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**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2014

Public sitting

held on Thursday 13 March 2014, at 10 a.m., at the Peace Palace,

President Tomka presiding,

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

VERBATIM RECORD

ANNÉE 2014

Audience publique

tenue le jeudi 13 mars 2014, à 10 heures, au Palais de la Paix,

sous la présidence de M. Tomka, président,

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

COMPTE RENDU

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

 Registrar Couvreur

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

M. Couvreur, greffier

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The PRESIDENT: Good morning. Please be seated. The sitting is open. We will hear this morning Serbia presenting its views on the counter-claim. For reasons explained to me, Judges Abraham and Skotnikov are not able to sit this morning. Mr. Obradović, you have the floor.

Mr. OBRADOVIĆ: Thank you, Mr. President.

OPERATION STORM: FACTS AND EVIDENCE

1. Allow me to continue today with the presentation of the facts and evidence in support of the counter-claim, which is related to Operation Storm and genocide that the Croatian official armed forces committed against the group of Serbs from the Krajina region.

1. Factual background of Operation Storm

1.1. Significance of the historical and political events

2. Mr. President, distinguished Members of the Court, Operation Storm was not an isolated event. That was not a mere war incident. The operation was prepared well in advance¹ as reported by General Janko Bobetko in his book, and represented one of the key events in the deep tragedy of the Yugoslav peoples at the breakdown of their country.

3. When the international criminal tribunals judge upon massive crimes such as genocide or crimes against humanity, it is common to start any discussion with a historical and political background of those crimes. In that regard, the Respondent has provided the Court with a significant number of documents. Without a due overview of that background², a court of law cannot fully understand how a spiral of crimes between Croats and Serbs developed and kept going on for such a long time in history, in spite of the decades of the seemingly peaceful socialist rule, and how that spiral reached its peak in Operation Storm in 1995. If this Court did not know what had occurred in Yugoslavia during World War II, in particular in the Independent State of Croatia, it would not be able to understand those words of the young Croat soldier who, entering Knin on 5 August 1995, met witness Hill, the United Nations Military Police Commander of Sector South,

¹See Croatian General J. Bobetko, *All My Battles*, p. 407; Ann. 50 to the Counter-Memorial of Serbia (CMS).

²See CMS, paras. 397-420; CMS, Anns. 1-12.

and told him that “he had been waiting for this since 1945”³. Nor how it was possible that over two million books were destroyed as “unsuitable” in the infamous Croatian 1990s process of librocide because they were written by Serbian authors, or they were printed in Cyrillic alphabet, or simply because they were about Yugoslavia⁴.

4. Nor can the words of the Croatian President on Brioni Island be rightly understood without the knowledge of his ideological background, which is described as “proto-fascist” by Mr. Efraim Zuroff, Director of the Simon Wiesenthal Center in Jerusalem, in his book “Operation Last Chance”⁵.

1.2. Massive crimes against Serbs in Croatia, 1991-1995

5. The situation of the Serb people in Croatia was deteriorating gradually ever since 1990. In the Counter-Memorial, the Respondent reported about discrimination and systematic violation of human rights of the Serbs in Croatia before and at the beginning of the armed conflict⁶, as well as about the massive crimes committed during Croatian military operations at Miljevci Plateau⁷, Maslenica⁸, Medak Pocket⁹ and Western Slavonia (Operation Flash)¹⁰. The Applicant denied these crimes in its Reply by a very general statement that no credible evidence had been produced. In turn, Serbia produced, with the Rejoinder, overwhelming evidence about the crimes committed against the Serbs from the beginning of conflict in 1991 to Operation Flash in May 1995¹¹. That evidence contains — (i) numerous witness statements given to domestic courts in Yugoslavia and Bosnia-Herzegovina, in accordance with the procedural rules which then existed in the FRY, Bosnia-Herzegovina and Croatia; (ii) two judgments against Croatian General Mirko Norac

³*Gotovina et. al*, IT-060-90, Transcripts, 27 May 2008, p. 3751; Ann. 44 to the Rejoinder of Serbia (RS).

⁴See Slavic Review, Vol. 72, No. 2, Summer 2013, Ante Lešaja: *Uništavanje knjige u Hrvatskoj 1990-ih (Destruction of the Book in Croatia in 1990s)*, available in English on: <http://www.jstor.org/discover/10.5612/slavicreview.72.2.0361?uid=3738736&uid=2129&uid=2&uid=70&uid=4&sid=21102533799611>.

⁵CMS, Ann. 9.

⁶Paras. 538-559.

⁷Para. 1120.

⁸Paras. 1124-25.

⁹Paras. 1130-1134.

¹⁰Paras. 1146-1154.

¹¹RS, paras. 609-631 (Crimes in 1991/92); paras. 639 & 643 (Maslenica); paras. 645-650 (Medak Pocket); paras. 651-665 (Flash).

rendered by Croatian domestic courts, namely, the County Court in Rijeka and the County Court in Zagreb; (iii) several United Nations documents; (iv) one OSCE report; and (v) other various documents made at the critical time without any direct connection with this case.

6. Thus, Serbia has presented convincing evidence that:

- (a) massive crimes were committed against Serbs throughout Croatia in 1991/1992¹²;
- (b) those massive crimes were committed by Croatian officials;
- (c) the Croatian Government was fully aware of those crimes;
- (d) the Croatian Government at that time did not properly investigate and prosecute those massive crimes; quite to the contrary, those most responsible for the crimes were later promoted to the higher ranks in the State hierarchy;
- (e) after the deployment of the United Nations Protection Forces (UNPROFOR), Croatian official armed forces conducted ethnic cleansing of the Serbs; that occurred in the operations Maslenica, Medak Pocket and Flash.

7. I had been curious to hear what our colleagues from the Croatian legal team would respond to this, but the response was disappointing and, indeed, symptomatic as to the way in which Croatia approaches any assertion against its specific historical view: namely, we were answered in the Additional Pleading, in 2012, that the new evidence concerning the massive crimes against the Serbs in 1991 was “wholly outside the purview of the subject-matter of the counter-claim and therefore simply not relevant”¹³.

8. Mr. President, we have never said that the crimes committed against the Croatian Serbs in 1991 form the subject-matter of our counter-claim for the simple reason that the Court lacks jurisdiction *ratione temporis* for any acts which occurred before 27 April 1992 and Croatia seems to have implicitly accepted that when arguing that acts taking place before that date are “outside the purview of the subject-matter of the counter-claim”.

9. Yet, those crimes, even when conducted before the critical date, provide for a factual background of Operation Storm which *is* the subject-matter of our counter-claim, and that was

¹²Examples were given for the towns of Sisak, Karlovac, Šibenik, Zadar, Split, Zagreb, Gospić, Petrinja, Daruvar, Virovitica, Osijek, Vukovar, as well as for the massacres that were committed in the villages of Mašička Šagovina, Marino Selo, Trnava, Merdare, Paulin Dvor, Borovo, and for the notorious detention camps as Lora and Kerestinec.

¹³Additional Pleading of Croatia (APC), para. 2.7.

clearly indicated in paragraph 608 of our Rejoinder. Seen in context, these facts are still relevant for a full understanding of the main issue of this dispute: they reflect an escalating criminal intent which will reach its peak in Operation Storm. The question here is only one: why do our Croatian colleagues avoid admitting the massive crimes committed against the Serb population in Croatia in 1991 — the crimes which are notorious and today well known to everyone who would really like to face the past and the responsibility?

10. On the other hand, it can be said that Croatia in its Additional Pleading did not deny the descriptions of the crimes given in our Rejoinder. Moreover, in footnote 99 on page 22, the Court can find a review of the Croatian domestic cases against several perpetrators of various massive crimes mentioned by Serbia. This may be sufficient for the purpose of our presentation: at least, the Court can conclude that the assertions made by the Respondent regarding the massive crimes against the Serbs throughout the armed conflict are not false. Unfortunately, I am afraid that one Croatian footnote might not be enough for the reconciliation between our two peoples.

11. The situation is even worse vis-à-vis the response to our assertion on ethnic cleansing committed in operations Maslenica, Medak Pocket and Flash. It seems even more painful for our colleagues from the Croatian legal team to admit these massive crimes. In the response given to the findings of the 1993 Report of the United Nations Special Rapporteur of the Commission on Human Rights concerning the crimes committed in Medak Pocket, one can hardly find a point. Namely, the Applicant quoted another finding given by the Final Report of the United Nations Commission of Experts from 1994, which reported that no evidence had been found concerning the responsibility of “any specific identifiable individual” in “any of these crimes”¹⁴. Which crimes, I am wondering, which crimes if the Applicant so strongly denies our assertions concerning the ethnic cleansing and arbitrary executions committed in Medak Pocket as unsupported by evidence? Our quote from the same Final Report, in the part which states that “[d]evastation was total”, Croatia has not answered at all. However, in the next paragraph of the same Croatian written pleading, the Court can find information about the conviction of the Croatian General Mirko Norac before the domestic court for “violations of international humanitarian law” in relation to the events

¹⁴Reply of Croatia (RC), para. 10.59; also, APC, fn. 163 on p. 31.

in the Medak Pocket¹⁵. Which violations then? The misunderstanding might be solved if Croatia would make an effort to inform the Court what General Norac was convicted for, if the Serbian assertion to this Court is misleading, as claimed. The relevant excerpt from that Croatian domestic judgment has been annexed to our Rejoinder¹⁶, from which the Court can gain an overview how severe the crimes committed against the Serbs in Medak Pocket were.

12. Apart from that uncertain response of the Applicant, the ethnic cleansing of Serbs in operations Maslenica and Medak Pocket was admitted by President Tudjman at the meeting of the Council for Defense and National Security of Croatia held on 25 November 1993. A relevant part of the confidential transcript from that meeting was read in the public session of the ICTY on 22 January 2004, during cross-examination of the former Croatian Minister of Foreign Affairs Hrvoje Šarinić. At the session, the accused Slobodan Milošević, the former President of Serbia, read Tudjman's words from the transcript that that was difficult to override Serbian arguments that Maslenica and Medak Pocket constituted a complete ethnic cleansing, when in Maslenica the entire area had been cleansed up to a kitten ("do mačeta", as it was originally recorded in Serbo-Croat)¹⁷.

13. Operation Flash. The criminal intent continued escalating. Yet, Croatia denies that any crime was committed in the operation by its official forces, let alone that ethnic cleansing of the attacked territory was performed. The witness statements produced by our side¹⁸ were attacked by unclear objections, as that those statements were not given in the context of "an actual legal proceeding"¹⁹. Mr. President, the statements in question were given between 1995 and 1998, well before the Croatian Application was submitted to this Court — a fact which, in our view, can only fortify their credibility.

14. In the Additional Pleading from August 2012 the Applicant has adduced many arguments that Operation Flash was planned and executed as a legitimate military action directed to the liberation of the occupied territory and re-establishment of the legal order. However, the

¹⁵RC, para. 10.60; also, APC, para. 2.30.

¹⁶See RS, Ann. 35.

¹⁷*Milosevic*, IT-02-54, Transcripts, pp. 31322-23 (http://www.icty.org/x/cases/slobodan_milosevic/trans/en/040122ED.htm).

¹⁸CMS, Anns. 48 and 49; RS, Anns. 37-43.

¹⁹APC, para. 2.41.

Applicant has missed — deliberately, I suppose — to produce any answer to an important part of our presentation concerning Operation Flash: the conversation among Croatian President Franjo Tuđman, Minister of Defense Gojko Šušak, and Minister of Interior Ivan Jarnjak, noted in the confidential transcript of the session of Croatia's Council for Defense and National Security held on 30 April 1995, a day before Operation Flash commenced²⁰. The relevant parts of that conversation which clarify the criminal intent of the Croatian leadership can be found in paragraphs 661 and 662 of the Rejoinder. It would be appreciated if Croatia could give any reasonable explanation for its silence vis-à-vis the unpleasant contents of this document.

15. Croatia has also adduced the argument that facts related to Operation Flash, as reported by nine witnesses in their statements given to the investigative judges in Bosnia-Herzegovina²¹, are not relevant to this case, because Operation Flash preceded Operation Storm, which is the only subject-matter of the Serbian counter-claim²². Once again, we cannot agree with so simplified a view. The context in which the meeting at the Brioni Island was held, and the words of President Tuđman and his supporters at that meeting, which are very important for our case, cannot be fully understood without knowledge on the events that took place only three months earlier in Western Slavonia, in Operation Flash. The agreement made at Brioni on 31 July 1995 was significantly based on the assumption that Operation Flash was a military, political and international success of the Croatian Government, in spite of: (a) a massive attack to columns of refugees near the bridge on the Sava River²³; (b) executions in several villages of those Serbs who stayed behind²⁴; (c) torture of prisoners of war²⁵ — the crimes for which no one has ever been convicted. From the witness statements given between 1995 and 1998 before the courts in Bosnia-Herzegovina, we know today the manner in which Operation Flash was really conducted. President Tuđman also knew that when he talked to his generals at Brioni.

²⁰See RS, paras. 661 and 662.

²¹CMS, Anns. 48-49 and RS, Anns. 37-43.

²²APC, para. 2.41.

²³Periodic Report by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, 14 July 1995, UN doc. A/50/287-S/1995/575, paras. 7, 8, 28 and 29; affidavits of Petar Božić (CMS, Ann. 48); Savo Počuča (CMS, Ann. 49); Anđelko Đurić (RS, Ann. 37); Milena Milivojević (RS, Ann. 38); Dušan Bošnjak (RS, Ann. 39); and Dušan Kovač (RS, Ann. 40).

²⁴Affidavit of Radojica Vuković (RS, Ann. 41).

²⁵Affidavits of Branko Mudrinić (RS, Ann. 42) and Zoran Malinić (RS, Ann. 43).

16. Finally, I have duly noted that our distinguished opponents in each and every discussion on the crimes committed by Croatian official organs do not miss to mention the crimes previously committed on the same territory against the Croatian civilians. Mr. President, allow me to assure you that the regret I expressed in the beginning of our oral presentation is also related to these Croat victims. Yet, that is not a proper defence by Croatia, if I may note, considering that that cannot be a justification for the ethnic cleansing of Serbs. Two evils in sum do not give one good. As we earlier discussed the crimes committed against the Croats, now we would like to discuss freely the crimes in which, we believe, the Serbs were the victims.

1.3. Context of National, Ethnic and Religious Hatred

17. The national, ethnic and religious hatred towards Serbs in Croatia also represents the context in which Operation Storm was conducted. I am fully aware that that hatred was provoked, to some extent, by the crimes committed by Serbs in 1991. However, this fact does not mitigate the circumstances of the public treatment of the Serbian ethnic group in Croatia during the armed conflict. Croatian philosopher, Professor Žarko Puhovski, described this context clearly in his statement recorded in the documentary “Storm over Krajina”. He said:

“We are talking here about a large number of incidents which were influenced by motions. But these incidents, these motions had been prepared for years through propaganda, from television to the president of the country and all public factors in Croatia who convinced the Croatian population and especially the soldiers that the Serbs are guilty as such and that they should be punished as such.”²⁶

18. In the following raw video material made by the Croatian soldiers of the 142nd HV Brigade on 22 August 1992 during the arrest of one Serb soldier at the Miljevci Plateau, the Court can see how this conclusion of the Croatian philosopher looked in practice. This video material was broadcast on the Croatian National TV on 1 October 2001²⁷. [Play video]

19. It is well known throughout history that the crime of genocide is not based only on the motive for revenge, but also on a certain disparaging public attitude towards other racial, national, ethnic or religious groups of people. As history taught us, a group which is intended to be destroyed is usually treated as a group of people of smaller human values than a group to which

²⁶*Gotovina et al.*, Transcripts, 13 Feb. 2009, p. 15901.

²⁷*Latinica*, directed by Denis Latin; available on <http://www.youtube.com/watch?v=45DVwD2P8OI>; Judges' folders, item No. 6.

perpetrators belong. Distinguished Members of the Court, I am convinced that Serbs in Croatia in 1995 had such a treatment. My attitude originates from evidence produced in Annex 51 to the Counter-Memorial; those are the statements which could provoke perpetrators to commit genocide.

20. Thus, the Court can find how Šime Đodan, Special Envoy of the President of the Republic of Croatia at a traditional folk festival, stated publicly that the Serbs had pointed heads and probably also small brains²⁸, while President Tudjman himself stated for the national television that he was happy because his wife was neither Serb nor Jew²⁹. In August 1991, a Croatian Parliamentarian Marjan Jurić, in his public statement in the Parliament, compared the Serbs with vermin³⁰. Zvonimir Šekulin, a journalist, repeated that comparison in the magazine *Globus* in 1994, and also offended the orthodox Serb population by stating that a photo of Patriarch Pavle, Head of the Serbian Orthodox Church, was “more pornographic than the photos of the biggest whores”³¹. Krešimir Dolencić, Director of the Gavela Theater, in the magazine *Danas* called the Serbs “beasts from the East”, compared them with monkeys, stated that their culture is below the primitive level and recommended that the Serbs “should either be held in captivity or destroyed”³².

21. Mr. President, I think that the last statement that I quoted went beyond mere hate speech. That statement publicly and directly communicated the call to members of the general public at large for destroying the Serbs. That was incitement to commit genocide. Nevertheless, neither one of the mentioned persons has ever been called for responsibility for these discriminatory words under any provision of the Croatian Criminal Code.

22. The Applicant did not deny that these speeches were made³³. Nonetheless, the Applicant, for an unfortunate reason which cannot be quite understood, has tried to mitigate the content of these statements by their context and timing factor. *Tu quoque* argument does not seem appropriate here, because the Applicant, by invoking some evidence about the political propaganda

²⁸RS, para. 634.

²⁹CMS, para. 431.

³⁰CMS, para. 440.

³¹RS, para. 637.

³²RS, para. 635.

³³APC, para. 2.12.

of Slobodan Milošević³⁴ unsuccessfully tried to equalize two patterns which have never been equal in their intensity. In other words, we have not seen in this case the reliable evidence on the public statement of any Serb by which the Croatian people were treated like the Serbs in the statements I have just quoted: as less than human.

2. Transcript of the Brioni Meeting as Evidence of Intent to Destroy the Group of Krajina Serbs as such

23. Mr. President, allow me now to go *in medias res*, to the key event of Operation Storm: the meeting at the Brioni Island. The full transcript of the Brioni meeting has been produced to the Court as Annex 52 to the Counter-Memorial. The relevant parts of the transcript have been quoted both in the Counter-Memorial and the Rejoinder; the meaning of the words of Croatian President has been explained, as well as their criminal consequences³⁵. Forty-four paragraphs of our written pleadings have been dedicated to this meeting.

24. It is not disputed that the Brioni meeting was a summit of “Croatia’s senior military leadership” at which “the commander-in-chief of the armed forces . . . together with senior military officials discussed the planning and launch of a military operation” known as Storm³⁶. The meeting was decisive for the conduct of Croatian troops in the upcoming days. At the very beginning of the meeting, President Tudjman declared: “Gentlemen, I have called this meeting to assess the current situation and to hear your views before I decide on what our next steps should be in the forthcoming days”³⁷. The meeting was concluded with the following statement of President Tudjman: “So agree in principle, in the spirit of what we have now discussed.”³⁸

25. The spirit of the meeting was expressed already in the introductory statement of President Tudjman. He said: “Therefore we should leave the east [Eastern Slavonia, it means] totally alone, and resolve the question of the south and north”, i.e., areas of Dalmatia and Lika known as United Nations protected Sector South, and areas of Kordun and Banija known as United Nations Sector North. “In which way do we resolve it? This is the subject of our discussion today.

³⁴See Memorial of Croatia (MC), paras. 2.62-2.66; RC, Ann. 106; APC, fn. 114.

³⁵CMS, paras. 1195-1204, 1414-1422; RS, paras. 692-717.

³⁶RC, para. 11.41.

³⁷Brioni Minutes, p. 1; CMS, Ann. 52.

³⁸*Ibid.*, p. 44.

We have to inflict such blows that the Serbs will to all practical purposes disappear”, and then he added — “that is to say, the areas we do not take at once must capitulate within a few days”³⁹.

26. At this point, the Applicant has raised the issue whether the words “to inflict such blows that the Serbs will to all practical purposes disappear” were related to the Serb forces that had to “capitulate” or to the Serb population of United Nations Sectors North and South in general. The Respondent has convincingly demonstrated that the words in question were not related merely to the Serbian Army of Krajina. This is visible from the next statement of President Tudjman:

“[W]e must take those points in order to completely vanquish the enemy later and force him to capitulate. But I’ve said, and we’ve said here, that they should be given a way out here . . . Because it is important that those civilians set out, and then the army will follow them, and when the columns set out, they will have a psychological impact on each other.”⁴⁰

27. Thus, it cannot be taken that Tudjman was presumably talking only about the Serbian forces; he was talking here about the civilians and the army separately. Nevertheless, the treatment of both was the same: the Serb army and the Serb civilians would be together in the columns, they would have a psychological impact on each other, and they both had to get out and disappear. The Croatian President treated both the Serb forces and the civilians as the same enemy. His language is clear and unambiguous.

28. This paragraph of the transcript does not stand alone. As we presented in our written pleadings, Tudjman was confident enough at the meeting to plan some psychological effects in order to remove as many civilians as possible⁴¹. That was confirmed by General Ante Gotovina, Commander of the Split Military District of the Croatian Army, who said that “civilians [were] already evacuating Knin and heading towards Banja Luka and Belgrade” and “if [the Croatian Army] continue this pressure”, there would not be so many civilians, “just those who have to stay, who have no possibility of leaving”⁴².

29. Then, President Tudjman immediately expressed his concern whether an attack on Knin was possible without hitting the United Nations Confidence Restoration Operation (UNCRO)

³⁹Brioni Minutes, p.2.

⁴⁰*Ibid.*, p. 15.

⁴¹RS, para. 705; Brioni Minutes, p. 23.

⁴²Brioni Minutes, p. 15.

camp⁴³. By that statement, firstly, he showed how he understood the Gotovina's term "to continue pressure" on the civilians: by shelling. Secondly, his concern that the UNCRO camp could be targeted wiped out all doubt, if any existed, that he talked exclusively about the legitimate military targets. Not at all. Otherwise, he did not have a reason to warn his General that the UNCRO camp had to be excluded from the shelling, because the UNCRO camp had never been a legitimate military target. This part of the conversation was concluded by the response of General Gotovina who said: "At this moment, we can engage in extremely precise operations at Knin, systematically, without aiming at the barracks in which UNCRO is located."⁴⁴

30. Finally, Miroslav Tadjman, the President's son, stated at the meeting that he expected that when the Krajina Serb forces would be pulled out, the Governmental forces would "clear the entire area" in ten days⁴⁵. Who would be cleansed then, when the Krajina forces had already been pulled out?

31. Consequently, in our view, there is no doubt that Franjo Tadjman, his son Miroslav, General Gotovina and others at the meeting were planning a forcible disappearance of the Serbs from United Nations Protected Sectors South and North through the infliction of blows, the continuing pressure, the vanquishing, no matter which words were used to express their intent. The remaining question is whether these incriminatory words include the physical destruction of the group, or merely its forcible expulsion. In other words, it is the question whether the plan for ethnic cleansing envisaged at Brioni assumed also genocide as a tool to make Krajina ethnically cleansed territory. Apart from the previous question, this one has not been raised by the Applicant, for the reason that the Applicant denied any criminal characterization of Operation Storm, either as genocide or the crimes against humanity. Nevertheless, our answer to this logical question is positive: Tadjman and his subordinates assumed genocide, if necessary, as a tool of the ethnic cleansing planned at Brioni. That answer is confirmed by the words of the participants at the meeting. Those were the statements vis-à-vis some specific actions, as the assault to the town of Knin. Thus, President Tadjman speculated: "If we had enough [ammunition]", he said, "then I too

⁴³Brioni Minutes, p. 15.

⁴⁴*Ibid.*

⁴⁵*Ibid.*, p. 19.

would be in favour of destroying everything by shelling prior to advancing”⁴⁶. The words “destroying everything” fully expressed his state of mind. If there was any doubt about the meaning of the terms as “to inflict such blows”, “to all practical purposes disappear”, “to completely vanquish the enemy” — presuming that the Serb civilians also belonged to the enemy — that doubt now disappears.

32. The same intent was confirmed by General Gotovina who clearly expressed his readiness to destroy Knin by the following statement: “Mr. President, at this moment we completely control Knin with our hardware. That’s not a problem, if there is an order to strike at Knin we will destroy it in its entirety in a few hours . . .”⁴⁷ This was an original interpretation of the meaning of Tudjman’s words that the Serbs should to all practical purposes disappear by one of the key participants of the Brioni meeting. This was how General Gotovina understood the words of his commander-in-chief: as the destruction in its entirety.

33. On the basis of the previous statements, the Respondent believes that the Brioni transcript is a direct evidence of the existence of intent to destroy the Krajina Serbs as such.

34. Yet, if any doubt still remains, I will continue to present the other circumstances of the Brioni meeting and its consequences in order to convince the Court, on the alternative basis, that there is only one possible conclusion that could be inferred from those circumstances: Operation Storm was planned and conducted with the intent to destroy the ethnic group of Krajina Serbs.

35. Firstly, in addition to the previous statements that, in our view, directly point out the intent of the Croatian State and military leadership in Operation Storm to destroy Serbs from Krajina, I would draw your attention to the following words of President Tudjman at the Brioni meeting by which he implicitly ordered a revenge toward the Serbs: “Accordingly, we should provide for certain forces which will be directly engaged in the direction of Knin. And, particularly, gentlemen, please remember how many Croatian villages and towns have been destroyed, but that’s still not the situation in Knin today.”⁴⁸

⁴⁶Brioni Minutes, p. 22.

⁴⁷*Ibid.*, p.10.

⁴⁸*Ibid.*

36. The revenge is a motive, not a proof for genocide per se. However, it is also an important factor in the forming *dolus specialis* of the crime of genocide, in particular if it is suggested by a Head of State and supreme commander of military forces during the war. Immediately after these words, General Gotovina expressed his readiness to destroy Knin in its entirety, as I have cited. These two complementary statements can be found on the same page of the Brioni transcript, namely on page No. 10. By his response, General Gotovina actually confirmed what the meaning of the call for revenge should be in his mind, and what would be the consequence, “if there is an order to strike at Knin”. I have not noticed that the Croatian President denied this Gotovina’s understanding. Moreover, Gotovina continued to speak: he described his armed forces, with medium- and long-range missile systems, emphasizing that the forces heading towards Knin were all from that area. He added: “They have reason to fight here and at this moment it is difficult to keep them on a leash.”⁴⁹ This is clear: the understanding between the supreme commander seeking revenge and his general was full and undisputed by any participant of that meeting.

37. Secondly, the destiny of the Serb people of Krajina was further determined by the statement of President Tudjman that human rights should not be respected. Tudjman said:

“A leaflet of this sort — general chaos, the victory of the Croatian Army supported by the international community and so forth (Serbs, you are already withdrawing, and so forth), and we are appealing to you not to withdraw, we guarantee . . . This means giving them a way out, while pretending to guarantee civil rights, etc.”⁵⁰

38. “Pretending to guarantee civil rights” is one new expression from the wealthy arsenal of the President’s attitudes on humanitarian law issues. Only someone very naive can leave the space for doubt that the meaning of Tudjman’s words went to human rights such as, for example, electoral rights, or freedom of movement of the Serb people in Croatia. The horrific circumstances of that war clearly points out that his observation dealt primarily with human lives: “pretending to guarantee civil rights” means a green light for the killing of those who decide to stay in the region.

39. All statements that I have quoted should also be evaluated taking into account the position of the person making the statement, and that is my third additional argument. If the Head

⁴⁹Brioni Minutes, p. 10.

⁵⁰*Ibid.*, p. 29.

of State, who is also an undisputed national authority in Croatia at the critical time, invited the participants of the meeting, who were his subordinates, to remember what happened to their kinfolks, to inflict such blows that the Serbs would to all practical purposes disappear, or to pretend to protect rights of the civilian population, those words were getting then its sharpest meaning. This should take on a special importance.

40. Furthermore, if that Head of State was a promoter of the reconciliation with the Ustasha movement, then it is not so strange that General Gotovina understood the President's words literally, in their blunt appearance. Gotovina got instructions from his commander-in-chief who was well known in Croatia by his scientific book *Wasteland of Historical Reality* — translated into English as *Horrors of War* — in which he tried to explain that genocide in history also had some positive consequences as

“[bringing] about ethnic homogenization of some peoples, leading to more harmony in the national composition of the population and state borders of individual countries, thus also having possible positive impact on developments in the future, in the sense of fewer reasons of fresh violence and pretexts for the outbreak of new conflicts and international friction”⁵¹.

41. Mr. President, according to my personal experience, whoever read this passage of Tudjman's book did it twice because a reasonable person cannot believe immediately in what is written in his book. However, at the Brioni meeting, the participants knew very well who their President was and what his ideology looked like.

42. The fourth additional argument may be the overall context in which the Brioni meeting was held. That context was best described by Professor Puhovski, as I quoted earlier, the context in which the majority on the Croatian side is convinced through the State propaganda that “the Serbs are guilty as such and that they should be punished as such”⁵². That was also the context of a general prejudice that Operation Flash, which was conducted three months earlier, was a military, political and international success of the Croatian Government, in spite of ethnic cleansing committed during the offensive. “The kitten” from Maslenica that I mentioned at the beginning should also be added to this context⁵³, as well as the promotion of Mirko Norac, a Croatian war

⁵¹Franjo Tudjman, *Wastelands of Historical Reality*, Nakladni zavod Matice Hrvatske, Zagreb, p. 163, in Viktor Ivančić, *Točka na U*; CMS, Ann. 11.

⁵²Gotovina et al., Transcripts, 13 Feb. 2009, p. 15901.

⁵³See para. 12 above.

hero, but also the most responsible person for the war crimes in the Gospić area in 1991⁵⁴ and the ethnic cleansing in the Medak Pocket in 1993⁵⁵, to the rank of General and the Commander of the Gospić Military District, which was directly engaged in Operation Storm.

43. Fifth, if one bears in mind this context of preparation for Operation Storm, the fact that neither President Tudjman nor any other participant at the Brioni meeting called for respect for international humanitarian law is also significant for the weight that should be given to the discriminatory statements in question.

44. Mr. President, I have so far dealt with the intent that is directly visible or at least that can be convincingly inferred from the very text of the transcript from the Brioni meeting held on 31 July 1995. Furthermore, I will turn to the circumstances of Operation Storm and its aftermath. Following a chronological order of my presentation, the Court will be provided with further facts and evidence which will strongly confirm the meaning of the statements of the President of Croatia at Brioni.

45. Thus, the intent to destroy the group of Krajina Serbs will be further confirmed by:

- (a) the massive, widespread and systematic killing of Krajina Serbs by the Croatian governmental forces during and after Operation Storm;
- (b) statements of Croatian soldiers and officers;
- (c) several statements by the Croatian high officials given *ex post facto*, which reflect their criminal intent;
- (d) legal measures imposed immediately after the operation to prevent the return of the Serb refugees, which cannot be a proof of genocide per se, but can show, if taken in the context with all other circumstances, that the target of Operation Storm was not only the Serbian Army of Krajina or Krajina Police, but the Serb people as such, and accordingly, that the statements given at Brioni could not relate exclusively to the Serb forces.

46. Mr. President, at this point I have a duty to emphasize that the ICTY, in *Gotovina*, completely underestimated the meaning and significance of the Brioni meeting for the crimes committed during and after the operation. The Government of the Republic of Serbia expects that

⁵⁴See CMS, Ann. 41.

⁵⁵See RS, Ann. 35.

the principal Court of the United Nations finally finds a remedy for this untenable situation and brings some sense of justice to the victims of Operation Storm and their families.

3. Geneva Negotiations

47. The Court has noted that in the written phase of these proceedings the Parties made some efforts to explain what happened at the meeting in Geneva, held on 3 August 1995, three days after the meeting at Brioni, and which side did not negotiate in good faith there: the Republic of Srpska Krajina or the Republic of Croatia; Knin or Zagreb.

48. A key for understanding what happened in Geneva lays in the context of that event: namely, that round of international negotiations was held after the meeting at Brioni Island, when the criminal plan of President Tudjman had already been hammered. The Croatian President said clearly at Brioni that the upcoming negotiations in Geneva would be only “a mask” for what he prepared for the day after⁵⁶.

49. In light of his Brioni statement, there is no doubt that the conduct of the Croatian Government at the Geneva negotiations was in function of the fulfilment of the criminal plan known as Storm. It was Croatia who did not negotiate in good faith in Geneva. The next day, the Government of Croatia commenced attack on the United Nations Protected Areas, contrary to Security Council resolution 981 of 1995 and the peacekeeping régime established by it⁵⁷.

50. Significantly, the Applicant again has not made any comment, any single word, on the quotation that Geneva would be merely “a mask”. Although, our colleagues from the other side wrote many counter-arguments to show that the Krajina Serbs were not faithful negotiators and even quoted a statement of Milan Martić, President of the Republic of Serbian Krajina, given on 2 August 1995⁵⁸. Yes, it might be that Milan Martić was also not a faithful negotiator, but he did not attack anyone on 4 August. He was attacked. Thus, we would be grateful to hear an official position of Croatia towards the quoted statement of its former President in which *he* planned to fraud the international community.

⁵⁶Brioni Minutes, pp. 2 and 32; CMS, Ann. 52.

⁵⁷See Letter of the Secretary General to the President of the Security Council dated 7 Aug. 1995, UN doc. S/1995/666; RC, Ann. 151.

⁵⁸RC, Ann. 161.

4. Military Aspects of Operation Storm

51. Operation Storm began on 4 August 1995 at 5.00 a.m. and was over by 8 August⁵⁹. From the military point of view, the outcome of the operation was never in serious doubt. On the one side were 150,000 soldiers — 135,000 members of the Croatian army and police, and 15,000 members of the army of Bosnia-Herzegovina — while on the other were around 30,000 soldiers of the Serbian army of Krajina⁶⁰. According to the public report of the United States Central Intelligence Agency, available at the Peace Palace library, the battlefield successes of the Croatian army and the army of Bosnia-Herzegovina, who acted fully in accordance with the plan reached at Brioni, were facilitated by structural weaknesses of the Serbian army of Krajina which did not have enough combat formations to maintain the depth and mobility needed to contain a penetration of the adversary⁶¹.

52. The Croatian operation was conducted from four different directions. The attack from the north went from Sisak and was aimed towards Petrinja and Kostajnica⁶². The attack from northwest went from Karlovci to Vojnić⁶³. The western attack moved from Gospić to Gračac, Udbine and Plitvica lakes, supported by the army of Bosnia-Herzegovina on the east⁶⁴. Finally the south direction of the attack started from the territory of Herzegovina and Dalmatia and was aimed towards Knin and areas of Benkovac and Obrovac⁶⁵.

53. One of the key undertakings of the Croatian army was immediate and co-ordinated air strikes and sabotage missions by ground forces against the command and control facilities across the Republic of Serbian Krajina. Another key event was the early capture of Knin, the capital of Krajina and a symbol of the Krajina Serbs' rebellion against Zagreb, which was virtually indefensible⁶⁶. According to the CIA Report, the previous Croatian army's Operation, Summer 95,

⁵⁹ Judges' folders, item No. 7.

⁶⁰CMS, para. 1213.

⁶¹Central Intelligence Agency (CIA), *Balkan Battlegrounds: A Military History of the Yugoslav Conflict 1990-1995* (Washington, 2002), Vol. I, p. 375; see more, pp. 367-376 (hereinafter "CIA Report"; available at the Peace Palace Library).

⁶²Judges' folders, item No. 8a.

⁶³Judges' folders, item No. 8b.

⁶⁴Judges' folders, item No. 8c.

⁶⁵Judges' folders, item No. 8d. See also, CIA Report, pp. 368-370.

⁶⁶Judges' folders, item Nos. 9a & 9b.

in which it took over the town of Grahovo in Western Herzegovina “effectively sealed Knin’s fate before Storm got off the ground”⁶⁷. Knin was set under a heavy shelling from early morning on 4 August. The Krajina Government and the Army’s General Staff pulled out during the following night to the village of Srb, some 35 km to the north-west⁶⁸. Knin fell in the morning of 5 August, when the Croatian army came into the town which was almost empty of the population. That was the key circumstance preventing the total destruction of the town, for which General Gotovina clearly stated his readiness at Brioni⁶⁹. However, the fall of Gračac⁷⁰, a strategic point, on the same day, formed part of the noose encircling the entire Serb military position⁷¹.

54. Krajina Serbs were left with no other choice but to run before the Croat forces, leaving virtually everything behind. As General Mile Mrkšić, Commander of the Serbian Army of Krajina, testified before the ICTY, many Krajina soldiers left their units in order to assist their own families leaving and as a result the units collapsed⁷². The formation of columns in the areas that were most in danger from the Croatian forces quickly became a chaotic escape of the complete Serb population of Krajina⁷³.

55. Croatian Defence Minister Gojko Šušak pronounced the operation complete as of 6 p.m. on 7 August, when the Croatian Army reached its eastern borders with Bosnia-Herzegovina⁷⁴. However, on 8 August Krajina’s General Bulat surrendered his forces that were remaining encircled in the Banija region to the Croatian Army. The defeated soldiers and as many as 20,000 refugees from Kordun, the north-western part of Krajina, were allowed to depart Croatia, escorted by the United Nations troops and the United States Ambassador Galbraith, as the CIA reports: “driving overloaded cars, buses, trucks and tractors along a torturous route that ran

⁶⁷CIA Report, pp. 374-75. See also, CMS, paras. 1184-85.

⁶⁸CIA Report, Vol. I, p. 371; judges’ folders, item No. 10.

⁶⁹See Brioni Minutes, p.10.

⁷⁰Judges’ folders, item No. 11.

⁷¹CIA Report, Vol. I, p. 371.

⁷²See *Gotovina et al.*, Trial Judgement of 15 Apr. 2011, para. 1539.

⁷³See CMS, paras. 1229-1236; RS, paras. 729-744.

⁷⁴CIA Report, Vol. I, p. 374.

through western and eastern Slavonia to the Federal Republic of Yugoslavia”⁷⁵. The images of their desperate column became a symbol of the ethnic cleansing of Serbs from Croatia⁷⁶.

56. Mr. President, the Respondent noted that the Applicant stressed several times in these proceedings — in the written part of the proceedings — the destiny of that last group of refugees, in which only one person was murdered in the town of Sisak⁷⁷. In order to avoid any ambiguities, I hereby declare that the Respondent does not consider that Croatian Army General Petar Stipetić, who negotiated the surrender of the General Bulat’s 21st Corps of the Serbian Army of Krajina on 8 August, shared *mens rea* with President Tudjman and other generals who were at the Brioni meeting. Firstly, General Stipetić did not participate in the discussion at Brioni, and secondly, it is well known that he was brought into the battle subsequently with a task to reorganize the faltering attack from the north⁷⁸. Indeed, the great majority of that last group of refugees reached Serbia safely. However, the horrific destiny of those who were attacked in the previous days while being in refugee columns in Sector North and Western Bosnia has never been seen by any world forum.

57. According to the Brioni Minutes, the Croatian leadership expected that the Government of the Federal Republic of Yugoslavia, provoked by the attack to its kinfolk, order an assault to Eastern Slavonia. The Krajina Serbs also expected a military protection from Belgrade. That did not occur, and it was the main reason why some authors claimed that Knin fell in Belgrade. They believe that Croatian governmental forces would never defeat them if the Yugoslav Army was involved. On 5 August 1995, the FRY Supreme Defence Council held an urgent meeting. The confidential minutes from that meeting, which in the meantime have been unsealed by the Tribunal in the *Perišić* case, and also produced to this Court upon the request of the Applicant, reflect the position of Belgrade at the critical time — the position that the Federal Republic of Yugoslavia, “under any circumstances”, should not have been “pushed into war”⁷⁹.

⁷⁵CIA Report, Vol. I, p. 374.

⁷⁶Judges’ folders, item No. 12a.

⁷⁷RC, para. 11.90; APC, para. 3.73.

⁷⁸CIA Report, Vol. I, p. 372.

⁷⁹Note from the 40th enlarged session of the Supreme Defence Council held on 5 Aug. 1995, Strictly Confidential No. 10-1, submitted to the Court by the letter of the Agent of Serbia dated 18 May 2011.

5. Shelling

58. The killing of the members of the group of Krajina Serbs in Operation Storm commenced in the dawn of 4 August 1995 by shelling Knin and other places. The Judge Agius's dissenting opinion in *Gotovina* notes that at least 900 projectiles fell on the town of Knin in just one and a half days, in spite of the fact that there was no resistance coming from the town itself⁸⁰. According to all eye-witnesses called by the ICTY Prosecutor to testify in *Gotovina*, the targets were both military and civilian.

59. In the Rejoinder, we used the subheading "Deliberate indiscriminate shelling of the Krajina Serbs" on the basis of the findings of the ICTY Trial Chamber in *Gotovina*⁸¹. Croatia answered to this assertion in the Additional Pleading from the position of the General Gotovina's defence, rather than from the position of a State charged with genocide⁸². The significance of the shelling in this case should be evaluated in light of the existence of the intent to destroy the group of Krajina Serbs as such, expressed at the Brioni meeting by President Tudjman and General Gotovina, who pleaded for the total destruction of the Krajina Serbs⁸³. For such an analysis, which is the sole discussion relevant for the subject-matter of this case, this shelling shall be reviewed as part of the widespread killing that occurred during Operation Storm. The shelling was part of the plan to drive the civilians into columns with the military where they would be predictably attacked. If we manage to demonstrate convincingly *dolus specialis* of the crime of genocide — and we believe that we do that pointing out the statements of the Croatian leadership at Brioni, as well as the consequences of those words — then, the Croatian arguments concerning the issues like the legitimate military targets, artillery impacts or margin of errors, rewritten from the Gotovina's pleading before the United Nations Tribunal are in vain.

60. The Respondent noted without satisfaction that the majority of the Appeals Chamber of the ICTY in its judgement of 16 November 2012 accepted the arguments of the Gotovina's Defence, reversed the Trial judgement of 15 April 2011 and released the Storm Generals⁸⁴. Yet,

⁸⁰*Gotovina et al.*; dissenting opinion of Judge Carmel Agius to the Appeal Judgement of 16 Nov. 2012, para. 21.

⁸¹See *Gotovina et al.*, Trial Judgement of 15 Apr. 2011, paras. 1906-1911.

⁸²APC, paras. 3.28-3.45.

⁸³See para. 32 (above).

⁸⁴*Gotovina et al.*, Appeal Judgement of 16 Nov. 2012.

that decision does not have a direct connection with the subject-matter of our case before this Court. Nevertheless, it should be said that Serbia cannot agree with the opinion of the three judges of the ICTY Appeals Chamber. It rather agrees with the opinion of the five ICTY judges (i.e., the unanimous Trial Chamber plus the Appeals Chamber dissenting members) who believed that Gotovina and Markač were liable for their roles in the joint criminal enterprise directed to the forcible expulsion of the civilian population by the indiscriminate shelling of civilian targets.

61. I will quote only Mr. Andries Dreyer, United Nations Security Co-ordinator in Sector South, one of the eye-witnesses who testified in *Gotovina*. He stated:

“On your question was anywhere in Knin safe at the time while I was driving around for the duration of the 4th of August, my answer to your question would be no. What I did over here is I was really trying to be as specific as I could. What I should have done is I should have taken a big pen and drawn a circle right around Knin and not specify and say: this is the area of impact. Because that was the area of impact. Knin itself, in all directions where I traveled, at any given time during the 4th of August, my life and the life of my staff members were at peril.”⁸⁵

The majority of the ICTY Appeals Chamber ignored this statement, as well as many others which described the situation in Knin on 4 August in a similar way, but this Court can form its own view on this issue, as far as it is necessary for the subject-matter of the case based on the Genocide Convention. I will rather turn to the more important fact, to the consequences of the shelling, that is to say, to the victims.

62. The ICTY witness Ms Mira Grubor, a civilian, stated that a refugee convoy was directly hit by a bomb in the vicinity of the United Nations camp. She said: “When we nearly reached UN camp, just as soon as we crossed [the] Krka River, I saw a bomb that fell onto a convoy of vehicles and tractors where people were waiting obviously for the bombing to cease, to pass through the town.”⁸⁶ Her statement was corroborated by the testimony of witness Hill⁸⁷. That was the United Nations camp for which President Tudjman at Brioni expressed his concern, while General Gotovina was calming him down stating that his units would be engaged in “extremely

⁸⁵*Gotovina et al.*, Transcripts, 17 Apr. 2008, pp. 1740-1741.

⁸⁶*Gotovina et al.*, Transcripts, 14 Apr. 2008, p. 1397.

⁸⁷*Gotovina et al.*, Transcripts, 27 May 2008, p. 3748; Rejoinder of Serbia (RS), Ann. 44.

precise operations at Knin, systematically, without aiming at the barracks in which UNCRO is located”⁸⁸. Hence, this is the proof that the refugee column was hit deliberately.

63. Canadian General Andrew Leslie, Chief of Staff of the United Nations Sector South, testified in *Gotovina* that on 5 August he saw between 15 to 20 dead people along his route to the Knin hospital, while “large quantities of dead, men, women and children, stacked in the hospital corridors in a pile”⁸⁹. The witness clarified that there were between 30 and 60 dead bodies and around 25 patients in “absolutely critical condition”⁹⁰.

64. His statement was corroborated by the testimonies of witness Hill, the United Nations Military Police Commander⁹¹, and witness Dreyer, a security co-ordinator⁹², who both saw the corpses in the streets of Knin.

65. In its Additional Pleading, Croatia answered that the statements of Ms Grubor, Mr. Hill and General Leslie, were “clearly inaccurate”, because “the Trial Chamber’s judgement in *Gotovina* does not identify a single death or injury resulting from the shelling of Knin”⁹³.

66. The fact that the ICTY Trial Chamber did not *identify* a single death or injury resulting from the shelling of Knin does not automatically mean that the statement of General Leslie is inaccurate, let alone false, as the Applicant implied. This Court will have an opportunity to take its own view in relation to his testimony, while I will only observe that neither the ICTY identified by names and other personal data the victims of Srebrenica in the *Krstić* case nor this Court dealt with such identification in the previous case of the *Application of the Genocide Convention*.

67. General Leslie, whose impartiality is not in doubt, was in a position to see many dead people in Knin and to testify on that before the United Nations Tribunal. He could not identify them. After all, he was under shelling. Does it really mean then, as Croatia implied, that there was not a single victim? This would be a strange conclusion: unidentified victims are still the victims. However, hard work through many years done by the Centre for Collecting Documents and

⁸⁸Brioni Minutes, p. 15.

⁸⁹*Gotovina et al.*, Transcripts, 22 Apr. 2008, p. 1967.

⁹⁰*Ibid.*, p. 1968.

⁹¹*Gotovina et al.*, Transcripts, 27 May 2008, p. 3748; RS, Ann. 44.

⁹²*Gotovina et al.*, Transcripts, 17 Apr. 2008, pp. 1739-1740.

⁹³APC, para. 3.32 (i).

Information Veritas scored in the identification of 70 victims who were killed just in the town of Knin in Operation Storm (36 civilians, 31 soldiers and 3 policemen)⁹⁴, the majority of whom must be the victims of shelling. Thus, these two statements, Leslie and Štrbac, appear as consistent and complementary. They are also supported by the statements of the ICTY witnesses Grubor, Hill and Dreyer, as well as by the ICTY protected witness 136, who was a United Nations interpreter at the critical time. That witness gave an account of unidentified graves, row by row, within the Knin cemetery⁹⁵.

68. Apart from these testimonies, it would be very interesting if the Applicant could clarify how it comes to the allegation that the ICTY Trial Chamber calculated that 94.5 per cent of shells were fired at legitimate military targets⁹⁶. We could not find such data in the Trial judgement. If not for the subject-matter of this dispute, that clarification would be important for the understanding of the Applicant's approach to the principle of bona fide presentation of the case before the principal judicial organ of the United Nations.

69. Other places of the Republic of Serbian Krajina were also exposed to heavy artillery attacks. According to evidence presented in *Gotovina et al.* concerning United Nations Sector South exclusively, those were the small towns of Benkovac, Obrovac, Gračac, Kistanje, Uzdojle, Kovačić, Plavno, Polača, Buković, and many villages⁹⁷. The ICTY Trial Chamber in *Gotovina* found that at least 150 projectiles fell on Benkovac and its immediate vicinity on 4 and 5 August⁹⁸ and that no fewer than 150 projectiles fell on Gračac and its immediate vicinity on 4 August 1995⁹⁹. The Trial Chamber also made no finding of resistance coming from Benkovac, Gračac and Obrovac¹⁰⁰.

⁹⁴Statement of expert witness Savo Štrbac submitted to the Court on 1 October 2013 (6.9).

⁹⁵*Gotovina et al.*, Transcripts, 13 Mar. 2008, p. 644; RS, Ann. 49.

⁹⁶APC, paras. 3.32 (ii.) and 3.40.

⁹⁷ *Gotovina et al.*, testimonies of witnesses Jovan Dopudj, 8 July 2008, Transcripts, pp. 5980–5981, 6000–6001; Sava Mirković, 25 Aug. 2008, Transcripts, p. 7417; Vida Gačeša, 15 May 2008, Transcripts, pp. 2886 and 2898–2899; Herman Steenberg, 30 June 2008, Transcripts, p. 5416; also see Reynaud Theunens, Expert report: *Croatian Armed Forces and Operation Storm*, Part II, p. 188; CMS, Ann. 64.

⁹⁸*Gotovina et al.*, Trial Judgement of 15 Apr. 2011, para. 1916; see more, paras. 1914–1945.

⁹⁹*Ibid.*, para. 1928.

¹⁰⁰*Ibid.*, paras. 1914–1945.

6. Attacks on refugee columns

70. The exodus of the Krajina population began with the indiscriminate shelling that forced the civilians to run away from the line of fire that was gradually moving forward. According to the Report of the Croatian Helsinki Committee for Human Rights, the Serb population left United Nations Sector South almost entirely until the end of Saturday 5 August¹⁰¹, while the inhabitants of Sector North started to leave the area between 6 and 8 August¹⁰². The maps that you can see on the screen, prepared by Veritas, show the directions of the withdrawal of the refugee columns and their gradual, daily movement towards the east¹⁰³.

71. How these columns were formed and how they were attacked — it was described authentically by witness Boris Martinović, who gave the statement in 1997 before the domestic court in Banja Luka, Bosnia-Herzegovina. His statement was produced by Serbia as an affidavit¹⁰⁴ and cited in the Rejoinder¹⁰⁵. I would like once again to draw your attention, distinguished Members of the Court, to its main points.

72. Witness Martinović reported¹⁰⁶ that the attack of the Croatian Army on the town of Glina in the region of Banija¹⁰⁷, United Nations Sector North, had been preceded by the heavy shelling of the town and its surroundings, forcing the local population to leave their homes and seek shelter in the direction of Dvor-upon-Una¹⁰⁸, at the border between Krajina and Bosnia-Herzegovina. He stated that the shelling had been very intense and even before the population left their homes, there had been victims. The shelling had been an indication that the Croatian infantry would launch an attack. That had been a reason why convoys of people fled the area. The witness emphasized that the civilian population had not been fleeing; they had been actually retreating. They had used passenger cars, freight vehicles, tractors and horse-drawn carts, while many of them had been

¹⁰¹Croatian Helsinki Committee for Human Rights, *Military Operation Storm and Its Aftermath (sic)*, Zagreb, 2001, p. 20 (hereinafter “CHC Report”; available on <http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Exhibit/NotIndexable/IT-06-90/ACE81106R0000326368.pdf>).

¹⁰²*Ibid.*, p. 5.

¹⁰³Judges’ folders, item No. 13 ((a), (b), (c), (d), (e), (f)).

¹⁰⁴RS, Ann. 53, para. 733.

¹⁰⁵Para. 733.

¹⁰⁶RS, Ann. 53.

¹⁰⁷Judges’ folders, item No. 14 (a).

¹⁰⁸Judges’ folders, item No. 14 (b).

walking because they had no means of transport. Convoys of refugees fleeing Knin and Kordun had joined them and the entire convoy had become very long. As the convoys moved on, Croatian warplanes were flying over, causing panic on the ground. The convoy had been shelled by the Croatian Army at Brezovo Polje, some 20 km away from Glina. He had seen six bodies of killed civilians there. The second shelling of the convoy had occurred when they had been close to the place called Žirovac¹⁰⁹.

73. This statement does not stand alone. Many details about the numerous attacks on the refugee columns in Banija, on the road between Glina and Dvor on 7 and 8 August can also be found in other affidavits produced by the Respondent. Those are the statements of Mirko Mrkobrad¹¹⁰, Božo Ivanović¹¹¹, Dušanka Mraović¹¹², and another four witnesses¹¹³, among whom are those who were visited and interrogated by the Croatian Police in 2012 in relation to the statements submitted by Serbia. These witnesses reported to the domestic courts information concerning the attacks on the refugee columns, as well as the executions conducted by the Croatian Army and the Fifth Corps of the Army of Bosnia-Herzegovina. Their statements are vivid first-hand accounts given one or two years after the horrific massacre they survived. Those statements were taken fully in accordance with the domestic procedural rules, which were applied at that time in the countries of the former Yugoslavia. I respectfully invite the Court to accept their statements as credible and reliable. One of those witnesses, Mr. Mrkobrad, was called by Serbia to be a witness in these hearings.

74. The attacks on the civilians and withdrawing soldiers on the road between Glina and Dvor were also reported by the United Nations Humanitarian Crisis Cell Sitrep — A Compilation of Human Rights Reporting — at the entries for 7 and 8 August¹¹⁴, as well as by many non-governmental organizations, including the Human Rights Watch¹¹⁵.

¹⁰⁹Judges' folders, item No. 14 (c).

¹¹⁰RS, Ann. 52.

¹¹¹RS, Ann. 55.

¹¹²RS, Ann. 60.

¹¹³RS, Anns. 54, 56, 58 and 59.

¹¹⁴CMS, Ann. 55.

¹¹⁵Human Rights Watch' Report, *Impunity for abuses committed during Operation Storm, and the denial of the right of refugees to return to the Krajina*, Aug. 1996, Vol. 8, No. 13 (D), pp. 11-12; available at: www.hrw.org/legacy/reports/1996/Croatia.htm.

75. The Croatian Helsinki Committee for Human Rights — the CHC — in its public report “Military Operation Storm and Its Aftermath” published in Zagreb in 2001, reported as follows:

“A great number of victims were recorded in the refugee column in the region of Banija, which was repeatedly cut off by shelling . . . From some parts of Kordun inhabitants started to leave between August 6 and 8. Thus, in this territory the greatest number of persons injured in a refugee column was recorded. Between August 6 and 9 1995 the column was the target of airplanes and tanks, as well as attacks from some individuals from the Croatian Army and the Fifth Corps of BH Army. These attacks killed and wounded great number of persons and individual executions of civilians moving in the columns were also carried out.”¹¹⁶

76. This organization reported four major attacks on the civilians that occurred within the territory of United Nations Sector North, near the places called Glina, Žirovac, Maje and Cetingrad. The CHC members interviewed many survivors of these attacks. Their statements were included into the report, and the Respondent was not hesitant to refer to these sources in the Counter-Memorial¹¹⁷. They support the other evidence, and together with the affidavits, give a dramatic account on the criminal acts committed between Glina and Dvor.

77. According to the data collected by the NGO Veritas, at least 189 people were killed in several attacks on the convoys on the road Glina-Dvor¹¹⁸. Their names are recorded in the List of the Victims of Operation Storm which is permanently available in English on the Veritas website¹¹⁹. Among these victims two thirds were civilians. In the place called Žirovac, 67 victims have so far been recorded by Veritas, out of which there were 43 civilians, with 21 women among them, 23 soldiers and one Krajina policeman. The mortal remains of only 17 victims of Žirovac have so far been exhumed and identified by the Croatian authorities, while all others are still registered as missing¹²⁰.

78. Distinguished Members of the Court — not even one person has ever been convicted for the massacre of the refugees on the road between Glina and Dvor, although it is well documented

¹¹⁶CHC Report, pp. 215-216.

¹¹⁷CMS, paras. 1244-1246, 1248-1256.

¹¹⁸Statement of expert witness Savo Štrbac submitted to the Court on 1 Oct. 2013 (6.8).

¹¹⁹[Http://www.veritas.org.rs/wp-content/uploads/2013/02/Oluja-spisak-direktnih-zrtava2.pdf](http://www.veritas.org.rs/wp-content/uploads/2013/02/Oluja-spisak-direktnih-zrtava2.pdf).

¹²⁰Statement of expert witness Savo Štrbac (6.8).

who were the Croatian units operated in the area¹²¹. The ICTY has never accused anyone for this massacre.

79. The attacks to the refugee columns occurred systematically at the other places as well. Witness Božo Šuša, the statement of whom also forms an integral part of the oral proceedings, testified as an eye-witness on the execution of 15 refugees in the town of Knin near the local catholic church on 5 August 1995. These old people lost their way and met the Croatian infantry entering Knin. The execution was immediate and merciless¹²².

80. Witness Sava Utržen gave her statement to the domestic court in Prijedor, Bosnia-Herzegovina in 1997. She reported that she had seen Croatian soldiers intercepting a convoy of civilians fleeing Knin on the tractors on 5 August. Four tractor drivers were killed and their bodies were thrown into the river. She also said that she had seen afterwards Croatian soldiers bringing a group of Serb soldiers, brutally beaten and taken to the barracks. Beside the barracks she had seen many dead bodies of civilians¹²³.

81. Witness Marija Večerina testified in Gotovina that a group of refugees were attacked at the place called Očestovo in the Knin municipality on 5 August. After a short detention, her son Stevo Večerina and other five men were executed¹²⁴. The names of these victims are recorded by Veritas.

82. Another three ICTY witnesses in Gotovina — Dusan Dragičević and protected witnesses P-001 and P-013 — testified that, on the same day, a group of at least 20 refugees from the village of Polača were attacked by Croatian soldiers at the place called Kovačić. In this incident three Serbs were killed and at least three wounded, while the others managed to run away into the nearby forest¹²⁵. There is no one single conviction for any of these crimes.

83. The attacks to the refugee columns did not cease even after the refugees managed to pass the Croatian border. The ICTY protected witness P-056¹²⁶, as well as two witnesses the statements

¹²¹Statement of expert witness Savo Štrbac (6.8).

¹²²Statement of witness Božo Šuša submitted to the Court on 1 Oct. 2013.

¹²³RS, Ann. 61.

¹²⁴*Gotovina et al.*, Transcripts, 17 July 2008, pp. 6716-6722; RS, Ann. 47.

¹²⁵*Gotovina et al.*, Trial Judgement of 15 Apr. 2011, paras. 313 – 333.

¹²⁶RS, Ann. 51.

of whom Serbia produced to the Court as affidavits¹²⁷, testified about the airplane attack on the refugee column near Petrovac in Bosnia-Herzegovina, at the place called Bravsko, in the area also known as Medeno Polje. According to their statements and the data collected by Veritas, in this air-attack nine Serbs were killed, among them four children, while tens were wounded. I will later come back to the attacks on the refugee columns that the Croatian army conducted on the territory of Bosnia-Herzegovina.

84. Mr. President, these massacres confirm the real meaning of the notorious words of Croatian President at the Brioni Island: “We have to inflict such blows that the Serbs will to all practical purposes disappear.” There was no military need to attack the fleeing columns of *hors de combat* and civilians. As we stated in the Rejoinder, the columns were attacked for a sole reason: to destroy the ethnical group living in Krajina. These attacks sent a clear message to those surviving that their return was not possible.

Mr. President, at this point I would kindly ask you for a short break.

Mr. PRESIDENT: Yes, I understand. You deserve a break even more than Members of the Court, this morning, as you still have some 85 minutes to plead. The sitting is suspended for 15 minutes.

Mr. OBRADOVIĆ: Thank you, Mr. President.

The Court adjourned from 11.25 a.m. to 11.40 a.m

The PRESIDENT: Please be seated. The hearing is resumed; Mr. Obradović, you may continue.

Mr. OBRADOVIĆ: Thank you, Mr. President.

7. Mass killing of Serbs who remained in Krajina

85. The fear of the people running away from Krajina was fully justified by the horrific destiny of those who decided to stay behind, waiting for the Croatian governmental troops. As the

¹²⁷RS, Anns. 65 and 66.

Report of the United Nations Secretary-General of 18 October 1995 states, the number of those Krajina Serbs was extremely small¹²⁸. Most of them were elderly and disabled persons who could not escape with the others. However, according to many sources of evidence, these people were slaughtered by Croatian forces en masse.

86. When several Serbs from the village of Golubić near Knin decided to end fleeing and return to their village, they stopped at a place called Radljevac to take some fuel. They were found there by Croatian soldiers who opened fire without any explanation and killed all seven of them. This incident was recorded by the Croatian Helsinki Committee for Human Rights¹²⁹. The executions continued next day at the same place. Veritas has recorded that on 4 and 5 August ten civilians and three prisoners of war were executed in the village of Radljevac. Their names, as well as the names of all other victims that I will further mention, are listed in the statement of the expert witness, Savo Štrbac¹³⁰.

87. However, even if the victims from Radljevac managed to reach their village of Golubić, the destiny for them would be the same. According to Veritas, the Croatian army conducted cleansing of that village on 6 August. At least 15 Serbs were killed in Golubić on that day, while the 16th inhabitant committed suicide. Those were literally all who were found in the village by the Croatian soldiers¹³¹. This is how the Croatian Helsinki Committee for Human Rights described the destiny of some of them in its 2001 report:

“Nikola Panić, born 1935, disabled, killed on August 6, 1995 in Golubić. His head was found 50 meters away from the murder spot. Allegedly soldiers played football with his head. The corpse of Marija Banjanin, 89 year old from Gračac, was found with her head cut off. The head was found without eyes. NN(f), around 74 years, was found tied with a fishing net. The automobile tire was found around her neck, which seemed burned. In the vicinity of Golubić, UN registered a dead man and women. The man’s nose and ears were cut off.”¹³²

The ICTY Prosecutor did not deal with these incidents. No one has ever been convicted for these crimes before the domestic courts in Croatia.

¹²⁸*The situation in the occupied territories of Croatia*, Report of the Secretary-General, 18 Oct.1995, UN doc. A/50/648, para. 27.

¹²⁹CHC Report, p. 53.

¹³⁰Statement of expert witness Savo Štrbac submitted to the Court on 1 Oct. 2013 (6.11.7).

¹³¹*Ibid.*, (6.11.6).

¹³²CHC Report, p. 47.

88. On the other side, three witnesses in *Gotovina* testified on the brutal executions of the remaining inhabitants of the Uzdolje village on 6 August, also in the Knin municipality. The Trial Chamber referred to their statements as reliable and trustworthy. According to these witnesses, seven persons were killed and 200 houses were burnt by the soldiers of the Croatian army. Two eye-witnesses of this execution — protected witness P-067 who was wounded in this massacre, and witness Dragutin Junjga who managed to escape before the execution took place, found shelter in the mountain area behind the village. All the victims of the Uzdolje massacre were elderly people, who were found on the road. They did not resist Croatian soldiers in any way¹³³.

89. In the village of Mokro Polje near Knin, the Croatian soldiers also killed six Serbs on 6 August 1995: four refugees they met in the village, and two old women¹³⁴. Witness Ilija Babić, for whom Croatia did not wish to cross-examine, survived the massacre, hidden in the compound of his house. The Croat soldiers killed everyone who was found in the village. No one has ever been accused of this massacre.

90. According to the Croatian Helsinki Committee for Human Rights report, the massive killings of the Krajina Serbs were also committed in the following Dalmatian villages: Strmica (15 victims)¹³⁵; Oton (8 victims)¹³⁶; Vrbnik (9 victims)¹³⁷; Žagrović (16 victims)¹³⁸; Ivoševci (14 killed and 10 missing persons)¹³⁹; and many others.

91. The Croatian army applied the same pattern of conduct in the Lika region. On 4 August 1995, 14 inhabitants of the village of Kijani, near Gračac, decided to stay at their homes waiting for the Croatian troops, while all others were leaving the village. The remaining villagers were killed, all of them. The ICTY witness, Mile Sovilj, stated before the Trial Chamber in *Gotovina* that his father, Vlade, did not want to leave the village because he had heard radio announcements of President Tudjman's proclamation that people should not leave their homes as

¹³³*Gotovina et al.*, Trial Judgement of 15 Apr. 2011, paras. 489-505.

¹³⁴Statement of witness Ilija Babić submitted to the Court on 1 Oct. 2013. See, also, statement of expert witness Savo Štrbac (6.11.8).

¹³⁵CHC Report, p. 38.

¹³⁶*Ibid.*, p. 40.

¹³⁷*Ibid.*

¹³⁸*Ibid.*, pp. 45-47.

¹³⁹*Ibid.*, pp. 45, 150-151.

nothing would happen to them. Ten days later, his son, Mile Sovilj, reported to the Red Cross in Serbia, UNPROFOR and Veritas, that his father had disappeared. The witness later heard that his father was killed by Croatian forces on 8 August 1995, along with all the others who had remained behind in Kijani¹⁴⁰.

92. According to a Croatian identification form, a completely burned body, numbered 302, was recovered from Bruvno, Gračac municipality, on 12 August 1995, and buried in a local cemetery in Gračac. Body G04/014B, exhumed with a metal tag marked “302” from a cemetery near Gračac on 3 June 2002, had, among other injuries, a gunshot injury to the trunk, which was found by a forensic pathologist to be the cause of death. In 2004, Croatian authorities in Zagreb identified by DNA analysis body G04/014B, exhumed from Gračac cemetery, as Vlade Sovilj, born in 1931¹⁴¹.

93. Although the ICTY Trial Chamber found that the evidence indicated that Vlade Sovilj had been killed by a gunshot to his trunk on or around 8 August 1995 in Gračac municipality, it considered that the evidence was insufficient regarding the circumstances under which or by whom Vlade Sovilj was killed. There was no survivor of the Kijani massacre, as was also the case in many other Krajina places during Operation Storm. The Trial Chamber was unable to draw any conclusion regarding the identity or affiliation of the perpetrator, and accordingly it did not further consider this incident in the course of the indictment against Croatian generals¹⁴². The killing of another 13 inhabitants of Kijani was not even examined by the ICTY Prosecutor.

94. Does it mean that the massacre did not occur? I do not think that such a conclusion can be inferred by anyone who is faithful and reasonable. Without information as to the affiliation of the perpetrators, the Criminal Tribunal dealing with the accusation of one military officer (Gotovina) and one police officer (Markač) could not come to any finding beyond reasonable doubt concerning their personal liability for the specific criminal incident. Yet, this is not a case of the individual criminal responsibility; the subject-matter of this case, distinguished Members of the Court, is the State responsibility. There is no doubt that the crime was committed on Croatian

¹⁴⁰*Gotovina et al.*, Trial Judgement of 15 Apr. 2011, para. 257. See, also, statement of witness Mile Sovilj and statement of expert witness Savo Štrbac both submitted to the Court on 1 Oct. 2013.

¹⁴¹*Gotovina et al.*, Trial Judgement of 15 Apr. 2011, para. 258.

¹⁴²*Ibid.*, para. 259.

territory after the fall of Krajina. There is no doubt that there was no military fighting on 8 August and thereafter in the Lika region¹⁴³. The village of Kijane, at the critical time, was under effective and exclusive control of the Croatian armed forces¹⁴⁴, nevertheless whether they were military or police units. This leads us to the unavoidable conclusion that Croatia is responsible for this violation of international humanitarian law that occurred in the village of Kijane.

95. On the other side, the execution of the remaining villagers of Oraovac in the municipality of Donji Lapac by the Croatian army was proved in *Gotovina et al.* beyond reasonable doubt. When the Croatian army entered the village on 7 August, five out of six remaining inhabitants were arrested. One of the arrested, Milan Ilić, managed to escape, while the other four, including his brother Marko, were executed. Hidden in the bushes, witness Milan heard eight shots: two bullets for each of the victims¹⁴⁵. The sixth inhabitant of Oraovac was an old immobile woman. Her name also appears today on the Veritas list of victims of Operation Storm.

96. For the purpose of this case, I am fully aware that one can say that the number of victims in the village of Oraovac was small: four or five. Yet, such an observation has only a relative significance for our case. Firstly, if we take a deeper look to the events, we will see that the killings in all villages that I have mentioned, as well as in many others, were committed on the same route of the Croatian forces, in the same killing operation. That happened in the course of a couple of days. Thus, these executions should not be observed as isolated incidents.

97. Secondly, there is no doubt that the perpetrators in Oraovac had intention to kill all remaining Serbs in the village. They executed four victims, while the fifth, Milan Ilić, skilfully escaped from the executors. Does anyone have any reasonable doubt what would happen if 15 Serbs remained in the village? Or 115? Some technical questions of the execution must have been deliberate by the perpetrators in the last case, and we cannot speculate how they would solve the problem, but nonetheless, there is no doubt that the perpetrators from Oraovac, as well as from many other slaughter places, clearly showed their intent to kill all Serbs found in the villages.

¹⁴³See para. 55 above.

¹⁴⁴*Gotovina et al.*, testimony of witness Peter W. Galbraith, Transcripts, 23 June 2008, p. 4947, lines 19-25.

¹⁴⁵*Gotovina et al.*, Trial Judgement of 15 Apr. 2011, paras. 210-218.

98. Nevertheless, the ICTY Appeals Chamber reversed the Trial judgement in *Gotovina et al.*: no one has been convicted for the massacre of innocent civilians in Oraovac, as well as no single perpetrator has ever been convicted for the massacre in Kijani.

99. A massive execution of civilians in the mountain village of Komić, in the municipality of Titova Korenica, also in the Lika region, has never found its place in any international or domestic indictment. Seven Serb peasants, who stayed peacefully at their homes, were brutally killed. Some of them were burnt together with their houses. The others managed to escape to the hills around the village¹⁴⁶. This is also a fact to which I have a duty to draw the attention of the Court. Krajina has a specific topographic terrain: it is a mountain area where many hamlets are difficult to be approached, where the houses were not one nearby another. Shots in one hamlet were heard by the inhabitants of the others who have enough time to escape to the hills and forests. These images of the Krajina region¹⁴⁷ explain how the cleansing operation of the Croatian army has not resulted in more victims. Ms Jela Ugarković, one of the Komić survivors, gave her witness statement on that horrific event in these oral proceedings.

100. All the same, although the municipality of Gračac was among the places recorded by the ICTY indictment in *Gotovina et al.* as a scene of the systematic and massive murders, the murder of four inhabitants of the village of Glogovo of that municipality was not examined by the Prosecutor in the course of the trial against three Croatian generals. When Boris Jakšić, on 7 August 1995, went from the mountain pasture down to the village, Croatian soldiers told him to invite other shepherds to come downhill in order to obtain new identification documents. Those who accepted this invitation and came later to Glogovo were killed. A witness of this event, Dragica Petrović, the wife of the victim Rade Petrović, passed away in 2001. In the meantime, the NGO Veritas had recorded her statement¹⁴⁸.

101. Veritas also reports that twelve civilians remained in the village of Doljani, in the municipality of Vrhovine. Those were the old persons, many of whom were ill or disabled. During

¹⁴⁶Statement of witness Jela Ugarković submitted to the Court on 1 Oct. 2013. See, also, statement of expert witness Savo Štrbac (6.11.2).

¹⁴⁷Judges' folders, item No. 15 (a), (b) and (c).

¹⁴⁸Statement of expert witness Savo Štrbac (6.11.3).

August 1995, the Croatian armed forces killed them all in their houses or nearby. Many of them were burnt with their houses¹⁴⁹.

102. All these crimes in the Lika region were also recorded in the 2001 Report of the Croatian Helsinki Committee for Human Rights. In addition, CHC reported that eight Serbs were killed in the village of Zalužnice in August 1995¹⁵⁰. According to the Veritas data, another 12, old Serbs, were executed in the village of Zrmanja, in the hamlets called Gudura, Nadvrelo and Palanka¹⁵¹. An average age of the Zrmanja victims was 71, while in the case of Doljani it was 67.

103. Mr. President, distinguished Members of the Court; in my presentation of the killing of the Serbs who decided to stay in Krajina, I have been so far dealing with the destiny of the remaining inhabitants of United Nations Sector South only. The map that you can see now on the screen is made by the ICTY Prosecutor¹⁵². It shows the places of killings — red dots — examined in the *Gotovina et al.* trial. However, the following map, prepared by our legal team¹⁵³, shows the places of executions that I have pointed out or I am going to point out today. The obvious difference among these two maps can give you insight about the difference between the two cases.

104. As you can see on the second map, the killing of the inhabitants who stayed behind the refugees' columns was committed also in United Nations Sector North. Thus, the CHC 2001 report gives information, *inter alia*, about the executions of civilians between 4 and 6 August in the Duga Resa municipality, the region of Kordun. On 5 August, six members of the Croatian army killed five victims in the house of Nikola Dmitrović in the village of Donji Skrad. Four of those victims were women. Another woman born in 1931, who escaped the massacre on 5 August, was found next day by the Croatian soldiers. She was raped and thrown into a well where she died¹⁵⁴, while the sixth victim, a woman born in 1905 was also killed in Donji Skrad on 5 August¹⁵⁵. CHC reports also about a murder of five civilians on 8 or 9 August in the village of Čremušnica, in

¹⁴⁹Statement of expert witness Savo Štrbac (6.11.4).

¹⁵⁰CHC Report, p. 51.

¹⁵¹Statement of expert witness Savo Štrbac, (6.11.4).

¹⁵²Judges' folders, item No. 16.

¹⁵³Judges' folders, item No. 17.

¹⁵⁴CHC Report, pp. 236–237.

¹⁵⁵*Ibid.*; see, also, statement of expert witness Savo Štrbac (6.11.1).

the municipality of Vrginmost, as well as of five burnt corpses found in the village of Bijeli Klanac.

105. According to the Veritas list of victims, in the region of Banija, the Croatian army entered the village of Luščani near Petrinja on 6 and 7 August 1995 and killed at least 11 Serbs, everyone who were found there¹⁵⁶, while on 7 and 8 August, in Šaš, the municipality of Kostajnica, six civilians who remained at home were killed¹⁵⁷.

106. The killing of the Serbs continued long after Operation Storm was finished. According to the 1996 Human Rights Watch report,

“[I]ocal human rights monitors report[ed] that an estimated eighty elderly Serb civilians [had been] executed in the months from November 1995 to April 1996, long after the Croatian government had asserted control over the region and promised it would guarantee the safety of the Serbs living in the Krajina area”¹⁵⁸.

107. Some more light was dropped on these aftermath crimes, like the massacres perpetrated in Sector South, in the villages of Grubori — the hamlet of Plavno — Gošići, and Varivode¹⁵⁹, primarily due to the free movement of the United Nations troops which was re-established from 9 August 1995 onwards, upon the pressure of the international community¹⁶⁰. Thus, the UNCRO investigation teams could record some consequences of the subsequent crimes on their video tapes. The United Nation video material found its place later in the documentary called “Storm over Krajina”, which was admitted into evidence in *Gotovina*¹⁶¹. Members of the Court, I would like to kindly invite you to take your earphones. [Video on]

Transcript:

“We visited the Plavno valley yesterday, to meet with a group of residents in one town there, and we observed that across the valley another town was apparently on fire. There was huge plume of smoke, and so we visited that town in the afternoon,

¹⁵⁶Statement of expert witness Savo Štrbac, (6.11.10).

¹⁵⁷*Ibid.*, (6.11.9).

¹⁵⁸Human Rights Watch Report, Croatia: Impunity for abuses committed during Operation Storm, and the denial of the right of refugees to return to the Krajina, Aug.1996, Vol. 8, No.13 (*d*), p.2, available at: www.hrw.org/legacy/reports/1996/Croatia.htm); CHC Report, pp. 166–169, also gives a list of 24 civilians killed in Sector South in period 1996-1999, available at: <http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Exhibit/NotIndexable/IT-06-90/ACE81106R0000326368.pdf>.

¹⁵⁹See CMS, paras. 1281-1283.

¹⁶⁰See ICTY testimony of General Andrew Brook Leslie in *Gotovina et al.*, Transcripts, 22 Apr. 2008, pp. 1972-1973.

¹⁶¹Judges' folders, item No. 18.

and we found out that in fact almost every structure in this hill side village was in the flame.

On the evening the 25th, we went back to the village, and we found a couple of more people there in addition to the one we'd found. They were wailing and [grief-stricken] because in the [interim] they found two dead bodies, people who had been killed evidently early that day. And, we witnessed the bodies . . . the two people had apparently . . . one person had been shot through the head. Another person — both of them were elderly men — had had his throat slashed." [Video off]

108. These executions were examined at the *Gotovina* trial, and several reliable witness statements of the United Nations monitors were heard in the neighbouring Tribunal¹⁶². Moreover, a couple of criminal proceedings were opened in Croatia. Unfortunately, according to the attitude of the majority of the ICTY Appeals Chamber, the impunity for these crimes prevailed. Neither the Croatian domestic courts have convicted a single perpetrator for the massacres of the innocent old people in Grubori, Gošići, and Varivode.

109. In the documentary, we could find a recorded statement of a lady from Varivode, her name is Jelka, who said: "So, they went from house to house. As they found someone, thus they killed him." Then, the journalist asked her: "You weren't there?", and she answered: "No, we weren't. If we were, we would not be here now."¹⁶³

110. Indeed, this statement, as well as the video itself, could not be of a great probative value for the individual criminal responsibility. However, her statement raises a question who the witnesses of the Storm killing are today. There are not so many of them who could be eye-witnesses 19 years later. Mr. Babić and Ms Ugarković are the persons who managed to escape the killing by hiding themselves. The ICTY witnesses Ilić and Junjga were skilful enough to run away from the death squads. Mr. Šuša believes that he survived just because he was lucky to be registered by the Red Cross in Knin before he was brought to the Croatian Military Police, while Mr. Mrkobrad at his surrender at Glina faced the young Croatian soldier who did not have nerve to kill him. Mirko Mrkobrad was lucky enough. Many others were not. These horrific facts are something that, I think, should be taken into account by the Members of the Court in deliberation of the counter-claim.

¹⁶²See CMS, p. 411, fn. 1229.

¹⁶³Božidar Knežević, *Storm Over Krajina*, documentary; the quoted dialogue is available on <https://www.youtube.com/watch?v=YJWGgb3YAp4>.

111. Finally, how hopeless was a destiny of the Serbs who remained in the Krajina after Operation Storm can be understood from the statement of the ICTY witness Peter Marti, United Nations official, who testified that he was very surprised when he had seen Serb Milan Marčetić still alive at his home. According to his statement, Marti had even asked Marčetić how it had been possible that he had still been alive in his village in Krajina. Soon afterwards, on 12 October 1995, Milan Marčetić was reported as killed¹⁶⁴.

8. Overall data about victims killed during and after Operation Storm

112. A precise number of victims killed by the Croatian armed forces during and after Operation Storm can never be determined. According to the ICTY witness Mr. Mladen Bajjić, the Croatian War Crimes Prosecutor, most of the bodies were buried in mass graves “without an on-site investigation or criminal report being filed”¹⁶⁵. However, the Respondent does not consider that its task is to prove the exact number of the Serbs killed in the operation. Rather, we present fully conclusive evidence that the Croatian armed forces during and immediately after Operation Storm conducted the mass killing of the members of the group of Krajina Serbs with intent to destroy that group as such. In our view, that is the relevant fact for the subject-matter of our case. In that regard, I will refer to some sources.

113. First of them is the list of direct victims of Operation Storm made by Veritas¹⁶⁶, as an extract from the overall list of the Serb victims on the territory of Croatia that was produced as Annex 66 to the Counter-Memorial. According to Veritas, 1,719 Serbs were killed during and after the operation. The list can be treated neither as complete nor final. Furthermore many mass graves in Croatia have still been waiting for the exhumation, while many mortal remains wait for the identification. However, Serbia considers the Veritas list as the most reliable one today.

114. Further, the mass killing of the Serbs was also confirmed by the Croatian Helsinki Committee for Human Rights’ early research, published in its 2001 Report. According to that

¹⁶⁴See *Gotovina et al.*, testimony of witness Peter Marti, 9 June 2008, Transcripts, p. 4628.

¹⁶⁵See RS, para. 767.

¹⁶⁶Available on <http://www.veritas.org.rs/wp-content/uploads/2013/02/Oluja-spisak-direktnih-zrtava2.pdf>.

report 677 Serb *civilians* were murdered and went missing. In addition, CHC noted that indications existed that a number of Serb *soldiers* were killed after having surrendered to Croat forces¹⁶⁷.

115. The third source concerning the killings is the Report of the Special Rapporteur of the United Nations Commission on Human Rights, Ms Elisabeth Rehn, dated 7 November 1995. The report was produced to the Court as Annex 59 to the Counter-Memorial. According to paragraph 24 of the Report “more than 120 bodies [had] been discovered by the United Nations . . . [A] common murder method was shots in the back of the head.”¹⁶⁸

116. Finally, Croatia clearly and publicly admitted the massive killing in its document published in February 1996, six months after the operation. It is the Report of the Government of the Republic of Croatia on the Implementation of the Security Council resolution 1019 (1995), which was circulated with the Note Verbale ref. No. PC/105/96 dated 9 February 1996 by the Permanent Mission of the Republic of Croatia to the OSCE, Vienna, to the delegations to that Organization¹⁶⁹. In the report, which was attached to the Note, Croatia officially stated that

“in the military activities during Operation Storm, the other side suffered the following fatalities: 404 soldiers belonging to paramilitary units, 462 civilians, and 45 persons whose status, military or civilian, cannot be determined. A total of 911 persons were killed. This figure includes a relatively high proportion of civilians because the enemy military units, contrary to the provisions of international law, intermixed with the civilian population, using them as a human shield.”¹⁷⁰

117. Croatia reported this at the time when there was not even an idea that the Croatian Generals could be indicted by the ICTY, or that Serbia could file the claim to the International Court of Justice based on the crimes committed in Operation Storm. The official statement of February 1996 is contrary to the Applicant’s response in its written pleadings. Namely, the Applicant neither admitted that such massive killing occurred during Operation Storm, nor claimed that using civilians as a human shield was a cause of their deaths. Rather, Croatia stated in its Reply that “some of these deaths were attributable to the acts of individual members of the

¹⁶⁷See CMS, para. 1239.

¹⁶⁸See RS, para. 762.

¹⁶⁹The Report was furnished to the Court on 8 August 2013. The document was also conveyed to the diplomatic missions accredited in the Republic of Croatia by the Note Verbale No. 385/96IP dated 8 February 1996, as well as to the permanent missions to the United Nations in New York. The reference to this report can also be found in the United Nations Further Report on the Situation of Human Rights in Croatia pursuant to Security Council resolution 1019 (1995), S/1996/109, dated 14 Feb. 1996, para. 7.

¹⁷⁰Report, p. 4.

Croatian army and the Croatian police, and it may be that some of those amounted to the war crime of murder”¹⁷¹. In the same vein, Croatian President, H.E. Ivo Josipović, in his statement given to Serbian television B92 on 7 December 2012 underestimated the number of civilian victims of Operation Storm to the number “between 200 and 300”¹⁷².

118. According to the Veritas research, the total number of persons killed between 4 and 12 August 1995, that is during the first week of the operation, is 1,513, including 887 civilians, 616 soldiers and 10 policemen¹⁷³. This figure demonstrates how intensive the attack on the Serb ethnic group in the Republic of Serbian Krajina was.

119. As we have convincingly shown in these proceedings, the Storm killing was massive, widespread and systematic. The group of Krajina Serbs was attacked as such. The number of the executions was determined to a large extent by the opportunity given to the perpetrators. In determination of this important factor, Members of the Court should take into account some undisputed facts:

- (a) the massiveness of those who decided to run away before facing the entry of the Croatian forces; it was estimated that 200,000 Serbs left the area¹⁷⁴;
- (b) the extremely small number of those who stayed behind the refugees, estimated to be 3,000 in Sector North, and 2,000 in Sector South¹⁷⁵;
- (c) the characteristic of the Krajina terrain which allowed many civilians to find shelter in the hills and forests¹⁷⁶;
- (d) the fact that a significant number of Serbs found shelter in the United Nations camps, or were escorted by the United Nations staff under the control of the international observers and

¹⁷¹RC, para. 12.50.

¹⁷²Available on: http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=12&dd=07&nav_category=11&nav_id=667053 in Serbian; translation submitted to the Court on 8 August 2013.

¹⁷³Statement of expert witness Savo Štrbac (6.7).

¹⁷⁴The situation in the occupied territories of Croatia: Report of the Secretary-General, dated 18 Oct. 1995, UN doc. A/50/648, para. 27.

¹⁷⁵The situation in the occupied territories of Croatia: Report of the Secretary-General, dated 18 October 1995, UN doc. A/50/648, para. 27. See also RS, para. 729 and subsequent ft. 771.

¹⁷⁶See para. 99 above.

journalists, as was the case with the last group of soldiers and civilians who surrendered near Topusko in Banija on 8 August¹⁷⁷.

Taking all these facts into account, one can conclude that the number of victims killed certainly represents a high proportion of those who were under the power of the army and police that took control over the region.

120. At the same time, these facts point out that the criminal case of Operation Storm cannot be equated to any other operation or incident in which the Croatian victims were recorded, including the Eastern Slavonia situation in 1991, taken as a whole. According to the Memorial, that situation was described as numerous attacks to the Eastern Slavonian villages by the JNA and paramilitary units, sometimes including serious battles, such as that one in Vukovar, after which sporadic incidents of mass murders were recorded together with many cases of torture, humiliation and general discrimination of the Croat civilians. However, the remaining Croat civilians, according to the Applicant, were exiled from March to May 1992, about six months after the takeover of their places¹⁷⁸. Should I say that all opportunities were in place during those six months for their physical destruction, if such intent existed? Yet, that was proven not to be the case.

9. Facts about killing confirm the intent to destroy the group of Krajina Serbs as such

121. Mr. President, as I emphasized earlier today, the intent of the Croatian Government to destroy the Krajina Serbs as an ethnic group is visible from the transcript of the Brioni meeting. Yet, if its contents are not convincing enough, I promise that the conduct of the Croatian troops during and after the operation will confirm such intent. The killing is one of the *actus reus* of the crime of genocide, but it can also point out, by its massiveness and persistence, what the intent of the perpetrators was.

122. To summarize, firstly, I have already demonstrated how massive, systematic and widespread the killing was. Secondly, I also offered a view to the limited opportunity available to the perpetrators, which, however, was fully used. Thirdly, I have mentioned today many villages in

¹⁷⁷See paras. 55 and 56 above.

¹⁷⁸See MC, paras. 4.30, 4.37, 4.46, 4.61, 4.80, 4.93.

which *all* those who were found by the Croatian armed forces were executed. The conclusion is unavoidable: the more Serbs decided to stay at home waiting for the Croatian units, the more would have been killed.

10. Causing serious bodily and mental harm to members of the group of Krajina Serbs

123. There is no doubt that so massive and widespread attack on the members of the group of Krajina Serbs had to cause serious bodily and mental harm to a huge number of both those who managed to flee from Krajina and those who stayed in the region but somehow escaped the execution.

124. Some examples that can confirm this conclusion could be found throughout our submissions and evidence produced. For instance, witness Mirko Mrkobrad testified in 1997 before the District Court in Požarevac, Serbia, that after his arrest in Glina, he suffered a serious torture in a collective centre in Sisak: he had lost six teeth; the guards had fractured two of his left side ribs and broke the joints of his middle fingers on both hands¹⁷⁹.

125. Another witness, the statement of whom is submitted as Annex 54 to the Rejoinder, testified how he had been interrogated at a prison in Glina.

“They took away all my papers and burnt them there. They punched me and beat me with batons. They made me do push-ups even though I was wounded. They stood on my fingers and put a muzzle into my mouth. I don’t know those who beat me. They were all uniformed men.”¹⁸⁰

126. Witness Dušanka Mraović had a baby when Croatian soldiers arrested her in Dvor where she had come in the refugee convoy. Two soldiers, Ivan and Zlatko, asked her where her husband was, kicked her around her loins resulting later in urinating blood, and when she admitted that her husband was in the army of adversary, they asked her whether she would be ready to eat her child’s testicles if they cut them off. However, their mate Josip protected her and gave her some food for the baby and a blanket. She was transported to the school “22 July” in Sisak.

“I spent 21 days in that camp”, she said, “where I was beaten like others, once or twice a day. The beating mainly occurred at night. The camp guards who beat us wore police uniforms. They beat us by ordering us to get up and put our hands behind our necks and walk in circle crying out: ‘for homeland’! Some of the guards kicked

¹⁷⁹RS, Ann. 52.

¹⁸⁰RS, Ann. 54.

us with their boots and the others hit us by batons all over our bodies or threw leather balls at us all over.”¹⁸¹

127. Some statements of the survivors were recorded also by Veritas and quoted in its report in 1998, published bilingually, in Serbian and English and available in the Peace Palace Library.

Thus, Mr. Davor Radić described his arrest:

“Before entering the bus, we were handcuffed, two by two, and beaten with clubs, fists, legs, whatever. We were also beaten on the bus; they changed when they got tired. We were beaten to heads and backs. We had to sing the Ustasha songs and their hymn. After each song we had to say ‘we are Serbs, we are shit’. We had to kiss the ground when we got to Zadar. While we were kneeling they beat us to chest and stomach with their feet.”¹⁸²

128. The statement of Mr. Jovan Manojlović relates to the treatment that the detainees suffered in Benkovac: “They beat us with stick, boots; they force[d] us to lick blood-stained floor; they forced us to swallow some cigarettes; they forced us to take a handful of salt without giving us any water.”¹⁸³

129. Mr. Mile Karapandža describes his arrest in the Brodjani area on 4 August, when he was beaten with boots, fists and clubs, thus his two teeth were broken. Later he was imprisoned in Karlovac where he had to fight against other prisoners in the cell. He was also forced to put women’s clothes on, in which he was fooled around the town¹⁸⁴.

130. Witness Božo Šuša reports about the torture he suffered by the Croatian soldiers at his surrender in Knin: “They beat us with boots and baseball clubs. They broke a broom against my head. They also put a bell on me and I had to imitate a sheep and a donkey. They took a photo of me with a bell.”¹⁸⁵ Later, he was transferred to the prison in Katalinić Brig, in Split, where he was tortured by electricity during the interrogation¹⁸⁶.

131. Suffering physical and mental torture in the prison in Zadar, detainee Milan Jović committed suicide on 4 September 1995¹⁸⁷.

¹⁸¹RS, Ann. 60.

¹⁸²D.I.C. Veritas Report “Serb Krayina, August 1995 — Exodus”, 1998, p. 33 (in English) and p. 95 (in Serbian), available in the Peace Palace Library.

¹⁸³*Ibid.*, p. 35 (in English) and p. 98 (in Serbian).

¹⁸⁴*Ibid.*, p. 41 (in English) and p. 104 (in Serbian).

¹⁸⁵*Ibid.*, p. 38 (in English) and p. 101 (in Serbian).

¹⁸⁶Statement of witness Božo Šuša submitted to the Court on 1 Oct. 2013.

¹⁸⁷*Ibid.*

11. Conditions of life inflicted to the Serbs who remained in Krajina

132. The systematic killing of Serbs were followed by other activities directed to the destroying every possibility that Serbs who were not killed could live on the territory of Krajina. In the Counter-Memorial¹⁸⁸, Serbia presented how massive and systematic the burning, destruction and looting of the property of Krajina Serbs were after Operation Storm. I would kindly draw your attention to those facts and evidence presented in the Counter-Memorial¹⁸⁹.

133. Thus, witness Andries Dreyer from South Africa who was a United Nations Security Co-ordinator for Sector South, testified that, on 9 August 1995, he and his colleagues, apart from tens of dead persons, observed that almost all cattle, dogs and pigs had also been shot in Knin and surrounding area¹⁹⁰. Witness John Hill from Canada described the same situation in Otrić, where he saw houses burning and “all of the animals, cows, pigs, sheep, whatever had been killed, shot”¹⁹¹.

134. Witness Jela Ugarković similarly testified about her eye-witness experience. She had seen carcasses of dead livestock all over the village of Komić, a lot of dead horses and poultry. According to her testimony, the livestock farming was the source of income in the village; some families had up to 20 cows¹⁹².

135. The consequences of this conduct were explained in the best way by United Nations General Forand, Commander of Sector South. His statement was recorded in the documentary “Storm over Krajina”¹⁹³. I would like once again to kindly ask you to take your earphones. [Video on]

Transcript:

“1. There was almost no damage done by the war itself, except the houses that were, not houses but the villages that were near the zone of separation. Here in Knin

¹⁸⁸Paras. 1312-1325.

¹⁸⁹*Gotovina et al.*, Transcripts, 9 Apr. 2008, p. 1501 (witness Edward Flynn); 15 April 2008, p. 1501 (witness Ton Minkuielien); 16 Apr. 2008, pp. 1739-40 and 1760 (witness Roland Dangerfield); 2 June 2008, p. 4047 (witness Edmond Vanderstynne); 3 June 2008, p. 4126 (witness Alain Robert Forand); 30 June 2008, pp. 5416, 5429 and 5431 (witness Herman Steenbergen); see also, CMS, Anns. 54, 55, 57 and 58; see also, CMS, paras. 1407 and 1408, and RS, paras. 773 and 774.

¹⁹⁰*Gotovina et al.*, Transcripts, 17 Apr. 2008, p. 1740.

¹⁹¹*Gotovina et al.*, Transcripts, 28 May 2008, p. 3776; RS, Ann. 44.

¹⁹²Statement of witness Jela Ugarković, para.13.

¹⁹³Available at: <https://www.youtube.com/watch?v=IulcmI1DC0>; judges' folders, item No. 19.

even to about two thousand grounds fell, there was minimum damage. The houses that you see were mostly burnt and looted by the Croat forces. It's still ongoing today almost a month, you know, after the war has ended, and it makes you wonder why they're doing it. At the same time the Croat Government is saying that this is not happening, and then you can see it with your own eyes that this is happening, and we have proved and we see it daily that it's the Croat forces that are doing it.

2. We're also finding bodies as we go to small villages on the daily basis and people who had been shot or people that had been their head, you know, cut. So what type of life can they expect by staying here?

3. It's a form of ethnic cleansing, you know, it's to ensure that the Serb people that have flee[d] [this area] will not come back, and if they come back they will have no more house, no more animal because they're either been killed or stolen, and all the crops have been burnt. So you come back to what, you know, nothing. So, I think it's a form to ensure that they will not come back." [Video off]

136. At the end of September 1995, the European Community Monitoring Mission reported that 73 per cent of Serb houses were burned and looted in 243 villages which were investigated¹⁹⁴. The Report of the United Nations Military Observers from 4 November 1995 states that 17,270 houses were destroyed or damaged after the commencement of Operation Storm in Sector South¹⁹⁵.

12. Statements that expressed *mens rea* of the crime of genocide

137. In order to sweep out any doubt regarding the intent of the Croatian armed forces, if any still remains, I will further refer to some statements that expressed *mens rea* of the crime of genocide.

138. First, I will refer to the statement of witness John Hill, United Nations Military Police Commander in Sector South, who testified in *Gotovina*. During his first meeting with the Croatian soldiers entering Knin on 5 August, he asked them what they were going to do. One soldier who was on top of a tank answered him that they were going "to kill all the Serbs"¹⁹⁶.

139. Second — when Captain Hill tried to release one United Nations interpreter of Serb ethnicity, one Croatian army officer who wanted to kill the interpreter told him that "any Serb men of military age, 19 to 60, who [left] [the UN] camp would be shot"¹⁹⁷. Captain Hill managed to

¹⁹⁴The situation in the occupied territories of Croatia: Report of the Secretary-General, dated 18 Oct. 1995, UN doc. A/50/648, para. 33.

¹⁹⁵CMS, Ann. 58.

¹⁹⁶*Gotovina et al.*, Transcripts, 27 May 2008, p. 3750-51; RS, Ann. 44.

¹⁹⁷*Ibid.*, p. 3767.

save the interpreter, but firmly believed that had he not gotten there that fast, the Croatian Commander would order killing the man on the spot. In his statement recorded during the interview with the ICTY investigator, Mr. Thomas Elfgren, on 28 and 29 May 1997, admitted into evidence in *Gotovina* as exhibit No. P.00292 and produced by the Respondent to this Court on 14 January 2014, Hill stressed that if the members of the Croatian army caught a Chetnik, they shot him. He was asked then by the investigator: “There’s no question about taking as prisoner?”¹⁹⁸ The answer was: “No. That was never discussed. It was either I was taking him or they were going to shoot him.”¹⁹⁹

140. Third — witness Božo Šušić stated that he had seen and heard a Croatian army officer who on 5 August, entering Knin on the main road, had ordered his soldiers to “[s]hoot them all at random”. The execution of the Serb refugees on two tractors was conducted immediately thereafter²⁰⁰.

141. This evidence is corroborated by a statement of one Croatian war veteran who was interviewed by Croatian Daily “Jutarnji list” in 1998. He stated:

“The plan was to clean everything up as soon as possible. Some will get out and we’ll waste the others . . . There were no civilians for us; they were simply all enemies . . . It was an unwritten order that there were no prisoners of war to be taken but, for the sake of saving our face before the world public opinion, a very small number of prisoners of war were nonetheless left alive.”²⁰¹

142. Furthermore, several statements of the Croatian State Leadership given *ex post facto* confirmed the intent they had during Operation Storm. In his euphoric speech in Knin on 26 August 1995 President Tudjman declared:

“[T]here can be no return to the past, to the times when they the Serbs were spreading cancer in the heart of Croatia, cancer which was destroying the Croatian national being and which did not allow the Croatian people to be the master in its own house . . .”²⁰²

¹⁹⁸*Gotovina et al.*, exhibit No. P.00292, p. 00577677, submitted by the Respondent on 14 Jan. 2014 upon the invitation of the Court.

¹⁹⁹*Ibid.*

²⁰⁰Statement of witness Božo Šušić.

²⁰¹RS, para. 720.

²⁰²BBC Summary of World Broadcasts, 28 Aug. 1995, Monday, Part 2 Central Europe, the Balkans; Former Yugoslavia; Croatia; EE/D2393/C. Available at: <http://emperors-clothes.com/docs/tudj.htm>; video available at: <http://www.youtube.com/watch?v=OOqB4sQ5am4>.

143. That statement of President Tudjman is quite similar to the statement of Dr. Mladen Lorković, Minister of Foreign Affairs, who said:

“Croatian people must clean itself from all elements which are its misfortune; which are foreign and strange to that people; which dissolute from one evil to another through decades and centuries. Those are our Serbs and our Jews.”

The only difference between the two statements is that the last one was published in the newspaper “Croatian People” 50 years ago, on 28 June 1941, at the beginning of the World War II genocide against Serbs, Jews and Roma people in the Independent State of Croatia.

144. Thus, the Applicant’s Head of State considered that “the Serbs were spreading cancer in the heart of Croatia”. The same metaphor was used by Croatian Minister of Foreign Affairs, Hrvoje Šarinić, in his conversation with the United States Ambassador Mr. Peter Galbraith, when they, after Operation Storm, discussed the opportunities for Serbs to come back to their homes in Krajina. According to Galbraith, who testified in *Gotovina*, Šarinić said the following: “We cannot accept them to come back. They are a cancer in the stomach of Croatia.”²⁰³ The difference between the two statements can be found rather in the location of Krajina in the Croatian national body than in the attitudes of the two State officials towards the Serbs as such.

145. In our Rejoinder, Professor Schabas explained this choice of metaphor, its meaning and poisonous language which direct to the elimination of the group of people²⁰⁴.

146. It is quite difficult to advocate today that these attitudes of the Croatian President and the Minister for Foreign Affairs appeared no earlier than Operation Storm was over. No, Mr. President, there is no doubt that these statements given *ex post facto* reflected their attitudes towards the Serbs from Croatia in general, the attitudes that existed at the time when the operation was being planned at Brioni. The Respondent has noticed that the Applicant has so far not adduced a single word to explain these statements of its State leadership. It speaks something for itself.

²⁰³*Gotovina et al.*, Testimony of witness Peter Galbraith, 23 June 2008, Transcripts, p. 4939.

²⁰⁴RS, para. 786.

13. Imposing legal barriers to the return of the Serb refugees

147. In the written phase of the proceedings²⁰⁵, Serbia produced a number of reliable documents containing the convincing evidence that the Government of Croatia immediately after Operation Storm:

- (a) had confiscated property which had belonged to the Krajina Serbs if the owners had not come back in 30 days — later, under pressure from the United States Government, prolonged to 90 days, but with the same effect)²⁰⁶;
- (b) had taken measures to colonize Croats in the Serb land and houses which had not been destroyed in the meantime²⁰⁷;
- (c) had amended its electoral law in order to reduce the number of the Serb representatives in the Croatian Parliament²⁰⁸.

148. We quoted the words of President Tudjman from his meeting with Minister Jure Radić on 11 August 1995, a couple of days after the end of the operation, when the President of Croatia confirmed his intent that “not even 10%” of Serbs be allowed to live in Croatia ever again²⁰⁹. These words are a direct reflection of Tudjman’s state of mind from the meeting at Brioni Island three weeks earlier. Although his statement is not evidence for itself of the intent to destroy the ethnic group of Serbs, it can confirm that the target of Operation Storm was the group as such, and not only the Krajina’s armed forces. Tudjman’s instructions from the Brioni meeting ought to be understood in that light.

149. Although the Applicant persisted on the position that “Croatia [had] not imposed any legal barriers on the return of Serb refugees”²¹⁰, and even adduced some mitigating interpretations of the meaning of the legal measures following Operation Storm, the Applicant has never denied

²⁰⁵CMS, paras. 1338-1346; RS, paras. 775-780.

²⁰⁶See “The situation in the occupied territories of Croatia: Report of the Secretary-General”, 18 Oct. 1995, UN doc. A/50/648, para. 28; Report on the situation of human rights in the territory of the former Yugoslavia submitted by Ms Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights, 7 Nov. 1995, UN doc. S/1995/933, paras. 36-42, CMS, Ann. 59; Minutes of the session of the Presidency of the Croatian Democratic Union, 11 Aug. 1995, RS, Ann. 67; *Gotovina et al.*, Transcripts, testimony of H.E. Mr. Peter Galbraith, 25 June 2008, pp. 5115 & 5125.

²⁰⁷See “Record of the meeting between the President of the Republic of Croatia Dr. Franjo Tudjman and Minister Dr. Jure Radić”, 23 Aug. 1995; RS, Ann. 68.

²⁰⁸“The situation in the occupied territories of Croatia: Report of the Secretary-General”, 18 Oct. 1995, UN doc. A/50/648, para. 38.

²⁰⁹RS, para. 778.

²¹⁰APC, para. 3.89.

Tudjman's words and his state of mind regarding the refugees quoted in the Rejoinder. That state of mind is in the rough discordance with the interpretation of history that the Croatian legal team would like to introduce in this case.

150. In addition, the Court might find very interesting the description of Tudjman's attitudes by the former United States Ambassador to Croatia, Mr. Peter Galbraith:

“According to Galbraith, Tudjman preferred a reasonably or basically homogenous Croatia. He believed and stated that the Serbs in Croatia were too numerous and constituted a strategic threat to the state. Tudjman spoke approvingly of population transfers, and also believed that Croats should leave areas that he did not think they could hold. He considered both Muslims and Serbs as part of a different civilization than Croats. Tudjman believed in the idea of a ‘Greater Croatia’.

Tudjman informed Galbraith after the Krajina Serbs had left Croatia in August 1995 that these Serbs could not return. According to a US Embassy cable dated 11 December 1995, Tudjman had told a visiting US congressman that it would be ‘impossible for these Serbs to return the place where their families lived for centuries’. Galbraith stated that since this was Tudjman's policy, it was also Croatia's policy.”²¹¹

14. Krajina Serbs as a substantial part of the Serb national and ethnic group in Croatia

151. Mr. President, I would now summarize some facts regarding the Krajina Serbs as part of a wider group of Serbs living in Croatia. It is not in dispute that Croatian Serbs constitute a specific national or ethnical group, and that the Serb population living in Krajina represented a substantial part of that national or ethnic group²¹².

152. The Respondent also claims that the Krajina Serb population was a distinct geographically located community in an area which was of immense importance to Serbs from Croatia. Krajina — the same meaning as Ukraine — was a specific centre of Serbian life in Croatia for centuries as we demonstrated in the Counter-Memorial²¹³. The most prominent member of that community was a famous American inventor from the first half of the twentieth century — Nikola Tesla, born in the Lika region of the Austro-Hungarian Empire.

153. During the armed conflict, Krajina was also an emblematic part of the overall group of Serbs living in Croatia. As the Respondent presented in the Counter-Memorial, Krajina as a United

²¹¹*Gotovina et al.*, Trial Chamber Judgement of 15 Apr. 2011, paras. 1999-2000.

²¹²RC, para. 12.2.

²¹³CMS, paras. 1381-1384.

Nations protected area, as well as a State *in statu nascendi*, was of immense importance to Croatian Serbs and their resistance to the Government of Croatia²¹⁴. According to General Gotovina, Knin was “psychologically and politically vital for rebel Serbs”²¹⁵.

154. As I demonstrated today, Operation Storm was an attack to the whole population of Krajina. The Croatian armed forces used each and every opportunity to kill all Serbs present in that limited area. Due to the timely withdrawal of the Serb population, that opportunity, fortunately, was not so huge.

155. Today, the Krajina Serbs do not exist as such. They cannot be found anywhere as a distinct group of Serbs from Croatia, including in Serbia, where the majority of Croatian refugees found their shelter: they have been intermixed with other Serbs, while their unique and recognizable culture and traditional characteristics have been lost.

156. Finally, if one compares the Croatian census from 1991 for the places I mentioned today as sites of massive executions²¹⁶ with the 2011 census²¹⁷, the following conclusion will be unavoidable: the group of Krajina Serbs, as such, is physically destroyed.

15. Rebuttal to the counter-allegations

157. Mr. President, distinguished Members of the Court, if you allow me, I will further respond to some specific factual allegations by which the Applicant challenges the counter-claim.

15.1. Alleged murders committed by the Bosnian Serbs’ army

158. Thus, Croatia reports that, according to a Slovenian newspaper dated 7 August 1995, the army of Bosnian Serbs bombed a convoy of Serb soldiers and civilians retreating from Croatia. It was allegedly conducted three times, killing 20 and injuring over 100 persons²¹⁸. This allegation, which is in the same vein with the shameful thesis of *sui-genocide* as expressed in paragraph 2 of the Application instituting proceedings, has not been supported by any evidence. The Croatian

²¹⁴CMS, paras. 1385-1389.

²¹⁵*Gotovina et al.*, Reynaud Theunens, expert report: Croatian Armed Forces and Operation Storm, Part II, p. 67; CMS, Ann. 64.

²¹⁶Donji Skrad, Komić, Glogovo, Doljani, Zrmanja, Nadvrela, Palanka, Golubić, Radljevac, Mokro Polje, Šaš, Luščani, and Kijani.

²¹⁷See statement of expert witness Savo Štrbac (6.11).

²¹⁸APC, para. 3.69; see, also, RC, para. 11.87.

legal team is persistent in forgetting that the litigant seeking to establish a fact bears the burden of proving it.

159. The same can be commented for the next implausible counter-allegation of the Applicant, namely, that the Serb refugee columns “were on occasion caught in the crossfire”²¹⁹, or that the tanks of the Serbian army of Krajina were treading over the columns of refugees²²⁰. No evidence has been produced.

15.2. Objection concerning the killing committed by the army of Bosnia-Herzegovina

160. It seems that Croatia is more hesitant in this case to admit causing victims among the Serb refugees than she was in its report from February 1996. Thus, Croatia adduced the objection that “it cannot be held responsible for any casualties caused by the Bosnian Army’s 5th Corps which was also involved in the fighting, or for any columns targeted in [Bosnia-Herzegovina]”²²¹.

161. Yet, the Bosnian 5th Corps did not invade the Croatian territory of its own will. The Bosnian Army was invited by the Croatian Government to be involved in Operation Storm fighting together against the joint enemy. Again and again, our distinguished adversary forgets the Brioni transcript, in which President Tudjman discussed with his high military personnel the deployment and military actions of the Bosnian Army’s 5th Corps²²². Their joint action was fully in accordance with the Split Agreement of 22 July 1995, concluded between Croatian President Tudjman, Bosnian President Izetbegović and the representative of Bosnian Croats, Krešimir Zubak. According to the CIA Report, the consummate political objective of this agreement was the destruction of the Republic of Serbian Krajina²²³. On the other hand, neither Croatia challenges its leadership over the operation in question, nor such objection can be found in any document related to the relevant events, including the Croatian documents which celebrate the great national victory.

162. This objection of Croatia looks rather like an attempt to avoid the State responsibility by pointing a finger to someone else who executed the Brioni plan, taking into account that the

²¹⁹APC, para. 3.68.

²²⁰*Ibid.*, para. 3.69.

²²¹*Ibid.*, para. 3.68; also, RC, para. 11.87.

²²²Brioni Minutes, pp. 4, 9, 16-18.

²²³CIA Report, Vol. I, p. 364.

Respondent did not specify complicity as one of the forms of responsibility under Article III (e) of the Genocide Convention. I hereby respectfully inform the Applicant that Serbia will use its right to modify its final submissions in accordance with this objection, adding complicity as an alternative mode of responsibility.

163. The crimes committed during and after the operation were a direct consequence of the genocidal plan reached at the Brioni meeting. The Respondent provided the Court with three affidavits in which the eye-witnesses had described how the Croatian and Bosnian troops attacked the Serb refugee column on the road Glina-Dvor, each from one side of the road²²⁴. In order to avoid any misunderstanding, I would remind the Court that there are also several affidavits, in which another four eye-witnesses had testified that their refugee columns had been attacked in the same area by the Croatian units exclusively²²⁵. One of those witnesses, Mr. Mrkobrad, was at the Applicant's disposal to be cross-examined, but the Applicant gave it up.

164. Finally, it should be noted that the Bosnian troops were not present at any of the places of the mass executions in Dalmatia, Lika and Kordun which I mentioned today. The map No. 9 annexed to the Counter-Memorial contains the plan of Operation Storm as drawn by the CIA experts. The green arrows mark the position and movements of the Bosnian 5th Corps in a very limited border area²²⁶. Hence, the plan from Brioni was executed by the Croatian armed forces, with an assistance of the Bosnian army, requested by Croatia.

15.3. Objection concerning the killing committed on the territory of Bosnia-Herzegovina

165. Of course, I have not forgotten the second part of the Applicant's problematic statement, which actually contains another specific objection: that Croatia cannot be responsible for the killing committed on the territory of Bosnia-Herzegovina, by unknown persons²²⁷.

166. However, we know who conducted the killing of the Serbian refugees and *hors de combat* in Bosnia: it was the Croatian army. The entry of the 4th Guards Brigade Operative Logbook for 7 August 1995, used as the exhibit in the ICTY *Gotovina et al.* case, contains a report

²²⁴RS, Anns. 53, 56 and 58.

²²⁵RS, Anns. 52, 54, 59 and 60.

²²⁶Judges' folders, item No. 7.

²²⁷APC, para. 3.68, and RC, para. 11.87.

of a Croatian officer, who stated: “From 12:05 to 12:10 our artillery was hitting the column pulling out from Petrovac to Grahovo; the score is excellent: the Chetniks have many dead and wounded . . .”²²⁸ Petrovac and Grahovo are the towns in the territory of Bosnia.

167. Furthermore, on 8 August 2013, the Respondent produced to the Court an English translation of the article “Operation Storm— Actions of the Croatian Air Forces” by Mr. Mario Werhas, published in the Croatian *Magazine for Military History* in August 2012. The article contained a list of all actions of the Croatian air forces in Operation Storm. Under entries Nos. 24 and 27 the Court can find data about the attacks on the columns at areas called Medeno Polje and Svodna respectively. Both of these places are in the territory of Bosnia-Herzegovina, as it was confirmed by the letter of the Croatian Agent sent to the Court on 10 September 2013.

168. The air force attack on Medeno Polje, at the hamlet called Bravsko, between Petrovac and Sanski Most, was conducted on 7 August. The Human Rights Watch Report, based on the statements of the survivors of the attack, reads that the column of civilians was hit by four bombs²²⁹. In the ICTY case *Gotovina et al.*, protected witness P-056 testified about this attack and confirmed that several civilian cars were hit in addition to two trucks that were burning²³⁰. Nine Serbs were killed, out of whom there were four children, while tens were wounded. This is also confirmed by two statements contained in the affidavits annexed to the Rejoinder²³¹, as well as by the statement of the expert witness Savo Štrbac²³². All statements are consistent and reliable.

169. Veritas also records that one soldier and two civilians were killed in the airplane attack at the village of Svodna, on 8 August 1995, around 6 p.m., while a number of civilians including

²²⁸*Gotovina et al.*, Reynaud Theunens, Expert Report “Croatian Armed Forces and Operation Storm”, 18 Dec. 2007, p. 189; CMS, Ann. 64.

²²⁹Human Rights Watch Report, *Impunity for abuses committed during Operation Storm, and the denial of the right of refugees to return to the Krajina*, Aug. 1996, Vol. 8, No. 13 (d), pp. 11-12, available at: <http://www.hrw.org/legacy/reports/1996/Croatia.htm>.

²³⁰*Gotovina et al.*, testimony of witness 56, 23 May 2008, Transcript, p. 3546.

²³¹RS, Anns. 65 and 66.

²³²Statement of the expert witness Savo Štrbac (6.6.2).

children were wounded²³³. This was confirmed by Mr. Boris Martinović, an eye-witness of this attack, who testified before the Court in Banja Luka²³⁴.

170. Finally, I would like to emphasize that, according to the Veritas data, the number of the Serbian victims killed on the territory of Bosnia-Herzegovina was not so high, at least not in light of the subject-matter of this case: in total, there were 37 killed out of whom 14 soldiers and 23 civilians²³⁵. Consequently, the simplified objection that Croatia cannot be held responsible for the killing committed on the territory of Bosnia-Herzegovina missed the point: it could not be a proper answer to the overwhelming evidence on mass killing presented in this case by Serbia.

15.4. The issue of evacuation

171. Another group of counter-allegations of the Applicant deals with the question why the Krajina Serbs left their homes in so huge a number. In the written phase of these proceedings, Croatia made significant efforts to convince the Court that during Operation Storm 200,000 Serbs fled from Krajina toward Bosnia-Herzegovina and Serbia²³⁶ for “a number of reasons including difficult living conditions, poverty and general insecurity in the RSK [Republic of Serbian Krajina]”²³⁷.

172. Serbia explained in the Counter-Memorial why these people had not had a genuine choice when they had decided to flee from Krajina²³⁸. They had abandoned their homes out of fear that they would be attacked and exterminated. The destiny of those who had decided to stay behind shows that their fear had been reasonable. The Respondent also dealt with the Applicant’s counter-arguments in the Rejoinder demonstrating that Croatia had removed the Krajina Serbs by force²³⁹. The Respondent firmly remains at that position, leaving for the Court to conclude how seriously the statements of some poor refugees who applied for safe return to their homes in the

²³³Statement of the expert witness Savo Štrbac (6.6.2).

²³⁴RS, Ann. 53.

²³⁵Statement of the expert witness Savo Štrbac (6.6.1).

²³⁶The situation in the occupied territories of Croatia: Report of the UN Secretary-General, 18 Oct. 1995, UN doc. A/50/648, para. 27.

²³⁷APC, para. 3.47.

²³⁸CMS, paras. 1443-1447.

²³⁹RS, paras. 729-744.

years following Operation Storm can be taken for the purposes of this case²⁴⁰. This is a new misleading argument adduced by the Applicant in its last written submission; however, the reliability and probative weight of the statements of the refugees who had to plea to their State to allow them to come back is of the same quality as the irrelevant argument that the ICTY in *Gotovina et al.* “[did not] identify *by name* any Serb civilian who claimed to have fled due to fear of shelling”²⁴¹.

173. A lack of full understanding of the subject-matter of this case leads the Applicant to another pointless effort: Croatia relentlessly tries to prove the existence of evacuation plans in the Republic of Serbian Krajina²⁴², as it could change anything. The Applicant forgets that this is not a criminal case based on an account of forcible transfer of the civilian population, but an international dispute in which the jurisdiction of the Court is established solely on the Genocide Convention. The plans for evacuation existed in the Republic of Serbian Krajina. Yes, they did, as well as they existed in all republics of the former Yugoslavia including Croatia²⁴³. What should be proven by this? The Krajina Supreme Defense Council issued a decision for evacuation in the evening hours of 4 August 1995 ordering people from five south municipalities who were unfit for combat to retreat to the towns of Srb and Lapac that were also within the territory controlled by the Krajina Serbs. Yes, it did. What should the Supreme Defense Council do? To order people to stay at home and wait to be killed? My previous presentation of the crimes committed during and after Operation Storm demonstrates that the decision of the Krajina Government to evacuate women, children and elderly people was fully justified. Had the more Serbs stayed behind, the more of them would have been killed.

174. Then, it may be that the Applicant wants, by this objection, to imply that the Brioni plan for destruction of the Krajina Serbs was not fulfilled due to the timely escape of the group. If it is a case, the crime planned at Brioni would finish at the level of attempt, one of other forms of responsibility under Article III (*d*) of the Genocide Convention. Nevertheless, there is no escape

²⁴⁰See APC, para. 3.51.

²⁴¹*Ibid.*, para. 3.53; emphasis added.

²⁴²*Ibid.*, paras. 3.57-3.65.

²⁴³See RS, para. 734.

for the Applicant: we will add attempt in our final submissions as an alternative mode of responsibility.

175. Yet, the plan from Brioni was completed. The tragedy of the Serb people from Krajina could not be avoided. They were killed en masse, they were seriously harmed, and finally, they were destroyed as a substantial and significant part of the wider group of Serbs from Croatia. In our view, the issue of evacuation is relevant only for the consideration of the opportunity that was available to the perpetrators to kill as many members of the group as possible.

176. Mr. President, this concludes my presentation of the facts and evidence in support of the counter-claim submitted by Serbia. I am eager to hear the response of our learned opponents, with sincere hope that the response will be properly directed to the facts relevant for *mens rea* and *actus reus* of the crime of genocide, but not to the useless questions as the existence of the evacuation plans, or the alleged economic reasons for the “sudden” departure of 200,000 Serbs, or the irrelevant examination of the margins of shelling error, or the unsupported allegations that the Serbs were attacked and killed in Bosnia by other Serbs or by unknown persons. I am grateful for your kind attention.

The PRESIDENT: Thank you very much, Mr. Obradović. This concludes today’s sitting. The Court will meet tomorrow at 10 a.m. for the conclusion of the first round of oral argument by Serbia. The sitting is adjourned.

The Court rose at 12.55 p.m.
