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YEAR 2014

Public sitting

held on Tuesday 4 March 2014, at 3 p.m., at the Peace Palace,

President Tomka presiding,

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

VERBATIM RECORD

ANNÉE 2014

Audience publique

tenue le mardi 4 mars 2014, à 15 heures, au Palais de la Paix,

sous la présidence de M. Tomka, président,

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

COMPTE RENDU

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

 Registrar Couvreur

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

M. Couvreur, greffier

The Government of the Republic of Croatia is represented by:

Ms Vesna Crnić-Grotić, Professor of International Law, University of Rijeka,

as Agent;

H.E. Ms Andreja Metelko-Zgombić, Ambassador, Director General for EU Law, International Law and Consular Affairs, Ministry of Foreign and European Affairs, Zagreb,

Ms Jana Špero, Head of Sector, Ministry of Justice, Zagreb,

Mr. Davorin Lapaš, Professor of International Law, University of Zagreb,

as Co-Agents;

Mr. James Crawford, A.C., S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, Member of the Institut de droit international, Barrister, Matrix Chambers, London,

Mr. Philippe Sands, Q.C., Professor of Law, University College London, Barrister, Matrix Chambers, London,

Mr. Mirjan R. Damaška, Sterling Professor Emeritus of Law and Professorial Lecturer in Law, Yale Law School, New Haven,

Mr. Keir Starmer, Q.C., Barrister, Doughty Street Chambers, London,

Ms Maja Seršić, Professor of International Law, University of Zagreb,

Ms Kate Cook, Barrister, Matrix Chambers, London

Ms Anjolie Singh, Member of the Indian Bar, Delhi,

Ms Blinne Ní Ghrálaigh, Barrister, Matrix Chambers, London

as Counsel and Advocates;

Mr. Luka Mišetić, Attorney at Law, Law Offices of Luka Misetic, Chicago,

Ms Helen Law, Barrister, Matrix Chambers, London

Mr. Edward Craven, Barrister, Matrix Chambers, London,

as Counsel;

H.E. Mr. Orsat Miljениć, Minister of Justice of the Republic of Croatia,

H.E. Ms Vesela Mrđen Korać, Ambassador of the Republic of Croatia to the Kingdom of the Netherlands, The Hague,

as Members of the Delegation;

Le Gouvernement de la République de Croatie est représenté par :

Mme Vesna Crnić-Grotić, professeur de droit international à l'Université de Rijeka,

comme agent ;

S. Exc. Mme Andreja Metelko-Zgombić, ambassadeur, directeur général de la division de droit communautaire et international et des affaires consulaires du ministère des affaires étrangères et des affaires européennes,

Mme Jana Špero, chef de secteur au ministère de la justice,

M. Davorin Lapaš, professeur de droit international à l'Université de Zagreb,

comme coagents ;

M. James Crawford, A.C., S.C., F.B.A., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, membre de l'Institut de droit international, avocat, Matrix Chambers (Londres),

M. Philippe Sands, Q.C., professeur de droit, University College de Londres, avocat, Matrix Chambers (Londres),

M. Mirjan R. Damaška, professeur de droit émérite de l'Université de Yale (chaire Sterling), chargé d'enseignement à l'Université de Yale,

M. Keir Starmer, Q.C., avocat, Doughty Street Chambers (Londres),

Mme Maja Seršić, professeur de droit international à l'Université de Zagreb,

Mme Kate Cook, avocat, Matrix Chambers (Londres),

Mme Anjolie Singh, membre du barreau indien (Delhi),

Mme Blinne Ní Ghrálaigh, avocat, Matrix Chambers (Londres),

comme conseils et avocats ;

M. Luka Mišetić, avocat, Law Offices of Luka Misetic (Chicago),

Mme Helen Law, avocat, Matrix Chambers (Londres),

M. Edward Craven, avocat, Matrix Chambers (Londres),

comme conseils ;

S. Exc. M. Orsat Miljenić, ministre de la justice de la République de Croatie,

S. Exc. Mme Vesela Mrđen Korać, ambassadeur de la République de Croatie auprès du Royaume des Pays-Bas,

comme membres de la délégation ;

Mr. Remi Reichhold, Administrative Assistant, Matrix Chambers, London,

Ms Ruth Kennedy, LL.M., Administrative Assistant, University College London,

as Advisers;

Ms Sanda Šimić Petrinjak, Head of Department, Ministry of Justice,

Ms Sedina Dubravčić, Head of Department, Ministry of Justice,

Ms Klaudia Sabljak, Ministry of Justice,

Ms Zrinka Salaj, Ministry of Justice,

Mr. Tomislav Boršić, Ministry of Justice,

Mr. Albert Graho, Ministry of Justice,

Mr. Nikica Barić, Croatian Institute of History, Zagreb,

Ms Maja Kovač, Head of Service, Ministry of Justice,

Ms Katherine O'Byrne, Doughty Street Chambers,

Mr. Rowan Nicholson, Associate, Lauterpacht Centre for International Law, University of Cambridge,

as Assistants;

Ms Victoria Taylor, International Mapping, Maryland,

as Technical Assistant.

The Government of the Republic of Serbia is represented by:

Mr. Saša Obradović, First Counsellor of the Embassy of the Republic of Serbia in the Kingdom of the Netherlands, former Legal Adviser of the Ministry of Foreign Affairs,

as Agent;

Mr. William Schabas, O.C., M.R.I.A., Professor of International Law, Middlesex University (London) and Professor of International Criminal Law and Human Rights, Leiden University,

Mr. Andreas Zimmermann, LL.M. (Harvard), Professor of International Law, University of Potsdam, Director of the Potsdam Centre of Human Rights, Member of the Permanent Court of Arbitration,

Mr. Christian J. Tams, LL.M., Ph.D. (Cambridge), Professor of International Law, University of Glasgow,

M. Remi Reichhold, assistant administratif, Matrix Chambers (Londres),

Mme Ruth Kennedy, LL.M., assistante administrative, University College de Londres,

comme conseillers ;

Mme Sanda Šimić Petrinjak, chef de département au ministère de la justice,

Mme Sedina Dubravčić, chef de département au ministère de la justice,

Mme Klaudia Sabljak, ministère de la justice,

Mme Zrinka Salaj, ministère de la justice,

M. Tomislav Boršić, ministère de la justice,

M. Albert Graho, ministère de la justice,

M. Nikica Barić, Institut croate d'histoire (Zagreb),

Mme Maja Kovač, chef de département au ministère de la justice,

Mme Katherine O'Byrne, Doughty Street Chambers,

M. Rowan Nicholson, *Associate* au Lauterpacht Center for International Law de l'Université de Cambridge,

comme assistants ;

Mme Victoria Taylor, International Mapping (Maryland),

comme assistante technique.

Le Gouvernement de la République de Serbie est représenté par :

M. Saša Obradović, premier conseiller à l'ambassade de la République de Serbie au Royaume des Pays-Bas, ancien conseiller juridique au ministère des affaires étrangères,

comme agent ;

M. William Schabas, O.C., membre de la Royal Irish Academy, professeur de droit international à la Middlesex University (Londres) et professeur de droit pénal international et des droits de l'homme à l'Université de Leyde,

M. Andreas Zimmermann, LL.M. (Université de Harvard), professeur de droit international à l'Université de Potsdam, directeur du centre des droits de l'homme de l'Université de Potsdam, membre de la Cour permanente d'arbitrage,

M. Christian J. Tams, LL.M., Ph.D. (Université de Cambridge), professeur de droit international à l'Université de Glasgow,

Mr. Wayne Jordash, Q.C., Barrister, Doughty Street Chambers, London, Partner at Global Rights Compliance,

Mr. Novak Lukić, Attorney at Law, Belgrade, former President of the Association of the Defense Counsel practising before the ICTY,

Mr. Dušan Ignjatović, LL.M. (Notre Dame), Attorney at Law, Belgrade,

as Counsel and Advocates;

H.E. Mr. Petar Vico, Ambassador of the Republic of Serbia to the Kingdom of the Netherlands,

Mr. Veljko Odalović, Secretary-General of the Government of the Republic of Serbia, President of the Commission for Missing Persons,

as Members of the Delegation;

Ms Tatiana Bachvarova, LL.M. (London School of Economics and Political Science), LL.M. (St. Kliment Ohridski), Ph.D. candidate (Middlesex University), Judge, Sofia District Court, Bulgaria,

Mr. Svetislav Rabrenović, LL.M. (Michigan), Senior Adviser at the Office of the Prosecutor for War Crimes of the Republic of Serbia,

Mr. Igor Olujić, Attorney at Law, Belgrade,

Mr. Marko Brkić, First Secretary at the Ministry of Foreign Affairs,

Mr. Relja Radović, LL.M. (Novi Sad), **LL.M. (Leiden (candidate))**,

Mr. Georgios Andriotis, LL.M. (Leiden),

as Advisers.

M. Wayne Jordash, Q.C., avocat, Doughty Street Chambers (Londres), associé du cabinet Global Rights Compliance,

M. Novak Lukić, avocat, Belgrade, ancien président de l'association des conseils de la défense exerçant devant le TPIY,

M. Dušan Ignjatović, LL.M. (Université Notre Dame), avocat, Belgrade,

comme conseils et avocats ;

S. Exc. M. Petar Vico, ambassadeur de la République de Serbie auprès du Royaume des Pays-Bas,

M. Veljko Odalović, secrétaire général du Gouvernement de la République de Serbie, président de la commission pour les personnes disparues,

comme membres de la délégation ;

Mme Tatiana Bachvarova, LL.M. (London School of Economics and Political Science), LL.M. (Université St. Kliment Ohridski), doctorante (Middlesex University) ; juge au tribunal de district de Sofia (Bulgarie),

M. Svetislav Rabrenović, LL.M. (Université du Michigan), conseiller principal au bureau du procureur pour les crimes de guerre de la République de Serbie,

M. Igor Olujić, avocat, Belgrade,

M. Marko Brkić, premier secrétaire au ministère des affaires étrangères,

M. Relja Radović, LL.M. (Université de Novi Sad), **LL.M. (Université de Leyde (en cours))**,

M. Georgios Andriotis, LL.M. (Université de Leyde),

comme conseillers.

The PRESIDENT: Please be seated. The sitting is open. This afternoon, the Court will begin hearing the witnesses and witness-experts called by Croatia. I will first again explain the procedure to be followed.

At my invitation, the witness or witness-expert will enter the Great Hall of Justice and take his or her place. I will then ask the witness or witness-expert to make the appropriate declaration in accordance with Article 64 of the Rules of Court. Witnesses will make the declaration set down in Article 64, subparagraph (a), of the Rules of Court, while witness-experts will make the declaration set down in subparagraph (b) of the same Article. The witness or witness-expert will be asked to confirm his/her written testimony/statement, which shall serve as the examination-in-chief. Serbia will then be given an opportunity to cross-examine the witness or witness-expert. The cross-examination of a witness/witness-expert shall be confined to the written testimony/statement he/she has already made and to matters concerning his/her credibility as witness/witness-expert in this case. Once cross-examination has been completed, Croatia will have an opportunity to re-examine the witness/witness-expert. Re-examination will be shorter and limited to matters raised in cross-examination. Following re-examination, questions may be put by Members of the Court or judges. Witness/witness-experts should reply orally, without further delay, save in exceptional cases, for example when a question requested precise information requiring verification. There will then be a short break, and the next witness/witness-expert will be called, following the same procedure. I should like to point out that witnesses and witness-experts shall remain out of court both before and after their testimony or statement.

I would like to draw your attention to the fact that, in the present case, when a witness or witness-expert is to give evidence in Croatian or Serbian, his/her testimony/statement will be consecutively interpreted by interpreters provided by Croatia into English. These testimonies/statements will be simultaneously interpreted into French by interpreters provided by the Registry. Pursuant to Article 70, paragraph 2, of the Rules of Court, the interpretation made by interpreters provided by Croatia will be verified by interpreters provided by the Registry. These interpreters, who are sitting at the table on my left, will immediately bring to my attention any serious problem with the interpretation between Croatian or Serbian and English. Serbia's representatives are allowed to cross-examine the witness-experts in Croatian or Serbian directly,

but before starting to answer, the witness-experts should wait for the end of the interpretation of the question into English.

To ensure the integrity of the testimonies and statements, the Court has decided that the sittings during which the witnesses and witness-experts will be heard will not be broadcast on the website of the Court. Further, and exceptionally, the written testimonies of witnesses, the written statements of witness-experts, as well as the verbatim records of the sittings during which the witnesses and witness-experts are heard, will not be made available to the public or posted on the website of the Court before the end of the oral proceedings, namely on 1 April 2014. As I explained yesterday morning, the Parties should ensure that witnesses/witness-experts do not have access to the testimonies/statements of other witnesses/witness-experts, or to the verbatim record of the testimonies/statements of the other witnesses and witness-experts, before the end of the oral proceedings. The Parties further have to ensure that witnesses and witness-experts are not otherwise informed of the testimonies/statements of other witnesses/witness-experts and that they have no contact which could compromise their independence or breach the terms of their solemn declaration.

According to the Court's practice, the verbatim records will be circulated to the Parties as soon as available after each sitting. The witness or witness-expert will also be asked to insert into the verbatim record (in English, with the assistance of the interpreter) corrections of any mistakes that may have occurred— without affecting the sense and content of the testimony/statement given— and will be requested to return the verbatim record, corrected and duly signed, to the Registrar within 24 hours of its receipt in order to facilitate any supervision that the Court may think it proper to exercise in respect of any corrections made.

Finally, I would like to draw your attention to the fact that the public attending witnesses and witness-experts examinations is requested not to divulge the content of the testimonies/statements before the end of the oral proceedings, on 1 April 2014. The same applies to the media, who subscribed to a code of conduct under the terms of which they are allowed to take photographs and make sound recordings, on the express condition that they do not make public the content of the testimonies and statements before the end of the oral proceedings. This is for the good administration of justice.

I shall now first invite interpreters provided by Croatia to make the solemn declaration prescribed by Article 70, paragraph 4, of the Rules of Court and I call on Ms Lidija Šimunić Mesić. Please. Would you be so kind as to read the solemn declaration?

Ms ŠIMUNIĆ MESIĆ: I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete.

The PRESIDENT: Thank you very much. Now I invite Ms Ana Burazin to make a solemn declaration. Please.

Ms BURAZIN: I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete.

The PRESIDENT: Thank you very much, Madam.

The Court will first hear Mr. Kožul, witness. Mr. Kožul may now be brought into the courtroom, please.

Good afternoon, Mr. Kožul. I call upon you to make the solemn declaration for witnesses as set down in Article 64, subparagraph (a), of the Rules of Court.

Mr. KOŽUL: Good afternoon. I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth.

THE PRESIDENT: Thank you, Mr. Kožul. Mr. Kožul, the usher will show you your testimony as provided by Croatia. You will be shortly examined by counsel, first of Serbia and then re-examined by counsel for Croatia. If they use either Croatian or Serbian language, I will ask you to wait with your response in your mother tongue until the interpretation into English has been completed. There will be a consecutive interpretation.

The PRESIDENT: Thank you. I understand that the cross-examination of Mr. Kožul on behalf of Serbia will be conducted by Mr. Wayne Jordash. But before giving him the floor, I will give the floor to counsel for Croatia, Sir Keir Starmer, who will have the opportunity later to

re-examine you if needed, but I ask him to introduce your written testimony. Sir Keir Starmer, you have the floor.

Sir Keir STARMER: Thank you.

The PRESIDENT: Please wait for the translation.

Sir Keir STARMER: Thank you, Mr. President.

Mr. Kožul, you have a statement in front of you. Can you confirm that that is your statement?

Mr. KOŽUL: I can confirm that this is my statement, made in Zagreb on 29 March 1993. The statement was taken by Neda Nikaravich. The first statement is not accurate; I have not signed that statement and I will not sign it.

Sir Keir STARMER: But the statement you have is your statement, and that is signed.

Mr. KOŽUL: Upon my return from a camp a police officer came to me. His name is *Ivica* Dodlek, that is the name which appears in this statement. He asked me some questions, made some notes and on the basis of these notes he made a statement which I did not sign.

Sir Keir STARMER: But the statement you have in front of you is, I think, your statement.

Ms ŠIMUNIĆ MESIĆ: There are two statements in front of Mr. Kožul.

Sir Keir STARMER: Do you have the statement dated 29 March 1993? I think it might be the first statement.

Mr. KOŽUL: Yes, there is a statement dated 29 March 1993.

Sir Keir STARMER: And is that your statement?

Mr. KOŽUL: Exactly. That is my statement.

Sir Keir STARMER: And do you adopt that statement?

Mr. KOŽUL: Exactly. I adopt the statement dated 29 March 1993.

Sir Keir STARMER: And are there any changes you need to make to that statement?

Mr. KOŽUL: No.

Sir Keir STARMER: Thank you.

The PRESIDENT: Thank you very much. And now I invite Mr. Wayne Jordash to stand for the examination. You have the floor, Sir.

Mr. JORDASH: Mr. President, Members of the Court, I am grateful for the opportunity to examine the witness.

Mr. Kožul, I want to just seek some clarification from your statement. I understand just to sum it up: you were captured when Vukovar surrendered and you were taken to Stajićevo and eventually to a prison in Niš, interrogated and then released. Is that correct?

Mr. KOŽUL: I was captured on 19 November 1991 in Vukovar hospital. On that very night, the Yugoslav People's Army headed by Šljivančanin ordered us to gather in the compound of the Vukovar hospital.

We found out that some parts of the city go under control of the Yugoslav People's Army and territorial defence forces. We invited people who took shelter in other shelters to join us in the hospitals because we believed that the more there are of us, the larger chances we have of survival.

Mr. JORDASH: Can I just interrupt you there for a moment? The shelters, I want to ask you about the shelters. Who were in the shelters through the city?

Mr. KOŽUL: Those were civilians, the inhabitants of the city of Vukovar who stayed in those shelters.

Mr. JORDASH: Did they stay in the shelters throughout the combat?

Mr. KOŽUL: Most of them followed our call and our invitation and came to the Vukovar hospital.

Mr. JORDASH: Sorry to interrupt. Before that time, had they remained in the shelters, throughout August to November, when the combat was taking place?

Mr. KOŽUL: The siege of Vukovar lasted three months and all of these people remained in those shelters until the battles stopped. Let me just add that in Vukovar, there was a shelter that was saved under a nuclear attack (*in Olajnica*) and also along the Danube River there were deep cellars that could provide shelter for people.

Mr. JORDASH: Now, as you emerge from the shelters, you see, and there is no dispute that many of the buildings were destroyed. Did the shelters manage to stay intact during the combat?

Mr. KOŽUL: Part of those shelters and some people who stayed in them, were killed as a result of tank or artillery fire. However, most of the shelters stayed intact with the exception of the shelter of Komerc in Borovo, which was deliberately destroyed.

Mr. JORDASH: Thank you. Now, you describe in your statement arriving, I think, in Stajićevo with a group of people who had come from the shelters. And you describe them as being constituted from Serbs that were among you, people from mixed marriages and other nationalities. Is that a correct summation of your statement?

Mr. KOŽUL: It is.

Mr. JORDASH: And, the process you describe of being detained and then taken to Stajićevo and to the prison in Niš where you were interrogated. Was that something that happened to all those people, including the Serbs and the other nationalities?

Mr. KOŽUL: I was not in Niš, I was in Stajićevo and in Sremska Mitrovica. So, the detainees were, then — in the alphabetical order — ordered: all those whose surnames were up to “R” were sent to Sremska Mitrovica. From the letter “R” to the end of the alphabet [they] were sent to Niš. I was sent to Sremska Mitrovica.

Mr. JORDASH: And this was something that happened to all the men who had been gathered from the shelters, is that correct?

Mr. KOŽUL: I do not understand your question. I mean, what happened to those people?

Mr. JORDASH: Well, I am just trying to seek clarification of a point you make in your statement about being present with some Serbs in Stajićevo who were also interrogated. Did I understand your statement correctly?

Mr. KOŽUL: Yes, that is accurate, it is true.

Mr. JORDASH: Now, before you were taken from the building of the Vukovar Hospital, the women, children and the elderly were separated from the men. Do you know what happened to them?

Mr. KOŽUL: I know what happened to them. Since my wife was one of the persons in that group. We were taken to Stajićevo, they were taken first to Velepromet and then to the factory Modatex which was close to the Velepromet, they stayed there for two days.

Mr. JORDASH: Were they then released?

Mr. KOŽUL: No, they were transported to the gymnasium, to the sports hall in Sremska Mitrovica.

Mr. JORDASH: Were they eventually released?

Mr. KOŽUL: Yes.

Mr. JORDASH: Thank you. Now, in your statement you describe counting the men who were at Stajićevo: 1,242 plus 480 men in another stable. And you describe them as mostly civilians. Was this the full totality of the civilians that had been taken from Vukovar, or were there more, at Stajićevo?

Mr. KOŽUL: This was the number of people who were taken to Stajićevo. There was another place where they were taken which is *Begejci*. They were taken there, 105 days before we were taken to Stajićevo, since they came from the village of Sotin, which was captured 105 days before Vukovar.

Mr. JORDASH: Thank you. Are you able to assist the Court with any further numbers, in terms of the number of civilians, or, let us stay with civilians, who were removed from the cellars and went through a similar process as yours, which was interrogation and then release, or release as with the women, children and elderly people?

Mr. KOŽUL: When we arrived in Stajicevo, we were put in two cow-sheds, in two stables, and I was ordered by the Commander of Stajicevo to make an exact list of people who were there. They called one of those stables "Poljud", the other one "Maksimir", I do not know what the reasons for that were. So we made a list of the persons detained in those two stables, and gave it to the Commander. I do not know the number of civilians or soldiers in that number of people in the two stables. The fact is that we were all taken to interrogation.

Mr. JORDASH: Thank you. One last question if I may. You have described in your statement how, during this process of interrogation, local men or men who were from Vukovar who you knew engaged in abusive behaviour. You say "I would never imagine that people who we lived with and worked with could do that crime". Were these neighbours of yours, who were maltreating you, men from Vukovar?

Mr. KOŽUL: As I said, I fully confirm what I said before, not even today it is clear to me that my neighbour and my co-worker beat me and did what he did in Mitrovica. I did no evil to him and after all he did previously no evil to me. Since I was designated a duty man together with some other people I could communicate with others and I could get out of those cow-sheds where we were. On Fridays people from *Vukovar* would come and they would take people with them without anybody prohibiting that to them. What I said, I confirm once again, it is not clear to me what compelled those people to do what they did to us.

Mr. JORDASH: Thank you, Mr. Kožul. I have got nothing further, thank you.

The PRESIDENT: Thank you, Mr. Jordash. I wish to ask Sir Keir Starmer whether he would like to conduct an examination. You have the floor, Sir.

Sir Keir STARMER: Thank you, Mr. President. Mr. Kožul, you have been asked about the Serbs who have remained in Vukovar. Could you tell us, of all the Serbs who lived in Vukovar, how many left before the siege started?

Mr. KOŽUL: Before the shelling of Vukovar started, all the Serb children were taken out of Vukovar, all of them. What followed were civilians, Serb civilians, Serb families, whoever wanted could leave the city. Whoever could not arrange for their own transportation was taken by military trucks from the barracks to Borovo Selo. So whoever from the Serbs living in Vukovar wanted to leave, could leave. Those Serbs who stayed in Vukovar were treated worse than us.

Sir Keir STARMER: Can I just pursue that last point — what was the attitude of the Serb forces to those few Serbs who chose to stay with the Croats at Vukovar?

Mr. KOŽUL: They were treated like us. When we arrived in the camps, first all Serbs were released then persons from mixed marriages.

Sir Keir STARMER: Thank you. You were asked about events in Vukovar and you were asked about events in the camp, but we rather skated over Velepomet. You spent some time there, can you briefly describe to the Court what you saw in your time at Velepomet.

The PRESIDENT: Sir Keir, you have been invited to ask questions relating to the issues which were raised during cross-examination.

Sir Keir STARMER: Mr. President, I had understood the first question to be starting with a summary with what happened to this witness. He then began his answer to indicate what had happened to him in answer to the summary of what had happened to him, he got as far as Vukovar hospital, he was then interrupted — I do not complain about that, but he never got to complete the answer he would have otherwise have given.

Sir Keir STARMER: But, Mr. President, I am in the hands of the Court, I do not want to trespass on an area . . .

The PRESIDENT: My understanding is that the statement of Mr. Kožul contains elements relating to what happened in Velepromet.

Sir Keir STARMER: And the Court has that statement . . .

The PRESIDENT: Exactly.

Sir Keir STARMER: I do not press it.

The PRESIDENT: Please proceed further.

Sir Keir STARMER: You were asked about your neighbours and who perpetrated the mistreatment of you and others. Was it just your neighbours?

Mr. KOŽUL: It was my neighbour, Veselin Petrović, and a person called Žarko with a nickname Kapara who beat me in Sremska Mitrovica, not in Stajićevo.

Sir Keir STARMER: And finally this. You were asked about your wife and the fact that she was released and it was put to you that you were released. Was that the same for all members of your family? Was that the result for all members of your family?

Mr. KOŽUL: Until the last day of my stay in the camp I did not know anything about my family with the exception of my daughter. I did not know about the destiny of my son or my wife. However, when I returned from the camp I found my wife, my daughter, my son-in-law and my grandson. However, I did not find my son. During my time in the two camps in Stajićevo and in Sremska Mitrovica, I was interrogated eight times. They asked all possible questions about my ancestors and my family. They did not mention my son with any single word. The interrogators were military intelligence people so they were aware of the fact that my son was killed. This is my opinion and it turned out that this is so because my son was killed at Ovčara.

Sir Keir STARMER: Thank you, Mr. President.

The PRESIDENT: Thank you very much, Sir Keir Starmer. I think that I can thank Mr. Kožul for his appearance in this Court, for the fact that he has travelled from his home to

provide testimony to this Court. Mr. Kožul, you will later, most likely tomorrow morning, receive the transcript of your statement to the Court this afternoon. That will be in English but with the assistance of an interpreter, I ask you to go through this text and if you have any correction to make, please do that. Correction, not to change the statement.

I understand that Judge Cançado Trindade would like to put a question. I give him the floor.

Judge CANÇADO TRINDADE: Thank you very much, Mr. President. I thank the witness for the testimony. I have just one question: What was the decisive factor for sorting the persons detained in Vukovar? Where and how was the selection carried out?

Mr. KOŽUL: As I said, we knew that the army was coming to different parts of the cities. Because of that, we invited people to come to the hospital. Most of the separations took place in the hospital. The rest of the separations took place where people happened to be.

The PRESIDENT: Thank you very much. So this brings to an end the examination of Mr. Kožul. On behalf of the Court I thank you very much for appearing before us. You may leave the room.

Mr. KOŽUL: Thank you.

The PRESIDENT: Before proceeding to the examination of witness-expert Mr. Biserko, I suspend the sitting for 15 minutes.

The Court adjourned from 3.50 p.m. to 4.05 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. The Court will now hear Ms Biserko, witness-expert. Ms Biserko may now be brought into court.

Good afternoon, Ms Biserko, welcome. I call upon you to make the solemn declaration for witness-experts as set down in Article 64, subparagraph (b), of the Rules of Court.

Ms BISERKO: I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief.

The PRESIDENT: Thank you, Ms Biserko. The usher will now show you your statement as provided by Croatia. That statement is in English, I understand. You will be cross-examined by counsel for Serbia, Mr. Novak Lukić, but first I invite Sir Keir Starmer, counsel for Croatia to introduce you as witness-expert of Croatia.

Sir Keir STARMER: Thank you, Mr. President. Ms Biserko, you have your statement, I think, in front of you.

Ms BISERKO: Yes.

Sir Keir STARMER: Can you confirm for the Court please that that is your statement?

Ms BISERKO: Yes.

Sir Keir STARMER: Is there anything that you would like to change in that statement?

Ms BISERKO: No, I have added some footnotes which were missing.

Sir Keir STARMER: Some footnotes?

Ms BISERKO: Yes

Sir Keir STARMER: Not to the statement you have in front of you?

Ms BISERKO: Yes.

Sir Keir STARMER: So the statement you have is the statement the Court has?

Ms BISERKO: Yes

Sir Keir STARMER: And you adopt that statement?

Ms BISERKO: As I said, yes.

Sir Keir STARMER: Thank you very much, Mr. President.

The PRESIDENT: Thank you. And I will now invite Mr. Novak Lukić to conduct cross-examination. I understand Mr. Lukić that you are going to speak in Serbian, yes? So I ask Ms Biserko to wait with her response to the question until the question is translated into English. Mr. Lukić, you have the floor.

Mr. LUKIĆ: Mr. President, and distinguished Members of the Court, this is my first appearance before this honourable Court, so I just want to say it is a great honour and privilege for me to act before you and, according your decision, I conduct my cross-examination in the Serbian language.

Ms Biserko, good afternoon, my name is Novak Lukić and I will ask you questions on behalf of Serbia. Ms Biserko together with your statement we have not received your c.v. We are aware that you are a founder of the Helsinki Committee for Human Rights, but I would like to ask some questions concerning your biography.

Ms BISERKO: Yes, you are free to do so. I have submitted my curriculum vitae to the Croatian team, obviously you have not received it.

Mr. LUKIĆ: Could you please tell us the studies of which faculty you have finished?

Ms BISERKO: I finished the faculty of economics in Belgrade.

Mr. LUKIĆ: And as I understand you were an employee of the Ministry of Foreign Affairs of the Socialist Federal Republic of Yugoslavia between 1974 and 1992, when you quit your employment in the Ministry?

Ms BISERKO: I stopped my employment following The Hague Conference in 1991, when it was obvious that Yugoslavia does not exist anymore. There was a group of colleagues who have submitted an application for termination of our employment and I received the termination of my employment in early 1992.

The PRESIDENT: I apologize, could you wait? I understand there might be some issue with translation, so one of the verifying interpreters will inform us what is the issue. Please, you have the floor.

VERIFYING INTERPRETER: Mr. President, I believe that Madam Biserko asked for a mutually agreed termination of her employment from the Ministry of Foreign Affairs and that was not explicitly said in the interpretation. Thank you.

The PRESIDENT: Thank you very much. Before giving the floor to Mr. Lukić, I only ask the verifying interpreter to switch off the button. Thank you. And before you continue, I just wish to remind that the questions are to be related to the statement and to issues concerning the credibility, so if you ask about the curriculum vitae and the career in that context only please.

Mr. LUKIĆ: Have you been engaged as an expert-witness for any case before the International Criminal Tribunal for the former Yugoslavia?

INTERPRETER: I am sorry, but before the interpretation I would just like the expert-witness to speak up, because I cannot understand all the names that she mentioned. So Ms Biserko said that she co-operated with a team of prosecution, that she drafted a report on the media, that is what I understood.

Mr. LUKIĆ: Have you been a witness before the ICTY in any of the cases before that Court?

Ms BISERKO: No, I have not.

Mr. LUKIĆ: Now, a few questions concerning the methodology of drafting your statement. Has the statement that is before you been done solely and only by you, or has anybody helped you in making the statement?

Ms BISERKO: No, I have drafted this statement by myself and this statement is based on the book, which is here, which has been published before a year and a half.

Mr. LUKIĆ: So, I would just like to ask the witness to directly answer my questions. If there may be some [unclarities] they can be clarified during the examination of the other side.

Has the Croatian legal team provided you with any kind of evidence, with any kind of documentation?

Ms BISERKO: No!

Mr. LUKIĆ: To what extent is, for your analysis, the context in which a certain statement was given, of importance?

Ms BISERKO: I believe that it is of great importance.

Mr. LUKIĆ: Is for an analysis of the context important when something happened and when somebody said something?

Ms BISERKO: Of course.

Mr. LUKIĆ: It should also be known and important who said something, so who made a statement, to which you relayed.

Ms BISERKO: Yes.

Mr. LUKIĆ: Let me turn to your work, to your statement. There is a total of 16 references in your statement.

Ms BISERKO: Yes, that is true.

Mr. LUKIĆ: Now I have analysed these 16 references and I have found that eight of those references concern concrete primary sources, whereas [in] eight other references contain your explanations. For example, referring to Tito, to AVNOJ, to Ćosić. Is that true? Take your time and have a look at your statement.

Ms BISERKO: So, some of them refer to the explanations of some concepts.

Mr. LUKIĆ: In your opinion, these are the sources that can provide enough explanation to the Court?

Ms BISERKO: As I said, I have added some footnotes to my statement and I have provided it to the Croatian team.

Mr. LUKIĆ: So the eight sources that you refer to, my question is whether these eight sources are enough to explain the topic that you deal with in your statement.

Ms BISERKO: As I said, I provided the footnotes that are missing; and all the rest of the explanation is contained in this book.

Mr. LUKIĆ: In addition to the sources that you refer to — let us now leave the book aside — there are facts that you refer to and on which you found your statement.

The PRESIDENT: Just a moment please. I understand there is another issue of interpretation. I ask one of the verifying interpreters to indicate. My understanding is it was in translating the question of Mr. Lukić?

VERIFYING INTERPRETER: Yes, Mr. President. The question by Mr. Lukić was: “Apart from the sources that you cite, leaving aside for the time being the book, the rest of the statement reflects your own positions?” That was the question.

INTERPRETER: Yes, I apologize for my mistake. No, Ms Biserko answered that . . .

The PRESIDENT: But maybe I would rather ask the answer to the corrected question, yes?

VERIFYING INTERPRETER: Yes, this is Ms Biserko’s answer, who says that these are not only her personal views but also something that is based on the literature that she read and on the experience that she gathered on the Yugoslav diplomacy. It is also based on her work in 25 years, the work dealing with Serbian nationalism, which arises from her activities in the last 25 years.

The PRESIDENT: So, I understand Ms Biserko understood well the question as it was in Serbian. That was only a problem for us. Thank you!

Mr. LUKIĆ: Sorry for making this cross-examination complicated. I apologize.

The PRESIDENT: Please continue.

Mr. LUKIĆ: Ms Biserko would you have a look at paragraph 23 of your statement? “The scenario for unmaking Yugoslavia . . .”

The PRESIDENT: Mr. Lukić, are there numbers of paragraphs in the statement of Ms Biserko?

VERIFYING INTERPRETER: If I can just interpret, you read it in English. It is the first sentence of paragraph 23: “The scenario for unmaking Yugoslavia was worked out in detail in advance.”

Ms BISERKO: So this stand, this view, was based on a number of public documents, on media footage, media reports. It was in fact the preparations of the Serb people, so for ten years there were media reporting especially in the period from 1988 to 1991. It was in fact something that conditioned and prepared the Serbian people for what was going to happen. It was an announcement of *war* in Croatia and in Bosnia Herzegovina. It was insisted that the Serbian people were victims of both Yugoslav States, so it was clear what was there in store.

Mr. LUKIĆ: So my question was whether this statement made in your statement is your own experience or whether it is based on something else.

The PRESIDENT: Ms Biserko, could you repeat your answer in Serbian so that it can be translated?

Ms BISERKO: It is my opinion, it is my view, however, it is based on the public documents, on the party manifesto of the Serb radical parties, on the statements made by university

professors and academics. And I omitted to mention and make a reference to the memorandum which in fact rounded off this whole thing in the former Yugoslavia.

Mr. LUKIĆ: Is that true, that in your statement you have not made any reference related to the sentence that I have read to you?

Ms BISERKO: I said that I made reference subsequently and I will submit it to the Court later.

Mr. LUKIĆ: May I just ask you, Ms Biserko, that we are working on the basis of the statement that is before us and which is accessible to us so please make references to this particular statement. If you could have a look at paragraph 29, "because of Yugoslavia's military superiority the international community became involved in the Yugoslav crisis". The question for Ms Biserko is whether this is her personal view or whether this is based on something else.

Ms BISERKO: Let me just remind you that I was an employee of the Ministry of Foreign Affairs of the Directorate for Planning and Analysis, so I had an insight in the developments up to the Hague Conference.

Mr. LUKIĆ: But there is no reference to this in your statement with relation to this particular sentence.

Ms BISERKO: No, but as I said, everything I have stated is based on my experience and on the insights I had in the developments.

Mr. LUKIĆ: Let's have a look at footnote number 10.

Ms BISERKO: I do not know exactly where that is.

Mr. LUKIĆ: Page 7, footnote 10. There is a reference to an interview by Ćosić given on 21 January with no year stated. This is the footnote at the end of page seven.

The PRESIDENT: The footnote relates to paragraph 16.

Ms BISERKO: The year is not stated but it is 1991.

Mr. LUKIĆ: We have found this piece of information now. Let's have a look at some of the quotations in your statement. Let's have a look at paragraph six. There are two quotations inserted in this paragraph, however there is no reference to the author. Isn't that true?

Ms BISERKO: This is Michaelo/Mihaly *Đurić*, it refers to a discussion that was conducted at the faculty of law. The topic was the 1974 Constitution.

Mr. LUKIĆ: My question to you was: Are there references to this in your statement, for us who read your statement?

Ms BISERKO: Not for this one.

Mr. LUKIĆ: Thank you. I would like now to turn to some of the views expressed in your statement. Please have a look at paragraph 22: "The purging of Vojvodina's, Kosovo's and Montenegrin's representatives gave Serbia a controlling majority in the federal leadership." This is the sentence before the last in paragraph 22, this is a statement of Ms Biserko, is that so?

Mr. LUKIĆ: Could you explain to the Court how did they control and had the majority?

Ms BISERKO: Serbia abolished the autonomous status of Vojvodina and Kosovo and after the developments in *Podgorica* in Montenegro, the same was true of Montenegro. So Serbia established control. At the same time, Serbia retained the seats in the Federal Presidency and with the votes it gained under its control blocked further work of the Presidency. Of course on the other side there were the votes of Slovenia, Croatia, Bosnia-Herzegovina and Macedonia but, having established control of four votes in the Presidency, Serbia blocked and in fact this was the point where the Federal State ceased to function.

Mr. LUKIĆ: OK, let's go on. We are making a reference to paragraph 24 and the paragraph refers to the Constitution of Serbia from 1990 and Ms Biserko in her statement says that it was the first secessionist document.

Do you remember that the Assembly of Slovenia made amendments to the Constitution of Slovenia dating 27 September 1989, giving the primacy to the Republic's regulation over the federal regulations? Is that known to you?

Ms BISERKO: I can remember that.

VERIFYING INTERPRETER: Mr. President, the witness actually said that she could remember that, that she was able to remember that.

Mr. LUKIĆ: In your opinion is the resolution of the Assembly of Slovenia from July 1991 proclaiming independence also a secessionist document?

Ms BISERKO: All the republics were preparing changes and amendments to the Constitution as a reflection of the state of affairs. However, Serbia was the first one to do so.

Mr. LUKIĆ: Let me repeat once again my question to you. Whether the decision of the Assembly of Slovenia from July 1990 was a secessionist document?

Ms BISERKO: Could you please remind me what the contents of this document was?

Mr. LUKIĆ: I read that piece of information in the book *Balkan Tragedy*, which I hope you would agree is a good source of information?

Ms BISERKO: I don't have that piece of document in front of me so it is impossible for me to comment on it.

Sir Keir STARMER: Mr. President, I wonder . . . [Inaudible.]

The PRESIDENT: Please could you speak to the microphone. Please proceed, if it is a procedural issue.

Sir Keir STARMER: Mr. President, I apologize for interrupting. If documents can be put to this witness, I wonder whether they might be put in front of her so that she can see the documents she is being asked about?

Mr. LUKIĆ: Your honour, my question was very simple. Is she aware of that fact, that it exists? And she said what she said, so I just want to go to the other topic.

The PRESIDENT: And I understand you don't have the document here.

Ms BISERKO: It is not part of my paper; I did not deal with that.

The PRESIDENT: Please proceed with the examination.

Mr. LUKIĆ: You made a reference to paragraph 28 and to the statement that the Yugoslav People's Army became a *de facto* Serb army in 1991. So we are here to clarify things. Let's go one step at a time.

"the YPA *de facto* became the Serb army, General Kadijevic described the war objectives in the following fashion: 'the YPA shall defend the Serbs and define borders of future Yugoslavia'."

Now, I read out a sentence from paragraph 28. My question now is where did General Kadijevic in 1990 make that statement, that the JNA became a *de facto* Serb army?

Ms BISERKO: You can get information on that in the book by Branko Mamula and in another book by Veljko Kadijević, *My View of the Dissolution*.

Mr. LUKIĆ: And that was in 1990?

Ms BISERKO: Yes. Because the army was reorganized and prepared for what was about to happen then.

Mr. LUKIĆ: Would you change your statement if you were told that we heard today from the legal team that engaged you that the JNA became a *de facto* Serb army in 1991?

Ms BISERKO: I have in mind the fact that what happened in the army was an extended process that took ten years and the reorganizations that took place in the previous years, the territorial organizations in fact made possible that the Yugoslav People's Army be used for specific purposes. In 1991 this particular fact became obvious and became public after The Hague

Conference. The Yugoslav People's Army clearly sided with Serbia, the purpose of the army was on the one hand the defence of socialism and secondly the recentralization of Yugoslavia.

Mr. LUKIĆ: I am making a reference to paragraph 36, where you said that, at the time when the statement was drafted, in 2013, the destiny of 1,500 missing persons is unaccounted for.

Ms BISERKO: Yes, this is the figure presented by the Croatian Government; it refers to the missing persons of both Croat and Serb nationality.

The PRESIDENT: Please wait. I wish to ask whether there is an issue with interpretation.

VERIFYING INTERPRETER: There was a reference to 1,500 missing persons and in fact, what was said was, missing Croats.

The PRESIDENT: Okay. Thank you.

Mr. LUKIĆ: Yes, Sorry for that.

The PRESIDENT: Mr. Lukić you can continue

Mr. LUKIĆ: Thank you. The conclusion, paragraph 38: "... the Serbian national programme was crucial for the tragic collapse of Yugoslavia." Do you know who said the sentence "I think I accomplished the task, Yugoslavia is there no more"?

Ms BISERKO: Yes, I know who said that particular sentence; it was Stjepan Mesić, who was the President of the Federal Presidency. He was installed in that position of Federal President by the international community, by the international Troika. He, however, had no control over federal bodies, such as the Yugoslav People's Army.

Mr. LUKIĆ: Based on your research, are you aware who gave him that mission, that task?

Ms BISERKO: I don't understand the question.

Mr. LUKIĆ: My question is: Stjepan Mesić said that particular sentence in Sabor, the Croatian parliament, in 1991, so he said: “I think my mission, my task is completed.” My question to you is: do you know who gave him that task?

Ms BISERKO: I believe that this sentence is irrelevant, taking into account the developments from Tito’s death to the 1990s. No other republic sought, or had any thoughts about leaving Yugoslavia; there were preparations in Serbia.

Mr. LUKIĆ: And a few questions concerning your credibility. You, Ms Biserko, made public comments on the Judgment of this Court in the case *Bosnia-Herzegovina v. Serbia* in the case of *Genocide*, do you remember that?

Ms BISERKO: Yes, I remember that statement and I said that the Court did not have access to all the documents that — if available — may have produced another Judgment of the Court.

Mr. LUKIĆ: Do you remember your appearance, you were a guest in the programme *The Impression of the Week*, a few days after this Judgment in 2007? Do you remember that you gave your assessment of this Judgment in an interview to the Peščanik paper on the anniversary of this Judgment?

Ms BISERKO: I have given a lot of statements; I cannot remember this particular one.

Mr. LUKIĆ: Do you remember that your comment was that this particular Judgment was a political compromise of the international community to Serbia.

Ms BISERKO: My statement about this particular Judgment was based on the fact that this Court did not have access to the documents which, before the International Criminal Tribunal for the former Yugoslavia, were made intelligible, so they couldn’t be read. I am making a reference to the documents of the Serbian Supreme Defence Council.

Mr. LUKIĆ: Let me refresh your memory. Do you remember that in interview you said that this judgment is a political compromise of the international community towards Serbia because of the impending amputation of Kosovo?

Ms BISERKO: There have been many compromises towards Serbia, which aimed at the necessity of drawing Serbia closer to the European structures. What I said in my comments was the fact that the Court did not have access to all the relevant documents.

The PRESIDENT: Mr. Lukić, we are approaching the end of time allocated to Serbia for cross-examination, so final question please.

Mr. LUKIĆ: Thank you. Sorry. Ms Biserko, are you aware of any proceeding that has been conducted against you for giving false information to anybody?

Ms BISERKO: I do not know what you have in mind. Would you be so kind as to remind me?

Mr. LUKIĆ: Were you not found responsible for giving false information about a flat, an apartment, during the time that you worked in the Ministry?

Ms BISERKO: This particular case refers to my decline of the co-operation with the State security. At the time of Tito's death I happened to be in Dubrovnik with friends of mine. After I returned to Belgrade I was demanded by the security services to engage in some intelligence work that would be related to a friend of mine who worked in the English Embassy. Since I said that this was not in the scope of my diplomatic activities, the fact was that at the time I lived in the flat of a friend of the family. The flat was not registered but the whole thing, this particular situation, made the basis for the whole case that was conducted against me in the next four years. I was in a way put on freeze and I was in a way picked on by the security services.

Mr. LUKIĆ: This was in 1981. After that you remained for the following ten years working in the Ministry of Foreign Affairs, is that not true?

The PRESIDENT: Your time is up.

Ms BISERKO: Yes, but it took several years to clarify this particular case.

Mr. LUKIĆ: Mr. President, thank you very much. I have no further question and thank you for the extension of time.

The PRESIDENT: Thank you, Mr. Lukić. You can take your seat. I ask Sir Keir Starmer whether he would like to conduct re-examination? You have the floor.

Sir Keir STARMER: Thank you, Mr. President. Just some questions. Ms Biserko, you have been asked about your experience at some length and, in particular, your experience in the Ministry of Foreign Affairs between 1989 and 1991. Can you just tell us what you were doing in those two years in the Ministry of Foreign Affairs?

Ms BISERKO: I came from Geneva in 1988, where I spent four years with the Yugoslav Mission at the United Nations. Once I came back, I was involved mostly in affairs dealing with Europe and European integrations. The last two years I was in the Department for Strategy and Planning, also dealing with European issues and was on a daily basis engaged in topics that were relevant at that time. The whole world, and Europe especially, was in some kind of turbulence after the fall of the Berlin Wall and the collapse of communism; it very much reflected on what has happened in Yugoslavia at that time and this international context has to be very much taken into account because this also impacted very much the Serbian Government and the possibility to proceed with their crusade against Yugoslavia and destroying all federal institutions and creating fait accompli which the international community was unfortunately late to deal with, but it was there present all these years. Somehow, at that time, the collapse of the Soviet Union had much more attention than Yugoslavia, understandably, because of its nuclear potential. So, Milošević in a way had a clear way to continue with his campaign and the international community was confronted with situations to which it responded with some kind of hesitancy. Their efforts to convene The Hague Conference was really the last chance for Yugoslavia to survive in this State framework, but unfortunately Serbia rejected this offer because the Yugoslav Army was already on its side. And as was revealed in The Hague Conference and the trial of Milošević, the JNA, the Yugoslav Army was really crucial in preventing Milošević, and later Bulatović, to sign this agreement.

[Inaudible intervention]

Yes, well, these last two years I was engaged in this Department for analysis and planning and this is really something I have sensed at that time, that this conflict was very important for what was happening in Yugoslavia itself.

The PRESIDENT: Please continue.

Sir Keir STARMER: And before your time in the Ministry of Foreign Affairs, where were you working?

Ms BISERKO: I spent one year in one of the enterprises dealing with foreign trade.

Sir Keir STARMER: And before that?

Ms BISERKO: That was my first job. It lasted one year and something.

Sir Keir STARMER: And since 1991 what have you been doing?

Ms BISERKO: Well, when I left the Foreign Office, I apparently got engaged in setting up different NGOs like European Movement in Yugoslavia. That was already in 1991 while I was in the Foreign Office. It was the beginning of 1991, but I spent a whole year in preparing it. Then I joined the anti-war campaign in Serbia. It was a small group of people but somehow it was I think relevant for what would come later, and then in 1994 I had founded with a group of people, the Helsinki Committee for Human Rights in Serbia. Since then I am the Chair of the Group.

Sir Keir STARMER: Have you been involved in writing other reports than the report you have submitted to this Court? Have you been involved in writing other reports on human rights issues?

Ms BISERKO: Yes, during the 1990s I was engaged by Human Rights Watch. At that time there was an idea to develop a project on the *responsibility* of intellectual relief to Serbia. We started a project but it was not finished and so all the ~~different~~ material I have collected from different archives, I have given to The Hague Tribunal once it was founded. I was also engaged

with the U.N. Special Rapporteur *Mazowiecki* who became a Special United Nations Envoy for Yugoslavia in 1992 and I was closely working with him until the moment he resigned after the Srebrenica fall.

Sir Keir STARMER: And more recently?

Ms BISERKO: Recently, I was a member of the United Nations Commission on North Korea and the mandate is expiring at the end of March.

Sir Keir STARMER: Thank you. You were asked a number of questions about footnotes to your statement and you mentioned the book that you had written. When was that book published?

Ms BISERKO: The book was published almost two years ago but I have worked on it for quite a long time. It is really an expression of my experience and what I have learned over the last 20 years in an effort to understand what happened and especially why it happened so brutally, why Yugoslavia had to finish in such a brutal war. So I was really trying to understand what had happened and this is the result.

Sir Keir STARMER: And the year of publication?

Ms BISERKO: I'm sorry?

Sir Keir STARMER: The year of publication?

Ms BISERKO: It is 2012.

Sir Keir STARMER: And I don't want an exact number, but how many sources did you go to in order to write that book?

Ms BISERKO: How many sources?

Sir Keir STARMER: Yes.

Ms BISERKO: Hundreds, I did so . . . 550, and there is a lot of literature I have read and which I refer to in the bibliography.

Sir Keir STARMER: Sorry, can I ask you just to speak up? I did not get that.

Ms BISERKO: Sorry, there are about 560 footnotes and bibliography of the books I went through and I must say I was following the Court, the trials like Milošević's trial, Šešelj's trial, I had put together many other books, edited books based on the ICTY material. ~~We had also put together — myself being an editor of many books on different topics relating to Serbia —~~ We published altogether about 150 books dealing with Serbia, the national programme and how it came about.

Sir Keir STARMER: When you came to make your statement in this case, did you draw on the material in your book?

Ms BISERKO: Yes.

Sir Keir STARMER: What was the essential question you were seeking to answer in your book and in your statement? What was the question you were posing for yourself in your book?

Ms BISERKO: Ideally, I wanted to understand why Serbia found itself in this rather archaic situation, getting engaged on a project which was really a nineteenth-century project. You know, unity and unification of all Serbs at the end of the twentieth century was really something which was not corresponding with the spirit of the time and international *context* at that time. So, I really wanted to understand the logic behind it and the logic behind it is that Serbia always perceived Yugoslavia as enlarged Serbia. The moment when Yugoslavia was heading for a new internal arrangement because Yugoslavia grew up through evolution and it served as a framework for emancipation of all nations in Yugoslavia. Serbia always denied ~~the right~~ the identities of Macedonians, Croats and the others. They did not understand that these peoples have emancipated and created their identities over the twentieth century, which I think is crucial to understand the denial, or not acknowledging the existence of these nations which was very present in the campaign before the war, *against* Croats ~~and Serbs~~, Muslims and *others*. So this was really a nineteenth century theory of the nation.

Sir Keir STARMER: Thank you. You were asked about your view of the Serb takeover of the JNA, and you were asked in particular whether you would change your view in light of the arguments advanced by the Croat legal team. You had previously been asked whether the Croat legal team had provided you with any document. Have you in fact seen the written arguments of the Croat team, or discussed them with the Croat team?

Ms BISERKO: Well, I have a chapter on the army in this book so I went through all the changes throughout this decade, which were really aimed to bring the Serbs into position to be able to control, because before that Serbia . . .

Sir Keir STARMER: I am sorry to interrupt you. At this stage I am not asking you why you held the view you did. A much more simple question: You were asked whether you would change that view in light of submissions made this morning. Have you discussed the legal submissions that the Croatian legal team are making with that team, or even seen them?

Ms BISERKO: Well, I am not a lawyer so I am not entering this legal, how should I say, discussion on that, and they obviously took a certain date when it became obvious.

Sir Keir STARMER: I am sorry, I am not making myself clear.

INTERPRETER: I am sorry, if I could interpret that for Ms Biserko?

Sir Keir STARMER: Thank you.

Ms BISERKO: No, I have not.

Sir Keir STARMER: Thank you. You were asked about views you had expressed on the 2007 Bosnia Judgment of this Court. Are you able to express a view on the comparison between Vukovar and what happened in Bosnia, particularly Srebrenica?

The PRESIDENT: I think this does not relate to the Judgment of 2007. The questions were about the 2007 Judgment and comment on the Judgment, not comparison, please.

Sir Keir STARMER: Thank you, Mr. President. Just, finally, you mentioned several times a version of your statement with fuller footnotes, do you have a version with fuller footnotes?

Ms BISERKO: Yes.

Sir Keir STARMER: Should the Court want to receive that, is there any objection from you?

Ms BISERKO: That depends. I can hand it to the Court.

Sir Keir STARMER: Thank you. Thank you, Mr. President.

The PRESIDENT: Thank you very much. And now I give the floor to Judge Sir Christopher Greenwood who would like to put one or two questions. Judge Greenwood, you have the floor.

Judge GREENWOOD: Thank you, President. Ms Biserko, very early on in the cross-examination, you were asked about any work you had done for the International Criminal Tribunal for the Former Yugoslavia.

Ms BISERKO: Yes.

Judge GREENWOOD: You gave an answer in which you mentioned some names, but that answer was not interpreted because the interpreter could not properly hear you. And I just want to be clear which names you gave. Which was the case in which you were asked to assist the prosecution?

Ms BISERKO: I was closely working with the team working on Milošević's trial.

Judge GREENWOOD: Milošević.

Ms BISERKO: Milošević's case, sorry.

Judge GREENWOOD: Thank you. And did you mention any other names in your answer?

Ms BISERKO: Well, it is the whole investigative team including the Prosecutor Geoffrey Nice.

Judge GREENWOOD: Right, thank you very much.

The PRESIDENT: Thank you. If there are no other Judges who would like to ask a question, I wish to thank Ms Biserko for having come to The Hague to appear before this Court. Ms Biserko, you will receive, most likely tomorrow, the transcript of this afternoon's sitting where you provided answers to questions which were put to you. I kindly ask you to check the transcript and if there is any correction you would like to make — not changes to the content but corrections — then please do that tomorrow. We thank you very much for appearing before us and you may now leave the room.

Ms BISERKO: Thank you.

The PRESIDENT: The Court will meet again tomorrow morning at 10 a.m. to hear the continuation of Croatia's first round of oral argument. The Court is now adjourned.

The Court rose at 5.15 p.m.
