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International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2006

Public sitting

held on Wednesday 1 March 2006, at 10 a.m., at the Peace Palace,

President Higgins presiding,

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

VERBATIM RECORD

ANNÉE 2006

Audience publique

tenue le mercredi le 1^{er} mars 2006, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Higgins, président,

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

COMPTE RENDU

Present: President Higgins
 Vice-President Al-Khasawneh
 Judges Ranjeva
 Shi
 Koroma
 Parra-Aranguren
 Owada
 Simma
 Tomka
 Abraham
 Keith
 Sepúlveda
 Bennouna
 Skotnikov
Judges *ad hoc* Ahmed Mahiou
 Milenko Kreća

Registrar Couvreur

Présents : Mme Higgins, président
M. Al-Khasawneh, vice-président
MM. Ranjeva
Shi
Koroma
Parra-Aranguren
Owada
Simma
Tomka
Abraham
Keith
Sepúlveda
Bennouna
Skotnikov, juges
MM. Ahmed Mahiou,
Milenko Kreća, juges *ad hoc*

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The PRESIDENT: Please be seated. The session is now open and I call upon Professor Franck.

Mr. FRANCK: Thank you, Madam President, Members of the Court.

GENOCIDE AS DEFINED BY THE GENOCIDE CONVENTION

It will be amply apparent that we have been following a schema for presenting our argument to you which consists in part of pleading groups of facts, grouped by where the facts occurred, when they occurred, what the nature of the facts was, and we have interspersed these pleadings of fact, which undoubtedly have been troubling and disturbing, with less disturbing discourses on the applicable law, the law that relates to these facts. This morning I will, with your permission, talk for a while about genocide, as defined by the Genocide Convention. May it please the Court. I would like to offer a few observations to begin on the role assigned to this Court by the Genocide Convention.

The role assigned to this Court by the Genocide Convention

1. We all know, of course, the events leading to the Convention's drafting. After the extermination of eight million persons¹, primarily because of their race, religion or ethnicity, major German war criminals were indicted on 8 October 1945². One year later, the United Nations General Assembly unanimously affirmed that genocide is "a crime under international law . . ."³. It simultaneously called for the drafting of the Genocide Convention, a universal treaty giving effect to that determination. Two years later, in 1948, the drafting of that Convention was completed and the Convention entered into force on 12 January 1951. In its first Article, it obligates the parties, first of all, "to prevent and punish" this offence against international law⁴. But it also provided another implementing process, one just as important.

2. That process was set out in Article IX of the Convention, by which the International Court of Justice is given jurisdiction over State responsibility for genocide. This was adopted only after

¹*Oppenheim's International Law*, Ninth ed., Vol. 1, Pts. 2-4, p. 993, para. 434.

²*Trial of the Major Criminals before the International Military Tribunal*, Nuremberg, 14 November 1945-1 October 1946, Nuremberg, 1947, Vol. I, pp. 43-44.

³Resolution on the Crime of Genocide, General Assembly resolution 96 (I) of 11 December 1946.

⁴Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 (III) of 9 December 1948. United Nations, 78 *Treaty Series (UNTS)* 277.

the earlier draft was deliberately amended. The reason for this change in the draft is very relevant to this case and I will take a moment to discuss it. The original draft would have confined the ICJ's jurisdiction solely to disputes relating to the interpretation or application of the Convention and it would have barred jurisdiction with respect to any issue which had been referred to and was pending before, or had been passed upon by an international criminal court. It is important to recall that, even back then, the creation of such an international criminal jurisdiction was already being contemplated. After extensive debate in the Sixth Committee of the General Assembly, that provision was deleted and it was replaced by a new text proposed by the United Kingdom and Belgium⁵. This new text granted the ICJ expanded jurisdiction over any "disputes between the contracting parties relating to the interpretation, application or fulfilment of the Convention *including those relating to the responsibility of a State for genocide . . .*"⁶ — those key words were new. The drafters had decided that State responsibility for genocide was an essential aspect of any effort to use law with respect to genocide, even while contemplating various ways to criminalize genocidal conduct by individual persons.

3. To this end the drafters established a non-criminal jurisdiction and vested it, of course, in this Court and made it the legal weapon of choice for States that violate their legal obligation to other States by engaging in genocide. What States had clearly understood was that it is States, as well as individuals, who are the actual perpetrators of genocide. In the words of the British delegate Sir Gerald Fitzmaurice during the debate on Article IX in the Sixth Committee of the General Assembly, "the inclusion of the idea of international responsibility of States or Governments was necessary for the establishment of an effective convention on genocide"⁷. The French representative also observed that, "whether as perpetrator or as accomplice, the Government's responsibility was in all cases implicated"⁸.

4. It is notable that the General Assembly, in approving a convention which deliberately gave the ICJ jurisdiction to ascertain State responsibility for genocide, did so in full contemplation

⁵A/C.6/258.

⁶See *Yearbook of the United Nations*, 1948, p. 955. Emphasis added.

⁷United Nations, *Official Records of the General Assembly*, Sixth Committee, Summary Records, 21 September-10 December 1948, p. 444.

⁸*Id.*, p. 146.

of the eventual need for a separate criminal process that would bring to justice individuals committing genocide. Thus, the Assembly, even while adopting the draft of the Genocide Convention and opening it for ratification, passed another resolution. That resolution requests the ILC, the International Law Commission, to study the desirability of having another treaty that would authorize an “international judicial organ” to bring to trial *persons* charged with genocide. It is of some historic interest that this resolution “requests the International Law Commission, in carrying out this task, to pay attention to the possibility of establishing a Criminal Chamber in the International Court of Justice”⁹.

5. Well, as we know, the slowly maturing fruit of that endeavour is the International Criminal Court, which has yet to speak in a case before it, and the two *ad hoc* Criminal Tribunals for Yugoslavia and Rwanda; that is where responsibility, culpability, for individual acts of genocide reside. The Yugoslav and Rwandan Tribunals have developed a mature jurisprudence, which I will examine further on Thursday morning. Thus, while the jurisdiction over genocidal crimes did not devolve on this Court, instead, other temporary and permanent institutions were created to punish individual perpetrators.

6. What comes through quite clearly in this history is that, from the very inception of the Genocide Convention, it was always intended that there be two complementary jurisdictions to deal with two quite clearly distinguishable aspects of the grizzly phenomenon of genocide: the problem of *State responsibility* for genocide and the problem of *personal culpability*. It was understood then, and that understanding must be honoured today, that both aspects of genocide need to be addressed, but by different institutions. Personal culpability is being addressed by the ICC and the two Criminal Tribunals, Yugoslavia and Rwanda. The world expects that State responsibility for genocide will be addressed by this Court.

7. Yet, despite all this ready-to-hand evidence to the contrary, the Respondent has persisted in arguing, as recently as 1997, that the “Convention does not envisage a state as the perpetrator of genocide”¹⁰. You had already spoken emphatically on this matter in 1996¹¹. Well, this case will

⁹General Assembly resolution 260 (III) B.

¹⁰Counter-Memorial, p. 303, para. 4.4.1.9.

¹¹*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*.

provide an additional opportunity for this Court to rule on that important matter, not only for the guidance of the Parties here before you, but for the benefit of future generations that should not have to fear the immunity of States from responsibility for their genocidal acts.

8. The Convention stipulates that genocide *is* — not *will be*, but *is* — prohibited under international law¹² and thus makes clear that this problem already was a principle of customary international law, even before the Convention came into force¹³. What the Convention added to the pre-existing law, however, is crucial. It created a universal, treaty-based concept of State responsibility. And, as a consequence, it created a tribunal — this honourable Court — before which that responsibility may be ascertained.

9. It is State responsibility for genocide that this legal proceeding is all about. It is the determination of State responsibility that Article IX assigns to the ICJ. It is the State responsibility of the Respondent that we seek to establish during the course of these pleadings.

The Genocide Convention's purpose

10. Permit me now, Madam President, to turn to the question of the Genocide Convention's underlying purpose. In its Advisory Opinion of 1951, this Court sought to underscore the important point that “the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation”¹⁴. These principles are perhaps the most important part of the normative structure that underpins all international law and that upholds the very concept of State accountability. It cannot be escaped.

11. This Court will undoubtedly wish to make it clear that every State's responsibilities under this normative structure are binding, that it takes much more than an opportunistic shrug to escape these normative bonds which bind nations to the common skein of civilization.

12. In the same Advisory Opinion, the Court further emphasized the Convention's purpose, a purpose that is very much at issue in the proceedings underway here, today. “The Convention was manifestly adopted for a purely humanitarian and civilizing purpose”, you said:

¹²Convention, Art. I.

¹³See: Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War*, 1982, p. 157

¹⁴*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

“It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality.”¹⁵

13. These elementary principles of morality are still in contention, alas, and what this Court does, in these proceedings, will have a determining role in establishing the “elementary principles” to which the Convention sought to bind States. In this case the Court must surely tell the citizens of all States that they, the whole population — and not just rogue leaders and criminals in their midst — shares the onerous responsibility of preventing the commission of genocide in their name, and *a fortiori*, not themselves to commit genocide. If they fail in that universal obligation, then they — their State — must at least shoulder part of the task of rebuilding the shattered lives and social fabric of the survivors. That, surely, is at the core of the Convention’s “humanitarian and civilizing purpose”.

What the Genocide Convention prohibits

14. Permit me now to address what the Convention itself prohibits. The purpose of the Genocide Convention is to prevent or to stop acts committed with intent to destroy in whole or in part, a national, ethnical, racial or religious group, as such¹⁶.

15. In its Advisory Opinion of 1951, this Court made clear that the intention of the drafters and ratifiers was to make unlawful acts “involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations”¹⁷.

16. In our pleadings we will more than demonstrate that the “right of existence of entire human groups” was denied in Bosnia.

17. We will show that this did, indeed, result “in great losses to humanity”, and we will demonstrate that this denial is attributable to the Respondent.

¹⁵*Id.*, p. 23.

¹⁶Convention, *id.*, Art. II.

¹⁷*I.C.J. Reports 1951*, p. 23.

18. But, it is you, the judges, as the “conscience of mankind”, who will have to decide whether these acts do, indeed, “shock the conscience”, and, if so, whether the “moral law and . . . the spirit and aims of the United Nations” will be enforced.

19. The drafters were quite specific in enumerating the acts that constitute genocide. In Article II, the Convention defines genocide as:

- “(a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group”

if “any of the following acts [were] committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such”.

20. The drafters knew that even this very specific enumeration would need to be construed in the light of as yet unforeseeable circumstances. It was Dr. Bartos, speaking on behalf of Yugoslavia, who foresaw that, for example, “Genocide could be committed by forcing members of a group to abandon their home.”¹⁸

21. We are demonstrating that almost every one of the enumerated elements of genocide was perpetrated against the non-Serb population of Bosnia and Herzegovina and that these acts were committed with “intent to destroy, in whole or in part” a specific and historic “national, ethnical and religious group as such”.

22. In compliance with Article IX of the Genocide Convention, we are presenting evidence that, we think, overwhelmingly demonstrates the “responsibility of a State for genocide”. The State in question is the Respondent, known to us during these proceedings by various names that reflect the evolution of its domestic politics, but which remains eternally responsible for these acts. We will show that the acts perpetrated in Bosnia have left an indelible trail of perpetrators, instructions, uniforms, and money that leads straight back to Belgrade.

¹⁸United Nations, *Official Records of the General Assembly, First Part of sixth session*, 82nd meeting, 23 October 1948, pp. 184-185.

23. We are showing that these acts were not merely the wanton cruelties of a random rabble, but, rather, that were the deliberate policy of the State that, at various times, has described itself as the Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia and, most recently, as Serbia and Montenegro. We will insist to this Court, charged as it is with being the “conscience of mankind”, that this State cannot be allowed to rid itself of the stench of the blood it has spilled merely by putting on fresh new names.

24. Article IX of the Convention authorizes this action to determine “the responsibility of a State for genocide or any of the other acts enumerated in Article III”. We will present overwhelming evidence of the acts of genocide enumerated in the Convention’s Article II, as well as of those other, ancillary acts enumerated in Article III. Article III includes:

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

.....

(e) Complicity to commit genocide.

25. The Convention’s definition of genocide precisely matches the events in Bosnia and Herzegovina in the first half of the past decade. Hundreds of thousands of innocent civilians have been tortured, raped and killed solely on account of belonging to a group, and have had conditions imposed on them that are calculated to bring about the physical destruction, in whole or in part, of the group to which they belong. The Special Rapporteur of the United Nations Commission on Human Rights, Mr. Tadeusz Mazowiecki, has reported that non-Serbs are by far the bulk of those who have been beaten, robbed, raped, forced to flee, and that this is “undoubtedly related to the political objectives formulated and pursued by Serbian nationalists . . .”¹⁹. The General Assembly has registered its horror at the “widespread rape and abuse of women and children” and “in particular its systematic use against the Muslim women and children in Bosnia and Herzegovina by Serbian forces . . .”²⁰.

26. But, the Respondent asks, *which* Serbs? We accept that the jurisdiction afforded this Court under Article IX of the Convention extends only to issues between States. We shall

¹⁹A/47/666; S/24809, 17 November 1992, Ann., p. 6.

²⁰General Assembly resolution 48/143 of 20 December 1993.

demonstrate that the responsibility for these acts of genocide adheres not to some Stateless crowd that can be traced directly to a State, the respondent State. To quote again the General Assembly, these “tactics” which were deployed “as a matter of policy”²¹ were “the primary responsibility” of “the commanders of Serb paramilitary forces” which we saw in the film that ended yesterday so depressingly “*and military leaders in the Federal Republic of Yugoslavia (Serbia and Montenegro) . . .*”²².

With your indulgence, I would like now to turn to the interpretation of the definition of genocide.

The interpretation of the definition of genocide

27. When this case began, the International Court of Justice was faced with interpreting the Genocide Convention as a matter of first impression. Now, more than a decade later, the legal text has had the benefit of extensive analysis by two specialized tribunals established by the Security Council precisely to serve that purpose in the context of actual genocides committed in the former Yugoslavia and in Rwanda. The law of genocide, alas, is becoming clearer through usage.

28. The International Criminal Tribunal for the former Yugoslavia, created under Chapter VII of the United Nations Charter by Security Council resolution 808 (1993), is responsible for the prosecution of persons committing genocide in the territory of the former Yugoslavia since 1991. The Tribunal’s Statute, Article 4, paragraph 2, defines genocide and its ancillary crimes by incorporating Articles II and III, which we have just discussed, of the Genocide Convention, thereby authorizing the judges to apply that Convention in the Tribunal’s proceedings. They have done so, conspicuously, in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties, taking into account the objects and purposes of the Genocide Convention²³ and recognizing that the Convention has codified a norm that is recognized in international law as *jus cogens*²⁴.

²¹*Id.*

²²*Id.*, para. 4, emphasis added.

²³ICTY, *Prosecutor v. Radislav Krstić*, case No. IT-98-33-T, Judgment, para. 540 (2 August 2001).

²⁴*Id.*, para. 541.

29. The *ad hoc* Yugoslav Tribunal has now had a decade in which to engage in these tasks. It has had several cases in which the crime of genocide was among the indictments brought against a defendant and in these cases the proceedings have culminated in convictions. Its findings are important evidence both as to law and as to facts. The decisions of the trial chamber in these cases have clarified the law pertaining to genocide — particularly, but not exclusively, as it pertains to “intent” — and have ascertained facts about what was done, where, when, by whom and to whom. The Appeals Chamber by its careful scrutiny of the law applied, and of the facts found, has strengthened the credibility of this jurisprudence.

30. The ICTY has also carefully taken into account the *travaux préparatoires* of its mandate, as well as the work of the Preparatory Commission for the International Criminal Court²⁵. It has also given full credence to the jurisprudence on genocide generated by the Criminal Tribunal for Rwanda, its sister institution, which, as we have noted, operates under an essentially identical mandate²⁶. The Tribunal has also taken into account the law-related work of other parts of the United Nations system, such as the report on the law of genocide by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities²⁷.

31. We believe that this Court will agree that both the determinations of law and of fact by the Yugoslav Tribunal cannot but be relevant to these deliberations.

32. It will be apparent to this Court that the facts established to the satisfaction of the Yugoslav Tribunal have been subjected to a vigorous and prolonged adversary process and have met the rigorous evidentiary standards benefiting a criminal trial. In one salient instance, the facts were established by agreement between a very prominent defendant, Mrs. Biljana Plavšić, a co-President of the Republika Srpska, between her and the Prosecutor of the Yugoslav Tribunal, an agreement endorsed by the judges of that Tribunal, who said, “A written Factual Basis for the crime described [in that judgment] was filed with the Plea Agreement. The factual basis was agreed by the accused and forms the basis upon which the Trial Chamber . . . passes sentence.”²⁸

²⁵PCNICC/2000/INF/3/Add.2, 6 July 2000.

²⁶*Id.*, para. 541.

²⁷Nicodeme Ruhshyankiko, *Study on the Question of the Prevention and Punishment of the Crime of Genocide*, United Nations ECOSOC, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub. 2/416, 4 July 1978.

²⁸ICTY, *Prosecutor v. Biljana Plavšić*, IT-00-37&40/1-S, 27 February 2003, Sentencing Judgment, para. 9.

33. We intended to present these factual determinations agreed by co-President Plavsić and the ICTY judges as highly persuasive evidence for this Court, especially in so far as they pertain to the very matters contested in our present case. They are important not only as to the agreed facts, but also as to the conclusions of law which the facts were held to support. The Respondent has invited this Court to disregard all this evidence as being of “dubious evidential value”²⁹. We will ask you, the judges of the World Court to give the appropriate answer, not only because this baseless contempt for a legitimate legal institution should not be allowed to stand, but, more importantly, to safeguard the historic record being established by the Yugoslav Tribunal from the arrogant machinations of the genocide deniers.

34. The facts established by the ICTY that will be cited to assist this Court in order to reach its own conclusions regarding the commission of genocide have various pedigrees. Some are facts found in cases in which genocide was charged by the ICTY Prosecutor and in which that Tribunal concluded that genocide had been committed by the indicted individual or individuals. But we will also be drawing your attention to facts established to the satisfaction of the Yugoslav Tribunal in cases in which individuals were charged with crimes other than genocide: crimes against humanity and war crimes. The facts found in those more numerous cases will be laid before you in order to establish an even more important point of law, one the criminal tribunals could not establish because it was not within their mandate: that point is that proven individual acts of murder, torture, rape and forcible displacement, when seen cumulatively in the context of numerous criminal prosecution of individuals, begin to emerge as, yes, a *pattern*. It is that terrible pattern which, ultimately, transforms many ordinary crimes into over-arching and undeniable genocide. It is the accumulation of solitary crimes — the dreadful repetition of evil acts — that emerges finally, clearly, as the super crime of genocide. When we piece together these many smaller proven facts, each gleaned in the rigorous adversary process in which one person at a time is convicted in a criminal trial, by evidence established beyond a reasonable doubt, of acts which constitute violations of humanitarian law, or crimes against humanity, only then, when the parts are pieced together, does a larger, more sinister picture begin to emerge, one that makes clear the respondent

²⁹*Rejoinder*, 22 February 1999, para. 3.1.4.

State's fateful unleashing of the planned and intended destruction of an important part of the Bosnian people and of their communities.

35. The decisions of the Rwanda Criminal Tribunal — established in 1994, also under the Security Council's Chapter VII mandatory authority³⁰ — are, admittedly, less relevant to these proceedings in so far as they constitute findings of fact that arise in a different geographic and demographic context. Nevertheless, that Tribunal, too, has made important determinations of law that certainly are relevant to you. It has heard cases in which genocide was among the offences charged, and thus the Tribunal has had to interpret and apply the Genocide Convention. These interpretations of the law have added to the jurisprudence pertaining to genocide, conspiracy to commit genocide, incitement and complicity. On Thursday morning, I will endeavour to present some of the highlights of this jurisprudence, which, despite the caustic disparagement of counsel for the Respondent, will readily be seen to be relevant to an understanding of the import and the significance of the Genocide Convention to these proceedings.

36. The Respondents are contemptuous of this process by which law is interpreted by judges. "The enumeration of the prohibited acts is exhaustive", they say — and I'm quoting them in their Counter-Memorial — and they note, for example, that ethnic cleansing and rape are not mentioned in the Convention³¹. But the Convention does specify "[c]ausing serious bodily or mental harm" and "imposing measures intended to prevent births". Can a pattern of rapes carried out against members of one ethnic and religious group by members of another be seen to qualify? Can the terrorization of large numbers of Bosnian Muslims so as to force them to flee their communities in areas intended to form part of a Greater Serbia be construed as evidence of an intent to destroy those communities? The Convention, like every other law, could not have anticipated every form which genocide might take in future.

37. However, the Convention does contemplate how interpretation of its turgid text would occur: by the bringing of legal action before qualified judges — that is the civilized way, that is the way intended by the Convention. The Convention contemplates actions precisely like this one, before, precisely, this Court. And it contemplates criminal proceedings before an international

³⁰Security Council resolution 955, 8 November 1994.

³¹Counter-Memorial, p. 299, para. 4.3.1.1.

criminal tribunal. Since the Rwanda and Yugoslav Tribunals have been in operation for more than a decade, it is completely appropriate to examine that jurisprudence to see how the terms of the Convention have been illuminated in the various circumstances of its application.

38. The Respondents do not like this.

39. Should we dignify with a response the unsubstantiated insult of the Respondent's Rejoinder memorandum of 22 February 1999 that, "[t]here are serious reasons for doubt about the correctness of the legal findings and views" of the Yugoslav Tribunal? Should we respond to the allegation of "[e]xtreme insufficiency of legal regulations on the basis of which the Tribunal functions"? Need we rebut the charge that the Tribunal's procedure "remains completely unregulated"?³² The judges of the Tribunal for the former Yugoslavia are accused by the Respondent of an "unbalanced attitude . . . towards the three parties to the conflict in Bosnia and Herzegovina". And that allegation is supported by the claim that "a large disproportion in the number of accused Serbs has been charged in comparison with that of accused Muslims"³³. Well, there were more Germans than French in the dock at Nuremberg. Should we have to address such scurrilous pleadings? We think it beneath judicial dignity.

40. In fact, since the exchange of written pleadings in this case, more Bosnian Muslims and Bosnian Croats have been indicted, but they have been charged with lesser offences than those levelled at Serb leaders who have been charged with genocide. This disparity in the number and gravity of offences charged is directly attributable to the facts in Bosnia, and provide evidence of the infinitely greater volume and degree of culpability on the one side as compared to the other.

41. Rather than respond to every desperate attempt to discredit the Yugoslav Tribunal and its jurisprudence, we will proceed on the basis that the Court before which we now stand is fully aware of the legitimacy of both the Yugoslav and Rwandan Tribunals and will proceed to examine the extent to which those judges' rulings have enriched the jurisprudence pertaining both to genocide in general and, in particular, to the interpretation, in practice, of the text of the Genocide Convention. We are confident that this Court will reject the Respondent's baseless allegations against the legitimacy of the criminal courts' judiciaries.

³²Respondent's Rejoinder, 22 February 1999, p. 480, paras. 3.1.7 and 3.1.8.

³³*Id.*, p. 485, para. 3.1.17.

42. Nevertheless, it is instructive that the Respondent continues to deny the findings of the Yugoslav Tribunal and to attack its legitimacy, rather than face up to the consequences of its findings. This, it seems to me, makes it all the more important that this good Court exercise its ultimate power and responsibility in such a fashion that denial of what happened cannot any longer be the refuge of the perpetrators.

Thank you, Madam President, Members of the Court.

May I now ask, Madam President, that you call upon my colleague Magda Karagiannakis.

The PRESIDENT: Thank you, Professor Franck. I now call upon Ms Karagiannakis.

Ms KARAGIANNAKIS: Madam President, Members of the Court, today before the break and after the break, I shall be addressing you on the issue of camps and detention facilities.

CAMPS AND DETENTION FACILITIES

1. In the summer of 1992 the world was shocked to see images beamed into their living rooms of starved and mistreated people behind barbed wire fences in the middle of Europe. These pictures were filmed in the most notorious camps in Bosnia and Herzegovina where Muslims were systematically detained in inhumane conditions, and beaten, tortured, raped, killed, simply because people of their ethnicity had to be cleansed from the territory claimed by the Serbs.

2. In this part of the pleadings we will not repeat our written pleadings on the issue which are set out in sections 5 and 7 in our Reply. Rather we will seek to demonstrate from additional sources that have come to light since then which demonstrate, with the use of well documented examples, where the camps fitted into the blueprint of ethnic purification and what happened.

3. Given the notoriety of the camps and the numerous United Nations reports addressing them, which we have set out in our Reply, it is no surprise that the Yugoslav Tribunal investigated them. These investigations resulted in a number of indictments and final judgments regarding local camp guards and commanders and local politicians and military personnel, particularly in the Prijedor and Foca municipalities. These indictments and associated judgments were limited in scope both territorially and temporally.

4. A much broader selection of detention facilities, both in number and location, were included in the charges of the highest level politicians and military personnel of the former Republic of Yugoslavia (FRY) and the Republic of Srpska (RS). For example, one judge who was a former detainee in Manjaca camp and representative of an association of former camp inmates testified, in relation to the Indictment against President Plavsić, that in the 37 municipalities listed, there was a total of 408 detention facilities where Muslims and other non-Serbs were detained by force and exposed to serious physical and mental abuse³⁴. The most important of the high-level accused who are charged with genocide, such as Karadžić and Mladić, remain fugitives from justice and others are currently in a defence case of their trials such as Milosević and Krajisnik.

5. Therefore, it is this Court that will be the first international judicial body which will have the opportunity to decide upon the “big picture” of the camps system in Bosnia. The ICTY sources could assist this Court in this task, because a number of its chambers have specifically examined some examples of the Serb-run camps.

A. Camp numbers and locations

6. According to the Alliance of Detainees of Bosnia and Herzegovina, 520 camps and detention facilities existed under Serb control, which were active in 50 different municipalities in Bosnia from 1992 until 1995. Estimates of how many people were detained there range from a provisional minimum estimate by the Alliance of Detainees of 100,000 people and up to 200,000 people reported by other sources, including non-governmental organizations³⁵.

7. In the following diagram you will be able to see where these camps were and how many were situated in each municipality. The municipalities are coloured in blue and the number inside of the municipality border is the number of camps and detention facilities.

8. The Court has been provided with another map which sets out the names of each of the municipalities, so that it may better understand the diagram. The picture is obvious.

³⁴ICTY, *Prosecutor v. Plavsić*, Sentencing Judgment, case No. IT-00-39 and 40/1, 27 February 2003, para. 45.

³⁵Exhibit No. P404.7a; Testimony of Malesević, Monday 10 March 2003, in ICTY, *Prosecutor v. Milosević*, case No. IT-02-54-T.

B. Camps: an integral part of the ethnic cleansing blueprint

9. These camps were, in fact, a part of a high-level plan of the Serb leadership to rid the land they claimed as theirs of Muslims and Croats.

10. As we have explained earlier, the Bosnian Serb leadership sought implement the Greater Serbia aim in Bosnia. They did so by seeking to create a contiguous block of ethnically pure territory, pursuant to Strategic Objectives of the Serbian People announced by Radovan Karadžić in the Assembly of the Serbian People on 12 May 1992.

11. According to David Harland, a United Nations Civil Affairs and Political Officer based in Sarajevo from 1993, members of the Bosnian Serb leadership expressed their resolve to achieve the objective at all costs, and that Radovan Karadžić, in particular, in his pre-conflict statements, forecast the extermination of the Bosnian Muslim population in the event of war. Radovan Karadžić stated, “[w]e will use this Serbian-supported war machine to make life impossible for civilians”, to terrorize the civilians in order to reach a particular goal³⁶.

12. This aim, and the place of detention facilities in achieving it, was confirmed by Mrs. Plavšić in the Agreed Facts accompanying her plea of guilty. There it is stated that the:

“Bosnian Serb military, police and civilian forces, collaborating with the JNA, the MUP of Serbia and paramilitary units committed persecutions upon non-Serb population through acts including ‘unlawful detention and killing’ and ‘cruel and inhumane treatment and inhumane conditions in detention facilities’.”

Mrs. Plavšić acknowledges these acts “were committed in furtherance of the objective of ethnic separation by force and are supported by the evidence and are acknowledged . . . as having occurred”³⁷. These general facts are consistent with the findings of relevant United Nations reports and the findings of the Tribunal.

13. These facts are further fortified by recent findings of the trial chamber hearing the case of the Momčilo Krajisnik. He was a member of the collective Presidency of the Republika Srpska with Mrs. Plavšić, and the President of its Assembly. This chamber was dealing with genocide charges relating to, among other things, approximately 400 detention facilities in 37 Bosnian

³⁶Testimony of Harland, Thursday 18 September 2003, transcript p. 27004 and ICTY, *Prosecutor v. Milosevic*, Decision on Motion for Judgment of Acquittal, case No. IT-02-54-T, 16 June 2004, para. 240.

³⁷ICTY, *Prosecutor v. Plavšić*, Factual Basis for Plea of Guilt, case No. IT-00-39 and 40, 30 September 2002, paras. 10 and 19.

municipalities. In its Decision on the Defence Motion for Acquittal the trial chamber found that there was evidence that:

“civilians were systematically detained for periods ranging from a few days to several months in what were frequently makeshift detention facilities. Detainees were, as a rule, kept in crowded, unsanitary conditions, with very little food or water. Many were killed, or subjected to severe physical or psychological abuse, including beatings, torture, or rape. Some detainees were forced to perform labour at front lines, or forced to act as human shields in combat situations. There is evidence that several persons used in those ways were killed.”

That trial chamber also found that there was evidence that:

“the Bosnian Serb leadership received extensive information from a variety of sources about the existence of detention facilities for Bosnian Muslims and Bosnian Croats in the indictment municipalities and the treatment meted out in those facilities. For example, in July 1992 Biljana Plavsić stated that she was aware of 3,000 non-Serbs who were being detained in Omarska camp in Prijedor.”³⁸

14. These findings are not yet part of a final judgment. However, they are based on voluminous and extremely detailed evidence which has been tested by the defence and scrutinized by the judges, in a trial that began more than two years ago. The same is also true for another finding of this chamber which has a particular relevance to this case where it was held that there was evidence that:

“these Serb leaders and their political and military subordinates intended to accomplish the task of creating a Serb-dominated territory through any means, and in particular through killings, unlawful detention, physical or psychological abuse, and deportation of Muslim and Croat civilians, and destruction of their cultural monuments. The evidence is sufficient to infer an intent at the top level to destroy not only the part of the Bosnian Muslim group living in the territory slated to become Republika Srpska, but also the part of the Bosnian Croat group living in that territory.”³⁹

15. Bosnia has demonstrated facts related to camps in its Reply through reference to United Nations reports, the reports of United Nations Member States, the ICRC and the reports of journalists who were witnesses to their terrible existence. These sources are overwhelming. They have not been undermined by the passage of time but have only been bolstered by more specific factual findings of the ICTY to which we will turn next.

³⁸ICTY, *Prosecutor v. Momčilo Krajišnik*, Decision on the Defence Motion for Acquittal under Rule 98bis, case No. IT-00-39-T for Friday, 19 August 2005, transcript pp. 17128-17130.

³⁹ICTY, *Prosecutor v. Momčilo Krajišnik*, Decision on the Defence Motion for Acquittal under Rule 98bis, case No. IT-00-39-T for Friday, 19 August 2005, transcript pp. 17130-17131.

C. Examples in eastern Bosnia

16. The following examples of detention facilities come from eastern Bosnian municipalities along or close to the Drina River. In this regard it is important to recall the overall strategic objective of the Serbian people, which was the separation of the ethnicities and the strategic objective numbered three which required the establishment a corridor in the Drina River Valley thereby eliminating the Drina as a border separating Serbian states. The following examples demonstrate the eradication of the non-Serb presence from these municipalities and the role of the detention facilities in this process.

(i) Vlasenica municipality

17. One of the major camps in eastern Bosnia was Susica Camp in Vlasenica municipality. The appalling things that happened there were addressed in Section 5 of Bosnia's Reply. Since then the horrors of that place have been confirmed by its former camp Commander, Dragan Nikolić. He confessed his guilt and admitted all factual details contained in his indictment in open court on 4 September 2003 and a sentencing judgment ensued setting out the pertinent facts⁴⁰. The events relating to the camp demonstrate the pattern of arrest, detention and deportation that was being repeated all over Serb-claimed territory as each municipality was taken over by Serb forces.

18. On or about 21 April 1992 the town of Vlasenica was taken over by Serb forces consisting of the JNA, paramilitary forces and armed locals. Many Muslims and other non-Serbs fled from the Vlasenica area, and from May 1992 and continuing until September 1992, those who had remained were either deported or arrested.

19. Susica Camp was established in late May or early June 1992 and operated until about 30 September 1992. During this time as many as 8,000 Muslim civilians and other non-Serbs from Vlasenica and the surrounding villages were detained there. Men, women and children were detained in Susica camp, some being detained as entire families. They were subjected to inhumane living conditions. They were deprived of adequate food, water, medical care, sleeping and toilet facilities. An atmosphere of terror reigned in the camp.

⁴⁰ICTY, *Prosecutor v. Dragan Nikolić, Sentencing Judgment*, case No. IT-94-2-S, 18 December 2003.

20. The guards brutally beat the detainees on a daily basis. Many were beaten to death. Axe handles, metal knuckles, iron bars, rifle butts and rubber tubing with lead inside, were used. After one detainee was subjected to numerous terrible beatings, the camp commander approached him and said words to the effect of: "I can't believe how an animal like this can't die; he must have two hearts." He then proceeded to beat him again and stomped on his chest. The camp commander personally participated in nine vicious murders of non-Serb detainees. In one example, the camp commander repeatedly beat a 60 year old man over a seven-day period, kicking him and using a metal pipe. On each occasion he would be beaten into unconsciousness until he finally succumbed to death. Women were raped and sexually assaulted by camp guards or other men who were allowed to enter and take them out. When they came back they were traumatized and distraught.

21. The detainees were forcibly transferred from the camp and Vlasenica municipality. At the end of June 1992, large numbers of the male detainees were transferred from Susica camp to the larger Batkovic detention camp located near Bijeljina in eastern Bosnia, whereas most of the women and children detainees were transferred to Bosnian Muslim-controlled territory. By September 1992, virtually no Muslims or other non-Serbs remained in Vlasenica.

(ii) Foča municipality

22. The largest detention facility in the municipality of Foča was the KP Dom facility. Again this camp was addressed in Section 5 of Bosnia's Reply. Since that time, the camp commander of that facility, Milorad Krnojelac, was tried and convicted by the ICTY in relation to what occurred there⁴¹. This was only one of the places where non-Serbs were imprisoned, tortured, raped and mistreated. Many of these other camps have been the subject of other judgments relating to local military personnel participating in rape and detention of Muslim women and girls⁴². These

⁴¹ICTY, *Prosecutor v. Krnojelac*, Trial Judgment, case No. IT-97-25-T, 15 March 2002; ICTY, *Prosecutor v. Krnojelac*, Judgment, case No. IT-97-25-A, 17 September 2003.

⁴²Also see ICTY, *Prosecutor v. Kunarac et al.*, Judgment, case No. IT-96-23&23/1, 22 February 2001; ICTY, *Prosecutor v. Kunarac et al.*, Judgment, case No. IT-96-23, IT-96-23/1-A, 12 June 2002 .

judgments have been confirmed on appeal and are the subject of a body of adjudicated facts from this municipality which tells the awful story of what happened there⁴³.

23. The main Serb attack on Foca town focused on the Muslim areas of the town and started on 8 April 1992. The Serb forces included soldiers from Montenegro and Yugoslavia, and in particular a paramilitary formation known as the White Eagles as well as local Serb forces. After the takeover of the town, Muslims were referred to as “balija”, they couldn’t work, they couldn’t meet, their telephone lines were cut, their homes were searched, their businesses were looted or burned and their equipment was seized. Their neighbourhoods were systematically destroyed. As Muslim houses burned, fire engines protected Serb houses. The Muslim civilian population, including women and children, was brutalized and killed or detained. Their mosques were blown up or burned.

24. But following the successful takeover of Foca town, the attack on the non-Serb civilian population continued and the Serb forces continued to take over or destroy Muslim villages in the municipality. The campaign was also waged against the Muslim civilian populations of neighbouring municipalities of Gacko and Kalinovik. Once the towns and villages were securely in their hands the Serb forces applied the same pattern: Muslim houses and apartments were systematically ransacked or burnt down, Muslim villagers were rounded up or captured, and sometimes beaten or killed in the process. For example, on one occasion Serb troops followed fleeing Muslims in the direction of Gorazde and captured civilians taking shelter at the JNA fuel depot warehouse at Pilipovići. Muslim men were separated from the women and children. The Serb forces selected several men whose names were on a list and arbitrarily selected several others. These nine men were separated from the others and shot. One escaped, one survived.

25. Almost all the remaining Muslim men and women from Foca, Gacko and Kalinovik municipalities were arrested, rounded up, separated from each other, and imprisoned or detained at several detention centres like Buk Bijela, Kalinovik High School, Partizan and Foca High School as well as the KP Dom in Foca, in accordance with the recurring pattern. Some of them were killed, raped or severely beaten. The sole reason for this treatment of civilians was their Muslim

⁴³ICTY, *Prosecutor v. Krajisnik*, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, IT- 00-39-PT, 24 March 2005, Annex, pp. 9-22.

ethnicity. The Muslim detainees held at the Kalinovik High School, Foca High School and Partizan Sports Hall were guarded and kept in an atmosphere of intimidation without hygienic conditions and insufficient food.

26. Sexual abuses and mass rape in these and other detention facilities in Foca will be addressed in more detail during the presentation of Professor Stern on Thursday.

27. The KP Dom had previously been a prison facility in Bosnia. From 17 April 1992 soldiers from the Užice Corps in Serbia, a part of the JNA, were running KP Dom, this was occurring after the time that Bosnia had been recognized by the international community as an independent State. The control of this prison was transferred to local Serbs during the course of the following weeks⁴⁴. The warden of the prison — the subsequent warden of the prison — was responsible to the Bosnian Serb Ministry of Justice and, to a certain extent, to the local military command.

28. Prisoners at KP Dom, which had previously served as a prison in Bosnia, numbered between 350 and 500 people, with peaks at about 750 detainees. The detention facility operated from April 1992 until October 1994. Muslim men were interned just because of their ethnicity, sometimes for periods of up to two-and-a-half years. The non-Serb detainees were forced to endure brutal and inadequate living conditions while being detained at the KP Dom; they were tortured and beaten during interrogation and many of the men who were detained there were killed.

29. In exhumations conducted in the Foča area, 375 bodies were identified by the State Commission for the Tracing of Missing Persons. All but one of these was Muslim. The remaining person was a Montenegrin who married to a Muslim.

30. Most of the surviving non-Serb population was eventually forced to leave Foča. All traces of Muslim presence in Foča, which had a Muslim majority in 1991, and its culture were wiped out of Foča. In January 1994, the Serb authorities crowned their complete victory by renaming Foča, “Srbinje”, literally the town of the Serbs.

I will now move to examples in Bosnian Krajina.

⁴⁴ICTY, *Prosecutor v. Krajisnik*, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, IT- 00-39-PT, 24 March 2005, Ann. para. 467.

D. Examples in Bosnian Krajina

(i) Bosnian Krajina in general

31. The region referred to as Bosnian Krajina is in the north-western part of Bosnia and is just over the border from the territory of the self-proclaimed Republika Srpska Krajina in Croatia. Apart from the first strategic goal of the Serbian People, that is ethnic separation, the other strategic goal which is pertinent to this area is the second goal, which required the setting up of a corridor between Semberija, an area in the north-eastern corner of Bosnia, and Krajina.

32. The Brdanin judgment made the following findings in relation to the camps in this area:

“In the spring of 1992, camps and other detention facilities were established throughout the territory of the Bosnian Krajina in army barracks and compounds, factories, schools, sport facilities, police stations and other public buildings. These camps and detention facilities were set up and controlled by the Bosnian Serb army, civilian authorities or the Bosnian Serb police. Non-Serb civilians were arrested *en masse* and detained in these camps and detention facilities . . . While prominent members of the SDA and the HDZ were among the first to be arrested, the overwhelming majority were normal citizens arrested solely because of their ethnicity . . . Inmates were interrogated, beaten, subjected to inhuman and degrading conditions of life and tortured. Women were raped and killings occurred on a regular basis.⁴⁵

33. Before proceeding to discuss examples of the camps in Bosnian Krajina it is important to provide a context to what occurred in this region. The trial chamber in the Brdanin case found that it was satisfied beyond reasonable doubt that “there was a coherent, consistent strategy of ethnic cleansing” against Bosnian Muslims in this region which was implemented by several means⁴⁶. It went on to describe these means.

34. Military operations were carried out against towns and villages that were not military targets. Attacks were carried out in Prijedor, Sanski Most, Bosanski Novi, Ključ, Teslić, and Kotor Varoš among others. Such military operations were undertaken with the specific purpose of driving the Bosnian Muslim and Bosnian Croat residents away. The displacement of persons was not simply a consequence of military action, but the aim of it. Following these attacks on towns and villages, Bosnian Muslim and Bosnian Croat men, women and children were rounded up and often separated from each other. Most of them were confined to camps and detention centres for

⁴⁵ICTY, *Prosecutor v. Brdanin*, Judgment, case No. IT-99-36-T, 1 September 2004, para. 115.

⁴⁶ICTY, *Prosecutor v. Brdanin*, Judgment, case No. IT-99-36-T, 1 September 2004, paras. 548-551.

varying lengths of time. Most of these people were then deported or forcibly transferred, some of them transferred immediately. The expulsion of Bosnian Muslims and Bosnian Croats was often accompanied by a widespread destruction of their homes and institutions dedicated to religion. These expulsions and forcible removals were systematic throughout the region. Tens of thousands of Bosnian Muslims and Bosnian Croats were permanently displaced. This mass forcible displacement was intended to ensure the ethnic cleansing of the region.

(ii) Sanski Most municipality

35. Relevant findings have also been made in respect of Sanski Most municipality⁴⁷. The SDS took over the municipality on 19 April 1992 through an armed attack on the municipality building conducted by the JNA's 6th Krajina Corps, territorial defence forces and members of a Bosnian Serb paramilitary group known as the Red Berets. At the end of May 1992, after calls for disarmament had been made, attacks were launched on the Bosnian Muslim neighbourhoods and villages. These attacks were planned well in advance by the army and the municipal crisis staff, and they were carried out by the army acting jointly with a local paramilitary group. They would begin with heavy shelling from outside the targeted neighbourhoods or villages. This shelling caused severe damage and people were killed. The shelling forced the inhabitants of these villages to flee. After the troops had entered the villages, a number of people who had not fled, were killed. Houses were looted and fleeing persons' belongings were taken from them.

36. There are a number of examples of particularly brutal killings of non-Serb men, women and children in this municipality. After the attack on the Muslim hamlet of Begići by Bosnian Serb soldiers, the men were separated from the women and between 20 and 30 of them were taken to Vrhpolje bridge over the Sanna River. They were ordered to jump off one by one. As they landed in the water the soldiers shot them. Twenty-eight people were killed.

37. On 31 May 1992, soldiers in JNA uniforms, who referred to themselves as the 'Serbian Army', came to the Muslim village of Hrustovo. Muslim women, children and one man gathered in a garage adjacent to Ibrahim Merdanović's house. At one point, Bosnian Serb soldiers came to the garage and started shouting. Shots were fired, and the people inside the garage panicked. The

⁴⁷ICTY, *Prosecutor v. Brdanin*, Judgment, case No. IT-99-36-T, 1 September 2004 paras. 101; 632-633 (takeover) 416-422; 451-452; 454 (killings); 868-886 (camps).

only man inside walked out and was shot dead immediately. Then, the soldiers started to fire into the garage randomly. Some people left the garage and tried to escape, but the soldiers continued to shoot at them as they fled. At least 15 members of the Merdanović family were killed that day.

38. The killings continued. On 22 June 1992, Bosnian Serb soldiers ordered around 20 Muslim men to dig a hole in a stream flowing below the area near the Partisan Cemetery in Sanski Most. All but three of them did not finish with the work because their throats were slit by one of the soldiers. After Bosnian Serb soldiers attacked the Muslim hamlet of Budim on 1 August 1992 they executed 14 members of the Alibegović family, all of whom were unarmed civilians. Seven Bosnian Croats were executed by paramilitaries in the Glamonica forest on 2 November 1992.

39. Beginning 27 May 1992, Muslim and Croat civilians were detained both by regular and Bosnian Serb military police and confined in detention facilities in Sanski Most until about the end of August 1992. They were detained in places including the SUP building, Betonirka, Hasan Kikić gymnasium and the Magarice military facility.

40. As of early June 1992, Bosnian Muslim civilians detained in facilities in Sanski Most and the surrounding area were brought to the Manjača camp in Banja Luka, on a large scale. Civilian and military police from both Banja Luka and Sanski Most were in charge of putting together and escorting the convoys. Two hundred and fourteen Bosnian Muslim men were transported on two dates, 6 June and 7 July 1992. Upon arrival of the first group at Manjača camp, at least six prisoners were beaten and subsequently killed by policemen from Sanski Most. Twenty prisoners died during the second transportation because of the overcrowding, heat and lack of water during the nine-hour transportation.

Madam President, I see that it is 11.22. Perhaps it would be a good moment to take a break?

The PRESIDENT: Yes, thank you. Before we do so, could I come back to the plan, the graphic you presented us of the camps and detention facilities at the beginning of your presentation. What is the provenance of this? Is it something that Bosnia and Herzegovina had made specially for the judges' folders and upon what data is it based?

Ms KARAGIANNAKIS: Yes, Madam President, it is based on the testimony of Mrs. Milošević from the Alliance of Detainees of Bosnia and Herzegovina and it is also based on her analysis as produced in Exhibit No. P4-04-7A in that trial. It was not produced upon the request of the Bosnian Government but it is an independent document and exhibit in the Milošević trial.

The PRESIDENT: It is obviously helpful to understand from the graphics these things and the same question will arise about the one that I suppose we will come to later in the morning on the destruction of cultural property.

The Court will rise.

The Court adjourned from 11.25 to 11.35 a.m.

The PRESIDENT: Please be seated. You have the floor.

Ms KARAGIANNAKIS: I now move to Prijedor municipality.

(iii) Prijedor municipality

41. The notorious camps in Prijedor were the focus of numerous United Nations and civilian society reports which have been set out in our Reply. Since these reports were issued, the facts contained in them have been confirmed and made even more vivid, by a series of judgments and guilty pleas at the ICTY specifically focusing on this municipality⁴⁸. The camps in this municipality are also the subject of adjudicated facts from the ICTY chambers that put the atrocities that happened there beyond any doubt⁴⁹.

42. On 30 April 1992, life changed overnight, within 24 hours, in the Prijedor area. On that day, Serb forces conducted a bloodless takeover of the town of Prijedor and declared their intention

⁴⁸ICTY, *Prosecutor v. Brdanin*, Judgment, case No. IT-99-36-T, 1 September 2004; ICTY, *Prosecutor v. Mrda*, Sentencing Judgment, case No. IT-02-59-S, 31 March 2004; ICTY, *Prosecutor v. Stakić*, Judgment, case No. IT-97-24-T, 31 July 2003; ICTY, *Prosecutor v. Kvočka et al.*, Judgment, case No. IT-98-30-PT, 2 November 2001; ICTY, *Prosecutor v. Kvočka et al.*, Judgment, case No. IT-98-30/1-A, 28 February 2005; ICTY, *Prosecutor v. Predrag Banović*, Sentencing Judgment, case No. IT-02-65/1-S, 28 October 2003; ICTY, *Prosecutor v. Sikirica et al.*, Sentencing Judgment, case No. IT-95-8-S, 13 November 2001; ICTY, *Prosecutor v. Tadić*, Judgment, case No. IT-94-1-A, 15 July 1999; ICTY, *Prosecutor v. Tadić*, Opinion and Judgment, case No. IT-94-1-T, 7 May 1997 and ICTY, *Prosecutor v. Milošević*, Decision on motion for Judgment of Acquittal, case No. IT-02-54-T, 16 June 2004.

⁴⁹ICTY, *Prosecutor v. Krajisnik*, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, case No. IT-00-39-PT, 24 March 2005, Ann., pp. 22-38.

to rename the territory the “Serb municipality of Prijedor”. After the takeover, non-Serbs were dismissed from their jobs, their children were no longer allowed to attend school and their movements were restricted. Propaganda against Muslims and Croats was broadcast on the radio and both mosques and Catholic churches were targeted for destruction⁵⁰.

43. The forces which executed this takeover were the JNA and local police. This was one of the JNA military operations which had commenced before 19 May 1992 but did not cease immediately on that day. The same elements of the VJ continued to be directly involved in this operation after that date. Indeed, the attack on the Muslim area of Kozarac was continued by the same JNA unit restyled as a VRS 1st Krajina unit with the same officers in command⁵¹.

44. Between May and July 1992, the predominantly Muslim and Croat inhabited areas and villages were attacked by the Bosnian Serb army acting jointly with the police and the paramilitary groups. Attacks were conducted by intensive shelling with heavy armed weaponry. Houses in Muslim villages and neighbourhoods were targeted and shelled indiscriminately, resulting in extensive destruction and civilian casualties. Many of the survivors fled the villages and sought shelter in the surrounding forests. After the shelling, armed soldiers entered the villages, looted and torched houses, and expelled or killed some of the villagers who remained behind. Women were raped. Countless Muslim civilians were killed during these attacks⁵².

45. At the end of May 1992, after the takeover of Prijedor and the outlying areas, women and children were separated from the men before they were all loaded onto buses and taken to Trnopolje, Omarska or Keraterm where the Serb forces confined thousands of these civilians. Generally, the men were taken to Keraterm and Omarska detention camps and the women to Trnopolje. Male and female prisoners were subjected to severe mistreatment, which included beatings, sexual assaults, torture, and summary executions. Prisoners were guarded by uniformed and armed soldiers, police forces, local Serb military or territorial defence (TO) units, who would racially abuse the prisoners calling them “Balijas”, a derogatory term for Muslim people, or

⁵⁰ICTY, *Prosecutor v. Kvočka et al.*, Judgment, case No. IT-98-30-PT, 2 November 2001, para. 1.

⁵¹ICTY, *Prosecutor v. Brdanin*, Judgment, case No. IT-99-36-T, 1 September 2004, para. 151, footnote 391.

⁵²ICTY, *Prosecutor v. Brdanin*, Judgment, case No. IT-99-36-T, 1 September 2004, paras. 104, 151, footnotes 391 and 401-415.

“Ustasha”. Members of paramilitary organizations and local Serbs were routinely allowed to enter the camps to abuse, beat, and kill prisoners⁵³.

(a) Omarska

46. During the summer of 1992, Omarska contained about 3,000 mainly Bosnian Muslim, detainees. This is one of the most notorious camps in Bosnia and Herzegovina. One survivor described the confines of the camp as follows:

“The Omarska camp wasn’t surrounded by barbed wire, but it was as secure as a stone fortress. It was encircled by three rings of guards, with 30 guards in each ring. One ring was in the camp, the second some 50 yards beyond, and the third about one 100 yards from the first ring. The first and second group kept an eye on the camp itself to make sure no prisoners ran away; the third protected the camp from any possible invaders.”⁵⁴

47. Inmates in Omarska were divided into three categories:

“Category one comprised intellectuals and political leaders from the Bosnian Muslim and Bosnian Croat communities, who were earmarked for elimination. Persons who associated themselves with those from the first category would fall into the second category, and the third category encompassed detainees that were in the view of the Bosnian Serb authorities, the least ‘guilty’, and eventually were to be released. However, in practice, people from all three categories were kept detained in the camp.”⁵⁵

48. Prominent members of the Muslim and Croat communities were specifically targeted and killed there. At the end of July 1992, the killing of inmates with a special professional background started. One night, lawyers were targeted, following which policemen and physicians were marked for killing.

49. The fate of one of the physicians in Omarska was described as follows:

“Dr. Esad Sadiković, a physician, had previously worked for the United Nations High Commissioner for Refugees (UNHCR) and was described as a charismatic and deeply humane person. In Omarska, he helped other detainees wherever he could, and was regarded as a ‘moral and spiritual authority’. One night, a camp guard appeared and said: ‘Dr. Esad Sadiković, come out and take your stuff with you.’ The other detainees knew that this meant he would not return. Everybody stood up and bid him farewell.”⁵⁶

⁵³ICTY, *Prosecutor v. Milosević*, Decision on Motion for Judgment of Acquittal, case No. IT-02-54-T, 16 June 2004, para. 183.

⁵⁴“The Tenth Circle of Hell: A Memoir of Life in the Death Camps of Bosnia” by Rezak Hukanović, (1996), p. 85.

⁵⁵ICTY, *Prosecutor v. Brdanin*, Judgment, case No. IT-99-36-T, 1 September 2004, para. 443.

⁵⁶ICTY, *Prosecutor v. Brdanin*, Judgment, case No. IT-99-36-T, 1 September 2004, para. 445.

He was taken out and killed.

50. Between 30 and 35 women were also detained in Omarska. They were frequently called out by the camp Commander and the camp guards and raped. They were later transferred to Trnopolje camp. Minors and mentally impaired non-Serb people were also imprisoned in Omarska.

51. Prisoners were held in large numbers in very confined spaces, with little room either to sit or to lie down to sleep. Sometimes 200 persons were held in a room of 40 sq m. Prisoners were even crowded into lavatories where they were packed one on top of the other and often they had to lie amidst excrement. Hunger was acute with some prisoners losing 20 to 30 kg in body weight during their time there and others considerably more⁵⁷.

52. The detainees were severely beaten. They were tortured. They were killed. Many of the killings at Omarska camp were committed at the building known as the “White House”. Incoming detainees recount that dead bodies were lying around there on various occasions, and the inside of the “White House” was covered with blood. Edin Elkaz, who was taken there, remembered that “you could still see bits of flesh or brains [there] the next day”⁵⁸. This same Omarska survivor recounted how he was beaten into unconsciousness:

“The barrel [of the gun] was in my mouth and I was receiving double blows with a rubber baton and with a metal spring . . . My head was bursting, blood was bursting. It was awful. My teeth were breaking. Everything was breaking. I cannot remember exactly which blow was the last one. The last one was really terrible . . . I do not know whether the barrel was out of my mouth at the moment or before that, but I received a terrible blow there and everything burst.”⁵⁹

53. Killings also occurred at the “Red House”. Detainees were deprived of their lives in various ways. Many of them were so severely beaten that they died from their injuries. Others were riddled by bullets, jumped on by camp guards, or strangled. Many were called out never to be seen again.

⁵⁷ICTY, *Prosecutor v. Milosević*, Decision on Motion for Judgment of Acquittal, case No. IT-02-54-T, 16 June 2004, paras. 191-193.

⁵⁸Raw memory, Prijedor: an “Ethnic Cleansing Laboratory”, by Isabelle Wesselingh and Arnaud Vaulerin, p. 53.

⁵⁹*Ibid.*, p. 52.

(b) Keraterm

54. Another notorious camp in Prijedor was Keraterm. Keraterm began operating on 25 May 1992 and held up to 1,500 prisoners crowded into a number of large rooms or halls. Conditions in Keraterm were atrocious. Prisoners were crowded into its unlit, windowless, unventilated rooms with as many as 570 in one room. Prisoners were kept locked in these rooms for days on end. The pattern recurred; the food, water, sanitation and medical treatment were woefully inadequate or non-existent.

55. Detainees were beaten, tortured and killed. During July 1992, the approximately 200 Bosnian Muslim cleansed men from the Brdo area were crammed into room 3 and were executed. Witnesses heard the sound of breaking metal and shattered glass, and human cries. The next morning, dead bodies were piled outside room 3, and the entire area was covered in blood. A truck arrived to carry away the bodies. When the truck left, blood could be seen dripping from it. A fire engine was used to clean room 3 and the surrounding area from the traces of the massacre.

(c) Trnopolje

56. The third most notorious camp in Prijedor was Trnopolje. Trnopolje held thousands of prisoners, most of whom were older men and women and children. They were detained there by armed guards. No food was supplied by the camp authorities. Because the Trnopolje camp housed the largest number of women and girls, there were more rapes at this camp than at any other, with girls between the ages of 16 and 19 at greatest risk.

57. Detainees were also taken from this camp and massacred. On 21 August 1992, four buses comprised only of men set off from Trnopolje camp. At a junction near Kozarac, the buses from Trnopolje were joined by other buses full of prisoners. Two of the buses headed towards the line of separation between Bosnian Serb- and Bosnian Muslim-controlled territory. Two of these buses stopped on the road at Korićanske Stijene. On one side there was a deep gorge, and on the other side was a steep face of rock. The men from the buses were taken in a column to the edge of the cliff and ordered to kneel down. Before the victims were executed, they cried and pleaded for their lives. Then the shooting started. The dead bodies fell into the abyss or were pushed over the edge, sometimes by other Bosnian Muslims prior to their own execution. Grenades were thrown into the gorge to make sure no one would survive. At a minimum, 200 men were killed.

58. The Trnopolje camp was the culmination of the campaign of ethnic cleansing because those Muslims and Croats who were not killed at the Omarska or Keraterm camps were sent to Trnopolje, and then deported from Bosnia.

59. According to the 1991 census the population of Prijedor was 112,543. Of those 43.85 per cent were Bosniaks, 42.48 per cent were Serbs and there were 5.61 per cent Croats. Bosniaks and Croats constituted the largest ethnic group in the municipality whereas most of the municipalities surrounding Prijedor had a majority Serb population⁶⁰. By 1995, ethnic cleansing had been so successful that the population had dropped to 66,100, of which 92.28 per cent was Serb, 5.44 per cent Muslim and 1.51 per cent Croat⁶¹. Thus the Muslim and Croat population of Prijedor, which had been in the majority in 1991, had been almost completely cleansed from this municipality.

(iv) Banja Luka municipality

60. We now move to the Banja Luka municipality. The most horrific camp in Banja Luka municipality was Manjaca. It began operating as a detention camp on 15 May 1992 and contained predominantly Muslim men and minors. The overwhelming majority of detainees were civilians⁶². Thousands of people were detained there with numbers ranging from 3,640 to 5,434⁶³. In addition to killings and beatings⁶⁴, the sanitary conditions in Manjaca were described as “disastrous . . . , inhuman and really brutal”. Manjaca was said to be a “camp of hunger”. Most inmates lost between 20 and 30 kg of body weight while they were detained there. One survivor stated that he believed that had the ICRC and UNHCR not arrived, the inmates would have died of starvation⁶⁵.

61. Manjaca was staffed by Bosnian Serb military police and was under the command of the 1st Krajina Corps. This was one of the military formations that underwent the so-called transformation process from the JNA to the VRS after 19 May 1992.

⁶⁰ICTY, *Prosecutor v. Tadić*, Opinion and Judgment, case No. IT-94-1-T, T, 7 May 1997, para. 128.

⁶¹ICTY, *Prosecutor v. Radoslav Brđanin*, case No. IT-99-36-T, exhibit P58, pp. 6-7, ERN No. 930356-930357.

⁶²ICTY, *Prosecutor v. Brđanin*, Judgment, case No. IT-99-36-T, 1 September 2004, paras. 749-750.

⁶³ICTY, *Prosecutor v. Plavsić*, Sentencing Judgment, case No. IT-00-39 and 40/1, 27 February 2003, para. 47.

⁶⁴ICTY, *Prosecutor v. Milosević*, Decision on Motion for Judgment of Acquittal, case No. IT-02-54-T, 16 June 2004, para. 178.

⁶⁵ICTY, *Prosecutor v. Plavsić*, Sentencing Judgment, case No. IT-00-39 & 40/1, 27 February 2003, para. 48.

62. The camps we have been dealing with in Prijedor and the Manjaca camp in Banja Luka were discovered by the world's media. For this reason we have video footage of what they looked like.

63. Before we turn to those videos, we do have footage of the takeover of Prijedor. [On screen] There is no sound to this: it is just pictures.

[On screen]

64. In the next clip we are going to see images of Omarska and hear the comments of a judge and a journalist who were detained there.

[On screen]

This explanation provided by the journalists related to the visit of the first journalist to Omarska and the attempts made by the authorities to hide the true fact of what was going on in that detention facility.

65. In the next sequence we will see images from Trnopolje and Manjača.

[On screen]

E. Examples of municipalities linking northern Bosnia and eastern Bosnia

66. I am now going to move on to examples of municipalities linking northern Bosnia and eastern Bosnia and the detention facilities there. The next examples that will be addressed are the municipalities of Bosanski Šamac and Brčko. At this point it is useful to recall the strategic objectives of the Serbian people. In addition to the first strategic objective of ethnic separation, the second strategic goal required setting up a corridor between Semberija and Krajina, essentially linking the north-western part of Bosnia to the north-eastern part of Bosnia. The municipalities of Bosanski Šamac and Brčko were in this linkage area.

(i) Bosnanski Šamac municipality

67. One of the earliest examples of camps and the co-ordination of the JNA, Serbian paramilitaries and local Bosnian Serb forces in the process of detention and inhuman treatment of

non-Serbs can be found in the municipality of Bosanski Šamac. This municipality was the subject of a multi-defendant trial and judgment of the UNICTY in the Simić case⁶⁶.

68. In this case the Tribunal found that on 17 April 1992, the municipality of Bosanski Šamac was forcibly taken over by Serb forces, including Serbian paramilitaries and the JNA. From that time these forces participated in executing a plan to persecute the non-Serb civilians in the municipality.

69. Following the takeover, hundreds of non-Serb civilians, including men, women, children and old people, were arrested and detained in various detention facilities in the municipality. The first large-scale arrests were carried out by local Serb police and paramilitary forces from Serbia, with some later arrests being carried out by the JNA soldiers. Their detention was arbitrary. Their interrogations were coercive and forced. They were detained because of their non-Serb ethnicity and political affiliations.

70. The non-Serb civilians were repeatedly and violently beaten in the detention facilities in Bosanski Šamac and in Crkvina, Brčko, and Bijeljina municipalities. Some were beaten upon their arrest and others during their imprisonment. The implements used included rifles, metal bars, baseball bats, metal chains, police batons, and chair legs. Some prisoners were beaten while undergoing interrogation. The beatings were applied by paramilitary forces from Serbia, local policemen, and a few members of the JNA. The beatings took place on a daily basis, day and night.

71. On one occasion, a victim was beaten in the crotch, and his assailants told him that Muslims should not propagate. They were tortured through heinous acts of sexual assault, the threat of execution and the extraction of teeth. This last form of vicious cruelty was recounted by the Simić chamber:

“When, as a result of the beatings, the detainees would open their mouths, an object would be put in to keep the mouth open, and ‘Zubar’ came with his bloody and rusty pliers and extracted teeth . . . When the gym of the primary school was cleaned the next morning, over 100 teeth were in the main corridor outside the gym . . . [T]hese same men went to the TO and pulled teeth there.”⁶⁷

⁶⁶ICTY, *Prosecutor v. Simić, Judgment*, case No. IT-95-9-T, 17 October 2003. See in particular, paras. 442-456; 654-669; 770-772; 984.

⁶⁷ICTY, *Prosecutor v. Simić, Judgment*, case No. IT-95-9-T, 17 October 2003, para. 722.

72. The trial chamber in the Simić case concluded that

“the detainees who were imprisoned in the detention centres in Bosanski Šamac were confined under inhumane conditions. The prisoners were subjected to humiliation and degradation . . . They did not have sufficient space, food or water. They suffered from unhygienic conditions, and they did not have appropriate access to medical care. These appalling detention conditions, the cruel and inhumane treatment through beatings and the acts of torture caused severe physical suffering, thus attacking the very fundamentals of human dignity . . . This was done because of the non-Serb ethnicity of the detainees.”⁶⁸

73. One group of approximately 47 Bosnian Muslim and Bosnian Croat detainees, who were held in the Territorial Defence building in Bonanski Šamac, was transferred at the end of April 1992 by the JNA to the JNA barracks in Brčko where they were guarded by JNA soldiers. They were held there until the fighting broke out in Brčko on 1 or 2 May 1992. They were then transferred by a military escort to the JNA barracks in Bijeljina where they were beaten by Serb forces, including members of the JNA⁶⁹. Some were taken back to detention facilities in Bosanaksi Šamac. Some detainees were subject to court proceedings in Bijeljina. Significantly, another group of detainees, including prominent persons, were transferred across the border out of Bosnia and Herzegovina to Serbia proper, to a place called Batajnica where they were subjected to so-called trials in May 1992⁷⁰. This is a most telling example of the co-operation between the Bosnian Serbs and their associates across the border.

(ii) Brčko municipality

74. We now move to an example of an atrocious camp in north-eastern Bosnia, in the critical strategic position of Brčko: the Luka camp. The horrors of the Luka camp were first demonstrated in Bosnia’s Reply in Section 5 and were confirmed most recently by an up-to-date finding of the ICTY trial chamber hearing the *Milosević* case. This stated:

“Many Muslim men of Brčko were detained in Luka Camp in May and June 1992. Witnesses gave testimony describing the manner in which these detainees were transported by bus to Luka Camp in Brčko. The number of detainees incarcerated there varied on a daily basis; and [one witness] estimated that the number of detainees could have been up to 1,500 at any given time. The conditions and

⁶⁸UNICTY, *Prosecutor v. Simić*, Judgment, case No. IT-95-9-T, 17 October 2003, para. 773.

⁶⁹UNICTY, *Prosecutor v. Simić*, Judgment, case No. IT-95-9-T, 17 October 2003, para. 718.

⁷⁰UNICTY, *Prosecutor v. Simić*, Judgment, case No. IT-95-9-T, 17 October 2003, paras. 667-669.

treatment to which the detainees at Luka Camp were subjected were terrible and included regular beatings, rapes, and killings.”⁷¹

It went on to find:

“At Luka Camp, [one witness] and other detainees were forced to remove the bodies, which typically had marks of beatings and gunshot wounds to the back of the head. The witness personally moved about 12 to 15 bodies and saw approximately 100 bodies stacked up like firewood at Luka camp; each day a refrigerated meat truck . . . would come to take away the dead bodies.”⁷²

75. In making its finding that a trial chamber could be satisfied beyond reasonable doubt that genocide was in fact committed in Brčko, it referred to various additional facts including those which showed that the non-Serb leadership and particularly members of the SDA, which was the main Muslim political party, were targeted. For example, people were called out by their surnames and beaten, because their names were recognized as belonging to those who had been organizers of the SDA. In another example, one witness saw men from Šešelj’s or Arkan’s group kill a Serb who had tried to help a Muslim flee the former Yugoslavia; later that night, the soldiers killed the Muslim, who was an active member of the SDA⁷³.

76. Evidence of the use of lists in Luka also supports the proposition that the Muslim leadership was particularly targeted. For example during an interrogation one witness saw Goran Jelesić circle the names of three people on a list and order them to be brought into the office. When the three Bosnian Muslims came in Jelesić interrogated them, beat them, and then took them out of the office. The witness heard gunshots and screaming afterwards.⁷⁴

77. The existence of lists is supported by a detainee at Luka who was forced to clean the administration offices. On one occasion, while cleaning one of the offices she saw a list with 50 names on it of mostly prominent, educated or well-off Muslims. The list was titled “The List of People to be Executed”⁷⁵.

⁷¹ICTY, *Prosecutor v. Milosević*, Decision on Motion for Judgment of Acquittal, case No. IT-02-54-T, 16 June 2004, para. 159.

⁷²UNICTY, *Prosecutor v. Milosević*, Decision on Motion for Judgment of Acquittal case No. IT-02-54-T, 16 June 2004, para. 161.

⁷³UNICTY, *Prosecutor v. Milosević*, Decision on Motion for Judgment of Acquittal, case No. IT-02-54-T, 16 June 2004, paras. 160, 165-168, 246.

⁷⁴ICTY, *Prosecutor v. Milosević*, case No. IT-02-54-T, Decision on Motion for Judgment of Acquittal, 16 June 2004, para. 168.

⁷⁵Testimony of 6 February 2004, Transcript, p. 612, ICTY *Prosecutor v. Krajisnik*, case No. IT-00-39-T.

78. Non-Serbs were also detained in other parts of the Brčko municipality after its takeover by Serb forces. For example, one witness in the Milosević case testified that, while detained in the house of a Muslim in Brčko by Simo Radovanović (a.k.a. “Captain”), who was a member of the Red Berets from Serbia, she worked like a servant and was used as an object of sexual gratification for him⁷⁶.

F. Conclusions

79. The conclusion that is forced upon us when confronted with this material is inescapable. At a minimum 100,000 to a maximum of 200,000 Bosniak and other non-Serb men, women, children and elderly people⁷⁷ were imprisoned in camps across Serb-claimed territory, for no other reason than their ethnicity. Some were even detained outside the State borders of the independent Bosnian State, in Serbia proper.

80. People were commonly imprisoned after being driven from their homes by Serb forces including the JNA, the Bosnian Serb Army (VRS), the Bosnian Serb police and both Bosnian and Serbian paramilitary formations. Some of the detention centres were actually controlled and operated by the JNA.

81. The inhumanity of the conditions in camps was uniform with little or no sanitation, shelter, water, food and medical care. Inmates were routinely humiliated and debased. They were subjected to horrific beatings, rape and other forms of torture by merciless perpetrators including JNA personnel, the Bosnian Serb army and police, and paramilitaries from Serbia and Bosnia. Untold numbers died as a result or were cold-bloodedly executed.

82. The leaders of the Bosnian Muslim community were targeted for the worst atrocities and for elimination, particularly in regions important to the nascent, ethnically “pure”, Serb State. The survivors of this systematic terrorization were deported, transferred or exchanged to areas out of the territory of the Serb-declared areas. The Serb goals were achieved.

⁷⁶ICTY, *Prosecutor v. Milosević*, Decision on Motion for Judgment of Acquittal, case No. IT-02-54-T, 16 June 2004, para. 152.

⁷⁷Exhibit No. P404.7a; Testimony of Malesević, Monday 10 March 2003, in ICTY, *Prosecutor v. Milosević*, case No. IT-02-54-T.

83. Madam President, Members of the Court, this concludes my pleading. May I ask you to give the floor to my colleague Laura Dauban.

The PRESIDENT: Thank you, Ms Karagiannakis. I give the floor to Ms Dauban.

Ms DAUBAN:

DESTRUCTION OF CULTURAL HERITAGE IN BOSNIA AND HERZEGOVINA

1. Madam President, distinguished Members of the Court, as this is the first time I am pleading before this Court, I would like to say what a very great honour it is for me.

2. During my pleadings, I will be presenting one of the most significant patterns of the genocide in Bosnia and Herzegovina, a pattern which can only be described as the deliberate savaging of the country's rich and unique architectural, bibliographical and religious heritage. Cultural and historical significance and beauty aside, these buildings act as beacons and symbols to keep the spirit of Bosnia and Herzegovina alive in the hearts of its people, whatever their faiths. They are the heart and spirit of communities and their presence alone marks some part of the chronicle of the nation and its people. The destruction of Bosnia's cultural heritage, alongside the horrific ethnic cleansing was nothing less than a ruthless campaign to destroy not only the Bosniak and Bosnian Croat aspects of the history of Bosnia and Herzegovina but also the very fabric of its society.

3. In order to show the Court what I mean by the "destruction of cultural heritage" in Bosnia and Herzegovina, I will be showing the calculated damage done to and eradication of mosques, churches, historical landmarks, libraries, manuscript collections and other landmarks associated with religion such as schools and offices. For there was not only an obliteration of Bosnia's religious heritage but also its written heritage. The characterization by the Committee on Culture and Education of the Council of Europe of the destruction of cultural heritage in Bosnia as "a cultural catastrophe in the heart of Europe"⁷⁸ is very much correct. The ramifications of such devastation will be felt for years and centuries to come.

⁷⁸Council of Europe Parliamentary Assembly, doc. 6756, 2 February 1993.

4. Under the Hague Regulations and customary international law, institutions dedicated to religion are protected. This protection is restated in both Additional Protocols I and II to the Geneva Conventions. This protection can be lost if the buildings are used for military purposes, but I intend to show you during the course of my pleadings on this subject that the destruction was very often carried out in places which were under Bosnian Serb control and thus the fighting for control of those places had indeed stopped.

The intent behind the destruction

5. Madam President, Members of the Court, such a wanton and deliberate destruction of religious buildings gives a clear indication of the intent of the perpetrators: they wanted to ensure that the departure of the Bosniak and Bosnian Croat populations would be on a permanent basis. On top of the physical removal of the non-Serb population, such a destruction of their cultural heritage shows an attempt to wipe out the traces of their very existence. And not only to forget the people but also the rich and unique history of Bosnia and Herzegovina: this is what they wanted to destroy forever.

6. The intent for such a destruction can be seen by the words of those people in positions of authority in the Bosnian Serb hierarchy. One of the Republika Srpska Assembly delegates, Miroslav Vjestica, was not concerned about the damage done to the town of Veliki Badic by the Serbs but he was more worried by the prospect that if the Muslims returned there: “We will have to compensate them for everything that we destroyed and burned there and the 17 mosques we razed to the ground.”⁷⁹ The razing of churches and mosques was inextricably linked to the cleansing of villages, towns and municipalities.

7. The eradication of the mosques in Bijeljina, was justified by the town’s mayor in 1996, when he stated that: “For six centuries, mosques were synonymous with evil in this area . . . I don’t want my children to see mosques again, ever . . . We don’t want to live in any kind of common country with them.”⁸⁰ These sorts of statements show the sort of misplaced ideological rationale for the removal of all traces of the shared cultural heritage of Bosnia and Herzegovina.

⁷⁹34th Session of the Republika Srpska Assembly, 27 August-1 October 1993.

⁸⁰Interview with Susan Sachs, *Newsday*, 19 March 1996.

The Serb perpetrators saw such monuments not as treasured beacons of the local community or even as objectively demonstrating the rich history of Bosnia; instead they characterized such history as an unwelcome reminder of the 500 years before the late nineteenth century when Bosnia formed part of the Turkish-run Ottoman empire. The Bijeljina mayor — who I just quoted to the Court — characterized such a period as: “the worst days of [Serbian] slavery under the Ottomans”⁸¹.

8. The rationale for destroying the mosques was that if they were gone, the Muslims would not return. This was stated explicitly to a journalist who visited Prijedor and spoke with one Serb who had, with a military demolition team, received orders to blow up the mosque in the centre of the town of Prijedor. His description of how the mosques were destroyed is unsettling in its very frivolity:

“[it] was about 200 years old. I don’t know, they all look the same — cheap’. They battered the door down and began smashing up the mosque, downing more rejki as they looted and destroyed . . . One of the boys started playing Iron Maiden and Nirvana over the loudspeakers that had once broadcast the muezzin calling the faithful to prayer. Then they lit a bonfire of carpets and tables in the middle of the mosque and bored holes in the walls by the light of the fire. They wired up the charges, dismantled and took the sound system and gathered outside to watch the walls crumble in a single cloudy explosion, singing and laughing. [Ranko stated to the journalist] ‘if you destroy their džamijas [mosques] they (the Muslims) never come back’.”⁸²

I would like at this point to show the Court a picture of the Stari Grad mosque in Prijedor, both in 1991 when it was still standing and in 2002 when it had been completely razed to the ground.

9. Destroying the religious buildings and cultural heritage of a community marks the death of that community: all traces that they lived there for generations, even centuries, are cleared away with the rubble. No one would ever be able to tell that these places were once inhabited by Bosniaks and Bosnian Croats. Jan Boeles who was, in 1994, the Head of the Dutch delegation to the European Community Monitor Mission to monitor political and security developments in the regions of Bosnia and Herzegovina, had the specific task to match the dates of mosque and church demolition with the names of militia commanders who controlled military units at the time of the

⁸¹Bosnia Report, Vol. 2, No. 15, 15 April 1998.

⁸²G. Weiss, “Street dogs, dead souls and killers who are heroes”, <http://www.salonmagazine.com/jan97/bosnia970106.html>.

destruction. They would then be able to prosecute those people for war crimes. He stated, in an interview with journalist Robert Fisk, that:

“You have to understand that the cultural identity of a population represents its survival in the future . . . This is the murder of a people’s cultural identity . . . In many religions, destroying a cemetery is about the worst thing you can do. The graveyard . . . proves that this piece of land has been in this peoples’ possession for generations.”⁸³

10. Professor Thomas Franck, has pleaded before this Court about the law of genocide. I will not attempt to duplicate what he has said but I think it is fitting to include a rather poignant quote from the “Original definition of genocide” by Rafael Lemkin, the legal scholar who first coined the term “genocide” in 1944 and whose initiative led to the adoption of the Convention for the Prevention and Punishment of the Crime of Genocide four years thereafter:

“Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the group itself. The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.”⁸⁴

General picture and pattern of the destruction

11. Such irreparable damage was unfortunately done to so many sites of cultural importance that to go through them all in this part of the pleading would simply take too long. I will instead focus on some of the more villainous destructions while presenting the general picture and pattern of those destructions to the Court. Mr. Andras Riedlmayer, who will provide his expert opinion to this Court, carried out an extensive survey of 19 municipalities in Bosnia and Herzegovina for the Prosecutor in the *Milosević* case at the ICTY⁸⁵ and an additional seven municipalities in Bosnia and Herzegovina for two other cases before the ICTY⁸⁶. In these reports he documented damage to

⁸³As reported by Robert Fisk, “Waging war on history”, *The Independent*, 20 June 1994, p. 18.

⁸⁴As quoted in Lori Lyman Bruun “Beyond the 1948 Convention: Emerging Principles of Genocide in Customary International Law”, *Maryland Journal of International Law and Trade*, Vol. 17, No. 2, Fall 1993, 193-226.

⁸⁵ICTY, *Prosecutor v. Slobodan Milosević*, case No. IT-02-54-T “Destruction of Cultural Heritage in Bosnia-Herzegovina 1992-1996 — A Post-war Survey of Selected Municipalities”, Andras Riedlmayer, Exhibit Number P486.

⁸⁶Namely for the ICTY in the *Krajisnik* case and the *Seselj* case.

cultural and religious sites of the Bosniaks and Bosnian Croats. His expert report for the *Milosević* case, which is probably one of the most comprehensive surveys done to date, contains an abundance of useful and accurate data, much of which I will be drawing on in my pleadings and showing to the Court.

12. Another very reliable report is that produced by Dr. Colin Kaiser who testified as an expert at the ICTY in the *Brdjanin* case. He conducted an investigation into the damage and destruction of Islamic and Roman Catholic sacral buildings in a number of municipalities in Bosnia⁸⁷ between 1992 and 1995⁸⁸. Dr. Kaiser wrote a series of reports for the Parliamentary Assembly of the Council of Europe, for whom he acted as a consultant to the Committee on Culture and Education, during the war. Since the year 2000 he has been Head of the Unesco office in Sarajevo. The study Dr. Kaiser compiled for the Brdjanin Prosecutor for the ICTY is not as comprehensive as the one carried out by Mr. Riedlmayer, as it does only cover six municipalities, but the two studies do both come to similar conclusions, some of which I will be presenting to the Court over the course of my pleadings.

13. In Mr. Riedlmayer's report, he found that all of the 277 mosques that he surveyed were damaged and only 22 of those were assessed as lightly damaged. Most of the mosques surveyed by him were located in territories seized and held by Bosnian Serb forces during the conflict, with Sarajevo being the notable exception⁸⁹.

14. What can only be described as a "campaign" of devastation of buildings and institutions dedicated to religion took place throughout the conflict. The Brdjanin trial chamber found that the destruction of sites of cultural and religious importance was intensified in the summer of 1992, this being the significant period of damage to Muslim and Roman Catholic institutions. Their conclusion was that this was "indicative that the devastation was targeted, controlled and deliberate"⁹⁰.

⁸⁷Namely Bosanski Novi, Donji Vakuf, Kljue, Kotor Varos, Prijedor and Sanski Most.

⁸⁸ICTY, *Prosecutor v. Brdjanin*, case No. IT-99-36-T "Report on the Damaging and Destruction of Islamic and Roman Catholic Sacral Buildings in the Municipalities of Bosanski Novi, Donji Vakuf, Kljue, Kotor Varos, Prijedor and Sanski Most in the 1992-95 War with specific reference to 1992", Dr. Colin Kaiser, Exhibit No. P1183.

⁸⁹ICTY, *Prosecutor v. Slobodan Milosević*, case No. IT-02-54-T "*Destruction of Cultural Heritage in Bosnia-Herzegovina 1992-1996 — A Post-war Survey of Selected Municipalities*", Andras Riedlmayer, Exhibit No. P486, p. 9.

⁹⁰ICTY, *Prosecutor v. Brdjanin*, case No. IT-99-36-T, Judgment issued on 1 September 2004, para. 642.

15. That the destruction was deliberate rather than incidental to the conflict is something which Mr. Riedlmayer has concluded in his report: a majority of the religious sites he identified were destroyed as a result of attacks directed *at* them, rather than attacks *incidental* to fighting in the vicinity⁹¹. Madam President, Members of the Court, to raze a building to the ground is not something which happens easily, quickly or without some amount of preparation.

16. The people who were destroying those Bosniak and Bosnian Croat religious buildings appeared to have been working from some pre-prepared lists. It is Mr. Riedlmayer who deduces this from the very fact that unfinished religious buildings were targets of vandalism but were not generally blown up like many of the finished ones⁹².

Some examples of destruction in Bosnia and Herzegovina

17. It was sometimes not even enough that the mosques had been burnt and the damage had been so extensive that they had been rendered completely unusable: the destruction in some places went as far as the foundations being dug up and removed. One of the most chilling tales is that of the fate of the eighteenth century Savska mosque in Brčko. A photo of the Savska mosque appears behind me now — it is shown in its pre-war state, when it stood in all of its glory and then, in July 2002 there is a picture which shows it is no longer there. I would like you to bear this picture in mind while I describe what happened there. The rubble from the destruction of the Savska mosque was mixed with tons of garbage then dumped on top of a mass grave site and used to cover the remains of Muslim civilians from Brčko killed by Serb forces and buried on the outskirts of the town⁹³. [Picture of the Savska mosque]

18. In the town of Foča a total of 11 mosques, eight of them dating from the sixteenth century, were destroyed during the first months of the town's occupation by Serb forces in the late spring and summer of 1992. One of them, the Aladza mosque, famous for its splendid mural paintings and lofty dome, dating from 1555 and under Unesco protection, was dynamited and razed. According to the ICTY Kunarac trial chamber, the Aladza mosque, which was the last standing mosque in Foča, was blown up on 1 August 1992. This was "well after the end of the

⁹¹Riedlmayer, *op. cit.*, Note 15, p. 11.

⁹²*Ibid.*, pp. 9-10.

⁹³Riedlmayer, *op. cit.*, Note 15, pp. 12-13.

fighting and . . . at a time when the town was securely under Serb control”⁹⁴. The Aladza Mosque was one of the world’s most beautiful Muslim places of worship, famous for its magnificent wood and marble carvings. Serb fire brigades stood by and watched as the mosques burned in Foča⁹⁵.

19. The Islamic community of Foča’s historical archive and library were also burned, as were three shrines of Muslim holy men, and a historic dervish monastery of the Nakshibendi order. In the surrounding municipality of Foča, a total of 33 Islamic sites were destroyed, including 24 mosques. In addition to such a destruction of its cultural heritage, the very name of the town of Foča — as Ms Karagiannakis explained earlier in her pleadings — was replaced; and this was a common pattern across the territories which were cleansed by the Serbs. So, in January 1994, “Foča” became “Srbinje”, “Serb Town”, by reference to the fact that it is now almost exclusively inhabited by Serbs. Indeed, “[e]verything that in any way was reminiscent of the past, . . . was destroyed”⁹⁶. As a consequence of the concerted effect of the attack upon the civilian population of Foča, and surrounding municipalities, all traces of the Muslim presence in the area were wiped out.

20. The village of Novoseoci, which is 50 km from Sarajevo, was the scene of an atrocious act of cold-blooded murder, which was centred around the mosque. On 21 September 1992, soldiers from the 2nd Romanija Brigade of the VRS, the army of the Bosnian Serbs, blocked and surrounded the village. There was no armed resistance in that village, Madam President. The next day, the women and children were bussed out of the area; the men were lined up outside the mosque and shot. The bodies were then placed in a garbage dump a few kilometres outside Novoseoci and were buried beneath the rubble of the mosque⁹⁷. Amor Masović, head of the Bosnian Missing Persons Agency, stated that tonnes of garbage and “15-ton chunks of the mosque”, destroyed by the Serbs had to be removed before the mass grave site was uncovered. He further pointed out that each of the victims had eight or nine bullet holes in them — and I shall quote him again: “Only military trucks could have carried those huge chunks of the mosque. This

⁹⁴ICTY, *Prosecutor v. Kunarac et al.*, case No. IT-96-23&23/1, Judgment, 22 February 2001, para. 44.

⁹⁵ICTY, *Prosecutor v. Krnojelac*, case No. IT-97-25, 17 September 2003 at para. 33.

⁹⁶ICTY, *Prosecutor v. Bijlana Plavšić*, case No. IT-00-39, testimony of Mirsad Tokaca, Judgment, 27 February 2003, para. 44.

⁹⁷ICTY, *Prosecutor v. Krajisnik*, case No. IT-00-39-T, testimony of Milan Tupajić, 29 June 2005.

was a deliberate, organized act of terror, not war.”⁹⁸ Madam President, Members of the Court, the Commander of the 2nd Romanija Brigade in 1992 was none other than Radislav Krstić, the man who is currently serving a life sentence for complicity in genocide for his actions in Srebrenica. He was sentenced by the ICTY. He was also, for all times between 1991 and 1995, an officer in the VJ, the Yugoslav army, and the VRS, the army of the Bosnian Serbs. We have submitted documents to the Court on a DVD on 16 January, showing that this was the case⁹⁹. This will be discussed in more detail when the Deputy Agent of Bosnia and Herzegovina, Mr. van den Biesen, presents to the Court the role and nature of Belgrade’s involvement in military matters in Bosnia and Herzegovina.

21. Madam President, Members of the Court, I would now like to talk about Banja Luka. This had been taken over by Serb forces at the start of the war without any fighting, all of the city’s 16 mosques, including two famous sixteenth century buildings — the Arnaudija and the Ferhad Pasha mosques — were deliberately razed to the ground. Both of these mosques were registered with Unesco. The Mayor of Banja Luka, Djordje Umicević, wrote that to rebuild the mosque would be a “deep humiliation for the Serbian people” and further that the mosque was a “monument to the cruel Turkish occupation”¹⁰⁰.

22. In the northern Bosnian municipality of Prijedor, the Brdjanin trial chamber found that “the most systematic and brutal infliction of damage to both Muslim and Catholic institutions dedicated to religion occurred in Prijedor”¹⁰¹. Dr. Kaiser concluded that all of the acts of destruction took place in the summer of 1992¹⁰². One of the most disturbing incidents so far reported is that which Mr. Riedlmayer refers to in his expert report submitted in the Milosović case. In the village of Carakovo, Serb forces massacred 18 Muslim villagers in front of the mosque; they then proceeded to wrap the Imam in a prayer carpet and burnt him death, before burning down the mosque itself and finally blowing up the minaret¹⁰³.

⁹⁸M. Roseblum, “41 Muslims Finally Buried in Bosnia”, *Associated Press*, 5 November 2000.

⁹⁹Documents submitted to the ICJ by Bosnia and Herzegovina, 16 January 2006, docs. Nos. 44a-j.

¹⁰⁰Bosnia Report, Vol. 2, No. 15, 15 April 1998.

¹⁰¹ICTY, *Prosecutor v. Brdjanin*, case No. IT-99-36-T, Judgment, 1 September 2004, para. 652.

¹⁰²*Op. cit.*, Note 14, p. 10.

¹⁰³Riedlmayer, *op. cit.*, Note 15, p. 13.

23. Dr. Kaiser concludes that the Islamic and Roman Catholic sacral buildings were destroyed in a “targeted, controlled and deliberate campaign of devastation, a kind of blitzkrieg against places of worship”¹⁰⁴.

24. In the eastern Bosnian municipality of Zvornik, Serb forces destroyed all five mosques in the town and a total of 46 Islamic sites, including 36 mosques, in the municipality. I would like now to demonstrate to the Court the link between the elimination of the religious sites and the removal of those people so inextricably connected to them in the eyes of the Serbs, as regards the municipality of Zvornik. In doing this, I would like to share with the Court the words of the Serb Mayor of Zvornik, Branko Grujić, who, in early 1993, was interviewed by several foreign reporters and he uttered a pure and simple lie when he made the absurd claim that: “There never were any mosques in Zvornik.”¹⁰⁵ I would now like to show you a picture of one of those mosques which apparently never existed. It is shown in 1990, before it was destroyed. Then we see, in 1998, a car park stands on the place where it once stood.

[Picture: mosque in Zvornik]

25. Later on in the same month, Mayor Grujić did admit that Muslims may once have had a legitimate claim to ownership of eastern Bosnia. However, he quickly qualified this by explaining why the United Nations map for the region needed to be thrown away. I would like to quote the article where he was interviewed:

“The demographics are different now,” he said. [The journalist writes] “Zvornik once had a population of almost 70,000 — with more than 60 per cent being Muslims. Today, the mosque has been blown up, and the city is more than 90 per cent Serb, maybe even 99.9 per cent Serb.”¹⁰⁶

26. A year later, Mayor Grujić was quoted in the Belgrade press as saying that there were only five Muslims left in Zvornik¹⁰⁷. Unfortunately, this time, Mayor Grujić’s words were not so

¹⁰⁴Kaiser, *op cit.*, Note 14, p. 12.

¹⁰⁵Branko Grujić, interviewed by Carol Williams, “Serbs Stay Their Ground on Muslim Lands: Conquering Warlords Bend History and Reality in an Attempt to Justify Their Spoils”, *Los Angeles Times*, 28 March 1993; Laura Silber, “Serb Mayor Confident in Bosnian Town Where Mosques Are Rubble”, *Financial Times* (London), 17 May 1993; Roger Cohen, “In a Town Cleansed of Muslims, Serb Church Will Crown the Deed”, *New York Times*, 7 March 1993.

¹⁰⁶*Chicago Tribune*, 23 March 1993.

¹⁰⁷*Vreme News Digest*, No. 156, 19 September 1994, Title: “On the Spot: Loznica and Zvornik, the Banks of the Drina”, by Dragan Todorović.

incredulous. Madam President, Members of the Court, before the takeover by the Serbs, Zvornik was made up of 54 per cent Muslims. In 1997-1998 this was 0.6 per cent¹⁰⁸.

27. The findings of the ICTY on the destruction of religious and cultural heritage of Bosnia and Herzegovina are succinctly put in the Brdjanin trial chamber judgment. This trial chamber found that there was a wilful damage done to both Muslim and Roman Catholic religious buildings and institutions in the relevant municipalities by Bosnian Serb forces. They furthermore concluded that the evidence showed that they were not used for military purposes¹⁰⁹. I will describe some of the findings of that trial chamber, as listed in the judgment, to you now.

28. In Bosanski Petrovac, the two mosques in the centre of town were destroyed during the takeover of it. There was no apparent resistance in the area¹¹⁰. The mosques in Staro Šipovo, Bešnjevo and Pljeva were destroyed on 7 August 1992 by Bosnian Serb forces. The mosques and their minarets were completely destroyed and the tombstones in the vicinity were also damaged¹¹¹. The religious buildings in Sanski Most were also subject to major damage. In Čelinac town, two mosques, the Imam's house and a Roman Catholic church were destroyed. In Teslić, the Roman Catholic church was demolished during an attack on it by Serb forces in mid-1992.

The damage done to Sarajevo's cultural heritage

29. The damage done to Sarajevo's cultural heritage was touched upon yesterday by the Deputy Agent, Mr. van den Biesen. I would like now to go into a little more detail. The robust construction of the historic buildings which make up the city managed to survive a lot of the shelling and gunfire — although many have sustained a considerable amount of damage. One of the most nefarious attacks on the cultural heritage of Sarajevo and Bosnia and Herzegovina was the destruction on 17 May 1992 of the Institute for Oriental Studies along with its priceless collection of more than 5,000 Arabic, Turkish, Persian and Bosnian encyclopaedias, works of Islamic philosophy and Ottoman poets. The archives alone contained over 200,000 manuscripts, which

¹⁰⁸ICTY, *Prosecutor v Slobodan Milosević*, case No. IT-02-54-T, Expert Report of Ewa Tabeau: Exhibit No. 548, tab 2, Ann. A1, p. 72.

¹⁰⁹ICTY, *Prosecutor v. Brdjanin*, case No. IT-99-36-T, Judgment on 1 September 2004, paras. 640 and 658.

¹¹⁰*Ibid.*, para. 647.

¹¹¹ICTY, *Prosecutor v. Brdjanin*, case No. IT-99-36-T "Document mentioning the destruction of the Staro Šipovo, Bešnjevo and Pljeva mosques". Exhibit No. P2404.

included the edicts of the sixteenth century sultans and land deeds for all of Bosnia, many of which could be considered works of art¹¹². The destruction was significant because it was a means of destroying the documents, such as the historic land deeds, that was evidence of the fact that Bosnia and Herzegovina had not *always* been Serb land; and because by destroying the Oriental Institute and its thousands of manuscripts, it annihilated one of the greatest repositories of the written legacy of 500 years of Bosnian Muslim cultural history. Furthermore, Madam President, it is clear from the fact that none of the other buildings, in what is a densely built neighbourhood in the city, were hit, that this was a deliberate attack on the Institute.

30. It was only just over three months later that one of the most notorious and shattering attacks on the cultural heritage of Bosnia and Herzegovina took place, the burning of Bosnia's National Library, which was, according to Mr. Andras Riedlmayer: "the largest single incident of deliberate book burning in modern history"¹¹³. The pattern was similar to that of the attack on the Oriental Institute: the Library was targeted and set ablaze by a barrage of shells. It was bombarded by a barrage of shells and fired upon from multiple VRS positions. This shows all the hallmarks of a co-ordinated attack. It burnt for 15 hours and smouldered for days afterwards but despite the inside being completely reduced to ashes, the shell of the building still stands today — a distressing reminder of what happened to the city, country and its people. As firemen fought the blaze, using water from the Miljacka River as the city's water supply had been cut-off, they were shot at by snipers¹¹⁴. I would like to show the Court pictures of the Sarajevo National Library being burnt.

[Picture: burning library]

31. Madam President, Members of the Court, The library was a national landmark and a cultural treasure; the main depository of Bosnia's written history including works in the languages of all of the cultures that have shaped the very history of the country including Old Slavic, Latin, Hebrew, Turkish, Arabic, Persian and Serbo-Croatian. Mr. Riedlmayer estimates the loss to be over 1.5 million volumes¹¹⁵. Like the Oriental Institute, the Library is located in a densely built

¹¹²As reported by Robert Fisk, "Waging war on history", *The Independent*, 20 June 1994, p. 18.

¹¹³Riedlmayer *op. cit.*, Note 15, p. 19.

¹¹⁴*Ibid.*, pp. 18-19.

¹¹⁵*Ibid.*

neighbourhood in the city and the surrounding buildings remain intact even in 2006. The written history of a nation was reduced to ashes overnight: a blazing example of what the Serbs wished to do to its very people and what they very nearly succeeded in doing. As Heinrich Heine warned, nearly two centuries ago: “Where they burn books, they will in the end burn human beings as well.”¹¹⁶ I would now like to show the Court a picture of what the interior of the library looked like after the destruction.

[Picture: interior of the library]

32. Aside from the two examples I have dwelt upon in Sarajevo thousands of historic buildings and many important collections of manuscripts and works of art were lost or severely damaged or completely destroyed throughout Bosnia. Madam President, every religious building has its records of the local community spanning generations and different periods in the history of Bosnia. The books and documents which embodied the historical memory of the Bosniak and Bosnian Croat communities, many of which were unique and the product of centuries of cultural history, were spitefully wiped out in a chilling parallel to the fate of the people who lived there.

Conclusions

33. The pattern of the destruction of the cultural heritage in Bosnia and Herzegovina can be seen on the map which is appearing on the screen behind me.

[Picture: map of cultural destruction in BiH].

I would like at this point to explain to the Court that this map was compiled by Bosnia and Herzegovina based on a database compiled by Mr. Andras Riedlmayer, submitted to ICTY in the Milosević case which was used by the ICTY in that case. As you can see on the map, much of the devastation occurred on the territory of what is now the Republika Srpska. This ties in with the first of the strategic goals, which was to separate the Serbian people from the other two ethnic communities. Madam President, they did not just want the territory, they wanted the territory cleansed of all traces of the Bosnian Muslim and Bosnian Croat populations that once lived there.

34. The destruction of Bosnia’s cultural heritage by the Serbs was an occurrence that started right from the beginning of the war and continued even after the Dayton Agreement had been

¹¹⁶Heinrich Heine “Dort wo man Bücher Verbrennt, verbrennt man auch am Ende Menschen” *Almansor* (1821).

signed. Some of the early destructions were carried out by JNA forces, after Bosnia and Herzegovina had been recognized by the international community. Some of these destructions carried out by the JNA were the mosques at Kotorsko and Orašje (near Doboj) on 6 May 1992, the destruction of a Roman Catholic church in Gorice on 8 May 1992¹¹⁷ and the destruction of the mosque in Grapska on 12 May 1992¹¹⁸. I would like to now show to the Court a picture of a church in Gorice, both as it was before the war and in 2002 after it had been destroyed. Those who destroyed these cultural, historical and religious monuments were, in fact, completing the work of the genocidal operation.

[Picture: Gorice Church before and after destruction]

35. The conclusions of both Dr. Kaiser and Mr. Riedlmayer focus on the intent behind the destruction, in that it was done to remove any trace of the Bosniak and Bosnian Croat civilizations. Dr. Kaiser points to the difference in the level of destruction between those religious buildings in the rural and urban areas. In the former, he found that there was less complete physical annihilation, which he concludes is due to the assumption, on the part of the destroyers, that the people would not return to the areas so the walls of the mosques and churches would crumble and disintegrate naturally. There was a more “radical removal” of religious buildings in urban centres¹¹⁹.

36. Both Dr. Kaiser and Mr. Riedlmayer point out that the minarets on mosques were almost always destroyed as these are the most prominent parts of the building and their removal changes the face of the landscape in the most dramatic of ways.

37. It was not even the case that when these buildings were destroyed an empty space was left: in many instances they were covered with parking lots and rubbish tips! Such a sign of contempt and disrespect shows the attitude towards the Bosniaks and Bosnian Croats by those who perpetrated such dreadful crimes. Mr. Riedlmayer even stated in his report that “the presence of large, overflowing containers of rubbish on an empty lot in the centre of towns in Republika Srpska

¹¹⁷Riedlmayer, *op. cit.*, Note 15, p. 16.

¹¹⁸*Ibid.*, p. 11.

¹¹⁹Kaiser, *op. cit.*, Note 14, p. 12.

often signals the site of a destroyed mosque”¹²⁰. I would like to use one comment published in *Vreme*, which was one of the few remaining independent periodicals in Belgrade during the war, as it sums up the situation accurately:

“It is characteristic that a great number of the destroyed places of worship were not within the range of war actions. In some towns, in places where sacral buildings had once stood, foundations have been laid for other purpose facilities. Sufficient cement, labour and hatred were found.”¹²¹

38. The Respondent’s replies to the evidence we have produced so far in our written pleadings have been entirely dismissive of the facts we have put before the Court. In their Counter-Memorial, where they allege that Serbian cultural property was destroyed in Bosnia, they are less than specific, both in description and date of those occurrences. More worryingly, their evidence sometimes does not match the descriptive terms they use for the damage and at times it is even downright misleading. For example¹²², they state in their Counter-Memorial of 1997 that on “May 26, 1993 the Muslims levelled to the ground the Orthodox church which was located in the very centre of Travnik”. In June 1994, the European Parliament’s rapporteur visited Travnik and found the church still there having suffered only “*minor damage from small shells*”¹²³.

39. The Rejoinder is even more telling, given that it says nothing of the evidence presented by Bosnia and Herzegovina in its Reply of 23 April 1998 and focuses entirely on counter-claims for damage done to Orthodox heritage sites. It is important to make clear at this stage that Bosnia and Herzegovina does not deny that damage was done to religious sites of all of the communities of the country. There were indeed a number of attacks on Serb Orthodox churches. This was especially seen in the early phase of the war in Herzegovina: the Serb Orthodox Church in Mostar was blown up by Croat extremists in June 1992 following the JNA siege, which had destroyed Mostar’s Catholic churches; the destruction of the old Serb Orthodox monastery in Zitomislic by a Croat gang from Medjugorje. What is clear is that there are no statements by Bosniak members of Government either condoning or encouraging such attacks, as Prime Minister Haris Silajdzic stated in 1995 when questioned about the safety of Serbs living in the Federation. He said:

¹²⁰Riedlmayer, *op. cit.*, Note 15, p. 13.

¹²¹E. Stitkovać, “More than Hatred”, *Vreme News Digest Agency*, 23 November 1992.

¹²²Para. 7.4.1.3.26.

¹²³Council of Europe, Sixth Information Report, doc. 7133, p. 5.

“Our history is our guarantee. Our credibility is our history, this history, the history of this conflict in which these authorities have demonstrated maximum tolerance even at the most difficult moments . . . I visited Bosanska Krupa following its liberation. In one small area there had been a Catholic church, a mosque and an Orthodox church. When I visited Krupa, the Catholic church and the mosque had been destroyed. The Orthodox church was intact. This is our credibility and this is not just the way things are around Sarajevo. This is the case everywhere. There are probably some exceptions that only confirm the rule.”¹²⁴

Madam President, Members of the Court, I see it is now 1.00 p.m. and I would like to ask the permission of the Court as I have only a few paragraphs left to go to complete my submission. Thank you.

40. It is worth noting that after more than three years of a bloody and bitter siege, the Serb Orthodox Church at the centre of Srebrenica was still standing — though not undamaged: it had suffered some vandalism. When the safe area fell and Mladić entered the town, Bosnian Serb army officers can be seen visiting the Orthodox Church and planting the Serb flag over its entrance. This stands in stark contrast to the fate of the town’s five mosques which were systematically destroyed — as were the town’s male Muslims. The combination of those killings with the forcible transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica. This ethnic cleansing of people was also achieved by a barbaric cultural cleansing — another way of killing the people by trying also to kill their spirit. By eradicating the mosques in the town, the aim was to make sure that the displaced population would never return. Madam President, Members of the Court, on the screen behind me, I would like to show you some pictures of the destruction of the mosques in Srebrenica.

[On screen]

41. Madam President, Members of the Court, this is what genocide looks like. This is what the wages of racial hatred and ethnic cleansing lead to. This is only a part of what Bosnia and Herzegovina has lost through cold-blooded attacks on those things which symbolize its people, its history and the very fabric of its society.

I would like now to conclude my pleadings and thank the Court.

¹²⁴Radio Bosnia-Herzegovina, Sarajevo, in Serbo-Croat, 1900 GMT, 7 December 1995.

The PRESIDENT: Thank you, Ms Dauban. The Court now rises and the oral arguments of Bosnia and Herzegovina will continue tomorrow morning at 10 o'clock.

The Court rose at 1.05 p.m.
