219 Tensions in the village began in early 1991; fuelled by the fact that Medviđa was surrounded by villages where Serbian inhabitants were in the majority.⁴⁷⁵ Croats were informed that their presence in the village was no longer acceptable and they were threatened with death unless they left immediately.⁴⁷⁶ The Serbs looted the houses of those who left.⁴⁷⁷ Between August and December 1991, the Church of Appearance of the Holy Virgin Maria was severely damaged.⁴⁷⁸ During the subsequent occupation, Croats

⁴⁷⁰ Minutes on the investigation, County Court in Zadar, 22 January 1997, Annexes, vol 2(III), annex 555. For an account of the murder see I.M., “They killed them singing”, Annexes, vol 4, annex 152.

⁴⁷¹ Witness Statement of S.Š., Annexes, vol 2(III), annex 470.

⁴⁷² Minutes on the Autopsy – Stipe Zubak, Annexes, vol 2(III), annex 557; Autopsy Report – Ivan Maruna, Annexes, vol 2(III), annex 558; Record of Exhumation – Božica Juričević, Zorka Zubak, Martin Bužonja, Manda Maruna, Annexes, vol 2(III), annex 556.

⁴⁷³ Witness Statement of N.V., Annexes, vol 2(III), annex 472.

⁴⁷⁴ Witness Statement of M.G., Annexes, vol 2(III), annex 473.

⁴⁷⁵ Komazeci: 100%; Zelengrad: 89.45%; Parčić: 100%.

⁴⁷⁶ Witness Statement of Š.L., Annexes, vol 2(III), annex 474.

⁴⁷⁷ Witness Statement of S.M., Annexes, vol 2(III), annex 475.

⁴⁷⁸ “The Wounded Church in Croatia, Destruction of Sacrale Monuments in Croatia (1991-1995)”, the Croatian Bishops’ Conference, Zagreb, 1995, p. 286.

were severely restricted in their freedom of movement and commercial dealings.⁴⁷⁹

5.220 On 9th May 1992 Šime and Ika Serdarević, were shot at point blank range. According to I.P., who found their corpses, Ika Serdarević was shot in the face and Šime Serdarević was shot in the forehead three times.⁴⁸⁰ In July/August 1992 Božo Demo was thrown into a pit, where he was left to die over a period of three or four days.⁴⁸¹ Soka Genda's husband remained missing after Serbs had set their house on fire in January 1993. They left a knife, which was covered in blood, sticking out of the front door.⁴⁸² On 3rd February 1993, the shepherd Ivan Mršić was gratuitously gunned down by machine gun fire.⁴⁸³ At the same time Serb paramilitaries attempted to rape K.S.*⁴⁸⁴ On 9th February 1993, 9 Croatian civilians were massacred. S.E. was one of the survivors. She saw Dragica Erstić killed on the street outside the house.⁴⁸⁵ The paramilitaries then went into the house and started shooting. The witness was wounded, but saved because the corpse of her 18 year old daughter, M., shielded her. Those who were killed as a result of the massacre were Petar Erstić, Jeka Erstić (born 1947), Draginja Erstić, Dušan Erstić, Ivan Erstić, Jeka Erstić (born 1933) and Mira Erstić. According to the statement of the "RSK" police officer, N.V., those responsible for the killing were apprehended, but on the intervention of Milan Martić,⁴⁸⁶ the killers were released without charge.⁴⁸⁷

⁴⁷⁹ Witness Statement of S.M.: "It was strictly forbidden for us to sell cattle or leave the village", Annexes, vol 2(III), annex 475.

⁴⁸⁰ Witness Statement of I.P., Annexes, vol 2(III), annex 476. N.V., was the police officer who was assigned to the case. Although V. made a report indicating that so-called "Service for Federal Safety" was responsible, his superiors did not act upon the information and he was later prohibited from pursuing the investigation, Annexes, vol 2(III), annex 477. See also the witness statement of the "RSK" policeman M.G., Annexes, vol 2(III), annex 473.

⁴⁸¹ According to the witness Š.L., "Serbs bragged and took pleasure in watching how long he could stay alive", Annexes, vol 2(III), annex 474.

⁴⁸² Witness Statement of S.G., Annexes, vol 2(III), annex 479.

⁴⁸³ Witness Statement of K.S.: "I heard two machine gun bursts and I later saw that Ivan Mršić was killed on the street...", Annexes, vol 2(III), annex 517.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ Witness Statement of S.E., Annexes, vol 2(III), annex 480.

⁴⁸⁶ The "SAO Krajina" Minister and Police Inspector of Knin.

⁴⁸⁷ Witness Statement of N.V., Annexes, vol 2(III), annex 477.

Other Locations

5.221 Other atrocities in the municipality of Obrovac included the following:

1. **Zaton Obrovački** (495 inhabitants: 35.16% Croats, 62.39% Serbs). Members of the Serbian paramilitaries murdered at least 8 Croats: Luka Modrić, Marijan Modrić⁴⁸⁸, Božica Dopud and Anđa Klanac.⁴⁸⁹ On 26 January 1993, a group of Croat villagers were taken by the members of the Serbian paramilitaries and killed. The witness J.M., a Serb, was also taken with the group, but when she was recognised as a fellow Serb she was separated from the group.⁴⁹⁰ 146 Croats fled due to the constant intimidation, robberies and arson.⁴⁹¹
2. **Kruševo** (1,676 inhabitants: 92.95% Croats). At least 1 Croat was murdered during the occupation of the village by Serbian paramilitaries who were lauded by their superior.⁴⁹² 1,557 Croats fled from the village.

24. MUNICIPALITY OF BENKOVAC⁴⁹³*Bruška*

5.222 In 1991, the village of Bruška comprised 373 inhabitants, of whom 89.54% were Croats. Throughout the occupation systematic violence and looting took place. The brutality reached a high point on 21st December 1991 when paramilitaries murdered 9 Croats, including Dušan Marinović, Roko Marinović, Petar Marinović, Krsto Marinović, Draginja Marinović, Manda Marinović, Stana Marinović, Dragan Marinović, Ika Marinović.⁴⁹⁴

⁴⁸⁸ Minutes of investigation, County Court in Zadar, 22 January 1997, Annexes, vol 2(III), annex 584.

⁴⁸⁹ Witness Statements of J.M. and N.M., Annexes, vol 2(III), annexes 481 and 482.

⁴⁹⁰ Witness Statement of J.M., Annexes, vol 2(III), annex 481.

⁴⁹¹ Witness Statement of N.M., Annexes, vol 2(III), annex 482.

⁴⁹² Witness Statement of M.J., Annexes, vol 2(III), annex 483.

⁴⁹³ The municipality of Benkovac had 33,378 inhabitants of which 40.6% were Croats and 56.88 were Serbs.

⁴⁹⁴ Commentary, Crime in the Village of Bruška, Annexes, vol 2(III), annex 559; Minutes of Investigation, County Court in Zadar, 26 April 1996 – Dušan Marinović, Roko Marinović, Annexes, vol 2(III), annex 460; Minutes of Investigation, County Court in Zadar, 26 April 1996 – Petar Marinović, Krsto Marinović, Draginja Marinović, Annexes, vol 2(III), annex 561; Minutes of Investigation, County Court in Zadar, 26

They were executed by a paramilitary firing squad outside their homes.⁴⁹⁵ In June 1992, Joso Marinović was murdered.⁴⁹⁶ The “RSK” authorities attempted to blame the killings on a Croatian terrorist movement.⁴⁹⁷ One eyewitness to the massacre was taken to the prison in Knin, where he died due to the injuries he sustained.⁴⁹⁸ 253 Croats fled the village of Bruška.

Korlat

5.223 The village of Korlat had 941 inhabitants, of whom 55.15% were Croats and 43.03% were Serbs. Serbian paramilitary units murdered nine Croats, including Martin and Cecilija Buljat,⁴⁹⁹ Kristina Galić,⁵⁰⁰ Joso Jurjević, Darinka Jurjević, Luca Zorić and Đurđija Modrić. The Jurjević’s were an elderly couple. Joso Jurjević’s nose and ears had been cut off and his thorax had been gouged out.⁵⁰¹ The police beat Milan Bulić to death with a hayfork.⁵⁰² Soka Šikić was blown up when a bomb was thrown at her house.⁵⁰³ The church and all Croatian houses in Korlat were destroyed.⁵⁰⁴ Three hundred and eighty-nine Croats were expelled during the occupation.

Smilčić

5.224 The village of Smilčić had 641 inhabitants, of whom 29.95% were Croats and 68.48% were Serbs. 6 Croats were murdered in the village. Three people were set on fire: Krsto Arbanas, Anica Arbanas, Biserka

April 1996 – Manda Marinović, Stana Marinović, Annexes, vol 2(III), annex 562; Minutes of Investigation, County Court in Zadar, 26 April 1996 – Dragan Marinović, Ika Marinović, Annexes, vol 2(III), annex 563.

⁴⁹⁵ Witness Statements of A.M. and J.M., Annexes, vol 2(III), annexes 485 and 486.

⁴⁹⁶ Witness statement of Ž.M., Annexes, vol 2(III), annex 484; Minutes of Investigation, 26 April 1996, Annexes, vol 2(III), annex 564.

⁴⁹⁷ Commentary, Crime in the Village of Bruška, Annexes, vol 2(III), annex 559, Witness Statement of D.Z., Annexes, vol 2(III), annex 487.

⁴⁹⁸ Witness Statement of Ž.M., Annexes, vol 2(III), annex 484.

⁴⁹⁹ Witness Statement of J.G., Annexes, vol 2(III), annex 488.

⁵⁰⁰ Report of Death, 27th March 1992, Annexes, vol 2(III), annex 565.

⁵⁰¹ Witness Statements of J.V., Annexes, vol 2(III), annex 489; J.G., Annexes, vol 2(III), annex 488; and B.Š., Annexes, vol 2(III), annex 490. Also Investigation Record, 24 April 1996, Annexes, vol 2(III), annex 566.

⁵⁰² Witness Statement of C.B., Annexes, vol 2(III), annex 491.

⁵⁰³ Witness Statement of B.Š., Annexes, vol 2(III), annex 490.

⁵⁰⁴ Witness Statement of M.B., Annexes, vol 2(III), annex 492.

Abanas.⁵⁰⁵ I.B.* and L.V.* were raped by a paramilitary soldier, G.A. In a subsequent confession statement, A. attempted to justify his conduct by saying that since the women were Croats, he thought he could act according to his own conscience.⁵⁰⁶ The victims went to hospital in Benkovac the following day where they were told that there was no evidence of rape and they were denied any medical reports.⁵⁰⁷ All the Croats in Smilčić eventually fled.⁵⁰⁸

Other Locations

5.225 Other atrocities in the municipality of Benkovac included the following:

1. **Lišane Ostrovičke** (892 inhabitants: 99.1% Croats). At least 4 Croats were murdered,⁵⁰⁹ whilst 825 Croats were forcibly expelled from the village.
2. **Benkovac** (3,776 inhabitants: 19.83% Croats, 73.62% Serbs). Croats were systematically abused and physically attacked. During the occupation, Serbs planted explosive devices on the Croat-owned property. The house of one Croat, a veterinarian, was attacked three times, either by missile bombardment or by planting bombs.⁵¹⁰ 659 Croats fled the town.
3. **Rodaljice** (162 inhabitants: 100% Croat). A number of Croats were murdered during the occupation, including Luka Šunić, Grgica Šunić, Marija Šunić and Milka Grgas.⁵¹¹ The witness M.Š. was shot in the head, but survived, and eventually escaped.⁵¹² 139 Croats were expelled.
4. **Lisičić** (499 inhabitants, 96% Croats). 4 Croats were murdered in the village: Maša Kutija, Stana Kutija, Frane Kutija⁵¹³ and

⁵⁰⁵ Record of Investigation, 26 November 1992, Annexes, vol 2(III), annex 568.

⁵⁰⁶ Witness Statement of G.A., Annexes, vol 2(III), annex 493.

⁵⁰⁷ Witness Statement of I.B., Annexes, vol 2(III), annex 494.

⁵⁰⁸ Witness Statement of B.A., Annexes, vol 2(III), annex 495.

⁵⁰⁹ Minutes of Exhumation, 24 May 1996 and Witness statement of T.D., Annexes, vol 2(III), annexes 569 and 496.

⁵¹⁰ Minutes of Investigations dated 26 March 1992, 11 August 1992 and 30 November 1992, Annexes, vol 2(III), annexes 587, 588, 589.

⁵¹¹ Witness Statements of M.Š. and T.Š., Annexes, vol 2(III), annexes 497 and 498. See also Record of the Performed Burial, 12 June 1992, Annexes, vol 2(III), annex 570.

⁵¹² Witness Statement of M.Š., Annexes, vol 2(III), annex 497.

⁵¹³ Record of the Autopsy (Exhumation), 28 October 1995, Annexes, vol 2(III), annex 571.

Nikola Žilić.⁵¹⁴ J.Ž. was indecently assaulted by paramilitaries who beat her and threatened to kill her. 5 or 6 paramilitaries raped M.B.*⁵¹⁵ 360 Croats were expelled from the village and the “RSK” authorities settled Serbs in their houses.⁵¹⁶ The Catholic Church in the village was destroyed with explosives.⁵¹⁷ According to witness statements, only a few Croats remained in the village. Those who remained were denied free movement.⁵¹⁸

5. **Perušić Benkovački** (595 inhabitants: 72.77% Croats). 353 Croats were forcibly expelled.
6. **Šopot** (531 inhabitants, 69.49% Croats). 8 Croats were murdered, including Luka Marinović, Stipe Marinović, Zorka Marinović and Vukosava Marinović. When their bodies were found, Vukosava Marinović was lying on her stomach with her skirt rolled up over her head. Her underwear had been removed. Stipe Marinović had been shot in the head and stabbed. He was wearing underpants. Zorka and Luka Marinović also suffered fatal head injuries.⁵¹⁹ Two were stabbed and two were set on fire.⁵²⁰ Croats were compelled to undertake forced labour in the village.⁵²¹

25. MUNICIPALITY OF ZADAR

Škabrnja and Nadin

5.226 The village of Škabrnja is located in the Municipality of Zadar, Dalmatia, 15 km east of the town of Zadar. According to the 1991 Census, Škabrnja had 1,953 citizens, of whom 1,906 (97.6%) were Croats. The massacre in the village took place on 18th and 19th November 1991, the same dates as the fall of Vukovar.

⁵¹⁴ Witness Statement of J.Ž., Annexes, vol 2(III), annex 499.

⁵¹⁵ Witness Statement of A.Š., Annexes, vol 2(III), annex 500.

⁵¹⁶ Witness Statement of J.Ž., Annexes, vol 2(III), annex 499.

⁵¹⁷ “The Wounded Church in Croatia”, p. 285

⁵¹⁸ Witness Statement of A.Š., Annexes, vol 2(III), annex 500.

⁵¹⁹ Witness Statement of K.V., Annexes, vol 2(III), annex 502.

⁵²⁰ Record of External Examination of Corpses, Annexes, vol 2(III), annex 585; Criminal charges, *ibid.*, annex 586; Witness Statement of K.V., *ibid.*, annex 502.

⁵²¹ Witness Statement of K.V., Annexes, vol 2(III), annex 501.

5.227 Škabrnja was attacked in the early hours of the morning of 18th November 1991. The key JNA units involved were the 180th Motorized Brigade and the 8th Aircraft Base RV. They acted in collaboration with the units of the Serb Territorial Defence from Lakić and various paramilitary groups including the “White Eagles”, the “SJS Benkovac.” According to the statement of a former member of the JNA N.B.,⁵²² the orders for the attack came directly from the JNA Headquarters in Benkovac. B.’s statement gives us a graphic picture of what occurred:

“We went through the village and stationed ourselves near the church. I saw such horrors there that I cannot even talk about them. The murdered people were lying around everywhere, houses were on fire, it was horrible...I saw tanks firing at houses.”⁵²³

5.228 Whilst the village was being attacked, its inhabitants hid in basements. S.M. describes one such experience where a group of approximately 60 civilians - many of them the elderly and women and children - were taken from a basement shelter and subjected to violence on the roadside. Many were shot as they came out into the open air with their hands up.⁵²⁴ In nearby basements, I.K.* saw at least 6 or 7 people killed.⁵²⁵ A Report published by “Helsinki Watch” in 1992 describes how a 59 year old woman was crushed by a tank.⁵²⁶ The evidence of S.M. confirms this.⁵²⁷ A fifteen-year-old boy, Ž.Š., witnessed the shooting of his grandmother, L.Š. He also saw his uncle, K.Š., stabbed to death. Other Croatian civilians were murdered, including Joso Miljanić, Stana Vicković,⁵²⁸ Ivan Ražov, Joso Brkić, Rade Šegarić, Kata Rogić,⁵²⁹ Vico Segarić, Soka Rogić and the husband and father-in-law of the witness S.M.⁵³⁰ On the next day, the JNA and Serbian paramilitaries attacked the neighbouring village of Nadin (666 habitants, 97.6% Croats). The Croats in Nadin were killed in their basements in same manner as those killed in Škabrnja. J.K.,⁵³¹ a Croat who eventually escaped from the village after being detained, heard from Serbian soldiers that 130 people had been killed in Škabrnja.

⁵²² Witness Statement of N.B., Annexes, vol 2(III), annex 503.

⁵²³ *Ibid.*

⁵²⁴ Witness Statements of S.M., Annexes, vol 2(III), annex 509.

⁵²⁵ Witness Statement of I.K., Annexes, vol 2(III), annex 505.

⁵²⁶ Extract from the Report of Helsinki Watch, 4th February 1992, Annexes, vol 2(III), annex 572.

⁵²⁷ Witness Statement of S.M., Annexes, vol 2(III), annex 504.

⁵²⁸ Witness Statement of Ž.Š., Annexes, vol 2(III), annex 507.

⁵²⁹ Witness Statement of N.P., Annexes, vol 2(III), annex 508.

⁵³⁰ Witness Statement of S.M., Annexes, vol 2(III), annex 509.

⁵³¹ Witness Statement of J.K., Annexes, vol 2(III), annex 510.

According to other witnesses the murdering of civilians continued into February and March 1992.⁵³²

5.229 After the occupation of Škabrnja, the JNA collected significant data about the crimes committed in the village. They discovered that several Croats including the aged and children were murdered.⁵³³ Members of the Serbian paramilitary formations murdered an elderly man with a rocket launching missile; they cut off the ears of the murdered people⁵³⁴ and they used civilians as a human shield.⁵³⁵ No action was taken against any of the perpetrators.⁵³⁶ On 23rd November 1991 the JNA handed over the bodies of 35 murdered Croats to the Croatian Government in Zadar.⁵³⁷ According to the accompanying Serb records, only 2 of the individuals were in military uniforms.⁵³⁸ On 26th November 1991, 3 further bodies from Škabrnja and 7 from the neighbouring village of Nadin were handed over. On 27th November 1991, 3 more bodies from Škabrnja were brought to Zadar.⁵³⁹ Subsequent autopsies showed that 41 of the dead were killed by bullet wounds, of which 36 were shot in the head and/or neck at close range. 32 of the victims had between 2 and 13 bullet wounds on their body. One of the dead was run over by a tank. Two had frozen to death. One of the bodies bore injuries from manual strangulation. The left ear had been cut off and the face, left eye and genital areas were mutilated.⁵⁴⁰

⁵³² Mass Killing and Genocide in Croatia 1991/92, pp. 140-144.

⁵³³ Reports of Major Branislav Ristić of the 180th Motorised Brigade of the JNA. No. 416-1 and No. 417-1 from 23 Nov. 1991, Annexes, vol 2(III), annexes 573 and 574.

⁵³⁴ Report of Major Branislav Ristić of the 180th Motorised Brigade of the JNA. No. 423-1 from 27 Nov. 1991, Annexes, vol 2(III), annex 538.

⁵³⁵ Report of Major Branislav Ristić of the 180th Motorised Brigade of the JNA. No. 416-1 from 23 Nov. 1991, Annexes, vol 2(III), annex 573.

⁵³⁶ *Ibid.* The exhibit includes a number of interviews with JNA officers. According to Dragan Mitrović, the “Chetniks” brought an elderly couple in front of a tank, forced them to kneel on the ground and shot them. Nenad Živanović saw an elderly man shot in the legs as he tried to run away. He was then shot in the head.

⁵³⁷ Video tape “The Victims from Škabrnja in Zadar”, in which the truck that took away more than ten dead bodies to Zadar and their offloading from the truck as they were in black plastic bags. The medical staff opens the bags and sees that all murdered were civilians and that there were many old people among them.

⁵³⁸ Record of the Sanitation Made on the Spot in the Village of Škabrnja, Annexes, vol 2(III), annex 575.

⁵³⁹ Video tape: “The Victims from Škabrnja brought to Zadar”

⁵⁴⁰ Massacre of the Civilian Population from Škabrnja and Nadin on 18 and 19 November 1991, Medical Center Zadar, The Pathology Department: Annexes, vol 2(III), annex 576.

5.230 On 6th June 1996, a mass grave containing 27 bodies was discovered on the west side of the elementary school.⁵⁴¹ 23 of the people whose bodies were subsequently exhumed were over 60 and most of them were women.⁵⁴² During the exhumation of another mass grave in Škabrnja called “Ambar”, on 6 June 1996, the bodies of Luca Šegarić and Ivan Babić were found.⁵⁴³ A member of the Serb paramilitaries, J.B., claimed that he had seen approximately 32 graves of murdered Croats dug in the area.⁵⁴⁴

Other Locations

5.231 Other atrocities in the municipality of Zadar included the following:

1. **Zemunik Gornji** (1,310 inhabitants: 35.72% Croats, 62.21% Serbs) and **Zemunik Donji** (2318 inhabitants; 77.35% Croats). At least 5 Croats were murdered, including Draginja Stura, Božo Stura,⁵⁴⁵ Luka Paleka, Stana Prostran, Šime Šestan, Kata Šestan.⁵⁴⁶ 433 Croats fled the village. Although the JNA admitted being in possession of 9 bodies they refused to hand them over.⁵⁴⁷

26. MUNICIPALITY OF SINJ⁵⁴⁸

Peruča

5.232 Between 1991 and 1993, the JNA made a number of unsuccessful attempts to destroy the Peruča dam in an effort to exterminate a large part of the local Croat population. The dam of “Peruča” hydro-electric plant is located at the Cetina River, 14 km upstream from the town of Sinj. The water storage reservoir contained in the dam supplies a considerable part of

⁵⁴¹ The Office of the Detained and Missing Persons of the Government of the Republic of Croatia: The list of the exhumed and identified persons from Škabrnja, Annexes, vol 2(III), annex 577.

⁵⁴² Record of Exhumation; Record of witnessing (the exhumation), Annexes, vol 2(III), annex 578.

⁵⁴³ *Ibid.*

⁵⁴⁴ Witness statement of J.B., Annexes, vol 2(III), annex 511.

⁵⁴⁵ Witness Statements of M. and Š.V., Annexes, vol 2(III), annex 512.

⁵⁴⁶ Mass Killing and Genocide in Croatia 1991/92, p. 144.

⁵⁴⁷ *Ibid.*

⁵⁴⁸ In 1991 the Municipality of Sinj had 60,210 inhabitants of which 92.66% were Croat and 4.63% were Serb.

Southern Croatia with drinking water.⁵⁴⁹ There is unequivocal evidence that the JNA was actively involved in a plot with the Serb local authorities to blow up the dam and consequently destroy by flooding a number of Croat villages in its vicinity.

5.233 On 17th September 1991, the workers at “Peruča” fled the dam as a result of the intensity of a JNA missile attack.⁵⁵⁰ On 22nd September 1991, the JNA closed the system so that the water levels would rise to such a level that the dam would burst. The intention was to create a “water bomb”, which would have destroyed tens of thousands of Croats who lived in Sinj and its surrounding villages.⁵⁵¹ The first attempt to destroy the dam was prevented by UN intervention.⁵⁵² However, on 14th July 1992, UNPROFOR announced that the UN engineer experts had discovered explosives around the dam.⁵⁵³ Again, the storage level had been closed off so that the dam had reached its full capacity. On 27th January 1993, an order was made by General Ratko Mladić to “blow up the dam”. A tape recording of this order was made and has been translated.⁵⁵⁴ The subsequent explosion on 28th January destroyed large parts of the “Peruča” dam, but failed to burst the reservoir.⁵⁵⁵

5.234 A secret military memorandum that was written up a decade earlier had stated that if the dam was destroyed a huge wave, 25 meters high and with the speed of 133km/h, would within 10 minutes flood Hrvatačko Polje and would result in the drowning of 4000 persons.⁵⁵⁶

⁵⁴⁹ “Facts and Estimates of the Consequences Resulting from Mining of the Peruča Dam by Serbian Forces on January 28, 1993”, Croatian Medical Journal, vol 34(4), 1993, pp. 280-4.

⁵⁵⁰ “A chronological narrative on the events at the dam from the occupation until the mining”, Josip Macan, Croatian National Electricity (on file with the Office for Cooperation with the ICTY and ICJ, Zagreb).

⁵⁵¹ 1991 Census, Republican Institute for Statistics of the Republic of Croatia, Zagreb, 1992, p.176-178.

⁵⁵² *Supra* note 550.

⁵⁵³ *Ibid.*

⁵⁵⁴ Conversation transcript Mladić-Novaković, Annexes, vol 2(III), annex 529.

⁵⁵⁵ Witness Statement of I.B., Annexes, vol 2(III), annex 513.

⁵⁵⁶ “Consequences if the Peruča dam was destroyed”, Zvonimir Sever, Elektroprojekt (on file with the Office for Cooperation with the ICTY and ICJ, Zagreb).

27. DUBROVNIK

5.235. As noted above in paragraphs 5.187 and 5.190, the coastal area of Dalmatia was a major focus of the pre-war tourist industry. At the centre of this expanding economy was the town of Dubrovnik. The coastline between Trsteno and Cavtat and the islands near the Lapad peninsula is of stunning natural beauty. In 1979, Dubrovnik was designated as a monument of world cultural heritage. In 1991, 71,419 inhabitants lived in the Dubrovnik area, of whom 82.5% were Croat and 6.7% were Serb. Of the remaining population, 4.1% were Muslims, 1.6% were Yugoslavs, 1% were Montenegrins and 4.1% comprised other ethnic groups.

5.236. Echoing its tactics in Vukovar, the JNA attempted to destroy the town in a manner that went far beyond any conceivable requirements of military logic⁵⁵⁷ and can only be explained in terms of a deliberate intent to destroy an important symbol of Croatian culture. The initial build up of military and naval forces around Dubrovnik in September 1991 far exceeded military necessity and in fact diverted Serbian forces from other parts of the war. The attack started on 1st October 1991. It was clear that the Serbian leadership intended Dubrovnik to form part of the new "Greater Serbia".⁵⁵⁸ At the end of October, the citizens of the town were offered an opportunity to leave, but the majority refused to do so.⁵⁵⁹ Thereafter, all supplies were cut off. The town was bombarded with heavy artillery until the end of the year.

5.237. On 1 October, the JNA at the same time started a co-ordinated aggression from the direction the border areas of Montenegro and Croatia. By making use of its significantly superior position, the JNA blocked Dubrovnik from land, sea and air with the aim of occupation, forced displacement of local inhabitants, destruction of Croatian historic, cultural and religious structures, about which there is detailed documentation in the town Archive. From the occupied area, the local Croats (about 340 of them) were taken to camps in Bileća in Bosnia and Herzegovina, and Morinje in Montenegro. The rest of the population was denied medical help, food and water. The inhabitants were not allowed to move without restrictions, many were taken as hostages, exposed to terror, physical and mental intimidation and abuse, and many of their houses were burned down and mined. According to the records of the Police Station of the Dubrovnik-Neretva County, 161 civilians were killed, 272 were wounded and one person is still missing due to the aggression of the JNA on this part of Croatia. 34,000

⁵⁵⁷ Branko Mamula, *The Yugoslavia case*, CID Podgorica, 2000, page 232.

⁵⁵⁸ *Ibid.*

⁵⁵⁹ Naval sector Boka from the 26 of October 1991, to the Dubrovnik crisis center and the European mission, Annexes, vol 2(III), annex 536.

persons were expelled from their homes. The inhabitants who remained in the occupied villages were taken to camps and some were tortured.

5.238. From the villages of Bistruč and Beroje, 11 men were taken to the camp Morinje, where they were abused and the guards and soldiers took out their frustrations especially on younger persons. They beat and tortured them, called them “Ustashas” and spat into their mouths, while they insulted the older ones. During the stay in the camp, one person died.⁵⁶⁰

5.239. In the village Kuna Konavoska, Orah, the JNA captured Obrad Jako. They took him in the direction of Graba in the Municipality of Trebinje, Bosnia and Herzegovina. On 9 July 1992, his dead body was handed over with the suspicious explanation that he had hung himself.⁵⁶¹ In the village of Piplice, family houses were burned down, eight persons were taken to the camp Morinje, and one of them died due to beating and torture.⁵⁶² In the village of Šiljezi, the sick Marko Mišić was taken away and has not been seen since.⁵⁶³

5.240. In the village of Mrčevo in the area of Dubrovnik seaside, F.Đ. and V.R. were captured. The soldiers threatened to cut off their ears and take out their eyes, and then locked them in a barn in the village Kijev, where they beat them with feet and police sticks. Both were taken to the camp in Bileća, where they spent seven days and nights with legs tied up in chains to the bed. 15 other prisoners were in the camp, and they were physically tortured, forced to the ground and beaten with feet by the guards all the time.⁵⁶⁴ The prisoners were tortured in the camps Morinje in Boka Kotorska and Bileća in Bosnia and Herzegovina, and some were beaten to death.⁵⁶⁵ Miho Katušić, juvenile was taken from the village of Gabrli, and his whereabouts remain unknown.⁵⁶⁶

5.241. Many cultural objects were destroyed in Dubrovnik. The JNA caused much damage to sacral monuments.⁵⁶⁷ More than 683 monuments

⁵⁶⁰ Official Record on the Operations of the Aggressor, 28 October 1992, Annexes, vol 2(III), annex 590.

⁵⁶¹ Witness Statements of I.B., Đ.B., Annexes, vol 2(III), annex 526.

⁵⁶² Official Record on the Operations of the Aggressor, 26 October 1991, Annexes, vol 2(III), annex 591.

⁵⁶³ Official Record on the Operations of the Aggressor, 17 December 1992, Annexes, vol 2(III), annex 592.

⁵⁶⁴ Witness Statements of F.Đ., V.R., Annexes, vol 2(III), annex 524.

⁵⁶⁵ Witness Statement of M.Š., Annexes, vol 2(III), annex 525; Official Record on the Operations of the Aggressor, 28 October 1999, Annexes, vol 2(III), annex 594.

⁵⁶⁶ Official Record, 11 November 1992, Annexes, vol 2(III), annex 593.

⁵⁶⁷ Investigation Record, 11 November 1992, Annexes, vol 2(III), annex 595.

were damaged and the damages were estimated at 60,726,856.94 DEM. The war damages of the cultural monuments in Dubrovnik are recorded in the Report of the State Commission for War Damages. Among the seriously damaged cultural monuments are: Benedictine Monastery at the island of Lokrum from the 17th century; Centre for Artistic Education Luka Sorkočević from the 18th century; Domino Church from the 17th century; Chapel of Annunciation at the island of Lokrum from the 15th century, City church tower in the street Placa from the 15th century; City walls – Bastion palace; Rector's palace from the 17th century; and many other monuments listed in the Report on war damages on immovable cultural monuments of the Republic Croatia, Ministry of Culture, Board for Protection of Cultural Heritage, where also an estimation of damage on each monument can be found.⁵⁶⁸

⁵⁶⁸ Republic of Croatia, Ministry of Culture, Board for Protection of the Cultural Heritage, War Damages of the Immoveable Cultural Monuments (by counties), Zagreb, September 2000.

PART TWO:

LEGAL ELEMENTS

CHAPTER 6

JURISDICTION

6.01 By Application dated 2 July 1999, the Republic of Croatia instituted proceedings against the FRY alleging its responsibility for violations of the Genocide Convention. The International Court of Justice has jurisdiction over this dispute pursuant to Article IX of the Genocide Convention and Article 36(1) of the Statute of the Court. Simply put, the Genocide Convention was in force between Croatia and the FRY when Croatia filed its Application, and it was applicable to every act attributable to the Respondent which violated its provisions. The Court has jurisdiction *ratione personae*, *ratione materiae* and *ratione temporis* in relation to all the conduct attributable to the FRY in international law, irrespective of when it occurred.

6.02 The jurisdiction of the International Court of Justice in relation to Croatia's Application dated 2 July 1999 is based upon the 1948 Genocide Convention and Article 36(1) of the Statute of the International Court of Justice.

6.03 Article IX of the Genocide Convention provides:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the Parties to the dispute.”

6.04 Plainly, there exists a dispute between Croatia and the FRY relating to the interpretation, application and fulfilment of the 1948 Genocide Convention. When it made its Application to the Court, the jurisdictional basis of Croatia's Application was precisely the same as that found to be effective by the Court in its 1996 Judgment in the case brought by Bosnia and Herzegovina against the Respondent.¹ The

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objection*, Judgment, ICJ Reports 1996, p. 595, at paras. 16 and 41. The jurisdictional basis upon which the ICJ recognised its jurisdiction in the case brought by Bosnia and Herzegovina against the FRY appears to have been Article 35 (2) of the Statute of the Court, which provides:

“The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security

principles which informed the Court's approach are equally applicable to Croatia's case. The only difference, for jurisdictional purposes, between the two Applications is that, since the present case was commenced, the Respondent has become a member of the United Nations. This must further confirm — if confirmation were needed — the jurisdiction of the Court under Article 36 (1) of its Statute.²

6.05 The Court's jurisdiction arises because (a) at the time the Application was lodged both states were parties to the Genocide Convention without reservation; (b) the Court, accordingly, has jurisdiction over disputes existing at that time concerning responsibility for breaches of the Convention; (c) there were such disputes, which were continuing and unresolved; and (d) the Genocide Convention has complete coverage *ratione temporis*, therefore there is no question of a temporal gap.

Council, but in no case shall such conditions place the parties in a condition of inequality before the Court.”

The Court has not finally decided the meaning of “treaties in force”. However, in its Order of 8 April 1993 in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide Case (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))* the Court stated that

“a compromissory clause in a multilateral convention, such as Article IX of the Genocide Convention relied on by [the Applicant] could ... be regarded *prima facie* as a special provision contained in a treaty in force.” (ICJ Reports 1993, p. 3 at para. 19)

The Court did not revisit this issue in its 1996 Judgment, although that decision is plainly premised upon the jurisdiction of the Court being founded upon Article IX of the Genocide Convention and Article 35(2) of the Statute of the Court.

² Article 36 (1) provides that: “The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.” Article IX is a “treaty or convention in force” within the meaning of that provision.

**BOTH STATES WERE PARTIES TO THE GENOCIDE
CONVENTION WITHOUT RESERVATION AT THE TIME OF
CROATIA'S APPLICATION**

6.06 Croatia and the FRY were both bound by the Genocide Convention on 2 July 1999. The SFRY signed the Genocide Convention on 11 December 1948. It deposited its instrument of ratification on 29 August 1950, without reservation. It became a party to the Convention on 12 January 1951 with its coming into force, in accordance with its Article XIII. The Genocide Convention applied to the entire territory of the Federal People's Republic of Yugoslavia³ from that date and subsequently the SFRY, including those areas which form the subject matter of Croatia's application. So long as the SFRY continued to exist it remained bound by the terms of the Genocide Convention. During the dissolution of the SFRY, Croatia as well as all the other successor states of the SFRY, including the FRY, became bound by the terms of the Genocide Convention.

6.07 The basic principle in this regard is laid down in the terms of Article 34 of the Vienna Convention on State Succession in Respect of Treaties (1978),⁴ to which the SFRY was formerly a party. Moreover, it is generally accepted that the population of a territory entitled to enjoy the protection of certain human rights flowing from basic human rights treaties may not be deprived of such rights by the mere fact of the succession of a state in respect of that territory.⁵

6.08 Croatia explicitly accepted its succession to the Genocide Convention, by notifying the depositary of this fact in a letter dated 12 October 1992 (with effect from 8 October 1991). Similar notifications of succession have been submitted by Bosnia and Herzegovina, Slovenia, and the Former Yugoslav Republic of Macedonia. No state (including the Respondent) has objected to the succession of Croatia to the Genocide Convention and, as the Court noted in the case brought by Bosnia and

³ See Chapter 2, para. 2.6.

⁴ 17 ILM 1488 (1978). Article 34 of the 1978 Vienna Convention provides:

“1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist: any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed...”

⁵ See e.g. M. Kamminga, “State Succession in Respect of Human Rights Treaties” (1996) 7 *European Journal of International Law* 184 (1996) with references to state practice and doctrine.

Herzegovina against the FRY there is nothing that impedes states becoming party to the Convention by means of succession.⁶

6.09 With regard to the FRY, the Court has already accepted in its Judgment of 1996 that the FRY was “bound by the provisions of the Convention on the date of the filing of [the Application by Bosnia and Herzegovina], namely on 20 March 1993.”⁷ Since that Judgment, in April 1999, the FRY has instituted proceedings before the Court against ten States on the basis, *inter alia*, of Article IX of the Genocide Convention. In those proceedings the FRY affirmed before the Court that it...

“is a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide”⁸

It cannot therefore be doubted that, as at the date of Croatia's Application to the Court the FRY was bound by the Genocide Convention.⁹

**THE COURT HAS JURISDICTION OVER DISPUTES EXISTING
AT THE TIME OF CROATIA'S APPLICATION CONCERNING
RESPONSIBILITY FOR BREACHES OF THE CONVENTION**

6.10 Under Article IX of the Genocide Convention the Court's jurisdiction extends to disputes existing as at 2 July 1999 between Croatia and the FRY “relating to the interpretation, application or fulfilment” of the Convention, including those relating to the responsibility of the FRY for genocide or for any of the other acts enumerated in Article III of the Convention.

⁶ ICJ Reports 1996, p. 595, at para. 24.

⁷ *Ibid.*, para. 17.

⁸ ICJ *VR* 99/14.

⁹ This submission is without prejudice to Croatia's consistent position rejecting the FRY's claim to be the *continuation* of the SFRY, a claim which is not recognised by other States or by international organisations. Indeed the FRY has now applied for and been admitted to membership of the United Nations: see Chapter 2, para. 2.162. Since the SFRY ceased to exist as a State, and given that the FRY continues to assert its status as a party to the Convention, the Note of 27 April 1992 referring to the FRY's proclamation can be treated as a notification of succession to the Genocide Convention.

**THE DISPUTE BETWEEN THE PARTIES AS TO
RESPONSIBILITY FOR BREACHES OF THE CONVENTION
WAS CONTINUING AND UNRESOLVED AT THE DATE OF
CROATIA'S APPLICATION**

6.11 There was plainly a dispute between Croatia and the FRY as to responsibility for breaches of the Convention on the date of Croatia's Application. The dispute continues and is unresolved. In Chapter 8 of this Memorial Croatia sets out in detail the violations of the Genocide Convention arising in respect of conduct between 1991 and 1995 for which the FRY is responsible under the Convention.¹⁰ Under Article I of the Genocide Convention, the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish. The FRY, acting through the JNA and paramilitary groupings as well as its officials and agents, bears direct responsibility for acts which violated Article II of the Genocide Convention.¹¹ The FRY is also directly responsible for the inchoate crimes of incitement, conspiracy and attempt to commit genocide.¹² It is further responsible for failing to prevent genocide, as required by Article I of the Genocide Convention.¹³

6.12 Moreover, the FRY has failed to punish individuals who have committed acts of genocide, including acts within Article III of the Genocide Convention, and who remain within its jurisdiction and control; it has not provided for effective penalties against such persons, in violation of Article IV and V;¹⁴ and it has failed to provide information as to the whereabouts of 1,419 Croatian citizens who were "disappeared" in Serbia's genocidal campaign. For all these reasons the FRY is in continuing violation of the Convention.

**THE GENOCIDE CONVENTION HAS COMPLETE COVERAGE
*RATIONE TEMPORIS***

6.13 The Court has jurisdiction over all the acts directly perpetrated by or attributable to the FRY, including those which took place before Croatia's succession to the Genocide Convention with effect from 8 October 1991. As the Court observed in its judgment on Jurisdiction and

¹⁰ See Chapter 8, paras. 8.2-8.31.

¹¹ *Ibid.*, paras. 8.6-8.55.

¹² *Ibid.*, paras. 8.18-8.31.

¹³ *Ibid.*, paras. 8.57-8.63.

¹⁴ *Ibid.*, paras. 8.64-8.70.

Admissibility in *Bosnia and Herzegovina v. The Federal Republic of Yugoslavia*,

"the Genocide Convention – and in particular Article IX – does not contain any clause the object or effect of which is to limit in such manner the scope of its jurisdiction *ratione temporis*".¹⁵

6.14 As in the *Bosnia and Herzegovina v. FRY* case, so in the present case: neither party has made any reservation to the Convention purporting to limit the jurisdiction *ratione temporis* of the Court. It is sufficient therefore to found jurisdiction that the Genocide Convention was applicable to both Croatia and the FRY as at the date of filing of Croatia's application. The Court has jurisdiction with regard to all relevant events which occurred since the beginning of the conflict on the territory of Croatia and which give rise to the responsibility of the FRY. As the Court noted in the *Bosnia and Herzegovina v. FRY* case, this is in accordance with the nature, object and purpose of the Genocide Convention as defined by the Court in its 1951 Advisory Opinion.¹⁶

6.15 The acts for which Croatia holds the FRY responsible for violation of the 1948 Genocide Convention fall within the jurisdiction of the Court *ratione temporis* because:

- (a) the provisions of the Genocide Convention were applicable to the territory of the Republic of Croatia at all material times, including the period between July 1991 and August 1995; and
- (b) the FRY is responsible for the acts in question, for its failure to prevent genocide, for its failure to punish those persons within its jurisdiction or control who perpetrated the acts, and for associated breaches of the Convention referred to in the Application and further particularised in this Memorial.

¹⁵ ICJ Reports 1996, p. 595, at para. 34.

¹⁶ *Ibid.*, para. 34. On the 1951 Advisory Opinion see Chapter 7, at para. 7.15. Croatia endorses the view of Judge Shahabuddeen in his Separate Opinion, confirming the applicability of the Convention "to the relevant facts which have occurred since the beginning of the conflict" in the former SFRY. As Judge Shahabuddeen pointed out, this avoids the creation of an "inescapable time-gap in the protection which the Genocide Convention previously afforded to all 'human groups' comprised in the former [SFRY]"; such a gap would not be consistent with the object and purpose of the Convention which "required parties to observe it in such a way as to avoid the creation of such a break in the protection which it afforded": ICJ Reports 1996, at pp. 635-636.

CONCLUSIONS

6.16 For the reasons set out above the International Court of Justice has jurisdiction *ratione personae*, *ratione materiae* and *ratione temporis* pursuant to Article 36(1) of its Statute and Article IX of the Genocide Convention.

CHAPTER 7

THE GENOCIDE CONVENTION

INTRODUCTION

7.01 Croatia's Application invites the International Court of Justice to find that the FRY is responsible for violations of the Genocide Convention, including direct responsibility for the perpetration of genocidal acts, responsibility for the inchoate offences of incitement and attempt, and responsibility for failing to prevent and punish genocide. As set out in the previous Chapter the FRY is bound by the Genocide Convention. This Chapter identifies the FRY's obligations under the Genocide Convention, as it applies in general to the types of acts and events described in Chapters 4 and 5 of the Memorial. The following Chapter applies the legal regime of the Convention to the events in Croatia.

7.02 The FRY's obligations necessarily arise by reference to the provisions of the Genocide Convention, but in understanding those provisions it is necessary to have regard to the history of the negotiations of the Convention (its *travaux préparatoires*) and to its subsequent interpretation and application by the International Court of Justice and other international tribunals. This Chapter also draws upon other international practice, the jurisprudence of national courts and the writings of the principal commentators to assist in the interpretation of the obligations set forth in the Convention.¹

7.03 The Chapter begins by addressing the background to the Convention and the available resources for its interpretation (Section 1, paras. 7.05-7.25). Sections 2 and 3 address the essential elements of the international crime of genocide, namely the mental element (*mens rea*, Section 2, paras. 7.25-7.57) and the physical element (*actus reus*, Section 3, paras. 7.58-7.74) as set forth in Article II of the Convention. Section 4 considers the provisions of Article III of the Convention, establishing the related crimes of conspiracy, incitement, attempt and complicity (paras. 7.75-7.95). Section 5 addresses the obligations upon States to prevent and to punish genocide, pursuant to Article I of the Convention (paras. 7.95-7.101). Section 6 of the Chapter sets out the principles of international law

¹ In line with the Vienna Convention on the Law of Treaties 1969, Arts. 31-33.

relating to “command responsibility”, and their applicability to the Genocide Convention (paras. 7.102-7.106).

7.04 It is clear that this case is concerned exclusively with genocide and with the breach of the FRY’s obligations under the Genocide Convention. It is not concerned as such with issues of aggression, or the right to use force (*jus ad bellum*), or violations of the laws of war (*jus in bello*), or other crimes against humanity such as torture. Nevertheless, it is plain that many acts which are prohibited by the Genocide Convention will also involve breaches of international human rights and international humanitarian law. Genocidal acts and a genocidal campaign – such as the one perpetrated by the Serbian/Yugoslav leadership in Croatia – may occur in the context of and form part of a broader military campaign, which violates the prohibition on the use of force under general international law and the United Nations Charter. Croatia considers that the acts described in this Memorial plainly violate many norms of international law beyond those reflected in the Genocide Convention. But Croatia accepts that the Court’s jurisdiction is limited to the application and interpretation of the Genocide Convention. Without prejudice to its position on the numerous violations of international law perpetrated in Croatia and in relation to Croatian citizens by the FRY, it is the Genocide Convention alone that Croatia addresses in this Memorial.

SECTION ONE: THE BACKGROUND TO THE GENOCIDE CONVENTION

7.05 The Genocide Convention has its roots in the events leading up to and including World War II, in particular the mass atrocities committed by Nazi Germany.² To understand why the Convention was considered necessary, however, it is helpful to go back to the period before 1933-1945. That context also assists in providing an understanding of what the drafters of the Convention intended it to achieve, specifically the kind of acts that it was adopted to address.

7.06 The belief that the mass persecution of ethnic, national and religious minorities could incur international legal responsibility had begun to emerge during the 19th century. Treaties safeguarding the rights of minorities within states were signed as early as the first half of the century.³

² Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington: Carnegie Endowment for World Peace, 1944).

³ For instance, the Treaty of Peace between Russia and Turkey, signed at Adrianople, 14 September 1829, 16 BFSP 647.

The atrocities committed against Armenians in the Ottoman Empire in and around 1915 led to a strongly worded declaration from France, Great Britain and Russia that they would hold the Ottoman Government responsible for the “crimes”.⁴ These developments coincided with the further development of international humanitarian law and the emergence of international criminal law, as reflected in particular in Articles 227 to 230 of the Versailles Peace Treaty of 1919, which provided for the trial of Kaiser Wilhelm II and the creation of international war crimes tribunals.⁵ The Treaty of Sèvres, signed with Turkey on August 10, 1920 (although never ratified),⁶ also provided for the surrender of those suspected both of war crimes and of what would now be defined as “crimes against humanity.” These early instruments indicated the desire of the international community to establish substantive norms of minimum behaviour applicable to all persons at all times. They also reflected the growing desire to ensure that procedures and institutions should be established to ensure that substantive norms could be applied and enforced in particular cases.

7.07 The period between the First and Second World Wars saw studies by private bodies such as the Advisory Committee of Jurists and the International Law Association into the establishment of an international criminal court, as well as a system of protection for national minorities in Poland, Romania, Czechoslovakia and the “Serb-Croat-Slovene State”.⁷ It was in the context of these minorities treaties that the term “genocide” emerged, largely in reaction to the failure to punish gross violations of the norms imposed by these and other instruments. As early as 1933, it was proposed in a report for the Fifth International Conference for the Unification of Penal Law that two new international crimes should be recognised, namely “vandalism” and “barbarity”.⁸

7.08 During World War II, the term “genocide” emerged to cover the partial or total destruction of a nation or of an ethnic group. Lemkin described “genocide” as an “old practice in its modern development”,⁹ and

⁴ Cited in United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London: HMSO, 1948), p. 35.

⁵ See William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), pp. 17-22.

⁶ [1920] UKTS 11.

⁷ Hersch Lauterpacht, *An International Bill of the Rights of Man* (New York: Columbia University Press, 1945), p. 219. Also see the Permanent Court of International Justice Advisory Opinion in the *Minority Schools in Albania* case, PCIJ Reports Series A/B, No. 64 (1935), p. 17.

⁸ Lemkin, *Axis Rule*, p. 91.

⁹ *Ibid.*, p. 79.

broke it down into several categories: political, social, cultural, economic, biological, physical, religious and moral. The term was used by the Allied leaders and applied to the practices they saw taking place in Nazi-occupied Europe, practises which had previously been described by Winston Churchill as “the crime without a name”.¹⁰

7.09 The term “genocide” was used in the indictment of the International Military Tribunal established at Nuremberg to try Nazi war criminals.¹¹ Although the final judgment in the Trial of the Major War Criminals did not use the term itself, as the International Criminal Tribunal for Rwanda (ICTR) pointed out in *Kambanda* “the crimes prosecuted [at Nuremberg]... were very much constitutive of genocide, but could not be defined as such because the crime of genocide was not defined until later.”¹² Ultimately, in the Nuremberg process ten defendants were singled out for the role in the genocide of Jews, including one – Julius Streicher – whose contribution had not been military or political, but instead stemmed from his editorship of the propaganda journal *Der Stürmer*.¹³

7.10 The London Charter of 1945 maintained a tight nexus between crimes against humanity and the war itself. One Prosecutor noted in his report to the United States Secretary of the Army that none of the Tribunal’s judgments “squarely passed on the question of whether mass atrocities committed by or with the approval of a government against a racial or religious group of its own inhabitants in peacetime constitute crimes under international law.”¹⁴ It was in part a response to this failure that Cuba, India and Panama sought to place a draft resolution on genocide on the agenda of the first session of the United Nations General Assembly.¹⁵ A revised resolution, 96 (I), was adopted unanimously and without debate on 11 December 1946.¹⁶

¹⁰ Quoted in Leo Kuper, *Genocide: Its Political Use in the Twentieth Century* (New Haven: Yale University Press, 1981), p. 12.

¹¹ Pursuant to Article 6 (c) of the Charter of the International Military Tribunal, Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, and Establishing the Charter of the International Military Tribunal (IMT), (1951) 82 UNTS 279.

¹² *Prosecutor v. Kambanda*, ICTR 97-23-S, Judgment and Sentence, 4 September 1988, para. 16.

¹³ Schabas, *Genocide*, pp. 41-42.

¹⁴ Telford Taylor, *Final Report to Secretary of the Army on the Nuremberg War Crimes Trials Under Control Council Law No. 10* (Washington: US Government Printing Office, 1971), p. 224.

¹⁵ UN Doc. A/BUR.50. The history of the subsequent resolution is summarised in UN Doc. E/621.

¹⁶ United Nations GA Res 96 (I), 11 December 1946.

7.11 United Nations General Assembly Resolution 96 (I) provides a clear indication of the considerations which propelled the international community to agree to prepare an international instrument against mass atrocities of this kind. The Resolution defines genocide as...

“the denial of the right of existence of entire human groups, as homicide is the denial of the right to life for individual human beings... Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.”¹⁷

The Resolution affirms that genocide is a crime under international law for which both private individuals and public officials are to be held responsible. Resolution 96 (I) also eliminated the nexus between genocide and armed conflict that had applied at Nuremberg. It did not address the question where prosecutions for genocide should take place, talking only of “international co-operation.”¹⁸ It did, however, mandate the drafting of a convention on genocide,¹⁹ and contributed to the recognition of a rule of customary international law on the subject.²⁰

7.12 Even before the drafting process could begin, however, a second generation of trials of Nazi leaders took place, pursuant to Control Council Law No. 10.²¹ These trials provided further assistance in understanding

¹⁷ *Ibid.*

¹⁸ *Ibid.* See also Nehemiah Robinson, *The Genocide Convention: A Commentary* (New York: Institute of Jewish Affairs, 1960), p. 31.

¹⁹ Saudi Arabia had already taken the initiative, submitting a draft convention (UN Doc. A/C.6/86). The drafting was undertaken by the Secretariat and an *Ad Hoc* committee composed of representatives of Saudi Arabia, Chile, Cuba, France, India, Panama, Poland, Soviet Union, the United Kingdom and the United States of America (UN Doc. A/C.6/SR.24). Finally, the convention was discussed in the Sixth (Legal) Committee.

²⁰ This Court has noted that General Assembly resolutions can help establish the existence of rules or of an *opinio juris* among States. *Legality of the Threat or Use of Nuclear Weapons (Request by the United Nations General Assembly for an Advisory Opinion)*, ICJ Reports 1996 p. 226, para. 70. The Court associated the resolution with the Genocide Convention to conclude that “the principles underlying the Convention are principles which are recognised by civilised states as binding on States, even without any conventional obligation.” *Reservations to the Convention on the Prevention of Genocide (Advisory Opinion)*, ICJ Reports 1951 p. 16. The resolution has also been cited in many subsequent instruments and judicial decisions, including in the provisional measures and preliminary objections stage of *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))* ICJ Reports 1996 p. 16 at p. 23; *ibid.*, p. 595, para. 31 (Judge Shahabuddeen).

²¹ Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, 20 December 1945, *Official Gazette of the Control Council for Germany*, No. 3, Berlin, 31 January 1945, pp. 50-5. In addition to

what the concept of “genocide” was taken to mean. The US Military Tribunal held a series of twelve themed trials²² that applied the term “genocide” to the activities of the *Einsatzgruppen* in Poland and the Soviet Union,²³ as well as to the persecution of Jews within Germany.²⁴ Six defendants in the *Rusha* case were found guilty of genocide, defined as a...

“master scheme... devised by the top ranking Nazi leaders in pursuance of their racial policy of establishing the German nation as a master race and to this end exterminate *or otherwise uproot the population of other nations.*”²⁵

This definition encompassed acts which fell short of the physical destruction of certain populations, the term “uprooting” being suggestive of the “ethnic cleansing” which characterised the object of many of the acts which occurred in the territory of Croatia in the period 1991-1995, and which are described in details in Chapters 4 and 5 of this Memorial. The criminal convictions by the US Military Tribunals were the first such convictions in history, and came at a critical time for the understanding of genocide.²⁶

the trials discussed above, the Law also formed the basis for trials conducted by German courts in subsequent decades.

²² Analysed in Frank M. Buscher, *The US War Crimes Trial Program in Germany, 1946-1955* (Westport, CT: Greenwood Press, 1989).

²³ *United States of America v. Ohlendorf et al.* (1948) 3 LRTWC 470 (USMT).

²⁴ *United States of America v. Alstötter et al.* (1948) 6 LRTWC 1 (USMT), 3 TWC 1. Such prosecutions were made possible by the enabling legislation, which removed the nexus between crimes of humanity and armed conflict.

²⁵ *United States of America v. Greifelt et. al.* (1948) 14 LRTWC 1 (USMT), pp. 3-19 (emphasis added).

²⁶ The Polish Supreme National Tribunal also found genocidal responsibility on the part of three defendants. *Poland v. Hoess*, (1948) 7 LRTWC 11; *Poland v. Greiser*, (1948) 13 LRTWC 70, [1948] ILR 389; *Poland v. Goeth*, (1946) 7 LRTWC 4.

THE SCHEME OF THE CONVENTION, ITS NEGOTIATING HISTORY AND
SUBSEQUENT PRACTICE

7.13 The Genocide Convention was negotiated over a 22 month period, commencing with a first draft in March 1947 and concluding in December 1948. Thirty-eight states participated at various stages of the negotiations. At the outset the drafters of the Convention plainly had a clear idea of what genocide was, and their views came through both in the debates recorded in the *travaux préparatoires* and in the final text of the Convention.

7.14 The scheme of the Convention is a simple one. The Preamble recalls the UN General Assembly Resolution 96 (I) and the determination of the international community to rid itself of the “odious scourge” of genocide. Article I establishes the general obligation to prevent and punish genocide, a crime whether committed in time of peace or time of war. Articles II and III, the core of the Convention, define the crime of genocide and establish liability for secondary participation in acts of genocide. Article IV provides that all persons shall be liable for prosecution, and that the defence of “act of state” shall not apply. Article V imposes an obligation on States parties to take the necessary legislative measures to give effect to the Convention. Article VI deals with jurisdiction for the prosecution of genocide, both domestically and before international tribunals, while Article VII covers extradition. Article VIII affirms that all States parties can call upon the competent organs of the United Nations to take action under the Charter to prevent and suppress genocide. Article IX is the compromissory clause, while Articles X-XIX are the final clauses.

7.15 It is apparent from the negotiating history of the Convention that the drafters intended to establish an effective and broad prohibition against conduct aimed at the destruction of human groups, a prohibition equally applicable to State officials as well as private parties, in peace and in war. They did not contemplate a highly technical definition, capable of evasion by refined arguments or by pedantic requirements of special intent. Evidently, they intended to adopt an instrument whose meaning and application could evolve over time and be applied to facts arising in different contexts.

7.16 The Genocide Convention has been raised in cases before this Court on five occasions, including Croatia’s application in July 1999.²⁷ The Court’s first opportunity to consider the Convention arose when the United Nations General Assembly requested an Advisory Opinion on the

²⁷ The applications brought by the FRY against ten NATO members in April 1999 are formally separate cases, but since they arise under the same set of facts they may be considered as interrelated and as comprising a single set of cases.

permissibility of reservations to the Convention. The Court's Opinion is relevant to the present case. The Court found the principles underlying the Convention to be recognised by civilised states as binding even without any conventional obligation, and restated the importance of its object and purposes as "purely humanitarian and civilising".²⁸ In short, the Convention is to be interpreted and applied having regard to its humanitarian purpose and its universal reach.

7.17 The four subsequent cases, including the present one, were brought under Article IX of the Convention. The first of these, *The Pakistani Prisoners Case*,²⁹ did not proceed to the merits and raises no points of substantive law. The three other cases are still pending before the Court. In *Bosnia and Herzegovina v. FRY*, the Court has made statements in relation to the preliminary measures stage that are of direct relevance to Croatia's case, including in relation to issues of jurisdiction.³⁰ In its 1993 Order on Provisional Measures the Court stressed the importance of "the clear obligation" on States to "do all in their power to prevent the commission of any such acts [of genocide],"³¹ and recalled the words of Resolution 96 (I), that genocide "shocks the conscience of mankind, results in great losses to humanity... and is contrary to moral law and the spirit and aims of the United Nations."³² The Court confirmed that it has competence to decide a dispute over the Genocide Convention even where the events in question took place within the framework of a civil war.³³ Most significantly, the Court has ruled that the Convention has no provision, which limits its applicability over time.³⁴

7.18 Judge *ad hoc* Sir Elihu Lauterpacht has attached two individual opinions at early stages of *Bosnia and Herzegovina v. FRY* case of direct relevance to the present case. The first tackled, among other issues, the question whether genocide had been committed in Bosnia and

²⁸ *Reservations in the Genocide Convention*, ICJ Reports 1951 p. 15 at p. 23.

²⁹ *Trial of Pakistani Prisoners of War (Pakistan v. India)*, Order of 13 July 1973, ICJ Reports 1973 p. 328.

³⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Requests for the Indication of Provisional Measures, Order of April 8, 1993; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Further Requests for the Indication of Provisional Measures, ICJ Reports 1993 p. 325.

³¹ Order of April 8, 1993, para. 45.

³² *Ibid.*, para. 49.

³³ *Ibid.*, para. 43. (rejecting the first preliminary objection of Yugoslavia).

³⁴ See Chapter 6, paras. 6.13-6.14.

Herzegovina.³⁵ He held that it had,³⁶ and that, importantly, in that case acts of ethnic cleansing were acts of genocide.³⁷ Judge *ad hoc* Lauterpacht has also given his support to the inferential approach to proving genocide, in a separate opinion attached to the Order concerning counter claims.³⁸

7.19 In the second set of cases, brought by the FRY against ten NATO members, the Court has not yet had an opportunity to address the merits, although it has provided some preliminary indications at the provisional measures phase. In particular, the Court has stressed that “the essential characteristic [of genocide] is the intended destruction of a ‘national, ethnical, racial or religious group’”.³⁹ It also made clear that “the threat or use of force against a State cannot in itself constitute an act of genocide within the meaning of Article II of the Genocide Convention.”⁴⁰

7.20 The Applications by the FRY indicate an approach to the interpretation and application of the Genocide Convention by the FRY which appears fully consistent with, and even goes considerably further than, that adopted by Croatia in this Memorial. Specifically the FRY alleged in its first Application that the actions undertaken by the NATO States in Kosovo, “in particular... causing enormous environmental damage and... using depleted uranium... [breached] its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part.”⁴¹ It then went on to allege specifically that the NATO States breached the Genocide Convention by these actions.⁴² This position was further elaborated by the FRY in its oral arguments before the Court, where it adopted a wide interpretation of the Convention and a relatively liberal approach to the standard of proof. The FRY argued, *inter alia*, that the use of depleted uranium weapons “inflict[ed] conditions on life on the Yugoslav nation

³⁵ *ICJ Reports* 1993, p. 325.

³⁶ *Ibid.*, p. 432.

³⁷ *Ibid.*

³⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Order of 17 December 1997 – Counter Claims*, *ICJ Reports* 1997, p. 243, individual opinion of Judge *ad hoc* Lauterpacht, p. 282 (paras. 12-13).

³⁹ *Case concerning the Legality of the Use of Force (Yugoslavia v. Belgium et al.)*, Request for Indication of Provisional Measures, Order of 2 June 1999, 38 ILM 950 (1999) para. 40. This repeated the definition this Court gave in the provisional measures stage of *Bosnia and Herzegovina v. FRY case*, *supra*, note 39.

⁴⁰ *Ibid.*

⁴¹ *Case concerning the Legality of the Use of Force (Yugoslavia v. Belgium et al.)*, Request for Indication of Provisional Measures.

⁴² *Ibid.*, “Legal Grounds upon which the Claim is based.”

calculated to bring about its physical destruction”, and that the NATO States, in bombing the FRY power supply system, had “targeted the Yugoslav nation as a whole as such.”⁴³ Moreover, the FRY continued, NATO States “had to be aware that the destruction of power supply systems of a country can produce enormous consequences, including loss of human life. This is... a matter of pre-knowledge on the part of the [NATO States] and implies the intent to destroy the Yugoslav national group.”⁴⁴ Significantly, the FRY has urged the Court to adopt an inferential approach to the proof of genocide – arguing that evidence presented about the NATO bombing and its effects permitted “a number of inferences relevant to the considerations of genocide.” These inferences included “the large number of civilian deaths and the resulting knowledge of the risk of death... the sheer extent of the destruction in urban areas... the general disruption of patterns of life... the extensive damage to the health care system and the deliberate creation of risks to patients by causing power cuts.”⁴⁵ Indeed the FRY went further, arguing that...

“the relentless coercion of a whole nation involving [force] directed explicitly at the population as a whole must, as a matter of law, involve responsibility for genocide. As a general principle, *dolus* – intention – extends both to intended consequences and also to risks of harm which are deliberately inflicted as risks of harm.”⁴⁶

It went on to argue that “the political punishment of a whole community” was both illegal and had “consequences which necessarily constitute serious breaches of the Genocide Convention,”⁴⁷ thus extending the meaning of protected groups under the Convention to include political groupings.

7.21 Two other international tribunals have considered the meaning of genocide in international law. They are the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Neither of these Tribunals has the general jurisdictional scope or authority of the International Court: they were established by UN Security Council Resolutions to address factual and legal situations of two specific conflicts and to do so in the context of

⁴³ *Ibid.*, Transcript of Oral Argument, 10 May 1999, Agent for the FRY (Rodoljub Etinski).

⁴⁴ *Ibid.* The Agent then stated baldly that “the above facts substantiate the qualification of the crime of genocide.”

⁴⁵ Transcript of Oral Argument, 12 May 1999, counsel for the FRY (Ian Brownlie, QC).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

individual criminal responsibility, not state responsibility.⁴⁸ Nonetheless the Statutes of the ICTY and the ICTR include provisions that replicate word for word the core elements of the Genocide Convention as reflected in its Article II,⁴⁹ and accordingly the case-law of these two Tribunals may provide assistance to the International Court in reaching an authoritative view on the meaning and scope of genocide under the Convention in relation to factual situations of the kinds revealed in Chapters 4 and 5 above.

7.22 The Prosecutors of both Tribunals have issued indictments for genocide.⁵⁰ So far, only the ICTR has convicted someone for genocide: it has done so in five cases, two of which have completed their appeals stage and therefore stand as completed cases.⁵¹ A third case – *Prosecutor v. Akayesu* – has not yet reached the end of the appeals stage but is nevertheless notable for the extent of discussion of the definitional issues on the part of the Trial Chamber.⁵²

7.23 Beyond its own jurisprudence and that of the ICTY and ICTR, the Court may also draw inspiration from the practice of other international judicial bodies, including the courts set up after the Second World War and other bodies such as the UN Human Rights Committee, which have addressed issues relating to genocide, including its definitional aspect. The Court may also draw inspiration from the judicial decisions of national courts, including the judgement of the District Court of Jerusalem in the *Eichmann* case,⁵³ which applied an Israeli law the terms of which derived directly from the Genocide Convention.⁵⁴

⁴⁸ UN Doc. S/RES/827 (1993), Statute of the International Criminal Tribunal for the Former Yugoslavia; UN Doc. S/RES/955 (1994), Statute of the International Criminal Tribunal for Rwanda.

⁴⁹ Art. 4 of the ICTY Statute; Art. 2 (2) of the ICTR Statute.

⁵⁰ The International Criminal Tribunal for the Former Yugoslavia has seen eight suspects indicted for genocide, no convictions and one acquittal (*Prosecutor v. Jelišić*, IT-95-10).

⁵¹ *Prosecutor v. Serushago*, ICTR-98-39; *Prosecutor v. Kambanda*, which saw the first conviction and punishment of a head of government for genocide: ICTR Press Release, ICTR/INFO-9-2-244.EN (October 19, 2000).

⁵² *Prosecutor v. Akayesu* (ICTR-96-4-T), Judgment, 2 September 1998.

⁵³ *A-G for Israel v. Eichmann* (1968) 36 ILR 5 (District Court, Jerusalem). Conviction upheld by the Israeli Supreme Court: *A-G for Israel v. Eichmann*, (1968) 36 ILR 277 (Israel Supreme Court).

⁵⁴ *Ibid.*, paras. 16, 190. Other national court decisions include two German cases: Appeals Court of Bavaria, *Novislav Đajić* case, 23 May 1997, 3 St 20/96; and Dusseldorf Supreme Court, *Nikola Jorgić* case, 26 September 1997, 2 StE 8/96; two U.S. cases: *Demjanjuk v. Petrovsky*, 776 F.2d 571 (6th Cir. 1985) (and the related *In the Matter of the Extradition of John Demjanjuk*, 612 F.Supp.544 (DC Ohio 1985)); and *Kadić v. Karadžić*. 70 F.3d 232 (2nd Cir. 1995), cert. denied, 64 USLW 3832 (18 June 1996);

7.24 Other relevant material includes the reports of fact-finding missions such as the Commission of Experts mandated by the UN Security Council to investigate war crimes in the former Yugoslavia, and domestic Commissions established, for example, to investigate the transfer of indigenous children in Australia and the allegations of genocide in Guatemala in 1982.⁵⁵ Although these decisions do not have the same authority as those of international courts and tribunals, they may illuminate the Convention and illustrate the *opinio juris* of States as to the meaning of genocide. Further assistance may be drawn from attempts made over the past half-century to codify the law in the field of crimes against humanity, including the work of the International Law Commission in its Draft Code on Crimes Against the Peace and Security of Mankind. This Code, adopted in 1996, may be regarded as a codification of customary law on the subject: it includes, in Article 17, an exact reproduction of Article II of the Genocide Convention. The ILC's Commentary relating to Article 17 is useful.⁵⁶ Assistance may also be obtained from the discussions leading to the adoption in 1998 of the Rome Statute for the International Criminal Court, Article 6 of which replicates Article II of the Genocide Convention. Finally, assistance may also be obtained from the writings of jurists and commentators.⁵⁷

two French cases: *Javor et al.*, Order of Tribunal de grande instance de Paris, 6 May 1994; upheld on appeal by the Paris Court of Appeal, 24 October 1994 and by the Court of Cassation, Criminal Chamber, on 26 March 1996; and *Dupaquier et al.*, Order of Tribunal de grande instance de Paris, 23 February 1995; and the *Pinochet* case in the United Kingdom, *R v. Bow Street Stipendiary Magistrate and others, ex parte Pinochet Ugarte*, [1998] 4 All ER 897. In 1994, Austria tried a Bosnian Serb, Duško Cvjetković, for genocide allegedly committed in central Bosnia and Herzegovina (S. Pagani, 'Serb cleared of War Crimes, Prosecutor Appeals, *Reuters World News Service*, 31 May 1995). Canada has also heard a genocide case: *Canada, Minister of Citizenship and Immigration v. Mugesera*, File No. QML-95-00171, July 11, 1996 (Immigration and Refugee Board Adjudication Division), reported (in French) in 7 *Rev. Univ. Droits de l'homme* 190 (1996). In parallel with the cases heard before the International Criminal Tribunal for Rwanda, there have been a series of genocide prosecutions in Rwanda itself. See 'Report of the United Nations High Commissioner for Human Rights on the Human Rights Field Operation in Rwanda,' UN Doc. A/52/486. Prosecutions for mass killings have also been initiated pursuant to national laws in Bangladesh, Cambodia, Romania, Ethiopia and Spain. See Schabas, *Genocide*, pp. 391-393.

⁵⁵ "Interim Report of the Commission of Experts," UN Doc. S/35374; Australia, Human Rights and Equal Opportunities Commission, *Bringing Them Home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen; *Guatemala: Memory of Silence, Report of the Commission for Historical Clarification, Conclusions and Recommendations*, 'Conclusions,' paras. 116-118, www.hrdata.aaas.org/ceh/report/english/toc.html.

⁵⁶ "Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996," UN Doc. A/51/10, pp. 86-93.

⁵⁷ See e.g. Robinson, *Genocide Convention*; Schabas, *Genocide*.

**SECTION TWO:
THE MEANING OF GENOCIDE: THE MENTAL ELEMENT**

2.1 INTRODUCTION

7.25 Article I of the Genocide Convention provides that

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

The obligation upon the Contracting Parties is “to prevent and to punish” genocide, an act which is expressly characterised as criminal in character. The act of genocide comprises two distinct elements: the mental element (*mens rea*) and the physical element (*actus reus*). These two elements are inherent in the structure of the Convention itself.⁵⁸ This Section considers first the mental element; the physical element is considered in Section 3.

7.26 The heart of the Convention is to be found in Article II of the Convention, which defines genocide. This provides that

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

7.27 To establish that genocide has occurred it is therefore necessary to prove that there existed an “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” and that this was accompanied by one or more of the five sets of acts listed in the five sub-paragraphs of Article II. As will be demonstrated in Chapter 8, Croatia considers that the acts described in Chapters 4 and 5 of this Memorial fall within those listed

⁵⁸ “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 87.

in Article II of the Convention and that they were motivated by an intent to destroy Croats as a group; those acts are, moreover, attributable to the FRY, or at least the FRY was complicit in them; in addition it has failed to prevent or punish them, notwithstanding the continued presence of the perpetrators on its territory.

2.2 THE MENTAL ELEMENT – *MENS REA*

7.28 To prove genocide it is necessary to show that one or more of the acts listed in Article II of the Convention were carried out with “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.” The term “intent” did not appear in the earliest drafts of the Convention, but was added by the *Ad Hoc* Committee at the request of the United States.⁵⁹ The subsequent debate in the Sixth Committee did not focus so much on the nature of “intent” as on whether or not genocide was a crime requiring premeditation.⁶⁰

(1) *The Nature of the Intent Required*

7.29 As far as the nature of the intent required, the context of the Convention makes it clear that the degree of intent to be established is that of specific (or special) intent, corresponding to the *dol special* or *dolus specialis* of the Romano-German systems.⁶¹ To prove genocide it is necessary that such specific or special intent exists so as to take it over the threshold from homicide to the “crime of crimes”.⁶² The *travaux préparatoires* of the Convention reveal that there was little discussion of this aspect by the drafters. Subsequent commentary and jurisprudence nevertheless confirms the importance of the requirement of specific intent.

7.30 The International Law Commission, for instance, in drafting the 1996 Code of Crimes against the Peace and Security of Mankind, qualified genocide’s requirement of specific intent as “the distinguishing characteristic of this particular crime under international law”.⁶³ In the negotiations for the establishment of the International Criminal Court, the

⁵⁹ UN Doc. E/AC.25/SR.24, p.3. The report of the *Ad Hoc* Committee stated that the proposed definition encompassed the notion of premeditation: UN Doc. E/794, p. 5.

⁶⁰ UN Doc. A/C.6/SR.72-3.

⁶¹ Jean Pradel, *Droit Pénal Comparé* (Paris: Dalloz, 1995), pp. 254-5.

⁶² As it was described by Judge Laity Kama of the International Criminal Tribunal for Rwanda in the *Kambanda* case. *Prosecutor v. Kambanda*, para. 16.

⁶³ “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 87.

reference to intent was “understood to refer to the specific intention to destroy more than a small number of individuals who are members of a group.”⁶⁴

7.31 Recent international judicial decisions confirm this approach. By way of example, the Trial Chamber of the ICTR ruled in *Akayesu* that the...

“special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in ‘the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.’ Thus, for a crime of genocide to have been committed, it is necessary for one of the acts listed under Article 2 (2) of the Statute [i.e. Article II of the Convention] be committed, that the particular act be committed against a specifically targeted group, it being a national, ethnical or racial or religious group.”⁶⁵

7.32 The Trial Chamber went on to define special intent as “the key element of an intentional offence, which offence is characterised by a psychological relationship between the physical result and the mental state of the perpetrator.”⁶⁶ In *Kambanda*, the Trial Chamber noted that “the crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime be committed with the intent ‘to destroy in whole in part, a national, ethnical, racial or religious group as such.’”⁶⁷

(2) Proving Intent to Commit Genocide

7.33 The Genocide Convention is silent as to the manner in which genocide is to be proved. By reason of the very nature of the act of genocide, it is unlikely that any State would formally adopt and then publicise any plan or other scheme of organisation to carry out or promote genocide, or otherwise prepare a paper trail which could then lead to its responsibility for failing to prevent genocidal acts committed by persons within its jurisdiction or control. But in the absence of documentary or other material which explicitly evidences a genocidal intent, it is permissible for the specific intent to be ascertained by inference, in

⁶⁴ UN Doc. A/AC.249/1998/CRP.8, p.2.

⁶⁵ *Prosecutor v. Akayesu*, para. 497.

⁶⁶ *Ibid.*, para. 516.

⁶⁷ *Prosecutor v. Kambanda*, para. 15.

particular from a relatively consistent pattern of behaviour involving the prohibited acts and targeted at a protected group.

7.34 The difficulty of obtaining explicit genocidal plans seems to have been foreseen by the drafters of the Convention. They rejected an effort by some States to include in the crimes under Article II of the Convention preparatory offences such as “issuing instructions or orders and distributing tasks with a view to committing genocide”.⁶⁸ As the delegate of the United Kingdom put it during the course of the negotiations, it would be “practically impossible” to prove that the object of a preparatory act was to encourage the perpetration of genocide.⁶⁹ It is plain that intent to commit genocide may be inferred from the facts, including a pattern of behaviour.

7.35 Subsequent practice, including that of international and other courts, supports this approach. It confirms that the standard of intent set forth in the language of the Genocide Convention does not impose the obligation to identify the existence of a specific written plan or system of organisation; it allows the proof of intent by inference from the existence of a set of facts, including a pattern of behaviour. The view is confirmed by the ILC in its Commentary to the Code of Crimes Against the Peace and Security of Mankind, which states that...

“[t]he necessary degree of knowledge and intent may be inferred from the nature of the order to commit the prohibited acts of destruction against individuals who belong to a particular group and are therefore singled out as the immediate victims of the massive criminal conduct.”⁷⁰

The ILC Commentary also states that...

“[t]he present article clearly indicates that it is not necessary to achieve the final result of the destruction of a group in order for a crime of genocide to have been committed. It is enough to have committed any one of the acts listed in the article with the clear intention of bringing about the total or partial destruction of a protected group as such.”⁷¹

⁶⁸ UN Doc. A/C.6/215 Rev. 1. The Yugoslav delegate was particularly vocal in his support of the Soviet amendment, arguing that “Propaganda which stirred up hatred must be punished because it was the very source of acts of genocide”: UN Doc. A/C.6/SR.82 (Bartoš, Yugoslavia).

⁶⁹ UN Doc. A/C.6/SR.82 (Fitzmaurice, UK).

⁷⁰ “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, Commentary on Article 17, para. 10.

⁷¹ *Ibid.*, para. 18.

7.36 A similar approach is reflected in the Report of the Special Rapporteur of the UN ECOSOC Sub-Commission on the Prevention of Discrimination and Protection of Minorities in his 1985 Revised and Updated Report on the Question of the Prevention and Punishment of Genocide.⁷² In relation to intent, the Report concludes that...

“[t]he relative proportionate scale of the actual or attempted destruction of a group... is certainly strong evidence to prove the necessary intent to destroy a group, in whole or in part.”⁷³

The Special Rapporteur concluded:

“a court should be able to infer the necessary intent from sufficient evidence...”⁷⁴

7.37 Adducing “intent” by inference is also reflected in the decisions of international courts and tribunals faced with the task of proving intent, in cases involving individual responsibility for genocide. In his separate opinions attached at the preliminary stages of the *Bosnia and Herzegovina v. FRY* case, Judge *ad hoc* Sir Elihu Lauterpacht has lent support to the inferential approach.⁷⁵ In *Akayesu* the Trial Chamber of the ICTR concluded that genocidal acts could be inferred from the physical acts, and specifically “their massive and/or systematic nature or their atrocity”. The Chamber continued:

“This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of

⁷² B. Whitaker, *Revised and Updated Report on the Question of the Prevention and Punishment of Genocide*, UN Doc. E/CN.4/Sub.2/1985/6.

⁷³ *Ibid.*, p.16. This was specifically approved by the Trial Chamber in *Kayishema*. See also Bunyan Bryant, “Comment, Part I: Substantive Scope of the Convention”, 16 Harv. Int’l L. J. 686 (1975); Lawrence J. LeBlanc, “The Intent to Destroy Groups in the Genocide Convention: the Proposed U.S. Understanding”, 38 AJIL 369 (1984).

⁷⁴ *Ibid.*, p. 19.

⁷⁵ *Supra.*, para. 7.18.

a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent.”⁷⁶

A similar approach is to be found in *Kayeshima and Ruzindana*, where the ICTR Trial Chamber ruled that:

“intent could be inferred from words of deeds and may be demonstrated by a pattern of purposeful action. In particular, the Chamber considers evidence such as the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing. Furthermore the number of victims from the group is also important.”⁷⁷

7.38 The approach has also been applied by the Trial Chamber of the ICTY, which in its review of the indictments against *Karadžić and Mladić*, laid out that specific intent...

“may be inferred from a number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article 4 [i.e. Article II], or the repetition of destructive or discriminatory acts. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate the very foundation of the group – acts which are not in themselves covered by the list in Article 4 (2) but which are committed as part of the same pattern of conduct.”⁷⁸

⁷⁶ *Prosecutor v. Akayesu*, para. 477. *Akayesu* also lays out in considerable detail the different types of intent for perpetration of genocide, incitement to genocide and complicity in genocide. *Akayesu* is quoted in turn in *Prosecutor v. Rutaganda*, para. 398. See also *ibid.*, para. 400.

⁷⁷ *Prosecutor v. Kayishema and Ruzindana*, para. 93. See also *ibid.*, paras. 534-540. In *Serushago*, the defendant pleaded guilty to genocide: in his plea he “recognise[d] that this [the purpose of the killings] is evidenced by the selective searching and targeting of Tutsi; the indiscriminate nature of the mass killings which victimised women and children, young people and old people alike, and the fact that they were pursued in the places where they had taken refuge, i.e. prefectures and communal offices, schools and churches and stadiums with the intent of exterminating them.” *Prosecutor v. Serushago*, para. 25. Serushago appealed against the length of sentence imposed, but the appeal failed on 6 April 2000.

⁷⁸ *Prosecutor v. Karadžić and Mladić*, Consideration of the Indictment within the framework of Rule 61 of the Rules of Procedure and Evidence, para. 94.

The Chamber went on to find that intent in this case...

”derives from the combined effect of speeches or projects laying the groundwork for and justifying the acts, from the massive scale of their destructive effect and from their specific nature, which aims at undermining what is considered to be the foundation of the group.”⁷⁹

7.39 It is important to note here that the ICTY found that proof of attacks against cultural institutions or monuments, committed in association with killing, could assist in establishing genocidal intent.⁸⁰ The *Tadić* case, although dealing with crimes against humanity, similarly laid out that “...knowledge and intent can be inferred from the circumstances”.⁸¹

7.40 In a similar vein to the approach in *Karadžić and Mladić*, the ICTY Trial Chamber review of the indictment of Dragan Nikolić held that “the constitutive intent of the crime of genocide may be inferred from the very gravity of those acts”.⁸² In *Jelisić*, although the defendant was acquitted of genocide, the Chamber was again willing to accept an inferential process of proof. It defined genocide as “the physical expression of an affirmed resolve to destroy in whole or in part a group as such...”

7.41 The *travaux préparatoires* of the Rome Statute of the International Criminal Court indicates that no formal plan is needed to demonstrate the existence of a genocidal intent, although it must be shown that conduct formed part of a broader pattern of behaviour.⁸³

⁷⁹ Ibid, para. 95.

⁸⁰ For instance, in its hearings into charges of genocide in *Karadžić and Mladić* case, the Tribunal heard a UNESCO expert on cultural heritage describe the destruction of monuments in Mostar and other towns in Bosnia and Herzegovina, and found it to be part of a strategy “designed to annihilate the centuries-long presence of the group or groups.” *Prosecutor v. Karadžić and Mladić*, Transcript of Hearing, 2 July 1996, pp. 35-39.

⁸¹ *Prosecutor v. Tadić*, para. 67, drawing on cases before British and American post-war military tribunals. The Appeals Chamber did not return directly to the point, instead concentrating on the question of motive.

⁸² *Prosecutor v. Nikolić*, Consideration of the Indictment within the framework of Rule 61 of the Rules of Procedure and Evidence, para. 34.

⁸³ “Discussion Paper Proposed by the Co-ordinator, Article 6: The Crime of Genocide”, UN Doc. PCNICC/1999/WGEC/RT.1: “The accused knew... that the conduct was part of a similar conduct directed against that group.”

(3) *Specific Intent in Article II*

7.42 If intent may be inferred, it is necessary to prove the existence of the elements of intent as set forth in the *chapeau* to Article II of the Convention, namely, “to destroy”, “in whole or in part”, “a national, ethnical, racial or religious group”, and “as such.” As will be shown in Chapter 8, each of these elements is satisfied in this case.⁸⁴

(a) “to destroy”

7.43 Article II requires that there must be an intent “to destroy” a protected group in whole or in part. It is clear that the drafters of the Convention intended to focus on the continuing physical existence of a group as distinct, for example, from changes in its culture or way of life. As the International Law Commission has made clear, the definition of destruction encompasses only “its material sense, its physical or biological sense”.⁸⁵

7.44 On the other hand, it is not necessary that the conduct in question should have as its object the physical destruction of the members of the group. This can be seen from the inclusion in Article II of such elements as paragraphs (d) and (e). For example, the systematic practice of forcibly transferring the children of a protected group so that others will bring them up would result, within a generation, in the disappearance of the group and would amount to its destruction in the sense of Article II. The group, as such, would no longer exist, and those who deliberately engaged in that practice, intending that result, would be guilty of genocide. Yet that practice would involve neither the physical destruction of the parents nor of the children. Article I has to be interpreted as a whole, and the concept of the destruction of a group need not be interpreted as requiring the actual killing of many or most of them: it is not to be interpreted as if genocide were confined to the acts referred to in paragraph (a). In other words, “intent to destroy” includes cases where a State seeks to destroy a group as an entity, even if it does not seek the physical destruction of many or most of the individual members of the group.

⁸⁴ See Chapter 8, paras. 8.2-8.17.

⁸⁵ “Report of the Commission to the General Assembly on the Work of its Forty-First Session,” UN Doc. A/CN.4/SER.A/1989/Add.1 (Part 2), p. 102, para. (4).

(b) “in whole or in part”

7.45 The “intent to destroy” must relate to a group “in whole or in part”. The preparatory work for the Convention provides little authoritative guidance as to what the drafters meant by the words “in part”, a formulation which was introduced by the Norwegian delegation. Apparently the drafters of the Convention sought two objectives: first, to exclude isolated acts of violence (even if ethnically or racially motivated); and second, to confirm that there need not be an intent to destroy an entire group but merely a part of it.

7.46 The language establishes that a State will be liable where it commits, or fails to prevent or punish, one or more genocidal acts which are premised upon an intention to destroy only a part of the group.⁸⁶ According to one early commentator, this permitted the conclusion that genocide could be directed against a single town.⁸⁷ On this approach, the acts occurring in Vukovar generally, and in relation to the hospital at Vukovar in particular, would be sufficient to disclose a genocide, even if they had been committed in isolation and not (as was in fact the case) as part of a broader campaign.

7.47 On the other hand there is clearly a threshold requirement, and genocide as a crime against humanity necessarily involves conduct which in aggregate has a systematic or collective character and a certain level of seriousness. Otherwise it would be impossible to distinguish genocide from individual acts of violence targeted at a member of a group as such, and genocide would lose its special character as the “crime of crimes”. It is true that the Yugoslav delegate negotiating the Convention did not exclude the possibility that genocide could even be perpetrated against a single person. But this is to confuse the two questions, whether genocide has been committed and whether an accused (who may only have been responsible for one or two deaths or other acts) is individually guilty for his involvement in the genocide. Clearly someone who commits a single murder in the context of and as part of a genocidal campaign may be guilty of genocide, but the campaign as a whole must have the character of being targeted against a protected group with the intent of achieving its destruction in whole or part. Thus the ILC considered that “the crime of genocide by its very nature requires the intention to destroy a least a substantial part of a particular group.”⁸⁸ The International Criminal

⁸⁶ Robinson, *Genocide Convention*, p. 63.

⁸⁷ *Ibid.*

⁸⁸ “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 88. This position was echoed by the Preparatory Committee of the International Criminal Court, “Draft Statute for the

Tribunal for the former Yugoslavia also considered that genocide must involve the intent to destroy a “substantial” part, although not necessarily a “very important” part of a protected group.⁸⁹ The ICTY Prosecutor considered that the definition requires...

“a reasonably significant number, relative to the total of the group as a whole, or else a significant section of the group such as its leadership.”⁹⁰

7.48 Even if the general intent must be directed towards the extermination of a “substantial” or significant part of the group, this need not necessarily result in the actual destruction of a significant part of the group. As the ICTY Prosecutor put it in *Karadžić and Mladić*:

“in view of the particular intent requirement, which is the essence of the crime of genocide, the relative proportionate scale of the actual or attempted destruction of a group, or a significant section thereof, should be considered in relation to the factual opportunity of the accused to destroy a group in a specific geographical area within the sphere of his control, and not in relation to the entire population of the group in a wider geographic sense.”⁹¹

7.49 The Commission of Experts established by the United Nations Security Council in 1992 to investigate the situation in former Yugoslavia adopted a similar approach. It concluded that the definition in the Convention was...

“sufficiently pliable to encompass not only the targeting of an entire group, as stated in the convention, but also the targeting of certain segments of a given group, such as the Muslim elite or Muslim women.”⁹²

International Criminal Court. Part 2. Jurisdiction, Admissibility and Applicable Law,” UN Doc. A/AC/249/1998/CRP.8, p.2, n.1.

⁸⁹ *Prosecutor v. Jelišić*, paras. 81-2. This echoed *Prosecutor v. Kayishema and Ruzindana*, para. 97, where the International Criminal Tribunal for Rwanda held that the phrase “in part” “requires the intention to destroy a considerable number of people.”

⁹⁰ *Prosecutor v. Karadžić and Mladić*, Transcript of Hearing of 27 June 1996, p. 15.

⁹¹ *Ibid.*, pp. 15-16.

⁹² M. Cherif Bassiouni, “The Commission of Experts Established Pursuant to Security Council Resolution 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia”, (1994) 5 *Criminal Law Forum* 279 at pp. 323-4.

(c) “a national, ethnical, racial or religious group”

7.50 The “intent to destroy” under the Convention must relate to “a national, ethnical, racial or religious group”. The protections of the Convention do not extend to linguistic groups, or to political, economic and social groups which were intentionally excluded because the drafters felt that they fell outside the scope of the Convention.⁹³ It is readily apparent that Croats constitute an ethnic and a religious as well as a national group, and that they accordingly fall within the list of protected groups under the Convention. As the UN Commission of Experts put it in its 1994 Report:

“The different groups relevant to the conflict in the former Yugoslavia – the Serbs, the Croats, the Muslims, the Gypsies and others – all have status as ethnic groups, and may, at least in part, be characterized by religion, ethnicity and nationality.”⁹⁴

Further, there is no requirement that the victim group should be a minority; it can equally be a numerical majority, as was often the case for Croat victims in particular villages and towns between 1991 and 1995.⁹⁵

7.51 The determination of membership of a protected group may be achieved either on the application of objective or subjective criteria. On either approach the Croats are plainly a group. The prevailing view at the time of the drafting of the Convention was that objective criteria were of the most importance. The objective approach to determining group membership had been adopted by the Permanent Court in the *Minorities in Upper Silesia* case,⁹⁶ where the Court held that membership of one of the protected groups was primarily a question of fact. The objective approach has also been relied by the International Court, most notably in the *Nottebohm* case, where the Court described nationality as a “social fact”.⁹⁷

7.52 In *Akayesu* the International Criminal Tribunal for Rwanda relied on *Nottebohm* in its first definition of “national group”, finding that a national group was “a collection of people who are perceived to share legal bonds based on a common citizenship, coupled with reciprocity of rights

⁹³ UN Doc. A/C.6/SR. 128.

⁹⁴ Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), at para. 95.

⁹⁵ *Ibid.*

⁹⁶ *Rights of Minorities in Upper Silesia (Germany v. Poland)*, PCIJ Series A, No. 12 (1928).

⁹⁷ *Nottebohm case (Liechtenstein v. Guatemala) (Merits)* ICJ Reports 1955 para. 4 at p. 49.

and duties.”⁹⁸ By the same token, an ethnic group was one whose “members share a common language or culture”;⁹⁹ a racial group was found to be “based on the hereditary physical traits often identified with the geographical region, irrespective of linguistic, cultural, national or religious factors”,¹⁰⁰ and a religious group was one “whose members share the same religion, denomination or mode of worship”.¹⁰¹ In the circumstances of Rwanda in 1994 the Tribunal’s Chamber interpreted the Convention so as to ensure protection for “any stable and permanent group”.¹⁰²

7.53 More recently, in *Kayeshima and Ruzindana*, the ICTR signalled a shift to a more subjective approach. In this case an ethnic group was defined not only as “one whose members share a common language or culture”, but also as “a group which distinguishes itself, as such (self-identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others)”.¹⁰³ In *Rutaganda*, the Tribunal went one stage further, stating that...

“the concepts of national, ethnical, racial and religious groups have been researched extensively and that, at present, there are no generally and internationally acceptable precise definitions therefore. Each of these concepts must be assessed in the light of a particular, political, social and cultural context... for the purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept.”¹⁰⁴

7.54 This approach has also been adopted by the International Criminal Tribunal for the Former Yugoslavia for all groups except religious ones. In *Jelisić* the Tribunal stated that it would...

“evaluate membership in a national, ethnical or religious group using a subjective criterion. It is the stigmatisation of a group as a distinct national, ethnical or racial unit by the community which allows it to be determined whether a targeted population

⁹⁸ *Prosecutor v. Akayesu*, para. 511.

⁹⁹ *Ibid.*, para. 513.

¹⁰⁰ *Ibid.*, para. 514.

¹⁰¹ *Ibid.*, para. 515.

¹⁰² *Ibid.*, para. 516.

¹⁰³ *Prosecutor v. Kayishema and Ruzindana*, para. 98.

¹⁰⁴ *Prosecutor v. Rutaganda*, para. 55. A case-by-case approach was also recommended in *Prosecutor v. Musema*, ICTR-96-13-1, paras. 161-2.

constitutes a national, ethnical or racial group in the eyes of alleged perpetrators.”¹⁰⁵

These debates are of limited significance for present purposes, since it cannot be doubted that the Croats who were the victims of the Serbian campaign described in Chapters 4 and 5 of this Memorial themselves constituted, or were at least an identifiable and significant part of, a protected national or ethnical group under the Convention.

(d) “as such”

7.55 The “intent to destroy” a protected group must be in relation to that group “as such”. This phrase indicates that...

“crimes against a number of individuals must be directed at their collectivity or at them in their collective character or capacity”.¹⁰⁶

7.56 There has been little or no interpretation of the words “as such” in international case law. The ICTR referred to motive only in the context of intent: “the perpetration of the act charged therefore extends beyond its actual commission, for example, the murder of a particular individual, for the realisation of an ulterior motive, which is to destroy, in whole or in part, the group of which the individual is just one element.”¹⁰⁷ The phrase clearly requires that the victims of the genocidal acts should have been attacked, in aggregate, because of their identification as members of a protected group. As Schabas puts it: “[e]vidence of [a] hateful [collective] motive will constitute an integral part of the proof of existence of a genocidal plan, and therefore of a genocidal intent.”¹⁰⁸

7.57 In regard to the intention to destroy the Croats as a group, the evidence relied upon in Chapters 4 and 5 provides numerous examples of Croats being targeted because of their ethnicity or nationality.¹⁰⁹ They were singled out for attack by reason of their being Croats in an area which was to become as far as possible purely Serb, and prohibited criminal acts were committed against them to achieve this purpose. In short they were attacked “as Croats”. It is apparent that this element of Article II is satisfied in this case.

¹⁰⁵ *Prosecutor v. Jelišić*, para. 70.

¹⁰⁶ Final Report of the UN Commission of Experts, para. 97.

¹⁰⁷ *Prosecutor v. Akayesu*, para. 461. See also the English Divisional Court raising the question of whether the words “as such” denoted a motive element: *Hipperson et al. v. DPP*, (1998) 111 ILR 584 at p. 587.

¹⁰⁸ Schabas, *Genocide*, p. 255.

¹⁰⁹ See Chapter 8, para. 8.16, point 7.

**SECTION THREE:
THE MEANING OF GENOCIDE: THE PHYSICAL ELEMENT**

7.58 Article II of the Convention identifies five categories of acts, the commission of any one of which will amount to genocide, where accompanied by the requisite mental element. As indicated above, there is a close relationship between the physical element and the mental element. The widespread or systematic occurrence of the proscribed acts, committed against persons belonging to a protected group, may well give rise to a legitimate inference of the proscribed intent.

(a) “Killing members of the group”: Art. II(a)

7.59 The first act listed in Article II is “killing members of the group”. This formulation was agreed by the Sixth Committee without a great deal of discussion and without a vote. In *Akayesu* the Trial Chamber of the ICTR identified the two material elements of the required physical element: the victim must be dead, and the death must have resulted from an unlawful act or omission of the accused or a subordinate.¹¹⁰

7.60 It is apparent from the *travaux* to the Convention that the term “killing” means intentional killing.¹¹¹ Subsequent developments, particularly in the context of the ICC Statute, indicate that the term “members of the group” means “one or more members of the group”.¹¹²

7.61 In the present case there were large-scale intentional killings of Croats targeted as such, as described in Chapters 4 and 5.

*(b) “Causing serious bodily or mental harm to members of the group”:
Art. II(b)*

7.62 The second proscribed act consists of “causing serious bodily or mental harm to members of the group”. Debate amongst the drafters of the Convention focused on the concept of “mental harm”. In *Akayesu*, the ICTR, in the first judicial interpretation of the provision, stated that “[c]ausing serious bodily or mental harm to members of the group does not

¹¹⁰ *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 588.

¹¹¹ UN Doc. A/C.6/SR.81. See also Robinson, *Genocide Convention*, p. 63.

¹¹² See “Discussion Paper Proposed by the Co-ordinator, Article 6: The Crime of Genocide,” UN Doc. PCNICC/1999/WGEC/RT.1.

necessarily mean that the harm is permanent and irremediable”.¹¹³ In *Kayishema* the Chamber endorsed the definition put forward by the Preparatory Commission for the ICC, which provided that the reference to mental harm “is understood to mean more than the minor or temporary impairment of mental faculties.”¹¹⁴ It is appropriate to conclude, therefore, that mental harm means more than minor and temporary impairment, but does not need to be permanent and irremediable.

7.63 Although rape and other sexual crimes were not expressly considered by the drafters of the Convention, the Chamber of the ICTR in *Akayesu* has confirmed that crimes of sexual violence can fall within the ambit of Article II(b) of the Convention.¹¹⁵ This represents an important clarification of the meaning of Article II(b).¹¹⁶ It brings within the scope of the Convention the catalogue of rape and other sex crimes which were — as has been shown in Chapters 4 and 5 — systematically and massively perpetrated against Croat men, women and even children.

7.64 Where a particular proscribed act has been committed in the context of a genocidal assault or campaign, there is no need to show that the act itself has contributed to the destruction of the group in whole or in part. It is only necessary to show that one or more victims actually suffered physical or mental harm. If the act is perpetrated with the requisite element of intent (*mens rea*) then the crime has been committed.¹¹⁷

(c) “Deliberately inflicting on the group conditions of life designed to bring about its physical destruction in whole or in part”: Art. II(c)

7.65 The third type of genocidal act is that which deliberately inflicts upon a group conditions which are designed to bring about its physical destruction in whole or in part. In the *Ad Hoc* Committee the drafters

¹¹³ *Prosecutor v. Akayesu*, para. 501. See also *Prosecutor v. Rutaganda*, ICTR-96-3, Judgment, 6 December 1999.

¹¹⁴ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 94.

¹¹⁵ *Prosecutor v. Akayesu*, para. 731. On the subject of rape and sexual assault as acts of genocide, see also Kelly Dawn Askin, *War Crimes Against Women, Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff, 1997); Beverley Allen, *Rape Warfare, the Hidden Genocide in Bosnia and Herzegovina and Croatia* (Minneapolis: University of Minnesota Press, 1996); Guglielmo Verdirame, “The Genocide Definition in the Jurisprudence of the *Ad Hoc* Tribunals,” 49 *Int’l and Comp. LJ* 3 (2000), pp. 578-598.

¹¹⁶ Rape can also fall under Art. II(c) and (d). It is also covered by a specific provision of the Statute of the ICTR (Art. 3 (g)), but the Tribunal established that the presence of the requisite intent can make it genocidal in nature.

¹¹⁷ Schabas, *Genocide*, pp. 164-5.

broadly approved the argument, put forward by China,¹¹⁸ that the physical element of genocide should include not only destruction of the physical existence of the group but also subjecting the group to such conditions or measures as would cause its destruction in whole or in part.

7.66 The ICTR in *Akayesu* proposed an interpretation of the provision that defines the means used to inflict such conditions as including...

“subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirements.”¹¹⁹

In *Kayishema and Ruzindana*, the Tribunal said that the conditions of life include...

“rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period, provided the above would lead to the destruction of the group in whole or in part.”¹²⁰

7.67 It is important to note that the deliberate imposition of conditions of life calculated to bring about the destruction of the group does not require that the destruction actually occurred. What must be proved is that the conditions were calculated to bring about the destruction.¹²¹

7.68 The Guatemalan Commission for Historical Clarification concluded that genocide had been committed against the Mayan people by the army in 1981-1983.¹²² The Commission noted that practices such as the razing of villages and the burning of harvests left the communities without food, which, in the opinion of the Commission, amounted to infliction of conditions of life “that could bring about, and in several cases, did bring about, its physical destruction in whole or in part.”¹²³ The Inter-American

¹¹⁸ UN Doc. E/447, p. 25.

¹¹⁹ *Prosecutor v. Akayesu*, para. 505.

¹²⁰ *Prosecutor v. Kayishema*, para. 116.

¹²¹ In the *Eichmann* case, the District Court of Jerusalem held that the count of imposing living conditions calculated to bring about the destruction was only applicable to those Jews who survived the Holocaust, rather than to those who were killed. *A-G of Israel v. Eichmann*, para. 196.

¹²² *Guatemala: Memory of Silence, Report of the Commission for Historical Clarification, Conclusions and Recommendations*, ‘Conclusions,’ paras. 116-118, www.hrdata.aaas.org/ceh/report/english/toc.html.

¹²³ *Ibid.*

Commission on Human Rights has declared admissible a petition alleging genocide in Guatemala in 1982 on the basis of these facts.¹²⁴

7.69 The International Law Commission, in its deliberations on the Code of Crimes Against the Peace and Security of Mankind, concluded that deportation fell within the scope of Article II(c), to the extent that it occurred with the intent to destroy the group in whole or in part.¹²⁵

7.70 Chapters 4 and 5 provide evidence of systematic and massive perpetration of acts imposing upon Croats conditions of life which were designed to bring about their physical destruction. The acts included rape and other sex crimes,¹²⁶ deprivation of food and medical supplies and treatments,¹²⁷ and systematic and widespread deportation from an entire region.¹²⁸

(d) *“Imposing measures intended to prevent births within the group”:*
Art. II(d)

7.71 The fourth type of genocidal act is the imposition of measures which are intended to prevent births within a group. The *travaux préparatoires* of the Convention suggest that such measures could include sterilisation, compulsory abortion, segregation of the sexes and obstacles to marriage.¹²⁹ In *Akayesu* the ICTR concluded that rape could fall within this head, where it was used to destroy the group:

“in patriarchal societies, where membership of a group is determined by the identity of the father [rape could be] an example of a measure intended to prevent births within a group...”¹³⁰

The Chamber also pointed to the mental effects of rape, which could be a measure intended to prevent births “when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.”¹³¹ The Chamber in

¹²⁴ *Plan de Sanchez Massacre* (Case No. 11.763), Report No. 31/99, 11 March 1999, in *Annual Commission of the Inter-American Commission on Human Rights*, OAS Doc. OEA/Ser.L/V/II.102, Doc. 6, p. 132.

¹²⁵ *Code of Crimes Against the Peace and Security of Mankind*, UN Doc. A/51/332 (1996), p. 126.

¹²⁶ See Chapter 8, para. 8.12 and 8.14.

¹²⁷ See Chapter 8, para. 8.12.

¹²⁸ See Chapter 8, para. 8.16, point 12.

¹²⁹ UN Doc. E/623/Add.2; UN Doc. E/447, p.26; UN Doc. A/C.6/SR.82.

¹³⁰ *Prosecutor v. Akayesu*, para. 731.

¹³¹ *Ibid.*

Rutaganda also found that “sexual mutilation, forced birth control, forced separation of males and females, and prohibition of marriages,” fell within Article II(d).¹³²

7.72 Other tribunals have expanded on the definition of possible measures intended to prevent births within the group. One of the charges against Adolf Eichmann was that he “devis[ed] measures intended to prevent child-bearing among the Jews”; these were held by the District Court to include his instructions “forbidding births and for the interruption of the pregnancy of Jewish women in the Theresin Ghetto with intent to exterminate the Jewish people.”¹³³ The Supreme National Tribunal of Poland found the director of the Auschwitz camp responsible for sterilisation and castration as a form of genocide.¹³⁴ The United States Military Tribunal also categorised sterilisation and other measures aimed at restricting births as a form of genocide in *Greifelt*.¹³⁵

7.73 It is clear that Article II(d) can cover a wide range of acts. As described in Chapters 4 and 5, the systematic perpetration against Croats of rape and other sex crimes, in particular castration, fall clearly within Article II(d) of the Convention.¹³⁶

(e) “*Forcibly transferring children of the group to another group*”: Art. II(e)

7.74 The fifth and final type of genocidal act is the forcible transfer of children of one group into another group. It is not relevant to the facts of the present case, as disclosed by Chapters 4 and 5.

¹³² *Prosecutor v. Rutaganda*, paras. 49-53.

¹³³ *A-G of Israel v. Eichmann*, para. 244.

¹³⁴ *Poland v. Hoess*, (1948) LRTWC 11 at p. 25 (Supreme National Tribunal of Poland).

¹³⁵ *United States of America v. Greifelt et. al.*, (1948) LRTWC 1 (USMT), at p. 17.

¹³⁶ See Chapter 8, paras. 8.14-8.15.

**SECTION FOUR:
CONSPIRACY, INCITEMENT, ATTEMPT AND COMPLICITY**

7.75 Article II is supplemented by Article III of the Convention, which provides for the punishment of genocide and of four other specified acts which do not in themselves amount to genocide: conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; and complicity in genocide.

CONSPIRACY: ARTICLE III(B)

7.76 A conspiracy to commit genocide will exist where two or more person have agreed upon a common plan to commit genocide, with the same specific intent as required for genocide itself.¹³⁷ The existence of a common plan may be shown either from documentary evidence or from the evidence of systematic and methodical action taken by persons under the control of the conspirators or acting on their directions.¹³⁸

7.77 Article III(b) of the Convention reflects a distinction between the two main Western legal traditions as to the notion of conspiracy.¹³⁹ In Romano-Germanic law, conspiracy is a form of participation in the crime itself, and is only punishable to the extent to which the crime itself is committed. In the common law tradition, however, conspiracy is an inchoate offence, committed once two or more people agree to carry out a crime, regardless of whether or not the crime itself is committed. At the drafting stage of the Convention, the common law approach appears to have prevailed, although Belgium, France and the Netherlands abstained in the vote on the Article because the Sixth Committee could not decide which French word best captured a concept unknown in French law.¹⁴⁰ The ICTR, which has convicted one person for the crime of conspiracy to commit genocide,¹⁴¹ has defined conspiracy as “an agreement between two

¹³⁷ The International Criminal Tribunal for Rwanda confirmed in *Akayesu* that the offence of direct and public incitement to commit genocide at least involves the specific intent set out in Article II. *Prosecutor v Akayesu*, para. 559.

¹³⁸ Schabas, *Genocide*, p. 265.

¹³⁹ Jean Pradel, *Droit penal comparé* (Paris: Dalloz, 1995), pp. 239-241.

¹⁴⁰ UN Doc. A/C.6/SR.84. The equally authoritative French text has “entente en vue de commettre le genocide.” Contemporary commentators all but ignored conspiracy. See e.g. Robinson, *Genocide Convention*, p. 66.

¹⁴¹ *Prosecutor v. Kambanda*, para. 40. At least five other indictments or trials for conspiracy to commit genocide have been issued or are pending. The ICTY has issued no public indictments for conspiracy.

or more persons to commit the crime of genocide.”¹⁴² In a recent judgment, *Musema*,¹⁴³ the Trial Chamber examined the *travaux* to the Convention and noted the difficulty caused by the different meanings in the two legal traditions. These differences notwithstanding, the Chamber clarified the inchoate nature of the offence, holding that “the crime of conspiracy was included [in the Convention] to punish acts which, in and of themselves, did not constitute genocide.”¹⁴⁴

7.78 In the present case, as disclosed by the facts set out in Chapters 4 and 5, genocide was actually committed against the Croatian populations concerned. This does not exclude the possibility that individual Serbian leaders who did not themselves personally commit or direct the commission of the acts in question may be guilty of conspiracy in terms of their overall responsibility for planning the crime.

DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE: ART. III(C)

7.79 Incitement is a form of complicity (“abetting”) and, to that extent, may also be covered by Article III(e). By including a specific head of direct and public incitement, therefore, the drafters of the Convention made it clear that no actual genocide need to have occurred for a criminal offence to have taken place.¹⁴⁵

7.80 Incitement to commit genocide has been defined by the ICTR as an inchoate offence, one of a class of offences which are “in themselves particularly dangerous because of the high risk they carry for society, even

¹⁴² *Prosecutor v. Musema*, Judgment and Sentence, 27 January 2000, para. 191. This definition comes much closer to the Anglo-Saxon definition than the one adopted in *Prosecutor v. Akayesu*, para. 559.

¹⁴³ *Prosecutor v. Musema*, Judgment and Sentence, 27 January 2000, paras. 184-198.

¹⁴⁴ *Ibid.*, para 198. The tribunal went on to acquit Museum of Genocide because it decided that “no purpose would be served in convicting an accused, who has already been found guilty of genocide, for conspiracy to commit genocide, on the basis of the same acts.” *Ibid.*

¹⁴⁵ The United States contested any reference to incitement as an inchoate crime. UN Doc. A/C.6/SR.84 (Maktos, United States); while Poland, backed by the Soviet Union, stressed that prevention was also the goal of the Convention, and that freedom of the press should not be so great “as to permit the Press to engage in incitement to genocide.” *Ibid.* (Lachs, Poland). An attempt by the United States to delete the entire provision was rejected by twenty-seven to sixteen, with five abstentions (UN Doc. A/C.6/SR.85), causing the United States to declare that it reserved its position on the provision. *Ibid.* (Maktos, United States). A Soviet attempt to expand the provision to include “[a]ll forms of public propaganda aimed at inciting racial, national, or religious enmities or hatred or at provoking the commission of acts of genocide” was rejected: UN Doc. A/C.6/SR.87.

if they fail to produce results” and thus warrant punishment “as an exceptional measure”.¹⁴⁶ The Prosecutor of the ICTR has issued several indictments for this offence, leading to two convictions.¹⁴⁷ The Trial Chamber in *Akayesu* observed that the drafters had emphasised the importance of addressing incitement to genocide because of the critical role that it played in the planning of genocide, and the Chamber agreed that direct and public incitement is an inchoate offence.¹⁴⁸

7.81 The *travaux* of the Convention provide little guidance as to the meaning of the words “direct and public”. “Public” is the easier to define: the ICTR cited French law to the effect that words are public when they are spoken aloud in a place that is public by definition.¹⁴⁹ The Chamber further stated that incitement “must assume a direct form and specifically provoke a criminal act”, and must be more than “mere vague or indirect suggestion”.¹⁵⁰

7.82 The ICTR has also stressed the importance of interpreting “coded” language in its context. In *Akayesu*, it stated that...

“the direct element of incitement should be viewed in the light of its cultural and linguistic content. A particular speech may be perceived as ‘direct’ in one country, and not so in another, depending on the audience.”¹⁵¹

It noted that implicit incitement could be direct. It has adopted a subjective approach, focusing “mainly on the issue of whether the persons for whom the message was intended immediately grasped the implication thereof.”¹⁵²

ATTEMPT: ART. III(D)

7.83 The offence of attempt to commit genocide appeared in the earliest draft of the Convention and was adopted by the Sixth Committee

¹⁴⁶ *Prosecutor v. Akayesu*, para. 562.

¹⁴⁷ *Prosecutor v. Akayesu*; *Prosecutor v. Kambanda*. In both cases, the convictions could easily have been for complicity, since the exhortations were followed by killings and other acts of genocidal violence.

¹⁴⁸ *Prosecutor v. Akayesu*, para. 560.

¹⁴⁹ *Prosecutor v. Akayesu*, para. 555.

¹⁵⁰ *Ibid.*, para. 556.

¹⁵¹ *Ibid.*, para. 556. See also *Prosecutor v. Kambanda*, para. 39.

¹⁵² *Ibid.*, para. 557.

unanimously without debate.¹⁵³ The offence is also included in the statutes of the two *Ad Hoc* tribunals,¹⁵⁴ as well as in the draft Code of Crimes and Rome Statute (in both cases applicable to all crimes in their subject matter jurisdiction).¹⁵⁵

7.84 The *travaux* of the Convention, though provide no guidance as to how the concept is to be applied, beyond the rejection of preparatory acts noted in relation to the prevention of genocide.¹⁵⁶ There has been no case-law on the subject, as there have never been any prosecutions for attempted genocide, although guidance may be found in relation to the case law pertaining to attempts to commit war crimes.¹⁵⁷ The Rome Statute of the ICC provides an articulation of a threshold, stating that an attempt occurs when the offender “commences its execution by means of a substantial step”.¹⁵⁸ The International Law Commission, for its part, has referred to a “significant step.”¹⁵⁹

¹⁵³ UN Doc. A/C.6/SR.85. See also Robinson, *Genocide Convention*, p. 66. A provision prohibiting “preparatory acts” was rejected by both the *Ad Hoc* Committee and the Sixth Committee. UN Doc. E/AC.25/SR.17, p.7; UN Doc. A/C.6/SR.86.

¹⁵⁴ Statute of the International Criminal Tribunal for the Former Yugoslavia, UN Doc. S/RES/827 (1993), art. 2(3)(d); Statute of the International Criminal Tribunal for Rwanda, UN Doc. S/RES/955 (1994), art. 4(3)(d).

¹⁵⁵ “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 18; Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, art. 25(3)(f).

¹⁵⁶ The ICTR noted that according to the *travaux* there could be no such thing as complicity in attempted genocide. *Prosecutor v. Akayesu*, para. 526.

¹⁵⁷ For instance, *France v. Stucker*, (1948) 7 LRTWC 72 (Permanent Military Tribunal at Metz), where a Nazi official was found guilty of attempt when he recommended that the Gestapo arrest and deport some “political undesirable” individuals, although no subsequent action was taken. See generally, “Types of Offences,” (1948) 15 LRTWC 89 at p. 89.

¹⁵⁸ Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, art. 25(3)(f).

¹⁵⁹ Edward M. Wise, “Part 3. General Principles of Criminal Law,” (1998) 13 *Nouvelles Etudes Pénales*, pp. 39, 44.

COMPLICITY: ART. III(E)

7.85 Finally Article III includes “complicity in genocide”. This can involve planning, ordering or otherwise aiding and abetting in the planning, preparation, or execution of genocide. The principle that accomplices to the commission of a crime should be punished is one that has been clearly established under most criminal law systems,¹⁶⁰ and there have been several convictions for complicity in genocide in relation to the Holocaust.¹⁶¹ Trial Chambers of the International Criminal Tribunal for the Former Yugoslavia have identified the principle as being “in clear conformity with general principles of criminal law”,¹⁶² and also based in customary law.¹⁶³ The International Law Commission’s “Nuremberg Principles” also hold that complicity in the commission of a crime against peace, a war crime or a crime against humanity is a crime under international law.¹⁶⁴

7.86 It is apparent from the debates in the negotiation of the Convention that complicity is limited to complicity to commit genocide and does not extend to the other acts listed in Article III.¹⁶⁵

7.87 Both the International Law Commission’s draft Code of Crimes and the Rome Statute include detailed definitions of complicity.¹⁶⁶ Complicity appears in the statutes for the ICTR and ICTY, not just in their versions of Article III, but also in a general complicity provision.¹⁶⁷ The significance

¹⁶⁰ *United Kingdom v. Schonfeld et al.*, (1948) 11 LRTWC 64 (British Military Court), pp. 69-70.

¹⁶¹ For instance *United Kingdom v. Tesch et al.*, (1947) 1 LRTWC 93 (British Military Court), convicting the manufacturer of Zyklon B gas; *United Kingdom v. Kramer et al.*, 1947 2 LRTWC 1 (British Military Tribunal), convicting members of the staff at Belsen and Auschwitz.

¹⁶² *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgment, 16 November 1998, para. 321.

¹⁶³ *Prosecutor v. Tadić*, Opinion and Judgment, 7 May 1997, paras. 666, 669.

¹⁶⁴ “Principles of the Nuremberg Charter and Judgment Formulated by the International Law Commission,” GA Res. 177A(II); “Report of the International Law Commission Covering its Second Session, 5 June to 29 July 1950,” UN Doc. A/1316/p. 12, art. VII.

¹⁶⁵ In the Sixth Committee, the debates centred on a Belgian amendment limiting complicity to genocide alone, and the acceptance (25-14: 3 abstentions: UN Doc. A/C.6/SR.87) of an identical amendment put forward by the United Kingdom shows clearly that Article III(e) is restricted to complicity in genocide, rather than any of the other acts listed in Article III. This view was confirmed by the International Criminal Tribunal for Rwanda in *Prosecutor v. Akayesu*, para. 526.

¹⁶⁶ Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 18; Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, art. 25.

¹⁶⁷ Statute of the International Criminal Tribunal for the Former Yugoslavia, UN Doc. S/RES/827 (1993), art. 7(1); Statute of the International Criminal Tribunal for Rwanda, UN Doc. S/RES/955 (1994), art. 6(1). Both establish criminal liability for persons who

of including a crime of complicity has been explained by the Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia in *Tadić*:

“Although only some members of the group may physically perpetrate the criminal act... the participation and contribution of other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.”¹⁶⁸

7.88 In the *Karadžić and Mladić* case, the Tribunal made clear how important complicity can be in establishing the criminal liability of leaders, organisers and planners. The Trial Chamber ruled that the accused were participants in genocide because...

“The uniform methods used in committing the said crimes, their pattern, their pervasiveness throughout all of the Bosnian Serb-held territory, the movements of prisoners between the various camps, and the tenor of some of the accused’s statements are strong indications tending to show that Radovan Karadžić and Ratko Mladić planned, ordered or otherwise aided and abetted in the planning, preparation, or execution of the genocide committed in the detention facilities.”¹⁶⁹

7.89 In *Tadić*, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia has also developed the concept of “common purpose” complicity, distinct from “aiding and abetting”, and carrying a greater stigma.¹⁷⁰ Criminal liability, the Tribunal held, could be extended to cover responsibility where two or more persons have a common design to pursue a course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose.¹⁷¹ This liability was said by the Tribunal to be derived from customary law and could be inferred from its own Statute.

have “planned, instigated, ordered, committed or otherwise aided or abetted in the planning, preparation or execution of a crime” within their jurisdiction.

¹⁶⁸ *Prosecutor v. Tadić*, para. 191.

¹⁶⁹ *Prosecutor v. Karadžić and Mladić*, IT-95-5-R61, IT-95-18-R61, Consideration of the Indictment Within the Framework of Rule 61 of the Rules of Procedure and Evidence, 11 July 1996, para. 84.

¹⁷⁰ *Prosecutor v. Tadić*, para. 229.

¹⁷¹ *Ibid*, paras. 204-20.

7.90 In *Tadić*, the Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia noted, however, that this case-law did not specify the degree of aiding and abetting required, although it offered some examples as guidance.¹⁷² Endorsing the view of the International Law Commission,¹⁷³ the Chamber for its own part held that criminal participation must have a direct and substantial effect on the commission of the offence, although it noted that “assistance need not constitute an indispensable element, that it is, a *conditio sine qua non* for the acts of the principal.”¹⁷⁴

7.91 In line with the practice of the ICTY, it appears that an accused person need not be present when the crime takes place:

“direct contribution does not necessarily require the participation in the physical commission of the illegal act. That participation in the commission of the crime does not require an actual physical presence or physical assistance appears to have been well accepted at the Nuremberg war crimes trials.”¹⁷⁵

Moreover, while mere presence may not alone constitute complicity, it may do so where the accused has a legal duty to intervene. This is especially relevant to a situation where a criminal act is being perpetrated by a paramilitary organisation and an official army fails to act to prevent it, despite the capacity to do so. The Yugoslavia Tribunal has ruled that a failure to intervene can be a form of encouragement (i.e. abetting).¹⁷⁶ The responsibility of a superior is not thereby automatic, although presence at the scene will create a strong presumption of guilt.¹⁷⁷

7.92 The ICTY has recognised that complicity can take place after the crime as well as prior to commission.¹⁷⁸ The ICTR has also clarified that it is possible to convict for complicity even if the person who committed the

¹⁷² *Prosecutor v. Tadić*, para. 681.

¹⁷³ “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 18. The Rome Statute, Art. 25 does not provide any indication of the quantitative degree of aiding and abetting required.

¹⁷⁴ *Prosecutor v. Furundžija*, IT-95-17/1-T, Judgment, 10 December 1998, para. 209.

¹⁷⁵ *Prosecutor v. Tadić*, paras. 678, 691; *United Kingdom v. Wielen et al.*, (1948) 9 LRTWC 31 (British Military Court, Hamburg), pp. 43-44, 46.

¹⁷⁶ *Prosecutor v. Tadić*, paras 689-90.

¹⁷⁷ *Prosecutor v. Aleksovski*, IT-95-14/1-T, Judgment, 25 June 1999, para. 65.

¹⁷⁸ *Prosecutor v. Tadić*, para. 692. The contemporary commentator Nehemiah Robinson wrote that the *Ad Hoc* Committee intended complicity to refer to “accessorship before and after the fact.” Robinson, *Genocide Convention*, p. 69.

underlying crime has not been (or cannot be) charged or convicted with that crime.¹⁷⁹

7.93 As to the mental element required to establish complicity, the Convention's *travaux* provide only limited guidance.¹⁸⁰ The ICTY has found that there is a...

“requirement of intent, which involves an awareness of the act of participation coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime.”¹⁸¹

7.94 Likewise in *Furundžija* the ICTY ruled that an aider and abettor need not “meet all the requirements of *mens rea* for a principal offender”;¹⁸² the real test is whether the accused had knowledge of the principal offender's intent.¹⁸³ With regard to the crime of “common purpose” complicity, the Appeal Chamber in *Tadić* ruled that it required...

“a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were likely to lead to that result but nevertheless willingly took that risk. In other words, the so-called *dolus eventualis* is required (also called ‘advertent recklessness’ in some national legal systems).”¹⁸⁴

7.95 The ICTR has adopted a similar approach. In *Akayesu* it ruled that...

¹⁷⁹ *Prosecutor v. Akayesu*, para. 530. Special Rapporteur Doudou Thiam said, in relation to the draft Code of Crimes that complicity was a “drama of great complexity and intensity,” and that it could cover acts committed before the principal offence as well as afterwards. “Eighth Report on the Draft Code of Crimes Against the Peace and Security of Mankind, by Mr. Doudou Thiam, Special Rapporteur,” UN Doc. A/CN.4/430 and Add.1, paras. 28-38, pp. 31-32.

¹⁸⁰ The United Kingdom proposed to insert the word “deliberate” before “complicity,” on the basis that in some legal systems complicity did not require intent: UN Doc. A/C.6/236 and Corr.1; UN Doc. A/C.6/SR. 87 (Fitzmaurice, United Kingdom). After others pointed out that this was unnecessary because it had always been clear that complicity in genocide must be intentional, it was withdrawn. *Ibid.*

¹⁸¹ *Prosecutor v. Tadić*, para. 674. This refers to the wider complicity provision, but the principle is same for the narrower construction of the Genocide Convention. The Tribunal also made clear that knowledge could be inferred. *Ibid.*, para. 677.

¹⁸² *Prosecutor v. Furundžija*, para. 243.

¹⁸³ *Ibid.* See also *Prosecutor v. Tadić*, para 229(iv); Schabas, *Genocide*, pp. 301-302.

¹⁸⁴ *Prosecutor v. Tadić*, para. 220. This has been criticised for allowing an individual to be held liable for an offence that he or she did not truly intend. Schabas, *Genocide*, p. 303.

“an accomplice to genocide need not necessarily possess the *dolus specialis* of genocide... an accused is liable as an accomplice to genocide if he knowingly aided or abetted or instigated one or more persons in the commission of genocide, while knowing that such person or persons were committing genocide, even though the accused himself did not have the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”¹⁸⁵

Such a knowledge requirement has also been specified by the International Law Commission.¹⁸⁶

SECTION FIVE: THE OBLIGATION TO PREVENT AND PUNISH

PREVENTION

7.96 The obligation to prevent the crime of genocide is at the heart of the Convention. It is referred to in the title and in Articles I and VIII. Article I establishes a positive obligation on States Parties to the Convention to prevent genocide. Article VIII makes it clear that all States parties to the Convention have an interest in the prevention of genocide and can call on the competent United Nations organs to take action in that regard.¹⁸⁷

7.97 The obligation to prevent genocide means that a State is required to take positive steps to ensure that those within its jurisdiction and control do not commit genocide. This positive obligation is clear from Article IV of the Convention, which provides that the obligation extends to those persons who are part of the state apparatus, including public officials and members of the armed forces, as well as to private individuals. The obligation is positive, in the sense that a State’s responsibility will not be excluded merely by its failure to act, turning a blind eye to genocidal acts. A State will incur direct responsibility under the Convention if its own officials perpetrate genocidal acts. But it will also incur responsibility if private

¹⁸⁵ *Prosecutor v. Akayesu*, para. 544. This reasoning was adopted in *Prosecutor v. Musema*, paras. 181-183.

¹⁸⁶ “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 24.

¹⁸⁷ Hans-Heinrich Jescheck, ‘Genocide,’ in Rudolph Bernhardt, ed., *Encyclopaedia of Public International Law*, Vol. II (Amsterdam: North-Holland Elsevier, 1995), pp. 541-544 at p. 542.

persons within its jurisdiction or control carry out such acts, which it could have prevented.

7.98 Moreover, the obligation to prevent genocide is an obligation owed to the international community as a whole. As this Court put it in the *Barcelona Traction* case:

“By its very nature, the outlawing of genocide [is] ... the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”¹⁸⁸

7.99 Other organs of the United Nations have also made clear on repeated occasions the importance of the obligation on states to prevent genocide. Repeated General Assembly Resolutions relating to the situation in the former SFRY have referred to the Genocide Convention or to the importance of preventing genocide.¹⁸⁹ State practice and *opinio juris* reflect the importance attached by the drafters of the Genocide Convention to the obligation to prevent genocide. For example on the fiftieth anniversary of the Convention, the General Assembly adopted a resolution which invited states to “redouble their efforts for the prevention and punishment of the crime of genocide,” and called upon all States to “increase and intensify their activities aimed at the full implementation of the Convention.”¹⁹⁰

¹⁸⁸ *Barcelona Traction, Light and Power Co. Ltd (Belgium v. Spain)*, ICJ Reports 1970 3, p. 32. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Further Requests for the Indication of Provisional Measures, ICJ Reports 1993 p. 325, individual opinion Judge *ad hoc* Sir Elihu Lauterpacht (at p. 436).

¹⁸⁹ “The Situation in Bosnia and Herzegovina,” UN Doc. A/RES/48/88; “Rape and Abuse of Women in the Areas of Armed Conflict in the Former Yugoslavia,” UN Doc. A/RES/48/143; “Situation of Human Rights in the Territory of the Former Yugoslavia: Violations of Human Rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro),” UN Doc. A/RES/48/153; “The Situation in Bosnia and Herzegovina,” UN Doc. A/RES/49/10; “Situation of Human Rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro),” UN Doc. A/RES/49/196; “Rape and Abuse of Women in the Areas of Armed Conflict in the Former Yugoslavia,” UN Doc. A/RES/49/205; “Situation of Human Rights in Kosovo,” UN Doc. A/RES/49/204; “Situation of Human Rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro),” UN Doc. A/RES/50/193; “Situation of Human Rights in Kosovo,” UN Doc. A/RES/50/190.

¹⁹⁰ UN Doc. A/RES/53/43 (22 January 1999), preamble and article 3.

PUNISHMENT

7.100 The requirement that perpetrators of genocide and related acts shall be punished, and the obligation of States parties to punish genocide, is referred to in the title and Articles I, V and VI of the Convention.¹⁹¹ Article IV provides that...

“Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private citizens.”

As indicated above, it is clear from this provision that the obligation to prevent genocide arises in relation to public and private acts alike.

7.101 Article VI of the Convention provides that those charged with offences under Articles II or III of the Convention...

“shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”

Although the Convention does not provide for universal jurisdiction in the modern sense,¹⁹² it is apparent that States are not barred from trying their own nationals for acts committed outside the territorial State, and that in light of the provisions of Article IV of the Convention they must do so.¹⁹³ It is plain that the FRY has a responsibility under the Convention to punish individuals for acts of genocide and that it has failed to do so. The failure of a State to punish or prosecute supports the inference that the acts concerned were part of a State sponsored policy.¹⁹⁴

¹⁹¹ Article VII also provides for an obligation to co-operate in extraditing genocide suspects.

¹⁹² The International Law Commission endorsed universal jurisdiction for the crime of genocide in 1996, although admitting that it could not be read into the Convention. “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 42.

¹⁹³ An interpretation proposed by the Chair of the Sixth Committee and accepted by twenty to eight, with six abstentions: UN Doc. A/C.6/SR.134. The right of States to try their own nationals for crimes against humanity, no matter where committed, has subsequently been recognised by the General Assembly in “Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity”, GA Res. 3704 (XXVIII), para. 2.

¹⁹⁴ See Letter dated 24 May 1994 from the Secretary-General to the President of the Security Council, S/1994/674 (“The practice of so-called ‘ethnic cleansing’ and rape and sexual assault, in particular, have been carried out by some of the parties so systematically that they strongly appear to be the product of a policy, which may also be inferred from the consistent failure to prevent the commission of such crimes and to

**SECTION SIX:
COMMAND RESPONSIBILITY**

7.102 The Convention is silent as to command responsibility, a concept which originally developed in the context of war crimes providing that a commander can be found liable for “fail[ing] to provide effective control” of his troops as required by the circumstances.¹⁹⁵ Command responsibility may give rise to responsibility either as a principal offender or as an accomplice, and it may extend to include political (civilian) leaders.¹⁹⁶

7.103 Developments since 1948 confirm that the concept of command responsibility is established in customary international law. This is reflected in the codification of the offence in Protocol Additional I to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts¹⁹⁷ and, more recently, in the Statutes of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda,¹⁹⁸ the Rome Statute of the ICC,¹⁹⁹ and the 1996 ILC Code of Crimes.²⁰⁰

7.104 There have been three convictions before the *ad hoc* criminal tribunals for genocide committed by command responsibility,²⁰¹ and a

prosecute and punish their perpetrators”). See also Report of the Commission of Experts, para. 313, drawing the conclusion that “the existence of a policy by omission” permits command responsibility to be established.

¹⁹⁵ Taken from the judgment in the leading post-Second World War case, *United States of America v. Yamashita*, (1948) 4 LRTWC 1, pp. 36-7; *In Re Yamashita*, 327 US 1 (1945).

¹⁹⁶ Although the International Criminal Tribunal for Rwanda found that the law remains “contentious” where civilian officials are concerned: *Prosecutor v. Akayesu*, para. 689.

¹⁹⁷ (1979) 1125 UNTS 3, art. 86 (2).

¹⁹⁸ Statute of the International Criminal Tribunal for the Former Yugoslavia, UN Doc. S/RES/827 (1993), art. 7(3); Statute of the International Criminal Tribunal for Rwanda, UN Doc. S/RES/955 (1994), art. 6(3). The provisions are identical, and read: “The fact that [genocide] was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

¹⁹⁹ Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, art. 28. This distinguishes between civilian superiors, who can only be liable if they knew or were wilfully blind as to the acts of their subordinates and did not take appropriate measures to prevent the offence, and military commanders, who are held liable for negligent supervision.

²⁰⁰ “Report of the International Law Commission on the Work of Its Forty-Eighth Session, 6 May-26 July 1996,” UN Doc. A/51/10, p. 34, art. 6, and p. 37.

²⁰¹ *Prosecutor v. Kambanda*; *Prosecutor v. Serushago*, ICTRd-98-39-S, Sentence 2 February 1999; *Prosecutor v. Kayeshima and Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999 (Kayishema only). All three were also found guilty of genocide either as

finding of liability pursuant to Rule 61 in a fourth case.²⁰² In *Akayesu*, the ICTR identified two different bases for establishing the *mens rea* of a commander, one based on the strict liability of the commander, and the other, which it preferred, based on “malicious intent, or, at least... negligence... so serious as to be tantamount to acquiescence or even malicious intent.”²⁰³ In *Karadžić and Mladić* the ICTY adopted the following approach:

“Insofar as [the Trial Chamber] is considering command responsibility, it must carry out its examination in order to discover whether the pattern of conduct of which it is seized, namely ‘ethnic cleansing,’ taken in its totality, reveals such a genocidal intent.”²⁰⁴

Where command responsibility exists, the commander is responsible for acts of the subordinate, and what matters is accordingly the genocidal intent of the latter.

7.105 The doctrine of command responsibility will apply when a military (or paramilitary) commander has given an order for the commission of an illegal act, including an act, which violates the Genocide Convention. But it may also apply when a military (or paramilitary) commander has not given the offending order but has such overall control and direction of the operation that responsibility can properly be imputed to him; thus political leaders and public officials have also been found liable under the doctrine of command responsibility in certain circumstances. For these latter cases the UN Commission of Experts has identified the necessary mental element as being (a) actual knowledge, or (b) such serious personal dereliction on the part of the commander of commander or political leader or public official as to constitute wilful and wanton disregard of the possible consequences, or (c) an imputation of constructive knowledge, that is the commander or political leader or public official under the facts and

principal offender or as accomplice. The closest examination of the issue has been in relation to war crimes in *Prosecutor v. Delalić et al.*, paras. 330-400, where the Tribunal concluded that “a superior can be held criminally liable only if specific information was in fact available to him which would provide notice of offences committed by his subordinates.” *Ibid.*, paras. 390-3.

²⁰² *Prosecutor v. Karadžić and Mladić*.

²⁰³ *Prosecutor v. Akayesu*, para. 488. Akayesu was acquitted on the portions of the indictment concerning command responsibility because the Tribunal found them ambiguous. *Ibid.*, para. 689.

²⁰⁴ *Prosecutor v. Karadžić and Mladić*, para. 94. Although the decision is equivocal, there is a strong suggestion that the Chamber considered the two accused to be responsible as commanders, because the acts “could have been planned or ordered [by them] with a genocidal intent.” *Ibid.* In this case, the basis of responsibility would be full-blown complicity, not merely command responsibility.

circumstances of the particular case must have known of the acts and acquiesced in them.²⁰⁵

7.106 The Commission of Experts has also identified a number of factors, which will assist in determining the existence of constructive knowledge.²⁰⁶ These are:

- (a) the number of illegal acts;
- (b) the type of illegal acts;
- (c) the scope of illegal acts;
- (d) the time during which the illegal acts occurred;
- (e) the number and types of troops involved;
- (f) the logistics involved;
- (g) the geographic location of the acts;
- (h) the widespread occurrence of the acts;
- (i) the tactical tempo of the operations;
- (j) the *modus operandi* of similar illegal acts;
- (k) the officers and staff involved;
- (l) the location of the commander at the time.

CONCLUSIONS

7.107 In the context of the present case, the Convention imposed upon the civilian and military leadership of the FRY a clear obligation not to engage in any acts which violated the Convention, including through the JNA and those Serb and Serbian paramilitary groups which they directed and controlled. It is evident from the material set forth in Chapters 4 and 5 that many acts were systematically and massively carried out in Croatia which fell within the five categories of acts listed in Article II of the Convention. Croats were intentionally killed; they were subjected to serious bodily and mental harm, including rape and other sex crimes; they were subjected to conditions of life (including destruction of their cultural identity) designed to bring about their physical destruction; and they were subjected to sexual and other measures which were intended to prevent births within their group. All of this was done on a concerted basis, implying the existence of careful planning and deliberation. The criminal conduct was widespread

²⁰⁵ Commission of Experts, *Report*, para. 58.

²⁰⁶ *Ibid.*

and not isolated or sporadic; it involved a substantial number of victims who were targeted because they were Croats (i.e. as members of the Croatian national or ethnic group). In other words the conduct taken in aggregate was committed against Croats as such. It was part of a campaign to eliminate all or virtually all Croats from the areas concerned, i.e. to destroy or eliminate the group as such in those areas.

7.108 It is clear that the commission of genocide does not require the actual destruction of *all* the members of the group. As the ILC put it with respect to the physical element, it “is enough to have committed any one of the acts listed” in Article II. In the present case there can be no doubt that the widespread and systematic nature of the Article II acts perpetrated against Croats are sufficient to constitute the physical element, which constitutes the crime of genocide. With regard to the mental element, it is sufficient to note that the requirement of intent to destroy a group may be inferred from the existence of a set of facts, including a pattern of behaviour. As the ILC put it, intent “may be inferred from the nature of the order to commit the prohibited acts of destruction against individuals who belong to a particular group and are therefore singled out as the immediate victims of the massive criminal conduct.”²⁰⁷ The catalogue of such orders and acts will be further demonstrated in the following Chapter.

7.109 The Genocide Convention does not, however, limit itself to declaring or constituting a crime of genocide. It imposes a further, positive obligation on its State Parties to prevent and to punish genocide. Those obligations are engaged where the acts threatened or occurring are *prima facie* genocidal, or where there is real risk that genocidal acts may be carried out. As will be made clear in the following Chapter, the FRY failed to respect its obligations in both respects. And it has failed, and continues to fail, to respect the obligation to prosecute and punish persons within its jurisdiction and control who perpetrated genocidal acts.

²⁰⁷ See above, para. 7.35.

CHAPTER 8

THE RESPONSIBILITY OF THE FRY FOR VIOLATIONS OF THE GENOCIDE CONVENTION

8.01 This Chapter sets out the basis of the responsibility of the FRY for the violations of the Genocide Convention which are the subject of the present proceedings. It demonstrates, on the basis of the evidence presented in this Memorial, that:

- Genocide was committed on the territory of Croatia between the summer of 1991 and August 1995, and the related acts of conspiracy, incitement, complicity and attempt were committed on the territory of Croatia and on the territory of the FRY (Section 1, paras. 8.2-8.31);
- The genocidal acts in question are attributable to the FRY (Section 2, paras. 8.32-8.55);
- In any event, the FRY is responsible for violations of Articles II and III of the Genocide Convention by reason of its failure to prevent or punish the genocidal acts (Section 3, paras. 8.56-8.70);
- In accordance with principles of general international law the FRY is liable for damages by way of reparation for its violations of the Genocide Convention. In particular the FRY is under an obligation to provide information as to the whereabouts of the Croatian citizens still missing as result of the genocidal acts, and as far as possible to reverse the effects of those acts in other respects (e.g. by the return of stolen cultural property) (Section 4, paras. 8.71-8.84).

SECTION ONE: GENOCIDE WAS COMMITTED ON THE TERRITORY OF CROATIA

8.02 The events described in Chapters 4 and 5 of this Memorial, taken in the context of the developments described in Chapters 2 and 3, disclose breaches of Articles II and III of the Genocide Convention. In particular, it is clear from the evidence that:

- (1) Genocide within the meaning of Article II of the Convention was committed by officers and soldiers of the JNA/VJ and Serbian

paramilitary groups acting in concert. Genocidal acts were committed in Eastern Slavonia as described in Chapter 4, and in the other regions of Croatia described in Chapter 5, through

- the arbitrary and widespread killing of members of the Croatian population “as such”, i.e. on account of their national or ethnic origin;
- the inflicting of serious bodily and mental injury on members of the Croatian population by a variety of means including indiscriminate acts of violence, torture, disappearance, rape and other sexual crimes;
- the inflicting of conditions of life calculated to bring about the physical destruction of the Croatian population and its elimination from the regions concerned (including, for example, by the physical desolation and destruction of towns and villages and objects of worship or cultural relevance); and
- the imposition of measures to prevent births within the Croatian population of those regions.

Each of these acts was committed with the necessary genocidal intent, in breach of Article II of the Genocide Convention.

- (2) The related crimes of conspiracy to commit genocide, direct and public incitement to genocide, attempt to commit genocide, and complicity in genocide, in breach of Article III of the Genocide Convention, were committed by the Serbian leadership of FRY and Republic of Serbia, officers of the JNA and the VJ, and paramilitary commanders under the control of the JNA/JA.

(1) THE CRIME OF GENOCIDE (ARTICLE II OF THE CONVENTION)

(a) A Consistent Pattern of Events Amounting to Genocide

8.03 The military campaign in the regions described in Chapters 4 and 5 must be assessed in the context of the aspiration of the Serbian leadership to establish a “Greater Serbia” by changing established borders, annexing territory and providing for Serbian control of large parts of Croatia. The aims adopted can be seen from Chapter 2; the methods adopted emerge clearly from Chapters 4 and 5 and from the evidence referred to in those chapters. In summary, the Serbian leadership, the FRY and the Republic of Serbia embarked on a campaign of territorial acquisition with the objective,

not merely of establishing Serbian control in those parts of the Republic of Croatia in which significant Serb populations were located (including in particular Eastern and Western Slavonia, Banovina, Kordun and Lika and Dalmatia as well as neighbouring areas falling within the arc of «Greater Serbia»), but also of eliminating from those areas as far as possible all or almost all members of the Croatian population.¹ The process involved the systematic and repeated commission of unlawful acts prohibited by Article II, with the specific intent of achieving the physical destruction and elimination of the Croatian population of the areas in question. Indeed, these genocidal actions were a necessary part of the policy as it had been conceived.

8.04 It is clear beyond doubt, not only from the public speeches of senior Serbian political and military officials² and the written memoirs of some of those officials,³ but from the military history of the campaign and the manner in which it was carried out,⁴ that the areas of Croatian territory which fell under Serbian/FRY occupation and control were intended as far as possible to be cleared of Croats. In other words, the goal of the campaign was not to achieve Serbian control of those areas with their existing populations, but to destroy the Croatian population of those regions in whole or in substantial part, and thereby to ensure that the regions were exclusively, or almost exclusively, inhabited by Serbs.

8.05 In order to achieve this goal the JNA military commanders, acting in concert with Serb and Serbian paramilitary groups, adopted a strategy which went well beyond any legitimate military objectives aimed at securing control of these territories, and which was calculated to bring about the destruction of that part of the Croatian ethnic population living in the regions concerned. This is well-illustrated by the prolonged and devastating assault on Vukovar followed, as it was, by the systematic extermination of many of those Croats who remained following the

¹ For Map of “Greater Serbia”, see Chapter 2, paras. 2.76 and 2.77.

² See e.g. Chapter 2, para. 2.79 (speech of Marković); para. 2.98 (speech of Milošević); para. 2.103 (interview with Ilić); Chapter 3, para. 3.39 (speech of Jovanić).

³ See e.g. Chapter 3, para. 3.36 (Memoirs of Jović).

⁴ See e.g. Chapter 3, paras. 3.72-3.99; Chapter 4, paras. 4.12-4.19 (overview of JNA role in Eastern Slavonia); 4.64-4.66 (JNA role in forced exile of Croats from Ilok); Chapter 5, paras. 5.7-5.11 (overview of JNA role in Western Slavonia); 5.72-5.75 (overview of JNA role in Banovina); 5.130-5.134 (overview of JNA role in Kordun and Lika); 5.198-200 (overview of JNA role in Dalmatia); 5.232 (“A Chronological narrative of the events at the dam from the occupation until the mining”, describing how the JNA attempted to destroy the dam at Peruća and flood Croatian villages); 5.236 (overview of JNA role in Dubrovnik).

occupation of Vukovar by Serbian forces.⁵ Neither the assault nor the extermination had any conceivable military justification. Civilian casualties and expulsions were in no sense a side-effect of legitimate military operations; they were the very object and purpose of the campaign.

8.06 Throughout Eastern Slavonia and elsewhere in Croatia the implementation of this strategy followed a typical pattern. First, the JNA and paramilitary groups would either engage in artillery shelling of a particular Croat locality, or would threaten to do so.⁶ On entry into the locality (and whether or not their entry was opposed) they would take steps to identify Croats and other non-Serbs and their property.⁷ Croatian and other non-Serb owned property, including cultural property, would be looted, confiscated and/or systematically destroyed.⁸ Members of the Croat population would be subjected to brutal attacks, including rapes and other sexual crimes and killings, i.e. to actions in which the victim was selected by reference to his or her Croat or non-Serb nationality or ethnicity and which were carried out only because of that nationality or ethnicity.⁹ The purpose and effect of these crimes was to induce a state of terror in the Croat civilian population and thereby to cause them to flee. Very often these crimes were accompanied by overt ethnic abuse and threats to “cleanse” the locality of Croats.¹⁰ Local Serb “authorities” would then be established and would impose a regime of humiliation and dehumanisation on the remaining Croat population, enforced by acts of extreme violence, including sexual violence and arbitrary killings.¹¹ The local Croat population would be required to identify themselves and their property with white ribbons and other distinctive marks;¹² they would be denied access to food, water, electricity and telecommunications and proper medical treatment;¹³ their movements would be restricted;¹⁴ they would be put to

⁵ Chapter 4, paras. 4.158-4.187, in particular para. 4.188 providing information on mass graves in Vukovar containing 1,151 bodies.

⁶ Chapter 4, paras. 4.17; 4.32 (Ministry of Defence (MORH), from 10 September 1994); 4.48 (M.K.); 4.57 (*Narodna Armija*, 13 November 1991); 4.64; 4.74; 4.83; 4.108; 4.118; 4.134; 4.146 (United Press International, 21 November 1991: “Army seeks to justify destruction of Vukovar”); 4.149 (*The Guardian*, London, November 1991); 4.159 (M.F.); and Chapter 5, paras. 5.15; 5.70 (D.V.); 5.94 (P.M.); 5.97 (A.K.); 5.103 (D.V.); 5.118; 5.151; 5.155 (M.L., D.P.); 5.157.

⁷ See below, para. 8.16 and notes 59 and 61.

⁸ See below, para. 8.16 and note 67.

⁹ See below, para. 8.11 and notes 31, 32, 33; para 8.14 and notes 47-9; para 8.16 note 65.

¹⁰ See below, para. 8.16 and note 65.

¹¹ See, in particular, below, para. 8.11 and notes 31-3; also para. 8.16 and note 65.

¹² See below, para. 8.16 and note 61.

¹³ See below, para. 8.13 and note 4.

forced labour;¹⁵ their property would be destroyed or looted;¹⁶ Croatian cultural and religious monuments would be destroyed;¹⁷ and schools and other public utilities would be required to adopt Serbian cultural traditions and language.¹⁸ Thereafter, the occupying “authorities” would organise transportation to evacuate the remaining Croatian civilian population,¹⁹ requiring them to sign documents renouncing all their property in favour of the occupying force’s administration.²⁰ Large numbers were transported to concentration camps in Serb-occupied territory or in the FRY itself.²¹ Many of those who remained were exterminated.²² This pattern was repeated throughout Eastern Slavonia, and in the other regions described in Chapter 5.

8.07 The consistent pattern of atrocities in these regions provides the clearest evidence of a policy on the part of the Serbian occupying forces which meets the requirements of genocide as identified in Chapter 7. In short, it involved:

- (a) the deliberate and unlawful commission of acts prohibited in Article II;
- (b) committed against the Croat civilian population as such,
- (c) with a view to their destruction and elimination.

By way of example of the elements of deliberation and discrimination involved, there is contemporary videotaped evidence of one paramilitary leader — known as Arkan — issuing instructions to soldiers wearing JNA uniforms on how the JNA and paramilitaries should cooperate during attacks on Lužac (on the outskirts of Vukovar) in order to ensure that the

¹⁴ See below, para. 8.13 and note 41.

¹⁵ The use of forced labour was characteristic in Serb-occupied towns and villages. For examples, see Chapter 4, paras. 4.25 (P.Š.); 4.35 (E.M.); 4.41 (K.M.); 4.60 (O.Š.); 4.67 (P.V.); 4.79 (I.B.); 4.87 (KB.); 4.101 (M.D.); 4.114 (B.U., describing the use of all-female labour gangs in Sotin); 4.123 (P.V.); 4.128 (V.R.); Chapter 5, paras. 5.31 (M.S.); 5.210 (M.P.); 5.214 (C.V.); 5.225 (K.V.).

¹⁶ See below, para. 8.13 and notes 42 and 44.

¹⁷ See below, para. 8.16 and note 67.

¹⁸ See below, para. 8.16 and note 68.

¹⁹ See below, para. 8.16 and note 66.

²⁰ See below, para. 8.16.

²¹ *Ibid.*

²² See below, para. 8.8.

killing of civilians was confined to those of Croat ethnicity.²³ That speech proves genocidal intent in relation to the acts which followed in Vukovar, which involved, *inter alia*, the death of thousands of civilians.

8.08 The program was largely successful in its aim of destroying and eliminating the Croatian population in the targeted regions. The demographic evidence shows that many of the towns and villages which had a predominantly Croatian population prior to their occupation had become almost exclusively Serbian by 1993.²⁴ In the territory of Eastern Slavonia as a whole, the population ratio prior to the occupation was 70.24% Croat, 17.13% Serb and 12.60% other ethnic groups. By 1993, after the occupation, the Croatian population had dropped to 2%, and the Serb population increased to 97%.²⁵ By that date Croats had physically ceased to be a group in the area. The area itself was a substantial one. So too was the number of persons who, solely by reason of the fact of their ethnicity and not because of anything they had individually done (e.g. as combatants) were subjected to one or more of the prohibited acts enumerated in Article II of the Convention. In these circumstances the conduct in question crosses any conceivable threshold and constitutes genocide within the meaning of the Convention.²⁶

8.09 The Serbian military campaign on Croatian territory has been characterised as “ethnic cleansing”. No doubt the phrase “ethnic cleansing”, repugnant as it is, covers conduct over a wide spectrum. But where, as here,

²³ Chapter 3, paras.3.57; see Appendices, vol 5, appendix 2 (Video Transcript).

²⁴ The towns and villages referred to below are those for which demographic details are recorded in Chapters 4 and 5, and some of many villages which were predominantly Croat before the war, but where the balance changed significantly as a result of expulsions or massacres. See Chapter 4, paras. 4.38 (Berak); 4.47 (Bogdanovci); 4.56 (Šaregrad); 4.62 (Ilok); 4.73 (Tompojevci); 4.81 (Bapska); 4.94 (Tovarnik); 4.107 (Sotin); 4.116 (Lovas); 4.133 (Tordinci); 4.140 (Vukovar); also Chapter 5, paras. 5.45 (Balinci); 5.47 (Donji Čaglić); 5.60 (Vukovije); 5.81 (Novo Selo Glinsko); 5.84 (Joševica); 5.89 (Donje Jame); 5.93 (Skela); 5.96 (Kraljevčani); 5.99 (Glinska Poljana); 5.102 (Zamlača, Struga Banska); 5.109 (Kozibrod, Unčani, Gvozdansko); 5.110 (Hrvatska Kostajnica); 5.112 (Baćin); 5.115 (Kostrići); 5.117 (Kostajnički Majur); 5.139 (Crna Draga, Novo Selo Lasinjsko and Lasinja); 5.142 (Lipovača); 5.144 (Lađevac); 5.147 (Arapovac, Gornji Furjan); 5.149 (Saborsko); 5.156 (Banski Kovačevac); 5.159 (Dabar); 5.162 (Vrhovine); 5.173 (Vaganac); 5.180 (Smoljanac); 5.183 (Lovinac); 5.196 (Knin, Benkovac); 5.202 (Piramatovci); 5.205 (Rupe, Ičevo, Čista Velika); 5.206 (Puljane); 5.208 (Siverić); 5.210 (Drniš); 5.211 (Miljevci); 5.212 (Trbounje, Oklaj, Lukari, Razvođe, Ljubotić, Matase, Otavice); 5.214 (Kijevo); 5.217 (Jasenice); 5.218 (Medvida); 5.221 (Kruševo); 5.222 (Bruška); 5.223 (Korlat); 5.225 (Lišane Ostrovičke, Lisičić, Rodaljice, Perušić Benkovački); 5.226 (Škabrnja).

²⁵ See Chapter 4, paras. 4.3-4.5.

²⁶ On the threshold for genocide to have occurred see above, Chapter 7, paras. 7.38, 7.48-7.50.

the “ethnic cleansing” of an entire region is carried out as part of a coordinated strategy involving the killing of non-combatants and the infliction of torture and brutality on a large scale, solely on account of the victims’ ethnic origin, with the plain object and effect of destroying that part of the local population which has a particular ethnic origin, the crime of genocide is established.²⁷

The Physical Element: Genocidal Acts

8.10 The evidence in support of a genocidal intent rests in part on the commission of acts of killing and the infliction of serious bodily and mental injuries on members of the target group.²⁸ The different acts constituting the crime of genocide are enumerated in Article II of the Convention, which has already been analysed.²⁹

8.11 There can be no basis for doubting that such acts occurred. More than 10,572 people were killed in the campaign; 1,419 persons are still missing and unaccounted for. In the whole of Croatia 126 mass graves have been found to date, of which 61 are in Eastern Slavonia.³⁰ The scale and pattern of killing,³¹ torturing³² and raping³³ of innocent Croatian civilians,

²⁷ This approach is reflected in United Nations General Assembly Resolution 47/121, adopted on 19 December 1992 without dissent.

²⁸ See above, para. 8.6.

²⁹ See above, Chapter 7, paras. 7.59-7.75.

³⁰ See Annexes, vol 3, Section 7 (Identified Mass Graves), Plate 7.1 (Eastern Slavonia, 61 mass graves); Plate 7.2 (Western Slavonia, 6 mass graves); Plate 7.3 (Banovina, 39 mass graves); Plate 7.4 (Kordun and Lika, 13 mass graves); Plate 7.5 (Dalmatia, 7 mass graves).

³¹ For examples of killings that indicate a particular scale, pattern or brutality (e.g. systematic massacres, massacres of entire families, or random murders used to force Croats to flee), see e.g. Chapter 4, paras. 4.18 (58 civilians killed with JNA participation in Aljmaš); 4.28 (Đ.B., who buried bodies in a makeshift grave he was forced to dig); 4.33 (“Mass Killing and Genocide in Croatia, 1991/92”, p. 112, where Serb representatives from Dalj admitted that 56 or 57 Croats had been killed in the village); 4.49 (M.M., describing how grenades were thrown into basements where Croat civilians were known to be hiding in Bodganovci); 4.66 (F.D. describing JNA participation in random murders of Croats remaining after forced exodus of majority from Ilok); 4.123-5 (P.V., S.P., L.S., Z.T., describing how 50 Croats were singled out in Lovas and forced to clear a minefield, during which 21 were killed instantly and the wounded were shot out of hand); 4.153 (E.M., JNA soldier, describing systematic murders in Petrova Gora); 4.162 (D.K., describing systematic murders at the prison camp at Stajičevo); 4.174-8 (E.Č., Report on Evacuation of the Vukovar Hospital and the Mass Grave at Ovčara, United Nations Commission of Experts, detailing massacre at Ovčara); Chapter 5, paras. 5.14 (A.T., murder of family in Mačkovac); 5.23 (Ž.S., paramilitary, describing how he had orders to confiscate weapons from Croat households, and to kill if he could find none); 5.34

which is disclosed by the evidence summarised in Chapters 4 and 5, and the

(Chronology of War, HIC, Zagreb, p.350, Serb civilians reporting that Croats had been systematically murdered in Voćin); 5.43 (M.K., describing how paramilitary groups were given task of ‘cleansing’ specific areas of the village of Četekovac); 5.49 (R.M., JNA vehicle used to prepare mass grave in Donji Čaglić before massacre perpetrated by JNA and paramilitaries); 5.56 (B.B., describing how systematic murders were perpetrated as Serb paramilitaries retreated from Đulovac); 5.113 (V.J., describing massacre of approximately 60 Croats in the municipality of Hrvatska Kostajnica); 5.116 (M.V., describing murder of every person in the village of Kostrići, ranging in age from 3 to 93); 5.122 (M.I., describing murder of entire family in Panjani); 5.157 (R.M., describing murder of 6 elderly Croats remaining in Banski Kovačevac and the disposal of their bodies down a well); 5.170 (M.O., describing systematic murder of elderly Croats in Široka Kula); 5.178-9 (B.V., describing murder of V. family, including two disabled members); 5.217 (S.Š., describing systematic murder of elderly Croats in Jasenice); 5.220 (S.E., describing massacre in Medviđa); 5.228 (S.M. and “Helsinki Watch” report, describing systematic murders in Škabrnja).

Chapters 4 and 5 also contain extensive examples of mass graves that have been discovered with little or no indication of who the victims are or where they were originally from. For locations, see Chapter 4, paras. 4.7 (Eastern Slavonia); 4.29 (Tenja); 4.35 (Dalj); 4.72 (Ilok); 4.107 (Sotin); 4.116 (Lovas); 4.138 (Tordinci); 4.178 (Ovčara); 4.188 (Vukovar); Chapter 5, paras. 5.27 (Pakrac); 5.77 (Banovina); 5.137 (Kordun and Lika); 5.146 (Ladevac); 5.226 (Škabrnja).

³² For examples of torture, especially tortures on a systematic basis, see e.g. Chapter 4, paras. 4.27 (R.J., describing the use of beatings with telephone cables); 4.34 (S.D., describing coordinated torture and murder in Dalj at the hands of Serbian paramilitaries); 4.41-2 (K.M. and M.M., describing torture with lighted cigarettes, beatings with rifle butts, and the use of a rat to bite the face of a woman for over 6 hours); 4.52 (M.B., describing how a Croat was stretched on a tree in front of the church in Bogdanovci and tortured until he died); 4.88-9 (A.Š., I.L., describing torture in Bapska, including beating of Croat who refused to drive through a minefield to pick corn); 4.130-1 (I.F. and M.M., describing torture with a power drill, and forcing a man with blood in his mouth to swallow salt); 4.162 (Z.K., describing torture at the prison camp at Stajićevo); 4.180 (M.L., describing torture at the prison camp at Velepomet); Chapter 5, paras. 5.17 (H.H., describing rape and torture of victim before her ears were cut off and her skull shattered); 5.27 (S.V., describing torture including physical mutilation); 5.30 (F.D., describing being tied to a tree and beaten); 5.33 (Dr. Jerry Blaskovich, describing savage torture with electric chainsaw of a Croat in Voćin); 5.53 (B.B., describing beatings with telephone wire, a baton, a pole made of hazel-tree and a hose, while being handcuffed to a stand used for binding cattle); 5.54 (S.A., describing torture including the removal of his tongue and teeth and daily beatings, frequently to unconsciousness); 5.98 (M.T. and A.K., describing rape of a Croat woman, whose breasts were then cut off); 5.122 (M.I., describing torture by blinding and cutting off of the nose); 5.175 (P.Đ., describing torture in prison by beating, cold water and sexual abuse); 5.210 (M.P., describing ears being cut off); 5.214 (B.V., describing how she was forced to stand in a fire).

³³ For examples of references to rape, see below, para. 8.14, note 47. For examples of references to other sexual crimes on men and women see below para. 8.16, notes 48 and 49.

subjection of those civilians to random acts of serious physical violence, is plainly sufficient to constitute the *actus reus* of the crime of genocide, within the meaning of Article II (a) and (b) of the Genocide Convention.

8.12 In addition, the conditions of life which were inflicted on the Croat population which remained in Serb-occupied territory were calculated to bring about its physical destruction as a group, and also amount to genocide within the meaning of Article II (c). The Croat population was subjected to acts very like those which — in a different geographical area — the International Criminal Tribunal for Rwanda (ICTR) has held to fall within the scope of Article II (c) of the Convention.³⁴ These include:

- rape;³⁵
- subjecting a group of people to a subsistence diet;³⁶
- systematic expulsion from homes;³⁷ and
- the reduction of essential medical treatment and supplies.³⁸

8.13 In addition, local Croats, having been identified as such, were required to display signs of their ethnicity³⁹ and were denied food, water, electricity and medical treatment.⁴⁰ Their movements were restricted,⁴¹ and

³⁴ See Chapter 7, para. 7.67.

³⁵ See below, para. 8.14, note 47.

³⁶ See Chapter 4, paras. 4.86; 4.77 (S.L.); 4.106 (A.G.); 4.117; 4.151 (Vukovar, where supplies were cut off during JNA encirclement and attack), Chapter 5, paras. 5.15; 5.30 (J.M.); 5.38; 5.166, 5.216; 5.236 (Dubrovnik, where supplies were cut off during JNA siege).

³⁷ See below, para. 8.16 and notes 66 and 67.

³⁸ See e.g. Chapter 4, para. 4.23; Chapter 5, para. 5.30 (referring to the situation in Voćin, where Dr. V.M. told D.D. that there was no medicine available for “Ustasha” children, even though supplies were available). On another occasion, the doctor ordered the nurse to administer an expired vaccine to a one year old Croatian girl): *ibid.*

³⁹ See e.g. Chapter 4, paras. 4.17; 4.60 (A.L., describing how Croats were forced to wear white ribbons in Šarengrad); 4.87 (K.B., describing how Croats had to hang white ribbons on their houses in Bapska); 4.98 (M.D.); 4.106 (A.I.); 4.128 (P.M.).

⁴⁰ See above, para. 8.12 and notes 36 and 38.

⁴¹ See e.g. Chapter 4., paras. 4.17 (house arrest after working hours); 4.22 (barricades); 4.25 (P.Š., describing how Croats in Tenja were forced to live like slaves); 4.26 (M.K., describing how Croats in Tenja had to stay inside their houses with the shutters closed except when they went to work, and how they had to turn their heads away when they passed Serbs on the streets); 4.40 (Police curfew, imposed by random beating and murder); 4.77 (V.V.); 4.87 (Croats in Bapska had to report daily to the Local Committee building with special passes); 4.106 (A.G., describing how Croats were only allowed to go to the shop, and were otherwise confined to their houses and yards); 4.128; Chapter 5, paras. 5.38 (I.K., describing how threats of death

they were subjected to repeated looting and to a regime of random and mass killings, brutalisation and violence.⁴² Their cultural monuments and the signs of their cultural heritage were destroyed or suppressed,⁴³ or looted and taken to Serbia.⁴⁴ Their children were required to be educated as Serbs.⁴⁵ For each of these acts the practice was systematic in character, both within and across the regions concerned.⁴⁶ Such conditions of life, inflicted as they were on purely ethnic grounds, can only have been intended to secure the overall political objective of ensuring that the Croat population of the occupied regions would cease to exist, i.e. would be destroyed and eliminated as such.

8.14 Finally, the evidence of systematic rape of Croatian women and men,⁴⁷ the sexual mutilation and castration of Croatian men,⁴⁸ and the

were made if they went beyond the village borders, and how anyone trying to leave was arrested; 5.51 (M.S.); 5.100 (I.D.); 5.166 (M.O.); 5.181 (M.B.); 5.219 (S.M., describing restrictions placed on movement and commercial dealings); 5.225 (A.Š.).

⁴² A clear example of the brutalisation to which Croats were subject was the use of “human shields”: see e.g. Chapter 4, paras. 4.85; 4.110 (S.L.); Chapter 5, paras. 5.43 (S.B.); 5.100 (I.D.); 5.103 (A.K.); 5.229 (Major B.R.). For looting, see below, para. 8.16 and note 67.

⁴³ For the destruction of cultural monuments, see below, para. 8.16 and note 67.

⁴⁴ For a list of locations from which cultural property was looted, see Appendices, vol 5, appendix 7.

⁴⁵ See Chapter 4, paras. 4.60 (B.Ž., describing how Croatian children in Šarengrad were forced to attend Serbian school and be educated in the “Greater Serbia” programme); 4.128 (V.R., describing how Croatian children in Lovas were forced to read and write in Cyrillic); also Chapter 5, para. 5.181 (M.B., describing how Croat children were prevented from going to Croatian school in Smoljanac).

⁴⁶ For example, the destruction of churches took place across Eastern Slavonia (e.g. Chapter 4, para. 4.36 – the Church of the Parish of St. Joseph in Dalj); Western Slavonia (e.g. Chapter 5, para. 5.35 – the 14th century Church of St. Mary in Voćin); Banovina (e.g. Chapter 5, para. 5.87 – the Chapel with the Statue of Our Lady of Lourdes (1908) in Joševica); Kordun and Lika (e.g. Chapter 5, para 140 – the Church of St. Antun Padovanski in Lasinja, mined after being used as a sniper’s nest); and Dalmatia (e.g. Chapter 5, para. 5.219 – serious damage to the Church of the Appearance of the Holy Virgin Mary in Medvida).

⁴⁷ See e.g., Chapter 4, paras. 4.25; 4.44 (M.H., describing her rape, where “... I was their special target because I had six sons and they were threatening me because I had delivered six Ustasas”); 4.45; 4.90; 4.113; 4.128-9 (Š.A., A.M.); 4.153; 4.155; 4.156; 4.169; 4.185; Chapter 5, paras. 5.17 (H.H.); 5.30 (F.D.); 5.59; 5.88 (L.F.); 5.98; 5.147 (K.Z.); 5.157 (B.M.); 5.209 (B.H., A.F., A.K.) 5.210 (M.M.); 5.212 (J.Č., K.Č., Z.S., J.L.); 5.224 (G.A.); 5.225 (A.Š.).

⁴⁸ See e.g. Chapter 4, paras. 4.91 (F.K., describing beating about the genitals by Serbs who were aware that his wife was pregnant and were determined to make sure that he could not father any more children); 4.100-1(B.H., describing

commission of other sex crimes,⁴⁹ when viewed in the context of the broader genocidal policies of the Serb occupying forces, involved the imposition of measures to prevent births within the Croatian population of the occupied regions, within the meaning of Article II (d). In this regard the approaches of the ICTR in the cases of *Akayesu* and *Rutaganda*⁵⁰ and of national tribunals in Poland, Israel and the United States⁵¹ support the conclusion that Article II (d) was violated in Croatia.

8.15 It is significant in this context that many of these crimes were committed in association with ethnically derogatory insults directed specifically at the capacity of the victim to procreate.⁵² The rape and other sexual crimes committed against Croats was often accompanied by references to the fact that the victim had previously given birth to “Ustashes” or of the need to destroy Croatian “seed”. Sexual mutilation, castration and other sexually-oriented violence was often accompanied by measures taken to ensure that the victim would be unable to procreate in the future.

The Mental Element: Genocidal Intent

8.16 The genocidal intent behind these actions is evidenced by a series of related factors. Each of these may be sufficient to demonstrate genocidal intent; collectively they provide overwhelming evidence of the intent required by Article II. The factors include:

castrations of three Croat men at Tovarnik); 4.130 (I.F., describing beatings about the genitals perpetrated on five Croat men in Lovas); Chapter 5, para. 5.27 (S.K., describing castration taking place in Kusunje).

⁴⁹ See, e.g. Chapter 4, paras. 4.25 (M.M., describing indecent assault in Tenja); 4.45 (P.B., describing forced oral sex); 4.101 (“Mass Killing and Genocide in Croatia, 1991/2”, pp. 107-8, describing forced mutual masturbation and homosexual intercourse between Croat prisoners in Tovarnik); 4.110 (R.G., describing “sexual advantage” being taken of an elderly woman); 4.111 (S.L., describing forced mutual masturbation by Croat men); 4.129 (A.M., describing both rape and other forms of sexual abuse in Lovas); 4.185 (M.M., describing both rape and other sexual abuse in the Velepromet camp); Chapter 5, paras. 5.146 (M.G.); 5.212 (M.D., describing indecent assault in Razvode); 5.175 (P.Đ., a priest, describing how Serb police commander pushed a stick into his rectum during torture in prison at Titova Korenica); 5.225 (A.Š., describing indecent assault on Croat woman in Lisičić).

⁵⁰ See Chapter 7, para. 7.66.

⁵¹ See Chapter 7, para. 7.67.

⁵² See e.g. Chapter 4, paras. 4.45 (P.B., describing how she was brutally raped by 7 men after they had shouted at her in the street “We will exterminate their seed. There is no place for their bones”); 4.111 (S.L., describing forced mutual masturbation, where the JNA reservists committing the crimes “were screaming that they would destroy Croatian semen”).

1. the political doctrine of Serbian expansionism which created the climate for genocidal policies aimed at destroying the Croatian population living in areas earmarked to become part of “Greater Serbia”;⁵³
2. the statements of public officials, including systematic incitement on the part of State-controlled media;⁵⁴
3. the fact that the pattern of attacks on the Croat civilian population far exceeded any legitimate military objectives necessary to secure control of the regions concerned;⁵⁵
4. contemporaneous videotaped evidence of the genocidal intent of those carrying out the attacks;⁵⁶
5. the close co-operation between the JNA and the Serbian paramilitary groups responsible for some of the worst atrocities, implying close planning and logistical support;⁵⁷

⁵³ See Chapter 2, paras. 2.43-2.50 (SANU Memorandum); 2.72-2.76; 2.77-2.80 (“amputation” of Croatia). The impact of this philosophy on the acts which occurred is apparent from the language used by the advancing forces. One witness in Tovarnik describes how her husband, a non-combatant, was taken by JNA officers to the concentration camp at Begejci. After he had been taken, other officers said to her that their mission was “to kill and destroy everything Croatian” and that they would “push us Croats into the Adriatic sea” (Chapter 4, para. 4.95, J.V.). The local Serb commander in Tovarnik, R.M., was quoted as saying “If this is to be Serbia, no Croats will remain” in justification of a policy of mass expulsion (see Chapter 4, 4.105).

⁵⁴ See Chapter 2, paras. 2.56-2.59; Appendices, vol 5, appendix 2 (Video Transcript); appendix 3 (Hate Speech).

⁵⁵ See e.g. the attacks on Vukovar, Chapter 4, paras. 4.158 *et seq.*

⁵⁶ See video of the notorious paramilitary leader Arkan, *supra.* note 23. For details of the attack on Vukovar, see Chapter 4, paras. 4.139-4.190. For Arkan’s role, see Chapter 4, para. 4.143 (Professor Mark Wheeler cited in *Agence France Presse*, 20 January 1998).

⁵⁷ It is clear from the whole of the evidence that the JNA planned and carried out attacks in conjunction with the Serbian paramilitary units operating in these regions. The JNA provided the paramilitary groups with the weaponry and logistical support necessary to carry out their attacks. See e.g. Chapter 4, paras. 4.29 (JNA blockaded roads while paramilitaries committed massacre in the farm village “Orlovnjak”); 4.48 (M.K. – paramilitary attacks on Bogdanovci taking place with JNA weapons); 4.108 (JNA rocket and air attack on Sotin); Chapter 5, paras. 5.49; (R.M. – JNA vehicle used to dig mass grave in context of massacre at Donji Čaglič); 5.85 (N.Š. – JNA assisting with blockade of Joševica); 5.129 (Đ.T. – Serbian paramilitaries trained at JNA bases in Pančevo and Knin); 5.232 (“A Chronological narrative of the events at the dam from the occupation until the mining” – JNA attempting to destroy dam at Peruča to flood Croatian villages). The JNA role was often more direct than this, either leading attacks on villages itself, or supervising the worst atrocities of the Serbian paramilitaries. For examples of this see Chapter 4, paras. 4.40 (Berak); 4.53 (Bogdanovci); 4.66 (Ilok, where Croats who refused to leave during forced exodus of 17 October 1991 were killed by paramilitaries under the control of a

6. the systematic nature and the sheer scale of the attacks on Croatian civilians;⁵⁸
7. the fact that ethnic Croats were consistently singled out for attack⁵⁹ whilst local Serbs were excluded;⁶⁰
8. the fact that during the occupation, ethnic Croats were required to identify themselves and their property as such by

JNA Colonel, Lieutenant-Colonel and Commander); 4.74 (Tompojevci); 4.84 (Bapska); 4.95 (Tovarnik); 4.125 (Lovas, where the minefield massacre was carried out by the JNA in cooperation with paramilitaries); 4.139 (Vukovar); Chapter 5, paras. 5.15-7 (Pakrac); 5.58 (Doljani); 5.70 (Banovina); 5.82 (Novo Selo Glinsko); 5.90 (Gornje Jame); 5.94 (Petrinja); 5.100 (Glinska Poljana); 5.111 (Hrvatska Kostajnica); 5.118 (Kostajnički Majur); 5.122 (Hrvatska Dubica); 5.150 (Saborsko); 5.174 (Vaganac); 5.177 (Poljanak); 5.207 (Puljane); 5.227 (Škabrnja).

⁵⁸ The campaigns in Croatia demonstrated the use of killings for several different purposes. One of the most extreme and premeditated examples of mass killing in Eastern Slavonia occurred in Lovas, in October 1991, when 50 Croatian men were forced to walk across a minefield. 21 people were killed and a further 12 were injured when the first mine to explode set off a chain reaction. Many of the injured were subsequently shot dead in cold blood. See Chapter 4, para. 125 (S.P., Z.T., L.S., P.V.). Probably the largest single mass killing in Eastern Slavonia was the execution of patients and civilians taken from Vukovar hospital, detailed at Chapter 4, paras. 4.174-4.178. Other examples of systematic brutality included the tactics used when entering villages, notably the use of “human shields,” detailed in Chapter 4, paras. 4.85; 4.110 (S.L.); Chapter 5, paras. 5.43 (S.B.); 5.100 (I.D.); 5.103 (A.K.); 5.229 (Major B.R.). Another standard technique was to throw grenades into the basements of Croat properties where it was known that civilians were sheltering. For examples of this, see Chapter 4, paras. 4.49 (M.B., describing events in Bogdanovci); 4.121-2 (M.M., describing events in Lovas); 4.158 (M.M., describing events in Mitnica, a suburb of Vukovar); 4.165 (V.O., describing events in Central Vukovar). For other examples of killings, see above, para. 8.13, note [43].

⁵⁹ See e.g. Chapter 4, paras. 4.24; 4.52 (Đ.B., describing how JNA and Serbian paramilitary units tested the pipes of Croatian homes to feel if they were hot, before issuing orders for the Croat civilians to leave their houses and killing any who did); 4.77 (V.V.); 4.123 (P.V., describing how the commander of the Serbian paramilitaries in Lovas ordered all Croatian male local residents between the ages of 15 and 65 to gather to be assigned forced labour); 4.155 (A.S., describing Vukovar, and how a Serbo-Chetnik group sent a Serb acquaintance to her with a list of Croats to be killed, with her name on it); 4.161 (D.K., describing how persons in Borovo Naselje were categorised as Croatian soldiers on the basis that they were capable of carrying a gun); also Chapter 5, paras. 5.29 (V.S. describing how he was forced under threat of death to list Croats in Voćin by street number); 5.48 (N.M.); 5.64; 5.92 (where the Commander of the “Krajina Police Special Unit” recorded that he noticed no ‘Ustasha formations’ in his assigned area but continued operations nonetheless); 5.210 (I.H.); 5.216 (J.B.).

⁶⁰ There is a consistent body of evidence attesting to the fact that local Serbs would point out which houses belonged to Croats and which to Serbs, so as to ensure that only Croat property was destroyed. See, for example, Chapter 4, para. 4.110 (P.H.); 4.119 (S.P.); 4.121 (I.S.).

wearing white ribbons tied around their arms and by affixing white cloths to their homes;⁶¹

9. the number of Croats killed and missing as a proportion of the local population;⁶²
10. the nature and extent of the injuries inflicted,⁶³ including injuries with recognisably ethnic characteristics;⁶⁴
11. the use of ethnically derogatory language in the course of acts of killing, torture and rape;⁶⁵
12. the forced displacement of the Croat population and the organised means adopted to that end;⁶⁶

⁶¹ For examples of this practise see Chapter 4, para. 4.60 (Šarengrad); para. 4.87 (Bapska); para. 4.114 (Sotin).

⁶² 10,572 persons were killed, and 1419 are still missing.

⁶³ See above, para. 8.13 and note [44].

⁶⁴ See Chapter 4, para. 4.68 (B.K., describing how he had the Serbian “Four C’s” symbol carved onto his forehead in Ilok); 4.157 (M.D., describing how Croats were crucified in Vukovar); 5.33 (Dr. Jerry Blaskovich, describing how a 23 year old Croat man was suspended by handcuffs from a tree in front of the Catholic Church in Voćin, before Serbian soldiers slashed his face with an electric saw before cutting off his lower limbs while he was still alive; his body was then set on fire with gasoline). The infliction of ethnically specific injuries extended to post-mortem mutilation, such as the desecration of a pregnant woman’s body in Central Vukovar (described by L.D. in Chapter 4, para. 4.166). The foetus had been removed and replaced with a dog with the sign “This is what Croatian mothers give birth to.”

⁶⁵ See Chapter 4, para. 4.45 (P.B., describing how she was raped while being taunted with “Fuck your Ustasha mother, where is the gold your son stole?”); 4.54 (Đ.B., describing how grenades were thrown into basements to the shouts of “Ustasha”); 4.91 (F.K., describing how during the course of a serious beating of his genitals, his torturers cursed him with “Fuck your Ustasha mother..., you won’t make any more little Croats”); 4.101 (M.D., describing how he was beaten while being forced to shout “Serbia all the way to Tokyo”); 4.163 (J.Z., describing how she was forced to walk barefoot across broken glass while being taunted about her Ustasha mother); 4.183 (A.H., describing savage beatings in the Velpromet warehouse while being called Ustasha); also Chapter 5, paras. 5.48 (N.M., describing how he and his fellow Serbs told captured Croat soldiers that they really were true Ustashes before killing them).

⁶⁶ See e.g. Chapter 4, paras. 4.30; 4.31; 4.37 (E.M.); 4.46 (A.P., describing how, in the course of expulsion, Croats were forced to walk through a minefield); 4.47; 4.61 (A.G.); 4.65; 4.80; 4.93; 4.105 (Đ.M., describing how the Serbs had a plan that only 5% of the Croat population could remain in Tovarnik); 4.107; 4.132 (D.J., describing how expulsions formed part of a plan to ensure that only 8% of the Croatian population could remain in the village of Lovas); 4.133; Chapter 5, paras. 5.14 (M.M.); 5.49 (photographic documentation); 5.79 (N.Š.); 5.92 (J.F.); 5.93 (Specification of the Banished, Killed and Missing Persons); 5.106; 5.121 (M.M.); 5.140 (R.M.); 5.141; 5.146; 5.148; 5.174 (J.J.); 5.181 (I.M.); 5.196

13. the systematic looting and destruction of Croatian cultural and religious monuments;⁶⁷
14. the suppression of Croatian culture and religious practices among the remaining population;⁶⁸
15. the consequent, permanent and evidently intended demographic changes in the regions concerned;⁶⁹ and
16. the failure to punish genocidal acts (addressed below).

While individual acts committed in the course of the campaign might — considered in isolation — have been explained as “common crimes” or as “excesses” committed in the course of a conflict, all of these factors taken

(S.I.); 5.202; 5.203; 5.204; 5.205 (photographic documentation of Rupe); 5.205; 5.210 (M.M.); 5.211; 5.212; 5.213; 5.214; 5.215; 5.216 (A.Ć.); 5.221; 5.222; 5.223; 5.225. The line between organised expulsion (a particular feature of the Serb campaign in Eastern Slavonia) and forcing Croats to flee out of fear for their lives is a thin one. A good example where the latter shades into the former can be seen at Chapter 5, para. 5.183-5.185, describing the situation in Lovinac in Lika, where attacks over a period of months forced Croats to flee even before the JNA and paramilitaries occupied the village.

⁶⁷ For references to destruction of cultural or religious monuments, see e.g. Chapter 4, paras. 4.36 (“Diocese Đakovo and Srijem War Damages”); 4.48 (A.T.); 4.55 (Đ.B.); 4.57 (“The Wounded Church in Croatia, the Destruction of the Sacral Objects in Croatia, 1991-1995”); 4.70 (M.V.); 4.83 4.92 (“Wounded Church”); 4.96 (“Wounded Church”); 4.104; 4.108 (B.M.); 4.120 (S.P.); 4.134; 4.150 (“Mass Killing and Genocide in Croatia 1991/2,” describing destruction in Vukovar); Chapter 5, paras. 5.12 (“Wounded Church”, describing Western Slavonia); 5.29 (A.V.); 5.35 (J.T.); 5.43; 5.76 (“Wounded Church”, describing Banovina); 5.87 (I.M.); 5.93; 5.105 (J.S.); 5.108 (J.S.); 5.113 (J.J.); 5.135 (“Damages to Cultural Monuments on Croatian Territory”, describing Kordun and Lika); 5.155 (M.L.); 5.186 (I.S.); 5.200 (“Wounded Church”); 5.201 (“Wounded Church,” describing Dalmatia); 5.212 (“Register of War Damages on Museums and Galleries, describing the destruction of the mausoleum of the famous Croatian sculptor Ivan Meštrović in Otavice); 5.219 (“Wounded Church”); 5.223 (M.B.); 5.225 (“Wounded Church”); 5.236 (description of Dubrovnik).

⁶⁸ The attack on Croatian cultural practice was widespread. For examples, see Chapter 4, paras. 4.60 (B.Ž., describing how Croatian children in Šarengrad were forced to attend Serbian school and be educated in the ‘Greater Serbia’ programme); 4.77 (M.L., describing the forced use of Cyrillic in Tompojevci); 4.98 (M.D., describing Tovarnik – “Everything was written in Cyrillic script. They changed everything to the Cyrillic script on the second or third day... [they wrote on the walls ‘Serbia all over to Tokyo’]”); 4.128 (V.R., describing how Croatian children in Lovas were forced to read and write in Cyrillic); also Chapter 5, paras. 5.152 (M.M., describing the use of Cyrillic signs in Saborsko); 5.181 (M.B., describing how Croat children were prevented from going to school in Smoljanac). As for religious practices, A.Š. described how the Croat population of Voćin was banned from practising their religion in the Catholic Church there, or from burying their dead in the graveyard (Chapter 5, para. 5.35).

⁶⁹ See above, para. 8.8.

together point to the inevitable conclusion that there was a systematic policy of targeting Croats with a view to their elimination from the regions concerned. This establishes quite clearly the required element of a specific intent to destroy a protected group in whole or in part.

8.17 It does not matter for present purposes whether the protected group is taken to be the national group of all Croats, or the ethnical group of the Croats living in specifically targeted areas. In either event, members of the group were targeted as such, and the numbers killed or otherwise affected were on any view “substantial” or “significant”.⁷⁰ Accordingly the requirement of an intent to destroy a group “in whole or in part” is met in the present case.

(2) THE CRIMES OF CONSPIRACY, INCITEMENT, ATTEMPT AND COMPLICITY (ARTICLE III)

8.18 In addition or in the alternative, the related crimes of conspiracy to commit genocide, direct and public incitement to genocide, attempt to commit genocide, and complicity in genocide were committed by senior officials of the FRY and Serbian leadership, by officers of the JNA and the VJ and by leaders of Serb and Serbian paramilitary groups under their direction and control. All these acts are in breach of Article III of the Genocide Convention, and the responsibility of the FRY is attracted in respect of these acts on precisely the same basis as it is attracted in respect of the completed acts of genocide.

Conspiracy (Article III(b))

8.19 A conspiracy within the meaning of Article III (b) consists in an agreement between two or more persons to commit a genocidal act with the requisite specific intent.⁷¹ It is not necessary, in this regard, that the acts which contribute to the conspiracy should themselves constitute genocide.⁷²

8.20 In the present case genocide was actually committed against the Croatian populations identified in Chapters 4 and 5. The clear pattern of mass killing, rape and torture of Croats described in these Chapters, and summarised above,⁷³ cannot be regarded as simply an accumulation of individual genocidal acts. The systematic and co-ordinated nature of these

⁷⁰ See Chapter 7, paras. 7.48, 7.49, 7.50 for formulations of the threshold test.

⁷¹ Chapter 7, paras. 7.77-7.79.

⁷² *Prosecutor v. Musema*, Judgment and Sentence, 27 January 2000, Chapter 7, para. 7.78.

⁷³ See above, paras. 8.2-8.16.

crimes was achieved — and could only have been achieved — through the adoption of a policy on the part of the FRY and Serbian leadership, the JNA and paramilitary commanders of committing, or deliberately authorizing and facilitating the commission of, the crimes concerned. The events formed an integral part of the Serbian military campaign in the regions concerned, and had the clear object of ethnically cleansing those regions through genocidal means. That object is reflected not only in the systematic nature of the acts but also in the failure of the FRY to punish individuals responsible for them, in the public speeches of leading Serbian politicians such as Šešelj and Paroški,⁷⁴ and in the honours bestowed upon members of the JNA involved in the acts.⁷⁵

8.21 These and other acts reflect the high degree of co-ordination and agreement within the ranks of the Serbian leadership, the JNA and the paramilitary groups. This is sufficient to establish the existence of a conspiracy to commit genocide. Participants in such a conspiracy include individual members of the Serbian leadership, officers of the JNA and leaders of the paramilitary groups who directed the commission of genocidal acts or who may even have committed the acts themselves. Participation in the conspiracy extends also to individuals who did not themselves personally commit or direct the commission of the acts in question but who nevertheless participated in the overall planning of the genocide.

Direct and Public Incitement (Article III (c))

8.22 As described in Chapter 7, incitement is a form of complicity which plays an important part in the planning of genocide.⁷⁶ Incitement may occur in written or in spoken form. In this case incitement was reflected in documents which specifically provoked criminal acts, including newspaper articles, and in public speeches of leading politicians. It is also reflected in the orders of Serb paramilitary leaders.

8.23 From 1988 onwards an increasing and large number of articles appeared in the Serbian press inciting hatred towards non-Serbs.⁷⁷ The newspaper *Politika* and the weekly magazines *Intervju* and *Duga* were used by the Serbian leadership to create a climate of fear and hatred which

⁷⁴ See Chapter 2, para. 2.76 (Šešelj); para. 2.56 (Paroški).

⁷⁵ See Chapter 3, para. 3.41; see photographs Annexes, vol 3, 10.9 and 10.10 (Medal award ceremony for senior officers of the JNA for their engagement in Vukovar, Belgrade, 21 November 1991).

⁷⁶ Chapter 7, paras. 7.80-7.83.

⁷⁷ Chapter 2, paras. 2.63-2.66 and accompanying notes.

would incite the physical destruction of Croats and other non-Serbs in areas which had been occupied. Numerous examples of newspaper articles and the television media are given in the Appendix on Hate Speech.⁷⁸

8.24 Throughout Serbia – but in particular in Belgrade – hate speech was tolerated and became an acceptable and even desirable form of public communication.⁷⁹ One example of a public speech given by a leading politician which was intended to – and did – provoke genocidal acts is the speech given in April 1991 by Milan Paroški, a member of the Serbian Parliament, in which he publicly declared (in the presence of a Minister that anyone who claimed Serbian lands as theirs was “a usurper, and you have the right to kill him like a dog”.⁸⁰ And on 2nd December 1991 the Serbian newspaper *Vreme* reported:

“The President of the SNO in an interview stated calmly: ‘I am for genocide against the Croats!’ Can anyone go further than this?”⁸¹

8.25 For a clear example of an order given by a Serb paramilitary leader which incited the wholesale destruction of individuals on grounds of ethnicity, one need look no further than the order given by Arkan in preparing to launch an attack on the outskirts of Vukovar:

“...[We] must launch a blitz attack to secure their passage. [...] Scouts told us that Serbs are in the cellars and Ustashas are on the first floor. This makes our task more difficult, it’s not a typical mop up, we can’t just throw bombs into cellars. If we do that, we will kill our own people. We must be careful not to kill our own, our Serbian brothers! All team leaders, when you enter the houses to mop them up, use rocket launchers to neutralize the first floor! The cellars must remain intact!”⁸²

8.26 Each of these acts is “direct” within the meaning of the Convention, taking into account the persons to whom it was addressed, its cultural and linguistic content, and the overall context.⁸³

⁷⁸ Appendices, vol 5, appendix 3 (“Hate Speech: The Stimulation of Serbian Discontent and Eventual Incitement to Commit Genocide”).

⁷⁹ *Ibid.*

⁸⁰ Chapter 2, para. 2.63; see photograph Annexes, vol 3, 10.2. For other examples see Chapter 2, para. 2.64 and accompanying notes.

⁸¹ SNO is extreme nationalistic party of the Serbian National Renewal. See Appendices, vol 5, appendix 3, at para. 50 and accompanying note.

⁸² *Supra*, note 23.

⁸³ See *Prosecutor v. Akayesu*, Chapter 7, para. 7.83.

Attempt (Article III (d))

8.27 It is the primary contention of the Government of Croatia that the acts set out at paragraphs 8.2-8.16 above involve the complete commission of the crime of genocide within the meaning of the Genocide Convention. Genocide was committed in certain parts of Croatia which formed part of the planned “Greater Serbia”. In other parts of Croatia, for example as regards the conduct relating to Dubrovnik,⁸⁴ genocide was attempted but not completed. In these parts of Croatia the conduct constituted part of the overall plan to establish a “Greater Serbia”. It involved “substantial” or “significant” steps towards the commission of genocidal acts, which are necessary to establish an attempt to commit genocide.⁸⁵

Complicity (Article III (e))

8.28 Complicity involves the planning, preparation or ordering of genocide, or otherwise aiding and abetting in the planning, preparation or execution of genocide.⁸⁶ The existence of the crime of complicity is premised on the recognition that, while genocidal acts may only have been perpetrated by certain persons, others will have participated and contributed less directly but in such a way as significantly to further the commission of the act.⁸⁷

8.29 Practice under the Convention (as well as under other international instruments providing for the crime of complicity) recognises that complicity can take two forms. These are (1) “aiding and abetting”, and (2) “common purpose” complicity, where the act is outside a common design but is a natural and foreseeable consequence of the effecting of a common purpose.⁸⁸

8.30 This Memorial identifies a large number of acts amounting to complicity (in the two forms in which it is recognised) carried out by political and military leaders as well as other persons for whom the FRY is responsible. These acts include, but are not limited to, assistance in:

⁸⁴ See Chapter 5, paras. 5.235-5.236.

⁸⁵ See Chapter 7, para. 7.85.

⁸⁶ See Chapter 7, paras. 7.86-7.96.

⁸⁷ See *Prosecutor v. Tadić*, Opinion and Judgment, 7 May 1997, para. 191.

⁸⁸ See Chapter 7, para. 7.90.

- (1) planning and preparation of genocidal attacks and other acts on individuals, homes, churches, villages and towns;⁸⁹
- (2) identifying Croats and other non-Serbs within particular villages and towns and other areas in order that they could be targeted and subject to genocidal attacks;⁹⁰
- (3) providing weapons and other matériel to Serb and Serbian paramilitary groups knowing and intending that they would be used to commit genocidal acts;⁹¹
- (4) providing information and other forms of support to Serb and Serbian paramilitary groups knowing and intending that they will be relied upon to commit genocidal acts;⁹²
- (5) assisting in the movement of prisoners from their villages to other areas, including to detention camps;⁹³
- (6) assisting in the operation of detention and other camps, including in the FRY;⁹⁴ and
- (7) assisting in covering up the violations of the Convention, in particular by hiding or otherwise disposing of the remains of persons killed in such a way that they would not be found.⁹⁵

8.31 The participation of persons for which the FRY was responsible in these and other acts was direct and it had a substantial effect on the commission of each of the violations of the Convention.⁹⁶ Moreover, it is not necessary that the persons involved in complicity should meet all the requirements of the mental element for the principal offender.⁹⁷ It is sufficient that such persons should be aware that they are participating in the commission of a crime under the Convention, and that they have taken

⁸⁹ See generally the acts taking place in the villages and towns referred to in note 57 above.

⁹⁰ See above, para. 8.16, note 61 and accompanying text.

⁹¹ See Chapter 3, paras. 3.59-3.62 (providing details of support in the form of weapons and matériel, finance, logistics, fuel and other supplies).

⁹² *Ibid.*

⁹³ See Appendices, vol 5, appendix 6.

⁹⁴ See Appendices, vol 5, appendix 6.

⁹⁵ References, Chapters 4 and 5. It is well established that complicity can take place after the crime as well as prior to its commission: see Chapter 7, para. 7.93.

⁹⁶ See Chapter 7, para. 7.92.

⁹⁷ See Chapter 7, para. 7.95.

a conscious decision to so participate by planning, ordering, instigating or otherwise aiding and abetting in the crime.⁹⁸ In the examples referred to in the previous paragraph it is abundantly clear that the persons complicit in the offences were aware that they were participating in the commission of a crime and that they consciously and voluntarily decided to participate.

SECTION TWO: THE CONDUCT IN QUESTION IS ATTRIBUTABLE TO THE FRY

(1) THE APPLICABLE PRINCIPLES OF ATTRIBUTION

8.32 It being established that the conduct identified in Chapters 4 and 5 above involved acts of genocide and related crimes contrary to Articles II and III of the Genocide Convention, it is necessary to establish the responsibility of the Respondent, the FRY, for that conduct. In this context it must be stressed that, as the Court held in the *Bosnia and Herzegovina v. FRY* case, Article IX of the Convention “does not exclude any form of State responsibility”.⁹⁹ It thus includes the responsibility of a state for the conduct of its organs and agents in committing genocide, as well as its responsibility for the omissions of its organs in respect of the obligations specifically imposed on states parties to the Convention, e.g. to prevent and punish genocide.

8.33 Chapter II of the ILC’s Draft Articles on State Responsibility (2000) sets out the legal principles governing attribution.¹⁰⁰ For the most part the relevant Articles have received the approval of governments in their written comments and in oral statements before the Sixth Committee of the United Nations General Assembly. In accordance with these Articles (so far as relevant to the present proceedings), conduct involving a breach of an international obligation is attributable to a state if it involves any one of the following:

- (a) the conduct of any state organ acting in that capacity (draft article 4 (1));
- (b) the conduct of any person or group of persons which is in fact acting on the instructions of, or under the direction or

⁹⁸ See Chapter 7, para. 7.94.

⁹⁹ *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, ICJ Reports 1996, p. 595, para. 32

¹⁰⁰ A/CN.4/L.600, 11 August 2000.

control of, the state in carrying out the conduct (draft article 6);

- (c) the conduct of any movement which succeeds in establishing a new state on certain territory, whether or not it may be described as an “insurrectional movement” and even though the conduct may have taken place before the definitive establishment of the new state (draft article 10);
- (d) conduct which, even if it may not be attributable to the state under one of the foregoing rules, is subsequently acknowledged and adopted by that state as its own (draft article 11).

In applying these principles to the facts of the present case, three preliminary points should be made.

8.34 First, a state is responsible for conduct attributable to it even though that conduct occurs on the territory of some other state or in an area beyond national jurisdiction. As the Court emphasised in the *Namibia Opinion*, “[p]hysical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States”.¹⁰¹

8.35 Secondly, in determining whether conduct is attributable to a state, international law looks to the substance and not the form. Thus, for example, while it is relevant that an entity is classified by national law as an organ of the state this is not decisive; what matters is whether in substance and in fact the organ is acting in that capacity and is integrated into the command system of the state.¹⁰²

8.36 Thirdly, it is irrelevant for this purpose that the conduct may have been performed in excess of authority or contrary to instructions (draft Article 9). As to this point, there is however no evidence whatever that the FRY or any of its senior officials at any time gave instructions to anyone involved not to commit the acts specified in Chapters 4 and 5. Indeed all the indications are to the contrary.¹⁰³

¹⁰¹ *ICJ Reports* 1971 at p. 54 (para. 118).

¹⁰² See, on the relevance of internal law, draft Art. 4 (2).

¹⁰³ *Supra*, paras. 8.22-8.26.

(2) THE SITUATION ON THE TERRITORY OF THE FORMER SFRY: THE TEMPORAL ELEMENT

8.37 As noted in Chapter 6, this Court has already authoritatively established that the Genocide Convention continued to apply throughout the territory of the former SFRY at all material times, and to bind all states on that territory without any temporal gap. In the *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. FRY)*, the Court rejected the FRY's argument that it was not competent to deal with events occurring prior to 29 December 1992 (when Bosnia and Herzegovina became a party to the Convention). The Court said:

“the Genocide Convention – and in particular Article IX – does not contain any clause the object or effect of which is to limit in such manner the scope of its jurisdiction *ratione temporis*, and nor did the Parties themselves make any reservation to that end... The Court thus finds that it has jurisdiction in this case to give effect to the Genocide Convention with regard to the relevant facts which have occurred since the beginning of the conflict... This finding is, moreover, in accordance with the object and purpose of the Convention as defined by the Court in 1951...”¹⁰⁴

8.38 The applicability of the Convention “to the relevant facts which have occurred since the beginning of the conflict” in the former SFRY extends equally to facts occurring on the territory of Croatia. As Judge Shahabuddeen put it in his Separate Opinion, the FRY's objections would have effectively led to the introduction of an “inescapable time-gap in the protection which the Genocide Convention previously afforded to all ‘human groups’ comprised in the former Socialist Federal Republic of Yugoslavia”, which would not be consistent with the “object and purpose of the Convention”.¹⁰⁵ That object and purpose “required parties to observe it in such a way as to avoid the creation of such a break in the protection which it afforded”.¹⁰⁶ In short, the Convention was applicable throughout to the territory of the former SFRY, and to all persons and groups on that territory, without any gap in its coverage *ratione personae* or *ratione temporis*.

¹⁰⁴ *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, ICJ Reports 1996, p. 595, para. 34.

¹⁰⁵ *Ibid.*, p. 635 (separate opinion of Judge Shahabuddeen).

¹⁰⁶ *Ibid.*, pp. 635-6.

8.39 It follows from the principle that there should be no “time-gap in the protection” afforded by the Genocide Convention to all human groups in the former SFRY and its successor States and that the Convention continued to have its full force and effect whilst the SFRY was in the process of dissolution. If there was no “time-gap” in the protection afforded by the Genocide Convention, equally there was also no gap in respect of the governmental authorities responsible for ensuring that the obligations of the Convention were given effect.

8.40 Thus the fact that the FRY only formally proclaimed itself on 27 April 1992 does not mean that acts occurring prior to that date cannot be attributed to it. In reality the proclamation of the FRY formalised a factual situation which had arisen with the dissolution of the SFRY, namely the emergence of FRY (comprising the Republics of Serbia and Montenegro) as a State *in statu nascendi*, under the control of President Milošević and the rest of the Serbian leadership. In the period prior to the proclamation of the FRY the conduct which is the subject of this Memorial was directed by that leadership, which controlled the relevant political apparatus and the military, in the form of the JNA and the Serb paramilitary groups. As described in Chapter 2:

- (a) from mid-1991 the SFRY ceased to operate as a functioning State and was authoritatively recognised as in a “process of dissolution”;¹⁰⁷
- (b) thereafter, and in particular from October 1991, the relevant organs of government and other federal authorities of the SFRY ceased to function as such and became *de facto* organs and authorities of the emerging FRY acting under the direct control of the Serbian leadership, embodied in particular in the President of Serbia but extending also to relevant officials in Ministries of Defence and Interior;¹⁰⁸
- (c) the JNA ceased to be the army of the SFRY and became, initially, a *de facto* organ of the emerging FRY (comprised of the Republics of Serbia and Montenegro) taking instructions directly from, and acting in the service of, the Serbian leadership.¹⁰⁹

8.41 By 25 June 1991 Croatia (and Slovenia) had concluded that the former SFRY was in the process of dissolution, since its organs could no

¹⁰⁷ Chapter 2, paras. 2.105-2.109. See also Opinion No. 1 of the Badinter Commission, Chapter 2, para. 2.120.

¹⁰⁸ Chapter 2, paras. 2.110-2.112.

¹⁰⁹ Chapter 3, paras. 3.33-3.42.

longer function as the organs of the Federal state and as a matter of fact they were no longer so functioning.¹¹⁰ From approximately this time, its constituent Republics as separate legal personalities assumed responsibility for the acts of their organs and agents as well as other functionaries under their direction or control.¹¹¹

8.42 The principle that a state in *statu nascendi* is responsible for conduct carried out by its officials and organs or otherwise under its direction and control is well-established, and is recognised in Article 10 of the ILC's Draft Articles on State Responsibility.¹¹² Thus according to Professor Brownlie:

“the distinction between *status nascendi* and statehood cannot be very readily upheld. States not infrequently first appear as independent belligerent entities under a political authority which may be called and function effectively as a provisional government... [O]nce statehood is firmly established, it is justifiable, both legally and practically, to assume the retroactive validation of the legal order during a period prior to general recognition as a state, when some degree of effective government existed. Leaving questions of state succession on one side, the principle of effectiveness dictates acceptance, for some legal purposes at least, of continuity before and after statehood is firmly established.”¹¹³

8.43 The process of dissolution of the SFRY and the emergence of the constituent Republics which were eventually recognised as new states occurred contemporaneously. Thus as the SFRY dissolved so the Republic of Croatia assumed responsibility for fulfilling the obligations of the Genocide Convention. Similarly, with the dissolution of the SFRY and the takeover during the spring of 1991 of the Federal institutions of the SFRY, including the JNA,¹¹⁴ so FRY (comprising the Republics of Serbia and Montenegro) assumed its responsibilities under the Genocide Convention.

¹¹⁰ Chapter 2, paras. 2.113-2.114.

¹¹¹ See the Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia, 25 June 1991, Annexes, vol 4, annex 9; the Declaration on the Establishment of the Sovereign and Independent Republic of Croatia, 25 June 1991 Annexes, vol 4, annex 8; Decision and Conclusions of the Croatian Parliament, 8 October 1991, Annexes, vol 4, annex 10.

¹¹² See above, para. 8.34, and for the commentary to the equivalent article (art. 15) on first reading see *Yearbook ILC*, 1975, vol. II, pp. 99-106 at paras. 9-14.

¹¹³ I. Brownlie, *Principles of Public International Law* (5th edn, Oxford, Clarendon Press, 1998), pp. 77-78 (footnotes omitted). See further J. Crawford, *The Creation of States in International Law* (1979), ch. 15 with references to earlier case law.

¹¹⁴ *Supra* notes 104 and 105 and accompanying text.

The reality of this process is made clear, for example, by the memoirs of leading Serbian politicians,¹¹⁵ the Constitution of the FRY itself,¹¹⁶ and statements of the new political authorities of the FRY.¹¹⁷ It was characterised by a seamless continuity of policy and practice on the part of the Serbian authorities located in Belgrade.

8.44 Thus the newly emergent states in the former SFRY assumed responsibility, in respect of the conduct of their organs and officials and of others under their direction and control, in the period from spring 1991 to April 1992. There was neither a time-gap in the application of the Convention, nor a lacuna of governmental authority responsible for the application of the Convention. This is consistent with the reality of the situation after mid-1991: by that date the only organised and functioning authorities on the territory of the former SFRY which possessed capacity to assume the responsibilities imposed by the Genocide Convention were the authorities of the six constituent Republics of the former SFRY. The process of dissolution was formally complete when the last successor state organised itself as a new state, but the conflict which accompanied the latter phase of dissolution (the violent phase of dissolution) continued, and so did responsibility for its consequences.

8.45 Moreover, by virtue of its insistence (at the time and until the year 2000) on its constitutional and political continuity with the former SFRY, the FRY explicitly recognised the links between the former SFRY's state administration and officials of the Socialist Republic of Serbia and Socialist Republic of Montenegro. These were the same people, carrying out the same policies, policies which, it has been shown, were genocidal in character. A list of leading political and military figures illustrative of the continuity between 1991 to the present day may be found in Volume 5 at Appendix 8.

(3) THE CONDUCT FOR WHICH THE FRY IS RESPONSIBLE

8.46 In accordance with the principles identified in paragraph 8.33 above, the FRY is accordingly responsible for the conduct of its organs and officials as regards any breaches of the Convention committed by them, or by persons under their direction or control, at any time after May 1991.

¹¹⁵ See e.g. the memoirs of Borisav Jović, Chapter 3, para. 3.40; also Appendices, vol 5, appendix 4.3. Also General Kadijević, Chapter 3, para. 3.32, and Appendices, vol 5, appendix 4.1.

¹¹⁶ See Article 16 of the FRY Constitution, Chapter 2, para. 2.140 (the FRY shall fulfil in good faith the obligations contained in international treaties).

¹¹⁷ On the commitment to the Genocide Convention see Chapter 6, para. 6.09.

Evidently this covers the conduct of the Serbian political leadership, namely President Milošević and others. Something more needs to be said, however, as to the conduct of the armed forces and Serbian paramilitary groups.

Acts of the Armed Forces (JNA/VJ)

8.47 There can be no question but that the JNA – which served as the armed forces of the FRY (and the Republics of Serbia and Montenegro) both before and after it was renamed as the VJ – was at all material times a state organ within the meaning of the ILC’s draft article 4.¹¹⁸ It is clear from the evidence that the JNA acted in Croatia under direct orders of the Serbian leadership in pursuance of Serbian policies.¹¹⁹ And it is well established that an armed force which acts in the territory of another State incurs the responsibility of the State to which the organ belongs, and not (without more) of the “receiving” State, *a fortiori* when the latter state has not consented to its presence or its activities.¹²⁰

8.48 Article 4 also governs the attribution to the FRY of the acts of Serb and Serbian paramilitary groups in Croatia, to the extent that they were in fact treated as part of the armed forces of the FRY. As described in Chapter 3, a number of the paramilitary groups were formally integrated into the JNA as “volunteers”, pursuant to the Order adopted on [13] September 1991.¹²¹

*Acts of Paramilitary Groups over which the JNA
and the Serbian Leadership Exercised Direction and Control*

8.49 Those Serb and Serbian paramilitary groups which were not formally integrated into the JNA as “volunteers” nonetheless acted under the direction and control of the JNA or the Serbian leadership. Draft article 6 of the ILC’s Draft Articles provides for the attribution to the FRY of conduct of persons which are not state organs but whose conduct is in fact

¹¹⁸ See FRY Constitution, Section VIII, in particular Article 135, Chapter 2, para. 2.141.

¹¹⁹ See Chapter 4, paras. 4.12-4.19 (overview of JNA in Eastern Slavonia); Chapter 5, paras. 5.7-5.11 (overview of JNA in Western Slavonia); 5.72-5.75 (overview of JNA in Banovina); 5.130-5.133 (overview of JNA in Kordun and Lika); 5.197-5.199 (overview of JNA in Dalmatia); 5.236 (JNA in Dubrovnik)

¹²⁰ See e.g. *Oppenheim’s International Law* (9th edn, 1992, ed. Jennings & Watts), para. 159.

¹²¹ Chapter 3, paras. 3.63-3.64.

carried out on its instructions or under its direction or control.¹²² It provides that:

“The conduct of a person or group of persons shall be considered an act of the State under international law if the person or group of persons was in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.”

The ILC deliberately chose the word “or” in the phrase “direction or control”. Thus it is sufficient for attribution that the State in question (through its own organs or agents) in fact directed the activity in question, or that the activity occurred under their control, e.g. through their failure properly to exercise that control.

8.50 The principles set forth in draft article 6 establish the basis for the responsibility of the FRY for the genocidal acts of paramilitary groups which could not be considered as organs of the Socialist Republic of Serbia or the FRY but which acted under their direction or control. Moreover article 6 reflects general international law as articulated by the Court in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, when it said:

“For [the conduct of paramilitaries] to give rise to legal responsibility of the United States, it would in principle have to be proved that that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed.”¹²³

8.51 The evidence set forth in this Memorial – including in particular witness statements of persons directly involved¹²⁴ and corroborating

¹²² Draft Article 6 provides: “The conduct of a person or group of persons shall be considered an act of the State under international law if the person or group of persons was in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.”

¹²³ *ICJ Reports* 1986 p. 3 at p. 65 (para. 115). Croatia notes the views of the Appellate Chamber of the ICTY in *Prosecutor v. Tadić* on the test of “effective control” adopted by the ICJ in *Military and Paramilitary Activities in and Against Nicaragua*: see 38 ILM 1518 (1999), at paras. 116-145. For present purposes, and without prejudice to any views it might express subsequently in these proceedings or in relation to any other proceedings, Croatia proceeds on the basis that the ILC’s draft Article 6 is consistent with the standard adopted by the Court in its 1986 Judgment, which standard is met in these proceedings. See also the explanation by Judge Shahabudeen in *Tadić*, *ibid.* (separate opinion).

¹²⁴ See e.g. Chapter 4, paras. 4.71 (interview with Major General Dragoljub Arandelović); 4.97 (testimony of M.P., JNA officer); Chapter 5, para. 5.227 (testimony of N.B., former JNA member).

independent reports¹²⁵ – discloses the direct participation or involvement of the JNA side by side with Serb and Serbian paramilitary groups when the most extreme violence was inflicted. It is clear that the JNA military commanders not only failed to intervene to prevent paramilitary genocidal acts, but actively cooperated with paramilitary groups and provided logistical and direct military support.¹²⁶ In many instances, there is clear evidence that paramilitary organisations were involved in joint planning with the JNA and VJ. In most instances, operations were jointly carried out.¹²⁷

8.52 Even if these acts, amounting to genocide within the meaning of the Convention, had not been committed by agents of the FRY or by persons under its direction or control, it would still be the case that the failure by the FRY to punish any of the acts described in Chapters 4 and 5 of this Memorial would constitute a breach of the Convention.¹²⁸ But in the context and having regard to the organic and factual links between the FRY and the individual perpetrators, this failure takes on added significance. It

¹²⁵ Chapter 2, paras. 2.130-2.126.

¹²⁶ See e.g. Chapter 4, paras. 4.29 (JNA blockaded roads while paramilitaries committed massacre in the farm village “Orlovnjak”); 4.48 (M.K. – paramilitary attacks on Bogdanovci taking place with JNA weapons); 4.108 (JNA rocket and air attack on Sotin); Chapter 5, paras. 5.49; (R.M. – JNA vehicle used to dig mass grave in context of massacre at Donji Čaglić); 5.85 (N.Š. – JNA assisting with blockade of Joševica); 5.129 (Đ.T. – Serbian paramilitaries trained at JNA bases in Pančevo and Knin); 5.233 (“A Chronological narrative of the events at the dam from the occupation until the mining” – JNA attempting to destroy the dam at Peruča to flood Croatian villages).

¹²⁷ See e.g. Chapter 4, paras. 4.29 (cooperation in massacre at village-farm “Orlovnjak” near Tenja); 4.40 (cooperation in Berak); 4.53 (cooperation in Bogdanovci); 4.66 (F. D., describing JNA cooperation with Serbian paramilitaries in Ilok); 4.74 (cooperation in Tompojevci); 4.84 (cooperation in Bapska); 4.95 (J.V., describing JNA role in Tovarnik, and how JNA soldiers had been told by Milošević that they were going to the front line and that their task was to kill and destroy everything Croatian, and that they would push the Croats into the Adriatic sea); 4.119 (cooperation in Lovas); 4.139 (cooperation in Vukovar); Chapter 5, paras. 5.15-7 (cooperation in Pakrac); 5.58 (cooperation in Doljani); 5.70 (operation “ŽAOKA,” attack on forces in area of Banovina); 5.82 (cooperation in Novo Selo Glinsko); 5.90 (J.F., describing how murders in Gornje Jame were carried out by a combination of the “Šiltovi” paramilitary group and local people in JNA uniforms); 5.95 (D.C., describing cooperation in Petrinja); 5.100 (I.D., describing cooperation in Glinska Poljana); 5.111 (cooperation in Hrvatska Kostajnica); 5.150 (S.T., describing JNA cooperation with paramilitaries in attack on Saborsko); 5.174 (cooperation Vaganac); 5.177 (M.K. and M.L., describing cooperation in attack on Poljanak); 5.207 (K.S., describing JNA cooperation with paramilitaries in attack on Puljane, and JNA abduction and detention of young Croats); 5.227 (former JNA member N.B., describing how orders for the joint attack on Škabrnja came directly from JNA Headquarters in Benkovac).

¹²⁸ See below, paras. 8.64-8.70.

confirms the intent of the Serbian leadership to destroy in whole or in part the Croat population of Eastern Slavonia and other parts of Croatia occupied by the JNA, Republic of Serbia and the FRY.

Subsequent Adoption and Ratification

8.53 Even if individual genocidal acts may have been committed in circumstances where they were not attributable to the FRY (*quod non*), there is clear evidence that the FRY leadership accepted those acts, “validated” their consequences in terms of its occupation and administration of the affected areas, and thereby adopted or ratified the acts in terms of article 11 of the ILC’s Draft Articles on State Responsibility.¹²⁹ This is reflected, for example, in the honours and decorations bestowed by the Serbian leadership and the JNA (and then the Yugoslav Army) on many of those persons involved in the genocidal campaign, including those involved in the attacks on the Croat and other populations of Vukovar.¹³⁰ A state cannot at the same time honour and congratulate certain of its officials for particular conduct and disavow its responsibility for that conduct.

8.54 The extent of ratification and adoption of the acts of the JNA and the Serb paramilitaries, however, goes further than this. As demonstrated earlier in this Memorial, the genocidal activities of the JNA and the paramilitary bodies were part of a considered plan to rid the areas in question of their Croat populations and to do so on a permanent basis.¹³¹ Any doubt as to the attribution of this plan to the FRY is resolved by the subsequent conduct of the FRY leadership in its establishment, direction and control of the Serb authorities on the territories concerned, and the attempt to integrate those territories into the “administrative, military, educational, transportation and communication systems of the Federal Republic of Yugoslavia (Serbia and Montenegro)”.¹³² In this respect there is a clear analogy between the acts of the FRY and those of the Islamic Republic of Iran in the second stage of the hostage crisis, as considered by the Court in the *Case Concerning Diplomatic and Consular Personnel*. Even if the seizure of the United States personnel may have involved private conduct by the student groups, not attributable to Iran, the conduct

¹²⁹ See above, para. 8.33.

¹³⁰ See Chapter 4, para. 4.143, where General Veljko Kadijević congratulated the forces on their victory in Vukovar, paying tribute to the “officers, soldiers and volunteers,” who participated in the operation.

¹³¹ See above, paras. 8.2-8.17 with references to the documentary evidence.

¹³² An attempt characterised by the UN General Assembly as “illegal, null and void” and which “must cease immediately”: see UN General Assembly Resolution 49/43 (“The situation in the occupied territories of Croatia”), para. 2: Annexes, vol 4, annex 4.

of Iran in accepting and continuing the detention and its consequences amounted to a clear act of ratification. As the Court held:

“The policy... of maintaining the occupation of the Embassy and the detention of its inmates as hostages for the purpose of exerting pressure on the United States Government was complied with by other Iranian authorities and endorsed by them repeatedly in statements made in various contexts. The result of that policy was fundamentally to transform the legal nature of the situation created by the occupation of the Embassy and the detention of its diplomatic and consular staff as hostages. The approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated continuing occupation of the Embassy and detention of the hostages into acts of that State. The militants, authors of the invasion and jailers of the hostages, had now become agents of the Iranian State for whose acts the State itself was internationally responsible.”¹³³

8.55 As noted already, the subsequent conduct of the FRY in endorsing and supporting the situation created by the genocidal activities of the JNA and the paramilitaries is consistent with and supports the conclusion that it was the FRY leadership which ordered those activities in the first place. But even if this had not been so, that subsequent endorsement and support would clearly have amounted to the ratification and adoption of the wrongful conduct in the sense of draft Article 11.

**SECTION THREE:
THE FRY IS RESPONSIBLE FOR FAILURE TO PREVENT AND
PUNISH THE VIOLATIONS OF ARTICLES II AND III OF THE
CONVENTION**

8.56 Independently of any responsibility it may have for genocide committed by its organs, or by persons acting under its direction or control, in accordance with the principles set out in Section 2, the Respondent is also responsible for its failure to prevent genocide, and subsequently for its failure to punish persons within its jurisdiction who are suspected on probable grounds of having committed genocide.

¹³³ *ICJ Reports* 1980 p. 3 at p. 35 (para. 74).

(A) RESPONSIBILITY FOR FAILURE TO PREVENT GENOCIDE
(ARTICLE I)

8.57 Article I imposes a positive obligation on a State Party to the Genocide Convention to take all steps within its power to ensure that those within its jurisdiction, or subject to its control — whether public officials, members of the armed forces, or private individuals — do not commit the crime of genocide.¹³⁴

8.58 The obligation is positive in the sense that a State's responsibility will not be excluded merely by its failure to act, turning a blind eye to genocidal acts. The State will incur responsibility for acts of persons within its jurisdiction or control — other than its own officials, employees or agents for which its responsibility is direct — if they carry out genocidal acts which the State could have prevented. Moreover, the obligation to prevent genocide is “comprehensive and unqualified”.¹³⁵

8.59 The positive nature of the obligation to prevent genocide may be compared with that which has been recognised by the European Court of Human Rights as inherent in Article 2 of the European Convention on Human Rights and Fundamental Freedoms, in connection with the crime of homicide. In that connection, it has been held that where the relevant authorities knew or ought to have known of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, the state will be in violation of Article 2 if those authorities fail to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. A breach will arise where “the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they had or ought to have had knowledge”.¹³⁶ If this is the test applicable to an individual case of homicide, it must apply *a fortiori* to genocide.

8.60 For the reasons already explained, it is the primary submission of the Government of Croatia that the genocidal campaign carried out in Eastern Slavonia, as described in Chapter 4, and in the other parts of Croatia as described in Chapter 5, was the product of a close collaboration between senior officers of the JNA, acting on the authority of the FRY and

¹³⁴ See generally Chapter 7, paras. 7.96-7.99.

¹³⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Further Requests for the Indication of Provisional Measures*, ICJ Reports 1993 p. 325 at 436 (individual opinion of *ad hoc* Judge Lauterpacht).

¹³⁶ *Osman v. United Kingdom* (1998) 29 EHRR 245.

Serbian Governments, Serbian paramilitary groups and local Serb militias. The nature of the collaboration is described in Chapter 3.¹³⁷ There is considerable evidence in the form of direct witness testimony, for example, that the JNA would assist Serb paramilitary groups in blockading certain villages, and then allow the Serb paramilitary groups to carry out atrocities in the villages,¹³⁸ or simply turn a blind eye to paramilitary atrocities.¹³⁹

8.61 A clear example of collaboration between the JNA and Serb paramilitary groups concerns the involvement of Arkan in planning a genocidal offensive on the outskirts of Vukovar, in which he describes how his paramilitary group would “mop up” after the JNA tanks had shelled “the first line of houses”.¹⁴⁰ It is plain that the JNA failed to prevent a genocidal “mop up”, despite the clear notice of the intent of the paramilitaries on this occasion.

8.62 The Serbian leadership, the Republics of Serbia and Montenegro, and the FRY are responsible under Article I of the Genocide Convention for failing to control the JNA (and those with whom it was collaborating) and for failing to prevent the direct participation of the JNA — and the paramilitaries over which the Serbian leadership had “effective control” — in the planning and execution of the genocide which occurred.

8.63 In any event, however, the JNA clearly had the capacity to protect the Croat and other civilian population of those regions, and to prevent the genocidal acts perpetrated by Serb paramilitaries and local Serb militias and leadership. Their military capacity far outweighed that of the paramilitaries and local militias operating in the regions. Without the collaboration of the JNA, the paramilitaries and militias would have been effectively unable to mount any sustained attacks on the Croat population.¹⁴¹ In these circumstances, the FRY is also responsible under

¹³⁷ See Chapter 3, paras. 3.54-3.71.

¹³⁸ See for example the village of Joševica in Banovina, Chapter 5, paras. 5.85-5.86.

¹³⁹ See for example the municipality of Dvor na Uni, Chapter 5, paras. 5.103-5.104; the village of Saborsko, Chapter 5, para. 5.152; the village of Vaganac, Chapter 5, para. 5.175 (the JNA escorted a priest into the village to administer to dead Croats and then failed to prevent Serb paramilitaries from abducting and then torturing him).

¹⁴⁰ Chapter 3, para. 3.57; see also video transcript, Appendices, vol 5, appendix 2.

¹⁴¹ See Chapter 3, paras. 3.60 (evidence as to numerous requests from paramilitary groups for weapons and ammunition from Serbia and the FRY). See Chapter 4., paras. 4.17; 4.32 (Ministry of Defence (MORH), from 10 September 1994); 4.48 (M.K.); 4.57 (*Narodna Armija*, 13 November 1991); 4.64; 4.74; 4.83; 4.95; 4.108; 4.118; 4.134; 4.146 (*United Press International*, 21 November 1991 “Army seeks to justify destruction of Vukovar); 4.149 (*The Guardian*, London, November 1991); 4.159 (M. F.); and Chapter 5, paras. 5.15; 5.70 (D.V.); 5.93-5.95; 5.97 (A.K.); 5.100 (I.D.); 5.103 (D.V.); 5.118; 5.151; 5.155 (M.L., D.P.); 5.157; 5.236 (detailing the attack on Dubrovnik).

Article I of the Genocide Convention for the failure of the JNA to take effective steps, within their capacity, to prevent the acts of genocide committed by paramilitaries and local militias of which they were, or ought to have been, aware.

(B) RESPONSIBILITY FOR FAILURE TO PUNISH GENOCIDE
(ARTICLE I)

8.64 The importance of the obligation to ensure that perpetrators of genocide and related acts shall be punished is reflected in the fact that the requirement is referred to in several provisions of the Convention. In addition to Article I, Article IV states expressly that:

“Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private citizens.”

8.65 Despite Article IV, the FRY has taken no steps to try and punish the perpetrators of any of the genocidal acts described in this Memorial, which occurred systematically in villages and towns across Croatia. The FRY’s failure occurs notwithstanding the fact that most of the perpetrators are known to its authorities, are on its territory and are under its jurisdiction and control. The failure of the FRY to try and punish perpetrators relates equally to the acts of its own officials and military personnel, and to the acts of private persons (members of paramilitary groups) within its jurisdiction or control.

8.66 The FRY’s unwillingness to commit to the punishment of perpetrators is reflected most publicly in the failure to extradite Slobodan Milošević to the ICTY in relation to his indictment for war crimes and crimes against humanity in Kosovo. But the FRY’s failure is not limited to its former head of state or to other high-ranking officials. It applies equally to officers and soldiers of the JNA.

8.67 In relation to JNA officers, amongst the clearest example of the failure to punish is the reaction of the FRY to the activities of Major Veselin Šljivančanin. Not only was Major Šljivančanin not punished for his conduct at Vukovar Hospital in November 1991;¹⁴² he has been twice promoted and is now a Colonel serving as an instructor at the Centre of Advanced Military Schools in Belgrade, where he teaches “tactics”.¹⁴³

¹⁴² See Chapter 4, para. 4.171 *et seq.*

¹⁴³ The FRY has refused to extradite Major (now Colonel) Šljivančanin to the ICTY following his indictment for war crimes and/or crimes against humanity by the ICTY for his conduct at Vukovar Hospital.

Other JNA officers responsible for the JNA's offensive and "liberation" of Vukovar were also decorated rather than punished.¹⁴⁴

8.68 The same pattern has been adopted by the FRY in relation to private persons, including those acting for or on behalf of the FRY, who have perpetrated genocidal acts. There is evidence that the Serbian authorities, including the JNA, detained perpetrators of genocidal massacres and then released them without subjecting them to the relevant prosecuting authorities. In Kusunje, Western Slavonia, for example, on 8 September 1991 Serb paramilitary groups tortured, castrated and killed a number of Croatian soldiers, and then buried them in a mass grave.¹⁴⁵ The JNA apparently detained the perpetrators of this massacre but there is no evidence that they were ever prosecuted or punished for their crimes by the Serb authorities.¹⁴⁶

8.69 Other private persons, such as Arkan¹⁴⁷ and Šešelj,¹⁴⁸ who directed the activities of paramilitary groups, in close collaboration with the JNA, have subsequently served as members of the Parliament of the FRY and, in the case of Šešelj, have even been members of the Cabinet.

8.70 It should be stressed that Articles I and IV of the Convention impose continuing obligations. They continue to be violated with each day that the FRY fails to take steps to punish the perpetrators of the genocidal acts described in this Memorial.

¹⁴⁴ See Chapter 3, para. 3.41; see photographs Annexes, vol 3, 10.9 and 10.10 (Medal award ceremony for senior officers of the JNA for their engagement in Vukovar, Belgrade, 21 November 1991).

¹⁴⁵ Chapter 5, para. 5.27.

¹⁴⁶ *Ibid.*

¹⁴⁷ See Chapter 3, paras. 3.52-3.

¹⁴⁸ See Chapter 3, paras. 3.51 and 3.53.

**SECTION FOUR:
THE OBLIGATIONS OF CESSATION AND REPARATION**

8.71 The Genocide Convention contains no specific provision concerning the consequences of its violation by a party. Neither, however, does it exclude the general legal consequences that flow from the commission of a breach, under the law of state responsibility. In particular, every breach of an international obligation entails the obligation to make full reparation. As the Permanent Court of International Justice put it in the *Chorzów Factory case*:

“the breach of an engagement involves an obligation to make reparation in adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.”¹⁴⁹

To the extent that the FRY is found to be internationally responsible to Croatia for its violations of the Genocide Convention, it must make full reparation for those breaches.

8.72 The guiding principle was laid down by the Permanent Court of International Justice in the *Chorzów Factory (Indemnity)* case, in the following terms:

“The essential principle contained in the actual notion of an illegal act — a principal which seems to be established by international practice and in particular by the decisions of arbitral tribunals — is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed. Restitution in kind, or, if this is not possible payment of a sum corresponding to the value which a restitution in kind would bear; the award if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it — such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”¹⁵⁰

8.73 This rule is now restated in the ILC’s Draft Articles on State Responsibility (2000).¹⁵¹ Draft Article 31 (1) provides:

¹⁴⁹ Jurisdiction, Judgment No. 8, 1927, PCIJ, Series A, No. 9, p. 21.

¹⁵⁰ (1927) PCIJ, Series A, No 17, p. 47.

¹⁵¹ A/CN.4/L.600, 11 August 2000.

“The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”

This is further specified in Draft Article 35, which provides that:

“Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of the present Chapter.”

8.74 As to compensation, Draft Article 37 provides:

“1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”

In relation to satisfaction, Draft Article 38 provides:

“1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.”

The Draft Articles recognise that interest will be payable on principal sums to ensure full reparation.¹⁵² They recognise that reparation for moral damages “reflecting the gravity of the infringement” may be recovered “in cases of gross infringement of the rights of the injured State” (Draft Article 45 (2) (c)).

¹⁵² Draft Article 39 provides:

“1. Interest on any principal sum payable under this Chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.”

8.75 It follows from the application of the general rules of state responsibility, as reflected in the ILC's Draft Articles, that the FRY is liable to provide reparation which will wipe out all the consequences of the illegal acts for which it is responsible. This extends to the material damage to persons and property as well as the non-material or moral damage occasioned to Croatia and its people by the massive violations of the Genocide Convention on its territory.

8.76 In its submissions Croatia has requested the Court to reserve to a subsequent phase of the proceedings the exact amount of the reparations owed by the FRY arising from its international responsibility incurred for its violations of the Genocide Convention. This is an approach which the Court has adopted in previous cases.¹⁵³ At this stage, Croatia merely outlines the various heads under which the principles of reparation fall to be determined.

8.77 As set out in the Submissions, Croatia requests first and foremost that the Court should adjudge and declare that the FRY is responsible for having violated its obligations under the Genocide Convention. Such a judgment from the Court would provide a primary means of satisfaction, representing as it would an authoritative determination by the highest judicial authority of the FRY's responsibility for the genocidal acts and related conduct which occurred in Croatia between 1991 and 1995. Such a declaration would also underscore the primary significance of the Genocide Convention and the significance for each and every one of its parties of the obligations which it imposes. It would affirm the importance of the rule of law and respect for fundamental human rights. A declaration would also assist in the process of setting the historical record straight and thereby contribute towards reconciliation over the longer term.

8.78 Beyond the declaration of responsibility for violations of these obligations, Croatia respectfully requests the Court to adjudge and declare that the FRY is continuing to violate its obligations under the Genocide Convention, in two ways, and that the FRY is required to cease these continuing violations and bring itself into full compliance with the Genocide Convention.¹⁵⁴ First, the FRY has violated and continues to

¹⁵³ See e.g. *Fisheries Jurisdiction* (Federal Republic of Germany v. Iceland), Merits, Judgment, ICJ Reports 1974, p. 204; *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States of America), Merits, Judgment, ICJ Reports 1986, pp. 142-143 and 149.

¹⁵⁴ The importance of the cessation of illegal conduct has been underscored by the International Law Commission:

“Cessation is of far greater relevance within the international legal system – given the structure of inter-state society and the role of States in the making, modification and abrogation of rules – than within the legal systems of national societies. Its

violate its obligation to punish perpetrators of acts proscribed by the Convention. The submissions call on the Court to require the FRY to take steps to punish perpetrators of genocide, including in particular the former President Slobodan Milošević. Second, as described in Chapters 4 and 5 of the Memorial, and as set forth in the Appendix in Volume 6, as a result of Serbia's genocidal campaign, 1,419 Croatian citizens remain missing; in its Submissions Croatia asks the Court to declare the obligation of the FRY to take all steps at its disposal to provide an immediate and full account to Croatia of the whereabouts of each and every one of these missing persons, and to that end to work in cooperation with the authorities in Croatia. Croatia also asks the Court to declare the obligation of the FRY to return cultural property which was stolen during the course of the genocidal campaign.

8.79 These declarations – on the wrongfulness of the FRY's past conduct and on the need for it to modify its present and future conduct to bring itself into compliance with the Genocide Convention – would not exhaust all the means of satisfaction to which Croatia is entitled as a matter of international law. As a consequence of the illegal conduct for which the FRY is responsible, Croatia is entitled to obtain – and the FRY is required to make – full reparation for the damages caused and for the losses suffered. This entails reparation by the FRY for all material and immaterial damages and losses resulting from violation of the Genocide Convention, as envisaged by draft Article 42 of the ILC's Draft Articles on State Responsibility. In particular, the FRY is liable to make reparation for those acts which are connected to the Serbian genocidal campaign which intended to destroy Croats as an ethnic/religious group, including killing, causing serious bodily or mental harm, deliberately inflicting on the group conditions calculated to bring about its physical destruction, and imposing measures intended to prevent births. These acts include, but are not limited to, the acts described in Chapters 4 and 5 of this Memorial, including rape and other sex crimes, deprivation of food and essential medical supplies, deportation and expulsion, imprisonment and other cruel and inhuman treatment in concentration camps, and destruction of cultural and religious property.

8.80 Further, Croatia is entitled to obtain from the FRY restitution in kind for all the damages caused by the genocidal acts in the territory of

function is to put an end to a violation of international law which is in progress and to safeguard the continued validity and effectiveness of the infringed primary rule which may suffer in the long run from the continuation of the violation. The rule on cessation thus protects not only the interest of the injured State or States but also the interests of the international community in the preservation of, and reliance on, the rule of law": Commentary to Article 41 of the ILC's Draft Articles on State Responsibility, *Ybk ILC*, Vol. II, Part Two, 1993, 55.

Croatia for which the FRY is responsible. Restitution in kind would amount to “the re-establishment of the situation that existed before the wrongful act was committed”.¹⁵⁵ Restitution here includes the return of all property and goods stolen in connection with the genocidal acts for which the FRY is responsible.

8.81 Since restitution will not, in this case, re-establish the situation which existed before the genocide, Croatia is further entitled to compensation from the FRY for all the damages suffered as a result of the violations of the Genocide Convention for which the FRY is responsible, where damage is not repaired by restitution in kind. In this regard damage resulting from genocidal acts includes:

- damage to the territory of Croatia and to its property, including cultural property; and
- damage to the cultural and natural heritage of Croatia;
- damage to the economy of Croatia, including *lucrum cessans*, caused by the destruction or damaging of its factors of production, natural resources and population; and
- damage and losses to the citizens of Croatia, including damage to property.

8.82 Compensation is also due for all damage caused to the physical and moral integrity and well-being of the citizens of Croatia. As the International Law Commission has put it, damage:

“embraces both the ‘patrimonial’ loss sustained by private persons, physical or juridical, and the ‘moral’ damage suffered by such persons.”¹⁵⁶

8.83 Finally, it is plain that in a case relating to genocide, where there has been a massive loss of life and untold human misery has been caused, that reparation in the form of restitution in kind and of compensation will never “wipe out all the consequences of the illegal act”, taking into account the moral and legal damage suffered by Croatia. Accordingly, Croatia considers that it is entitled also to claim satisfaction for the moral and legal

¹⁵⁵ *Supra*, para. 8.72.

¹⁵⁶ *YbK ILC*, Vol. II, Part Two, 1993, p. 72.

damage suffered by it as an injured state, in accordance with practise¹⁵⁷ and the views of the International Law Commission.¹⁵⁸

8.84 Croatia reserves its right to revisit these heads, and to provide full details of the reparation due to it from the FRY at a further stage of these proceedings.

¹⁵⁷ See the *I'm Alone case* (Canada v. United States of America), UNRIAA, Vol. III, p. 1609, at 1618; *Re Letelier and Moffitt* the Chile-United States of America International Commission, 88 ILR 727, at 735-6 (11 January 1992), and the Opinion of Professor Vicuna at 743; *Rainbow Warrior, New Zealand v. France*, 74 ILR, 241 at 274.

¹⁵⁸ *Supra*, para. 8.82. In its Commentary, the ILC emphasised that such a remedy was of an exceptional nature as indicated by the phrase "in case of gross infringement of the rights of the injured State" (*Report of the International Law Commission on the work of its forty-fifth session*, p.67, in 1993 YbK of ILC, Part II, p.79) The ILC further explains that such a remedy is

"given to the injured party over and above the actual loss, when the wrong done was aggravated by circumstances of violence, oppression, malice, fraud or wicked conduct on the part of the wrongdoing party" (*ibid.*).

SUBMISSIONS

On the basis of the facts and legal arguments presented in this Memorial, the Applicant, the Republic of Croatia, respectfully requests the International Court of Justice to adjudge and declare:

1. That the Respondent, the Federal Republic of Yugoslavia, is responsible for violations of the Convention of the Prevention and Punishment of the Crime of Genocide:

(a) in that persons for whose conduct it is responsible committed genocide on the territory of the Republic of Croatia, including in particular against members of the Croat national or ethnical group on that territory, by

- killing members of the group;
- causing deliberate bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group,

with the intent to destroy that group in whole or in part, contrary to Article II of the Convention;

(b) in that persons for whose conduct it is responsible conspired to commit the acts of genocide referred to in paragraph (a), were complicit in respect of those acts, attempted to commit further such acts of genocide and incited others to commit such acts, contrary to Article III of the Convention;

(c) in that, aware that the acts of genocide referred to in paragraph (a) were being or would be committed, it failed to take any steps to prevent those acts, contrary to Article I of the Convention;

(d) in that it has failed to bring to trial persons within its jurisdiction who are suspected on probable grounds of involvement in the acts of genocide referred to in paragraph (a), or in the other acts referred to in paragraph (b), and is thus in continuing breach of Articles I and IV of the Convention.

2. That as a consequence of its responsibility for these breaches of the Convention, the Respondent, the Federal Republic of Yugoslavia, is under the following obligations:

- (a) to take immediate and effective steps to submit to trial before the appropriate judicial authority, those citizens or other persons within its jurisdiction who are suspected on probable grounds of having committed acts of genocide as referred to in paragraph (1)(a), or any of the other acts referred to in paragraph (1)(b), in particular Slobodan Milošević, the former President of the Federal Republic of Yugoslavia, and to ensure that those persons, if convicted, are duly punished for their crimes;
- (b) to provide forthwith to the Applicant all information within its possession or control as to the whereabouts of Croatian citizens who are missing as a result of the genocidal acts for which it is responsible, and generally to cooperate with the authorities of the Republic of Croatia to jointly ascertain the whereabouts of the said missing persons or their remains;
- (c) forthwith to return to the Applicant any items of cultural property within its jurisdiction or control which were seized in the course of the genocidal acts for which it is responsible; and
- (d) to make reparation to the Applicant, in its own right and as *parens patriae* for its citizens, for all damage and other loss or harm to person or property or to the economy of Croatia caused by the foregoing violations of international law, in a sum to be determined by the Court in a subsequent phase of the proceedings in this case. The Republic of Croatia reserves the right to introduce to the Court a precise evaluation of the damages caused by the acts for which the Federal Republic of Yugoslavia is held responsible.

The Republic of Croatia reserves the right to supplement or amend these submissions as necessary.

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Agent of the Republic of Croatia

Zagreb, 1 March 2001