

INTERNATIONAL COURT OF JUSTICE

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

(BOSNIA AND HERZEGOVINA v. YUGOSLAVIA)

PRELIMINARY OBJECTIONS

JUNE 1995

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Abbreviations

B-H	<i>Bosnia and Herzegovina</i>
FRY	<i>the Federal Republic of Yugoslavia</i>
HDZ	<i>the Croatian Democratic Union</i>
JNA	<i>the Yugoslav People's Army</i>
SDA	<i>the Muslim Party of Democratic Action</i>
SDS	<i>the Serbian Democratic Party</i>
SFRJ	<i>the Socialist Federal Republic of Yugoslavia</i>

PRELIMINARY OBJECTIONS

By the Application dated 20 March 1993, the Government of the so-called Republic of Bosnia-Herzegovina requested the Court to adjudicate on the application of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. In pursuance of the Order issued by the Court on 7 October 1993, that Government filed on 15 April 1994 the Memorial setting forth the reasons of law and of fact on which it seeks to rely in support of its claims.

The Government of the Federal Republic of Yugoslavia raises Preliminary Objections against these claims and has the honour to set them out and justify them below, in accordance with Article 79, paragraph 1 of the Rules of Court, and in pursuance of the Order issued by the Court on 21 March 1995. Accordingly, this Government will for the time being refrain from filing, in accordance with Article 79, paragraph 3, of the Rules of Court, a Counter-Memorial in reply to the contentions set forth in the Memorial of the Government of the Applicant State.

INTRODUCTION

1. The Applicant requests the Court to base its jurisdiction on Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereafter: the 1948 Genocide Convention). Bearing this in mind, the FR of Yugoslavia is hereby submitting its preliminary objections. The Applicant cannot make his retention of this request conditional upon the FR of Yugoslavia's renunciation of its right to raise preliminary objections. In case the FR of Yugoslavia submits preliminary objections, the Applicant cannot invoke other possible grounds for the jurisdiction of the Court and proceed to submit new requests, as set out in para. 4.1.0.9. of the Memorial (p. 132) and para. 4.2.4.5 of the Memorial (p. 178). This would mean a revision of the Memorial and the formulation of a new case, which is not permitted in this procedure. Before initiating the procedure and in the course of proceedings the FR of Yugoslavia had not accepted the jurisdiction of the Court over this Case.

2. The circumstances which constitute the background of the Case are dominated by elements of civil strife and, consequently, no international dispute is involved over which the Court can properly exercise its competence.

3. By issuing the authorization for the institution of proceedings, Alija Izetbegovic has overstepped his powers as the President of Presidency of the Applicant State and, consequently, the Application is not admissible.

4. The FR of Yugoslavia holds that the Applicant State is not a party to the 1948 Genocide Convention for it could not enter into it by notification of succession, for, by declaring

its independence, it violated the duties stemming from the imperative rule of international law - the principle of equal rights and self-determination of peoples. To prove this violation, we have to highlight the relations between the three peoples in the territory of the former Yugoslav Republic of Bosnia-Herzegovina at critical junctures, as well as certain segments of their past history which have become pertinent once again in the wake of the latest developments.

5. The FR of Yugoslavia points to the fact that the Applicant State has been recognized as an independent state in contravention of international law, that it has never established its authority over a larger part of the territory of the former Yugoslav Republic of Bosnia and Herzegovina where the Bosnian Serb Republic was formed, as well as that the established authority stood no chance of remaining stable for a longer period of time because the new independent governments of Herceg-Bosnia and the Autonomous Province of Western Bosnia were formed on the territory which had briefly been under the control of the Government in Sarajevo. These are, also, the reasons why the Applicant State is not a party to the 1948 Genocide Convention.

6. In view of the fact that armed conflicts are taking place in the territory of the former Yugoslav Republic of Bosnia-Herzegovina in which the FR of Yugoslavia is not taking part, nor did it do so, and considering that the FR of Yugoslavia did not have any jurisdiction over the contested areas in the period in question, there are no grounds on which to constitute a dispute between the two sides under Article IX of the 1948 Genocide Convention.

7. If, however, the Court establishes that the above

assertions are not founded either on the law or on facts or that, even though they are, there are other reasons why this Case falls under the jurisdiction of the Court, the FR of Yugoslavia holds that a jurisdiction of a Court cannot be defined *ratione temporis* as claimed by the Applicant and requests the Court to determine its jurisdiction *ratione temporis* in accordance with the law.

8. The opinions of the Badinter Commission to which the Applicant has referred do not constitute *res iudicata* in this Case because the Badinter Commission was not an arbitration in the sense of international law but an advisory body at the service of the Chairman of the Conference on Yugoslavia and the opinions by the Badinter Commission are not legally binding.

9. The participation of the FR of Yugoslavia in this procedure cannot be interpreted as its recognition of the Republic of Bosnia-Herzegovina.

F A C T S

1.1. Relevant facts from the past of Bosnia and Herzegovina

1.1.0. FRY does not wish to burden this procedure and this submission with the elaboration of historical facts. References to certain historical facts, however, concerning the application of the principle of equal rights and self-determination of peoples are indispensable and will therefore be made here. Of relevance here are the historical facts which testify that Serbs have been living in the space of Bosnia and Herzegovina as a people for centuries, and that in certain past periods they were subjected to repression, including the acts of genocide, at the hands of the Ottoman authorities and later on of the Muslim-Croatian fascist coalition during World War Two.

1.1.1. In mid-10th century Bosnia was mentioned for the first time in Constantine Porphyrogenitus' "De administrando imperio", as an area within Serbia. At the time Bosnia was the region around the upstream and middle sections of the river Bosna, in effect a geographical designation within the Serbian state rather than a separate state entity. The section subtitled "Of the Serbs and of the Country they now dwell in" clearly shows that Serbs settled in Bosnia as early as the ninth century, i.e. that Bosnia has been a Serb land. (Constantine Porphyrogenitus, *De administrando imperio*, ed. G.M. Moravcsik, trans. R.J.H.Jenkins, Dumbarton Oaks, Washington 1967, 160. Annex. p.1¹)

1.1.2. In the 12th century Pope Urban III regards Serbia and Bosnia as identical and speaks about the political

¹ Documents annexed to the Preliminary Objections are marked by "Annex. p..."

and ecclesiastical unity of these lands. The Pope likewise confirms the rights of the Dubrovnik Church by the 1187 Charter in which he says: "regnum Seruillie, quod est Bosna... - "Kingdom of Serbia - that is Bosnia". (T. Smiciklas, Codex diplomaticus regni Croatiae, Dalmatiae et Slavoniae, vol.II Zagreb 1904, 207)

1.1.3. John Kinnamos refers in his article "Campaign on the Tara in 1150" to the Drina River which separates Bosnia from the rest of Serbia, meaning to say that even then Serbs were living in Bosnia. (John Kinnamos, Deeds of John and Manuel Commenus, Columbia University Press, New York 1976, Annex. p. 7)

1.1.4. In the 12th century Priest Dukljanin also says that the Drina River separates Serbia into two regions - Bosnia and Raska (Priest Dukljanin's Chronicle, Matica Hrvatska Zagreb, 1950).

1.1.5. Bosnian rulers in the 13th and 14th centuries exclusively designated their subjects as Serbs and referred to Serbian as the only language in Bosnia. (S. Cirkovic, I Serbi nel Medio Evo, 62., M. Blagojevic, on the National Identity of the Serbs in the Middle Ages, Serbs in European Civilization, Belgrade, 1993, 25-26, Annex. p.10)

1.1.6. The charters of the Bosnian Governor Matija Ninoslav of 1249 use the term "Serb" to denote an inhabitant of Bosnia and the Charter of Governor Stjepan II Kotromanic addressed to Dubrovnik regarding the sale of Rati in Ston, dated March 1333, notes that "two of the charters are Latin and two are Serb". (F. Miklosich, Monumenta Serbia, Viennae, 1858)

1.1.7. The Cyrillics, as the Serbian script, was used in Bosnia from earliest times. The Charter of Kulin Ban issued to the people of Dubrovnik in 1189 was also written in it. It was used later on too in the offices of the Bosnian rulers and feudal

lords as well as in church books. (G. Cremosnik, Die serbische diplomatische Minuskel, Studien zur alteren Geschichte Osteuropas II, Graz-Koln 1959, 113-115)

1.1.8. From the beginning of the 15th century external political circumstances began to change and Bosnia was being increasingly attacked by Turks. Their attacks forced King Tvrtko II to become a vassal both to the Hungarian king and to the Turkish sultan, to whom he paid regular yearly tributes as of 1415. Bosnia finally fell under Turkish rule in 1463. (C.Jirecek, Geschichte der Serben II, Gotha, Friedrich Andreas Parthes A.G., 1918, 168-226. John V.A. Fine, Jr., The Late Medieval Balkans, Ann Arbor, The University of Michigan Press, 577-590)

1.1.9. The Turks abducted Serb boys, took them to the centers of the Ottoman Empire where they were islamized and trained for soldiers - notorious janissaries. There was constant religious intolerance. As of 1767 the Serbs lost their autocephalous church and were officially considered "Romaics" and in 1853 a Turkish regulation was enacted banning the use of the Serbian name. From 1868 the rule was introduced that in national terms the entire population had to declare themselves as being Osmanli. (Milorad Ekmecic, Stvaranje Jugoslavije 1790-1918, II, Beograd, 1989, p.316) After the Serb uprising in 1874 which broke out as a result of terror, 250,000 Serbs, or one fourth of the total population, crossed the Bosnian border into the Habsburg-ruled lands. Later on, another 80,000 Serbs fled Bosnia and moved into Serbia and Montenegro (B.H. Summer, Russia and the Balkans 1870 - 1880, Oxford, 1937).

1.1.10. The first official population census in 1879 showed that the proportion of the three religious communities was: Serbs - 43%, Muslims - 38%, Catholics - 18%. (Djurdje Pejanovic, The Population of Bosnia and Herzegovina, Belgrade, 1955;

Ferdo Hauptman, *The Economy and Society of Bosnia and Herzegovina during Austro-Hungarian Rule (1878-1918)*, Contributions for the History of Bosnia and Herzegovina, II, Sarajevo, 1987; Milena Spasovska, Dragica Zivkovic, Milomir Stepic: *Ethnic Composition of the Population of Bosnia and Herzegovina*, Belgrade, 1992, 68 Annex. 15, Mark Pinson, *The Muslim of Bosnia-Herzegovina*, Harvard University Press, 1994, pp.86,87, 102,103, Annex. 21)

1.1.11. The execution by firing squad of 84 Serbian peasants at the hands of the Muslim volunteer Schutzkorps in Celebici on the river Drina at the outset of the World War presaged the genocide and large-scale massacres that were to follow. The violence to which the Serbs in Bosnia and Herzegovina had been subjected in 1914 was the reason why it was only there that some previous democratic institutions were not restored. Parliaments that had been disbanded in 1914 were renewed in all countries of Europe. This was not done in Bosnia and Herzegovina lest the Serbs demanded investigations of the crimes committed. Instead, the Governor of Bosnia and Herzegovina, General Sarkotic, made plans for Bosnia and Herzegovina to become part of Greater Croatia, for the establishment of an alliance of Croats and Muslims in which way the unification of Yugoslavia around Serbia would be precluded. (Stephan F.Sarkotic, *Der Banja Luka Process*, I, Berlin, 1933, p.IX)

1.2. The creation of the Kingdom of Serbs, Croats and Slovenes and the status of Muslims in that State

1.2.0. In view of the principle of self-determination of peoples as a basis for the creation of an independent state, it is necessary to explain the position of Muslims in the territory of Bosnia-Herzegovina from the establishment of the Kingdom of Serbs, Croats and Slovenes up to 1992.

1.2.1. The national question of Serbs, but also of other South Slav nations - Croats and Slovenes - was resolved with the creation of the Kingdom of Serbs, Croats and Slovenes in 1918. This Kingdom was formed when the Kingdom of Montenegro and the territories which had belonged to the Austro-Hungarian Monarchy before World War One and inhabited by Serbs, Croats and Slovenes joined the Kingdom of Serbia. The unification was achieved on the basis of the right of peoples to self-determination which was then valid as a political principle. (Address by the Diplomatic Legation of the People's Council, Zagreb, 1 December 1918 and the Reply of His Royal Highness Heir to the Throne Alexander, 1 December 1918, Annex. p. 26)

1.2.2. The Muslims in the Kingdom of Serbs, Croats and Slovenes were protected as a religious minority. Their status was governed by Article 10 of the Treaty which the principal allied and associated powers and the State of Serbs, Croats and Slovenes signed in St. Germain-en-Lais on 10 September 1919. Article 10 of this Treaty reads:

"The Serb-Croat-Slovene State agrees to grant to the Muslimans in the matter of family law and personal status provisions suitable for regulating these matters in accordance

with Musliman usage.

"The Serb-Croat Slovene State shall take measures to assure the nomination of a Reiss-UI-Ulema.

"The Serb-Croat-Slovene State undertakes to ensure protection to the mosques, cemeteries and other Musliman religious establishments. Full recognition and facilities shall be assured to Musliman pious foundations (Wakfs) and religious and charitable establishments now existing, and the Serb-Croat-Slovene Government shall not refuse any of the necessary facilities for the creation of new religious and charitable establishments guaranteed to other private establishments of this nature."(Traite entre les principales puissances allies et associees et l' etat Serbe-Croate-Slovene, Saint-Germain-en-Laye, 10 septembre 1919, Annex. p. 36)

1.3. Genocide committed against the Serbs in Bosnia and Herzegovina during the Second World War

1.3.1. 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. Certain Catholic clergymen directly worked on this up to 1943 when the Vatican distanced itself from the Croatian ustashi movement. In the organized genocide against Serbs, Jews and Gypsies, several hundred thousand people were killed. (Ladislaus Hory, Martin Broszat, Der Kroatische Ustascha- Staat 1941-1945, Stuttgart, 1964; Odone Talpo, Dalmazia. Una cronaca per la storia 1941, Roma, 1985, 998. Official edition of the Italian General Staff, Edmond Paris, Convert or Die, Catholic Persecution in Yugoslavia during World War II, printed in the USA, Annex. 51, Avro Manhattan, The Vatican Holocaust, printed in the USA, 1986,

1.3.2. By the decision of Nazi Germany and fascist Italy at the Vienna Conference of April 21 and 22, 1941, Bosnia and Herzegovina was made part of the Independent State of Croatia. By special provisions the Government of the Independent State of Croatia designated its commissioners to quickly institute Ustashi authorities and be in charge of direct preparations for the terror against the Serbs, Jews and Gypsies in Bosnia and Herzegovina which was to ensue.

1.3.3. Among the most notorious of the Ustashi commissioners designated for Bosnia and Herzegovina were Dr. Viktor Gutic (for the Banja Luka region), Nikola Jurisic (for Travnik), Prof. Hakija Hadzic (for the Tuzla basin), Don Bozidar Bralo (for Sarajevo), Dr. Dragutin Kamber (for Doboij), Dr. Pavle Canki (for Mostar) and prof. Alija Suljak (for eastern Herzegovina). Jure Francetis was appointed Chief Ustashi Commissioner for the entire Bosnia and Herzegovina.

During World War II the Nazi Germany organized a Moslem SS division - "Hanjar"

1.3.4. The establishment of Ustashi authority in Bosnia and Herzegovina met with the overt support of Moslem politicians from the Yugoslav Moslem Organization (hereafter: JMO), the pro-Ustashi Moslem intelligentsia as well as of different population strata. Thus Osman Kulenovic was Vice-Premier of the Ustashi government until November 1941 when he was replaced by his influential brother Jafer. Among the Ustashi were the leaders of JMO Hamid Kurbegovic, Ismet-beg Kapetanovic and others. Of Moslems eminent Ustashi dignitaries were the deputy head of state Ademaga Mesic, Mehmed Alajbegovic (later foreign minister of the Independent State of Croatia), Hakija Hadzic, Alija Suljag and others. In the

Government of the Independent State of Croatia (the Croatian Parliament) there were as many as 11 representatives of the JMO at the beginning of 1942.

1.3.5. The Ustashi authorities nominated the Moslems Hamdija Beslagic and Ragib Capljic heads of the counties of Pliva and Rama and Usora and Soli. They all exerted efforts for Moslems to declare themselves as Croats and support the establishment and strengthening of Ustashi rule in Bosnia and Herzegovina.

1.3.6. Ustashi propaganda portrayed the Moslems as one of the main constituents in the forming of the Independent State of Croatia and proclaims them the "flower of Croatia", and Bosnia and Herzegovina "the heart and soul of Croatia". At the same time, the Serbs are represented as the centuries-old enemy which has to be liquidated. All this prompted many Moslems to join the Ustashi movement, either through their participation in Ustashi and Home Guardsmen quisling armed formations or by joining the state bodies and organizations of the Independent State of Croatia.

1.3.7. Intensified propaganda was employed throughout the war, especially by religious factors (Moslem and Catholic) to incite to crimes against the Serbian people in Bosnia and Herzegovina with a view to carrying out the general strategy of the Independent State of Croatia for solving the Serbian question: kill a third, expel a third and convert a third to Catholicism. By their cruelty and massive scale, crimes in Bosnia and Herzegovina did not differ from those in Croatia itself, especially in primitive religiously fanatic Moslem communities. Thus for example crimes in Herzegovina, where the Chief ustashi Commissioner was the Moslem Alija Suljag, started as early as on June 1, 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 (Ilinden) in 1941, almost 12.000 men, women and children of Serb nationality were killed and thrown into pits. In the pit near the village of Korito near Gacko alone, 160 Serbs were killed and their property appropriated by Moslems.

1.3.8. 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 June 23, 1941, in the fields 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 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 ograda", 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. (Military History Institute Belgrade, Military History Gazette 1-2/1994, pp.79-104, Strahinja Kurdulija, Atlas of the Ustasha Genocide of the Serbs 1941-1945, Belgrade, 1993, Annex. p. 70)

1.3.9. At that time, the Ustashi killed 526 men, women and children in Capljina and the surrounding villages, of which

283 persons at 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, "not to throw the corpses of killed Serbs into the Neretva and other rivers of Herzegovina because they pollute the water".

1.3.10. The most massive carnages in the territory of Bosnia took place during August 1941 in its western regions. 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 July 31, 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.

1.3.11. The daily reports of the Gendarmerie show that in the area of the commune of Buzin "between 1,000 and 1,300 Serbs were killed" in just one day (August 1, 1941), 500 Serbs in the surroundings of Kljuc, while the day after, 800 hostages were killed in Sanski Most, and nearly 3,000 men, women and children of Serb nationality in the territory of the entire district.

1.3.12. Moslem Ustashi took the lead in most of these campaigns. The Office for Public Order and Security of the Independent State of Croatia (NDH) was informed on August 22, 1941, that "an Ustashi unit composed of 200 Bosnians - Moslems attacked the Serb village of Kotorane in the district of

Dvor na Uni" and that the attackers set fire to houses, plundered the village and slaughtered a large number of its inhabitants.

1.3.13. On the first day of September 1941, the village of Srdjevici was raided by a group of Moslems from the nearby villages of Basici, Kula, Muhovici and from Gacko who, led by Musa Basic and Avdo Zvizdic, set fire to the houses and looted Serb property.

1.3.14. The extermination of the Serbs and the ultimate solution to the Serbian question were not much different in other parts of Bosnia and Herzegovina either. The Commander of the Vojna Krajina (Military Frontier) Command, in his report of September 20, 1941, comments on the situation in the area of Jajce and its surroundings after the arrival of Moslem Ustashi from Herzegovina and notes that "total anarchy reigns in Jajce, 117 Ustashi who fled Mostar and Herzegovina before the Italian army, mostly Moslems from Gacko and Mostar, are committing grave atrocities in Jajce and the vicinity: four days ago 158 Greek Orthodox Serbs were slaughtered in the Orthodox Church in Jajce".

1.3.15. In numerous actions of this kind, Moslem Ustashi took the lead in killing the Serbian population and looting their property. The Serbs, in smaller or larger groups, took refuge in the mountains and fled from one territory to another before such terror. "In the period from August 1-5, between 4,600 and 5,000 Orthodoxes fled to the area of the gendarmerie precinct Zirovac in the district of Cazin, from the area of the gendarmerie precincts Vrgorac and Ravnice, fleeing untold terror at the hands of the Moslems", says the daily report of August 15, 1941.

1.3.16. The report of the district of Slunj of September

24, 1941, to the Ministry of the Interior of the Independent State of Croatia, states that in the period immediately preceding the Report, "there was large-scale persecution and cleansing of Serbs at the hands of the local Moslems - rambunctious Ustashi" in the area of the counties of Krbava and Psat "especially in the districts of Cazin, Bihac, and the station of Velika Kladusa".

1.3.17. The Serbs were massacred with unprecedented bestiality and horrendously tortured. The Ustashi killed them everywhere: in the street, in the fields, on their thresholds, before their parents and children. They gouged out their victims' eyes, cut off their tongues and ears, slit open the bellies of women extracting unborn infants, smashed in their skulls...

It is a state of fact that in 1941 the regular armed forces of the Independent State of Croatia, the Ustashi, offered as a birthday present to their leader Ante Pavelic a basket full of eyes they had gouged out of dead Serbs. (Curzzio Malaparte, Kaput; Military History Institute Belgrade, photographs)

1.3.18. Even the overt enemies of the Serbian people were appalled at the use of such horrific methods to "solve the Serbian question", one very much resorted to by the Moslem Ustashi. The Vice-Marshal Vladimir Laksa, special representative of the head of state Ante Pavelic reported, already in the first days of July, that "no citizen, no woman, no child can count on staying alive". At the same time, the German commander of Sarajevo qualified such crimes as "violence of the worst kind", quoting examples of mass murder and massacre of Serbs.

1.3.19. The Ustashi crimes against the Serbs in Bosnia and Herzegovina which started in the first days after the establishment of the Independent State of Croatia, continued unabated in 1942 and until the end of the war. In February 1942

alone, the Ustashi, led by Father Vjekoslav Filipovic Majstorovic, as they themselves admitted, killed 2,300 Serbs with pickaxes, hoes and axes in the villages of Sargovac, Dragulici and Motike near Banja Luka. Somewhat later, in mid-year, under the command of German general Friedrich Stahl and in cooperation with German units, the Ustashi wiped out 140 villages at the foot of Mt. Kozara. Some 70,000 inhabitants of Kozara out of a total of 195,000 were deported. 46,642 adults and 23,858 children were taken to the Ustashi camp Jasenovac. Most of them were killed in the camp, i.e. 33,398 civilians including 11,194 children.

1.3.20. In parallel with mass liquidation and terror the authorities of the Independent State of Croatia systematically moved Serbs out to Serbia or forcibly converted them to Roman Catholicism. According to German data, in 1941 alone some 180,000 Serbs were moved out to Serbia from Croatia and Bosnia-Herzegovina and during the four years of World War II (1941 - 1945), some 400,000 Serbs from Bosnia were banished to Serbia. (Military History Institute Belgrade, Military History Gazette, 1-2/94, p. 103)

1.3.21. During the war, special larger Ustashi armed formations were formed of Moslems, such as for instance, the 13th SS Moslem Division and 369th Legionary Division. The Hanjar Division, set up in May 1943 by Hitler's Germany and made up of Moslems (60%) and of Germans, mostly Volksdeutschers, (40%) was the most notorious of them all. These units killed 352 Serbs at Sremska Raca alone in July 1944. They set houses on fire in a number of villages and killed over 100 persons at Jarmen while they sent all persons capable of work to Germany. They slaughtered 35 persons, mostly women and children in the Orthodox church at Brezovo Polje, a village near Bijeljina. (Military History Institute Belgrade, Archives, box

1.3.22. Due to massive loss of life in World War II there was a change in the ethnic composition of the population in Bosnia and Herzegovina. According to the 1991 census, Moslems accounted for 43%, ranking first, while the Serbs were second, accounting for 31%.

1.4. The status of Muslims in Bosnia-Herzegovina in post-war socialist Yugoslavia

1.4.1. In post-war socialist Yugoslavia, the status of Muslims improved from that of a religious minority to that of a people. Art. 1 of the 1974 Constitution of the Socialist Republic of Bosnia-Herzegovina says:

"The Socialist Republic of Bosnia-Herzegovina is a socialist democratic state and a socialist self-managed democratic community of the working people and citizens, the peoples of Bosnia and Herzegovina - Muslims, Serbs and Croats, persons belonging to other peoples and nationalities living in it, based on the rule and self-management of the working class and all working people and on the sovereignty and equal rights of the peoples of Bosnia and Herzegovina and of persons of other peoples and nationalities living in it.

"The Socialist Republic of Bosnia and Herzegovina is a part of the Socialist Federal Republic of Yugoslavia."(Annex. p. 104)

This is probably a unique case in the history of the world that a religious minority has advanced to the status of a

nation.

1.4.2. Art. 2 of the same Constitution says:

"Working people and citizens, peoples of Bosnia-Herzegovina - Serbs, Croats and Muslims and persons belonging to other peoples and nationalities - shall exercise their sovereign rights in the Socialist Republic of Bosnia-Herzegovina, except those rights which - in the common interest of working people and citizens, peoples and nationalities - shall be implemented in the Socialist Federal Republic of Yugoslavia under the Constitution of the SFRY." (Annex. p. 104)

1.4.3. Art. 3 of the same Constitution sets out as follows:

"In the Socialist Republic of Bosnia and Herzegovina, the equality of peoples and nationalities and persons belonging to them shall be guaranteed.

"The peoples of Bosnia-Herzegovina, Croats, Muslims and Serbs, and persons belonging to other peoples and nationalities shall be provided with the means for the promotion of national values, for a free expression of their distinctive national features in line with the requirements of co-existence, social development and strengthening of brotherhood and unity, as well as proportionate representation in the assemblies of socio-political communities." (Annex, p. 104)

1.4.4. The Socialist Republic of Bosnia and Herzegovina had broad constitutional, legal, executive and judiciary powers. It had its assembly as the constitutional and legislative body, its government as the executive, presidency as a representative body and a constitutional court and its own

Supreme Court.

1.4.5. In post-war Yugoslavia, the Muslims were proportionally represented in all agencies of government, both at local, republican and federal levels. The following persons held high-ranking offices in the Federation: Avdo Humo (1953, 1962), Hasan Brkic (1958), Osman Karabegovic (1949, 1953-57, 1963), Dr Zaim Sarac (1953-57), Safet Filipovic (1945 - 1960), Lutvo Ahmetovic (1965), Ahmet Cahovic (1965-1967), Dr Kemal Kapetanovic (1969), Ibrahim Maglajic (1965), Ibrahim Liftic (1969), Mustafa Sabic (1962), Dzemat Bijedic (Prime Minister), Muhamed Hadzic, Hakija Pozderac (1969), Fehim Halilovic (until 1980), Dr Kemal Tarabar, Mumamed Berberovic (1985), Nijaz Dizdarevic (1982), Dr Muhamed Kesetovic, Tarik Karavdic (1978), Kadir Alijagic, Izet Brkic, Smajo Mandzuka, Hamdija Pozderac, Raif Dizdarevic, Dzevad Mujazinovic (1989), Suada Muminagic (1990), Ibrahim Hadzic (1990), Irfan Ajanovic, Ibrahim Tabakovic (1988), Kemal Halilovic (1984), Sabrija Pojskic (1990).

1.4.6. From 1945 to 1992, the Muslims in Yugoslavia made remarkable progress and developed freely in economic, political, cultural and religious fields.

1.4.7. Islamic clergy was educated at the Gaza Husref-Beg Madrasah in Sarajevo. A number of young Muslims attended religious schools in Islamic countries. Unfortunately, they were one of the conduits through which the ideas of militant Islam were imported into Yugoslavia.

1.4.8. There were four universities in Bosnia and Herzegovina: in Sarajevo (since 1949), in Banja Luka (since 1975), in Tuzla (1976) and in Mostar (1977).

1.4.9. The Academy of Sciences and Arts of Bosnia and Herzegovina was founded in 1966.

1.4.10. In the post-war period, the economy of Bosnia and Herzegovina developed rapidly. A large number of industrial facilities were constructed in Bosnia and Herzegovina with the Federal Government funds.

1.4.11. All arts were developed in Bosnia and Herzegovina. There were theaters in Sarajevo, Mostar, Banja Luka, Zenica and other. The associations of authors, painters, musicians and others were established. Movie industry was flourished as well.

1.4.12. All three peoples participated equally in all spheres of social life. Hence, the Muslims in Yugoslavia fully enjoyed their rights as a people on the principle of equality and self-determination.

1.5. The first crisis in inter-ethnic relations in post-war socialist Yugoslavia

1.5.1. The signs of a major crisis which could escalate into a civil war emerged also in 1971 and 1972 while Josip Broz Tito was still alive. In the political history of Yugoslavia, this crisis was registered as the "Mass Movement". The crisis was provoked by the separatist forces within the League of Communists of Croatia.

1.5.2. Farmers in Serb villages set up vigils, armed themselves illegally and took other self-defensive measures.

1.5.3. A certain number of Serbs left Croatia and Bosnia and Herzegovina for Serbia.

1.5.4. The crisis ended when Josip Brpoz Tito replaced the Croatian political leadership.

1.6. The founding of parties in the Yugoslav Republic of Bosnia and Herzegovina in 1990

1.6.1. The Parliament of the Socialist Republic of Bosnia-Herzegovina adopted a Law on Civic Associations in Bosnia- Herzegovina in the first half of February 1990 (Official Gazette of the Socialist Republic of Bosnia-Herzegovina, No. 5/90, Annex. p. 109). This created a legal basis for the formation of political parties. The three most important of the many parties formed had an explicitly national character. They were the Muslim Party of Democratic Action, the Serbian Democratic Party and the Croatian Democratic Union (hereafter: HDZ).

1.6.2. The Muslim Party of Democratic Action (hereafter: SDA) was formed on 26 May 1990 in Sarajevo. Alija Izetbegovic was elected as its leader.

1.6.3. Given the earlier biography and activities of Mr Izetbegovic, his appearance on the Bosnia-Herzegovina political scene provoked the concern and mistrust of the Serb people in Bosnia-Herzegovina. Mr. Izetbegovic was sentenced twice on the grounds of subversive activity from the positions of Islamic fundamentalism.

1.6.4. Alija Izetbegovic wrote the "Islamic Declaration", a religious political program, in 1970, and it was illegally printed and distributed among Muslims. It was published again in 1990

in Sarajevo. It was subtitled "A program of the Islamization of Moslems and Moslem Peoples". Alija's aim was the Islamization of Muslims and his motto was "faith and struggle". This was concisely and explicitly explained underneath the subtitle. Since the whole text of the "Islamic Declaration" is appended to the Preliminary Objections (Annex. p. 171), we shall mention here only those parts that we think are the most important for an understanding of Alija Izetbegovic's political activity.

1.6.5. One of the most important of the ideas presented by A. Izetbegovic in the "Islamic Declaration" is the unity of religion and politics. Starting from this idea, Izetbegovic arrives at his "first and most important conclusion", which was certainly a reason for serious concern among Serbs in Bosnia-Herzegovina. Later on in the "Islamic Declaration", in the third paragraph under the heading "Islam is not only a religion", stands the text:

"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 Moslem 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).

1.6.6. A. Izetbegovic does not only advocate the Islamization of one Muslim community, but a global Islamization of all Moslems. In the fourth thesis on the Islamic order, entitled "The unity of Moslems", he says:

"Islam comprises the principle of ummet, i.e., the aspiration for the unification of all Moslems into a single community - religious, cultural and **political**. Islam is not a nationality, but it is the supranationality of this community." (Bold type is ours)

1.6.7. This is what A. Izetbegovic says about the introduction of Islamic rule:

"Emphasizing as a priority religious and moral revival does not imply - nor can it be interpreted to imply - that Islamic order can be achieved without Islamic rule. This stand only means that our road does not proceed from the conquering of power, but rather from the conquering of people, and that Islamic revival is primarily a revolution in the field of education and only after that in the field of politics.

"Therefore, we must be preachers first and then soldiers. Our prime means are personal example, books and words. When will force be added to these means?

"The choice of the right moment is always a specific question and depends on a number of factors. Nevertheless, there is a general rule: Islamic order should and can approach the overtaking of rule as soon as it is morally and **numerically** strong enough **not only to overthrow the non-Islamic rule but to develop new Islamic rule**. This differentiation is important, since destruction and development do not require an equal level of psychological and material readiness.

"To act prematurely is equally as dangerous as to be late in taking the required action.

"The conquering of power on the basis of a favourable concurrence of events, without sufficient moral and psychological preparedness and without the required minimum of competent and developed personnel implies the realization of another coup and not an Islamic revolution (and a coup is a continuation of non-Islamic politics by other groups of people or on behalf of other principles). To be late in the overtaking of power means to deny oneself a very powerful means for achieving the aims of Islamic order and to give non-Islamic rule an opportunity to strike a blow to the movement and disperse its activities. For the latter case, recent history gives sufficient tragic and illustrative examples." (Bold type is ours)

1.6.8. In an attempt to hide his true intentions, as outlined in the above text of the "Islamic Declaration", and after forming an anti-Serb coalition between the SDA and the HDZ with the aim of preserving a single and unitary Bosnia-Herzegovina, Izetbegovic began to speak about Bosnia-Herzegovina as a civil, multi-ethnic state. However, the Serb people did not believe in such a sudden change in Mr Izetbegovic's political convictions.

1.6.9. How justified this lack of confidence was can best be seen from the fact that Alija Izetbegovic did not manage to hide for long behind this transparent political mask, and the Islamization of the Muslim population on territory under his control became quite clear in 1994. This is shown by a series of reports from territory under his control. A campaign began against mixed marriages, anti-war songs of Serb singers were banned, and even "loyal" Christians were discriminated against. The Mujaheddin contributed to this by banning the consumption

of alcohol, and demanding women to wear long hooded overdresses. (Roger Cohen, *Bosnians Fear a Rising Islamic Authoritarianism*, *The New York Times*, October 10, 1994, Annex. p. 241, Anthony Loyd, *Islamic Teachers Offer Pension in Return for Jihad*, *The Times*, 22 October 1994, Annex. p. 242, Lubor Zink, *Thoughts on Balkan Stife*, *The Toronto Sun*, 21 July 1993, Annex. p. 243, Remy Ourdan, *La fin du reve bosniaque*, *Le Mond*, 28 September 1994. Annex. p. 244, R. Cia, *L'allarme del neocardinale Puljic "Stanno islamizzando la Bosnia"*, *Corriera della Sera*, 14 November 1994, Annex. p. 247)

1.6.10. One of the ways of expressing Islamic fundamentalism of the leadership of the Party of Democratic Action (SDA) was their readiness to sacrifice their citizens in order to achieve foreign political goals: condemnation of Serbs and foreign military intervention. There are convincing indications that the Moslem authorities activated the mine in the line of people waiting for bread on 27 May 1992 in Sarajevo, when 17 people were killed and a large number wounded. TV networks broadcast the terrifying pictures all around the world and military forces of the Republic of Srpska were condemned without any proof. (Leonard Doyle, *Moslems Slaughter Their Own People*, *The Independent*, 22 August 1992, Annex. p. 250, Warren Strobel, *Bosnians May Shelled Selves*, *The Washington Times*, 23 August 1992, Annex. p. 251 Colonel Milanko Cvijovic, *Expert Analysis of the B-H TV Shots of the Event in the Vase Miskin Street - Sarajevo*, 25 May 1992, Annex. p. 252)

Canadian Major General Lewis MacKenzie, Commander-in-Chief of UNPROFOR, wrote down in his diary:

"Disaster in Sarajevo. People lined up for bread were attacked and at least 17 killed. Presidency claims it was a Serb mortar attack, Serbs claim it was a set-up using explosives. Our people tell us there were a number of things that did not fit. The

street had been blocked off just before the incident. Once the crowd was let in and lined up, the media appeared but kept their distance. The attack took place and media were immediately on the scene. The majority of people killed are alleged to be "tame Serbs" " (Major General Lewis MacKenzie, Peacekeeper, Douglas and McIntyre, Vancouver - Toronto, 1993, pp. 193, 194, Annex. p. 262)

There is serious reason to believe that Moslem forces fired a mortar grenade killing 68 people in the Sarajevo market "Markale" in February 1993. (Reuters, February 19, 1994, Annex. p. 267, David Binder, Anatomy of a Massacre, The Foreign Policy, Winter 1994 - 1995, Annex. p. 268, Pazit Ravina, Was there a Shell in the Sarajevo Marketplace, Davap, February 16, 1994, Annex. p. 277)

1.6.11. Another form of expressing the Islamic fundamentalism was Alija Izetbegovic's relying on the Mujaheddin, warriors waging the holy war. They participated in the fighting, trained Bosnian Moslems, and also worked on the spreading of Islam and helped introduce Islamic customs and similar. From the countries they came from, an enormous quantity of arms was delivered to Moslem forces in B-H. It would be wrong to justify the engagement of the Mujaheddin by military reasons, because Alija Izetbegovic's regime enjoys NATO's support and military protection. (Andrew Hogg, Arabs Join in Bosnia War, The Sunday Times, 30 August 1992, Annex. p. 280, Tom Post, Joel Brand, Help from Holy Warriors, Newsweek, October 5, 1992, Annex. p. 281, Bill Gertz, Iranians Move into Bosnia to Terrorize Serbs, The Washington Times, Annex. p. 283, Bill Gertz, Iranian Weapons Sent Via Croatia, The Washington Times, Annex. p. 285)

1.6.12. This can perhaps best be seen from the Statement issued by five of the seven members of the

Presidency of the so-called Republic of Bosnia and Herzegovina in February 1995 against Alija Izetbegovic's attempt to make Bosnia-Herzegovina into a one-party Islamic state. The signatories say that army units are exposed to ideological pressures and the abuse of religious feelings by some of their members. The protest was signed by Nijaz Durakovic, a Moslem, Stjepan Kljucic, a Croat, Ivo Komsic, a Croat, Tatjana Ljubic-Mijatovic and Mirko Pejanovic, Serbs. The other two members of the Presidency are Alija Izetbegovic and Ejup Ganic, Moslems. (Robert Fox, Islamic Indoctrination of Army Splits Bosnian Leadership, Daily Telegraph, 6 February 1995, Annex. p. 288)

1.6.13. A. Izetbegovic said at Teheran on 30 October 1992 that his Bosnian Muslim forces had poison-gas weapons and might be forced to use them as a "defensive" measures against Serbian forces. (Bosnian Threatens Poison Gas Against Serb Forces, The New York Times, 31 October 1992, Annex. p. 289)

1.6.14. On 21 June 1993 in Ankara, A. Izetbegovic said that he could not exclude the possibility of using chemical weapons if the United Nations did not lift the arms embargo against them. In an interview to Anadolu Agency, he said that Muslims did not want to use chemical weapons but that events could get out of control. (REUTERS, AFP)

Really, on three occasions in August 1993, Bosnian Muslim army near Zvornik used chlorine gas in artillery projectiles. (Yossef Bodansky, "Bosnian Muslim Forces' First Combat Use of Chemical Weapons: The Precedent is Set", Defense and Foreign Affairs Policy, September 1993)

The UNPROFOR Situation Report for 15-17 October 1993 notified the President of the UN Security Council that chemical grenades were used by the Bosnian government army in the Tuzla vicinity. (United Nations: "Note to the President of the Security Council" UNPROFOR Situation report, New York, 18 October 1993)

1.6.15. A.Izetbegovic said in Tehran that Bosnian Muslims would not abandon their original demands and would step up their struggle until their expectations were fulfilled. He said that there could be no peace in Bosnia until the demands of Muslims were met. He invited Islamic countries to support Muslims more actively and to bring pressure to bear to end the "Serb aggression". (Nicosia, Reuters, Irna, 13 September 1993).

1.6.16. The distinguished American expert in terrorism Yossef Bodansky, who was the Director of the US House of Republican Task Force on Terrorism and Unconventional Warfare for four years, testifies:

"Beginning in early 1992, the Islamists' commitment to a Jihad against the West came to be tested in Bosnia-Herzegovina, in what was formerly Yugoslavia. A forward support and coordination center was established in the fall of 1991 in Bulgaria. In early 1992, forces of the Armed Islamic Movement (AIM) assumed an offensive and special operations throughout Bosnia-Herzegovina. Most active are the Islamic Jihad forces, the elite component of the Movement's 'international legion', led by 'Afgans'. Tehran urged and actively supported the establishment of 'volunteer forces from all over the Muslim world who would rush to help their brothers in faith in the Balkans'.

"In Bosnia-Herzegovina, the AIM forces are organized, very disciplined, and well equipped. Their commander is Mahmud Abdul-Aziz, a veteran of six years of fighting in Afghanistan under Ahmed Shah Massud and other combat for 'the sacred cause' in the Philippines and Kashmir, who also participated in clandestine operations in Africa for Turabi.

"The 'Muslim Forces' include several hundred

volunteers, primarily from Iran, Algeria, Egypt, Sudan, Persian Gulf Arab states, Pakistan, Afghanistan, Syria, and Turkey... As of the fall of 1992, there were 200-300 volunteer mujahideen in the Travnik area; 200 in the center of Bosnia; an undertermined number (in the hundreds) in Sarajevo and in eastern Bosnia-Herzegovina. They fight the Serbs and train the Bosnian forces. They also teach children the Koran and fundamentalist Islamic ways. The volunteers also train local Muslims in special operations. Meanwhile, the flow of volunteers, including Muslims from the United Kingdom, some of whom are 'Afghan' veterans, continues. By early 1993, there were over 1,000 mujahideen from Pakistan, Iran, Sudan and Libya.

"In addition, Iran maintains a core of highly professional operatives, mainly Iranians from the Pasdaran and Lebanese from the HizbAllah, who provide expert training and assistance and conduct the most sensitive covert operations (intelligence and terrorism). Tehran continues to provide Sarajevo with weapons and experts. In early November 1992, more than 50 expert terrorists and instructors of the HizbAllah and the Tawhid (its Sunni counterpart under Sheikh Sha'ban) were sent from Baalbak to Bosnia-Herzegovina to train local cadres and launch operations on their own. These trainers spearhead on ongoing Iranian efforts to deploy a 2,000-strong brigade of its Al-Quds Forces. All these forces receive substantial Iranian military assistance.

"Indeed, since the summer of 1992, there has been a marked escalation in provocations by the Muslim forces, the goal of which is to secure military intervention by the West against the Serbs (and, to a lesser extent, the Croats). Initially, these provocations were mainly senseless attacks on their own Muslim population. The UN concluded that a special group of Bosnian Muslim Forces, many of whom had served with Islamist

terrorist organizations, committed a series of atrocities, including 'some of the worst recent killings', against Muslim civilians in Sarajevo 'as a propaganda ploy to win world premeditated attacks and atrocities committed against Serbian civilians trying to flee contested areas. It is noteworthy that these Bosnian detachments are following exactly the principles of 'the war of the weak' as outlined by the HizbAllah's Ayatollah Fadlallah." (Yossef Bodansky, Target America, Shapolsky Publishers, USA, 1993, pp. 275- 277, Annex. p. 290)

1.6.17. Croatian Democratic Union was founded on 6 September 1990. Its program stressed the goal of "transforming Bosnia-Herzegovina into a democratic, parliamentary and multi-party state", but did not mention Yugoslavia at all. This party represented the interests of the Croat people in Bosnia-Herzegovina and worked towards the creation of a separate state entity of the Croat people in Bosnia-Herzegovina, which would be linked to Croatia and to the Muslim state entity in Bosnia- Herzegovina to the extent that was necessary in order to realize to Croat interests in the territory of the former Yugoslavia.

1.6.18. The Serb Democratic Party (hereafter: SDS) was formed on 27 July 1990. Its main goal was "a democratic Yugoslavia, organized as a modern federal state". This party represented the interests of the Serb people in Bosnia-Herzegovina. It strove first to ensure that territory with a Serb majority in Bosnia- Herzegovina should remain part of Yugoslavia, but if that was not possible, to create a separate state for the Serbs in Bosnia- Herzegovina.

1.6.19. The formation of this party was hindered by the government of Bosnia-Herzegovina. SDS activists were arrested while they were pasting party posters. The flat of the

president of the SDS regional committee in Zenica, Slobodanka Hrvacanin, was broken into. She suspects that the intruders were members of the state security service under Moslem control and that their aim was to frighten members of the SDS.

1.6.20. The leaders of this party are Dr Radovan Karadzic, Professor Dr Biljana Plavsic and Professor Dr Nikola Koljevic. Dr Karadzic is a professional psychiatrist, while Dr Plavsic and Dr Koljevic are university professors. They had not been involved in politics before the crisis began in Yugoslavia in 1990.

1.6.21. The Muslim Bosnian Organization was founded in Sarajevo in early October 1990 by defectors from the SDA who were dissatisfied by the fact that the party had fallen under the influence of its religious fundamentalist wing. The leader of this party is Adil Zulfikarpasic. Its members felt threatened by radical Muslims and therefore cancelled conferences in Mostar, Sarajevo and Zenica.

1.6.22. In the very first public appearances of the leaders of the new parties different views on the political organization of the Socialist Federal Republic of Yugoslavia (hereafter: SFRY) and the Socialist Republic of Bosnia-Herzegovina were expressed. During preparations for the foundation of the SDS, its future leaders stressed as the essence of its program two aims: that all parts of the Serb people living in the SFRY should remain in Yugoslavia, and the maintenance and development of friendly relations with neighbouring peoples, in the first place the Muslims. These goals were repeated at the Constituent Assembly and later during the formation of local SDS organizations. At the founding meeting of the SDS in Gorazde all those present in the town stadium expressed their wish to continue to live within the

borders of the SFRY. Speaking at the founding meeting of the SDS branch in Stolac, Mr Velibor Ostojic, chairman of the SDS Executive Committee, said that a confederal organization of the SFRY would mean that the Serb people would be split among several states and transformed into national minorities, which could not be accepted. Dr Karadzic repeated the same thesis at the founding meeting of the SDS branch in Mostar. (D. Maric, *Nikada necemo prihvatiti konfederaciju /We Shall Never Accept a Confederation/ Politika*, 8 October 1990, Annex. p. 296/7)

1.6.23. The Serb National Council in Bosnia-Herzegovina was formed at the pan-Serb rally in Banja Luka on 12 October 1990. It was said at a press conference that the Serbs had been forced to organize in this way because at the end of the 20th century they had been deprived of the state they had created. By that time, the Serbs had been eliminated from the Croatian Constitution, which had earlier recognized them as a constituent people in Croatia. Because of new threats to the Serb population, it had been forced to form the Council in order to prevent a new genocide. At a public meeting in Bileca, representatives of the SDS said that, on the basis of the Declaration of the Serb National Council on the situation of the Serb people in Bosnia-Herzegovina, they would insist on the equality of peoples and a federal system. The Declaration proposed the founding of a chamber of peoples in the Bosnian parliament. If an attempt was made to impose a confederal system in Yugoslavia or make Bosnia-Herzegovina into an independent state, the Serb National Council would not accept any law or decision made by the parliament that harmed its interest (M. Duric, S. Kljatic, *Za ravnopravan zivot u BiH kao federalnoj jedinici /For Life on an Equal Footing in B-H as a Federal Unit/ Politika*, 9 November 1990, Annex. p. 298/9)

1.6.24. Before the first multiparty elections, SDA leaders did not say much about the future organization of the SFRY and the Socialist Republic of Bosnia-Herzegovina. However, Mr. Izetbegovic said at one meeting of his party in Banja Luka that he would defend Bosnia's unity by force. (D. Kecman, *Branicemo Bosnu i silom /We Shall Defend Bosnia with Force Too if Need Be/ Politika*, 9 July 1990, Annex. p. 301/2)

1.7. The first multiparty elections in Bosnia-Herzegovina

1.7.1. The first multiparty elections in the Socialist Republic of Bosnia-Herzegovina were held on 18 and 19 November 1990. The results were published in the Official Gazette of SR Bosnia-Herzegovina, No. 42/1990, dated 19 December 1990. In addition to the three leading national parties, many other parties took part in the elections. They included the Democratic Socialist League of Bosnia-Herzegovina, the League of Reform Forces of Yugoslavia for Bosnia-Herzegovina, the Democratic League for Bosnia-Herzegovina, the Green Movement, the League of Communists - Social Democratic Party, the Muslim Bosnian Organization, the Party of Private Initiative, the Democratic Party of Mostar and Tuzla and the Serbian Renewal Movement.

1.7.2. The parliamentary seats were divided as follows in SR Bosnia-Herzegovina: SDA 86, SDS 72 and HDZ 44. The distribution of the parliamentary seats was in line of the national structure of the population. The three main national parties together won 202 of the total of 240 parliamentary seats. The parties whose programs did not stress national issues won only 38 parliamentary seats. (Report on the Results of the Elections of Deputies to Chamber of Citizens of the Assembly of the SR B-H, Annex. p. 326, Bosnia-Herzegovina, Defense and Foreign Affairs Handbook, London,

1.7.3. The electoral results clearly demonstrate the political mood of the citizens of the former Yugoslav republic of Bosnia-Herzegovina. It is clear that the overwhelming majority of citizens voted according to their national affiliation for parties that represented their national interests.

1.7.4. At the first multi-party elections on 18 - 19 November 1990, the following members of the Presidency of SR B-H were elected: Fikret Abdic, (1,045,539 votes) and Alija Izetbegovic (879,266 votes) as Muslims; Dr.Biljana Plavsic (573,812 votes) and Dr. Nikola Koljevic (556,218 votes), as Serbs; Stjepan Kljucic (473,812 votes) and Franjo Boras (416,629) as Croats; and Ejup Ganic (709, 691 votes) as Yugoslav. (Official Gazette of SR B-H, No. 42,19 December 1990, Annex. p. 326)

1.7.5. The Assembly of the Socialist Republic of Bosnia-Herzegovina elected at its session on 30 January 1991 the following government: Prime Minister Jure Pelivan (HDZ candidate), Vice Prime Ministers Muhamed Cengic (SDA candidate), Dr. Miodrag Simovic (SDS candidate), Dr. Rusmir Mahmutcehajic (SDA candidate), members Jerko Doko (HDZ candidate), Alija Delimustafic (SDA candidate), Ranko Nikolic (SDS candidate), Momcilo Pejic (SDS candidate), Dr. Resad Bergetic (SDA candidate), Dr. Milivoje Nadazdin (SDS candidate), Tomislav Krsticevic (HDZ candidate), Dr. Munir Jahic (SDA candidate), Dr. Haris Silajdzic (SDA candidate), Dr. Ismet Lipa (SDA candidate), Dr. Ismet Kusumagic (SDA candidate), David Balaban (SDS candidate), Velibor Ostojic (SDS candidate), Vitomir - Miro Lasic (HDZ candidate), Dr. Vitomir Lukic (SDS candidate), Dr. Nihad Hasic (SDA candidate). Ibrahim Colahodzic (SDA candidate), and Dr. Branko Djeric

(SDS candidate). (Official Gazette of SR B-H, No. 4, 7 February 1991).

1.8. Disagreement between the three leading parties over the future organization of Yugoslavia and Bosnia-Herzegovina in 1991

1.8.1. After the first multiparty elections, the SDA made clear its position on the organization of Yugoslavia and Bosnia-Herzegovina. A resolution of Muslim intellectuals on a sovereign Bosnia-Herzegovina was presented at a press conference held in Sarajevo on 7 January 1991, on Orthodox Christmas. (M. Duric, Objavljena rezolucija muslimanskih intelektualaca /Resolution of Muslim Intellectuals Made Public/ Politika, 8 January 1991, Annex. p. 416/7) It was probably no coincidence that this statement was made precisely on the Orthodox Christmas Day. It is mentioned because certain acts of genocide against the Serbs were committed on Orthodox Christian holidays during World War II. The same happened in the civil war that started in 1992. The holding of the press conference at which the resolution of the Muslim intellectuals was presented on the Christian Orthodox Christmas Day was probably part of a deliberate strategy aimed at further irritating the Serb people. (See paragraph 1.3.7.)

1.8.2. The details of this strategy were presented by SDA leader A. Izetbegovic at a press conference held in Sarajevo on 30 January 1991, when he said: "If Slovenia and Croatia secede from the present Federation, I will consider that I no longer have any authority to conduct further talks on a new Yugoslavia. I will propose that a referendum be held of all citizens of Bosnia-Herzegovina - not of individual peoples - to

decide on the independence and sovereignty of Bosnia-Herzegovina and that a decision be reached by a majority of at least two-thirds." A Declaration on the Sovereignty of Bosnia-Herzegovina was given to reporters on this occasion. (Referendum o samostalnosti BiH /Referendum on the Independence of B-H/ Politika, 31 January 1991, Annex. p. 418/9)

1.8.3. In February 1991, the SDA Executive Council prepared a Draft Declaration on the Sovereign B-H and submitted it to the B-H Parliament.

1.8.4. On 20 February 1991 the SDS Council issued a statement saying that the SDA Declaration on the Sovereignty and Indivisibility of Bosnia-Herzegovina was unacceptable to the Serb people. The statement said that a sovereign and indivisible was possible only within the framework of the Yugoslav Federation and that the SDA Declaration denied the Serb people their right to live in one state. (Deklaracija o suverenosti BiH svodi status srpskog naroda na nacionalnu manjinu /Declaration on the Sovereignty of B-H Reduces the Serbian People to the Status of a National Minority/ Politika, 21 February 1991, Annex. p. 420/1)

1.8.5. In reaction to the Declaration on the Sovereign B-H prepared by SDA for the B-H Parliament, five parties that were active in Banja Luka issued a joint statement saying that these acts did not respect the results of the first multiparty elections in Bosnia-Herzegovina because the SDS had scored a convincing victory in communes that covered 64 percent of Bosnia-Herzegovina's territory, which meant that the people of these areas had voted to remain within Yugoslavia. (D. Kecman, BiH nije "negde izmedju" /B-H Is Not Somewhere "In-between"/ Politika, 26 February 1991, Annex. p. 422/3)

1.8.6. The SDS branch in Sarajevo rejected the Declaration. The regional Committee of SDS for North-Easter Bosnia said in a public statement of 14 Herzegovinian municipalities that the Declaration was unacceptable. (M. Caric, SDS Sarajeva odbija Deklaraciju o suverenosti BiH /SDS of Sarajevo Rejects the Declaration on a Sovereign B-H/ Politika 27 February 1991, Annex. p. 425/6)

In a public statement the SDS Committee for Herzegovina, said, among other things: "We most energetically condemn the Declaration on the State Sovereignty of Bosnia-Herzegovina as an anti-constitutional and illegal act calculated to break up Yugoslavia and as an act directed against the interests of the Serb people and their right to live in a single state." At the end of this public statement the regional SDS committee said that representatives of 14 municipalities had agreed at a meeting in Gacko on concrete measures to protect the Serb people and its sovereign right to live in a common homeland (Politika, 28 February 1991).

1.8.7. At the session of the B-H Parliament on 27 February 1991, the Draft Declaration on the Sovereign B-H proposed by SDA was reviewed. Marko Simic proposed on behalf of 20 SDS deputies that Declaration be excluded from the Agenda and addressed to the Council for National Equality of B-H, as envisaged in item 10 of Amendment LXX to the Constitution of the Socialist Republic of Bosnia and Herzegovina from 1990. Item 10 of Amendment LXX read as follows:

"The Council shall review issues of equality of peoples and national minorities at the initiative of deputies in the Socialist Republic of Bosnia-Hezegovina Parliament. If at least 20 deputies deem that a proposed regulation or any act from the competence of the Parliament of the Socialist republic of Bosnia-Herzegovina violates the equality of peoples and national

minorities, the Council shall determine the proposal decided on by the Parliament of the SR Bosnia-Herzegovina.

"Issues of interest for achieving equality of peoples and national minorities of Bosnia-Herzegovina, are decided on at the proposal of the Council by SR B-H Parliament under a special procedure established by The Rules of Procedure of the SR B-H Parliament, i.e. a two/third majority of the total number of deputies".

The Parliament Secretary Avdo Campara (SDA deputy) told the Parliament that the Council for National Equality did not exist. (M. Duric, M. Caric, Deklaracija upucena u Savet za nacionalnu ravnopravnost /Declaration Reffered to the Council for National Equality/ Politika 28 February 1991, Annex. p. 427/8)

1.8.8. Alija Izetbegovic said at this session of the SR Bosnia-Herzegovina's Parliament: "I would sacrifice peace for a sovereign Bosnia-Herzegovina, but I would not sacrifice its sovereignty for peace." This statement greatly upset the Serbian people. The Club of Serbian Deputies in the B-H Parliament addressed a letter to the President of the Presidency of the Socialist Federal Republic of Yugoslavia with a request for protection, including the following:

"We, Serbian deputies in the Parliament of the Socialist Republic of Bosnia-Herzegovina, as legitimate and only representatives of the Serbian people in Bosnia-Herzegovina request the federal institutions to protect our sovereign right to remain within the federal state of Yugoslavia.

We base our right to live in the federal state of Yugoslavia on the present Constitution of Bosnia-Herzegovina, Article 1, para 2, as well as on the still existing Constitution of the Socialist Federal Republic of Yugoslavia."

This statement of Alija Izetbegovic was also condemned by the Socialist Democratic Party of Bosnia-Herzegovina gathering members of all the three peoples. (M. Caric, SDA je konacno obelodanila svoje prave namere /SDA Has Finally Revealed Its True Intentions/ Politika, 1 March 1991, Annex. p. 430/2, M. Caric, Koga Izetbegovic moze da zastupa u Predsednistvu SFRJ /Who Can Izetbegovic Represent in the Presidency of the SFRY/ Politika, 1 March 1991, Annex. p. 432/3, D. Kecman, Frapantne metamorfoze A. Izetbeovoca /The Amazing Metamorphoses of A. Izetbegovic/ Politika, 1 March 1991, Annex. p. 434/5)

1.8.9. Mass rallies were held in Banja Luka and on Mount Kozara in early March 1991 in support of the preservation of the Yugoslav Federation. About 70 000 people rallied at the meeting in Banja Luka. (Veliko interesovanje za miting na Kozari /Great Interest in the Rally on Mn, Kozara/ Politika, 3 March 1991, Annex. p. 436/7, Dusan Kecman, Protiv razbijaca zemlje /Against Those Breaking up the Country/ Politika, 4 March 1991, Annex. p. 438/9, Dj. Djukic, Odlucna bitka za Jugoslaviju /The Decisive Battle for Yugoslavia/ Politika, 4 March 1991, Annex. p. 440/1)

1.8.10. The SDS Regional Committee for the Bosnian Krajina protested at a press conference held in Banja Luka on 7 June 1991 against the announced referendum on Bosnia-Herzegovina's sovereignty and pledged its support for living together in Yugoslavia. (D. Kecman, Krajsnici ne priznaju nikakvu suverenu drzavu BiH /Krajina People Do Not Recognize Sovereign State of B-H/ Politika, 8 June 1991, Annex. p. 442/3)

1.8.11. Addressing a mass rally in Nevesinje on 23 June 1991, Dr Karadzic said that the Serbs would not agree to be divided by state borders. (D. Maric, Srpski narod neće dati Jugoslaviju /The Serbian People Will Not Give Yugoslavia Up/ Politika, 24 June 1991, Annex. p. 444/5)

1.8.12. In a letter to US Secretary of State James Baker, the SDS said that it had won the support of three-quarters of the Serb people in Bosnia-Herzegovina who wished to live in a federal Yugoslavia in which parts of the Serb people would not be national minorities. (Mirko Caric, Milosevic umesto Izetbegovica /Milosevic Instead Izetbegovic/ Politika, 25 June 1991, Annex. p. 446/7)

1.8.13. After it became evident that the Muslims and the Croats in Bosnia-Herzegovina did not wish to remain in Yugoslavia, Dr Karadzic told a press conference held in Belgrade on 18 July 1991 that each people could leave Yugoslavia but without harming other peoples that wanted to remain in Yugoslavia. Serbian and English versions of a pamphlet entitled "What the Serbs Propose" were distributed at this press conference. The purpose of this pamphlet was to precisely present the positions of the SDS and thus oppose anti-Serb propaganda. (A. Brkic, Regije - kljuc za resenje jugoslovenske krize /Regions - the Key to the Solution of the Yugoslav Crisis/ Politika, 19 July 1991, Annex. p. 448/9)

1.8.14. Even then SDS was trying to find a solution equally acceptable for the Serbs and the Muslims in Bosnia-Herzegovina and for that purpose prepared a text of an agreement with representatives of the Muslim-Bosniac Organization. However, representatives of the Muslim-Bosniac Organization were exposed to great pressure and open threats by SDA leaders, which prevented the conclusion of the agreement. (M. Caric, Propao pokusaj SDA da minira sporazum /Attempt of the Party of Democratic Action to Undermine the Agreement Failed/ Politika, 2 September 1991, Annex. p. 450/1, P. Simic, Srpsko-muslimanski sporazum pod informativnom blokadom /Serbian-Muslim Agreement under an Information Blockade/ Politika, 11 August 1991, Annex. p. 453/4) (See 1.8.18.)

1.8.15. In a statement dated 14 October 1991, the SDS said that if Croatia seceded from Yugoslavia the SDS would propose the holding at local levels (district, commune and region) and republican level of a referendum of Bosnia-Herzegovina's three constituent peoples.

1.8.16. Two days later Dr Karadzic told an SDS press conference in Sarajevo that it was evident that the Muslims and Croats in Bosnia Herzegovina did not wish to remain in Yugoslavia. "For that reason we expect recognition of our wish to have strong federal ties with Yugoslavia. In order to avoid a civil war the Parliament adopted principles according to which a solution acceptable for all the peoples will be sought, while no one will impose their will on others, " the SDS leader said. (M. Pesic, Nema jedinstvenog resenja za BiH /There is No Unified Solution for B-H/ Politika, 18 October 1991, Annex. p. 455/6)

1.8.17. Finally, on 22 December 1991, the SDS proposed a comprehensive democratic transformation of Bosnia- Herzegovina into a confederation of three ethnic communities with three parliaments. During the talks held between the three parties SDS proposed that an integral B-H be preserved as part of the Yugoslav Federation. Realizing that the two other parties were against this, SDS was prepared to respect the wish of Muslim and Croat representatives to "loosen" the ties with Yugoslavia or to completely secede from it. "For the sake of peace we are ready to accept B-H as a confederation with three parliaments of the three ethnic communities, functioning without any mutual disturbances. This confederation would also have some common functions, which could make it possible for for B-H to be a link between Croatia and Yugoslavia. Thus, in B-H three entities, complementary or at least indifferent to each other, would be established" - said Dr.

R. Karadzic informing the Parliament of the Serbian people of negotiations between the three ethnic communities. (Muharem Duric, Bosanskohercegovačka konfederacija /A Bosnia-Herzegovinian Confederation/ Politika, 23 December 1991, Annex. p. 457/8)

1.8.18. It should be said, however, that not all Muslim parties and leaders shared the position of the SDA and A. Izetbegovic. The Muslim Bosnian Organization and its leader, Adil Zulfikarpasic, and the SDS and its leader, Dr Radovan Karadzic, prepared a draft agreement on Serb-Muslim relations in Bosnia-Herzegovina, which said:

"1. Aware of the problems we have inherited and those produced by political life since the elections, we have decided, in the spirit of openness and mutual respect, to work for the achievement of the historical and political interests of our two peoples. This Agreement is not aimed against anyone. It is for the benefit of all, and as such, open to all who support the principle of the common life in freedom and full equality.

"2. We consider that the basis for such life is mutual recognition of the sovereignty of peoples and the full territorial integrity of our Republic of Bosnia-Herzegovina and its constitutional and legal equality with the other republics in the common state of Yugoslavia.

"3. In our view, there is full historical justification for Yugoslavia as a common state of completely equal peoples and we shall work for the preservation and development of such a community.

"4. We are agreed that Bosnia-Herzegovina should be a legally and politically united and a democratic federal unit with appropriate powers in all parts of its territory, on condition that

the federal constitution and legislation form the basis of the country's system and guarantee the equality of citizens, peoples and republics.

"5. We express our interest in the Croats of Bosnia-Herzegovina living with us in full equality and we call upon them to accede to this Agreement. Regardless of the position of the Republic of Croatia, in or outside Yugoslavia, the Croats in Bosnia-Herzegovina are a completely equal people.

"6. Relations between citizens, peoples and republics in Yugoslavia shall be regulated by a common constitution embodying European standards.

"7. We are aware that this Agreement constitutes only a political and historical basis for our durable common life in peace. However, such a political accord makes it possible to seek the most constructive and rational solutions for the work of common federal bodies and their functions: monetary system, single market, single armed force and foreign affairs.

"8. We also consider that the optimal Yugoslav community is one comprising all six republics and all the peoples who originally constituted this community. Those peoples and republics who wish to withdraw from this community should do so by agreement and guarantee the real interests of each of the other members." (Focus SI/92, pp. 118-119, Annex. p. 459)

1.8.19. However, fundamentalist Muslim forces hindered these efforts with their constant attacks on the Muslim Bosnian Organizations (Muharem Duric, *Zajednicki zivot u zajednickoj drzavi /Joint Life in a Joint State/ Politika*, 31 July 1991, Annex. p. 461/2)

1.8.20. In addition to this, a rift occurred between A. Izetbegovic and the leader of the Muslims in Western Bosnia, Fikret Abdic, at the SDA Conference held in Sarajevo on 1 December 1991. The latter said that in important things it was wrong to act against the interest of not only the Muslim people but also the other peoples of Bosnia-Herzegovina and opposed the absolute power of A. Izetbegovic. (Muharem Duric, *Abdiceve zamerke Izetbegovicu /What Does Abdic Hold against Izetbegovic/ Politika*, 2 December 1991, Annex. 465/6). F. Abdic had before that received more votes than A. Izetbegovic in the presidential elections, but had conceded the Presidency to the latter. F. Abdic later broke entirely with A. Izetbegovic, particularly after the formation of the Muslim Autonomous Province of Western Bosnia and the conclusion of a treaty on peace and cooperation with the Bosnian Serb Republic. This conflict culminated when A. Izetbegovic's forces (The Fifth Corps in Bihac) defeated F. Abdic's forces in Western Bosnia, which resulted in terror by A. Izetbegovic's forces against the civilian Muslim population in that region, particularly the town of Velika Kladusa, and the flight of about 60,000 Muslims from that region to the Republic of Serb Krajina at the end of August 1994. After consolidating his forces, Abdic regained the lost territory and Muslim refugees returned to the area.

1.9. The rebellion by members of the SDA and the HDZ in the republican government against the SFRY and pressures on the Serb people in Bosnia-Herzegovina (1991-1992)

1.9.1. 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 printed in Bosnia-Herzegovina. The magazine "Novi Vox", a

Muslim youth paper led the attacks. (Bosna je okupirana - Al' ne zadugo /Bosnia Occupied - But Not for Long/ Novi Vox, Sarajevo, No.3, October 1991, Annex. p. 469/70)

1.9.2. 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 (fascist armed formations in the Independent State of Croatia during World War II). (Serbs should be hanged from the willows, and words "Srbe" and "Vrbe" rhyme in Serbian. The mentioning of pits was also supposed to associate to the suffering of the Serbs in World War II, since at that time Croat and Muslim fascists threw slaughtered or killed Serbs into deep pits in the rocky fields of B-H). Under the lyrics of the song the editorial office stated that it published the song because allegedly its style reminded of Ivo Andric's work. Thus, chauvinism, religious and national intolerance, were attributed to the literature of Yugoslavia's only Nobel Prize winner, which is absurd. In any event, in whatever context it was published this song had to cause concern of the Serbs in B-H. (Patriotska poezija /Patriotic Poetry/ Novi Vox, No. 3, October 1991, Annex, p. 472/4)

1.9.3. 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. This "newspaper" funeral of the leaders of the Serbian people in B-H was a grave attack on them. ("Citulje" /"Obituaries"/ Novo Vox, No. 3, October 1991, p. 478/9)

1.9.4. Illegal armed formations were set up in Bosnia-Herzegovina, as illustrated by an article, also published in the third issue of "Novi Vox" in October 1991, entitled "We will defend the border on the Drina". This article said:

"A two-page article entitled 'From the camp of the Hanjar Division' appeared in the latest issue of the Zagreb weekly 'Globus' with an interview with Alija Siljak, a member of the Presidency of the Croatian Party of Rights and its coordinator for Eastern Bosnia, who is said in political circles to have organized military activities on the Drina and recruited Muslim volunteers for Croatia's patriotic war. The journalist of the popular Zagreb weekly saw that these stories were not without basis when Alija took him to a training camp for new fighters somewhere in deep forest 'between the Drina and the Sutla'. When the journalist said that he was seen as the creator of the new Hanjar Division, Alija Siljak replied: 'What I am doing with my people from the Drina, as I call them, really is the continuation of a tradition. Much has been said about the Hanjar Division from 1945 to 1990, mainly in a negative context. Their so-called crime was to fight for their own state and defend their people from people like Kalabic, Medenica and Mihajlovic. They were disciplined and loved by the people, but one of their so-called crimes was that they wore fezes with a letter 'U' or a crescent and star, or both, instead of the Serb royalist insignia or the communist five-pointed star."

The Hanjar Division was a fascist Muslim armed formation created in the Second World War. (See paragraphs

1.3.3.and 1.3.21.) (Branit cemo granice na Drini /We Will Defend Our Border on the Drina/ Novi Vox, No. 3, October 1991, p. 482/5, Odluka o formiranju muslimanske narodne garde /Decision on the Formation of the Muslim National Guard/ Annex. p. 490/1, Uvodi se Hajvan vagon /Special Animal Cars To Be Introduced/ Annex. p. 494/7, Cele-Kula /Tower of Skulls/ Annex. p. 495/9, Igre /Games/ Annex. p. 496/9)

1.9.5. The authorities of B-H did not react to the texts in "Novi Vox" although they were meant to spread religious and ethnic intolerance.

1.9.6. The Bosnia-Herzegovina radio and television, the "Oslobodjenje" newspaper publishing house and all other republican mass media remained in Muslim-Croat hands. They were used to wage a media war against the Serb people.

1.9.7. SDS leader Dr Karadzic spoke at a press conference held on 23 January 1991 of the anxiety of Serbs in the western Herzegovinian communes bordering on Croatia due to which women and children were moving from Metkovic to eastern Herzegovina.

1.9.8. The arming of the Muslim and Croat civilians was organized in 1991. Part of the arms were obtained with the help of the Republic of Slovenia. This was confirmed by Hasan Cengic, a Muslim middleman. Cengic said at a hearing a Slovenian parliamentary committee that he had been first approached by Slovenian President Milan Kucan, who then connected him with Interior Minister Igor Bavcar. Slovenian Defence Minister Janez Jansa was the key person in the illegal arms deals. (M. Jaksic, Kucan prva veza /Kucan the First Connection/ Politika, 14 July 1994, Annex. p. 502/3)

1.9.9. The former chief of Slovenia's Counter-Intelligence Service, Miha Brejc, said on 17 February 1995 at a hearing before a Slovenian parliamentary committee that Slovenia supplied the Bosnian Muslims with arms from the beginning of 1991 to autumn 1994. Although these arms deals were supposed to be secret, it is quite certain that the arming of Muslims in Bosnia-Herzegovina could not have gone unnoticed by the Serbs.

1.9.10. Several thousand Muslims and Croats from Bosnia- Herzegovina were trained at the Croatian Interior Ministry training centre during 1991. ("It's a Crime to Remain Silent About a Crime", Novi Sad, 1993, pp. 372-375)

1.9.11. As early as February 1991, the flats of army officers and eminent Serbs were marked in Sarajevo and Bihac. In this way they were marked as possible targets.

1.9.12. Attacks by Croatia's armed forces on the territory of Bosnia-Herzegovina inhabited by Serbs began in March 1991. Croatian Special Police seized the "Brotherhood and Unity" bridge on the Sava near Jasenovac and the village of Donja Gradina on 5 March 1991. Serbs in Bosnia-Herzegovina were concerned by the failure of the SDA - and HDZ - controlled republican authorities to condemn these attacks.

1.9.13. The SDA began to organize the Muslim extremist organization, the Patriotic League, at least a year before the war. This was an illegal terrorist organization that mainly comprised Muslim officers who had deserted from the Yugoslav People's Army (hereafter: JNA). Sefer Halilovic, commander of the Muslim army of the so called Republic of Bosnia-Herzegovina deserted from JNA and joined the illegal and terrorist Patriotic League. The Patriotic League grew into a

new territorial defence force of Bosnia-Herzegovina and came into the open by attacking the JNA and breaking up the legal Territorial Defence force. The previously illegal Patriotic League was based in Sarajevo and led by leaders of the SDA.

1.9.14. When asked in an interview on "Bosnia-Herzegovinian Radio and Television" whether or not the war in Bosnia-Herzegovina could have been avoided, Muslim leader Alija Izetbegovic admitted that he himself had not expected that the war would be so terrible. "In the second half of 1991, we established the Patriotic League to prepare the people for the possibility of war," Mr Izetbegovic said (Tanjug, 15 February 1993)

1.9.15. The Serb people in Bosnia-Herzegovina was particularly irritated by the fact that A. Izetbegovic paid an official visit to Kurt Waldheim. The Serbs consider that Mr Waldheim is among those responsible for the death of 34.000 Serbs from Mt Kozara in World War Two. A. Izetbegovic said that K. Waldheim had been only a soldier. This visit and A. Izetbegovic's explanation did not contribute to building trust between Muslims and Serbs. On the contrary.

1.9.16. Residents of several western Herzegovina communes blocked roads with vehicles and human shields to prevent the passage of a motorized JNA column. The road blocks were placed on the Mostar-Listica-Posusje road allegedly because Bosnia-Herzegovina's authorities had not been notified in advance of the passage of the army column. A. Izetbegovic claimed at a press conference that he had not been consulted about troop movements. This was a clear case of A. Izetbegovic claiming authority he did not have, because the JNA was not obliged to consult the Republican Presidency. It is clear that this too influenced the political mood of the Serbs in

Bosnia-Herzegovina and that they saw this as a threat. (Drago Maric, Uzaludni pokusaji da se omogući prolaz vojnom konvoju /Unsuccessful Efforts to Enable Army Convoy to Pass/ Politika, 9 May 1991, Annex. p. 505/6)

1.9.17. At an SDS press conference, Dr Karadzic warned that the border between Bosnia-Herzegovina and Croatia was slowly melting away and that A. Izetbegovic had given half of Bosnia-Herzegovina's sovereignty to F. Tudjman, the President of the Republic of Croatia. In the Croat-populated parts of B-H the school system and the mass media were part of the Croatian system. (Granice izmedju BiH i Hrvatske polako se tope /Border between B-H and Croatia Slowly Melting/ Politika, 16 May 1991, Annex. p. 507/8)

1.9.18. Dr Biljana Plavsic, President of the Council for the Protection of the Constitutional Order and member of the Bosnia-Herzegovina Presidency, spoke of the chaos in the legal system of Bosnia-Herzegovina and said that this was due to the coalition of the SDA and the HDZ in the republican government and the interference of the Republic of Croatia. (M. Caric, Hrvatska se grubo uplice u poslove suverene BiH /Croatia's Interference in the Internal Affairs of Sovereign Bosnia/ Politika, 14 May 1991, Annex. p. 510/11)

1.9.19. Alijzetbegovic said in Sarajevo on 8 May 1991 that Sarajevo was a Muslim city. Shortly afterwards, the Mayor of Sarajevo, Dr Muhamed Kresevljakovic, went further and said that Bosnia-Herzegovina was a Muslim country. These statements naturally did not give the Serbs any reason to believe in the good intentions of the SDA. (Izetbegovic demantuje Kljuica /Izetbegovic contradicts Kljuic/ Politika, 9 May 1991, Annex. p. 512/513)

1.9.20. Dobroslav Paraga, a leader of ultra right-wing, fascist political forces, said that Croat companies were already allied with Muslim forces on the Drina. (Mirko Caric, Pogledi uprti u BiH /Eyes Turned towards Bosnia-Herzegovina/ Politika, 11 June 1991, Annex. p. 514/515)

1.9.21. The local police station in Visegrad was blockaded for several hours on 15 June 1991. A group of Muslims sought the replacement of Serb policemen in the town. This was part of an organized action aimed at changing the national structure of the police force in Bosnia-Herzegovina. (R.M. Blokirani putevi prema Srbiji /Roads Towards Serbia Blocked/ Politika, 16 June 1991, Annex. p. 516/7)

1.9.22. In protest against the conduct of Mr Izetbegovic, the President of the Bosnia-Herzegovina Presidency, who made statements without consulting the other members of the Presidency, the Serb members of the Presidency, Dr Plavsic and Dr Koljevic, decided on 8 June 1991 to freeze their membership of the Presidency. The SDS leadership on 10 June 1991 to deny Mr Izetbegovic the right to represent the Serbs of Bosnia- Herzegovina. This was the beginning of the departure of Serb representatives from bodies of the government of Bosnia- Herzegovina as a result of their isolation and marginalization by SDA and HDZ representatives.

1.9.23. Croatia's armed forces shelled the town of Bosanska Gradiska from territory of the Republic of Croatia. Again there was no reaction from the republican government of Bosnia-Herzegovina. (Dusan Kecman, Veliki ratni okršaj na Savi /Big Armed Clash on the Sava/ Politika, 19 August 1991, Annex. p. 518/9)

1.9.24. During a visit to Turkey, A. Izetbegovic asked for Bosnia-Herzegovina to be allowed to attend a Ministerial

Conference of the Organization of Islamic Countries. This request only further deepened the mistrust of Serbs towards A. Izetbegovic's policies. (Zahtev da BiH ucestvuje u radu Islamske konferencije /Demand for B-H Participation in the Work of the Islamic Conference/ Politika, 18 July 1991, Annex. p. 521/2)

1.9.25. Alija Izetbegovic said in an interview in "Der Spiegel": "If Bosnia-Herzegovina is divided there will certainly be a civil war which will be impossible to bring to an end." He also said that during visits to Turkey and Libya he had sought "political support, but not assistance in arms for the time being". This statement also testifies that A. Izetbegovic had been determined to use force to create an independent, united and unitary Bosnia-Herzegovina against the will of the Serbian people. (Jeder kampf gegen jeden /Evryone Fighting against Everyone Else/ Der Spiegel, 22 July 1991, Annex. p.523/5)

1.9.26. At the end of a visit to the USA, Mr Izetbegovic said that there could be a conflict between the Serbs and the Croats, and that the Muslims would in that case support the Croats. This was indeed what later happened. Naturally, this statement was not intended to win the trust of Serbs in Bosnia- Herzegovina, on the contrary. (U slucaju sukoba Muslimani uz Hrvate /Muslims will Side with Croats in Event of Conflict/ Politika, 1 August 1991, Annex. p. 526/7)

1.9.27. A Muslim group led by Murat Sabanovic beat up a driver of the "Raketa" bus company from Uzice in Serbia and several Serbian passengers. The next day the same group of Muslims beat up Milija Ceba, a Serb shipper from Visegrad. (R.M. SDA tuce Srbe /SDA Beats Serbs/ Politika 24 September 1991, Annex. p.528/9)

Murat Sabanovic and a group of Moslems demolished the monument to Ivo Andric, the Nobel Literature Prize laureate, at the Liberation Square in Visegrad. Pieces of

the marble statue were thrown into the Drina. The demolition of the monument had been preceded by a negative article on Ivo Andrić in the magazine "Novi Vox", as well as a cartoon of the Nobel Prize laureate fixed on a pencil as if impaled and thus punished in the manner characteristic of the Ottoman period, a punishment described by the Nobel Prize winner in his novel "The Bridge on the Drina", which certain Islamic fundamentalists could not forgive him.

In August 1991 Islamic fundamentalists distributed a leaflet in Visegrad containing 20 instructions on what to do to the Serbs in order to drive them out. These instructions included, among other, the following recommendations: "Forbid your children to play with Serb children", "Throw your rubbish in front of their doors", "Urinate in their doorways", "Mark their houses and apartments", "Write threatening graffiti on their houses and churches", etc.

1.9.28. Forces of the Croatian Ministry of Internal Affairs and the Croatian National Guard shelled the town of Bosanska Kostajnica from Croatian territory. Dragan Borojevic, aged 30, and Nedeljko Prohic, aged 28, were killed in the attack. SDA and HDZ representatives in the republican government in Sarajevo deliberately ignored Serb demands that the Croatian leadership be warned against attacking Bosnia-Herzegovina. (D. Kecman, Ponovo napadnuta Bosanska Kostajnica /Bosanska Kostajnica Attacked Again/ Politika, 1 September 1991, Annex. p. 531/2)

1.9.29. At a press conference held in Sarajevo on 5 September 1991, the SDS leaders issued an appeal to the Ministry of Internal Affairs of Bosnia-Herzegovina to cease its activities against the JNA. (Muharem Duric, Protiv haosa u BiH /Against Chaos in B-H/ Politika, 6 September 1991, Annex. p. 533/4)

1.9.30. Through the Ministry of the Interior of B- H, SDA intensively worked on preventing recruitment in JNA and forming one-national police forces. JNA officers constantly received threatening phone calls. (D. Kocic, Prete rusenjem mosta kod Zvornika /Threats to Destroy Zvornik Bridge/ Politka, 29 September 1991, Annex. p. 535/6)

1.9.31. Dr. Biljana Plavsic and Dr. Nikola Koljevic stated in a letter addressed to the Hague Peace Conference that Alija Izetbegovic could not represent the Serbs from B-H.

1.9.32. At an SDA press conference in Sarajevo of 2 October 1991, Irfan Ajanovic, Vice President of the Assembly of SFRY and one of the leaders of this party, and Muhamed Cengic, B-H Vice Prime Minister and also one of the SDA leaders announced a terrible war in B-H. They confirmed that the Moslems in B-H were getting armed. (Mirko Caric, Ajanovic i Cengic grubo vredjaju JNA /Ajanovic and Cengic Severely Insult JNA/ Politika, 3. October 1991, Annex. p. 537/8)

1.9.33. The President of Bosnia-Herzegovina, A. Izetbegovic, proclaimed Bosnia-Herzegovina's neutrality in the conflicts in Croatia on 7 October 1991. He behaved as if the Socialist Republic of Bosnia-Herzegovina was an independent and sovereign state, although it was not. Dr. Radovan Karadzic, Momcilo Krajisnik, Dr. Biljana Plavsic, Dr. Nikola Koljevic and Vojislav Maksimovic, issued a statement on behalf of the Serbian people condemning that act and pointing to its unconstitutionality. They stressed that B-H was not an independent state, and therefore, could not claim neutrality. They also said that Alija Izetbegovic's appeal to concripts not to respond to mobilization calls constituted a severe violation of the law. (Predsednik Predsednistva BiH povredio citav niz ustavnih i zakonskih normi /President of the B-H Presidency Violated Several

1.9.34. A session of the republican parliament was held in Sarajevo on 14 October 1991. At the proposal of the SDA, the incomplete Parliament of SR Bosnia-Herzegovina adopted a Memorandum (Letter of Intent) on the sovereignty of the republic and a Platform on the Position of Bosnia-Herzegovina and the Future Set-up of the Yugoslav Community proposed by the republican Presidency. These documents were not supported by the SDS and SDS members did not take part in these decisions. The documents were not subjected to the procedure envisaged in item 10, Article LXX of the 1990 Amendment to the Constitution of SR B-H, which means that they were not reviewed or proposed by the Council for National Equality. Bearing in mind that the three leading parties could not agree on these documents, and that the procedure regarding the Council for National Equality was not observed, Momcilo Krajsnik, President of the Assembly and SDS deputy, concluded the Assembly session after which SDS deputies withdrew. At the proposal of Irfan Ajanovic, the then Vice President of the SFRY Assembly and one of the SDA leaders, the Assembly continued working although there was not a sufficient number of deputies present, and adopted the mentioned documents. (Memorandum -pismo o namjerama-/Memorandum -Letter of Intent-/ Sluzbeni list SR BiH, br. 32, 16. oktobar 1991, Annex. p. 542/6, Platforma o položaju BiH i budućem ustrojstvu jugoslovenske zajednice /Platform on the Status of B-H and the Future Set-up of the Yugoslav Community/ 543/5, Muharem Duric, Mirko Caric, Bosna se podělila /Bosna Divides/ Politika, 16 October 1991, Annex. p. 547/8, Bosnia-Herzegovina, Defense and Foreign Affairs Handbook, London, 1994, p.135, Annex. p. 410)

1.9.35. At a press conference held in Sarajevo on 16

October 1991, the SDS issued a proclamation to the Serb people in Bosnia-Herzegovina. The proclamation said that the parliamentary groups of the SDA and the HDZ attempted a *coup d'état* during the night of 14-15 October 1991 by adopting by means of political terror unconstitutional decisions, thus destroying the tradition of Serbs, Moslems and Croats living together. That endangered the constitutional order and opened the door to lawlessness and chaos. If the parliament of Bosnia-Herzegovina did not preserve the constitutional order, the Serb people would establish a legal order that was in accord with the SFRY Constitution, ensure respect for the federal constitution and federal laws, civil and national rights and organize its own legislative, executive and judicial authorities, to which it had a right as a sovereign people. It also said that the Serb people would remain in Yugoslavia unless it decided otherwise in a referendum. (M. Duric, Nezavisnost BiH mimo volje srpskog naroda /Sovereignty of B-H against Will of Serb People/ Politika, 17 October 1991, p.551/2)

1.9.36. About 50,000 Serbs attended a meeting in Banja Luka on 26 October 1991 protesting against the adoption of the Memorandum and the Platform. (See para. 1.9.34.) Dr. Nikola Koljevic said that the Serbs would organize a referendum on their state status. (Srbi su izabrali plebiscit /The Serbs Have Chosen a Plebiscite/ Politika 27 October 1991, Annex. p. 553/4)

1.9.37. Deputy Prime Minister of Bosnia-Herzegovina Muhamed Cengic visited Turkish Prime Minister Suleyman Demirel in Ankara on 15 November 1991. Yugoslav diplomats were not allowed to attend the meeting. (Cengic informisao Demirela o Bosni /Cengic Informed Demirel on Bosnia/ Politika, 16 November 1991, Annex. p. 559/60)

1.9.38. JNA pilot, Captain Dragos Stojcinovic, was

kidnapped in Mostar on 28 November 1991 by a Croat paramilitary formation. The police of Bosnia-Herzegovina were involved in the kidnapping. Captain Stojcinovic was first taken to Listica and then to Split and Zagreb in Croatia. He was physically tortured and received serious bodily injuries in these places. He was exchanged at Pleso airport on 10 December 1991. (Statement of Dragos Stojcinovic to the team of experts for collecting and processing evidence on crimes against humanity and international law, of 5 May 1994, Annex. p. 566, Medical Documentation, Annex. p. 574)

1.9.39. An explosive device was placed under the car of the Editor of the Krajina newspaper "Glas", M. Mladjenovic, Secretary of Information of the Autonomous Region of Bosanska Krajina. The car was destroyed and windows in surrounding buildings were shattered. Before that event, explosive was placed under the car of Dr. Radislav Vukic, President of Bosanska Krajina SDS, and then in the entrance hall of the building where Predrag Radic, Mayor of Banja Luka, lived. (D.K. Na meti celnici SDS /SDS Leaders Attacked/ Politika, 1 December 1991, Annex. p. 577/8) In December bombs were planted in restaurants owned by Serbs (D.K. Tri diverzije u srpskim lokalima /Three Sabotages in Ser-owned Restaurants/ Politika, 15 December 1991, Annex. p. 579/80) Those sabotages were organized in order to bring pressure to bear on Serbs in that part of B-H. The mentioned events significantly influenced the political positions of the Serbs in B-H.

1.9.40. After the decision of the Parliament of the Serb people in Bosnia-Herzegovina to form the Bosnian Serb Republic, Alija Izetbegovic threatened the Serbs in a TV news broadcast that they would see a repetition of the exodus which they had suffered in Croatia.

1.9.41. Izetbegovic thanked Turkey for recognizing Bosnia-Herzegovina before the Referendum was held on 29 February 1992. Izetbegovic said that he met with Cetin, Minister for Foreign Affairs in Davos, and that he promised him the recognition. Demirel also made the same promise later. Izetbegovic said that the recognition would encourage Moslems and Croats to vote for independence. In an interview to the Turkish daily "Miliyet", he described Turkey as a brother. (Saraybosna, bayram yasiyor, Miliyet, 10 February 1992, Annex. 581/2)

1.9.42. On the day of the Muslim-Croat referendum on an independent state of Bosnia-Herzegovina, 1 March 1992, there was an armed attack on Serb wedding guests in Sarajevo. Nikola Gardovic, the groom's father, was killed, and the priest Radenko Mirovic was wounded in front of the Orthodox church in the Bascarsija in the centre of Sarajevo. They were both Serbs. Suad (of father Hamdija) Sabanovic, a Moslem, Igor (of father Zvonimir) Dodig, a Croat and Muhamed (of father Emin) Svrakic, a Moslem carried out the attack. The attackers tried to seize the Serbian flag carried by the bride-grooms brother. It is a Serb custom to carry national flags at weddings. When the father tried to protect his son the attackers opened fire. Under the circumstances of the referendum on independence that attack symbolized the future fate of the Serbian people in B-H. This attack started the inter-ethnic armed conflicts in Bosnia-Herzegovina. (Ubsitvo na Bascarsiji /Killing in Bascarsija/ Politika, 2 March 1992, Annex. p. 584/5, Bosnia-Herzegovina, Defense and Foreign Affaires Handbook, London, 1994, p.135, Annex. p. 410)

1.9.43. Barricades were erected in Sarajevo after the murder of Nikola Gardovic. After the agreement between Dr. Radovan Karadzic, Alija Izetbegovic and JNA General Milutin Kukanjac, barricades were removed and crisis areas put under the control of mixed military and police patrols. On the night of

3 March 1992 armed Moslems erected barricades in the part of the town where they constituted majority. This was despite Alija Izetbegovic's promise that the blockade would not happen again. There were several murders of both Serbs and Moslems. (M. Caric, M. Duric, Nove napetosti /Renewed Tensions/ Politika, 4 March 1992, Annex. p. 586/7, M. Duric, Bosna: Dogovor u poslednji cas /Bosnia: Last Minute Agreement, Annex. p. 589/90)

1.9.44. About 50,000 SDA and HDZ members were armed in March 1992. Their formations were called the "Green Berets", the "Flying Pals" and the "Hanjar Division". The Turkish newspaper "Hurriyet" carried two reports from Sarajevo and Bosnia- Herzegovina on Islamic commandos who are preparing for war in Bosnia-Herzegovina. The paper called the commandos "The Islamic Rambos of Bosnia". The reporter Muammer Elveren visited the "Green Berets" Headquarters in Bosnia and described their arms, clothes and training. (Muammer Elveren, Islamic Rambos, Hurriyet, 30 March 1992, Annex. p. 597, Muammer Elveren, Password of Rambos Selamunaleykum, Hurriet, 31 March 1992, Annex. p. 598, Radovan Pavlovic, Pod oruzjem 50.000 clanova HDZ i SDA /50.000 Members of HDZ and SDA Are Armed/ Politika 4 March 1992, Annex. p.600/1)

1.9.45. During March 1992 Moslem-Croat military formations tried to take over by force dominant positions in B-H with ethnically mixed population. To achieve that they attacked some JNA units, and a civil war started in B-H.

Croat armed formations opened artillery fire from the commune of Neum on a JNA unit on 22 March 1992. On that occasion, six JNA members were killed: Slavko Lukovac, Vukan Joksimovic, Zoran Obradovic, Radenko Filipovic and Branislav Mrdak. (D.M. S.D. Poginulo sest pripadnika rezervnog sastava JNA /Six JNA Reservists Killed/ Politika, 24 March 1992, Annex. p.603/4)

Moslem and Croat armed formations created three hotbeds of crisis: Bosanski Brod, Neum and Gorazde. (M. Duric, Pucnji od mora do Bosanskog Broda /Shots from the Sea to Bosanski Brod/ Politika 25 March 1992, Annex. p. 605/6)

In Bosanski Brod Croat Armed Formations (HOS and ZNG) and the Moslem "Green Berets" entered the conflict with Bosnian Serb territorial defence units. The town was shelled from Slavonski Brod in Croatia.

The Republican Ministry of the Interior of B-H did not try to prevent inter-ethnic conflicts. (M. Duric, Opet sukobi i barikade, /Conflicts and Barricades Again/ Politika, 2 April 1992, Annex. p. 608/9)

In Bijeljina there were armed conflicts after Moslem armed formations had erected barricades in the streets. (P. Simic, Gradske borbe u Bijeljini /Fighting in the City in Bijeljina/ Politika, 2 April 1992, Annex. p. 611/2)

On 3 April 1992 in Mostar a terrorist action was carried out when a cistern loaded with grenades and left in front of the JNA barracks "Mostarski bataljon" exploded. Great material damage was caused and a number of soldiers and civilians injured. (Cisterna je bila napunjena granatama, /Tank Truck Filled with Shells/ Politika, 5 April 1992, Annex. p. 614/5)

1.9.46. Serbs were fleeing B-H to Serbia. In April 1992 tens of thousands of refugees from B-H arrived in Serbia. (Mirjana Kuburovic, Rata se svi plase /Everybody Is Afraid of War/ Politika 7 April 1992, Annex. p. 618/9)

1.9.47. The SDS leader Dr. Karadzic, the SDA leader Alija Izetbegovic and the HDZ leader M. Brkic signed a Declaration on the Humanitarian Treatment of Displaced Persons

in Sarajevo on 11 April 1992. The Declaration stated:

"Considering the particular problems of displaced persons in Bosnia-Herzegovina,

"Acknowledging that they were compelled to leave their homes as a result of the conflict in tension which affect the neighbouring republics and some areas of Bosnia-Herzegovina and which continue to generate new displacement

.....
To support the initiative to establish a tripartite commission between the Republic of Croatia, the Republic of Bosnia and Herzegovina and UNHCR to define principles, guarantees and procedures aimed at facilitating the return of displaced persons to the Republic of Croatia

....." (S/23836, p. 12, Annex. p. 622)

The Declaration bears witness to the fact that the first victims of ethnic cleansing were Serbs. The term "neighbouring republics" could refer only to Croatia, and the term "some areas of Bosnia-Herzegovina" could only refer to Western Herzegovina from where Serb villagers had been expelled.

1.9.48. Agreements on an immediate cease-fire were signed on 12 April and again on 23 April 1992 by leaders of the three sides (Karadzic, Izetbegovic and Brkic), with the mediation of the European Community. The Bosnian-Herzegovinian Cease-fire Agreement of April 12, 1992 reads as follows:

"The leaders of the three main parties of Bosnia and Herzegovina - aware of the extremely serious situation now prevailing in the territory of Bosnia and Herzegovina;

Solemnly agree:

- To declare an immediate and total cease-fire on all the territory of Bosnia and Herzegovina, starting on Sunday, 12 April at midnight.

- To stop all activities that can provoke fear and instability among the population like the action of snipers and the bombardment of Sarajevo and other towns and villages. All house searches, barricades and general arbitrary actions of all kinds should stop immediately.

- All threatening artillery should be removed under the control of the EC Monitors simultaneously with the suspension of all mobilization. These two actions should start within 24 hours of the cease-fire.

- To disband all irregular armed forces, in accordance with an agreed timetable, this will be conducted under the supervision and control of the EC Monitors.

- To start in the most urgent way work on defining the **areas of the future constituent units of Bosnia and Herzegovina.**

- In this context the three main parties reaffirm their opposition to any territorial gain by force and agree on the right of return for the refugees, without adverse consequences in respect of employment or otherwise. The three parties agree that all parties should have equal access to television." (S/23836, p. 11, Annex. p. 624)

With this Agreement, the three parties recognized to each other the status of warring parties and confirmed control over their armed forces and combat operations. The Agreement also points to the main controversial issue among the parties:

the future state organization , i.e. "defining the areas of the future constituent units of Bosnia and Herzegovina". The Agreement testifies to the dissatisfaction of the Serb side over the lack of access to Sarajevo Television.

1.9.49. Despite the cease-fire agreements, in April 1992 Ejup Ganic and Stjepan Kljucic as members of the B-H Presidency, Juka Pusina, as assistant Republican Minister of the Interior of B-H, Hasan Efendic former JNA Colonel, presently Commander of the B-H territorial defence, Fikret Muslimovic, former JNA Lieutenant Colonel, and assistant security commander of the B-H territorial defense, Jovan Divjak, Colonel and member of the Supreme Headquarters of the B-H territorial defense Izet Bajramovic called "Celo", and Jusuf Prazina, as commanders of the "Green Berets" of the B-H territorial defence, Jovica Berovic, investigator in B-H police, agreed to launch armed attacks on military facilities, units and officers and take over weaponry and ammunition. To this effect, they issued an order to all B-H territorial defense paramilitary formations, and in late April and early May started armed actions. The competent military authorities of Yugoslavia pressed charges against these persons on the grounds of criminal act of armed rebellion and war crimes.

1.9.50. Here are some of the actions carried out. Croat forces and Muslim "Green Berets" attacked the JNA barracks in Derventa. Five Serb territorial defense members were killed and seven others were wounded in the attack. About 100 Serbs were imprisoned in the basement of the JNA Army Club. (D. Kecman, Napad na kasarnu JNA u Derventi /Attack on the JNA Barracks in Derventa/ Politika, 26 April 1992, Annex. p. 625/6)

A JNA ambulance vehicle was stolen. From that vehicle the "Green Berets" in Sarajevo opened fire on the town

and passengers at the bus station. The media attributed the attack to JNA. Fire was also opened both from that vehicle and from the mosque at the military hospital in Sarajevo.

The road to Butmir airport was blocked and two nearby mosques were used for surveillance and for opening fire on the airport.

In the morning of 30 April 1992, a terrorist attack was carried out against three JNA soldiers in a cafe opposite the Command of the Second Army District. Predrag Ninkov and Sasa Urosevic were killed. Another soldier and a 13-year old child were severely injured. A member of the "Green Berets" called Pavijan opened fire on the mentioned persons without any reason.

On 2 May 1992, a direct all-out attack on all the JNA units started. Izet Bajramovic called "Celo" was ordered to attack with his unit the JNA centre in Sarajevo. He did it around 11:30 a.m. supported by the unit commanded by Juka Prazina, a well-known criminal. Six persons were wounded in the JNA centre.

On the same day around 1 p.m. a motor vehicle transporting food from the "Marsal Tito" barracks in Sarajevo to the barracks of the Second Army District Command was attacked, on which occasion Colonel Goran Belic, who was sitting next to the driver, was heavily injured, while Goran Divovic, the driver, was killed.

1.9.51. In the morning of 2 May 1992, Moslem armed formations attacked the building of the JNA centre in Sarajevo. In the building there was a small number of JNA members, who soon found themselves in a difficult situation as they were

largely outnumbered by the enemy. They requested reinforcement. Reinforcement troops set off from the Second Army District Command between 12:30 and 1 p.m. The troops consisted of military police units headed by Colonel Milan Suput. The column was moving along Dobrovoljacka Street - Skenderija - Obala Vojvode Stepe Street - the Drvenija bridge - the JNA centre. While moving along Obala Vojvode Stepe Street in the direction of the JNA centre, the JNA unit was blocked at a point parallel to the "Djuro Djakovic" Technical College. Near the Main Post Office in front of the column there was a barricade of containers. The column could not withdraw because behind it, at the end of Obala Vojvode Stepe Street, there was a public transport tram around which there were cheval-de-fises. A missile was fired from a bazooka from behind the barricade on the first JNA transporter, with Sergeant Magazin in it. After that the B-H territorial defence members opened fire from the neighboring buildings on the column. Responding to the attack, JNA members divided into two groups taking positions in the neighboring buildings. One group with Colonel Suput, Captain Srdjan Petrovic and Captain Miodrag Markovic took the passage in the building of the Technical College, while the second group with Corporals Dragan Stepanovic, Bojan Jovanovic and Milan Kontic took a building nearby the Main Post Office.

Immediately after the attack on Colonel Suput's unit, another military police unit set off from the military hospital in two "Pinzgauer" vehicles (registration plate P-4319, with Captain Marko Labudovic, Colonels Obrad Gvozdenovic and Ivica Cvetkovic, Soldiers Branko Popovic, Srdjan Nikolic, Aleksandar Blagojevic, Rados Pajovic and Milan Pejic; and registration plate P-3535, with Colonel Nihad Kastrati, Corporal Dragan Matic and soldiers Dragan Lazukic, Mladen Nikolic, Kruno Beslic, Dragan Glamocanin and Dragoslav Nikolic and two "Citroen" ambulances. At the invitation of Colonel Suput this unit set off to

unblock the surrounded JNA members and to rescue the wounded. However, as soon as it arrived in Obala Vojvode Stepe Street, the unit was attacked. The front vehicle driven by Colonel Obrad Gvozdenovic was shot by an anti-armour missile because of which it turned to the tram rails and ran into an electric mine. Colonel Gvozdenovic burned in the vehicle. After that, fire was opened from all directions on JNA members. Since they were in a hopeless situation Captain Labudovic shouted that they were surrendering, but Moslems paid no attention to it and continued opening even more intense fire.

In a three hour fight most soldiers from Captain Labudovic's group were killed. During that time, Colonel Suput's group successfully rejected the attacks until the next morning, on 3 May 1992, when they were deceived and captured. Namely, that morning Colonel Suput agreed with the Moslem Commander that soldiers and officers be enabled to return to the Command, and when they gathered in the Technical College building, Moslem soldiers disarmed them and took them to prison. Moslem forces used chemical weapons in the attacks on Colonel Suput's unit.

In the fighting on 2 May 1992 the following persons were killed: Captain Marko Labudovic, Colonel Ivica Cvetkovic, Colonel Obrad Gvozdenovic, Colonel Nihad Kastrati, soldiers Rados Pajovic, Aleksandar Blagojevic, Mladen Nikolic, Slobodan Jelic, Predrag Cerovic, Miodrag Djuric, Srecko Jovanovic, Ivica Simic, Dragan Vitkovic, Kruno Beslic, Perica Novic and Branko Popovic.

1.9.52. 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 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 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 lay on the asphalt with their faces to the ground and kicked them, hit them with rifle butts and shot at them as they laid 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 JNA. The attackers interrogated some of the officers while they laid 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 what their troops were doing the whole time 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 cellar, while Inspector Ivica Berovic interrogated Colonel Slavoljub Belosevic for 36 hours without interruption, hitting him with truncheons and a pistol in the face, the kidneys and other parts of his body. Groups of civilians were allowed into the prison and spat, 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 shone it in his eyes, bringing

it to within two to three centimeters within his eyes. They held him like this for 11 hours without a break, hitting him all over his body. His eyes were swollen up and he could not see anything for several days (Minutes from the hearing of Slavoljub Belosevic before the investigative judge Dragoslav Rakic in the District Court in Belgrade on 13 March 1995, Annex. P. 639, Major General Lewis MacKenzie, Peacekeeper, Douglas & McIntyre, Vancouver/Toronto 1993, pages 164-171, Annex. p. 649)

1.9.53. At the same time shots were fired from nearby mosques and other buildings at the Sarajevo military hospital. The 9th floor of the hospital was damaged. Parallel with these attacks, small arms fire was opened on the Rajlovac aerodrome from the mosque in Sokolje, Sarajevo, in which paramilitary formations of the Bosnia-Herzegovina Territorial Defence force had placed a machine-gun nest.

1.9.54. Representatives of the Presidency of Bosnia-Herzegovina and the JNA, under the sponsorship of the personal representatives of Lord Carrington and the head of the EC Monitoring Mission B-H, have agreed a cease-fire to take effect immediately in Sarajevo and elsewhere in Bosnia-Herzegovina on 5th of May 1992. All sides in the conflict are urged to support the cease-fire. (Focus: Documents 92 p. 88, Annex. p. 658) In spite of the withdrawal decision of the FRY Presidency and the cease-fire agreement, Muslim armed formations continued their attacks on JNA units as they withdrew. (R.K. Borbe posle masakra /Fighting after the Massacre/ Politika, 5 May 1992, Annex. p. 659/60, D. Stevanovic, Napadnuta kasarna "Marsal Tito" /"Marshal Tito" Army Barracks under Attack/ Politika, 31 May 1992, Annex. p. 662/3)

1.9.55. At 7:00 p.m. on 15 May 1992, in Skojevska Street in Tuzla the last JNA column was attacked as it withdrew

from the barracks. In spite of the agreement concluded between Moslem authorities and JNA on safe withdrawal several dozens of JNA members were killed in the attack.

1.9.56. The battle for the Marsal Tito barracks and the Secondary Quartermaster School in Sarajevo recommenced on 30 May 1992. The soldiers, surrounded by "Green Berets" appealed to UNPROFOR for help.

1.9.57. It was obvious that JNA was attacked by Moslem and Croat forces controlled by the Government in Sarajevo and that those attacks slowed down and hindered the withdrawal of JNA from the region. The attacks continued even after the decision of the Yugoslav Presidency on the withdrawal of JNA members, citizens of the Federal Republic of Yugoslavia, and after the decision of the Presidency of 4 May 1992 to accelerate the withdrawal, as well as despite several agreements on cease fire and agreements on concrete actions of evacuation of JNA from certain facilities. It is evident from the above that JNA was not the attacker, but the attacked.

1.10. The emergence of new states in the territory of the former Yugoslav republic of Bosnia-Herzegovina

1.10.1. The almost simultaneous emergence of several new states in the former Yugoslav republic of Bosnia and Herzegovina reflected the referendum of 29 February and 1 March 1992, showing that only majority of Moslems and Croats in Bosnia and Herzegovina wanted to secede from the Socialist Federal Republic of Yugoslavia, but not to establish a common state.

1.10.2. The Serbian people in the former Yugoslav republic of B-H, subjected to terror by the Moslem-Croat coalition in the republican government, remembering the genocide against it in World War Two, was concerned with reason that the genocide could happen again, which eventually was the case. The Serbian people established its state the Republic of Srpska.

1.10.3. The Croatian people in the former Yugoslav republic of Bosnia and Herzegovina wanted to secede from Yugoslavia, but not to remain in an Islamic state of B-H. It wanted to have as tight ties as possible with Croatia and therefore established its state of Herzeg-Bosnia, which became economically, monetary and military integral part of Croatia.

1.10.4. Alija Izetbegovic and other SDA leaders wanted to transform the former Yugoslav republic of Bosnia and Herzegovina into an integral Islamic state. This idea was opposed not only by the Serbs and the Croats in the former Yugoslav republic of B-H, but also by part of the Moslem population in Western Bosnia. Thus, as a result of the resistance against Islamic fundamentalism as a state ideology, a fourth state emerged in the region: the Autonomous Province of Western Bosnia, led by Fikret Abdic.

1.11. The establishment of the Bosnian Serb Republic

1.11.1. In reaction to the first signals coming from Muslim and Croat political organizations on the possible secession of the Socialist Republic of Bosnia-Herzegovina from the SFRY, during 1991 the Serb people in Bosnia-Herzegovina set up a number of Serb autonomous regions: Bosnian Krajina, Romanija, Herzegovina, Semberija and Northern Bosnia. They

showed in this way that they would not remain in an independent Bosnia-Herzegovina.

1.11.2. The SDS and the Serbian Movement of Renewal (SPO) clubs in the Bosnia- Herzegovina parliament, as the legitimate representatives of the Serb people in Bosnia-Herzegovina, decided at a meeting held on 24 October 1991 to found a parliament of the Serb people in Bosnia-Herzegovina, on the basis of the constitutional right to self-determination. This was done after the session of the SR B-H Assembly with an insufficient number of deputies present on 14 October 1991, when the Memorandum and the Platform were adopted which started the legal secession of SR B-H from Yugoslavia. (Decision on the Establishment of the Assembly of the Serb People in B-H, Annex. p. 667)

1.11.3. At its session on 24 October 1991, the parliament of the Serb people in Bosnia-Herzegovina, acting on the constitutional right to self-determination, adopted a decision that the Serb people in Bosnia-Herzegovina would remain in the common state of Yugoslavia. (Decision of the Serb People of B-H to Remain in the Common State of Yugoslavia, Annex. p. 671)

1.11.4. The parliament of the Serb people in Bosnia-Herzegovina organized a plebiscite of the Serb people in Bosnia-Herzegovina on 9 and 10 November 1991. 1,162,032 Serbs and 48,895 non-Serbs voted in favour of remaining in Yugoslavia (Muharem Duric, *Bosna ostaje u Jugoslaviji /Bosnia Remains in Yugoslavia/ Politika*, 13 November 1991, Annex, p. 672/3, *Bosnia-Herzegovina, Defense and Foreign Affaires Handbook*, London, 1994, Annex. p. 410)

1.11.5. The parliament of the Serb people in Bosnia-Herzegovina adopted a Declaration on the proclamation

of the Republic of the Serb People in Bosnia-Herzegovina on 9 January 1992. The Declaration said: On the basis of the plebiscite of 9 and 10 November 1991 at which Serbs voted in favour of remaining in the common state of Yugoslavia, the Republic of the Serb People in Bosnia-Herzegovina is founded and proclaimed in the territories of the Serb autonomous regions and areas and other Serb ethnic territories in Bosnia-Herzegovina, including those areas in which the Serb people became a minority in World War II. (Declaration on the Proclamation of the Republic of the Serb People of B-H, Annex. p. 681)

1.11.6. The parliament of the Serb people in Bosnia-Herzegovina adopted the constitution of the Bosnian Serb Republic on 28 February 1992. (Decision on the Promulgation of the Constitution of the Serb Republic of B-H, Annex. p. 691, The Constitution of the Republic of Srpska, Annex. p. 692)

1.11.7. The Bosnian Serb Republic founded its army on 13 May 1992 and appointed General Ratko Mladic its Commander. (S/ 24049, Annex. p. 695)

1.11.8. The parliament of the Serb people in Bosnia-Herzegovina adopted a declaration on the state and political organization of the Bosnian Serb Republic, which defined the name of the state as "Republika Srpska".

1.11.9. Annex II of the Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to para.14 of Commission resolution 1992/S-1/1 of 14 August 1992 (E/CN.4/1992/S-1/9, 28 August 1992, p.18, Annex. p. 701) says:

"Most observers agree that the 'Serbian Republic of

Bosnia-Herzegovina', and unrecognized government proclaimed when Bosnia-Herzegovina declared its independence from Yugoslavia against the wishes of the Serbian population, controls between 50 and 70 percent of the territory. The headquarters of the 'Serbian Republic of Bosnia-Herzegovina' is located in the city of Pale, a short distance from Sarajevo, the besieged capital of Bosnia-Herzegovina. It is comprised of four 'autonomous regions', one of which, Banja Luka, was visited by the Special Rapporteur..."

1.11.10. This report clearly describes the existence of unrecognized but independent states.

1.11.11. The Security Council indirectly recognized the existence of the Bosnian Serb Republic when it applied against it measures under Chapter VII of the U.N. Charter in Resolution 942 (1994), dated 23 September 1994 (Annex. p. 702). Like many previous resolutions, this resolution described the Bosnian Serb Republic as "the Bosnian Serb party". Paragraph 14 of the Resolution states:

"Decides that States shall prevent the entry into their territories of:

"(a) the members of the authorities, including legislative authorities, in those areas of the Republic of Bosnia-Herzegovina under the control of Bosnian Serb forces and officers of the Bosnian Serb military and paramilitary forces..."

The Security Council recognized the existence of authorities, including legislative authorities, and also military forces, as well as the fact that the latter controlled territory, which are preconditions for the existence of a state.

1.11.12. In concluding many agreements with the Serb side, starting on 11 April 1992, the Applicant recognized the former as a party to the conflict (a warring party).

The Bosnian Serb Republic is one of the participants in the Conference on Yugoslavia.

1.12. The establishment of the so-called Republic of Bosnia-Herzegovina

1.12.1. On 20 December 1991 the government of Bosnia-Herzegovina decided by a majority of votes to submit to the Ministerial Council of the European Community a request for the international recognition of Bosnia-Herzegovina as an independent state. The SDS members of the government voted against this decision. (Decision on the recognition of statehood, Official Gazette SR B-H, 1991, No. 37, p. 1085, Annex. p. 709)

1.12.2. On 20 December 1991, the Presidency of Bosnia-Herzegovina decided by a majority of votes to submit a request to the European Communities for the recognition of Bosnia-Herzegovina as a sovereign state. (Decision on Submitting a Request for the Recognition of the Socialist Republic of Bosnia and Herzegovina as an Independent State, Official Gazette SR B-H, 1992, No. 4, p. 96, Annex. p. 711)

1.12.3. At an SDS press conference in Sarajevo on 20 December 1991, Dr. Koljevic and Dr. Plavsic said that they had not agreed with the vote taken in the Bosnia-Herzegovina Presidency to seek recognition of Bosnia-Herzegovina as a sovereign state. (Muharem Duric, Zajedno ili deobe /Together or Divided/

1.12.4. At a session of the Bosnia-Herzegovina parliament in Sarajevo on 24 and 25 January 1992, a decision was taken to organize a referendum asking citizens of Bosnia-Herzegovina whether or not they wanted Bosnia-Herzegovina to be a sovereign state. This decision was adopted against the opposition of the Serb deputies. SDS President Dr. Karadzic said at the parliamentary session: "We want Bosnia-Herzegovina to be transformed so that Serbs will have strong links with Yugoslavia, Croats with Croatia and Muslims with Yugoslavia and with Croatia as much as they want. It does not have to be Yugoslavia, it can be a Serb federation. What we are offering can not be more honest: every people to determine itself its position vis-a-vis any other people, to have a its own government and maintain its sovereignty. Bosnia-Herzegovina should be acceptable to all three peoples. Only then should we hold a referendum. That is the only way to avoid any undesirable effects, to calm down the peoples and to let them start living normally at last..."

The discussion in the Assembly showed that there was readiness to accept the decision that first the regionalization of Bosnia and Herzegovina, acceptable to all the three peoples, should be agreed, on and then organize a referendum. When it seemed that the agreement was at hand, Alija Izetbegovic refused to agree on a regional transformation of B-H and then organize a referendum, and proposed instead that the Assembly should vote immediately whether it accepted the decision on a referendum. After the deputy Dr. Vojislav Maksimovic said on behalf of the Serb deputy club that for Serb deputies it was unacceptable to put the decision on the referendum on the agenda, and that they would withdraw if it was done, Irfan Ajanovic, Vice President of the Assembly of SFRY and one of

the SDA leaders, threatened to act in the same way as on 14 October 1991, when the Assembly of SR B-H adopted the Platform and the Memorandum without the presence of SDS deputies. This is exactly what happened. The decision on referendum was included in the agenda, Serb deputies withdrew, and the Assembly adopted the decision. (Muharem Duric, Odluka o referendumu bez srpskih poslanika /Decision on Referendum without Serb Deputies/ Politika 26 January 1992, Annex. p. 715/6)

1.12.5. The referendum in which Bosnia-Herzegovina's citizens were asked if they wanted a sovereign Bosnia-Herzegovina was held on 29 February and 1 March 1992. The Serb people abstained from voting at the referendum. The results of the referendum were not officially published. (Bosnia-Herzegovina, Defense and Foreign Affairs Handbook, London, 1994, p.135, Annex. p. 410)

1.12.6. Although the international standards had not been fulfilled, the European Community recognized Bosnia-Herzegovina as a sovereign state on 6 April 1992. Other states followed suit. At the moment of recognition, the republican government in Sarajevo controlled only a small part of the territory of Republic of Bosnia-Herzegovina. The Bosnian Serb Republic was emerging in the same territory and was in armed conflict with the government in Sarajevo. Those who decided on the recognition of Bosnia-Herzegovina must have known that 6 April 1941 was the date on which Nazi Germany had bombed Belgrade and began its attack on Yugoslavia, without declaring war. (Bosnia-Herzegovina, Defense and Foreign Affairs Handbook, London, 1994, p. 135, Annex. p. 410)

1.12.7. Lord Carrington, Co-chairman of the International Conference on the Former Yugoslavia, said on 26

September 1992 that the recognition of Croatia, Slovenia and Bosnia-Herzegovina by European Community and other countries had been premature. (Priznanje Bosne tragicna greska /Recognition of Bosnia - a Tragic Mistake/ Politika, 27 September 1992, Annex. p. 720)

1.12.8. The French President, Mitterrand, pointed out several times that the recognition of the so-called Republic of Bosnia and Herzegovina had been premature. (Un entretien avec M. Francois Mitterrand, Le Mond, 9 fevrier 1993, Annex. p. 721)

1.12.9. President of the Foreign Policy Committee of the Russian Parliament Ambarcumov stated that the premature recognition particularly of Bosnia and Herzegovina was responsible for the deterioration of the Yugoslav crisis and the outbreak of the war. (Statement to Globus, 5 March 1993, Annex. p. 722)

1.12.10. Former US Secretary of State Henry Kissinger wrote in an article published in the Los Angeles Times on 16 May 1993: "It is important to realize that Bosnia has never been a separate nation and that there is no distinct Bosnian cultural identity... The most irresponsible mistake of the current tragedy was international recognition of a Bosnian state governed by Muslims, blindly following the precedent of Germany's hasty recognition of Slovenia and Croatia. But whereas Croatia and Slovenia had their own identity, Bosnia was a Yugoslavia in microcosm.

"It is a mystery how anyone could even think that Croats and Serbs, unwilling to stay together in the larger Yugoslavia, could be induced to create a joint state in Bosnia together with Moslems they hated for centuries." (Henry A. Kissinger, Los Angeles Times, 16 May 1993, Annex. p. 729)

1.12.11. US Secretary of State, Christopher said that the premature recognition of Croatia and Bosnia and Herzegovina caused the civil war. (Statement to US Today, 17 June 1993, Annex. p. 734)

1.12.12. Former Italian Foreign Minister De Michelis has also pointed to the premature recognition of Bosnia-Herzegovina. (Statement to the "L'Europeo", 18 June 1993, Annex. p. 741)

1.12.13. Former French Foreign Minister Dumas said that the premature recognition was a mistake. (Statement to AFP, 20 June 1993, Annex. p. 744)

1.12.14. Annex II of the Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 14 of Commission resolution 1992/S-1/1 of 14 August 1992, (E/CN.4/1992/S-1/9, 28 August 1992, p. 18, Annex. p. 746) says:

"Three separate regions are under the control of the Government of Bosnia-Herzegovina, namely, part of the capital, Sarajevo; the region known as Bihac, adjacent to the border with Croatia in northwest Bosnia; and parts of central Bosnia and Herzegovina. Much of the territory of Bosnia and Herzegovina is not under the control of the recognized Government."

1.12.15. It is clear that the recognition of Bosnia-Herzegovina occurred contrary to the rules of international law. The secessionist government controlled only

a small part of the territory of the former Yugoslav republic of Bosnia-Herzegovina. In addition, this government was also very unstable, which could be seen not only in the fact that it was in conflict with the Bosnian Serb Republic, but also in the constant clashes and efforts to resolve problems in relations between the Muslim and Croat representatives. As well as the Bosnian Serb Republic, two other new independent states emerged in this process: Herzeg-Bosnia under Croat control; and the Autonomous Province of Western Bosnia under the control of Muslim leader Fikret Abdic, who had broken with Izetbegovic.

1.13. The establishment of Herzeg-Bosnia

1.13.1. The Croat Community of Herzeg-Bosnia was established on 19 November 1991 in the Herzegovina commune of Grude. It was conceived of as a political, economic, cultural and territorial entity comprising communes populated mostly by Croats: Kresevo, Busovaca, Vitez, Novi Travnik, Kiseljak, Fojnica, Skender Vakuf, Kakanj, Vares, Kotor Varos, Tomislavgrad, Posusje, Mostar, Siroki Breg, Grude, Ljubuski, Citluk, Capljina, Neum and Stolac, and the commune of Ravno in Trebinje. Mostar was proclaimed the capital of Herzeg-Bosnia.

1.13.2. On July 4, 1992 the independent state community under the name of Herzeg-Bosnia was formed. (Hrvati u BiH proglasili svoju posebnu drzavu /Croats in B-H Proclaim Their Own Separate State/ Politika, July 6, 1992, Annex. p. 747/8, Bosnia-Herzegovina, Defense and Foreign Affaires Handbook, London, 1994, p. 136, Annex, p. 410)

1.13.3. On Saturday, August 27, 1993, the Bosnian Croats proclaimed their own state within the framework of the future Bosnian-Herzegovinian Union, "the Republic of

Herzeg-Bosnia." A decision was brought on the constitution of the assembly of the new Republic. (Proglasena Republika Herzeg-Bosna /Republic of Herzeg-Bosna Proclaimed/ Politika, August 28, 1993)

1.14. The establishment of the Autonomous Province of Western Bosnia

1.14.1. At the session of the constituent assembly in Velika Kladusa on September 27, 1993 a decision was brought on the proclamation of the Autonomous Province of Western Bosnia. Fikret Abdic, former member of the B-H Presidency, was elected President. The majority of the population in this region of Western Bosnia is of Muslim nationality. The Province was constituted due to the discontent of the population and its disagreement with A. Izetbegovic's manner of rule as they believed that he introduced Islamic fundamentalism.

1.14.2. The authorities of the Autonomous Province of Western Bosnia were in a state of constant armed conflict with the forces of A. Izetbegovic until the end of August 1994, when they were militarily defeated and which resulted in the withdrawal of approximately 60,000 inhabitants, primarily of Muslim nationality. The population withdrew because of the terror and killing of civilians by A. Izetbegovic's forces. The fact that civilians were shot at was confirmed by UNPROFOR in Velika Kladusa.

1.14.3. A few months later, the armed forces of the Autonomous Province of Western Bosnia succeeded in getting back the lost territory so that the Muslim refugees were able to return to their homes.

1.15.The Constitution of the Muslim-Croat Federation

1.15.1. After many months of heavy and bloody fighting between the Muslim and Croatian forces in Central Bosnia, in 1993 the Muslim government in Sarajevo sent an appeal for an urgent meeting of the UN Security Council asking the world organization to prevent the open interference of Croatia into the conflict in Bosnia-Herzegovina. The Security Council ordered the withdrawal of the Croatian army from the territory of Bosnia-Herzegovina and set a dead-line. However, in mid-February 1994 when the Croatian army was to withdraw, but did not, news arrived of the creation of the Muslim-Croatian federation.

1.15.2. In Washington in the State Department an agreement was signed on March 2, 1994 between the representatives of the Muslims and Croats from Bosnia-Herzegovina on the unification of Muslim and Croatian territories in Bosnia and Herzegovina into a federation of ethnic cantons with a joint central government along with confederal relations with Croatia. (Framework Agreement, Annex. p. 752, Dusan Pesic, Federacija Muslimana i Hrvata u Bosni /Federation of Muslims and Croats in Bosnia/ Politika, 3 March 1994, Annex. p. 770/2)

1.15.3. At an official ceremony in the White House in Washington the Federation of Bosnian Croats and Muslims was formed. A separate declaration was adopted containing the principles of confederation with Croatia. (Dusan Pesic, Stvorena federacija bosanskih Hrvata i Muslimana /Federation of Bosnian Croats and Muslim/ Politika, 19 March 1994, Annex. p. 776/7)

1.15.4. On May 16, 1994 the beginning of the operation of the joint general-staff of the joint Croatian-Muslim Army was marked in Sarajevo.

1.15.5. In reality, however, not too much was done in the establishment of the new federation. Therefore, the Agreement on the complete cessation of hostilities of December 31, 1994 concluded between the armed formations of the Republic of Srpska and Muslim armed formations at the beginning of January was also signed by the military commanders of the forces of Herzeg-Bosnia and the forces of the Autonomous Province of Western Bosnia. (Ian Trayner, US Puts Pressure on Bosnian Muslims and Croats to Stay Together and Keep the Serbs at bay, Guardian , 5 February 1995, Annex. p. 782)

1.16. The Armed Conflict Between the Bosnian Muslims and Bosnian Croats

1.16.1. During 1993 very severe fighting broke out between the Bosnian Muslims and Bosnian Croats. These conflicts took place in central Bosnia. The Muslim militia focused its attacks in the regions of Kakanj, Travnik, Vitez and Mostar from where it expelled more than 10,000 Croats from Croatian villages.

1.16.2. The Security Council reviewed the conflicts. The Security Council Presidents referred to them in the statements of 21 April 1993 (S/25646, Annex. p. 784), 10 May 1993 (S/25746, Annex. p. 785), 14 September 1993 (S/26437, Annex. p. 787), 9 November 1993 (S/26716, Annex. p. 789) and 3 February 1994 (S/PRST/1994/6, Annex. p. 791).

1.16.3. Croatian refugees were passing through the territory of the Republic of Srpska at that time on their way to Croatia. On that occasion they received aid in food. (U centralnoj Bosni zestoko /Fierce Fighting in Central Bosnia/ Politika, 4 June 1993, Annex. p. 792/3, Hrvati se sklanjaju kod Srba /Serbs Give Shelter to Croats/

Politika, 9 June 1993, Annex. p. 795/6, Muslim Forces Plunder Bosnian Croat Villages, the Washington Post, June 17, 1993, Annex. p. 799, Bosnian Muslim' Gains May High Cast, The Washington Post, September 12, 1993, Annex. p. 801)

1.17. CONCLUSIONS CONCERNING THE FACTS

1.17.1. Serbs have been living as a people in the territory of Bosnia and Herzegovina for centuries.

1.17.2. The status of Serbs who lived in the Ottoman state was worse than that of colonial peoples. They were subjected to the acts of genocide, which was legitimate and known as the tribute in blood: forcible taking away of Serb children from their families to the centres of the Ottoman state, conversion of those children into Islam and their training so as to become Turkish soldiers, notorious janissaries.

1.17.3. During World War Two, the Serbs from Bosnia-Herzegovina were subjected to genocide at the hands of the Croato-Muslim fascist coalition in Bosnia-Herzegovina which was then an integral part of the collaborationist Independent State of Croatia. Several hundred thousand of Serbs perished at that time, which brought about a change in the ethnic composition of certain parts of Bosnia-Herzegovina.

1.17.4. At the first multi-party elections in Bosnia-Herzegovina in 1990, the Democratic Action Party won the support of the overwhelming majority of Muslims. This party had been founded by Alija Izetbegovic who expounded his religious and political ideas in his "Islamic Declaration" which he

wrote and distributed illegally in 1970 and officially published in Sarajevo in 1990. A. Izetbegovic's political goal was to transform Bosnia-Herzegovina into an Islamic state.

1.17.5. At the first multi-party elections in Bosnia-Herzegovina, an overwhelming majority of Croats voted for the Croatian Democratic Community, which was controlled by Franjo Tudjman and pursued his policy, aimed at dismembering Yugoslavia and creating an independent Croatian state and, in doing so, they felt no qualms about using fascist symbols and relying on Croatian fascist emigres.

1.17.6. An informal coalition of the Democratic Action Party and the Croatian Democratic Community was constituted within the government of the Yugoslav federal unit of Bosnia-Herzegovina and all relevant decisions, including those regarding the proclamation of independence, were brought by the majority vote of the representatives of those two parties, contrary to the republican constitution and law in force in Bosnia-Herzegovina.

1.17.7. As the political representatives of the Serb people in Bosnia-Herzegovina said that the Serbs were against the breakaway of Bosnia-Herzegovina from Yugoslavia and as they refused to remain within an independent and autonomous Bosnia-Herzegovina, they were demonized in the media, harrassed and physically mistreated, while there were frequent acts of terrorism against the Yugoslav People's Army and its lawful and legitimate operations, while the Serb civilian population was attacked by the Croatian regular and paramilitary units in the areas bordering on Croatia. At the same time, the Muslim authorities in Sarajevo prepared illegal organizational plans and armed the Patriotic League units to deny by force the Serbs their right to self-determination.

1.17.8. The afore-mentioned historical reasons, as well as the actual political situation in Bosnia-Herzegovina following the first multi-party elections, constituted a de facto basis for the Serb people in Bosnia- Herzegovina to exercise their legitimate rights stemming from the principle of equal rights and self-determination of peoples.

1.17.9. On the other hand, there were no legitimate reasons for the Muslims and Croats in Bosnia-Herzegovina to make a claim for the forming of an independent state and to secede from Yugoslavia. They joined, together with Bosnian Serbs, the Kingdom of Serbia of their own free will in 1918 and, by exercising their right to self-determination, proclaimed at that time by U.S. President Woodrow Wilson, created the Kingdom of Serbs, Croats and Slovenes together with the Kingdom of Serbia and the Kingdom of Montenegro. The Muslims living in that Kingdom were protected by statute as a religious minority.

1.17.10. After World War Two, the Serbs, Muslims and Croats in Bosnia and Herzegovina were constituted as equal peoples within a separate federal unit - Bosnia-Herzegovina. The status of Muslims was thus promoted into that of a people. Muslims and Croats were proportionally represented in all agencies of government and enjoyed full freedom of political, economic, religious and cultural development. Therefore, they had no reason whatsoever to invoke the principle of equal rights and self-determination of peoples in order to demand secession from Yugoslavia.

1.17.11. Late in 1991 and early in 1992, the political representatives of the Serb people in Bosnia-Herzegovina sought to reach a democratic and peaceful settlement so as to accommodate the interests of all three peoples by means of a mutual division of territory and the transformation of Bosnia-

Herzegovina into a loose federation or confederation. Unfortunately, the Muslim leadership did not accept these proposals, convinced that it would establish its authority - by force and with the help of the countries that supported it - on the entire territory of Bosnia-Herzegovina, even in the areas in which the Serbs were the majority population. Izetbegovic reiterated on several occasions that a united and indivisible Bosnia-Herzegovina was more important to him than peace. He thus violated the principle of equal rights and self-determination of peoples, the aim of which is to maintain peaceful and friendly relations among peoples.

1.17.12. Shots at a Serb wedding party on 1 March 1992 on the day of the referendum on an independent Bosnia-Herzegovina, fired by a number of Muslims, marked the outbreak of fighting between the three peoples of Bosnia-Herzegovina.

1.17.13. Despite the fact that the international legal requirements for the recognition of Bosnia-Herzegovina as an independent state had not been satisfied, certain countries proceeded to grant such recognition in contravention of the rules of international law, thus interfering in the internal affairs of the Socialist Federal Republic of Yugoslavia.

1.17.14. Almost at the same time two states were created in the territory of the former Yugoslav republic of Bosnia-Herzegovina: the Republic of Srpska and the Republic of Bosnia-Herzegovina.

1.17.15. As the Muslim-Croatian coalition was constituted solely on their common policy against the Serb people and as the Croats in Bosnia- Herzegovina never wanted to live in an Islamic state, this coalition soon fell

apart and fierce fighting ensued between the Muslims and Croats in Bosnia- Herzegovina and a separate state of Herceg-Bosnia was formed.

1.17.16. A part of the Muslim population in the western part of Bosnia-Herzegovina, which was not under A. Izetbegovic's direct control, also refused to remain within the Islamic state and formed the Autonomous Province of Western Bosnia. As Mr. Izetbegovic refuses to meet the requests of that population, the Autonomous Province of Western Bosnia continues to fight Izetbegovic's forces.

1.17.17. Consequently, two new states - Herceg-Bosnia and the Autonomous Province of Western Bosnia - have emerged within the prematurely recognized so-called Republic of Bosnia-Herzegovina.

1.17.18. There are four states within the territory of the former Yugoslav republic of Bosnia-Herzegovina, maintaining different mutual relations. The so-called Republic of Bosnia-Herzegovina seeks to build a federation with Herceg-Bosnia. The Republic of Srpska and the Autonomous Province of Western Bosnia have concluded relevant agreements and co-exist in peace. Fighting is going on between the so-called Republic of Bosnia-Herzegovina and Herceg-Bosnia, on the one hand, and the Republic of Srpska and the Autonomous Province of Western Bosnia, on the other. The FR of Yugoslavia is not a party to this conflict.

1.17.19. Since the end of April 1992, the FRY has not carried out any act of authority nor has it had any jurisdiction over the territory of the former Yugoslav republic of Bosnia-Herzegovina.

L A W

PRELIMINARY OBJECTION REGARDING THE ADMISSIBILITY OF THE APPLICATION

First Preliminary Objection

A.1. The existence of civil war at the material time renders the Application inadmissible

A.1.1. The circumstances which constitute the background against which the 'Submissions' of the Memorial are formulated, in so far as the 'Submissions' may be said to relate to the 1948 Genocide Convention (Which is denied by the Respondent State), are dominated by elements of civil strife and, consequently, no international dispute is involved over which the Court can properly exercise its competence.

A.1.2. The protagonists in reality are the four contending political elements within the territory of the former Republic of Bosnia and Herzegovina: the Bosnian Serbs, the Bosnian Croats, the Muslim followers of Mr. Izetbegovic and the Muslim group which opposes Mr. Izetbegovic.

Second preliminary objection

A.2. Allja Izetbegovic was not competent to issue authorization for the initiation of proceedings before the Court

A.2.1. Pursuant to its Constitution, the Applicant State is represented in international relations by the Presidency as a collective head of state. The decision on the initiation of proceedings before the International Court of Justice and on the designation of its agents could have been only taken by the Presidency as a collective organ or by the Government rather than by the President of the Presidency.

A.2.2. Pursuant to Art. 219 of the Constitution of the so-called Republic of Bosnia-Herzegovina:

"The Presidency of the Republic of Bosnia-Herzegovina shall:

"1) represent the Republic of Bosnia-Herzegovina;

"2) consider issues regarding the implementation of the agreed policies in the field of defence, state security, social self-defence and international cooperation...

...

"4) in line with the positions and proposals of the Assembly consider issues concerning the charting and implementation of the Republic's foreign policy, the pursuit of international cooperation and enforcement of international treaties;

...."(Official Gazette of the Republic of Bosnia and Herzegovina, 14 March 1993, the text is given in the Annex to the letter of 22 August 1993, which Professor Francis A. Boyle addressed to the Court as the agent for the Applicant State).

A.2.3. The decision to initiate the proceedings was taken by the President of the Presidency, thus overstepping his authority and violating a relevant provision of internal law.

A.2.4. The letter of authorization for the initiation of proceedings and the appointment of agents was signed by Alija Izetbegovic, as the President of the Republic. However, at that time there was no President of the Republic, but only the President of the Presidency. Consequently, the letter of authorization was signed by the Applicant State's organ which did not exist under the regulations of internal law.

A.2.5. Alija Izetbegovic was not appointed as President of the Presidency in a legal manner. At the general and direct elections held in the Socialist Republic of Bosnia and Herzegovina in 1990, he won 879.266 votes, whereas Fikret Abdic won 1.045.539 votes. Having won more votes, Fikret Abdic should have become the President of the Presidency.

A.2.6. At the time of the issuance of the authorization for the conduct of proceedings and of the designation of the agent, Alija Izetbegovic was not performing the duties of the President of the Presidency legally. His mandate was contested by the representatives of the Croat people in former Yugoslav republic of Bosnia-Herzegovina.

A.2.7. Alija Izetbegovic's mandate as the President of the Presidency was contested by Serbs as early as 1991.

A.2.8. The fact that certain states recognize Alija Izetbegovic as the Applicant State's representative cannot invalidate the gross violations of internal law and the challenge of his mandate by the Serb and Croat peoples in the territory of the former Yugoslav republic of Bosnia-Herzegovina.

PRELIMINARY OBJECTIONS TO THE COURT'S JURISDICTION RATIONE PERSONAE

Third preliminary objection

B.1. As it has flagrantly violated the principle of equal rights and self-determination of peoples, the Applicant State could not by notification of succession enter into the 1948 Genocide Convention

B.1.1. Acts whereby the Applicant State was constituted run counter to the internal law

B.1.1.1. The Platform on the status of Bosnia-Herzegovina in the future set-up of the Yugoslav community, the Memorandum (Letter of Intent), which was adopted by the Assembly of the Socialist Republic of Bosnia-Herzegovina on 14 October 1991, the Decision of the Assembly of the Socialist Republic of Bosnia and Herzegovina on calling a public referendum on gaining independence of 24 January 1992, as well as the Decision of the Government of the Socialist Republic of Bosnia and Herzegovina on the recognition of statehood of 20 December 1991 and the Decision of the Presidency of the Socialist Republic of Bosnia and Herzegovina to submit a request for the recognition of the Socialist Republic of Bosnia-Herzegovina as an independent state of 20 December 1991 are in contravention of the federal law and republican statute, i.e. Articles 5 and 237 of the 1974 Constitution of the SFRY, Article 116 of the 1976 Criminal Code of the SFRY, as

well as of Article 252 of the 1974 Constitution of the SR Bosnia and Herzegovina and 1990 Amendments LXIX and LXX to the 1974 Constitution of the SR Bosnia and Herzegovina.

B.1.1.2. By its Platform on the status of Bosnia-Herzegovina and the future set-up of the Yugoslav community, as well as by its Memorandum (Letter of Intent), the illegitimately constituted Assembly of the SR of Bosnia-Herzegovina, sitting without representatives of the Serbs, expressed its intent to constitute the SR Bosnia and Herzegovina as an independent state outside the Yugoslav federation. This intent was achieved with the adoption of the Decision of the Government of the SR of Bosnia-Herzegovina on the recognition of statehood, as well as that of the Presidency of the SR of Bosnia-Herzegovina to submit an application for the recognition of the SR Bosnia and Herzegovina as an independent state whereby the recognition of the SR Bosnia and Herzegovina as an independent state was requested.

B.1.1.3. Article 5 of the SFRY Constitution stipulates as follows:

"The territory of the Socialist Federal Republic of Yugoslavia is a single unified whole and consists of the territories of the Socialist Republics.

"The territory of a Republic may not be altered without the consent of that Republic, and the territory of an Autonomous province - without the consent of that Autonomous Province.

"The frontiers of the Socialist Federal Republic of Yugoslavia may not be altered without the consent of all Republics and Autonomous Provinces.

"Boundaries between the Republics may only be altered on the basis of mutual agreement, and if the boundary of an Autonomous province is involved - also on the basis of the latter's agreement." (1974 Constitution of the SFRY, Article 5, Annex. p. 805)

The transformation of the administrative boundaries of a federal unit into international frontiers of an independent state is an alteration which under Art. 5, para 4, of the SFRY Constitution could not be made without an agreement between the Republics, and such an agreement was not achieved in this particular case.

B.1.1.4. Article 237 of the SFRY Constitution says:

"It shall be the inviolable and inalienable right and duty of the peoples and nationalities of Yugoslavia, working people and citizens to protect and defend the independence, sovereignty, territorial integrity and the social system of the Socialist Federal Republic of Yugoslavia established by the SFRY Constitution." (1974 Constitution of the SFRY, Article 237, Annex. p. 805)

B.1.1.5. Article 116 of the Criminal Code of the SFRY stipulates:

"(1) Whoever commits an act aimed at a violent or unconstitutional secession of a part of the SFRY's territory or at the annexation of a part of that territory to another state, shall be punished by a term of imprisonment of at least five years.

....."(Criminal Code of the SFRY, Article 116, Annex. p. 809)

B.1.1.6. Mention should also be made of Article 124

of the Criminal Code of the SFRY which reads:

"(1) Whoever takes part in the preparation of an armed rebellion, or in an armed rebellion itself, shall be punished by a term of imprisonment of at least one year.

"(2) Whoever organizes preparations for an armed rebellion or takes part therein as its organizer or ringleader, shall be punished by a term of imprisonment of at least five years."
(Criminal Code of the SFRY, Article 124, Annex. p. 809)

Criminal action has been taken in Yugoslavia against some officials of the authorities of the so-called Republic of Bosnia-Herzegovina, who are charged with the said criminal offences.

B.1.1.7. Clearly, the above acts by the Assembly, Government and the Presidency of the SR of Bosnia-Herzegovina were contrary to the above-mentioned federal regulations. The fact that the republican authorities in some other federal units of the SFRY undertook similar illegal acts cannot justify nor provide legality to the mentioned acts of the authorities of Bosnia-Herzegovina.

B.1.1.8. The above acts of the authorities of Bosnia-Herzegovina were contrary to Article 252 of the Constitution of the SR of Bosnia-Herzegovina which reads as follows:

"It shall be the inviolable and inalienable right and duty of the peoples and nationalities, working people and citizens of the Socialist Republic of Bosnia-Herzegovina to protect and defend the freedom, independence, sovereignty, territorial integrity and the social system of the Socialist Federal

Republic of Yugoslavia and the Socialist Republic of Bosnia-Herzegovina established by the Constitution." (1974 Constitution of SR Bosna and Herzegovina, Article 252, Annex. p. 812)

B.1.1.9. The above acts of the authorities of Bosnia-Herzegovina were contrary to the provision of item 7 of 1990 Amendment LXIX to the Constitution of the SR of Bosnia-Herzegovina which reads as follows:

"Political organization and actions designed to: violently overthrow the system established by the Constitution, violate the territorial integrity and independence of the Socialist Federal Republic of Yugoslavia shall be prohibited." (The 1990 Amendment LXIX to the 1974 Constitution of SR Bosnia-Herzegovina, Annex. p. 815)

B.1.1.10. The Platform on the status of Bosnia-Herzegovina and the future set-up of the Yugoslav community, the Memorandum (Letter of Intent) of the Assembly of the SR of Bosnia-Herzegovina, as well as the Decision of the SR of Bosnia and Herzegovina to call a public referendum on acquiring independence were brought in contravention of the procedure required under item 10 of 1990 Amendment LXX to the Constitution of the SR of Bosnia-Herzegovina for the adoption of acts of such importance (the mentioned provision stipulates that the Assembly of the SR of Bosnia-Herzegovina shall set up a Council to decide upon matters of equal rights of the peoples and nationalities in Bosnia-Herzegovina). This item, among others, says:

"The Council shall be duty-bound to review issues concerning equal rights of peoples and nationalities at the initiative of deputies to the Assembly of the SR of Bosnia-Herzegovina. If at least 20 deputies hold that the

proposed regulation or any other act in the competence of the Assembly violates the equality of the peoples and nationalities, the proposal which the Assembly of the SR of Bosnia-Herzegovina will decide upon shall be formulated by the Council.

"The questions regarding the exercise of equal rights by the peoples and nationalities of Bosnia-Herzegovina shall be decided upon by the Assembly of the SR of Bosnia-Herzegovina at the proposal of the Council in a separate procedure spelled out in the Rules of Procedure of that Assembly by a two-third majority vote of the total number of deputies." (Annex. p. 816)

The above-mentioned procedure was not observed. Despite the fact that all deputies of the Serb Democratic Party opposed the adoption of the mentioned documents along with other Serb deputies and that they walked out of the session of the Assembly of the SR of Bosnia-Herzegovina, the Platform was adopted at the proposal of the republican Presidency, while the Memorandum was adopted at the proposal of the Democratic Action Party.

B.1.1.11. The adopted documents contradict one another. Item 1 of the Platform on the status of Bosnia-Herzegovina and the future set-up of the Yugoslav community, among others, reads as follows:

"An appropriate structure of the Assembly of the Republic of Bosnia-Herzegovina shall exclude the possibility of out-voting in the decision-making process regarding the most important issues of relevance to the equality of all peoples and nationalities living in the Republic."

However, even then, i.e. on 14 October 1991, when

the Republican Assembly adopted the Platform, there were outvoting-prevention mechanisms in place in the decision-making process regarding the most important issues of relevance to the equality of nations. The appropriate proportional national representation in the Assembly of Bosnia-Herzegovina was laid down in Articles 19-22 of the Constitutional Law for the application of Amendments LIX to LXXIX to the Constitution of the SR of Bosnia-Herzegovina and was also based on the authentic interpretation of Articles 19 to 22 of the Constitutional Law on the application of amendments LIX to LXXIX to the Constitution of the SR of Bosnia-Herzegovina. (Official Gazette of the SR of Bosnia and Herzegovina, 1990, No. 34) There was also a Council for questions concerning the exercise of equal rights of nations and nationalities of Bosnia-Herzegovina, as mentioned above.

All those mechanisms were grossly violated and all the decisions regarding the independence of the SR of Bosnia-Herzegovina were brought on the basis of outvoting in the decision-making process.

B.1.1.12. On the very same day of 14 October 1991, the Assembly of the SR of Bosnia-Herzegovina adopted the Memorandum (Letter of Intent) on the basis of the mentioned Platform and at the proposal of the Democratic Action Party. Item 5 of the Memorandum reads as follows:

"The positions presented in this Memorandum reflect the will of a majority of deputies in this Assembly and as such the political will of the majority of the citizens of Bosnia-Herzegovina, and thus represent a binding basis for the conduct of the government and political authorities of the Republic."

B.1.1.13. While the Platform on the status of Bosnia-Herzegovina and the future set-up of the Yugoslav community of 14 October 1991 rejects any decision based on the procedure of outvoting, the Memorandum (Letter of Intent) adopted on the same day on the basis the Platform was adopted by a majority vote in the Assembly in which there were no Serb representatives.

B.1.1.14. Pursuant to item 3 of the Platform on the status of Bosnia-Herzegovina in the future set-up of the Yugoslav community "boundaries of a Republic may only be altered on the basis of a decision of the Assembly of the Republic of Bosnia-Herzegovina and in keeping with the will of all the citizens of that Republic, expressed at their referendum, provided at least two-thirds of the electorate vote in favour of such an alteration". As the proclamation of the Yugoslav Republic of Bosnia-Herzegovina as an independent and autonomous state implies the alteration of the status of its boundaries - the boundaries of a federal unit becoming international state boundaries - the decision at the referendum was intended to be taken on the basis of a two-third majority vote of the total number of voters.

The results of the referendum have never been published in the prescribed manner. The Memorial (para. 4.2.1.19, p.139) says that 63.4 per cent of the electorate showed up for the referendum on 29 February and 1 March 1992 and that reportedly 99.4 per cent of those who took part voted in favour. Even if these figures were true, the decision was taken by a majority below the two-third majority of the total number of voters required by law.

**B.1.2. Acts whereby the so-called Republic of
Bosnia-Herzegovina was constituted are contrary to
international law**

B.1.2.1. The Socialist Republic of Bosnia-Herzegovina was a federal unit within the Yugoslav federation at the time of the adoption of the disputable enactments. It was not a state in terms of international law, however, nor did it have any elements of international legal personality.

B.1.2.2. There is no rule of international law on the basis of which a federal unit, as such, would have the right unilaterally to break away from the federation and become an independent and autonomous state.

B.1.2.3. The principle of equal rights and self-determination of peoples applies as a rule of positive law but this is not a rule on which a federal unit as such may base its right unilaterally to break away from a federation. (paragraph 1.9.34. of the Preliminary objections). "Fourteen Points", Address by the President of the United States, Woodrow Wilson, delivered at a Joint Session of the two Houses of Congress, 8 January 1918; Declaration of Principles, known as the Atlantic Charter, by the President of the United States, Franklin D. Roosevelt, and the Prime Minister of the United Kingdom, Winston S. Churchill, 14 August 1941; "Declaration of Liberated Europe", The Crimes (Yalta) Conference, 4-11 February 1945; Charter of the United Nations (Art. 1, para 2, Art. 55, Art. 73 and Art. 76); Draft International Covenant on Human Rights and measures of implementation: future work of the Commission of Human Rights, Resolution of the General Assembly 421(V) D, 4 December 1950; Resolution of the General Assembly, 637 (VII), 16 December 1952; "The right of peoples and nations to self-

determination", Resolution of the General Assembly 738(VIII), 28 November 1953; "Recommendations concerning international respect for the right of peoples and nations to self-determination" Resolution of the General Assembly 837(IX), 14 December 1954; "Declaration on the granting of independence to colonial countries and peoples", Resolution of the General Assembly 1514(XV), 14 December 1960; International Covenant on Economic, Social and Cultural Rights, 16 December 1966; "Declaration of principles of international law concerning friendly relations and cooperation among states in accordance with the Charter of the United Nations, Resolution of the General Assembly 2625 (XXV), 24 October 1970; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276(1970), ICJ Reports 1971, p. 31; Consideration of reports submitted by states parties under Art. 40 of the Covenant, Third periodic reports of States parties due in 1988, Addendum, Federal Republic of Germany, Human Rights Committee, CCRP/C/52/ Add.3, 7 March 1989, pp. 11-14; Consideration of reports submitted by states parties under Art. 40 of the Covenant, third periodic reports of states parties due in 1992, Addendum, Mexico, Human Rights Committee, CCRP/76/ Add.2, 20 January 1993, pp. 4.8; Consideration of reports submitted by states parties under Article 40 of the Covenant, fourth periodic reports of states parties due in 1994, Spain, Human Rights Committee, CCPR/C/95/Add.1, 5 August 1994, pp. 2,3; Consideration of reports submitted by states parties under article 40 of the Covenant, third periodic reports of states parties due in 1991, Addendum, Sri Lanka, Human Rights Committee, CCPR/70/Add.6, 27 September 1994, pp. 1,2; Consideration of reports submitted by states parties under Art. 40 of the Covenant, initial reports of states parties due in 1993, Addendum, United States of America, Human Rights Committee, CCPR/81/ Add.4, pp. 5-20, Annex. pp. 819-856)

B.1.2.4. The subject of powers deriving from the principle of equal rights and self-determination of peoples is a group of persons which has the status of a people as an ethnic community. A large number of General Assembly resolutions make simultaneous use of two notions - a "people" and a "nation" - to indicate the ethnic links among the group's members.

According to a position of the General Assembly and the International Court of Justice, in certain cases a "population" does not constitute a "people" which is authorized to decide on self-determination.

In the Western Sahara Case, the Court stated:

"The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that **a certain population did not constitute a 'people' entitled to self-determination** or on the conviction that a consultation was totally unnecessary, in view of special circumstances." (ICJ, Reports 1975, p. 33. Annex. p. 873.) (Bold type is ours.)

Under the Constitution of the SR of Bosnia-Herzegovina, the status of a people in that republic was enjoyed by Serbs, Moslems and Croats.

B.1.2.5. It is wrong to interpret this to mean that this right could be used in the case in point by the citizens of the SR of Bosnia-Herzegovina. Serbs did not take part in the referendum held on 29 February and 1 March 1992, on the

transformation of Bosnia-Herzegovina into an independent state. Persons belonging to the Muslim and Croatian peoples did. It very soon transpired, however, that in reality the two ethnic community did not constitute a single stable group which wanted to live in a single state and be represented by a single government, because, as early as 1993, the Croats broke away from the so-called Republic of Bosnia-Herzegovina and founded their separate state unit - Herceg-Bosnia.

B.1.2.6. In the following year of 1994, these two states - the so-called Republic of Bosnia-Herzegovina and Herceg-Bosnia - started negotiations and reached agreement in Washington on the forming of a common federation.

B.1.2.7. It is questionable, however, whether the use of the right to self-determination, including the foundation of an independent state, is exclusively a matter of political will of a group of people having the status of a people or is restricted by certain conditions.

B.1.2.8. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970 sets out the principle of equal rights and self-determination of peoples in the following way:

"By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, the political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provision of the Charter.

"Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provision of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

"(a) To promote friendly relations and cooperation among States; and

"(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned; and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter."

"Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedom in accordance with the Charter.

"The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

"Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with

the purpose and principles of the Charter.

"The territory of a colony or other Non-Self- Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color.

"Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country."

B.1.2.9. Bearing in mind the above mentioned text of the Declaration one cannot proceed to invoke formally the principle of equal rights and self-determination of peoples. A proper approach calls for the review of certain political, economic, cultural and other social circumstances.

B.1.2.10. It is certain that the peoples under colonial rule may invoke the principle of equal rights and self-determination of peoples and request the establishment of their independent states.

B.1.2.11. "The beneficiaries of the right to self-determination are peoples subjected to colonial or racist regimes or any other form of alien domination. Thus the international status of colonies or non-self-governing territories as separate and distinct from the territory of the administering State is recognized, and remains so as long as the peoples of these territories have not exercised their right to self-determination, in accordance with the Charter. The principle does not however extend to the rights of nationalities living in a sovereign State; for although it is the duty of all States to promote the universal and effective respect of human rights, the principle of equal rights and self-determination of peoples must not be understood to authorize or encourage any action whatsoever likely to divide or threaten, wholly or partially, the territorial integrity or political unity of any independent sovereign State." (R. Daoudi, *The Principle of Equal Rights and Self-Determination of Peoples*, in *International Law: Achievements and prospects*, Mohammed Bedjaoui, General Editor, Martinus Nijhoff, Publishers, UNESCO, 1991, p.493, Annex. p. 876)

B.1.2.12. The peoples which have joined a state on a voluntary basis, precisely on the basis of the principle of self-determination, in the government of which they are fairly and proportionally represented and freely pursue economic, social and cultural development may not invoke the principle on equal rights and self-determination of peoples in order to get out unilaterally and by force of such a community.

B.1.2.13. Serbs, Croats and Slovenes from the territories of what used to be the Austro-Hungarian Monarchy freely decided, by invoking the principle of self-determination, to join the Kingdom of Serbia and together with the Kingdom of Montenegro form the Kingdom of Serbs, Croats and Slovenes. This is evinced by the Preamble of the Treaty concluded by the

principal allied and associated powers and the State of Serbs, Croats and Slovenes and signed in St. Germain-en-Lais on 10 September 1919 which, inter alia, reads:

"Considering the Serbs, Croats and Slovenes from the former Austria-Hungary Monarchy decided of their own free will to unite permanently with Serbia so as to organize an independent and unified state named the Kingdom of Serbs, Croats and Slovenes;

Considering that the Prince-Regent of Serbia and the Serbian Government agreed to achieve that unification and that consequently the Kingdom of Serbs, Croats and Slovenes was formed which undertook upon itself to exercise sovereignty over the territories inhabited by those nations;"...

B.1.2.14. Perhaps no other human group has seen such promotion of its status as the Muslims in Yugoslavia. From a religious minority - the status they had in 1918 - they advanced to the status of a people. They obtained the status of a constituent people within the SR of Bosnia-Herzegovina, side by side with the Serbs and the Croats. They enjoyed free economic, political, cultural and every other social development on an equal footing with Serbs and Croats. They were proportionally represented in all agencies of government in the SR of Bosnia-Herzegovina and, through the representatives of SR Bosnia- Herzegovina, also in the federal administration.

B.1.2.15. A part of the Croatian people in the SFRY lived in the SR of Bosnia-Herzegovina. The Croatian people in the SR of Bosnia- Herzegovina, accounted for about 17 per cent of its population, enjoyed the status of a people equal to Serbs and Muslims. Croats had free political, economic and cultural development. They were proportionately represented at all levels

of authority. Almost throughout the post-World-War-Two period, Yugoslavia had Josip Broz Tito, a Croat by nationality, as its head of state. In 1990 and 1991 Ante Markovic, a Croat by nationality, was the federal Prime Minister.

B.1.2.16. Muslims and Croats living within the SR of Bosnia- Herzegovina enjoyed their right to self-determination by freely pursuing political, economic, cultural and every other social development and by being adequately represented in government. Consequently, the social requirements necessary for these two peoples to invoke the principle of equal rights and self-determination of peoples and secede from Yugoslavia had not been satisfied.

B.1.2.17. On the contrary, their action along the above lines, ran counter to the explicit provision set out in the UN Declaration on the principles of international law on friendly relations and co-operation among states in accordance with the UN Charter which reads as follows:

"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color."

B.1.2.18. This is why the Respondent State believes that the acts whereby the Applicant State was constituted as an independent state are in contravention of the rules of international law.

B.1.2.19. The Respondent State wishes to point out, on the other side, that the authorities in Sarajevo have by their acts violated, also, the principle of equal rights and self-determination of peoples against the Serbs living in the territory of the former Yugoslav republic of Bosnia-Herzegovina.

B.1.2.20. The relevant historical facts, as well as the political developments in the SR of Bosnia-Herzegovina from 1990 to April 1992 form the required basis for the Serbs in Bosnia-Herzegovina to invoke the principle of equal rights and self-determination of peoples.

B.1.2.21. The part in which the relevant facts have been presented contains a description of the status of the Serb people in the Ottoman Empire. That status was much worse than that of any colonial people.

B.1.2.22. The part in which the relevant facts have been presented contains a description of the status of the Serb people in the Independent State of Croatia which was formed during World War Two and included the territory of Bosnia-Herzegovina. The Serb people in that state was subjected to genocide. Hundreds of thousands of Serbs perished in the concentration camp at Jasenovac and other concentration camps, including a large number of people from the territory of Bosnia-Herzegovina. Both Croat and Muslim fascists formed the government of the Independent State of Croatia. The perpetrators of the genocide against the Serbs included Croats and Muslims from Bosnia-Herzegovina.

B.1.2.23. Alija Izetbegovic presented his political programme for the transformation of Bosnia-Herzegovina into an Islamic state in his "Islamic Declaration" published in 1990.

B.1.2.24. The quintessence of A. Izetbegovic's political programme is spelled out in the following part of the "Islamic Declaration":

"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 nor 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 coup de etats 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).

B.1.2.25. In pursuit of this programme, Mr. Izetbegovic established links with certain Islamic regimes and enlisted support of many Islamic countries to achieve that end.

B.1.2.26. For tactical reasons, Mr. Izetbegovic entered an alliance with the Croatian Democratic Community in order to join forces against the Serbs.

B.1.2.27. Contrary to the Constitution of the SR of Bosnia- Herzegovina and the laws in force, many important decisions are being taken on an basis of outvoting, i.e. by the joint vote of the representatives of the Democratic Action Party and the Croatian Democratic Community. All decisions regarding independence have been taken in this way. The Serb representatives in the republican government agencies have

been totally ignored in such decision-making.

B.1.2.28. In 1990 and 1991, the Serbs in Bosnia-Herzegovina were vilified in the media, particularly by the Sarajevo Television, as well as in the press.

B.1.2.29. Physical violence against persons belonging to the Serb nationality came to a head on 1 March 1992 on the day of the referendum when a number of Muslims shot at a Serb wedding party in Sarajevo. While the perpetrators were identified soon after, no steps were taken to arrest them.

B.1.2.30. At the time when he was about to proclaim an independent Bosnia-Herzegovina, A. Izetbegovic was forming paramilitary units and arming them clandestinely, preparing them to resist the right of the Serb people to self-determination in Bosnia-Herzegovina by force.

B.1.2.31. During the withdrawal of Yugoslav People's Army units from Sarajevo and Tuzla, the military forces controlled by A. Izetbegovic attacked those units, despite the fact that their own promises that they would let Yugoslav People's Army withdraw peacefully, which proves that A. Izetbegovic had wanted armed conflicts to break out.

B.1.2.32. Izetbegovic repeated on a number of occasions that an independent and unified Bosnia was more important to him than peace.

B.1.2.33. Preparing itself, and attempting, to deny the Serb people the rights stemming from the principle of equal rights and self-determination of peoples by force, the government of A. Izetbegovic has committed a flagrant violation of its obligation, according to which:

"Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence."

B.1.2.34. The mentioned facts are a factual basis which justifies the invocation by the Serbs living in the territory of the former Yugoslav republic of Bosnia-Herzegovina of the principle of equal rights and self-determination of peoples so as to safeguard their free political, economic, cultural and over-all social development.

B.1.2.35. It is clear now that the Croats of Bosnia-Herzegovina also felt threatened by A. Izetbegovic's regime, so that they also formed a separate state unit of Herceg-Bosnia.

B.1.2.36. The 1994 Contact Group Plan on the creation of the union of the Muslim-Croatian federation and the Republic of Srpska rejects the practice pursued by the A. Izetbegovic's regime to resist by force the rights of Serbs living in the territory of the former Yugoslav republic of Bosnia- Herzegovina, stemming from the principle of equal rights and self-determination of peoples. By accepting this proposition, A. Izetbegovic's regime admitted to having previously violated the inalienable rights of Serbs.

B.1.2.37. Had this regime accepted the Serb Democratic Party proposal (the Resolution on the position of Bosnia-Herzegovina in settling the Yugoslav crisis, Annex. p. 878) of October 1991 or the Coutilhero Plan of 1992, the fighting with all the grave consequences in its train would not have broken out.

B.1.2.38. By refusing to recognize timely the demands of the Serbs of Bosnia-Herzegovina, based on the principle of equal rights and self-determination of peoples, the Applicant State has grossly violated the right of that people to self-determination.

B.1.2.39. The Applicant State violated the obligations deriving from the principle of equal rights and self-determination of peoples by breaking away from Yugoslavia unilaterally and seeking to contest by force the exercise of the rights of the Serbs living in the territory of the former Yugoslav republic of Bosnia-Herzegovina, belonging them on the basis of the principle of equal rights and self-determination of peoples.

The Applicant State cannot enter into the international treaties of the predecessor State on the basis of succession because it flagrantly violated the principle of equal rights and self-determination of peoples.

B.1.3. The entry of the Applicant State into the 1948 Genocide

Convention by notification of succession contravenes international law

B.1.3.1. As the 1978 Vienna Convention on the Succession of States in Respect of Treaties has not entered into force, the succession of states to international treaties is regulated by the customary rules of international law.

B.1.3.2. As only few states have ratified the 1978 Vienna Convention on the Succession of States in Respect of Treaties, the treaty rules set forth in the Convention have not been transformed into rules of customary law.

B.1.3.3. The parties are, therefore, not bound by the rules of the 1978 Vienna Convention on the Succession of States in Respect of Treaties (Annex. p. 880), except in case if the rules of this Convention are in force as the rules of customary law. However, even if rules of the 1978 Vienna Convention on the Succession of States in Respect of Treaties were to be applied, the Note on Succession by the Applicant State of 29 December 1992 would run counter to those rules.

B.1.3.4. Article 6 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties reads as follows:

"The present Convention applies only to the effect of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations."

B.1.3.5. As the Applicant State has violated the obligations deriving from the principle of equal rights and self-determination of peoples, the Vienna Convention on the Succession of States in Respect of Treaties could not apply to this case even if it had come into force.

B.1.4. Relevant rules of customary international law

B.1.4.1. Para 4.2.1.44. of the Memorial (p. 151) says: "These special features strengthen the general principle exposed in Article 34 of the 1978 Convention on Succession of States in respect of Treaties which, as seen above, purely codifies the contemporary practice of States. According to this provision:

'When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor continues to exist:

'(a) any treaty in force at the date of succession of States in respect of the entire territory of the predecessor State which has become a successor State continues in force in respect of each successor State so formed.'

In the preceding paragraphs of the Memorial (pp. 149-151) the Applicant has mentioned some of the opinions of the authors which do not corroborate the Applicant's own claim. In any case, such opinions are held only by a minority of international legal scholars. (Ian Brownlie, *Principles of Public International Law*, Fourth Edition, Clarendon Press, Oxford, 1990, p.670, Annex. p. 920) The Applicant has not referred to the practice codified by this Article. And it could not do so, because the case in point, i.e. Art. 34, indicates to the contrary.

Art. 34 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties is not applicable as rule of customary international law. It has been introduced in the Convention not as the result of codification but as a result of progressive development. (Statement by Swiss representative Ritter at the United Nations Conference on Succession of States in respect of Treaties, Vienna, 31 July - 23 August 1978, pp. 52-55; Statement of the Spanish representative at the Vienna Conference, *ibid.* p. 59; Statement of U.K. representative Sir Ian Sinclair, *ibid.* pp. 59, 60; Statement by Turkish representative Dogan, *ibid.* p. 66, Annex. pp. 920-926)

B.1.4.2. The Applicant says in paragraph 4.2.1.42. of the Memorial (p. 150): "Automatic continuity is particularly well established in respect of conventions of humanitarian character." The Applicant refers here to the opinion expressed in

Oppenheim's Treatise, 9th edition. However, the full opinion reads as follows:

"It may happen that a part of a state secedes and becomes a separate state. In such cases the practice before 1945 tended to support the conclusion that the new state did not succeed to the treaties of the state of which it was formerly a part but rather began its international existence free from any such treaty inheritance (except for those treaty rights and obligations locally connected with its territory), and this is probably still the correct position today. Practice since 1956 has been equivocal, and also limited (apart from the situation of dependent territories emerging to independence, to which special considerations apply and which calls for separate treatment in para. 66).

"However, while with regard to treaties generally the position is essentially similar to that obtaining in the case of absorption (para. 62) there is more room for the view that in case of separation resulting in the emergence of a new state the latter is bound by - or at least entitled to enter into - general treaties of 'law-making' nature, especially those of a humanitarian character, previously binding on it as part of the state from which it has separated. Thus Pakistan and Burma, when accepting in 1949 the obligations of the Constitution of the International Labour Organization, recognized as binding upon them the various international labour conventions which applied to their territories when forming part of India. Similarly Pakistan considered itself a party to the Convention for the Suppression of Traffic in Women and Children 1921 by virtue of the fact that India became a party of that Convention before the establishment of Pakistan as an independent state.

"The state from which the secession has taken place

continues in principle, and despite its territorial diminution, to be bound by its treaties, although in particular cases its loss of the territory in question may have consequences for the continued operation of the treaty." (Oppenheim's International Law, ninth edition, Vol. I, edited by Sir Robert Jennings QC and Sir Arthur Watts KCMG QC, 1992, pp. 222, 223, Annex. p. 928)

Consequently, the relevant paragraph has been worded very carefully to reflect the uncertain nature of those rights - "**there is more room for the view** that in case of separation resulting in the emergence of a new state the latter is bound by - **or at least entitled to enter into** - general treaties of 'law-making' nature, especially those of a humanitarian character". (Bold type is ours.) Practice shows that this prudence regarding the formulation of the above paragraph was appropriate and has confirmed an alternative view that new states are entitled to accede to general treaties...

B.1.4.3. The new states established in the territory of the former USSR - Azerbaijan, Estonia, Georgia, Armenia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, Uzbekistan - have not acted in line with the rule set out in Art. 34 of the 1978 Vienna Convention on the succession of states with respect to treaties. All of them acted in line with the "clean slate" rule and entered into the treaties of the predecessor state by means of accession.

B.1.4.4. Thus, notes on accession were communicated to the depositary of the 1948 Genocide Convention, to which the USSR was a party, Armenia (23 June 1993), Estonia (21 October 1991), Georgia (11 October 1993), Latvia (14 April 1992) and Moldova (26 January 1993); they became parties to the Convention in accordance with its provisions. Other new states created in the territory of the former

USSR are not parties to this Convention.

Another example is the Convention on the Elimination of All Forms of Racial Discrimination (1966) to which the USSR was a party (4 February 1969). By means of accession, this Convention was acceded to by Armenia (23 June 1993), Estonia (21 October 1991), Latvia (14 April 1992) and Moldova (26 January 1993). Other new states are not parties to this Convention.

Thirdly, the International Covenant on Civil and Political Rights (1966) to which the USSR was a party (16 October 1973), was entered into by means of accession by Armenia (23 June 1993), Azerbaijan (13 August 1992), Georgia (3 May 1994), Kyrgyzstan (7 October 1994), Estonia (21 October 1991), Latvia (14 April 1992), Lithuania (20 November 1991) and Moldova (26 January 1993). Other new states have not acceded to the Covenant and are not its contracting parties.

(Multilateral Treaties deposited with the Secretary-General, Status as at 31 December 1993.)

B.1.4.5. The Czech Republic and the Republic of Slovakia, as new states, do not act in accordance with the rule set out in Art. 34 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties either. They, too, proceed from the "clean slate" rule and enter into the treaties to which the predecessor state was a party at their own discretion by either accession or succession. They enter into the treaties of which the UN Secretary General is the depository by succession whereas they enter into other multilateral treaties mainly by accession.

The International Convention against Apartheid in Sports (1985), of which CSSR was a party (29 July 1987) was

entered into by the Czech Republic by notification of succession (22 February 1993), but Slovakia did not. On the other hand, the Convention and the Statute on the Freedom of Traffic (1921) of which CSSR was a party (29 October 1923) was entered into on the basis of succession by Slovakia (28 May 1993), but not by the Czech Republic. Likewise, the Convention on the International Regime of Maritime Ports (1923) of which Czechoslovakia was a party (10 July 1931) was entered into on the basis of succession by Slovakia (28 May 1993) but not by the Czech Republic.

(Multilateral Treaties deposited with the Secretary-General, Status as at 31 December 1993.)

B.1.4.6. The new states which were created in the territory of the SFRY did not act in line with the rule set forth in Art. 34 of the 1978 Vienna Convention on the Succession of States in Respect of Treaties. They acted in accordance with the "clean slate" rule and chose the treaties of the SFRY which they wished to enter into. They intended to enter into the treaties of which the Secretary General of the United Nations is the depositary mainly by notification of succession whereas they entered into other multilateral treaties by accession.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide of which the SFRY is a party (29 August 1950) has not been entered into by the Former Yugoslav Republic of Macedonia. Hence, it is not a party to this Convention.

(Multilateral Treaties deposited with the Secretary-General, Status as at 31 December 1993.)

B.1.4.7. The Applicant State did not act in accordance with Art. 34 of the 1978 Vienna Convention on the Succession of

States in Respect to Treaties, but followed the "clean slate" rule. The SFRY, i.e. the FRY, is a party to the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Acquisition of Nationality (1961) and the Applicant State has not addressed a note on succession to this Protocol. The Applicant State has not addressed a note of succession with regard to the 1946 Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at The Hague (1912), Geneva (1925, 1931, 1936) and at Bangkok (1931) to which the SFRY, i.e. the FRY, has been a party since 19 May 1948. The applicant state has not furnished the note on succession to the 1972 Protocol amending the Single Convention on Narcotic Drugs (1961) of which SFRY, i.e. FRY has been a party since 23 June 1978. The same applies to the Customs Convention on Containers (1956), of which the SFRY, i.e. the FRY, has been a party since 9 March 1961 or to the Customs Convention on the Temporary Importation of Commercial Road Vehicles (1956) of which the SFRY, i.e. the FRY, has been a party since 12 June 1961 or to the European Convention on the Customs Treatment of Pallets used in International Transport (1960) of which the SFRY, i.e. the FRY, has been a party since 19 June 1964 or to the Convention on Road Signs and Signals (1968) of which the SFRY, i.e. the FRY, has been a party since 6 June 1977 or to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) (1970) of which the SFRY, i.e. the FRY, has been a party since 17 December 1974 or to the Agreement on International Carriage of Perishable Foodstuffs and on Special Equipment to be used for such Carriage (ATP) (1970) of which the SFRY, i.e. the FRY, has been a party since 21 December 1975 or to the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character (1949) of which the SFRY, i.e. the FRY, has been a party since 30 June 1950 or to the Convention on the Continental Shelf

(1958) of which the SFRY, i.e. the FRY, has been a party since 18 January 1966 or to the Convention relating to the Distribution of Programme-carrying Signals transmitted by Satellite (1974) of which the SFRY, i.e. the FRY, has been a party since 29 December 1976 or to the Protocol on Arbitration Clauses (1923) of which the SFRY, i.e. the FRY, has been a party since 13 March 1959 or to the Convention on the Execution of Foreign Arbitral Awards (1927) of which the SFRY, i.e. the FRY, has been a party since 13 March 1959 or to the Declaration recognizing the Right to a Flag of States having no Sea-coast (1921) of which Yugoslavia has been a party since 7 May 1930 or to the Convention on the International Regime of Maritime Ports (1923) of which Yugoslavia has been a party since 20 November 1931. (Multilateral Treaties deposited with the Secretary-General, Status as at 31 December 1993.)

The new states which were created in the territory of the SFRY entered into, by means of accession, the following treaties, concluded within the Council of Europe, of which the SFRY, i.e. the FRY, had been a party: European Convention on the Equivalence of Diplomas Leading to Admission to Universities, 1953, European Cultural Convention, 1954, European Convention on the Equivalence of Periods of University Study, 1956, European Agreement on the Academic Recognition of University Qualification, 1959, Protocol to the European Convention on the Equivalence of Diplomas Leading to Admission to Universities, 1964, Convention on the Elaboration of European Pharmacopoeia, 1964, European Convention on the Supervision of Conditionally Sentences of Conditionally Released Offenders, 1964, European Convention on the Protection of the Archaeological Heritage, 1969, European Agreement on Continued Payment of Scholarships Studying Abroad, 1969, European Convention for the protection of Animals Kept for Farming Purposes, 1976, European

Convention on the International Effects of Deprivation of the Right to drive a Motor Vehicle, 1976, European Convention for the Protection of Animals for Slaughter, 1979, European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches, 1985, Convention for the Protection of the Architectural Heritage of Europe, 1985, Anti-Doping Convention, 1989. However, the Applicant State has not entered into any of those conventions.

Clearly, in view of the above considerations, the notes on the succession by the Applicant State were no formal proof of the continuity of the treaties, but an actual choice made to enter into treaties, which proves that the Applicant State considered itself free from all treaties to which the SFRY had been a party, i.e. that like all other new states concerned it proceeded from the "clean slate" rule.

B.1.4.8. After all, the note on succession of 29 December 1992 says as follows:

"The Government of the Republic of Bosnia and Herzegovina, **having considered** the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, to which the former Socialist Federal Republic of Yugoslavia was a party, **wishes to succeed to** the same and undertakes faithfully to perform and carry out all the stipulations therein contained with effect from 6 March 1992, the date on which the Republic of Bosnia and Herzegovina became independent." (Bold type is ours).

It is self-evident that the applicant state's government had not been guided by the idea of automatic continuity when it drew up the said note, but rather by the idea of freely joining the treaties to which the SFRY, i.e. the FRY, was a party.

B.1.4.9. The FRY continues the rights and duties established by the treaties of the SFRY. For international purposes, the FRY is identical to the SFRY. This is why the position of the FRY cannot be equated with that of the new states created in the territory of the former SFRY. The registries of all depositaries mention the FRY as a party as of the date of submission of its instruments of ratification or accession made by the SFRY, the pre-war Kingdom of Yugoslavia, i.e. the Kingdom of Serbs, Croats and Slovenes. All new states created in the territory of the former SFRY are mentioned as parties as of the date of submission of their notes of succession or accession.

B.1.4.10. The "clean slate" rule has been and remains in force as a rule of customary international law for new states. The new states freely choose which treaties of the predecessor state they will enter into, with the exception, of course, of the treaties pertaining to borders and territorial regimes.

Cases of joining treaties by notification of accession are most common but the joining of treaties by notification of succession seems to be tolerated as well in cases where succession occurred in conformity with international law, i.e. under the circumstances and terms which developed in the decolonization process. In the latter case, customary law rules on the joining of treaties by means of succession are applied and they were developed in the decolonization process and codified in the 1978 Vienna Convention on Succession of States in Respect of Treaties.

B.1.4.11. Notification of succession is a manner of entry into treaties of the predecessor state in cases where the new state has based its existence upon the principle of equal rights and self-determination of peoples. In this particular case,

the Applicant State has based its existence on the violation of duties deriving from the principle of equal rights and self-determination of peoples, and thus cannot make use of the notification of succession as a method of entry into the international treaties of its predecessor state.

B.1.4.12. The FR of Yugoslavia objected that in its view the succession of the so-called Republic of Bosnia-Herzegovina was not in conformity with international law and the UN Secretary-General, as the depository, noticed that objection in his Report on the Status of Multilateral Treaties for 1994. (Multilateral Treaties deposited with the Secretary-General, Status as at 31 December 1993, p. 97 Annex. p. 931)

B.1.4.13. The Applicant State could and may enter into international treaties by notification of accession.

Fourth preliminary objection

B.2. As it was recognized in contravention of the rules of international law and as there are four states in existence in the territory of the former Yugoslav republic of Bosnia-Herzegovina, the so-called Republic of Bosnia-Herzegovina is not a party to the 1948 Genocide Convention

B.2.1. The so-called Republic of Bosnia and Herzegovina was accorded recognition on extra-legal grounds and in the absence of a central government exercising effective control over the relevant territory. Secondly, and without prejudice to the first consideration, the statehood of Bosnia and Herzegovina is invalid in that the political entity claiming

statehood does not satisfy the principle of the self-determination of peoples recognised in the Charter of the United Nations and in general international law and having the status of *jus cogens*.

B.2.2. The recognition of the so-called Republic of Bosnia-Herzegovina was granted at a time when the international legal conditions for the recognition of it as a state had not been fulfilled.

B.2.3. At the time when recognition was granted, a civil war was raging in the territory of the former Yugoslav republic of Bosnia-Herzegovina and the authorities in Sarajevo did not control most of the territory which they laid claim to. At the moment of recognition, there was another state in existence in the larger part of the territory of the former Yugoslav republic of Bosnia-Herzegovina - the Bosnian Serb Republic (Republic of Srpska) with which the so-called Republic of Bosnia-Herzegovina was in conflict.

B.2.4. At the time of the recognition, there was no stable central authority, nor did the majority of the population accept the Bosnia-Herzegovina which had been recognized. This is corroborated by the fact that new states soon emerged apart from the Republic of Srpska as truly independent from the central authority: the Republic of Herceg-Bosnia and the Autonomous Province of Western Bosnia.

B.2.5. The so-called Republic of Bosnia-Herzegovina has never existed as a state in the territory which it maintains is its state territory. At present four states exist in this territory with unstable mutual relations, in which relations of partnership or ceasefires often give way to hostilities.

B.2.6. Given that the acts whereby the Applicant State

was constituted as an independent state have violated the duties stemming from the principle of equal rights and self-determination of peoples and that this principle is a *ius cogens* rule, the said violations cannot be rectified by the recognition of that state.

B.2.7. Consequently, the so-called Republic of Bosnia-Herzegovina cannot enter into the 1948 Genocide Convention by succession.

PRELIMINARY OBJECTION TO THE COURT'S JURISDICTION RATIONE MATERIAE

Fifth preliminary objection

C. There is no dispute between the parties which would be covered by Article IX of the 1948 Genocide Convention

C.1. The 1948 Genocide Convention can only apply when the State concerned has territorial jurisdiction in the areas in which the breaches of the Convention are alleged to have occurred. The key provisions of the Convention involve the duty of States parties 'to prevent and to punish the crime of genocide' (Article 1), the enactment of the necessary legislation to give effect to the Convention (Article 5), and the trial of persons charged with genocide 'by a competent tribunal of the State in the territory of which the act was committed' (Article 6).

The Respondent State did not have territorial jurisdiction, either for enforcement purposes or for prescriptive purposes, in the relevant areas in the period to which the Application relates.

C.2. The responsibility of a State party prescribed by the 1948 Genocide Convention does not cover the claims contained in the submissions of the Applicant State. The duties prescribed by the Convention relate to 'the prevention and punishment of the crime of genocide' when this crime is committed by individuals: the provisions of Articles IV, V, VI and VII make this abundantly clear.

C.3. These two considerations jointly and severally preclude the existence of jurisdiction in accordance with Article IX of the Genocide Convention.

C.4. The Memorial of the Applicant State is based upon a fundamentally erroneous construction of the 1948 Genocide Convention and, in consequence the requests contained in the 'Submissions' (Memorial, pp. 293-95) are based on allegations of State responsibility which fall outside the scope of the Convention and of its compromissory clause.

PRELIMINARY OBJECTIONS TO THE COURT'S JURISDICTION RATIONE TEMPORIS

D. Even if the Convention on the prevention and punishment of the crime of genocide of 1948 is in force between the parties, it has not been in force, i.e. it has not been operative since 6 March 1992

Sixth preliminary objection

D.1. In case the Court qualifies the Note of Succession as accession, the 1948 Genocide Convention has been in force between the parties since 29 March 1993

D.1.1. The FR of Yugoslavia asks the Court to consider and decide on this preliminary objection only unless it does not accept any of the above mentioned objections under A, B and C.

D.1.2. The FR of Yugoslavia does not see any possibility for the Notification of Succession whereby the so-called Republic of Bosnia- Herzegovina intended to enter into the 1948 Genocide Convention to be considered as its accession to this Convention.

D.1.3. If the Court turns down the position of the FRY set out in paragraph D.1.2, the FR Yugoslavia requests the Court

to consider the following: It follows from the Memorial that the Applicant State is agreed to have its Notification of Succession interpreted as accession to the 1948 Genocide Convention. Paragraph 4.2.1.51. of the Memorial (p. 153) reads as follows:

"It therefore appears that:

.....

iii) as such it has automatically succeeded it to the 1948 Convention on Genocide or, alternatively (and complementarily) it has established its acceptance of the Convention through its communication to the Secretary-General of 29 December 1992; ..."

D.1.4. In accordance to Art. XIII of the 1948 Genocide Convention:

".....

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession."

D.1.5. Should the Court, therefore, qualify the notification of succession as accession, the 1948 Genocide Convention would take effect for the parties, pursuant to Art. XIII of this Convention ninety days after the deposition of instruments, i.e. on 29 March 1993. In that case, the Court would have jurisdiction as of that date.

Seventh preliminary objection

D.2. Should the Court conclude that the entry of the so-called Republic of Bosnia-Herzegovina by succession into the 1948 Genocied Convention was valid for any reason, this Convention would be operative between the parties as of 29 December 1992

D.2.1. If the Court holds that the Applicant State could nevertheless have entered the 1948 Genocide Convention, that Convention did not become applicable to the parties on the basis of notification of succession as of 6 March 1992 when according to the Applicant the Applicant State became independent.

D.2.2. If the multilateral treaty entered into by the new state by notification of succession was operative between the new state and other states parties at the date when the new state won its independence, the notification of succesion made after that date would have retroactive effect on the application of that international treaty which contravenes the law of treaties. This would introduce legal uncertainty into the new state's legal relations with states parties to multilateral treaties because the state parties would not know whether a multilateal treaty was applicable to the new state until the latter notifies succession to that treaty. As there is no time limit for the notification of succession, the period of uncertainty would be interminable.

D.2.3. This problem was highlighted in particular by Israel, Great Britain and the United States in their comments on Article 18 of the Draft Convention concerning the effects of a notification of succesion. (Succession of States in respect of Treaties, First rapport on succession of States in respect of Treaties, by Sir Francis

Vallat, Special Rapporteur, Document A/CN.4/278 and Add.1- 6, Yearbook of the International Law Commission, 1974, vol. II, Part One, p. 56).

D.2.4. This problem did not emerge in the practice of decolonization because the new de-colonized states prior to acquiring independence or in the short period following the acquisition of it addressed a note on the temporary application of treaties through the UN Secretary-General to all UN member states. These states expressed their intent by such a note to temporarily apply the predecessor state's multilateral treaties in the new state's relations with the states parties to those treaties and reserved for themselves the right to decide in the temporary application period on which treaties they would enter by succession or accession, i.e. which treaties were to remain in force and which were to be terminated. (Report of the Commission to the General Assembly, Document A/9610/Rev.1, Report of the International Law Commission on the work of its twenty-sixth session 6 May - 26 July 1974, Yearbook on the International Law Commission, 1974, vol II, Part One, pp. 187-193, Annex. p.934)

D.2.5. The notes on temporarily application of treaties were used by Antigua and Barbuda (Note of 4 November 1981), Bahamas (Note of 10 July 1973), Barbados (Note of 16 March 1967), Belize (Note of 29 September 1982), Botswana (Note of October 1966), Brunei (Note of 1 January 1984), Burundi (Note of 26 June 1964), Grenada (Note of 19 August 1974), Guyana (Note of 30 June 1966), Lesotho (Note of 22 March 1967), Malawi (Note of 24 November 1964), Mauritius (Note of 12 March 1968), Nauru (28 May 1968), Papua New Guinea (Note of 16 September 1975 and 24 September 1980), Saint Christopher and Nevis (Note of 15 November 1983), Saint Lucia (Note of 5 April 1979), Saint Vincent and the Grenadines (Note of 30 September 1983), Solomon Islands (Note of 7 July 1978), Surinam (Note of 29 November 1975), Swaziland (Note of 22

October 1968), Tanganyika (Note of 9 December 1961) and Zambia (Note of 1 September 1965). (Annex. pp. 941-973)

D.2.6. All those states subsequently entered into particular multilateral treaties by separate notes either on the basis of succession or by accession, as was registered by the depositary.

As for the Vienna Convention on Diplomatic Relations adopted on 18 April 1961 the countries proceeded in the following manner; Antigua and Barbuda did not enter; Bahamas entered by notification of succession on 17 March 1977); Barbados - by notification of succession on 6 May 1968; Belize did not enter; Botswana entered by notification of succession on 11 April 1969); Brunei did not enter; Burundi - by notification of accession on 1 May 1968); Grenada did not enter; Guyana - by notification of accession on 28 December 1972; Lesotho - by notification of accession on 26 November 1969; Malawi - by notification of accession on 28 March 1968; Mauritius - by notification of succession on 18 July 1969; Nauru - by notification of succession on 6 May 1978; Papua New Guinea - by notification of succession on 4 December 1975; Saint Christopher and Nevis did not enter; Saint Lucia - by notification of succession on 27 August 1986; Saint Vincent and the Grenadines did not enter; the Solomon Islands did not enter; Surinam did not enter; Swaziland - by notification of accession on 25 April 1969); Zambia - by notification of succession on 16 June 1975.

(Multilateral Treaties deposited with the Secretary-General, Status as at 31 December 1993.)

D.2.7. Solving the problem of the temporary effect of the notification of succession, the International Law Commission proposed a solution which was formulated in Articles 23 and 27

of the 1978 Vienna Convention on Succession of States in Respect of Treaties. (Report of the Commission to the General Assembly, Document A/9610/Rev.1., Report of the International Law Commission on the work of its twenty-sixth session 6 May - 26 July 1974, Yearbook on the International Law Commission, 1974, vol. II, Part One, p. 235, 236, Annex. p. 975)

D.2.8. Article 23 of the 1978 Vienna Convention on Succession of States in Respect of Treaties reads as follows:

"1. Unless the treaty otherwise provides or it is otherwise agreed, a newly independent State which makes a notification of succession under article 17 or article 18, paragraph 2, shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.

"2. Nevertheless, the operation of the treaty shall be considered as suspended as between the newly independent State and the other parties to the treaty until the date of making of the notification of succession except in so far as that treaty may be applied provisionally in accordance with Art. 27 or as may be otherwise agreed.

"3..."

D.2.9. Pursuant to Article 72 of the 1969 Vienna Convention on the Law of Treaties, which reflects the general rule of law of treaties, the consequences of the suspension of the operation of a treaty are:

"1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present Convention:

"a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

"b)..."

D.2.10. The practice of using notes on the temporary application of treaties has been set out in Article 27 of the 1978 Vienna Convention on Succession of States in Respect of Treaties and read as follows:

"1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally in respect of its territory, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct to be considered as having so agreed.

"2..."

D.2.11. The above mentioned rules set forth in Articles 23 and 27 of the relevant Vienna Convention reflect the rules of customary international law; if the Court decides that the Applicant State may enter into the 1948 Genocide Convention by notification of succession and considering that the Applicant State has not offered by a separate note to declare the 1948 Convention temporarily applicable, the rules of this Convention would become operative between the parties as of 29 December 1992.

E. CONCLUSIONS REGARDING THE LAW

E.1.

The circumstances which constitute the background against which the 'Submissions' of the Memorial are formulated, in so far as the 'Submissions' may be said to relate to the genocide Convention (Which is denied by the Respondent State), are dominated by elements of civil strife and, consequently, no international dispute is involved over which the Court can properly exercise its competence.

E.2. Alija Izetbegovic has overstepped his powers established by the Constitution by granting the authorization for proceedings to be initiated to settle the dispute.

E.3. The 1978 Vienna Convention on the Succession of States in Respect of Treaties has not come into force and does not apply between the parties.

E.4. Art. 34 of the 1978 Vienna Convention on Succession of States in Respect of Treaties has not been the result of codification and thus does not apply as a rule of customary international law.

E.5. Present-day practice has confirmed the old "clean slate" rule with respect to the newly-formed states. These states enter into the predecessor state's multilateral international treaties by notification of accession or succession if their succession is in accordance with international law.

E.6. The notification of succession has been created as a particular instrument in the decolonization practice and implies that a newly-formed state has acquired its independence in

accordance with the principle of equal rights and self-determination of peoples.

E.7. The Applicant has violated the duties stemming from the principle of equal rights and self-determination of peoples by its acts on the independence of State and thus it cannot become a party to the 1948 Genocide Convention by means of notification of succession.

E.8. The recognition of the newly-formed state was granted in contravention of the rules of international law. Given that the Applicant State has, by claiming independence, has violated the duties deriving from the *ius cogens* rule, the new state's recognition cannot deny the illegal nature of those acts and consequently, despite recognition, the Applicant State cannot enter into the 1948 Convention on the prevention and punishment of the crime of genocide by notification of succession.

E.9. As the FR of Yugoslavia has not exercised jurisdiction or any other authority in the relevant areas in the period to which the Application relates, the required conditions have not been achieved for the application of Article IX of the 1948 Genocide Convention.

E.10. The Applicant State could have entered into the 1948 Genocide Convention by accession and agrees that its notification of succession of 29 December 1992 should be interpreted as its accession to the Convention. The FR of Yugoslavia holds that such an interpretation is impossible but if the Court believes the contrary, this means that the 1948 Genocide Convention has been in force between the parties since 29 March 1993.

E.11. If the Court holds that the notification of succession of 29 December 1992 has produced valid legal effects, the 1948 Genocide Convention would become operative between the parties as of 29 December 1992.

SUBMISSIONS

FR Yugoslavia asks the Court to adjudge and declare:

First preliminary objection

A.1. Whereas civil war excludes the existence of an international dispute,

the Application of the so-called Republic of Bosnia and Herzegovina is not admissible.

Second preliminary objection

A.2. Whereas Alija Izetbegovic did not serve as the President of the Republic at the time when he granted the authorization to initiate proceedings and whereas the decision to initiate proceedings was not taken by the Presidency nor the Government as the competent organs, the authorization for the initiation and conduct of proceedings was granted in violation

of a rules of internal law of fundamental significance and, consequently,
the Application by the so-called Republic of Bosnia-Herzegovina is not admissible.

Third preliminary objection

B.1. Whereas the so-called Republic of Bosnia-Herzegovina has by its acts on independence flagrantly violated the duties stemming from the principle of equal rights and self-determination of peoples and for that reason the Notification of Succession, dated 29 December 1992, of the Applicant to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide has no legal effect,

Whereas the so-called Republic of Bosnia-Herzegovina has not become a state party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in accordance with the provisions of the Convention itself,

The so-called Republic of Bosnia and Herzegovina is not a state party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and consequently

the Court has no jurisdiction over this Case.

Fourth preliminary objection

B.2. Whereas the so-called Republic of Bosnia-Herzegovina has been recognized in contravention of the rules of international law and that it has never been established in the territory and in the form in which it pretends to exist ever since its illegal declaration of independence, and that there are at present four states in existence in the territory of the former Yugoslav republic of Bosnia-Herzegovina, the so-called Republic of Bosnia-Herzegovina is not a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and consequently,

the Court has no jurisdiction over this Case.

Fifth preliminary objection

C. Whereas the Case in point is an internal conflict between four sides in which the FR of Yugoslavia is not taking part and whereas the FR of Yugoslavia did not exercise any jurisdiction over the disputed areas in the period under review,

Whereas the Memorial of the Applicant State is based upon a fundamentally erroneous construction of the 1948 Convention on Prevention and Punishment of the Crime of Genocide and, in consequence the claims contained in the 'Submissions' are based on allegations of State responsibility which fall outside the scope of the Convention and of its compromissory clause,

there is no international dispute under Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and, consequently,

the Court has no jurisdiction over this Case.

If the Court does not accept any of the above-mentioned preliminary objections,

Sixth preliminary objection

D.1. Without prejudice to the above exposed preliminary objections, whereas the Notification of Succession, dated 29 December 1992, whereby the so-called Republic of Bosnia-Herzegovina expressed the intention to enter into the 1948 Convention on the Prevention and Punishment of the Crime of Genocide can only produce the effect of accession to the Convention,

the Court has jurisdiction over this Case as of 29 March 1993 and, thus, the Applicant's claims pertaining to the alleged acts or facts which occurred prior to that date do not fall within the jurisdiction of the Court.

In case the Court refuses to adopt the preliminary objection under D.1.

Seventh preliminary objection

D.2. Without prejudice to the sixth preliminary objection, if the Applicant State's Notification of Succession, dated 29 December 1992, is construed on the basis that it has the effect that the Applicant State became a party to the 1948 Genocide Convention from 6 March 1992, according to the rule of customary international law, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide would not be operative between the parties prior to 29 December 1992

and, accordingly this would not confer jurisdiction on the Court in respect of events occurring prior to 29 December 1992 and consequently,

the Applicant's claims pertaining to the alleged acts or facts which occurred prior to 29 December 1992 do not fall within the jurisdiction of the Court.

The Federal Republic of Yugoslavia reserves its right to supplement or amend its submissions in the light of further pleadings.

Belgrade, 25 June 1995

Rodoljub Etinski
Agent of the Government
of the FR of Yugoslavia