

Pursuant to Article 80, para. 3 of the Rules of the Court, within the time-limit fixed by the letter of the Registrar of the Court, dated 10 October 1997, the Federal Republic of Yugoslavia has the honour to submit to the International Court of Justice the following

S T A T E M E N T

1. Introduction

1.1. Within the time-limit fixed by the Order of the Court of 23 July 1996, the Federal Republic Yugoslavia filed the Counter-Memorial, dated 23 July 1997 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), instituted by the Application of the Republic of Bosnia and Herzegovina, dated 20 March 1993. The Counter-Memorial includes a counter-claim.

1.2. A.H.J. van den Biesen, having signed as Deputy Agent of the Republic of Bosnia and Herzegovina by his letter of 28 July 1997, informed the Court that:

The Applicant is of the opinion that the Counter-Claim submitted by the Respondent on 23 July 1997 does not meet the criterion of Article 80, paragraph 1, of the Rules of Court and should therefore not be joined to the original proceedings.

1.3. Acting upon instruction of the Court, the Registrar in its letter of 26 September 1997 invited the Government of the Applicant to specify *in writing ... the legal ground on which this opinion is based.*

1.4. The Applicant responded by its letter of 9 October 1997, expressing its views on the issue.

1.5. This Statement argues that the views and request of the Applicant on the issue are not based on the facts and a proper understanding of Article

80, para 1 of the Rules of Court and, consequently, the Court should dismiss them.

2. Traditional Forensic Civility, in the Practice of the International Court of Justice

2.1. It is the well established custom in the proceedings before the Court that parties to a dispute, and their representatives, should address each other with full respect. Having this in mind, as well as the principles of international law, the Applicant is invited to address the Respondent by using its correct name: the Federal Republic of Yugoslavia. The mentioning of Serbia and Montenegro in brackets should be deleted. The Respondent hopes that the Applicant will meet this request. If not, the Respondent expects the Court to take appropriate action.

3. The claim and counter-claim submitted by the parties respectively

3.1. The last Submissions presented by the Applicant in its Memorial of 15 April 1994 read as follows:

*On the basis of the evidence and legal arguments presented in this Memorial, the Republic of Bosnia and Herzegovina,
Requests the International Court of Justice to adjudge and declare,*

1. That the Federal Republic of Yugoslavia ... directly, or through the use of its surrogates, has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide, by destroying in part, and attempting to destroy in whole, national, ethnical or religious groups within the, but not limited to the, territory of the Republic of Bosnia and Herzegovina, including in particular the Muslim population, by

- killing members of the group;*
- causing deliberate bodily or mental harm to members of the group;*

- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

- imposing measures intended to prevent births within the group.

2. That the Federal Republic of Yugoslavia ... has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by conspiring to commit genocide, by complicity in genocide, by attempting to commit genocide and by incitement to commit genocide;

3. That the Federal Republic of Yugoslavia ... has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by aiding and abetting individuals and groups engaged in acts of genocide;

4. That the Federal Republic of Yugoslavia ... has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by virtue of having failed to prevent and to punish acts of genocide;...
(Memorial, pp. 293- 294)

3.2. The Federal Republic of Yugoslavia has responded by the following submissions presented in its Counter-Memorial of 23 July 1997:

The Federal Republic of Yugoslavia requests the International Court of Justice to adjudge and declare:

1. In view of the fact that no obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide have been violated with regard to Muslims and Croats

- since the acts alleged by the Applicant have not been committed at all, or not to the extent and in the way alleged by the Applicant, or

- if some have been committed, there was absolutely no intention of committing genocide, and/or

- they have not been directed specifically against the members of one ethnic or religious group, i.e. they have not been committed against individuals just because they belong to some ethnic or religious group,

consequently, they cannot be qualified as acts of genocide or other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and/or

2. In view of the fact that the acts alleged by the Applicant in its submissions cannot be attributed to the Federal Republic of Yugoslavia,

- since they have not been committed by the organs of the Federal Republic of Yugoslavia,

- since they have not been committed on the territory of the Federal Republic of Yugoslavia,

- since they have not been committed by the order or under control of the organs of the Federal Republic of Yugoslavia,

- since there is no other grounds based on the rules of international law to consider them as acts of the Federal Republic of Yugoslavia,

therefore the Court rejects all claims of the Applicant, and

3. Bosnia and Herzegovina is responsible for the acts of genocide committed against the Serbs in Bosnia and Herzegovina and for other violations of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

- because it has incited acts of genocide by the "Islamic Declaration", and in particular by the position contained in it that "there can be no peace or coexistence between 'Islamic faith' and 'non-Islamic' social and political institutions",

- because it has incited acts of genocide by the "Novi Vox", paper of the Muslim youth, and in particular by the verses of a "Patriotic Song" which read as follows:

*"Dear mother, I'm going to plant willows,
We'll hang Serbs from them.
Dear mother, I'm going to sharpen knives,
We'll soon fill pits again".*

- because it has incited acts of genocide by the paper "Zmaj od Bosne", and in particular by the sentence in an article published in it that "Each Muslim must name a Serb and take oath to kill him";

- because public calls for the execution of Serbs were broadcast on radio "Hajat" and thereby acts of genocide were incited;

- because the armed forces of Bosnia and Herzegovina, as well as other organs of Bosnia and Herzegovina have committed acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, against the Serbs in Bosnia and Herzegovina, which have been stated in Chapter Seven of the Counter - Memorial;

- because Bosnia and Herzegovina has not prevented the acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, against the Serbs on its territory, which have been stated in Chapter Seven of the Counter-Memorial.

4. Bosnia and Herzegovina has the obligation to punish the persons held responsible for the acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

5. Bosnia and Herzegovina is bound to take necessary measures so that the said acts would not be repeated in the future.

6. *Bosnia and Herzegovina is bound to eliminate all consequences of the violation of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and provide adequate compensation. (Counter-Memorial, pp. 1083 - 1085)*

3.3. The counter-claim appears as items 3, 4, 5 and 6 of the submissions in the Counter-Memorial.

3.4. Accordingly, the Applicant contends that there are breaches of the obligations under the Genocide Convention and that these breaches are attributable to the Respondent. Consequently, according to the Applicant there are crimes of genocide and other acts prohibited by the Genocide Convention committed against the Muslim and non-Serb population and these acts and/or failures to prevent them are attributable to the Respondent.

3.5. On the other hand, the Respondent denies the existence of the alleged breaches. It denies, *inter alia*, the existence of crimes of genocide and other acts prohibited by the Genocide Convention committed against non-Serb population. It denies also that the alleged acts presented by the Applicant, even if they had been committed, can be attributed to the Respondent.

3.6. The Respondent asserts by its counter-claim that there are acts of public and direct incitement to commit genocide against the Serbs, that there are crimes of genocide committed against the Serbs, and that the concerned acts are attributable to the Applicant, and requests the Court to establish the responsibility of Bosnia and Herzegovina.

3.7. The facts on which the counter-claim is based are presented by the Part Two, Chapter VII, of the Counter-Memorial.

3.8. The claim and the counter-claim are based on the same legal ground: the Genocide Convention and general rules of State responsibility.

4. The disputed facts of the claim and counter-claim are the facts of the same tragic conflict, i.e. civil war in Bosnia and Herzegovina, which happened in a single territorial and temporal setting, based on the same historical background and within the framework of the same political development. Due to that reason as well as to the same legal ground of the claim and the counter-claim, all relevant facts which form the basis of claim and counter-claim are interrelated in such a way to make a factual and legal connection relevant to the issue.

4.1. The request of the Respondent submitted to the Court to dismiss the claim of the Applicant is based, *inter alia*, on the facts which are the basis of the counter-claim.

4.2. By its letter of 9 October 1997, the Applicant alleges that there is no connection between the counter-claim i.e. Part Two, Chapter VII of the Counter-Memorial and Part One of the Counter-Memorial.

La deuxième partie du contre-mémoire est parfaitement autonome de la première... (para 3 of the letter of 9 October 1997, p. 4)

4.3. The Applicant said:

... En effet, de l'aveu même de celle-ci, sa 'demande reconventionnelle' n'a aucun rapport avec l'objet de la demande initiale, contrairement à ce qu'exige l'article 80 du Règlement. Elle n'a non plus le moindre rôle à jouer dans l'évaluation du bien-fondé de la demande initiale, et inversement. Le sort judiciaire de l'une ne saurait conditionner ou influencer le sort de l'autre de quelque façon que ce soit. ... (para 3 of the letter of 9 October 1997, p. 6)

4.4. Quite the opposite, there is a direct connection between Part Two of the Counter-Memorial i.e. the counter-claim and Part One of the Counter-Memorial, i.e. the defence of the Respondent. The counter-claim and the subject-matter of the claim are directly connected. The facts on which the counter-claim is based and which are contained in Part Two, Chapter VII of the Counter-Memorial are of crucial importance to

answer the question of attribution to the Respondent of acts alleged by the Applicant. They are also relevant for qualification of the acts alleged by the Applicant as crimes of genocide.

4.5. Consequently, the following assertion of the Applicant is not based on the facts of the Case:

Les faits soumis à l'attention de la Cour par la Yougoslavie, au moyen de sa 'demande reconventionnelle', sont totalement différents de ceux sur lesquels est basée la demande initiale de la Bosnie-Herzégovine. Ceci implique alors que, si les deux demandes étaient jointes dans le même procès devant la Cour, le juge devrait de toute façon vérifier séparément les faits allégués ex edverso et examiner séparément s'ils constituent, au regard de la Convention sur le génocide, des comportements illicites imputables, respectivement, à l'une ou à l'autre Partie. Il va de soi, cependant, que l'étude de chacune des deux séries de faits ne serait d'aucune aide dans l'analyse judiciaire de l'autre série et ne saurait en influencer les résultats de quelque manière que ce soit: la Yougoslavie, d'ailleurs, se garde bien d'alléguer le contraire. (para 3 of the letter of 9 October 1997, pp. 4-5)

5. The facts which are the basis of the counter-claim are relevant for the decision on the claim of the Applicant concerning the attribution of alleged acts to the Respondent.

5.1. A careful reading of the Counter-Memorial will disclose that some identical facts are presented as a basis for denying the allegation of the Applicant which are, according to its view relevant for attribution of alleged acts to the Respondent and as a basis for the counter-claim. It seems necessary to draw attention to the said facts.

5.2. The Applicant has devoted one of the chapters of the Memorial to the context of the acts, including stories about the ideology of Greater Serbia and RAM, believing, probably, that it could be of some relevance for attributability of alleged acts to the Respondent. The said chapter ends with the following conclusion:

these atrocities are the ultimate and inevitable outcome of the Greater Serbian ideals as promoted by the Serbian leadership and their desire to create an ethnically pure Serbian state. (Memorial, para 2.3.9.1, p. 94)

5.3. The Respondent has denied the quoted conclusion. In para 2.1.1.1. of the introduction to Chapter II of the Counter-Memorial, p. 111, the Respondent said:

The Applicant's thesis that a "Greater Serbian" ideology is the cause of everything that has happened in the former Yugoslav Republic of Bosnia-Herzegovina, including the alleged genocide of Muslims, is entirely unfounded. Developments in Bosnia-Herzegovina are the result of internal factors.

5.4. The Respondent has also denied that the Republic of Srpska, its organs and officials, its citizens or any individuals, were agents or surrogates of the Federal Republic of Yugoslavia, i.e. that they had committed the alleged acts under orders of the organs of the Respondent. To negate the assertion of the Applicant concerning the context of the acts and relationship of agency between the Republic of Srpska, its organs, citizens or other individuals, and the FR of Yugoslavia, the Respondent referred to facts which strongly influenced the attitude of the Serb people in Bosnia and Herzegovina.

5.5. The Respondent in fact began the presentation of the said facts with a quotation from the relevant parts of the *Islamic declaration* in para 2.9. of Part One, Chapter II of the Counter-Memorial:

2.9.1.2. ¹ One of the most important concepts presented by A. Izetbegovic in the "Islamic Declaration" is the unity of religion and politics. Proceeding from this concept, Izetbegovic arrives at his "first and most important conclusion". The third paragraph of the "Islamic Declaration", under the heading "Islam is not only a religion", reads:

¹ Number of paragraph appeared in the Counter-Memorial

"The first and the most important of these conclusions is definitely the one about the incompatibility of Islam and non-Islamic systems. There can be no peace or coexistence between the "Islamic faith" and "non-Islamic" social and political institutions. The failure of these institutions to function and the instability of regimes in Muslim countries, manifested in frequent changes and coups d'etat are as a rule the consequence of their a priori opposition to Islam as the fundamental and guiding feeling of the people in these countries. Claiming for itself the right to regulate its own world, Islam clearly rules out any right or possibility of action of any foreign ideology on its turf. Namely, there is no room for the lay principle and the state should be an expression of the moral concepts of religion and supportive of them." (Bold type is ours) (Counter-Memorial, Part One, p. 141)

5.6. The Counter-Memorial (para 2.8.1.2, p. 134) referred to the fact that Mr Izetbegovic was among a few individuals judged and sentenced by Yugoslav courts in 1984 for their illegal activities associated with preparations for the transformation of civil society of Bosnia and Herzegovina into religious Islamic society. It also indicated that the *Islamic declaration* was published and distributed again in 1990 in the eve of the civil war in Bosnia and Herzegovina. These facts are very relevant for deciding on whether the Serb people acted under the orders of the Yugoslav authorities to create an ethnically pure Greater Serbia or spontaneously to protect itself. It is connected with other facts, presented in the Counter-Memorial, in particular with the genocide committed by the Croat-Muslim coalition against the Serbs during the Second World War and with the renewal of the same Croat-Muslim coalition in Bosnia-Herzegovina in 1991.

5.7. Effects of the renewal of the Croat-Muslim coalition to the attitude of the Serbs in Bosnia and Herzegovina cannot be properly understood without knowledge of the following facts presented by the Counter-Memorial:

2.17.1.1. With the Nazi occupation of Yugoslavia early in April 1941 Bosnia and Herzegovina were incorporated by force into the Independent State of Croatia,

a satellite state led by the Croatian fascists - the Ustashi, whose head was Dr. Ante Pavelic. A massive campaign of conversion to Catholicism and of genocide was mounted in that state... In the organized genocide Serbs, Jews and Gypsies, several hundred thousand people were killed...

2.17.1.7. Intensified propaganda was employed throughout the war, especially by religious factors (Muslim and Catholic) to incite to crimes against the Serb people in Bosnia and Herzegovina with a view to carrying out the general strategy of the Independent State of Croatia (NDH) for solving the Serbian question: kill a third, expel a third and convert a third to Catholicism or to Islam. By their cruelty and massive scale, crimes in Bosnia and Herzegovina did not differ from those in Croatia itself, especially in primitive religiously fanatic Muslim communities. Thus for example crimes in Herzegovina, where the Chief ustashi Commissioner was the Muslim Alija Suljak, started as early as 1 June 1941 and soon reached unheard-of proportions. In what are known as the three waves of carnage of the Orthodox population (in June, on the holiday of St. Vitus' day (Vidovdan) and on the holiday of St. Elias's day (Ilindan) in 1941, almost 12,000 men, women and children of Serb nationality were killed, slaughtered and thrown into pits. In the pit near the village of Korito near Gacko alone, 160 Serbs were killed and their property was appropriated by Muslims.

2.17.1.8. At the same time, in several villages near Ljubinje, the Ustashi killed 143 peasants and threw them in a pit in the village of Kapavica, and somewhat later, on 23 June 1941, in the valley of Popovo Polje they captured and killed another 168 persons of Serb nationality and threw them in the pit Rzani do. On 6 August 1941 the Ustashi threw about five hundred women, children and old men who were mostly alive in the pit Golubinka in Surmanci. Horrendous massacres and carnage rapidly spread through Herzegovina. Of 1020 Serb inhabitants of the village of Prebilovci near Capljina, 824 were subjected to the crime of genocide by the Ustashi. The pits Rzani do, Pandurica, Golubinka, Kapavica, Vidovno, Bivolje brdo, Hutovo,

Benina ogradina, and many others were full of massacred Serbs at the time. In the sheds of the military camp at Nevesinje 137 men, women and children were killed in the carnage on St. Vitus' Day and the Ustashi planted potatoes on their graves. In the eastern part of Staro Petrovo Selo near Stara Gradiska, 25 Serbs in the 35 - 40 years age group were killed and this, alongside the adoption of numerous regulations against the Serbs, was one of the reasons why the Serbs began to put up resistance...

2.17.1.9. At that time, the Ustashi killed 526 men, women and children in Capljina and the surrounding villages, of which 283 persons on the execution site near Opuzen. At the same time, 450 Serbs from Mostar were slaughtered, battered to death with clubs or thrown into the Neretva river. The mass scale of these murders is gruesomely attested to by the "request of the Croatian population" from the Neretva river valley to the highest authorities of the Independent State of Croatia (NDH), "not to throw the corpses of killed Serbs into the Neretva and other rivers of Herzegovina because they pollute the water".

2.17.1.10. The most massive carnage in the territory of Bosnia took place in its western regions in August 1941. It is estimated that at the end of June over 20,000 Serbs, among whom a large number of children, were killed in the districts of Bihac, Bosanska Krupa and Cazin alone. About 6,000 people were killed in the area of Sanski Most and another 6,000 in the area of the districts of Prijedor and Bosanski Novi. Only in Bosanska Krupa, on 31 July 1941, the Ustashi killed several hundred Serbs (men, women and children) and the day after, in the general "cleansing" of that district, a further 1,000 persons of Serb nationality.

5.8. The counter-claim presented in Part Two of the Counter-Memorial begin with para 7.0. referring to direct and public incitement to commit genocide. The relevant paragraphs read:

7.0.1.0. The acts of direct and public incitement to commit genocide have been made, inter alia, by 'Islamic

Declaration, newspapers 'Novi Vox' and 'Zmaj od Bosne' (Dragon of Bosnia), as well as by Radio Hajat.

7.0.1.1. By its position that 'there can be no peace or coexistence between 'Islamic faith' and 'non-Islamic' social and political institutions' the 'Islamic Declaration' has incited armed actions and extermination of the Serbian population because they do not profess Islamic religion, i.e. because they belong to other religion... (Counter-Memorial, Part Two, p. 349)

5.9. The same fact, i.e. the quoted part of the *Islamic Declaration* is a basis of counter-claim. Indeed, the Applicant has never withdrawn the text of the *Islamic Declaration* from public distribution, nor has it deleted the quoted part of it. The Applicant has never punished responsible individuals. At the end, the quoted part of the *Islamic Declaration* appears in the text of the Submissions (item 3, p. 1084). It is quite clear that the same fact presented by the Respondent serves as a defence i.e. to dismiss the claim of the Applicant and as a basis for the counter-claim.

5.10. Expounding further on the pressures brought to bear on the Serb people in Bosnia and Herzegovina, the Respondent referred to the magazine *Novi Vox*, a Muslim youth paper, in Chapter II of the Counter-Memorial devoted to the considerations of relevance for attribution of acts to a State:

2.12.1.1. *The harassment of the Serb people in Bosnia-Herzegovina in 1991 with attacks on the SDS leadership on television and radio, and in newspapers and magazines published in Bosnia-Herzegovina. The magazine "Novi Vox", a Muslim youth paper led the attacks...*

2.12.1.2. *In its third issue in October 1991, "Novi Vox" published the following "patriotic" song:*

*"Dear mother, I'm going to plant willows,
We'll hang Serbs from them.
Dear mother, I'm going to sharpen knives,*

*We'll soon fill pits again.
Dear mother, chop some salad,
And invite our Croat brothers.
When our banners unite,
All the Serbs will end in graves."*

During World War Two the slogan "Serbs on Willows" was popular among the Ustashi (Ustashi were fascist armed formations in the Independent State of Croatia during World War Two). Serbs should be hanged from the willows. The reference off pits was also supposed to associate to the suffering of the Serbs in World War Two, since at that time Croat and Muslim fascists threw slaughtered or killed Serbs into deep pits in the rocky fields of B-H).

2.12.1.3. The same issue of "Novi Vox" published obituaries of the most prominent Serb leaders, including Dr Radovan Karadzic, Dr Biljana Plavsic and Dr Nikola Koljevic. There is a picture of cut off heads of Serb leaders on the front page. It was an early incitement to commit genocide... (Counter-Memorial, Part One, p.163)

5.11. In actual fact, such texts would necessarily influence the attitude of any people against which they are directed. It should be borne in mind that the Serb people had suffered genocide at the hands of the Croat-Muslim fascist coalition in the Second World War.

5.12. The same fact is also a basis for the counter-claim of the Respondent. The relevant paragraph of Part Two states as follows:

7.0.1.2. The following verses of the "patriotic" song published in the third issue of "Novi Vox" in October 1991:

*"Dear mother, I'm going to plant willows,
We'll hang Serbs from them.
Dear mother, I'm going to sharpen knives,
We'll soon fill pits again.
Dear mother, chop some salad,
And invite our Croat brothers.*

*When our banners unite,
All the Serbs will end in graves."*

revive a direct and public incitement to commit genocide against Serbs from World War Two. The slogan "Srbe na vrbe" (Hang Serbs on Willows) was used by the Ustasha Movement in Croatia and Bosnia and Herzegovina in the eve and during World War Two as a public call to execution of Serb civilians. This call resulted in a horrible genocide against Serbs in World War Two. Serb civilians were slaughtered and thrown into deep pits in Croatia and Bosnia and Herzegovina. These crimes were committed by the members of the Ustasha Movement consisted by the members of Croatian and Muslim population. The mentioned verses were an incitement to renew genocide against Serbs... (Counter-Memorial, Part Two, p. 349)

5.13. The Applicant has done nothing to prevent the publication of such writings and it did not punish the individuals responsible. On the contrary, the cover-page of one of the issues featured appeared a smiling Alija Izetbegovic reading *Novi Vox*.

5.14. The quoted verses of the Patriotic song appeared also in the Submissions, item 3, p. 1084 of the Counter-Memorial. The conclusion is obvious: The Respondent has invoked the same fact to dismiss the claim of the Applicant, and also to serve as the basis for the counter-claim.

5.15. To negate the assertions of the Applicant concerning the alleged involvement of the Yugoslav People's Army (JNA) in breaches of the Genocide Convention, the Respondent described the position of the said Army in Bosnia and Herzegovina and, in particular the attacks made by Muslim forces against the Army. In Part One, Chapter III, para 3.1.3.18 of the Counter-Memorial it is stated:

3.1.3.18 A mechanized JNA column with officers and soldiers from the garrison of the Second Army District Command was attacked in Sarajevo on 3 May 1992. The evacuation was carried out on the basis of an agreement between Alija Izetbegovic and the JNA. The agreement was reached with the mediation of UNPROFOR and the EC Mission. UNPROFOR participated in the organization of

the evacuation. Despite this, paramilitary formations of the Ministry of the Interior and the Territorial Defence of Bosnia-Herzegovina opened fire in Dobrovoljacka Street around 6.00 p.m. on the column after the vehicle carrying Alija Izetbegovic and Lt.-Gen. Milutin Kukanjac had passed. Although no one in the column had given any motive for the attack, they forced soldiers and officers to get out of the vehicles, stripped them to their underpants, ordered them to lie down on the asphalt with their faces turned to the ground and kicked them, hit them with rifle butts and shot at them as they lay there. On this occasion they killed Colonels Dr Budimir Radulovic, Miro Sokic, Gradimir Petrovic, Bosko Mihajlovic and Lt. Colonel Bosko Jovanovic, soldier Zdravko Tomovic and Suko Normel, a civilian employee of the the JNA. The attackers interrogated some of the officers while they lay on the ground and shot at them with small arms seriously wounding Colonel Ratko Katalin. Members of UNPROFOR and the EC Mission watched what was happening. Colonels Hasan Efendic and Jovan Divjak watched the doings of their troops all along but did not intervene. The paramilitary formations of the Bosnia-Herzegovina Territorial Defence then took about 200 officers and soldiers to the police headquarters where they were mistreated and interrogated by people commanded by Ivica Berovic, in the presence of Goran Milic, TV director. One of the captured soldiers was taken out and murdered in the basement while inspector Ivica Berovic interrogated Colonel Slavoljub Belosevic for 36 hours without interruption, hitting him with truncheons and a pistol on the face, the kidneys and other parts of his body. Groups of civilians were allowed into the prison and spat at, pushed and kicked Colonel Belosevic, causing him to lose consciousness several times. They then took him to another room, turned on a strong light and directed it an his eyes, bringing it to within two to three centimetres from his eyes. They held him in this position for 11 hours without a break, hitting him all over his body. His eyes were swollen up and he could not see at all for several days... (Counter-Memorial, Part One, pp. 255-256)

5.16. The facts of the same event are the basis for the counter-claim and they are set forth in Part Two of the Counter-Memorial:

7.2.6.13. S.B., a former JNA officer, was captured in Dobrovoljacka Street in Sarajevo and taken to the Central Prison. From 3 to 13 May 1992 he was beaten and interrogated for hours every day. His interrogators demanded that he confess to war crimes that he had not committed. They threatened to cut his throat, liquidate his family and so on. On a number of occasions they pulled out his tongue and put a knife to it. He lost consciousness frequently as a result of the physical torture and starvation (he was given food once a day, but it was inedible)...

7.2.6.32. G.M., a former JNA conscript serving his military service in Sarajevo, was captured, disarmed and imprisoned with other soldiers in the Central Prison, which was run by Muslims dressed in green uniforms with blue insignia. For 15 days during May 1992 all the prisoners were beaten around the clock every day. They often heard screams. Paratroopers were particularly badly beaten. Muslim civilians came to this camp and, together with the guards, beat the prisoners, who were handcuffed to radiators, with truncheons and rifles. The witness often saw bodies being taken from the camp, thrown in a lorry and driven off. Four of his ribs were broken and vision in his left eye was reduced by 35%. (Counter-Memorial, Part Two, pp.802, 811)

5.17. In Part One, Chapter III of the Counter-Memorial the Respondent referred to the attack against the Yugoslav People's Army in Tuzla:

3.1.3.21. On 15 May 1992 at 7.00 p.m., in Skojevska Street in Tuzla the last JNA column was attacked as it withdrew from the barracks. In spite of the agreement concluded between Muslim authorities and the JNA on safe withdrawal several dozens of the JNA members were killed in the attack. ... (Counter-Memorial, Part One, p. 257)

5.18. In Part Two, Chapter VII the facts of the same event are invoked as the basis for the counter-claim:

7.1.20.3. On 15 May 1992, in Kozlovac near Tuzla, 140 reserve soldiers of the former JNA, all Serbs, were captured. They were taken to the prison camp at Stari Rudnik near the "Sloboda" FC stadium in Tuzla, where they were put in cellars. They were beaten there every day, and during the 15 days they spent in this camp about 10 soldiers were killed. (Counter-Memorial, Part Two, p. 502)

5.19. In Part One, Chapter II of the Counter-Memorial the Respondent referred to the events happened in Visegrad, a town near the border on the river Drina to reject the allegations of the Applicant concerning the attribution of acts to the Respondent, in the following way:

2.13.3.38 In August 1991 a leaflet was circulated among the Muslims in Visegrad stating: "It is obvious that we can no longer live at peace with the Serbs and that the crisis that we find ourselves in cannot be resolved as long as there is a single Serb living in our Republic. We therefore have to do everything in our power to get rid of them as soon and as efficiently as possible. Before we resort to the last argument - arms, we shall try to employ some subtler methods..." Twenty points followed the statement with recommended action for the Muslims. Inter alia: "Smash their car windows and the windows of their houses"; "Throw garbage on their doorsteps"; "Urinate in their entrance halls"; "Mark their houses or flats"; "Write threatening graffiti on their houses or churches", and similar.

5.20. In Part Two, Chapter VII of the Counter-Memorial, i.e. in the counter-claim, the same facts are, inter alia, invoked as the basis for the counter-claim:

7.3.16.1. ...In August 1991, Muslims in Visegrad circulated a leaflet with 20 instructions as to what should be done to the Serbs in order to expel or destroy them. Among others, there were instructions like these: "Forbid your children to socialise and play with them", "Empty your

*garbage in front of their doors", " Urinate in their gates",
"Mark their houses and flats", "Write threatening graffiti on
their houses and churches", etc.*

5.21. The same facts are invoked by the Respondent, first in Part One of the Counter-Memorial relevant for attribution of acts to a State, and then in Part Two of the Counter-Memorial as the basis for the counter-claim in the following cases: facts of events in Sarajevo in paras 2.13.2.5, 2.13.2.6 and 7.2.6.38.0, 7.2.6.38.1; facts of events in Tuzla in paras 2.13.3.1 and in 7.3.3.2.

5.22. Further, on the question of attribution raised by the Applicant, the Respondent has stated in the general conclusions as follows:

8.11. The reasons for establishing the Republic of Srpska do not lie in the "ideology of a Greater Serbia", or in any plan created in Belgrade, but rather in the objective threats that the Serb people is under and in the religious and ethnic discrimination it is being subjected to in the territory under the Applicant's control. The creation of the Republic of Srpska has been motivated by the historical memory of the Serbs in Bosnia and Herzegovina, especially that of the genocide suffered in World War II, as well as in the political events in Bosnia and Herzegovina in 1990 and later, which culminated in armed attacks and genocide against the Serbs . (Counter-Memorial, p. 1080)

5.23. It is apparent that the Respondent raised the question of genocide of the Serbs as one relevant to contradicting facts presented by the Applicant as being relevant for attributing alleged acts to the Respondent.

5.24. Accordingly, the facts which are the basis of the counter-claim are crucial for a decision on the claim of the Applicant concerning the attribution of alleged acts to the Respondent.

6. The facts in the counter-claim are relevant for qualifying alleged acts presented by the Applicant as a crime of genocide

6.1. The Respondent agrees with the Applicant that a breach of the Genocide Convention cannot serve as an excuse for another breach of the same Convention (para 4 of the letter of 9 October 1997, pp. 6-7), that is that an act of genocide cannot compensate for another act of genocide. (para 5, of the letter of 9 October 1997, p.8) But the two parties are in dispute over existence of a breach of the Genocide Convention, i.e. genocide against the Muslim and Non-Serb population.

6.2. The Applicant asserts that genocidal acts were committed against the Muslim and non-Serb population. For different reasons the Respondent denies the existence of crimes of genocide against the Muslim and non-Serb population. One of the very relevant reasons is the absence of intent to commit genocide.

6.3. A crucial element making the crime of genocide different from other crimes against humanity is precisely the element of intent. The definition of genocide as given in Article II of the Genocide Convention stresses the element of intent:

In the present Convention, genocide means any of the following acts committed with intent to destroy ... a group, as such: ... (emphasis supplied)

6.4. The Applicant has done almost nothing to prove the existence of intent to destroy ... a group, as such. It referred in general terms to the circumstances of the situation, which allegedly indicated that the actors 'intended to destroy, in whole or in part, a national, ethnical, racial or religious group' (Application, para. 31, p. 18). The facts presented by the Part Two, Chapter VII of the Counter-Memorial, which constitute the basis for the counter-claim, i.e. crimes of genocide committed against the Serb people in Bosnia and Herzegovina are part and parcel of the circumstances of the situation.

6.5. Indeed, the first victims in Bosnia and Herzegovina were Serbs. The first victim was a Serb member of a wedding party in the Bascarsija, section of Sarajevo, which took place on 1 March 1992. (Counter-Memorial, para 7.1.9.0., p. 401 and para 2.13.2.10, p. 179).

6.6. In Part One of the Counter-Memorial, to dismiss the claim, the respondent referred to the following facts:

2.13.2.10. On 1 March 1992, when the referendum for the so called "Independent and Sovereign" B-H took place (with the participation of Muslims and Croats only), the first Serb was killed in Sarajevo by the members of the illegal Muslim military formation, the "Green Berets".

On that day, Nikola Gardovic had a wedding party of his son Milan, and when the wedding guests, after the ceremony in the church, started to lunch, they were attacked near the Town Hall by armed Muslims who tried to seize from them the flag that was folded around the pole. One of the assailants fired four shots on R. M., while Ramiz Delalic called "Celo", a pre-war criminal, one of the leaders of the "Green Berets" shot Nikola Gardovic, who died soon afterwards. One of the assailants said to Serbs: "We will kill you all".

Some of the Serbs run after Delalic and other assailants, but a uniformed policeman with an automatic rifle stopped them, instead of taking the necessary measures to arrest those who committed the crime.

Although that event created a great concern of the Serbs in Sarajevo, no assailant was arrested for criminal procedure, while the murderer of Gardovic, Delalic, later on a military commander in the Army of Bosnia and Herzegovina, boasted with that murder in front of the cameras of TV Sarajevo.

The above mentioned circumstances clearly show that it was a premeditated criminal act, with the objective of frightening the Serbs, in the preparation of the forcible, unconstitutional secession of the Bosnia and Herzegovina from the SFRY.

6.7. In Part Two, Chapter VII of the Counter-Memorial, the same facts invoked as a basis for the counter-claim:

7.1.9.0. Sarajevo had many different ethnic communities, but the overwhelming majority of the population were Muslims, Serbs and Croats. Before the outbreak of armed conflicts, ethnic relations were normal and marked by tolerance. The Muslims are to blame for spoiling these relations, because the first victim to fall was a Serb guest at a wedding party in the Bascarsija.

6.8. The first mass crimes had been committed against the Serbs in the village of Sijekovac on 26 March 1992 (Counter-Memorial, para 7.1.12.0, p. 445) as well as in the area of Kupres between 3 and 9 April 1992 (Counter-Memorial, paras 7.1.13.0 to 7.1.13.10, pp. 447-452):

7.1.12.1. On 26 March 1992, in the afternoon hours, the village of Sijekovac, municipality of Brod (Bosanski Brod), in which the majority of the population was of Muslim and Croat nationality and in which there were 50-60 Serb houses, was stormed by a Croat army unit headed by Marko Prkaca. The majority of soldiers were masked with stockings over their faces and because of this the witnesses presume that they were their Croat and Muslim neighbours from Sijekovac. They called on Serbs over a megaphone to surrender their weapons and gave them 10 minutes within which to do so. The whole part of the village in which were Serb houses was encircled and, even before the expiry of the deadline, the soldiers began to enter Serb houses and to drive out the villagers who happened to be there. All this was followed with a lot of shooting. They separated men from women and children and, the following persons were singled out from a group of men and killed from firearms then and there:

- 1. Jovo Zecevic and his three sons*
- 2. Milan Zecevic*
- 3. Vaso Zecevic*
- 4. Petar Zecevic*
- 5. Luka Milosevic and his sons*
- 6. Zeljko Milosevic*
- 7. Dragan Milosevic, who had been previously seized from the hands of his mother*
- 8. Sveto Trifunovic and*
- 9. Marko Radovanovic.*

7.1.13.1. On 4-5 April 1992, in the Vilina Kuca suburb of Kupres, members of Croat-Muslim armed formations tortured and brutally killed the following unarmed Serb civilians:

1. *Vlajko Danilovic, born 1952, who telephoned his Croat friend, Marko Vila to ask for help during attacks by Croat-Muslim forces in the Kupres area. Vila promised that he would save him and invited him to his house. However, Danilovic was shot when he went to Vila's house. There were gunshot wounds in the area of his neck and waist;*

2. *Milan Milicic, born 1965, who was tortured before being killed, as shown by many bruises on his head and in the area of the chest and stomach, cuts made in the chin and stomach area with a blade. He was finally shot in the head;*

3. *Stanko Maric, born 1949; and*

4. *Marko Keranovic, born 1948, who were shot in the back when they tried to escape from settlement in the direction of Plazenica mountain. Both were wearing civilian clothes and were unarmed;*

5. *Rade Knezic, born 1926, who tried to hide when the attack began, but was caught, beaten, tortured and finally shot; and*

6. *Djordje Manojlovic, born 1955, who was also unarmed and tried to hide in the woods, where he was caught and shot.*

These murders were committed by: Safet Pilic, chairman of the Kupres branch of the Muslim Party of Democratic Action; Sulejman Pilic; Sejo Pilic; Ekrem Pilic; Milenko Vila; Marko Vila; Mirko Vila; Mijo Vila; Zoran Vila; Ratko Rebrina; Smail Mandluka; Miroslav Kaminski; Anto Jelic; Zijad Mandzuka; Bozo Zulj; Pero Dumanicic; Josip Zrno; Ibro Horozovic; Ahma Horozovic; Ivica Zulj; Igor Vila; Ruzdi Ramsic; Amir Ramsic; Miroslav Vrgoc;

Manuel Ledic; Dragutin Ledic; Ivo Males; Darko Simic; Drazen Simic; and Ivo Rastegorac. ...

7.1.13.2. During the attacks by Muslim-Croat forces in the territory of Kupres commune on 5-6 April 1992, hitherto respected local Croats and Muslims abused the trust that they had previously enjoyed among their Serb neighbours. In agreement with the commanders of the armed formations, they invited Serb civilians to come with them and promised to take them where there was no fighting. They brought together a large number of Serb civilians in this way and took them to the house of Milenko Vila on Narodnih Heroja Street in the suburb of Vilina Kuca. Milenko Vila was chairman of the Kupres branch of the HDZ.

The Serbs were taken from there and shut in the cellar of the building of the Croat-Muslim army's headquarters, where they were maltreated and tortured. They were beaten with clubs, sticks, electric cables and other implements, causing serious physical injuries and psychological pain. Seven of the imprisoned Serbs were then lined up in front of the cellar wall and executed with shots fired from automatic weapons.

The following Serbs were killed:

- 1. Jova Zubic, born 1950;*
- 2. Dragan Sormaz, born 1952;*
- 3. Vlastimir Jarcevic, born 1956;*
- 4. Nedeljko Karan, born 1949;*
- 5. Vlado Duvnjak, born 1945;*
- 6. Momcilo Sesum, born 1937; and*
- 7. Predrag Baltic, born 1971.*

Three other persons were seriously wounded. Their names are also known.

The dead and wounded Serbs were loaded onto the trailer of a tractor and driven by Pero Dumancic to a hill above the village of Odzak near Kupres, where they were thrown in a pit.

This crime was committed by the same people listed in section 7.1.13.1.

7.1.13.3. Croat-Muslim armed formations attacked Kupres between 3 and 6 April 1992. Units coming from Duvno (Tomislavgrad) and many places in the Republic of Croatia were joined Croats and Muslims from the Kupres area, who armed themselves, donned camouflage uniforms with HOS insignia and placed themselves under the command of the unit that started the attack.

Attacks on the town of Kupres were directed in particular against the suburb of Kratelj, which was mainly inhabited by Serbs. Many Serbs were captured in their homes. A tank shelled Serb houses and important buildings like the police station, the hotel, the bank, the elementary school and the out-patients clinic from close range. A local Croat sat on the tank and showed the gunner which houses and other buildings to fire at.

Nine Serb were killed in this attack on the suburb of Kratelj:

- 1. Vojislav Kanlic, born 1955, was first wounded and was then killed by a burst from an automatic weapons;*
- 2. Milorad Kontic, born 1958;*
- 3. Todor Dragoljevic, born 1958;*
- 4. Spiro Bosnic, born 1954;*
- 5. Trifko Pavlovic, born 1957, and*
- 6. Nedeljko Jarcevic, born 1950, were shot down as they were coming out of the house of Milorad Kontic with their arms raised in surrender;*
- 7. Lazo Kontic, born 1960, was captured and tortured, in the course of which his left ear was cut off, before he was shot dead;*
- 8. Drago Celebic, born 1966; and*
- 9. Stevo Lugonja, born 1966, were taken prisoner and shot in front of the Kamel cafe on the orders of the commander of the Croat-Muslim forces.*

These crimes were committed by: Filipovic, the commander of the unit, whose first name is not known; Ivica Radic; Drago Radic; Zoro Turalija; Borislav Zrno; Jure

Zrno; Barisa Vila; Marko Ivic; Ivica Ravansic; Rasim Jahic; Dragun Dumancic; Ante Perkovic; Ivan Jezidzic; Marko Lovric; Franjo Smoljo; Ljupko Radic; Franjo Mamic; Ivo Zrno; Ivica Zrno; and Mario Zrno.

7.1.13.4. On the morning of 3 April 1992, Croat-Muslim forces from Livno and Sujica attacked the Serb village of Donji Malovan in Kupres commune, shooting unarmed civilians who tried to escape, killing from sniper rifles and other infantry weapons 11 Serb civilians and wounding 3 civilians in this attack, while the others were captured and taken to the camp in Duvno (Tomislavgrad).

Killed were:

1. Darinka Duvnjak (female), born 1933;
2. Svetozar Duvnjak, born 1962;
3. Milos Duvnjak, born 1925;
4. Mitar Duvnjak, born 1940
5. Vlado Duvnjak, born 1907;
6. Milan Duvnjak, born 1936;
7. Mitar Duvnjak, born 1967;
8. Dusan Duvnjak, born 1967;
9. Marinko Duvnjak, born 1922;
10. Niko Kanlic; born 1956; and
11. Zivko Maksimovic, born 1966.

Three other women whose names are known were wounded too, while one of them was old.

These persons were killed and wounded when they tried to escape from the village into the surrounding woods in three trucks. Mitar Duvnjak was first gravely wounded and then shot dead with an automatic rifle from close range.

These killings were committed by Croat-Muslim armed forces from Duvno (Tomislavgrad) and Livno.

7.1.13.5. On 7 April 1992 Croat-Muslim formations attacked the village of Rilic (Kupres commune) populated only by Serbs. The attack was launched from the neighbouring village of Kukavice, which was inhabited by

Croats and Muslims. The following unarmed Serb civilians were killed as they tried to escape from the house of Sava Rudic, where they had been hiding:

- 1. Niko Males, born 1931;*
- 2. Dusan Soro, born 1934; and*
- 3. Borislav Rudic, born 1941.*

Dusan Soro and Borislav Rudic were shot dead by infantry weapons, and Niko Males was killed in a savage manner and decapitated and his head was discovered lying near the body.

This crime was committed by Croat-Muslim armed formations.

7.1.13.6. In Begovo Selo in Kupres commune, populated by inhabitants of various nationalities, on 7 April 1992, Josip Turajlija shot the unarmed Serb villager:

- 1. Sima Spremo, born 1929.*

The victim and his family were the only Serb civilians left in the village after the breaking out of armed conflicts.

Josip Turalija, a Croat from the same village who knew his neighbour, came armed and dressed in a Croatian Army uniform with a unit led by Drago Turalija. Turalija shot Spremo several times while he was walking towards the stable in order to feed his cattle.

7.1.13.7. Ivica Stipcevic and other members of Croat-Muslim armed formations raided the Serb village of Znanaglina in Kupres commune on 9 April 1992. Finding only unarmed and defenceless old people, women and children, they drove them out of their houses and maltreated them by making them lie face down on the ground. They then killed the following people with barrage fire from machine guns:

- 1. Petar Soro, aged 78;*
- 2. Strahilo Spremo, aged 82;*

3. Spasoje Maric, aged 62; and
4. Milorad Spremo, aged 56.

...Ivica Stipcevic was one of the members of the Croat-Muslim formation responsible for this attack. He came from the neighbouring village of Sujice and thus knew that all the victims were Serbs.

7.1.13.8. Croat-Muslim armed forces attacked the exclusively Serb populated village of Botun in Kupres commune on 10 April 1992. Arriving at the house of the Serb Stojko Spremo, they forced open the door of the cellar knowing that a number of frightened civilians were hiding there and threw in a hand grenade. The following women died in the explosion:

1. Savica Spremo (female), aged 72; and
2. Andja Spremo (female), aged 57.

They then set fire to the house which burned to the ground, together with the bodies in it.

On that occasion they also killed Savica Spremo's son Branislav Spremo, who had been hiding in the attic, but was caught when he tried to escape. They tortured him, cutting his face several times with a knife, and then shot him.

7.1.13.9. On the night of 6-7 April 1992, in Strazanj on the road from Kupres to the village of Sujice, Ive Cisak, a member of a Croat armed formation from Odzak in Kupres commune killed:

1. Zarko Zivanic (father Cvije), born 1946, as he tried to escape from a column of prisoners. Zivanic had feared that the prisoners were being taken to pits on Borovska Glava Hill into which Ustasha had thrown over 200 Serbs from his village in 1941. Guards shot at him with automatic weapons when he tried to escape and wounded him in the legs. He fell down and was unable to return to the column when ordered because of his wounded legs, at which Cisak walked over to him, cursed his Serb mother and shot him in the head.

6.9. These and other crimes of genocide described in Chapter VII of the Counter-Memorial i.e. in the counter-claim are circumstances of the situation very relevant for identifying the motives and intentions of individuals who committed crimes *vis-a-vis* Muslims.

6.10. Dismissing the allegations of the Applicant concerning Srebrenica (para 2.2.2.6 of the Memorial, p. 31), the Respondent said in Part One, Chapter I of the Counter-Memorial:

1.3.2.26. The genocide committed in the Commune of Srebrenica in World War One halved the Serb population. The same crime was repeated in World War Two. The Muslims had made preparations and armed themselves for new destructions long before the civil war began. This is evinced by a number of documents and military ID cards of paramilitary formations in the area of Srebrenica with dates before the war, as well as by the call to the Muslims by an illegal Muslim National Council, meeting near Bratunac, to start making final preparations for the establishment of a Muslim State...

1.3.2.27. On 28 September 1991, six months before the war, the Communal Committee of the Serb Democratic Party of Srebrenica sent an urgent communication to the Government of Bosnia and Herzegovina and all other relevant organs, informing them that the Serbs in this region were being harassed by the Muslims and that it was not possible to establish normal dialogue with them on important issues...

1.3.2.28. Muslims set up vigilante groups in the Serb neighbourhoods of Srebrenica and Bratunac. They attacked and destroyed some 100 Serb villages around these two towns, killing and expelling people and burning down their homes; 12,800 refugees or 45 per cent of the overall number of Serbs from that region have been registered by the Red Cross of Serbia alone... All the attacks on the Serbs were prepared in advance, carried out according to plan, with a large number of armed individuals.

1.3.2.29. The Serbs fled Srebrenica on 9 May 1992, two days after the massacre in the village of Bljeceva on 6 May 1992 and the murder of their deputy Goran Zekic. Serb refugees went

also to Bratunac, just as Muslims went later to Srebrenica. The same fate awaited the Serbs in Bratunac like the Serbs in Srebrenica and one hundred surrounding villages and they had to withstand over 80 Muslim attacks... (Counter-Memorial, Part One, pp. 44-45)

6.11. The facts of crimes of genocide, mentioned in above quoted paragraphs constitute a basis of the counter-claim in Part Two of the Counter-Memorial, paras 7.1.1.0, 7.1.2.0 and 7.2.28.0:

7.1.1.0. Srebrenica

The territory of the former commune of Srebrenica has a mixed population of Muslims and Serbs, with Muslims being predominant in number. Since armed conflict broke out in this territory, the members of the Serb people, as the minority population, were constantly exposed to threats and attacks by Muslim armed forces throughout 1992 and later. At first these threats were aimed at causing the fear of the Serb population and forcing them to leave their homes and property and to leave the territory for good. Later on the threats escalated into armed attacks in which entire villages and towns in which Serbs lived were burned down and their Serb civilian populations killed. During 1992 in this commune almost all Serb villages were razed to the ground, Serb houses were set on fire and Serb property was looted. Over 500 Serbs, mainly old men, women and children, were killed in the territory of this commune during this period. Bosnia and Herzegovina is responsible for the following crimes of genocide committed on the territory of the municipality of Srebrenica in the case of which the victims and the perpetrators have been identified.

7.1.1.1. On 6 May 1992, the Serb religious holiday of St. George's Day, Muslim armed forces attacked the Serb village of Gniona, burned it to the ground, plundered all property and killed the following Serbs:

- 1. Lazar Simic (father: Milivoje), born 1936; and*
- 2. Radojko Milosevic (father: Rajko), born 1928.*

Milosevic was burned alive in his house. These were peaceful farmers who were not members of any Serb armed formations.

The Muslim armed forces who perpetrated this crime were commanded by Naser Oric, born in 1967 in Potocari village, and Rifat Karovic, Ibro Mujkovic, Ibro Osmanovic, Behadin Mujkanovic and others were also involved.

7.1.1.2. On 8 May 1992, the following person was ambushed and killed on the road leading to Srebrenica:

1. Goran Zekic, a Serb deputy in the Parliament of Bosnia-Herzegovina. The killing was committed by members of the Muslim armed forces.

This crime was committed by Hakija Meholjic (father: Husein) from Srebrenica, and Osman Osmanovic, Dzevad Osmanovic and Safet Mujic.

7.1.1.3. On 1 June 1992, members of Muslim armed forces stationed in Brezovice attacked the Serb hamlet of Oparci, burnt down the 22 Serb houses in the village and killed the following Serb villagers:

- 1. Dragic Ilic (father: Dragutin), born 1939;*
- 2. Ratko Ilic (father: Momcilo), born 1942;*
- 3. His brother Ugljesa, born 1939;*
- 4. Milorad Petrovic (father: Drago), born 1923; and*
- 5. Dikosava Petrovic (female, father: Drago), born 1932, whose throat was slit.*

The following members of the Muslim army perpetrated this crime: Akif Ustic, Huso Salihovic, Hajrudin Halilovic, Abdula Alic, from the village of Brezovice, Sevdalija Begic from Piric, and Velkaz Husic (or Husih).

7.1.1.4. On 21 June 1992, Muslim armed forces attacked the village of Ratkovici in Srebrenica commune, whose population is exclusively Serb, burned down the village and killed 18 Serb villagers:

1. *Obren Bogicevic (father: Vojislav), born 1932;*
2. *Stanoje Stanojevic (father: Vladislav), born 1949;*
3. *Desanka Stanojevic (female, father: Rado), who was burned in her home;*
4. *Nikola Stanojevic (father: Todor), born 1958;*
5. *Radenko Stanojevic (father: Milorad), born 1940, whose throat was slit;*
6. *Vidosav Djuric (father: Luka), born 1930;*
7. *Vidoje Rankic (father: Obrad), born 1928;*
8. *Milutin Rankic (father: Obrad), born 1944;*
9. *Ranko Rankic (father: Obrad), born 1933;*
10. *Vinko Maksimovic (father: Filip), born 1927;*
11. *Dragomir Maksimovic (father: Milorad), born 1949;*
12. *Radomir Maksimovic (father: Milorad), born 1942, who succumbed to torture;*
13. *Cvijeta Milanovic (female, father: Risto), born 1925;*
14. *Novka Pavlovic (female, father: Milorad), born 1945;*
15. *Zora Prodanovic (female, father: Drago), born 1941;*
16. *Zivana Prodanovic (female, father: Petar), born 1966;*
17. *Milovan Pavlovic (father: Josa), born 1919; and*
18. *Milan Jakovljevic (father: Stojan), born 1920.*

Mehmed Alic, also known as "Kadic", from Dedici and Hajrudin Osmanovic from Potkorjen, persons with the surnames Medic, Potkorjenovic, Martic, Poznanovic and Osmanovic, and Behaija Martic, Osman Zukic, Andrija Osmanovic and Resid Halilovic were recognised among the perpetrators of this crime.

7.1.1.5. Muslim armed forces attacked the Serb village of Brezani in Srebrenica commune on 30 June 1992 and killed the following 19 Serb villagers:

1. *Radovan Petrovic (father: Djolo), born 1923;*
2. *Milos Novkovic (father: Rado), born 1956;*
3. *Dostana Lazic, (female) born 1919;*
4. *Djuka Lazic (father: Pavle), born 1935;*
5. *Vidoje Lazic (father: Pavle), born 1937;*
6. *Kristina Lazic (female);*
7. *Milenko Dragicevic (father: Ilija), born 1974;*
8. *Ljubomir Josipovic (father: Milenko), born 1975;*

9. *Pero Krstajic (father: Vlada), born 1935;*
10. *Milos Krstajic (father: Vlada), born 1937;*
11. *Stanko Milosevic (father: Luka);*
12. *Vidoje Milosevic (father: Milovan), born 1974;*
13. *Milivoje Mitrovic (father: Dragisa), born 1930;*
14. *Stanoje Mitrovic (father: Milivoje), born 1963;*
15. *Milisav Rankic (father: Mika), born 1947;*
16. *Dragoslav Rankic (father: Milisav), born 1974;*
17. *Mirko Rankic (father: Milisav), born 1972;*
18. *Milomir Stevanovic (father: Vladislav), born 1946; and*
19. *Dragan Stjepanovic (father: Stjepan), born 1961.*

Milos Novakovic from the hamlet of Cicevac was found decapitated and Vidoje Lazic burnt, and Kristina Lazic, Milisav Rankic, Dragoslav Rankic and Mirko Rankic were burnt in their homes.

The perpetrators of this crime included, among others, the following members of the Muslim armed forces: Hakija Meloljic, Arif Ustic, Huso Halilovic and Vehbija Jahic.

7.1.1.6. On 5 July 1992, members of the Muslim armed forces attacked the village of Krnjici in Srebrenica commune, killing 16 people, all of Serb nationality:

1. *Boban Lazarevic (father: Spasoje), born 1965, priest of the Serbian Orthodox Church;*
2. *Sredoje Jovanovic (father: Nedeljko), born 1947;*
3. *Miroslav Jovanovic;*
4. *Dragutin Dimitrijevic (father: Milos), born 1961;*
5. *Srpko Aksic (father: Novak), born 1972;*
6. *Rade Trimanovic (father: Petko), born 1961;*
7. *Rados Maksimovic (father: Mirko), born 1968;*
8. *Milenko Maksimovic (father: Rista);*
9. *Milos Milosevic (father: Ostoja), born 1961;*
10. *Nebojsa Milosevic (father: Zoran), born 1975;*
11. *Milja Misic (female);*
12. *Vaso Poraca, born 1912, whose throat was slit;*
13. *Ilija Simic, born 1922;*
14. *Veljko Simic (father: Milosav), born 1953;*

15. *Vlajko Vlastic (father: Petar), born 1934; and*
16. *Soka Vujic (female).*

7.1.1.7. *The Serb village of Zalazje in the commune of Srebrenica was attacked by Muslim armed forces on 12 July 1992, and 38 Serb villagers were killed:*

1. *Svetozar Lakic (father: Cvijetin), born 1951;*
2. *Dusan Blagojic (father: Slobodan), born 1946;*
3. *Radinka Cvijetinovic (female, father: Dragomir), born 1952, whose body was badly mutilated;*
4. *Ivan Cvijetinovic (father: Ranko), born 1953;*
5. *Svetislav Dragicevic (father: Tadija), born 1949;*
6. *Zeljko Giljevic (father: Milorad), born 1970;*
7. *Nedeljko Gligic (father: Desimir), born 1948;*
8. *Ljubisav Gligoric (father: Nikola), born 1962;*
9. *Aleksa Gordic (father: Milos), born 1955;*
10. *Slobodan Ilic (father: Milan), born 1946;*
11. *Milisav Ilic (father: Sreten), born 1957;*
12. *Luka Jeremic (father: Ljubomir), born 1927;*
13. *Ratko Jeremic (father: Milos), born 1969;*
14. *Marko Jeremic (father: Ratko), born 1965;*
15. *Radovan Jeremic (father: Ratko), born 1963;*
16. *Milovan Lazarevic (father: Malisa), born 1946;*
17. *Momir Lazarevic (father: Stanko), born 1955;*
18. *Branislav Pavlovic (father: Aleksandar), born 1957;*
19. *Gojko Petrovic (father: Jugoslav), born 1963;*
20. *Svetozar Rakic (father: Cvijetin), born 1951;*
21. *Momcilo Rakic (father: Ljubomir), born 1949;*
22. *Miodrag Rakic (father: Ljubomir), born 1959;*
23. *Mile Rakic (father: Momcilo), born 1966;*
24. *Dragomir Rakic (father: Borisav), born 1957;*
25. *Branko Simic (father: Gojko), born 1959;*
26. *Petko Simic (father: Gojko), born 1963;*
27. *Miladin Stanojevic (father: Vojin), born 1929;*
28. *Miroljub Todorovic (father: Radivoje), born 1961;*
29. *Radivoje Tomic (father: Bogoljub), born 1950;*
30. *Miladin Tubic (father: Rado), born 1955;*
31. *Radisav Vasiljevic (father: Radovan), born 1963;*
32. *Radisav Vasiljevic (father: Radovan), born 1965;*
33. *Bosko Vujadinovic (father: Zivojin), born 1951;*

34. Vaso Vujadinovic (father: Zivojin), born 1954;
35. Nedeljko Vujadinovic (father: Bogdan), born 1947;
36. Dragomir Vujadinovic (father: Milovan), born 1947;
37. Milovan Vujadinovic (father: Slavoljub), born 1948; and
38. Dusan Vujadinovic (father: Vasa), born 1940.

The following members of the Muslim armed forces were identified among the perpetrators of this crime: Naser Oric (father: Dzermal), born 1967 in Potocari, and Zulfo Tursunovic, Akif Ustic and Hakija Meholjic.

7.1.1.8. A Muslim armed formation entered the hamlet of Karno, the Serb village of Medje, the municipality of Srebrenica on 15 May 1992, and burned down all Serb houses and plundered Serb property. The following Serbs were killed:

- 1. Petrija Andric (female), born 1933;*
- 2. Radivoje Subotic, born 1954; and*
- 3. Milojko Gagic, born 1947.*

The other villagers were taken to a camp in Srebrenica, where they were tortured and severely maltreated. Unable to endure the torture, Ljubica Gagic (female) committed suicide.

The Muslim armed forces unit which committed this crime was commanded by Nedzad Bektic (father: Ramo), from the village of Karacic. Zulfo Tursunovic from Suceska and other members of Muslim forces tortured the Serb prison inmates.

7.1.1.9. On 7 May 1992, in the village of Osmace in Srebrenica commune, Muslim armed forces set up an ambush and fired at two passenger and two freight vehicles, although they knew the vehicles were carrying only Serb civilians. On that occasion they killed:

- 1. Milojka Mitrovic (female, father: Slavko), born 1953;*
- 2. Radosav Stjepanovic (father: Milovan), born 1956;*
- 3. Nebojsa Coric (father: Radomir), born 1966;*

4. Zoran Vukosavljevic (father: Obren), born 1970;
5. Simo Tanasijevic (father: Manojlo);
6. Milivoje Ilic (father: Bogdan), born 1961; and
7. Danilo Petrovic (father: Radomir), born 1961.

The ambush was laid by Muslims from the village of Osmace on the orders of Naser Oric, and the immediate perpetrator was a person called Ramo or "Hlebara".

7.1.1.10. At a place on the Srebrenica to Milici main road called "Zutica", on 21 May 1992, members of the Muslim armed forces fired from an ambush at a lorry carrying Serb civilians and killed:

1. Mladjen Petkovic (father: Dragoljub), born 1952;
2. Nedeljko Kandic;
3. Milenko Kovacevic (father: Milisav), born 1960;
4. Miso Lazarevic (father: Desimir), born 1974;
5. Miljana Obradovic (female, father: Vidoje), born 1941;
6. Vojislav Sarac (father: Ilija), born 1925;
7. Slobodan Zecic (father: Radoje), born 1959; and
8. Obrenija Ilic, (female) born 1958.

The ambush was organised by Becir Mekanik (father: Jakub), and the attackers were Esad Muratovic (father: Rasid), Jusuf Ahmetovic (father: Obranas), also known as "Juka", Mehudin Osmanovic (father: Osman) and Sulejman Veizovic (father: Suljo).

7.1.2.0. Bratunac

Members of the Muslim armed forces committed numerous crimes of genocide against Serb inhabitants of the commune of Bratunac. In this region, the following Serb villages were razed to the ground: Rekovac, Zalucje, Biljaca, Sikiric, Pirici, Djepala, Pobrđe, Borici, Zagoni, Repovac, Mihaljevici, Rijecani, Plane, Pilici, Gradina, Suha, Radijevici, Boljavic, Bradici, Popovici, Grujicevici and Poznasevici. Serb houses were burnt down in many other villages in this area, and more than 500 Serb inhabitants were killed. The following cases include only

those where the victims and the perpetrators have been identified.

7.1.2.1. *The Serb village of Gornji Magasic in Bratunac commune was often attacked by Muslim armed forces. The severest attacks were between 20 and 25 June 1992, when 12 Serb villagers were killed:*

1. *Stojan Popovic (father Zivorad), born 1967;*
2. *Zivko Cvjetinovic (father: Vojislav), born 1950;*
3. *Ljiljana Ilic (female, father: Dusan), born 1975;*
4. *Zorka Ilic (female, father: Marko), born 1947;*
5. *Milenija Ilic (female, father: Milorad), born 1944;*
6. *Ljubinka Ilic (female, father: Petar), born 1952;*
7. *Marjan Ilic (father: Radomir), born 1963;*
8. *Ljubica Milanovic (female, father: Milos), born 1929;*
9. *Blagoje Popovic (father: Pera), born 1907;*
10. *Leposava Popovic (female, father: Rista), born 1919;*
11. *Ljubica Mirkovic (female, father: Zivorad), born 1942;*
and
12. *Cvijetin Djuricic (father: Nikolije).*

Among the many members of the Muslim armed forces who took part in this crime, witnesses have identified Meho Osmanovic (father: Junuz) from Magasic, and Saban Osmanovic, Camil Hasanovic, Senahid Avdic, Ramo Babajic, Mehidin Smailovic, Nedzib Demanovic and Hajrudin Osmanovic.

7.1.2.2. *The Serb village of Jesestica in Bratunac commune was also frequently attacked by Muslim armed forces, and many inhabitants were killed.*

7.1.2.2.1. *In an attack on this village on 8 August 1992, 55 Serb houses were burnt down and 9 Serb villagers were killed:*

1. *Vojin Bogicevic (father: Rado), born 1929;*
2. *Andjelko Mladjenovic (father: Ljubomir), born 1965; who was buried without his head, which had been cut off and taken away;*

3. Dragan Mladjenovic (father: Ljubomir), born 1960;
4. Savka Mladjenovic (female, father: Obren), born 1931;
5. Sreten Rankovic (father: Milos), born 1962;
6. Milan Rankovic (father: Vlada), born 1935;
7. Savka Stjepanovic (female, father: Nedeljko), born 1951;
8. Milosav Stjepanovic (father: Obrad), born 1919; and
9. Srbo Djuric (father: Savan), born 1944.

7.1.2.2.2. On 7 January 1993, Serbian Orthodox Christmas Day, Muslim armed forces again attacked the village, burning the rest of the Serb houses and killing:

1. Radomir Jovanovic (father: Vujadin), born 1959;
2. Bosko Djukanovic (father: Mika), born 1928;
3. Nevenka Djukanovic (female, father: Rista), born 1946;
4. Ivan Djukanovic (father: Vlada), born 1954; and
5. Krsta Djukanovic (father: Vlada).

The Muslim armed forces were led in both attacks by Naser Oric and included, among others, Zulfo Tursunovic, Ferid Hodziz, Enver Alispahic and Alija Alispahic.

7.1.2.3. The village of Loznica in Bratunac commune was also repeatedly attacked by Muslim armed forces. Especially severe were the attacks of 28 June and 14 December 1992, when 31 Serb villagers were killed:

1. Nebojsa Vucetic (father: Petko), born 1972;
2. Jovan Milovanovic (father: Gavriilo), born 1930;
3. Srecko Milovanovic (father: Radivoje), born 1943;
4. Miloje Damjanovic (father: Mitar), born 1971;
5. Djordjo Filipovic (father: Milisav), born 1949;
6. Zivan Filipovic (father: Vladimir), born 1954;
7. Verica Filipovic (female, father: Ivan), born 1957;
8. Radovan Lukic (father: Milan), born 1950;
9. Milenko Nikolic (father: Nedeljko), born 1963;
10. Milorad Rancevic (father: Mica), born 1960;
11. Svetozar Vucetic (father: Sreten), born 1957;
12. Jelena Stojanovic, (female) born 1952;
13. Jelena Stanojevic (female, father Zivojin), born 1953;
14. Drago Jovanovic (father: Miladin), born 1962;

15. Milic Ilic (father: Vidoje), born 1972;
16. Todor Nikolic (father: Milovan), born 1951;
17. Slavomir Damnjanovic (father: Radivoje), born 1971;
18. Nedeljko Damnjanovic (father: Svetozar), born 1959;
19. Dragan Filipovic (father: Dragoljub), born 1969;
20. Dragoljub Filipovic (father: Milisav), born 1942;
21. Milan Jovanovic (father: Petko), born 1948;
22. Djoko Jovanovic (father: Petko), born 1956;
23. Milos Jovanovic (father: Veselin), born 1928;
24. Zeljko Knezevic (father: Vojislav), born 1966;
25. Kristina Lukic (female, father: Ceda), born 1948;
26. Bojan Milkovski, born 1938;
27. Mladjen Petrovic (father: Bozidar), born 1958;
28. Miodrag Petrovic (father: Bogdan), born 1948;
29. Boro Todorovic (father: Krsta), born 1949;
30. Milenko Vucetic (father: Radovan), born 1947; and
31. Radovan Vucetic (father: Sava), born 1943.

Numerous members of the Muslim armed forces took part in this crime, including Alija Ibric (father: Muja), also known as "Kurta", from Cirici, Besim Salihovic (father: Avdo), Hida Salihovic (father: Avdo) and Resid Sinanovic (father: Rahman).

7.1.2.4. The village of Zagoni in Bratunac commune was burnt down in attacks by Muslim armed forces on 5 and 12 July 1992, and 21 inhabitants were killed, all of Serb nationality:

1. Ljubica Milosevic (female, father: Milovan), born 1939;
2. Milos Milosevic (father: Jovan), born 1932;
3. Cedomir Tanasijevic (father: Blagoje), born 1942;
4. Rajko Gvozdenovic (father: Sreten), born 1927;
5. Blagoje Gvozdenovic (father: Milorad), born 1944;
6. Rada Gvozdenovic (female, father: Radoje), born 1973;
7. Mileva Dimitric (female, father: Milorad), born 1912;
8. Marko Dimitric (father: Mitar), born 1974;
9. Matija Jasinski (father: Stevan), born 1940;
10. Mihajlo Mihajlovic (father: Jevta), born 1951;
11. Milovan Dimitric (father: Mirko), born 1962;
12. Dusan Milosevic (father: Zivojin), born 1963;

13. Djordje Milosevic (father: Aleksa), born 1934;
14. Vidosav Milosevic (father: Branko), born 1968;
15. Dragisa Milosevic (father: Milko), born 1963; and
16. Miodrag Milosevic (father: Milko), born 1970.

In the same village, members of the Muslim armed forces also tortured to death (the tortures included gauging out eyes, breaking facial bones and ribs, and stabbing in the stomach) the following Serb civilians:

17. Dusanka Paunovic, (female) born 1954, who was killed with a sledge hammer;
18. Rada Milosevic (female, father: Ilija), born 1968;
19. Miodrag Malovic (father: Ilija), born 1943;
20. Dragoljub Gvozdenovic (father: Miladin), born 1954; and
21. Miodrag Jovanovic (father: Jakov), born 1952.

The identified participants in this crime are: Muriz Muratovic, Meho Oric and Idriz Muratovic.

7.1.2.5. The village of Fakovic in Bratunac commune was attacked on 5 October 1992 by members of the Muslim armed forces and 17 Serb civilians were killed:

1. Desanka Bozic (female, father: Radoje), born 1924;
2. Olga Markovic (female, father: Milovan), born 1935;
3. Slavka Markovic (female, father: Milovan), born 1931;
4. Cuba Nikolic (female);
5. Danilo Djuric, born 1910;
6. Miroslav Ivanovic (father: Milan), born 1973;
7. Radoje Markovic (father: Sava), born 1941;
8. Radomir Markovic (father: Steva), born 1939;
9. Petko Nikolic (father: Milovan), born 1954;
10. Milovan Nikolic (father: Sreten), born 1923;
11. Radovan Savic (father: Jova), born 1965;
12. Milomir Subotic (father: Blagoje), born 1959;
13. Milovan Djokic (father: Vlada), born 1936;
14. Sreten Djokic (father: Mileta), born 1938;
15. Djoko Djokic (father: Nedeljko), born 1955;
16. Svetozar Djokic (father: Sreten), born 1965; and
17. Vidoje Djukic (father: Radovan), born 1954.

7.1.2.6. Eight Serbs were killed on 5 October 1992 in an attack of Muslim armed forces on the village of Boljevici in Bratunac commune:

1. Milja Despotovic (female);
2. Petra Prodanovic, (female) born 1927;
3. Stojka Stjepanovic (female, father: Jovan), born 1922;
4. Stanija Vasic, (female) born 1930;
5. Radovan Djukic (father: Sreta), born 1932;
6. Milutin Ristic (father: Ljubisav), born 1940;
7. Zarija Ristic (father: Novica), born 1928; and
8. Vladan Vasic (father: Manojlo), born 1929.

The identified perpetrators of this crime are Naser Mamutovic, Ibrahim Mujkic and Aris Ridjic.

7.1.2.7. On 14 December 1992, Muslim armed forces attacked the Serb village of Bjelovac in Bratunac commune, burnt it down and killed 24 Serb villagers:

1. Zlatan Bogicevic (father: Milenko), born 1957;
2. Miodrag Cvijic (father: Ilija), born 1972;
3. Slobodan Vitorovic (father: Vitomir);
4. Stevo Filipovic (father: Nedja), born 1951;
5. Milisav Ilic (father: Ilija), born 1957;
6. Milun Ilic (father: Mica), born 1939;
7. Zlata Jovanovic (female, father: Milos), born 1911;
8. Radenko Jovanovic, born 1974);
9. Vida Lukic (female, father: Radivoje), born 1933;
10. Miroslav Marincevic, born 1965;
11. Radivoje Matic (father: Ilija), born 1937;
12. Gordana Matic (female, father: Radivoje), born 1967;
13. Snezana Matic (female, father: Radivoje), born 1965;
14. Mirko Miladinovic (father: Petko), born 1971;
15. Cedo Miladinovic (father: Petko), born 1975;
16. Slavko Milutinovic (father: Ceda), born 1963;
17. Slobodan Nedeljkovic (father: Ratko), born 1970;
18. Mirko Petrovic (father: Krsta), born 1920;
19. Mirko Petrovic (father: Milan), born 1972;
20. Mitar Savic (father: Ostoja), born 1954;

21. Radovan Tanasic (father: Sreten), born 1923;
22. Rajko Tomic (father: Zika), born 1955;
23. Milorad Tosic (father: Zivorad), born 1972; and
24. Zoran Trisic (father: Tomislav), born 1968.

A large number of members of the Muslim armed forces took part in this attack, including Alija Ibric, also known as "Kurta", Hida Salihovic, Besim Salihovic, Resim Sinanovic and Sadim Zukic.

7.1.2.8. The village of Sikiric in Bratunac commune was attacked by Muslim armed forces on 14 December 1992 and 21 villagers, all of Serb nationality, were killed:

1. Zivojin Ilic (father: Blagoje), born 1928;
2. Radojka Ilic (female, father: Kosta), born 1935;
3. Desimir Matic (father: Nikodin), born 1928;
4. Radovan Mitrovic (father: Bogosav), born 1948;
5. Srecko Mitrovic (father: Bogosav), born 1946;
6. Milomir Nedeljkovic (father: Bogoljub), born 1940;
7. Ljubisav Nedeljkovic (father: Obrad), born 1925;
8. Ratko Nedeljkovic (father: Svetislav), born 1946;
9. Slobodan Petrovic (father: Miladin), born 1976;
10. Dusan Prodanovic (father: Rade), born 1931;
11. Obrenija Rankic (female, father: Miladin), born 1934;
12. Zlatan Simic (father: Ranko), born 1961;
13. Zivadin Simic (father: Svetolik), born 1946;
14. Radisav Simic (father: Svetolik), born 1937;
15. Grozdana Simic (female, father: Vasilije), born 1931;
16. Dragisa Stevanovic (father: Branko), born 1966;
17. Radenko Stojanovic (father: Sava), born 1973;
18. Milomir Tanasic (father: Ljubisav), born 1939;
19. Milan Tanasic (father: Petar), born 1957;
20. Obrenija Trisic (female, father: Obrad), born 1931; and
21. Novak Vukcic (father: Srecko), born 1931.

This attack was carried out by the same Muslim armed formation which carried out the attack on the village of Bjelovac.

7.1.2.9. *The village of Kravica in Bratunac commune is inhabited solely by Serbs. It was attacked by more than 1,000 members of the Muslim army on 7 January 1993, Orthodox Christmas Day, when 28 Serb civilians were killed:*

1. *Miladin Dolijanovic (father: Dušan), born 1963;*
2. *Negoslav Eric (father: Mikailo), was killed by a shot fired from close range in the mouth;*
3. *Kristina Eric (female, father: Nikola);*
4. *Pajkan Gavric (father: Paja), born 1963;*
5. *Milovan Nikolic (father: Todosije), born 1946;*
6. *Risto Popovic (father: Kosta), born 1920; according to the forensic report, his left hand was cut off, his skull was fractured on the left side and he had been stabbed with a knife in the back of his neck;*
7. *Kostadin Popovic (father: Rista), born 1947;*
8. *Milan Stevanovic (father: Radovan), born 1973;*
9. *Slobodan Bogicevic (father: Jovan), born 1947;*
10. *Mara Bozic, (female) born 1909;*
11. *Stevo Bozic (father: Stojan), born 1951;*
12. *Novica Bogicevic (father: Slobodan), born 1976;*
13. *Krsto Lazic (father: Dusan), born 1933;*
14. *Miladin Momcilovic (father: Drago), born 1935;*
15. *Vaso Nikolic (father: Marko), born 1920;*
16. *Mitar Nikolic (father: Cvijan), born 1927;*
17. *Ljubica Opackic (female), born 1918, who was shot in the head with a side arm, and, while still alive, stabbed in the right side of the chest with the sharp edge of an unidentified tool;*
18. *Bozo Radovic (father: Drago), born 1943, who was shot in the face at close range, and whose left hand was cut off;*
19. *Radenko Radovic (father: Ljuba), born 1974;*
20. *Dragan Radovic (father: Radosav), born 1968;*
21. *Vaskrsije Radovic (father: Djordje), born 1956;*
22. *Ratko Visnjic (father: Todor), born 1949;*
23. *Tankosava Stevanovic (female, father: Vasilije), born 1938,*
24. *Lazar Veselinovic (father: Kostadin), born 1935;*
25. *Radoje Pavlovic (father: Radovan), born 1936;*
26. *Mile Saveljic (father: Sava), born 1964;*

27. *Vladimir Stojanovic (father: Stojan), born 1915; and*
28. *Stanoje Djokic (father: Stanko), born 1942.*

The Muslim armed forces responsible for this attack were commanded by Naser Oric, and included Ferid Hodzic, Zulfo Tursunovic and Becir Mekanic.

7.1.2.10. On 27 May 1992, in the village of Konjevic Polje in Bratunac commune, Muslim armed forces fired from an ambush on the road from Sarajevo to Zvornik at a lorry carrying Serb civilians to work in the bauxite mines. They killed immediately:

- 1. Novak Sukic (father: Milko), born 1962;*
- 2. Zoran Popovic (father: Nenad), born 1959;*
- 3. Djordjo Mijatovic (father: Milenija), born 1950; and*
- 4. Stevo Simic (father: Novak), born 1953;*
and later killed:
- 5. Milomir Vujadinovic (father: Jova), born 1960, who was taken prisoner, and whose mutilated body was found 20 days later.*

This attack was made on the orders of Ferid Fodzic (father: Avdo), and the direct perpetrators were Semsudin Salihovic (father: Smajkan), Munib Alic (father: Adem), Meho Alic (father: Muhan), Meho Mehmedovic (father: Muhan) and others.

7.1.2.11. In an ambush on the road from Zvornik to Sarajevo in the village of Sandici at the end of May 1992, Muslim armed forces killed the following Serbs:

- 1. Milutin Milosevic (father: Steva), born 1948, chief of police in Bratunac;*
- 2. Jovo Blagojevic (father: Sreten), born 1973;*
- 3. Dragica Matikosa (female, father: Stojan), born 1955;*
- 4. Miodrag Vorkapic (father: Mile), born 1971;*
- 5. Ivan Ivanovic (father: Ratko), born 1970;*
- 6. Dragan Petrovic (father: Desimir), born 1967;*
- 7. Vesna Krdzalic (female);*
- 8. Aleksandar Grahovac (father: Mirko), born 1972;*

9. Zarko Ivanovski; and
10. Sreto Suzic (father: Milan), born 1960.

7.1.2.12. On 12 July 1992, in the village of Biljaca in Bratunac commune, the following persons were killed in an ambush:

1. Dragomir Zivkovic (father: Nenad), born 1970;
2. Milivoje Zivanovic (father: Dragan), born 1972;
3. Jovan Zivanovic (father: Cvijetin), born 1969;
4. Bozidar Jokic (father: Ivan), born 1968;
5. Dragoljub Jokic (father: Sava), born 1961;
6. Bosko Kovacevic (father: Andro), born 1969;
7. Nedeljko Mitrovic (father: Milojko), born 1965;
8. Zeljko Peric (father: Milorad), born 1973;
9. Milenko Savic (father: Branko), born 1968;
10. Dragan Savic (father: Laza), born 1953;
11. Tomo Spasojevic (father: Stjepan), born 1956;
12. Milan Djokic (father: Nedja), born 1967; and
13. Miroslav Andric (father: Stojan), born 1967.

The ambush was laid by members of Muslim armed formations.

7.1.2.13. On 24 December 1992, Muslim armed forces killed the following Serb civilians in an ambush in the village of Glogovo:

1. Milan Zivanovic (father: Mirko), born 1974;
2. Mirko Dragicevic (father: Milos), born 1947;
3. Stanko Gajic (father: Rade), born 1963;
4. Radovan Ilic (father: Stanoje), born 1953;
5. Mirko Kribl (father: Antonije), born 1949;
6. Radovan Milinkovic (father: Steva), born 1959;
7. Svetolik Milovanovic (father: Boza), born 1960;
8. Milisav Milovanovic (father: Radoje), born 1950;
9. Borivoje Obradovic (father: Ceda), born 1944;
10. Milenko Petrovic (father: Jezdimir), born 1956;
11. Dragan Veselinovic (father: Slavomir), born 1965;
12. Petko Vujadinovic (father: Dusan), born 1958;
13. Bosko Zekic (father: Krsta), born 1949;

14. Dragan Sarac (father: Ranko), born 1964;
15. Vladislav Janic (father: Mirko), born 1948; and
16. Vlado Stamatovic (father: Ceda), born 1953.

The Muslim forces who committed this crime were led by Naser Oric (father: Dzermal).

7.1.2.14. The report by Richard Boucher, spokesman for the US State Department, dated 26 January 1993, states that Bosnian Muslim forces from Srebrenica killed at least 60 Serbs, mainly civilians, in villages around Bratunac. It adds: "As a result of the hostilities, as many as 5,000 people - mainly women, children, the elderly and wounded people - fled across the Drina to Ljubovija."

6.12. Due to the insufficiency of relevant facts presented by the Applicant the issue is perhaps a little bit obscure at this stage of the proceedings. But, even some of few witnesses or sources, quoted by the Applicant said that alleged crimes had been committed as a revenge.

6.13. The interrelationship of the facts alleged by the Applicant as a basis of the claim and facts presented by the Respondent in Part Two, Chapter VII of the Counter-Memorial as a basis of the counter-claim is without doubt relevant from the aspect of detection of relevant motives and intentions. Consequently, the facts presented in Part Two, Chapter VII of the Counter-Memorial as a basis for the counter-claim served for proper qualification of the acts alleged by the Applicant.

7. The Applicant has not presented a complete interpretation of Article 80, paragraph 1 of the Rules of Court.

7.1. In paras 5 and 6 of its letter of 9 October 1997, the Applicant referred to *positions doctrinales* and *la jurisprudence internationale* regarding the direct connection between the counter-claim and subject-matter of the claim. (The letter of 9 October 1997, pp. 7-12) However, the Applicant has failed to reach the end of development of the construction of Article 80, para. 1 of the Rules of Court, made by the Court. Careful study of the practice of the Court reveals an important development of understanding of the said paragraph.

7.2. The Permanent Court faced the issue for the first time in the *Chorzow Factory case* (Merits) and stated:

... The Court also observes that the counter-claim is based on Article 256 of the Versailles Treaty, which article is the basis of the objection raised by the Respondent, and that, consequently, it is juridically connected with the principal claim.

...The claim having been formulated in the Counter-Case, the formal conditions required by the rules as regards counter-claims are fulfilled in this case, as well as the material conditions. (JUDGEMENT NO. 13. - CHORZOW FACTORY (MERITS), P. 38)

7.3. Judge Anzilotti, having in mind the *Chorzow Factory case*, commented on Article 40 of the Rules, by which a counter-claim was then regulated:

... L'élément commun aux diverses législations qui accueillent la notion de la demande reconventionnelle est que, par cette demande, le défendeur tend à obtenir en sa propre faveur, dans le même procès intenté par le demandeur, quelque chose de plus que le rejet des prétentions du demandeur, de plus, par conséquent, que l'affirmation juridique sur laquelle se base le rejet. Telle est, sans doute, la demande reconventionnelle dont parle l'art. 40 du Règlement. ("LA DEMANDE RECONVENTIONNELLE EN PROCEDURE INTERNATIONALE" PAR D. ANZILOTTI, JOURNAL DU DROIT INTERNATIONAL, TOME 57 (1930), P. 867)

7.4. In the *River Meuse case* the Respondent filed counter-claim. The Applicant asked the Permanent Court:

I. To adjudge and declare that:

(a) the construction by Belgium of works which render it possible for a canal situated below Maastricht to be supplied with water taken from the Meuse elsewhere than at that town is contrary to the Treaty of May 12th, 1863;

(b) the feeding of the Belgian section of the Zuid-Willemsvaart, of the Campine Canal, of the Hasselt branch of that canal and of the branch leading to Beverloo Camp, as also of the Turnhout Canal, through the Neerhaeren Lock with water taken from the Meuse elsewhere than at Maastricht, is contrary to the said Treaty;

(c) Belgium's project of feeding a section of the Hasselt Canal with water taken from the Meuse elsewhere than at Maastricht is contrary to the said Treaty;

(d) Belgium's project of feeding a section of the canal joining the Zuid-Willemsvaart to the Scheldt between Herenthals (Viersel) and Antwerp with water taken from the Meuse elsewhere than at Maastricht is contrary to the said Treaty;

II. To order Belgium

(a) to discontinue all the works referred to under I (a) and to restore to a condition consistent with the Treaty of 1863 all works constructed in breach of that Treaty;

(b) to discontinue any feeding held to be contrary to the said Treaty and to refrain from any further such feeding. (The Division of Water from the Meuse, Judgement of June 28th, 1937, P.C.I.J. Reports, Series A./B. Fascicule No. 70, pp. 5,6)

7.5. The Belgian Government, for its part, formulates in its Counter-Memorial a counter-claim alleging: (1) that the Netherlands Government has committed a breach of the Treaty of 1863 by constructing the Bogharen barrage on the Meuse below Maastricht; (2) that the Juliana Canal constructed by the Netherlands alongside the Meuse below Maastricht from Limmel to Maasbracht, is subject, as regards its water supply, to the same Treaty.

7.6. The Permanent Court concluded:

As this claim is directly connected with the principal claim, it was permissible to present it in the Counter-

Memorial. (The Division of Water from the Meuse, Judgment of June 28th, 1937, P.C.I.J. Reports, Series A./B. Fascicule No. 70, p.28)

7.7. The Republic of Colombia objected to the admissibility of the counter-claim failed by the Republic of Peru in the *Asylum case*. The Applicant requested the Court:

To adjudge and declare:

I. - That the Republic of Colombia, as the country granting asylum, is competent to qualify the offence for the purpose of the said asylum, within the limits of the obligations resulting in particular from the Bolivarian Agreement on Extradition of July 18th, 1911, and the Havana Convention on Asylum of February 20th, 1928, and of American international law in general;

II. - That the Republic of Peru, as the territorial State, is bound in the case now before the Court to give the guarantees necessary for the departure of M. Victor Raul Haya de la Torre from the country, with due regard to the inviolability of his person.

(on the counter-claim)

1. That the counter-claim presented by the Peruvian Government on March 21st, 1950, is not admissible because of its lack of direct connection with the Application of the Colombian Government;

2. That the new counter-claim, irregularly presented on October 3rd, 1950, in the form of a submission upon allegations made during the oral debate, is not admissible on the grounds that:

(a) It was presented in violation of Article 63 of the Rules of Court;

(b) The Court has no jurisdiction to take cognisance of it;

(c) It has no direct connection with the Application of the Colombian Government.

7.8. The Respondent requested the Court:

To set aside submissions I and II of the Colombian Memorial.

To set aside the submissions which were presented by the Agent of the Colombian Government at the end of his oral statement on October 6th, 1950, in regard to the counter-claim of the Government of Peru, and which were repeated in his letter of October 7th, 1950.

To adjudge and declare,

As a counter-claim, under Article 63 of the Rules of Court and in the same decision, that the grant of asylum by the Colombian Ambassador at Lima to Victor Raul Haya de la Torre was made in violation of Article I, paragraph 1, and of Article II, paragraph 2, item 1 (inciso primero), of the Convention on Asylum signed in 1928, and that in any case the maintenance of the asylum constitutes at the present time a violation of that treaty." (Colombian-Peruvian asylum case, Judgement of November 20th, 1950; I.C.J. Reports 1950, p. 271.)

7.9. The Court took the following position:

... Relying upon Article 63 of the Rules of Court, the Government of Colombia has disputed the admissibility of the counter-claim by arguing that it is not directly connected with the subject-matter of the Application. In its view, this lack of connection results from the fact that the counter-claim raises new problems and thus tends to shift the grounds of the dispute.

The Court is unable to accept this view. It emerges clearly from the arguments of the Parties that the second submission of the Government of Colombia, which concerns the demand for a safe-conduct, rests largely on the alleged regularity of the asylum, which is precisely what is disputed by the counter-claim. The connection is so direct that certain conditions which are required to exist before a safe-conduct can be demanded depend precisely on facts which are raised by the counter-claim. The direct connection being

thus clearly established, the sole objection to the admissibility of the counter-claim in its original form is therefore removed. (Colombian-Peruvian asylum case, Judgement of November 20th, 1950; I.C.J. Reports 1950, pp. 280, 281.)

7.10. It seems that the above mentioned development in the interpretation of the Court of direct connection between a counter-claim and the subject-matter of the claim has started in the *Morocco case*. Until the *Morocco case*, it seems that the Court understood that a counter-claim is directly connected with the subject-matter of the claim of the other party when it serves for a rejection of the claim and for obtaining a judgment on the responsibility of the other party. Questions presented in a counter-claim should be relevant to the rejection of the claim of the other party and should provide a basis for establishing responsibility of the other party. But in the *Morocco case* the Court departed from this position.

7.11. The French Government asked the Court:

To judge and declare, either in the absence or in the presence of the said Government, and after such interval of time as the Court may decide, subject to an agreement between the Parties:

That the privileges of the nationals of the United States of America in Morocco are only those which result from the text of Articles 20 and 21 of the Treaty of September 16th, 1836, and that, since the most-favoured-nation clause contained in Article 24 of the said treaty can no longer be invoked by the United States in the present state of the international obligations of the Shereefian Empire, there is nothing to justify the granting to the nationals of the United States of preferential treatment which would be contrary to the provisions of the treaties;

That the Government of the United States of America is not entitled to claim that the application of all laws and regulations to its nationals in Morocco requires its express consent;

That the nationals of the United States of America in Morocco are subject to the laws and regulations in force in the Shereefian Empire, and in particular the regulation of December 30th, 1948, on imports not involving an allocation of currency, without the prior consent of the United States Government;

That the dahir of December 30th, 1948, concerning the regulation of imports not involving an allocation of currency, is in conformity with the economic system which is applicable to Morocco, according to the conventions which bind France and the United States. (CASE CONCERNING RIGHTS OF NATIONALS OF THE UNITED STATES OF AMERICA IN MOROCCO (FRANCE V. UNITED STATES OF AMERICA), Application, p.)

7.12. The Government of the United States of America submitted the following counter-claim:

On the basis of the arguments which it has presented in support of its counter-claims, the United States Government requests the Court to judge and to declare that:

1. Under Article 95 of the Act of Algeciras, the value of imports from the United States must be determined for the purpose of customs assessments by adding to the purchase value of the imported merchandise in the United States the expenses incidental to its transportation to the custom-house in Morocco, exclusive of all expenses following its delivery to the custom-house, such as customs duties and storage fees.

It is a violation of the Act of Algeciras and a breach of international law for the customs authorities to depart from the method of valuation so defined and to determine the value of imported merchandise for customs purposes by relying on the value of the imported merchandise on the local Moroccan market.

2. The treaties exempt American nationals from taxes, except as specifically provided by the same treaties; to

collect taxes from American nationals in violation of the terms of the treaties is a breach of international law.

Such taxes can legally be collected from American nationals only with the previous consent of the United States which operates to waive temporarily its treaty right, and from the date upon which such consent is given, unless otherwise specified by the terms of the consent.

Consumption taxes provided by the Dahir of February 28, 1948, which were collected from American nationals up to October 28, 1950, date of the application of the French Government in this case, were illegally collected and should be refunded to them.

3. Since Moroccan laws do not become applicable to American citizens until they have received the prior assent of the United States Government, the lack of assent of the United States Government to the Dahir of February 28, 1948, rendered illegal the collection of the consumption taxes provided by that Dahir. (CASE CONCERNING RIGHTS OF NATIONALS OF THE UNITED STATES OF AMERICA IN MOROCCO (FRANCE V. UNITED STATES OF AMERICA)(COUNTER-MEMORIAL OF THE USA, P.))

7.13. It seems that the counter-claim of the United States did not play any role in the defence against the French claim. Instead of this fact neither the Applicant nor the Court expressed any doubt concerning direct connection between the counter-claim and the subject-matter of the claim and the Court decided on the counter-claim.

7.14. Indeed, having in mind the *Fisheries case* and the *Morocco case*, Shabtai Rosenne remarked:

... In the Fisheries case the possibility of a counter-claim was reserved, apparently, in the counter-memorial. By agreement of the parties, the particular issue was left to subsequent settlement "if it should arise" (1951, at p.126) and was subsequently withdrawn by the Norwegian Government, after it had won the principal case. In the U.S. Nationals in Morocco case a counter-claim was formulated in the counter-memorial. No jurisdictional issues were raised either by the parties, or by the Court - which

proceeded to deal with the various submissions thereon without even mentioning the connexity of the counter-claim with the principal claim.

These last two cases illustrate that lack of rigidity is becoming a feature of the manner in which States and the Court incline towards problems of counter-claims. (THE LAW AND PRACTICE OF THE INTERNATIONAL COURT BY SHABTAI ROSENNE, 2ND REVISED EDITION, MARTINUS NIJHOFF PUBLISHERS, 1985, PP. 435- 436)

7.15. It seems that further practice of the Court has gone in the direction, termed by Mr. Rosenne as "lack of rigidity." Thus, in the *Hostages case*, the Court said:

... The Court, at the same time, pointed out that no provision of the Statute or Rules contemplates that the Court should decline to take cognisance of one aspect of a dispute merely because that dispute has other aspects, however important. It further underlined that, if the Iranian Government considered the alleged activities of the United States in Iran legally to have a close connection with the subject-matter of the United States' Application, it was open to that Government to present its own arguments regarding those activities to the Court either by way of defence in a Counter-Memorial or by way of a counter-claim. (Case concerning United States diplomatic and consular staff in Tehran (UNITED STATES OF AMERICA v. IRAN), Judgement, I.C.J. Reports 1980, p.19)

7.16. It is obvious that facts alleged in the letters of the Government of Iran sent to the Court cannot be legally used as defence in the case. (I.C.J. Reports 1980, pp. 18-19) In spite to this fact, the Court opened the possibility of a counter-claim. The Court said, it is true,

... if the Iranian Government considered the alleged activities of the United States in Iran legally to have a close connection with the subject-matter of the United States' Application.

But, the Court believed that close connection existed. Were it otherwise, the Court would probably not have mentioned this possibility.

7.17. Judge Bedjaoui in his dissenting opinion in the *Montreal Convention case* (Interim measures of protection) took an important position:

(...) 4. But in parallel with this very precise legal dispute, the United Kingdom and the United States have brought before the Security Council another dispute involving the Libyan State, which they accuse of being implicated in terrorism in general and in the Lockerbie bombing in particular. This dispute is quite different from the first one. For the first dispute concerns the extradition of two Libyan nationals and is being dealt with, legally, by the Court at the request of Libya, whereas the second dispute concerns, more generally, State terrorism as well as the international responsibility of the Libyan State and is being dealt with, politically by the Security Council, at the request of the United Kingdom and the United States.

5. With regard to the role of the Court, as a judicial organ, with respect to the first dispute, the Court is in no way requested in the present proceedings to pass judgement on state terrorism and the international responsibility of Libya, particularly since two Respondent States have presented no counter-claim in response to the Libyan Application. The second dispute, concerning the international responsibility of Libya, has been resolved in a strictly political way, the chief elements of compensation for the families of the victims and the imposition of an obligation concretely to renounce terrorism, whereas a judicial solution, which necessarily sets higher procedural standards, would have required, as a preliminary, the production of evidence, adversary proceedings and respect for due process of law. (...) (1971 MONTREAL CONVENTION (DISSENTING OPINION BEDJAOUI), I.C.J. Reports 1992, pp. 34, 144)

7.18. It is clear that the Respondent States in the above case (USA and UK) cannot raise the question of responsibility of the Applicant for alleged state terrorism as a defence in the case.

8. By a counter-claim the Respondent may present new facts and raise new questions.

8.1. It seems that the Applicant is of the opinion that a counter-claim has to be limited exclusively to facts presented in claim. This opinion is not based on the law.

8.2. According to Article 49, para 2, a Counter-Memorial shall contain:

an admission or denial of the facts stated in the Memorial, any additional facts, if necessary...

8.3. If the Respondent is entitled to submit new facts by a Counter-Memorial, it can certainly do it by a counter-claim. New, additional facts should be a basis for a counter-claim and should be relevant for rejection of claim. It is precisely the case.

9. Some remarks by the Applicant stated in its Letter of 9 October 1997 are without relevance.

9.1. After referring to general data relating to the Case, the Applicant has started its letter of 9 October 1997 with the following remarks:

Le 23 juillet 1991(?) la Yougoslavie a déposé son contre-mémoire. Celui-ci est divisé en deux parties. La première partie essaie de réfuter les arguments et les preuves présentés à la Cour par la Bosnie-Herzégovine, qui démontrent que la Yougoslavie a violé la Convention sur le génocide. La seconde partie (pp. 349-1077) contient l'allégation d'après laquelle la Bosnie-Herzégovine se serait rendue elle responsable de violations de ladite Convention. Cette allégation est présentée sans que le terme "counter-claim" ("demande reconventionnelle") ne soit jamais utilisé dans le deuxième partie du contre-mémoire yougoslave. D'ailleurs, dans le document tout entier, qui est de plus de

mille pages, le terme en question ne figure en tout que deux fois, et ceci exclusivement dans l'introduction générale (p. 1, par. 1.0.0.1.; et p. 2, par. 1.0.0.5.), mais n'est repris, ni dans les conclusions générales du contre-mémoire (p. 1079-1082), ni dans les conclusions finales (Submissions: p. 1083 ss.) présentées à la Cour. De plus, nulle part dans le contre-mémoire de la Yougoslavie l'amissibilité d'une prétendue demande reconventionnelle de ce genre ne forme l'objet d'une quelconque analyse ou remarque se référant, en particulier, au Statut ou au Règlement . . .

9.2. Such criticisms reflect perhaps the skilfulness of the advocates but they are legally unfounded. They are not based on the law. The points made have no substance.

9.3. The relevant law, Article 80 of the Rules of Court, states:

1. A counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Court.

2. A counter-claim shall be made in the Counter-Memorial of the party presenting it, and shall appear as part of the submissions of that party.

3. In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Court shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings.

9.4. The counter-claim is formulated in the Counter-Memorial, in Part II, Chapter VII, on pages 349 to 1078 and appears as part of the submissions, as items 3,4,5 and 6. The obligation of the Respondent based on the law is fulfilled. The Respondent was not obliged to do more. But, the Respondent has stated at the beginning of the Counter-Memorial:

1.0.0.1. *This Counter-Memorial filed by the Government of the Federal Republic of Yugoslavia, in accordance with the Order of the International Court of Justice dated 23 July 1996, includes Counter-Claims...*

1.0.0.5. *This Counter-Memorial includes two parts. Part One responds to the allegation of the Applicant presented in its pleadings. It contains the following six chapters: Chapter I: General overview of allegations submitted by the applicant; Chapter II : facts relevant to the attribution of acts to a state; Chapter III : The policy of the Federal Republic of Yugoslavia towards the Republic of Srpska and Bosnia and Herzegovina; Chapter IV : Interpretation of the rules of the 1948 Convention on the prevention and punishment of the crime of genocide; Chapter V : Attribution of acts to the state; Chapter VI : Rules on proofs*

Part Two (Chapter VII) includes counter claims and is divided in five sections: Direct and public incitement to commit genocide; Deliberate killing of the civilian population and captured persons of Serb nationality; Deliberate inflicting on Serbs conditions of life calculated to bring about their physical destruction and causing serious bodily or mental harm; Ethnic cleansing; Destruction of places of worship of the Serbian Orthodox Church.

Counter-Memorial ends with General Conclusions and Submissions. (Counter-Memorial, pp, 1,2)

9.5. Even if the above had not been stated, the lawyers could recognize a counter-claim. Indeed, the Respondent has not discussed in the Counter-Memorial the issue of admissibility of the counter-claim, believing that a simple reading of the text of the Counter-Memorial is enough to see that the counter-claim is admissible. As the Applicant has expressed doubt about the matter, the Respondent has not hesitated to express its views.

9.6. In the Submissions contained in the letter of the Applicant dated 9 October 1997, it is stated:

La Bosnie-Herzégovine prie également la Cour de ne pas permettre encore à la Partie adverse de retarder ultérieurement la procédure en cours au moyen de manoeuvres dilatoires de toutes sortes, dont la demande

reconventionnelle à laquelle se réfère le présent exposé est un nouvel et flagrant exemple.

The purpose of the counter-claim is not to prolong the proceedings. Even if the counter-claim was submitted separately, sound administration of justice would require the joining two separate proceedings.

SUBMISSIONS:

The Federal Republic of Yugoslavia requests the Court to decide as follows:

1. As Bosnia and Herzegovina has submitted the claims: a) that certain alleged acts were committed against the non-Serb population in Bosnia and Herzegovina, and b) that the alleged acts are breaches of the Genocide Convention, and c) that the alleged acts are imputable to the Federal Republic of Yugoslavia;
2. As the Federal Republic of Yugoslavia has requested the Court to reject all claims of Bosnia and Herzegovina because, *inter alia*: a) the alleged acts are not breaches of the Genocide Convention, i.e. the crime of genocide, in particular, because the intent to commit genocide did not exist; b) that the alleged acts are not imputable to the Federal Republic of Yugoslavia due the fact that the Republic of Srpska was an independent state entity and that the acts of its organs, citizens and other individuals, were motivated by local reasons, *inter alia*, by direct and public incitement to genocide by the Muslim side and by crimes of genocide committed against the Serbs, and not by orders of Yugoslav organs;
3. As the Federal Republic of Yugoslavia has submitted the counter-claim requesting the Court to establish the responsibility of Bosnia and Herzegovina for acts of direct and public incitements to commit genocide against the Serbs and for crimes of genocide committed against the Serbs;
4. As the Federal Republic of Yugoslavia has referred to the facts presented in the counter-claim as relevant for rejection of the claim of Bosnia and Herzegovina concerning qualification of alleged acts as the crime of genocide, in particular, the circumstances of the situation relevant to the decision of the Court on the existence of intent to commit genocide;
5. As the Federal Republic of Yugoslavia has presented the same identical facts as facts relevant for rejection of the claim concerning the imputability of alleged acts to the Federal Republic of Yugoslavia and as a basis for the counter-claim, i.e. direct and public incitements to genocide;

6. As the Federal Republic of Yugoslavia has referred to the other facts, i.e. crimes of genocide, presented in the counter-claim, as relevant to the rejection of the claim concerning the imputability of alleged acts to the Federal Republic of Yugoslavia and as a basis for the counter-claim;

7. As the claim and the counter-claim are based on the same legal ground, i.e. Convention on the Prevention and Punishment of the Crime of Genocide and general rules of State responsibility;

8. The counter-claim is directly connected with the subject-matter of the claim and the counter-claim meets the conditions of Article 80, paragraphs 1 and 2, of the Rules of Court,

9. Accordingly, the Court rejects all requests of Bosnia and Herzegovina submitted by its letter of 9 October 1997.

Belgrade, 23 October 1997


Rodoljub Etinski

Agent of the FR of Yugoslavia

