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Vendredi 10 mars 2006 à 10 heures

10 The PRESIDENT: Please be seated. Professor Stojanović, you have the floor.

Mr. STOJANOVIĆ: Thank you, Madam President, Members of the Court. I will continue my presentation with an analysis of the preparations for war and the arming of the population in Bosnia and Herzegovina.

Part Three

Preparations for war and the arming of the population

113. In the autumn of 1991, the war in Croatia was coming to an end. The United Nations Security Council had characterized the conflict in Croatia by resolution 713 of 25 September 1991 (pursuant to Chapter 7 of the United Nations Charter) as a direct threat to peace and international security. This resolution imposed an embargo on the export of arms to Yugoslavia. The Security Council gave Cyrus Vance a mandate to act as an intermediary in the ceasefire negotiations. Also, a United Nations peacekeeping force, UNPROFOR, was set up. It was to keep the two sides apart along the boundaries that their respective military forces held at that point.

114. The situation became tense when the Parliament of Bosnia and Herzegovina adopted a memorandum on the sovereignty and independence of Bosnia and Herzegovina on 15 October 1991. Representatives of the Serb parties walked out, and the two Serb representatives of the Presidency of Bosnia and Herzegovina voted against the memorandum. A few days later, the Serb representatives who had walked out of the Parliament of Bosnia and Herzegovina set up their own separate parliament and announced a referendum to let the citizens decide if they wanted to stay inside Yugoslavia or not. The referendum was due to take place on 9 and 10 November 1991.

115. On 22 December 1991, the Serb party, the SDS, proposed a total transformation of Bosnia and Herzegovina, under which it would have been turned into a confederation of three ethnic groups, each with their own parliament. During the ensuing discussions between the three sides, the Serb SDS party proposed retaining Bosnia and Herzegovina within the framework of the Yugoslav federation. When the Serb party realized that the other two groups were opposed to this
11 idea, it dropped the suggestion and was willing to abide by the wishes of the Muslim and Croat

representatives and, to this end, loosen the links with Yugoslavia or cut them altogether. For the sake of peace, the Serb party was ready to accept the transformation of Bosnia and Herzegovina into a confederation with three parliaments for the three ethnic communities, operating on the basis of mutual respect. The confederation would also have had certain joint functions, thanks to which Bosnia and Herzegovina would have acted as a bridge between Croatia and Yugoslavia. Therefore, in Bosnia and Herzegovina three entities would have been created, acting in harmony with one another, or at least adopting a neutral position. (Preliminary Objections, Annex, pp. 457-458, June 1995).

116. This proposal was in complete contradiction with the position of the Muslim and Croat parties, which sought a unitary and independent Bosnia and Herzegovina.

117. The above-mentioned proposal by the Serb party demonstrates that the Serbs had no plans for war as of mid-December 1991. The meeting between Nikola Koljevic, Deputy Chairman of the Serb party, and Croatia's President Franjo Tudjman in Zagreb on 8 January 1992 bears this out. During the meeting, Nikola Koljevic suggested the transformation of Bosnia and Herzegovina into "a community of three entities linked by a confederal contract". At the same time, Koljevic put forward confederal-type links between the Croat entity in Bosnia and Herzegovina and Croatia, on the one hand, and between the Serbian entity in Bosnia and Herzegovina and Serbia, on the other (Transcripts on the Partition of Bosnia, *op. cit.*, p. 143).

118. Another attempt at a peaceful solution to the political conflict in Bosnia and Herzegovina occurred a week after the referendum in Bosnia and Herzegovina. The European Union's mediator, José Cutiliero, invited the representatives of all three national groups to negotiations in Lisbon on 18 March 1992. During the negotiations, the three sides agreed on the inviolability of Bosnia and Herzegovina's frontiers and decided to leave the issue of sovereignty for later. All three sides were in agreement that Bosnia and Herzegovina was a republic composed of three constituent peoples, each of which had the right to self-determination. Bosnia and Herzegovina was to have been divided up into cantons along ethnic lines according to the map drawn up on the basis of the compromise agreement sponsored by the European Community. One week after accepting the Lisbon agreement, Mr. Izetbegovic rejected it (S.L. Woodward, *op. cit.*, p. 196).

119. The referendum of 29 February 1992, held without the participation of the Serb population, constituted the basis for international recognition of Bosnia and Herzegovina, which came on 6 April 1992. To be valid, the referendum in Bosnia and Herzegovina should (in the opinion of the Badinter arbitration commission) have shown that a majority of the three constituent peoples of Bosnia and Herzegovina were in favour of the independence of Bosnia and Herzegovina. This was the only sort of referendum that would have been in accordance with the Constitution of Bosnia and Herzegovina. After the referendum, held without Serb participation, the European Union recognized Bosnia and Herzegovina as an independent State on 6 April 2002. With the referendum and international recognition, an armed conflict for control of territory in Bosnia and Herzegovina was clearly imminent (J.P. Maury, *op. cit.*, p. 276).

120. After the recognition of Bosnia and Herzegovina, the Serb population of the country was reduced to the status of a national minority in their own country, where they had been and lived for centuries as one of the three constituent peoples. The arbitration commission chaired by Robert Badinter incidentally indicated in its report of 11 January 1992:

“The Serbian population in Bosnia-Herzegovina and Croatia must therefore be afforded every right accorded to minorities under international convention as well as national and international guarantees consistent with the principles of international law and the provisions of Chapter II of the draft Convention of 4 November 1991, which has been accepted by these Republics . . .”

121. It is difficult to imagine a situation in which a population becomes a national minority within its own State. And yet that was the destiny of the Serbs of Bosnia and Herzegovina. It cannot reasonably be denied that, in such an event, the population concerned must have had a sense of enormous disappointment and historical failure. This failure could have been accepted, but its acceptance would have meant the disappearance of the Serb population of Bosnia and Herzegovina. Problems begin when the refusal to accept failure translates into resistance. This is what happened to the Serbs of Bosnia and Herzegovina, because they did not accept their defeat.

122. The change in the status of the Serbs, from constituent people to national minority, meant for them a loss of their collective identity. The consequence was the creation of boundaries between the Serb, Croat and Muslim entities. The struggle for territory was for the Serbs a struggle to preserve their identity.

123. The same was true in Croatia, where the Serbs were transformed into a national minority by the new Croatian Constitution of 1990, whereas until then they had formed one of the constituent peoples of Croatia along with the Croats, since Croatia had previously been the Republic of Croats and Serbs living in the territory of Croatia. Confronted with their failure to hold on to their historical territory in Croatia, where they had lived for centuries and had even benefited from a special status recognized by the Austro-Hungarian monarchy, the Serbs resigned themselves to their fate and abandoned their property, their land, their identity and their history by leaving Croatia. They fled to Serbia (more than 200,000 people from Krajina expelled during Operation Storm moved to Serbia in August 1995) in the hope of recovering their collective identity.

Resistance to the war inside Serbia

124. As soon as war broke out in Yugoslavia in 1991, the opposition parties had the possibility of confronting the Milosevic régime on its nationalist policies. The opposition parties emphasized the need to maintain the State of Yugoslavia by peaceful means. However, since the régime also claimed to be in favour of the continued existence of Yugoslavia, it was difficult for the opposition to differentiate itself radically from the Government in the domestic political arena. Since the opposition was against the use of force to keep Yugoslavia together, its political arguments against the régime were undermined. The declaration of independence by Croatia and Slovenia and the secession of the two republics from the Yugoslav federation helped to sap the struggle against the régime in power in Serbia. Since the continued existence of Yugoslavia was the best solution for the Serbs with a view to achieving their goal of establishing a national homeland, a question had to be answered by the Serb population, as well as by the Croat population: what would happen if over two million Serbs and several hundred thousand Croats were left outside of their new homelands (in the event of the break-up of Yugoslavia)?

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125. After the elections held in Serbia in December 1990, which were won by the ruling socialist party, with 42.5 per cent of the votes, the opposition, led by the Serbian Renewal Movement, along with the democratic party and a number of smaller parties, organized mass demonstrations on 9 March 1991. The demonstrations took place in the centre of Belgrade.

Around 100,000 people took part in the protests. The opposition's main demand concerned changes to the Serbian Constitution of 1990, which was due to be adopted after the parliamentary election. The opposition also sought an end to the régime's monopoly over the media (notably nationwide TV). The protests ended with fighting between demonstrators and the police, who treated demonstrating citizens with particular brutality. That evening, the régime called in tanks to patrol the boulevards of Belgrade.

126. Once armed conflict broke out in Yugoslavia (Plitvice on 30 March 1991), various Serb parties, led by Belgrade's democratic party, sought to convince the Serbs who had taken up arms in Croatia to negotiate. At the same time, in Serbia, the opposition stepped up its campaign for a peaceful solution to the Yugoslav crisis. The campaign was taken to a large number of towns and villages throughout Serbia, at which the opposition managed to attract an increasing number of people opposed to the war.

127. On 30 June 1991, the democratic party and its parliamentary group in the Serbian Parliament launched an invitation for a conference to find a peaceful outcome to the Yugoslav crisis to all the heads of parliamentary groups in the Yugoslav federation. It is worth noting that 32 of the 36 parliamentary groups invited accepted the invitation.

128. The conference was held in Sarajevo on 21 and 22 August 1991. Dr. Dragoljub Micunović, the Chairman of Belgrade's democratic party, gave the opening speech. He outlined a plan aimed at finding a peaceful solution to the Yugoslav crisis by describing negotiating procedures and techniques. The conference adopted the text of the "Call for Peace", which declared:

"We call on reason, in the name of life. Peace can only be established by people disposed to dialogue, to living alongside one another and working together. We, the parliamentary representatives of all the Yugoslav Republics, here in Sarajevo, have begun discussions to this end." [*Translation by the Registry.*]

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129. Another meeting was to be held on 6 September of the same year, in Sarajevo (just like the first conference). All political parties were due to make public their proposals for a solution to the Yugoslav crisis. However, this conference was not very successful, since the major figures in the war which had already started in Croatia did not attend. The democratic party launched a written version of its project for the political and constitutional structure of Yugoslavia, but there

was no debate, since none of the other representatives had their own proposals. The delegations from Zagreb and Ljubljana did not turn up, so consequently the conference ended on that same day with the approval of a final declaration, in which, this time, the delegates called upon the warring parties in Croatia to abide by the ceasefire agreement and solve the conflict in a peaceful way.

130. Anti-war sentiment gained ground in Serbia, at a time when the conflict between the opposition and the régime intensified. In their various activities, the continued existence of Yugoslavia remained the political goal of the majority of the opposition parties.

The failure of the autumn 1991 mobilization in Serbia

131. On 14 and 15 September 1991, the Yugoslav National Army proclaimed the second phase of mobilization as a result of fighting in Croatia and in response to the outright attack by Croatian forces on the Yugoslav National Army's barracks there. Major disappointment reigned in the General Staff of the Yugoslav National Army, when the reservists refused to respond to the mobilization order.

132. As war spread in Croatia towards the end of August 1991, the Yugoslav army continued to emphasize its role in keeping the two warring sides apart.

133. At the same time, in Croatia, the Yugoslav National Army was increasingly viewed as a Serb force. This attitude prevailed in Bosnia and Herzegovina as well, where the Government decided not to act upon the mobilization call by the military authorities of the Yugoslav army (CIA, *Balkan Battlegrounds*, Washington, 2002, Vol. 1, p. 125).

16 134. The refusal of mobilization by the Government of Bosnia and Herzegovina constitutes an interesting point. To a certain extent, it reflected the situation inside Serbia, where the mobilization order was singularly unsuccessful. At a meeting of the Supreme Defence Council of Yugoslavia, held on 28 September 1991, it was shown that 100,000 reservists called up by the mobilization order had not reported for duty, 50,000 had left the ranks of the Yugoslav army and 40,000 soldiers had refused to go to fight in Croatia. In short, some 200,000 reservists had refused to submit to the mobilization order. The ethnic breakdown of the people who had refused to respond to the mobilization order reflected that of Serbia itself: Serbs 70 per cent, national minorities 30 per cent.

135. The Yugoslav army was confronted by a situation which is an entirely normal consequence of the break-up of a State: when a State breaks up, its army breaks up as well. In fact, it was the dissolution of the army which made the dissolution of the State possible. However, the break-up of an army is not a purely political matter, it is a social issue as well. A large number of people, whose existence depended upon their service in the army, are left without wages, without means of subsistence, without housing, without unemployment benefits and health cover. This was notably the case in those republics which had declared their independence, Slovenia and Croatia, where officers of the Yugoslav National Army were evicted from their quarters and no longer had any income. This caused disputes inside the Government of Yugoslavia, which still formally existed at the time. The Defence Ministry demanded a general mobilization in order to continue fighting in Croatia (the Yugoslav National Army had already withdrawn from Slovenia in the summer of 1991). In this phase, the army was seeking a means of subsistence (see CIA, *op. cit.*, Vol. 2, pp. 175-177).

136. The Yugoslav National Army's aim of maintaining Croatia and Slovenia within the Yugoslav federation began to run counter to the views of the Government of Serbia and Montenegro, which was no longer interested in preserving Yugoslavia as soon as it had become clear that the two republics concerned did not want to remain inside the federation. Bosnia and Herzegovina was thus the only territory outside Serbia and Montenegro where the Yugoslav National Army survived as a military force.

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137. The failure of the mobilization of reservists in Serbia in the autumn of 1991 demonstrated to the Government of the Republic the depth of anti-militarist sentiment prevailing in Serbia. It was the first time in the history of Serbia that a mobilization order had had so little success. This factor made it very difficult to undertake violent action in order to prevent the break-up of the country.

138. After the opposition's mass demonstrations against the régime, in Serbia in the autumn of 1991 the Government was aware that the general mobilization, proposed by the military General Staff, could prompt mass protests by the Serbian population and "political defeat for Milosevic's Government" (CIA, *op. cit.*, Vol. 2, p. 182).

139. The last attempt by the Defence Ministry to take a political decision concerning a general mobilization followed the fall of Vukovar. It then, in effect, suggested that the Presidency of Yugoslavia should decide to launch an attack on Zagreb. It was Milosevic himself who vetoed this proposal (CIA, *op. cit.*, Vol. 2, p. 182).

140. Madam President, Members of the Court, this brief analysis of the resistance in Serbia to the use of force during the break-up of Yugoslavia clearly indicates that Serbia and Montenegro was incapable of being the aggressor in an inter-ethnic conflict in Yugoslavia. The conflict that broke out was not the result of aggression, because, if it had been, the war would have been completely different.

141. Serbia did not mobilize troops, although certain individuals, who happened to come from Bosnia and Herzegovina or Croatia initially (Šeselj, Bokan, Jovic), did organize volunteer units, without any State backing. Similarly, in 1941, when Serbia was occupied by the Germans, volunteer formations were organized to be sent into Bosnia to protect the Serb people from the genocide perpetrated by the Ustaši. Moreover, volunteer units of Croats took part in the war in Bosnia alongside Bosnian Croats and volunteer units from certain Muslim countries fought alongside the Bosnian Muslims.

The formation of military organizations in Bosnia and Herzegovina

142. The political conflict was obviously leading to military conflict. The failed attempts to resolve the political crisis in Yugoslavia amicably and peacefully clearly show this. Arming in secret and military organization among all three ethnic groups in Bosnia and Herzegovina also confirm it.

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143. The interests of the parties in conflict were becoming more and more difficult to reconcile: the Serbs in Bosnia and Herzegovina did not accept the separation of Bosnia and Herzegovina from Yugoslavia, while the Muslims were insisting on a sovereign, independent and integral Bosnia and Herzegovina. It should be emphasized that these interests were not defined exclusively by the political and intellectual elite of these ethnic groups, but were rooted in their national and political consciousness. This is confirmed by the results of the November 1990 elections, when nationalist parties got most of the votes. Similarly it should be noted that the great

majority of Serbs boycotted the referendum on the independence of Bosnia and Herzegovina (March 1992). This large-scale boycott could not have been provoked by the Serb Democratic Party's political campaign. It doubtless resulted from what the Serbs regarded as their national interests. This attitude of the Serbs (opposition to the secession of Bosnia and Herzegovina), accompanied by fear, persuaded them to accept arms from anywhere.

144. The fact that there were weapons, souvenirs of the Second World War, in most houses in Bosnia and Herzegovina should be mentioned. This was doubtless due to the experience of the Second World War, in which unarmed Serbs were an easy prey for the Ustashi.

145. The Yugoslav national army, consisting of officers of all nationalities, was becoming increasingly Serb. This is a fact, but one that can be explained. Croatian and Muslim officers had left the Yugoslav army in order to join new, ethnically-based armed forces. The same can be said of Slovenian officers, who joined the brand new Slovenian army and of Macedonian officers, who joined the newly-constituted Macedonian army. So the Yugoslav national army became a Serb army. Even before the war most of the officers in the Yugoslav national army were of Serb origin, but it should be stressed that most of these Serb officers were Bosnian Serbs. There were two reasons for this: firstly, the Yugoslav national army was created by Tito's army that operated during the Second World War, especially in Bosnia and Herzegovina. Secondly, Yugoslav national army officers came from poor regions in Bosnia and Herzegovina and Croatia, regions populated mainly by Serbs. As committed communists these Serbs chose the army for ideological reasons, but above all for economic reasons, because the army gave them a decent life, which was difficult to find where they lived. This was very relevant to the process of transformation of the Yugoslav national army into a Serb army in Bosnia and Herzegovina.

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146. The multi-ethnic army that was defending the multi-ethnic Yugoslavia as the Yugoslav national army at the beginning of the war in Croatia and Bosnia and Herzegovina became a Serb army through the composition of its troops and officer corps, and as such lined up with the Serbs in the war in Bosnia and Herzegovina. As such it was the target of choice for Muslim and Croat military formations from the beginning of the war. Everywhere in Bosnia and Herzegovina, these formations would surround and attack Yugoslav national army barracks, killing conscripts, often only 18 years old, who were simply doing their compulsory military service.

147. The CIA book states:

“From January through April 1992, the JNA in Bosnia had two priorities. The first was to work [for] and support a peaceful settlement of the political differences among the three ethnic groups. The second, and more important, was to see that the Bosnian Serbs and their position in the republic was secure.” (CIA, *op. cit.*, V-1, p. 128/2.)

148. Once Bosnia and Herzegovina had been recognized as an independent State (on 6 April 1992), the Yugoslav political Government was faced with the issue of withdrawing the Yugoslav national army. It was clear that there was very strong international pressure and that Yugoslavia would have to withdraw the Yugoslav national army from Bosnia and Herzegovina. The risk that this withdrawal represented for the Bosnian Serbs was obvious. However, most of the officers and men in that army were of Serb origin, but since they were from Bosnia and Herzegovina they did not want to leave what was their country. So they chose to stay in Bosnia and Herzegovina near their homes and families.

One of the consequences of the army's withdrawal would have been a great wave of refugees into Serbia and Montenegro. If only the families of Yugoslav national army officers were counted, there would be nearly 200,000 refugees. This was a matter of great concern for the régime in Serbia and for the political and social Serb elite, because small groups of refugees were already arriving in Serbia from Croatia, and also from Bosnia and Herzegovina. It should be stressed that there were Croat and Muslim families, and above all mixed families, Yugoslav families, among these first groups of refugees, seeking refuge in Serbia because they feared war and persecution in Bosnia and Herzegovina, but also in Croatia.

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149. In January, February and March 1992, i.e. before the international recognition of Bosnia and Herzegovina, all officers of Bosnian origin — Croats, Muslims and Serbs — who so wished were transferred to Bosnia and Herzegovina. At the same time all officers from other regions in the former Yugoslavia serving in Bosnia and Herzegovina could be posted elsewhere, and particularly to Serbia or Montenegro. In the end the military remaining in Bosnia and Herzegovina were all citizens of that State.

150. At the same time the Republika Srpska forces were becoming more and more substantial (see CIA, *op. cit.*, pp. 129-130). Thus on 1 April 1992 the Republika Srpska had 60,000 men in territorial defence. These were under the command of municipal staffs. The

Internal Affairs Ministry newly formed in the Republika Srpska (on 1 April 1992) had 15,000 police at its disposal. The Republika Srpska Government was responsible for funding these troops. Later, towards the end of 1993, the Republika Srpska Parliament decided to “transfer responsibility for supporting army units to the communes where they were stationed” (session of the Republika Srpska Parliament, 30-31 December 1993).

151. At the same time (1 April 1992) the Yugoslav national army (JNA) had 110,000 officers and men. According to the CIA report “[t]hese forces were equipped with an estimated 500 tanks, 400 field artillery pieces over 100 mm; 48 multiple rocket launchers and 350 120-mm mortars, some 40 light attack observation helicopters and 30 transport helicopters based in the republic” (CIA, *op. cit.*, V-1, pp. 130-131).

152. In short, the Serb military force in Bosnia and Herzegovina, professional soldiers and territorial defence personnel, had 185,000 men. After the withdrawal of Serbs and Montenegrins born in Serbia and Montenegro (there were between ten and 15,000 of these), the military forces of the Republika Srpska, together with police units, numbered about 200,000.

21 The formation of Bosnian military forces

153. It is understandable that, as the political conflict developed in Bosnia and Herzegovina (1990-1991), the Bosnian Muslims also saw the possibility of transforming the political conflict into a military conflict. At that time the multi-ethnic Yugoslav national army (JNA) still existed in Bosnia and Herzegovina, with the aim of supporting a multi-ethnic Yugoslavia. Despite this, the Bosnian political Government authorized the creation of a military organization within the Democratic Action Party (SDA), the Muslim party at that time. The CIA reports that this military organization was known as the “Patriotic League of Peoples”. On 10 June 1991 this party organized a meeting of the most important Muslim leaders. At this meeting the “Council for National Defence of Muslims” was formed, to organize the military preparations on behalf of the Patriotic League. The purpose of all this was to achieve and defend the independence of Bosnia and Herzegovina (CIA, *op. cit.*, V-1, p. 130).

154. The Yugoslav national army (JNA) intelligence service informed the general staff and the Yugoslav Presidency that a specialized military unit of 50,000 men, 25,000 of whom were armed, had been formed (CIA, *op. cit.*, V-1, p. 130).

155. Madam President, Members of the Court, I would now like to quote from Alija Izetbegovic's speech in 1997:

- “In June 1991 the SDA Council for National Defense was formed. This meeting was attended by about 400 representatives of Bosnians from the entire territory of the former Yugoslavia, primarily from Bosnia and Herzegovina.
- In July 1991 the first military experts (e.g. ex JNA officers) joined the Patriotic League and provided the first directives for the defense of Bosnia and Herzegovina.
- The first truckload of weaponry arrived in August 1991.
- The first military training began in September.
- The first units were formed in October.
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- In December the organizing of personnel and arming of reserve police units of the Bosnia and Herzegovina MUP (Ministry of Internal Affairs) began at the initiative and under the leadership of the Patriotic League.
- In January 1992 the first unit of the Patriotic League, an action that was carried out through the highest organs of Bosnia and Herzegovina.
- In February 1992, at the conference in Mehurici, orders for the staff of the Patriotic League of Bosnia and Herzegovina were defined and issued, and political directives on the principles of defense of Bosnia and Herzegovina were set out. The political goals were: defense of the territory, democracy, multi-ethnic community and human rights.
- In April 1991, after the decision by Bosnia and Herzegovina Presidency that the territorial defense of Bosnia and Herzegovina was the state defense structure, the three high-ranking Territorial Defense officers, who were appointed then joined the command of the Patriotic League of Bosnia and Herzegovina and began commanding the existing structure of the Patriotic League . . .
- At the beginning of the War the Patriotic League of Bosnia and Herzegovina had around 30,000 armed volunteers arranged in units, with an established corps area and commanders. Prior to the war, the Patriotic League, had well developed logistical systems. That system remained the backbone of logistics for the Army of Bosnia and Herzegovina until the end of the war, thanks to SDA state policy and the solidarity of friendly countries in the Islamic world . . .
- If it were not for the Patriotic League of Bosnia and Herzegovina, that would not have been possible. It was the first army of our defense: for it emerged [as] the

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Army of the Republic of Bosnia and Herzegovina . . .” (CIA, *op. cit.*, V-1, pp. 132-133.)

156. When war broke out in Bosnia and Herzegovina, there were already nine regional Bosnian Muslim armed forces commands (Sarajevo, Doboj, Cazin, Prijedor, Livno, Mostar and Sandzak (a region in Serbia inhabited mainly by Muslims). It is important to stress that the commander-in-chief of the Bosnian army was Sefer Halilovic, a former senior officer of the Yugoslav national army, of Serbian (Sandzak) origin. These nine regions were divided into one hundred and three municipal staffs (CIA, *op. cit.*, V-1, p. 132).

157. Since this organization consisted solely of the Muslim population in the regions and municipalities mentioned, military conflicts were triggered by Serbian forces breaking into these Muslim military bases. This was an initial conflict, before there were any conflicts between larger military units. These conflicts gave rise to ethnic movements. As regards territories under Serb control, it is clear that the aim was to drive out the population that formed the basis of the opposing party's military force. That, however, is the purpose of any armed conflict and as such it was the purpose of all parties in the war in Bosnia and Herzegovina in the territories that they controlled.

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Apart from forced ethnic movements, the consequences of military action and the context of war that in themselves give rise to a large-scale exodus of people cannot be overlooked. There was such an exodus from Bosnia and Herzegovina, but also from Serbia and Montenegro, which was suffering the economic consequences of this war.

158. Military operations began with local conflicts between villages and towns which caused many casualties right at the start of the war. The first units committed to action were local units created solely on an ethnic basis. Of course, responsibility for the victims was attributed to the enemy ethnic group. In inter-ethnic wars there is no difference between civilians and military personnel. This is a characteristic of all civil wars and revolutions. It is well known that hatred is aroused in wars of this type, becoming a basis for revenge, which intensifies the violence. All fight against all, neighbours against neighbours, villages against villages. That is why civil wars are always more terrible than international wars, in which conflict is based on the clash of military forces and civilian victims are regarded as collateral damage. Obviously total international wars, especially after the outbreak of the Second World War, have to a large extent blurred this

distinction between the victims of armies and civilian victims. In the twentieth century the civilian population has become the first victim of armed conflict.

Arming the Croats in Bosnia and Herzegovina

159. Towards the end of 1991, the right-wing Croat party (the ultranationalist party) began to establish paramilitary units (the Croat Defence Forces, known as the HOS) in Croatia and those regions of Bosnia and Herzegovina where Croats formed the majority of the population (Western Herzegovina). The chief command centre was set up in Ljubusko (Western Herzegovina) on 3 January 1992, but the Croat armed forces (HOS) were always directed from Zagreb, the capital of Croatia. The commander of the defence of Vukovar, Mile Dedakovic (a former officer of the Yugoslav national army), was appointed to command the Croat armed forces. In March 1992, the Croat armed forces could muster 5,000 armed men (CIA, *op. cit.*, Vol. I, p. 133).

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160. Apart from the Croat armed forces formed by the right-wing party, the Croat Democratic Union, the HDZ (the party in power in Croatia at the time), chaired by the Croatian President Franjo Tudjman, created in 1992 the Croatian Defence Council: HVO (which had the direct support of the Croat army or HV). The Croatian Defence Council quite openly demonstrated its support for a partition of Bosnia and Herzegovina to the extent that it had no major links with the Muslim political and military organizations. Rivalry between the Croatian Defence Council (HVO) and Croat armed forces (HOS) was very intense, leading to the murder of one of the (HOS) Croat armed forces' commanders on 9 August 1992. From that time onwards, the Croatian Defence Council played the leading role among the Croats of Bosnia and Herzegovina.

161. The Croatian Defence Council was established at the beginning of January 1992, although the HDZ (the party led by Tudjman) had already begun to organize paramilitary groups as of the end of the summer of 1991 (CIA, *op. cit.*, Vol. I, p. 134).

162. According to the CIA's book, from which we have already quoted:

“With Zagreb's intensive assistance — and with the example of the 1991 Croatian war to motivate local populations to organize and arm themselves — the HVO units would surface within days of the Bosnian war's beginning, complete with officers, staffs, organization and weapons. Organized and directed from Zagreb, the HVO in 1992 was for all practical purposes a subordinated command of the Croatian Army (HV), directed by HV general Janko Bobetko through former HV officers reassigned to the HVO. The HVO relationship went well beyond the deployment of

allied HV units fighting alongside HVO forces in Bosnia. Not only were HVO and HV forces operating under joint command but the HVO main staff was itself an HV forward command force, established on the 16th of April in Grude at Tudjman's direction. Bobetko personally selected the first HVO commander, former Croatian army Colonel Milivoj Petkovic, and Petkovic's newly established headquarters was simultaneously also an HV command post both officially and in practice. During the entire Bosnian war — but especially during the first several months, the HVO's chain of command, both political and military would run all the way back to Tudjman's desk in Zagreb. When the war began the HVO probably had some 15,000 and perhaps as many as 20,000 troops under arms. They were initially formed as 'Croatian Defense Councils' for each Croat-controlled municipality . . . But would later be organized into battalions and brigades. The Bosnian Croat forces were on average better organized and equipped than their Bosnian early counterparts but still lacked the professionalism and expertise of their JNA and Bosnian Serb Army opponents, and had little armor and artillery. These limitations were to constrain the HVO's performance for the remainder of the war, preventing it from ever becoming a robust fully independent fighting force." (CIA, *op. cit.*, Vol. 1, p. 134.)

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163. This comparative analysis of the formation of armed forces in Bosnia and Herzegovina prompts the following conclusions:

- (A) The arming of military units was organized entirely by the ethnic communities themselves, which established ethnically-based military formations.
- (B) The Serbs and Croats of Bosnia and Herzegovina sought support from their respective sister States, Serbia and Croatia. The Croatian Army maintained a constant presence in Bosnia and Herzegovina throughout the war. The Yugoslav National Army was present until 19 May 1992 and, after that date, the army was only implicated in the war in Bosnia and Herzegovina in sporadic incidents involving violations of the frontiers and territory of the Republic of Serbia by the forces of the central Government of Bosnia and Herzegovina.
- (C) With no neighbouring State on which it could rely for support, the Bosnian Muslim side in the war had no option but to rely on itself for the political and military organization of its army. Nevertheless, Bosnia and Herzegovina was not alone in this conflict, it was aided by certain Muslim countries. In the speech cited above, Alija Izetbegovic made reference to the aid received by Bosnia and Herzegovina for which he expressed his gratitude to the countries of the Muslim world that played a role in the success of organizing the Bosnian Muslim military. Of course, not all Muslim countries were implicated in the war in Bosnia and Herzegovina.

Given that there is no reliable information on the type and amount of aid that the Muslims of Bosnia and Herzegovina received from Islamic countries, I do not wish to lose myself in conjecture over various estimates. Suffice to say that such financial, military and material aid existed. It is

equally evident that in the armed forces of the Muslim community of Bosnia and Herzegovina there were a certain number of volunteers from Islamic countries, who had come to help their Muslim brothers in the war in Bosnia and Herzegovina.

164. The aim of all of these armed formations during the war was to establish control over the territories that the different sides to the conflict viewed as being the territories of their ethnic community.

26 Madam President, I will complete the first part of my presentation today and I respectfully ask you to grant us a break now.

The PRESIDENT: I will. Thank you, Professor Stojanović.

Mr. STOJANOVIĆ: Thank you, Madam President.

The PRESIDENT: The Court will rise for 15 minutes.

The Court adjourned from 11.20 a.m. to 11.35 a.m.

The PRESIDENT: Please be seated. Professor Stojanović, you have the floor.

Mr. STOJANOVIĆ: Madam President, Members of the Court, I shall continue my presentation with an analysis of the armed conflicts in Bosnia and Herzegovina.

Part Four

The armed conflicts in Bosnia and Herzegovina

165. Madam President, Members of the Court, I believe that the armed conflict in Bosnia and Herzegovina was considerably more complex than the way in which the Applicant has presented it. I agree with the opinion of General Sir Michael Rose, who, in his book *Fighting for Peace* (Harvell Press, London, 1998, p. 3) stated that “the situation in Bosnia was not simply that of one nation invading another. It was a civil war about territory in which the Bosnian Croats and the Bosnian Serbs sought to secede from the State and join with their compatriots in neighbouring Croatia and Serbia.” And he continues: “Nevertheless, the ethnic differences in Bosnia which were to result in a three-sided civil war over territory are mirrored elsewhere in the world and the

story of the UN peacekeeping force in Bosnia raises important questions for the future.” (*Ibid.*, p. 7.) On the same page, Sir Michael Rose quotes Edmund Burke, who said that “[c]ivil wars strike deepest of all into the manners of the people. They corrupt morals; they pervert even the natural taste and relish of equity and justice.” As the Commander of the UNPROFOR in Bosnia and Herzegovina, General Rose witnessed events there directly, as he did in the other missions that he accomplished.

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166. What I have just said indicates that the beginning of the war in Bosnia and Herzegovina, following the recognition of Bosnia and Herzegovina’s independence by the European Union and the United States, on 6 and 7 April 1992 respectively, had been prepared in advance. I would even say that the conflict was expected, since all sides concerned were establishing military units and arming their populations. Historical experience shows that arms procurement is the most important indicator of preparations for war and especially when it is raised and quantitatively exceeds the normal level necessary for the maintenance of the armed forces in peacetime. In the case of Yugoslavia, this procurement took place in the middle of an economic crisis and did so in spite of this crisis and of growing poverty. Moreover, each of the ethnic/national groups, which had been in conflict for some time, armed their own communities.

167. Madam President, Members of the Court, I think that I have clearly illustrated the process of arming and military organization of the three ethnic/national groups in Bosnia and Herzegovina. I must emphasize that all three of these groups benefited from outside support: the Serbs from Serbia, the Croats from Croatia and the Bosnian Muslims from certain Muslim countries of the Middle East. The way that armament was organized clearly shows that the preparations for armed conflict paved the way for armed, inter-ethnic conflict. There were, however, other features to this conflict, for example, social factors, but the fundamental, underlying characteristic was that of conquest and defence of territory. The Bosnian Muslims sought to control the whole of Bosnia and Herzegovina, whereas the Serbs and Croats wished to control the territories they considered to be theirs. The reason for the beginning of the conflict in Bosnia and Herzegovina, the reason for the war in Bosnia and Herzegovina, was thus the struggle for territory. This struggle for territory made the situation even more complicated and the search for a peaceful solution more arduous.

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168. The creation of the respective entities at the end of the conflict is the clearest evidence that the war in Bosnia and Herzegovina was a war about territory. The Serbs and the Croats have never denied the Muslims the right to have a territory over which they would have sovereign and independent power. The only issue was the amount of territory that the Serbs and the Croats were ready to hand over to Bosnia's Muslims. Peace could be achieved at Dayton because the territorial entities, guaranteed by international agreement, were formed, thereby settling the relationships between the ethnic/national groups in Bosnia and Herzegovina. Consequently, a terrible, destructive war, which caused enormous suffering and so many victims, was brought to a close by a peace settlement that was remarkably close to the solutions proposed before the war began. No ethnic/national group won the war, but all three of them obtained territories in which they could organize more or less autonomous political power structures.

169. The war in Bosnia and Herzegovina was a civil war between the ethnic/national groups, as it was these groups which took part in the war, but the objectives of this war went no further than territory and control over territory. The destruction of a group was not the aim of this war, it was never contemplated in the war in Bosnia and Herzegovina. In Bosnia and Herzegovina, mobilization was widely supported, but only within individual ethnic/national groups. We cannot show that there was resistance to the calls for mobilization by national structures in Bosnia and Herzegovina, but we can prove that certain Serbs, certain Croats and certain Muslims chose to move to Serbia to avoid the war. Some of them stayed on and still live there to this day. Equally, a certain number of mixed families went to live in Serbia from Croatia and Bosnia, where the pressure on them was becoming too great.

170. There was no mobilization of the population in Serbia during the war in Bosnia and Herzegovina. An insignificant number of groups of volunteers did go to Bosnia and Herzegovina to take part in the conflict and these groups were led by individuals who came from Bosnia and Herzegovina originally. Consequently, the war in Bosnia and Herzegovina was a local war, involving the ethnic/national groups that lived in the territory of Bosnia and Herzegovina, which was, we should not forget, a State comprising Muslims, Serbs and Croats. The members of national groups living elsewhere, notably in Serbia, had no political, moral or psychological will to involve themselves in a war which was not their own. Thus over 20,000 Muslims lived in Belgrade

throughout the war and continue to live there now. These Muslims were not subjected to any discrimination and most of them had no wish to go to fight alongside the Bosnian Muslims in Bosnia and Herzegovina.

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171. Consequently, I regard the war in Bosnia and Herzegovina as having been an internal, civil war, the aim of which was to control territory. This war was in no respect an attempt by the Serb people or the State of Serbia to destroy another ethnic, national or religious group. This war cannot be characterized in any other way than as a civil war between the citizens of Bosnia and Herzegovina belonging to the three main ethnic groups in order to occupy territory and establish the boundaries of their respective entities.

172. As evidence that the war in Bosnia and Herzegovina was an internal civil war fought over territory, I will now provide a short history of the conflicts which occurred in Bosnia and Herzegovina in the years from 1992 to 1995 between the three national groups which had lived there for centuries.

The war between the Bosnian Muslims and the Croats

173. An appalling war broke out between the Croats and Muslims in early 1993. According to the CIA report:

“After a week of rising interethnic tensions across the entire Central Bosnian area, the two ostensible allies clashed openly on 12 January 1993, in Gornji Vacuf [a town in Bosnia and Herzegovina] — a predominantly Muslim town in what had been designated a Croat-majority canton. HVO forces firing from commanding positions in the hills to the southeast began a drive to force the Muslim defenders out of most of the town.” (CIA, *op. cit.*, p. 190.)

174. The armed conflict between the Croats and the Muslims rapidly spread in January, February and March 1993. Although the Croatian President, Franjo Tudjman, on 28 March 1993 published an agreement entered into with the Muslims of Bosnia establishing a joint command for the Croatian forces (HVO) and the Muslim forces (the army of Bosnia and Herzegovina), these two allied armies started fighting each other again a mere three weeks after the agreement was signed. In effect, the agreement failed to put an end to the war between the Croats and the Bosnian Muslims.

175. Not later than 16 April 1993, Croat forces entered the village of Ahmici in the Lasva river valley and committed atrocities there. Events in the war between the Croats and the Muslims have been described in the CIA report:

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“When British United Nations peacekeepers arrived in the village on 19 April to investigate Bosnian charges of a massacre, they found that the entire village had been systematically destroyed. The main mosque had been burned and its minaret felled by explosives detonated at the base. The majority of the houses had also been put to the torch, their roofs collapsed by the flames. Only Croat-owned buildings remained intact. Burned-out cars, blackened private driveways, and livestock lay dead in the streets and gardens. An entire family of seven was found dead in one house, including two young children who had almost certainly burned to death . . .” (CIA, *op. cit.*, p. 192.)

176. The intensity of the conflict between the Croats and the Muslims is also exemplified by the fate of the city of Mostar, where, according to the Applicant, Serbs committed genocide against Muslims. However, the truth about Mostar is something else entirely, because at the beginning of the Croat-Muslim conflict, Serbs, who had accounted for approximately 20 per cent of Mostar’s pre-war population, were no longer to be found there. Ensuing events in Mostar are best described in the CIA report, according to which:

“By the late summer of 1993, Mostar became the most divided city in divided Bosnia-Herzegovina. Before the war the greater Mostar metropolitan area’s population of some 120,000 citizens showed a very marginal Muslim plurality: 35 per cent Muslims, 34 per cent Croats, and 19 per cent Serbs. Within urban Mostar itself, there [was] a higher fraction of Muslims — 52 per cent. When the ethnic violence cut through the city centre, Mostar’s roughly 55,000 Muslim townspeople found themselves squeezed into the smaller and besieged East Mostar section, forced off the western bank of the river and with only a medieval footbridge . . . linking the two halves of the city.” (CIA, *op. cit.*, p. 200.)

177. The conflict between Croats and Muslims, characterized by a series of offensives and counter-offensives on both sides, success of varying degrees see-sawing between them, lasted until 23 February 1994, when leaders from the central Government in Sarajevo and the Government of the Croat entity Herceg Bosna — that is one name for the area considered by the Croats to be theirs — signed a ceasefire. One month later an agreement uniting the two armies was signed and the former foes became allies in the war against the Serbs.

178. Because the war began as a war between the Serbs, on one side, and the Croats and Muslims, on the other, the conflict between the Muslims and Croats transformed it into a three-way war. In the war between the Croats and Muslims, the same types of events took place as those

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which we saw in the war between Muslims and Serbs. Exactly the same actions as those which the Applicant said were specific to the war between Serbs and non-Serbs took place in the war between the Croats and Muslims. Like all civil wars, this one involved the full panoply of ills: murder, rape, torture, the destruction of cultural, religious and historical property, the forced transfer and deportation of the population. Authors of works on the conflict between Croats and Muslims — for example, Ivica Milivončić in her book *Sealed Crime*, published in 1998 in Zagreb (Centre for the Collection of Documentation and Analysis of Information on the Homeland War (www.hic.hr/ratni-zlocini/B-H/tab00.JPG)) — cite the figure of 140,000 Croats displaced and deported during the war with the Muslims.

During the war between the Croats and Muslims, the Serbs consolidated their positions and used the war to consolidate their territories under threat from Croat or Muslim forces and, particularly, to reinforce the strategically important corridor linking Bosanska Krajina (western Bosnia) to eastern Bosnia. Following this strategic approach, and seeking to maintain balance, the Republika Srpska army helped both the Croats and the Muslims in their fight against each other. The support provided to Muslims in their war against the Croats shows that there was never any intention to destroy the Muslims as a group. If there had been such an intention, the Serbs would have provided support exclusively to the Croats or they would simply have used the war between the Muslims and Croats to attack both sides. Yet, although they could have done so, the Serbs never carried out such an attack and never had any intention to do so.

179. Madam President, Members of the Court, I do not wish to describe all the atrocities committed during the war between Croats and Muslims in 1993 and 1994. I am citing that conflict now, before this Court, in order to show you the scale of the tragedy suffered by all peoples in Bosnia and Herzegovina. The Applicant in its written pleadings has offered a simplistic vision of the war and of the situation in Bosnia and Herzegovina because it has wished to avoid showing the complexity of the relations between the ethnic-national groups in Bosnia and Herzegovina, in order to hide the real nature and causes of this internal civil war among the peoples of Bosnia and Herzegovina.

The inter-Muslim armed conflict

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180. Another tragic aspect, one among so many tragedies in Bosnia and Herzegovina, was the armed conflict between the two Muslim factions, the conflict between the Government forces loyal to Alija Izetbegovic and the forces faithful to Fikret Abdic, the undisputed leader of the Muslims of western Bosnia.

181. Fikret Abdic's moderate politics led him to oppose his former ally Alija Izetbegovic and his radicalism. The conflict between Alija Izetbegovic and Fikret Abdic intensified after 21 June 1993; the reason for this was the negotiations arranged by the European Union in Geneva in connection with the Vance-Stoltenberg plan, which was intended to establish peace in Bosnia and Herzegovina. As one of the members of the Presidency of Bosnia and Herzegovina, Fikret Abdic wanted, against the wishes of Alija Izetbegovic, to attend the negotiations in Geneva. The political dispute between Alija Izetbegovic and Fikret Abdic culminated in Abdic's removal from the Presidency. Fikret Abdic then left Sarajevo and returned to Bihac, the city where he had many supporters and where he proclaimed the autonomous region of western Bosnia (APZB). Armed groups rapidly sprang up in the area, because part of the 5th Corps of the army of Bosnia and Herzegovina, which was stationed at Bihac, split off from the Muslim governmental forces and came under the command of Fikret Abdic. Fikret Abdic's forces immediately entered into armed conflict with the rest of the 5th Corps of the army of Bosnia and Herzegovina, which remained loyal to Alija Izetbegovic. The CIA describes the situation in Bihac as follows in its report:

“Open violence between the rival forces began in the early days of October, as for the first time Muslims fought not only Serbs and Croats but other Muslims. UNPROFOR attempted to negotiate a truce between the two Muslim factions before the violence escalated out of control, but the Abdic representatives refused to attend the talks.” (CIA, *op. cit.*, p. 188.)

182. There was a military logic to this conflict, as there was to the one between Muslims and Croats, and it lasted until August 1995.

183. During the conflict between the Muslim forces loyal to Alija Izetbegovic and those loyal to Fikret Abdic, Republika Srpska supported the moderate approach represented by Fikret Abdic. An agreement providing for mutual recognition between Republika Srpska, represented by Radovan Karadzic, and the autonomous region of western Bosnia, represented by Fikret Abdic, was entered into in October 1993. Republika Srpska and the autonomous region of

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western Bosnia had economic dealings with each other and maintained friendly relations until the end of the war and the definitive defeat of Fikret Abdic's forces. In effect, the autonomous region of western Bosnia, a Muslim area governed by Fikret Abdic, a Muslim but a political opponent of Alija Izetbegovic, was economically, politically and militarily allied with Republika Srpska. On a number of occasions, several thousand civilians, and Muslim soldiers as well, supporters of Fikret Abdic, sought shelter with Bosnian or Croatian Serbs from attacks by Muslim forces loyal to Alija Izetbegovic. These Muslim supporters of Fikret Abdic were always welcomed and protected by the Serbs both in Republika Srpska in Bosnia and Herzegovina and in Republika Srpska Krajina in Croatia.

The armed conflict between Muslims and Serbs

184. The conflict between Serbs and Muslims in this all-embracing war, in which everybody was against everybody else, was no different from the other conflicts occurring in the territory of Bosnia and Herzegovina. At the very beginning of the war, the Serbs succeeded in seizing control of most of the areas which they wished to control.

Thus, in late 1992 and in any event by 1993, the Serbs in Republika Srpska controlled the territories which they considered to be their own. That is why the Serbs were prepared, at that time, to end the war. On the other side, the Muslims insisted on pursuing the war, precisely in order to seize territories under Serb control. The goal of the Muslims and later the Croat-Muslim federation was exactly the same as that of the Bosnian Serbs: to take and control territory. This fact is confirmed by the report by the Netherlands Institute for War Documentation, according to which:

“Sarajevo defenders — initially numbering perhaps 10,000 to 15,000 armed personnel of all types, with only a few heavy weapons and very limited ammunition — were a motley lot . . . After a series of inconclusive skirmishes, the Bosnian Government attempted its first major offensive operation from within the city on 8 June [this means 1992]. Bosnian Army forces mounted several simultaneous attacks aiming to capture four critical hilltop positions overlooking the city centre . . .”

Later, in 1993, Sarajevo was to become a security zone, proclaimed by the United Nations Security Council, but this did not prevent the army of Bosnia and Herzegovina from expanding the military

forces in Sarajevo to 45,000 men in the city itself, or 70,000 if the positions held by the army in Bosnia and Herzegovina around Sarajevo are included.

34 185. Thus, from 1993, the Muslims and later the Federation tried by all possible means to keep the conflict alive and insisted on its continuation in order to extend their control over territory which they considered to be theirs. General Sir Michael Rose expressed the following opinion about the policy of the Bosnian Muslims during his stay in Bosnia and Herzegovina:

“By mid-1994 the Bosnian Government had undoubtedly ceased to support the peacekeeping efforts of the UN, believing that a ceasefire might turn into a permanent freezing of the conflict line which would then result in an unfair division of the country. It therefore ordered its army to move to offensive operations to recover territory lost in previous battles with the Serbs, thus bringing it into confrontation with the UN whose job it was to restore peace in the country . . . The Bosnian Army had an additional aim of getting the US and NATO committed to the war on the ground . . . UN peacekeeping efforts to halt the fighting were clearly an obstacle to their endeavours and by 1994 it became obvious to us in Sarajevo that the UN primary [goal] to alleviate the suffering of the people was of less consequence to Bosnia’s leaders than the achievement of their own political goal.” (*Op. cit.*, p. 9.)

186. The Sarajevo Government used all possible means to achieve military victory in the war, including security zones which, contrary to what their name might suggest, were never demilitarized and, as a result, were used as military bases by units of the army of Bosnia and Herzegovina. They launched attacks from those zones on the armed forces of the Bosnian Serbs and also on neighbouring Serb-inhabited villages, thereby inflicting not only losses on the army of Republika Srpska but also great suffering on the Serb civilian population. These security zones were established in April-May 1993 in Srebrenica, Sarajevo, Tuzla, Zepa, Gorazde and Bihac. The CIA described the military situation in Srebrenica, which had supposedly been demilitarized, in its report, as follows:

“Under the terms of the UNSC resolution as finally written, the Srebrenica area was to become a demilitarized zone. The Bosnian Army forces in the Srebrenica enclave were supposed to turn in all their weapons at UN-supervised control points, while UNPROFOR was supposed to enforce a permanent cease-fire around the enclave, supervise the enclave’s demilitarization, and respond to any Serb attacks. Neither provision really came to pass as originally intended.” (CIA, *op. cit.*, Vol. I, pp. 319-320.)

For example, the general staff of the 28th Division of the army of Bosnia and Herzegovina was in Srebrenica. According to testimony by the Commander-in-Chief of the army of Bosnia and Herzegovina, General Hadzihasanovic, at the Krstic trial, the 28th Division had a force of over

35 5,000 men in Srebrenica. Also, the 5th Corps of the army of Bosnia and Herzegovina had its headquarters at Bihac, which was also in a security zone; Tuzla, another security zone, was the headquarters of the 2nd Corps of the army of Bosnia and Herzegovina. Finally, the Gorazde security zone was used for armed attacks on the Serbs. This fact was noted in the CIA report, which states:

“After some early sparring, the Government troops launched a major offensive in late July, seizing the passage to Gorazde and pushing VRS troops out of Trnovo . . . Although Serb forces won the first round of fighting, seizing most of Rogatica municipality and positions southeast of Visegrad, a series of Bosnian Army attacks from late August to November retook key territory around Visegrad.” (Gorazde, Istočna Bosna, July 1992, CIA, p. 151.)

187. The situation was no different in 1995, the year which saw the army of Bosnia and Herzegovina, in co-operation with its once-again ally, the Bosnian Croats, but also with the army of the Republic of Croatia, conquer areas which they considered their own. This objective finally having been achieved, a peace agreement became possible and this became a reality in Dayton. For example, we shall cite some instances of armed attacks and offensives carried out by the army of Bosnia and Herzegovina and the Croat forces in 1995, as reported by the Netherlands Institute for War Documentation:

1 May 1995: Croat forces take advantage of the offensive in the area of western Slavonia to attack Serb positions in Bosnia and Herzegovina:

“Four months cease-fire ends and fights escalate. Start of the Croatian offensive, ‘Operation Flash’, to retake western Slavonia and launch attacks on 3 fronts against Krajina Serbs. 2 Croatian MiG-21s attack key bridge on Sava river linking Croatia to Bosnia. Sniping increases along Sniper Alley. Serbs also shell village of Pazaric (10 miles SW of Sarajevo) killing 2. More fighting around Brcko as Croatian government forces shell corridor. Government troops come under Serb attack in corridor while other government forces launch attack against Serb communication tower in Majevisa hills (S. of Brcko).”

5 May 1995: troops of the central Government of Bosnia and Herzegovina attack the area of Turbe in Bosnia and Herzegovina.

15 June 1995: forces of the Federal Government attack Serb positions in Ilijas and Vogosca and on the Teslia-Doboj-Banja Luka road.

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27 July 1995: Croat forces attack western areas in Bosnia: “HVO forces advancing along Tomislavgrad-Grahovo line, and in Livno region, now within 4 km of Glamoc and 8 km from Grahovo. 250 Serbs flee to Knin, while Muslim refugees in north now number 8,000 in Bihac.”

12 August 1995: Croat forces attack Serbs in Herzegovina: “Croatian forces launch new attack on Serbs near Dubrovnik, Serbs fleeing from Trebinje inside Bosnia. Bosnian Government forces pushing towards Donji Vakuf, Bosanska Krupa, and Prijedor with Bosnian Croatian forces providing some artillery support (1,300 explosions in 3 hr period).”

188. The definitive conclusion which follows from the presentation of the chronology of events in Bosnia and Herzegovina clearly shows that the war in Bosnia and Herzegovina was a typical war, having as its sole objective capturing and controlling territories which the various national groups considered to be theirs for various reasons, the most important of which being historical. This war objective was definitively confirmed by the Dayton Agreement.

The victims of the conflict

189. All three parties suffered casualties during the conflict in Bosnia and Herzegovina. The victims were subjected to all kinds of violence, some being killed, others displaced. In order to obtain a true picture of this conflict, the total number of persons killed needs to be known. Unfortunately the Applicant has not even tried to establish the precise number of victims, but has not hesitated to use various sources, usually its own, in seeking to increase the number of victims in order to persuade the Court that genocide was committed against the Muslims of Bosnia and Herzegovina.

190. Thus Bosnia and Herzegovina states in its Application:

“Not since the end of the Second World War and the revelations of the horrors of Nazi Germany’s ‘Final Solution’ has Europe witnessed the utter destruction of a People, for no other reason than they belong to a particular national, ethnical, racial, and religious group as such. The abominable crimes taking place in the Republic of Bosnia-Herzegovina at this time can be called by only one name: genocide.” (Application, 20 March 1993, p. 3.)

The Applicant warned of “the destruction of the Bosnian people” and claimed that the people of the State of Bosnia and Herzegovina were suffering genocide at the hands of Yugoslavia.

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191. And in the Memorial the Applicant continues:

“This litigation can have but one redeeming aspect. It is within the power of the Court to lift the Genocide Convention from the dusty abstraction of law libraries and pious museums and deploy it as an effective shield for present and future generations . . . [T]his Court cannot revive the approximately 200,000 to 250,000 human beings who already have died . . .” (MBH, 15 April 1994.)

192. Also in the Memorial (15 April 1994, para. 2.1.0.8), the Applicant claims “that the total number of people killed, mainly Muslim but also Croat is around a quarter of a million . . .”. The Applicant further states that these figures were compiled by the Bosnia and Herzegovina Institute for Public Health in February 1994, so these figures only relate to the period from 1992 to February 1994, and even in this period the Applicant cites figures that could never be confirmed, although the war lasted as long again as the period to which these figures relate. According to these figures, which relate to 61 municipalities, accounting for 65 per cent of the territory of Bosnia and Herzegovina, it is contended that there were in Bosnia and Herzegovina up to February 1994:

- 142,334 deaths (of whom 16,510 were children);
- 161,755 injured (of whom 33,734 were children);
- 72,282 seriously injured (of whom 18,056 were children);
- 20,000 rapes at least;
- 2.6 million refugees and displaced persons;
- 500 mosques destroyed at least.

193. Madam President, Members of the Court, Serbia and Montenegro is accused of genocide, and is under an obligation to establish the truth. The Serb people and the State of Serbia and Montenegro sympathize with all the victims of this dreadful conflict irrespective of their national, ethnic or religious affiliations; they sympathize with Croats, Bosnian Muslims and Serbs, with all those who have suffered in this tragic and appalling civil war and regret that they are obliged to analyse figures, which in a sense reduces the sufferings of human beings, and human beings themselves, to faceless statistics. I ask you in advance to forgive me for this analysis that I have to carry out.

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194. I am obliged to enter into this debate on the number of victims because recent researches by the Sarajevo Research and Documentation Centre reveal a picture quite different from that presented by the Applicant. The number of victims does not reach that claimed by the Applicant; it is far smaller. At a conference in Banja Luka on 15 December last

Mr. Mirsad Tokaca, President of the above-mentioned Centre, who is a Bosnian Muslim, gave the following information: the Centre established that 93,837 persons of all nationalities (Muslims, Croats and Serbs) had been killed during the war in Bosnia and Herzegovina. Moreover, this number includes both civilian victims and military killed in action. Mr. Tokaca then stated that among those killed, 30,173 were Muslim fighters and 35,514 were Muslim civilians. Although it is possible that the total number of victims may rise, the total, according to Tokaca, is unlikely to exceed 100,000. So we are a very long way from the figures put forward by the Applicant, who would have us believe that 142,334 people were killed in the first part of the war alone, up to February 1994.

195. Mr. Tokaca's researches are in accordance with reports and testimony by experts before the Tribunal for the former Yugoslavia. Moreover, these researches show that a large number of victims died in combat. Unfortunately this research has not established the number of victims in each individual combat: between Muslims and Croats, between Muslims and Muslims, between Croats and Serbs and between Muslims and Croats. In all likelihood, it is not even possible to establish exactly how many victims there were in each of these conflicts. The complexity of the conflict in Bosnia and Herzegovina from 1992 to 1995 is such that it is best described by Hobbes's maxim *bellum omnium contra omnes*.

Ethnic homogenization

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196. As regards displacement of the population, I cannot lay before you all the cases of voluntary and forced displacement of the Serb and non-Serb population from their homes. It is the direct consequence of the armed conflict, but also of the terrible economic situation and, of course, the policy conducted by the parties in power. I have said repeatedly that all parties to the conflict were waging war in order to establish control over territories. The best evidence of this can be found in the sources cited by my distinguished colleague Maître van den Biesen, namely Mrs. Ewa Tabeau's work used in Slobodan Milosevic's trial before the Tribunal for the former Yugoslavia. According to Mrs. Tabeau, the ethnic structure of the population in Bosnia and Herzegovina in 1997 (after the war) was almost the same as it was in 1991, before it. Thus before the war the non-Serb population accounted for 67.8 per cent of the population of Bosnia and

Herzegovina; after the war the figure was 64.7 per cent. However, the percentage of Muslims allegedly victims of genocide in Bosnia and Herzegovina increased, because before the war Muslims accounted for 42.2 per cent of the total population in 1991, whereas after the war the figure was 45.5 per cent of the total population in Bosnia and Herzegovina. You have a graph of these data in your folder. Madam President, Members of the Court, it is impossible that the group that was allegedly a victim of genocide could have increased its percentage presence in the territory where this genocide was allegedly committed. Because of the misconceived comparison drawn by Professor Franck, who would have us believe that the events in Bosnia and Herzegovina reminded him of the holocaust, when he stated in his address of 2 March 2006: “Do these pictures remind you — as I am afraid they remind me — of the burnt-out Synagogues of Berlin and Frankfurt after Kristallnacht”, I am compelled once again to analyse the number of victims and to say that nine million Jews had been living in Europe before the Second World War. Afterwards there were only three million. So, Madam President, Members of the Court, six million Jews, 67 per cent of the Jewish population of Europe, perished during the Second World War. The war in Bosnia and Herzegovina, despite all its atrocities, certainly cannot be compared to the insanity of the Nazis.

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197. On the other hand no one can dispute that ethnic homogenization was carried out in Bosnia and Herzegovina in the war from 1992 to 1995. This, however, was not a unilateral policy, still less unilateral ethnic cleansing planned by the Serbs. Neither is it true that throughout the war the Muslims were aiming to create a multi-ethnic society, which is what our distinguished colleague Ms Laura Dauban sought to demonstrate through the words of Haris Silajdzic, the Prime Minister of Bosnia and Herzegovina, who stated in 1995: “Our history is our guarantee. Our credibility is our history, the history of this conflict in which these authorities have demonstrated maximum tolerance even at the most difficult moments . . . There are probably some exceptions that probably only confirm the rule.” Doubt must be cast upon these words and their purpose simply because the percentage of Serbs living in territories controlled by the Federation before the war was 18.5 per cent. After the war only 1.9 per cent of Serbs still lived there. The situation of Serbs in the Federation was identical to that of non-Serbs in Republika Srpska. This does not excuse the criminal acts committed, but does clarify the situation in Bosnia and Herzegovina. As I

have said, this war was a war of all against all. Contrary to the Applicant's contention, this war produced victims in all communities and throughout the territory of Bosnia and Herzegovina.

198. The Applicant claims that most displaced persons and refugees were Muslims, and accordingly concludes that such numbers of Muslim victims of ethnic cleansing amounted to genocide. The facts are quite different. According to Ewa Tabeau's report, the number of refugees and displaced persons conforms to the ethnic structure of the population in Bosnia and Herzegovina as it was before the war. Thus Muslims, accounting for 44 per cent of the population of Bosnia and Herzegovina before the war, accounted for 46 per cent of the refugees and displaced persons. Serbs, 31 per cent of the population of Bosnia and Herzegovina before the war, accounted for 32 per cent of refugees and displaced persons.

199. I am defending my State, Serbia and Montenegro, against allegations of genocide, and I do not intend to accuse anyone of crimes committed against Serbs during that terrible war. I do not think that the crimes of one party can excuse the crimes of another. However, and solely to show what the true nature of this war was, I must give a brief account of crimes against Serb civilians in territories controlled by the Sarajevo Government.

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200. The first refugees from the territory of Bosnia and Herzegovina were Serbs from Bosanski Brod, Sijekovac and Kupres. Since refugees provide convincing evidence of a systematic policy of ethnic homogenization of territories which could be implemented only by movements of populations which no one will deny is often forcible, this seems an appropriate place to cite part of the report by the United Nations Special Rapporteur, who states that Serbia had taken in some 445,000 refugees, a majority of whom (235,000, i.e., 53 per cent) were from Bosnia and Herzegovina. Most of these refugees seeking safety in Serbia were Serbs (80 per cent), but 7.8 per cent of all refugees seeking safety in Serbia were Muslims. The number that I have just cited, 445,000 refugees, 235,000 coming from Bosnia and Herzegovina, is the number of refugees taken in by Serbia up to 1993 (United Nations, Sixth Periodic Report E/CN.4/1994/110, 28 February 1994). This number does not include the number of refugees going to Montenegro, nor the much greater number coming to Serbia in 1995 after the major Croat and Muslim offensives during which the entire Serb population was expelled, for example, from places like

Grahovo, Glamoc, Drvar and Bosanski Petrovac, to name only towns and villages in Bosnia and Herzegovina in which Serbs accounted for about 90 per cent of the population before the war.

201. Serbia took in a great number of refugees during the war in Bosnia and Herzegovina. Serbia and Montenegro is accused before this Court of ethnic cleansing which, according to the Applicant, amounts to genocide; Serbia was, and remains today, the State that took in the greatest number of refugees from the conflict that is before this Court. If these refugees were Muslims, how is it possible that that State, Serbia and Montenegro, which indisputably helped them, can be accused of genocide against the same group to which it gave all the assistance of which it was capable under the difficult conditions that it itself had to bear? If these refugees were Serbs, how can it be maintained that the Serbs dominated the non-Serbs in Bosnia and Herzegovina? Madam President, Members of the Court, I have no wish to understate anyone's responsibility or anyone's sufferings, but Serbia and Montenegro has never sought to destroy the Muslim or Croat people, it has never sought to destroy a national, ethnic, racial or religious group. It was overwhelmed by the terrible sufferings of the refugees from neighbouring countries that it took in, never asking itself what their nationality, their religion or their ethnic group was. My colleague Vladimir Cvetkovic will go into greater detail in his presentation.

202. It is therefore obvious that ethnic homogenization was one of the consequences of all the wars in the territories of the former Yugoslavia, above all because of the country's extremely complex ethnic structure.

203. It is undeniable that homogenization was in part the result of migration of the population, which was admittedly forcible but made so by the context of the war, by the fighting, by poverty and by the insecurity inherent in any war. It is also true that the parties to the conflict went to great lengths to displace the population by force and used criminal methods; first, however, this policy was pursued by all parties to the conflict, and secondly, despite the fact that criminal methods were used and these acts can admittedly amount to war crimes and sometimes to crimes against humanity, in no case do they amount to genocide.

Conclusion

204. The war in Bosnia and Herzegovina was ended by the Dayton Peace Accord, after lengthy negotiations. Bosnia and Herzegovina survived as a State consisting of two entities: Republika Srpska and the Croat-Muslim Federation. The Accord also contains the Constitution of Bosnia and Herzegovina, which confirmed this arrangement. That Constitution is still in force.

205. The nature of the war in Bosnia and Herzegovina was not defined by the Dayton Accord, but it notes that this war was “a tragic event”. And if I may add, this to me is the best definition given of the war in Bosnia and Herzegovina. Let us say that it is the most precise definition of that war.

206. The Dayton Accord requires all participants in the war to co-operate with the International Criminal Tribunal for the former Yugoslavia. In other words, the Dayton Accord calls for individual responsibility to be established. On the other hand, the Accord is silent on any collective responsibility and on State responsibility.

43 207. I am absolutely certain that war broke out in Bosnia and Herzegovina because of the apparently irreconcilable interests of the parties in conflict. Those interests seemed to be irreconcilable because of the obstinacy of the leaders of the ethno-nationalist groups, although in reality they were not.

208. On the one hand Alija Izetbegovic, the Muslim leader, was convinced that the only form acceptable to Bosnia and Herzegovina was the unitary State without regional and local divisions, although these divisions were proposed by the 1992 Cutiliero plan.

209. On the other hand the Serbs in Bosnia and Herzegovina wanted the creation of a Serb territory that would unite with Serbia, or which would be in a federal or confederal relationship with the other ethno-nationalist territories in Bosnia and Herzegovina.

210. Lastly, the Croats wanted the creation of a Croat territory that would unite with Croatia, or which would be in a federal or confederal relationship with the other ethno-nationalist territories in Bosnia and Herzegovina.

211. Of course, neither Serbs nor Croats could agree on the extent of the territories that they wished to control. Since none of the parties was ready to accept a compromise, the war broke out.

212. The basis of this war was a struggle for territories, and also a struggle for power. It is because of the struggle for power that the conflict between the parties broke out.

213. When an internal civil war starts, fear takes hold everywhere; that fear explains, though it does not justify, many crimes committed in Bosnia and Herzegovina.

214. Fear among the Serbs was accounted for by the recollection of crimes committed by the Ustashi during the Second World War. Bosnia and Herzegovina was then an integral part of the independent Croat State and some Bosnian Muslims were allies of the Ustashi. Two SS divisions were created in Bosnia and Herzegovina, Handzar and the 13th Muslim division. The Serbs' fear was not just a matter of history, it lived on in the memories of those who were lucky enough to survive the Second World War.

215. Madam President, Members of the Court, I have said and I repeat, fear and bad memories cannot excuse or justify the crimes committed, but they can explain them. I think that the history of Bosnia and Herzegovina and the collective memory of its peoples are too full of painful memories, and that they should look to the future. So I return to the proposal that I made in
44 my preliminary statement regarding the process of reconciliation. Of course, each of the peoples living in Bosnia and Herzegovina should face up to its own history and the crimes perpetrated. Thank you, Madam President, Members of the Court, I have now completed my pleadings.

The PRESIDENT: Thank you, Professor Stojanović. The Court will now rise and the oral pleadings of Serbia and Montenegro will resume at 10 o'clock on Monday morning.

The Court rose at 12.55 p.m.
