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THE HAGUE

Cour internationale
de Justice

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YEAR 2006

Public sitting

held on Friday 24 March 2006, at 10 a.m., at the Peace Palace,

President Higgins presiding,

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

VERBATIM RECORD

ANNÉE 2006

Audience publique

tenue le vendredi 24 mars 2006, à 10 heures, au Palais de la Paix,

sous la présidence de Mme Higgins, président,

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

COMPTE RENDU

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

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

M. Couvreur, greffier

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Ms Brigitte Stern, Professor at the University of Paris I,

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The PRESIDENT: Please be seated. The sitting is now open.

Today, the Court will hear the evidence of the next witness called by Serbia and Montenegro, General Sir Michael Rose, who will testify in English. The witness may now be brought into court.

[Witness enters and takes his place at the rostrum]

I call upon General Rose to make the solemn declaration for witnesses as set down in Article 64 (a) of the Rules of Court.

General ROSE: I solemnly declare upon my whole honour and conscience that I will speak the truth, the whole truth and nothing but the truth.

The PRESIDENT: Thank you. I now give the floor to Mr. Brownlie to begin his examination of the witness.

Mr. BROWNLIE: General Rose, as we open the examination-in-chief, would you please make your opening statement to the Court?

General ROSE: I am a retired soldier, formerly of the British army, and my interest in appearing before this Court is to serve the interests of justice and of peace. I do not regard myself as other than a witness of the Court. I am not siding with one party to the dispute or another. I was appointed Commander of the United Nations Protection Force in Bosnia-Herzegovina on 5 January 1994, and I remained in that post until 23 January 1995. I of course was not solely responsible for the policies and the actions of the United Nations during that time in Bosnia. I was part of a team, which consisted of the civil adviser, under whom I was serving, because of course the military are always in support of the civil authority. At the start, there was Mr. Sergio Vieira de Mello, sadly blown up and killed in a bomb in Iraq, and latterly Mr. Viktor Andreev. My superior headquarters was located in Zagreb, where I was under the military direction of General, first of all, Kot and then subsequently, de Laprel. And throughout, the senior civil/military representative of the United Nations was Mr. Yasushi Akashi, from Japan. Behind him, of course, was Mr. Kofi Annan who at that time was the Special Representative for Peacekeeping Operations in the United Nations.

The mission of the United Nations Protection Force in Bosnia was to facilitate the delivery of humanitarian aid and to attempt to bring about a peaceful reconciliation of what at times was a three-sided civil war. It was never to enforce a just solution; it was never to protect or defend. Because of course those are war-fighting actions, which a peacekeeping force is neither mandated nor trained, nor equipped, nor deployed so to do. Its responsibilities, therefore, were limited to facilitation of the delivery of humanitarian aid and the normal process of a peacekeeping force, which is to try and bring about the conditions which could be a peaceful resolution to the problem.

The three parties to that conflict were at times not helpful to the process of peace. Indeed, they interrupted the passage of convoys, often to the detriment of their own people, they shot at and abused the peacekeeping force, and they attempted often to infringe the demilitarized zones which existed, or to use the so-called "safe areas" for their own military advantages. They were recalcitrant parties to the peace process, to say the least. And all three parties were guilty of war crimes to one degree or another. Of course, the military forces under the command of General Mladić were by far and away the greatest perpetrators of war crimes and atrocities during that civil war, but one judges criminality by the quality of the act, not by the quantity of the act, and all three sides were undoubtedly guilty of war crimes.

The responsibility for those war crimes does not lie solely with the military because of course on all three sides the military were again in support of the civil power. And so the burden of responsibility for those war crimes undoubtedly goes through the civil authority, and notably to the top, in the case of Mr. Tudjman; in the case of Republika Srpska, Mr. Karadžić; and in the case of Bosnia-Herzegovina, Mr. Izetbegović. All three share responsibility for the war crimes and atrocities.

As a result of the work undertaken by the United Nations, I was often required to travel to Pale, where Republika Srpska had its military and political headquarters, and I was able to gain some impression as to how closely the political and military operations of Republika Srpska were being either directly controlled or influenced by Belgrade. And my impression was that it was not, on the military side, a formal military command arrangement. They were not, in technical terms, under command, but a great deal of influence was brought to bear and a great deal of consultation, material support was provided and on one or two notable occasions, actual military support was

deployed in support of Republika Srpska from the former Republic of Yugoslavia. So there was a link, but it was not formal. And of course on the political side, again there were many occasions where one was able to achieve changes in the political position of Mr. Karadžić by bringing pressure to bear through the United Nations or, indeed, sometimes through Russia, on Milošević's administration and government, and that would then be translated, but never clearly done; it was always a long process and often did not produce results. So, again, one's impression was that it was not a formal arrangement.

Finally, I would like to state that I think this Application by the Government of Bosnia-Herzegovina is not in the interests of peace. I believe that to punish successive generations of young Serbs who are trying to put the past behind them for crimes, however atrocious, that were committed by a government, which many of whose leaders are either dead or here in The Hague, is not conducive to peace, particularly when the State of Bosnia-Herzegovina itself, at the time, was party and complicit to war crimes. A far better and more constructive approach would be that of truth and reconciliation. We would not want to see, clearly, a situation arising in the Balkans, certainly in Serbia and Montenegro, where the people felt so aggrieved that they took the same responses as the Germans did in 1930, when heavy reparations were brought to bear on the people of Germany. That was a mistake which it did not repeat in 1945. Madam President, thank you.

The PRESIDENT: Thank you, Sir Michael. I now ask . . .

Ms KORNER: I am so sorry Madam to interrupt and it is not the General's fault but he read this at some speed and obviously what he had to say was important. I wonder if there is a copy of this available for . . .

General ROSE: I was not reading what I said.

Ms KORNER: I see; you didn't have a written statement.

General ROSE: I have a written statement but I didn't follow it very closely. But I could provide you with my statement if you wish, as I intended to make it. The substantive points are certainly contained within it.

Ms KORNER: Thank you very much. If the other side has no objection?

The PRESIDENT: I think, Ms Korner, you have heard what the General had to say. It was not immensely detailed and specific — they were very important points — but I do believe his main points you have surely been able to absorb. So I am going to ask you now if you would like to commence your cross-examination. I beg your pardon, I am going to ask Mr. Brownlie if he would like to commence his examination.

Mr. BROWNLIE: On behalf of Serbia and Montenegro, in my own personal opinion I think we have been very patient in face of a number of attempts at procedural innovation and as I understand it the evidence is the oral testimony given under oath and . . .

The PRESIDENT: I have ruled on this point. Thank you.

Mr. BROWNLIE: Would you please confirm that your period in Serbia as Commander of UNPROFOR was January 1994 to January 1995.

General ROSE: That is correct.

Mr. BROWNLIE: Could you please confirm that the statement you made and your answers to questions is or will be your own evidence.

General ROSE: It will.

Mr. BROWNLIE: Thank you. Have you at any time made arrangements with the Office of the Prosecutor of ICTY for the carrying out of investigations on behalf of the Prosecutor?

General ROSE: I have not.

Mr. BROWNLIE: Thank you. Now if I can proceed with some more precise questions. What is your opinion on the relation between the army of Republika Srpska and the Yugoslav army in general? And, by the way, please give your evidence to the Court.

General ROSE: As I said in my opening remarks, there was clear evidence of liaison and, on two notable occasions, direct military support provided, but otherwise my impression was that materiel support was being given in terms of fuel, ammunition, reinforcements of soldiers being recruited “voluntarily” to fight for the army of Republika Srpska in Serbia, but there was no formal military command arrangement: they were not under tactical command, they were not under full command, in a way that one would get in a coalition of forces.

Mr. BROWNLIE: Could you give me your opinion about the relation between Mladić and Radovan Karadžić and also the relation of both of them with Milošević and other politicians from Serbia and Yugoslavia.

General ROSE: Well, the relationship between Mladić and Karadžić was as one would expect in a confused and brutal situation, of varying intensity. At times Mladić would appear to dominate the discussions and determine the course of events; on other occasions Karadžić would be able to hold his political position and Mladić would then conform to that, depending very much on how pressed they felt, either politically or militarily on the ground. But generally speaking, I think my opening remark is true, that the military were generally in support of the civil power. They did not replace it. And of course, it wasn't just Mr. Karadžić, there was also Mr. Kodović and Mr. Krajisnik as well. And they formed a triumvirate, however they were very powerful politically and to whom Mr. Mladić at least on the surface responded. In terms of their relationship with Belgrade, it was very difficult to determine other than by inference, because, of course, we were not party to the conversations or . . .

The PRESIDENT: Can you speak slightly more slowly, Sir Michael, so that the interpreters can keep up with you.

General ROSE: The relationship between Pale and Belgrade was more difficult to ascertain because of course we were not party to the liaisons or conferences that took place. In my memory I do not think that Mladić or Karadžić were present, certainly, on the occasion that I went to Belgrade; they were not present at the meeting between the United Nations and the Government of the former Republic of Yugoslavia. But of course, there was, as I say, by inference, a great liaison and consultation. It was possible from time to time to bring about changes in the course of action on the ground or policies of Pale by bringing pressure to bear on the Belgrade Government.

Mr. BROWNLIE: Could I ask a question in clarification. Could anyone, including Karadžić and Milošević have given an order to General Mladić.

General ROSE: Well, they certainly could have given an order, but I very much doubt if it would have been obeyed in that direct way.

Mr. BROWNLIE: Thank you. Who was the Supreme Commander of the Army of the Republika Srpska?

General ROSE: That was General Mladić.

Mr. BROWNLIE: Now, if I can move on through some other subjects. Do you have any information about the direct involvement of Yugoslav army units or police of the Republic of Serbia or special police of Republic of Serbia units in the conflict in Bosnia and Herzegovina?

General ROSE: On one occasion, after there had been an agreed ceasefire in Sarajevo, which took place in February 1994, which halted the bombardment in Sarajevo and, indeed, the siege in Sarajevo was partially lifted for many months. One small dissident group that was fighting for the forces of Republika Srpska who, it appears were volunteers that had come from outside the Balkans mainly and were located in the Jewish cemetery in Sarajevo, refused to accept the ceasefire, even though they had been ordered to do so by the Republika Srpska military command. After some difficulty — I think a week of difficulty — when they themselves were shot at by the so-called heroes who lived up in the Jewish cemetery, a unit of the regular Yugoslav army did appear and eliminated them. That was the only time I saw evidence of those forces coming on the ground in Bosnia and Herzegovina.

There was another occasion shortly afterwards, when four bombers bombed a town called Bugojno on the western side of Bosnia and Herzegovina, west of Sarajevo, and they were all four shot down by NATO and they were, because of course, there was a no-fly zone over Bosnia and the pilots undoubtedly came from the Yugoslav air force.

They were the only two occasions where there was direct evidence.

Mr. BROWNLIE: Thank you. You were, by virtue of your office as Commander of UNPROFOR directly involved in the arrangement and maintenance of ceasefire agreements. Is that the case?

General ROSE: I was.

Mr. BROWNLIE: Thank you. Could you tell us what was the general approach of the Bosnian Government in relation to peace plans and ceasefire agreements in the period in which your office was maintained?

General ROSE: They were recalcitrant and unhelpful to the cause of establishing long-term peace in Bosnia. The reason was quite simple. Originally they had welcomed the United Nations peacekeeping forces because their people were needing their support and indeed the presence of the United Nations peacekeeping forces prevented, in some cases, the physical presence on the ground. The forces of Republika Srpska were overrunning, for example, Sarajevo which they could have done at one point. There were various agreements brokered; for example, they withdrew from the top of Mt. Igman and that was subject to guarantees by NATO that they should so remain — both parties — outside the Mt. Igman region. The reason being that the Serbs were on it and were therefore about to close a complete encirclement of Sarajevo but finally withdrew under agreement brokered before my time by the United Nations and NATO. But the guarantees were by NATO that no one would go back into that zone. On other occasions the ceasefire I referred to: again the Bosnian Government were very reluctant to agree that ceasefire because they felt that if they agreed a ceasefire too early, this could turn into a cessation of hostilities, a freezing of the battle lines and then they would have been unjustly legislated against by the international community. They would have lost large parts of their territory.

So, at the start they needed peacekeeping forces, but as time progressively moved, on during my time, they were very reluctant to accept ceasefires because they felt — as I say — that they would really be frozen ultimately long term on the battle lines as they existed. And therefore they were the main cause, throughout 1994, of United Nations brokered ceasefires being broken and a return to war; each time it was the Bosnian Serbs that broke the ceasefire and not either the Croats or the Serbs.

Mr. BROWNLIE: General Rose, is it true that in 1994 the Bosnian army extended its military operations?

General ROSE: Please can you repeat that question?

Mr. BROWNLIE: Can you tell me to what extent in 1994 the Bosnian Government extended the military operations?

General ROSE: The Bosnian Government — army — was developing and being built throughout 1994. Indeed from the time that it created the State of Bosnia, it did not have an army; it took the rump elements of the former Yugoslav army and started to build its own forces. And

throughout 1994 that process continued either through the illicit supply of weapons and ammunition and training that was coming in from outside, subsequent to the formation of the federation between Croatia and Bosnia. That changed the military balance and they were able to get a lot of support, obviously from the Croatian side, in terms of their own military capability. So they were not only politically opposed to the peace process by then, but they were also emboldened and encouraged by the enlargement of their own military capability, the extent of their military capability, and would often — as I say — launch attacks when actually they should not have done, in sensible military terms.

Mr. BROWNLIE: Thank you. Could you please explain to the Court the creation by the Security Council of the institution of safe havens. And in connection with that, the extent to which the safe havens were effectively demilitarized?

General ROSE: The arrangement for the safe areas, as they were called, came about as a result of an attack that had been launched by forces of Republika Srpska into the area of Srebrenica in 1993. This followed some *major* ethnic cleansing of the Serb villages in the area by the Muslim forces that were located in Srebrenica, under the military commander called Nasir Orić, who is now indicted for war crimes. In response of these attacks against the Serb villages, a major onslaught was launched into Srebrenica. General Morillon, my predecessor, halted those attacks, physically standing on the road in front of the Serb forces, and then engaged in a conversation with General Mladić, in which General Mladić agreed not to press his attack and overrun the enclave of Srebrenica from where his own side were being attacked. But in return he expected the Muslim forces under Naser Orić to hand in their weapons and demilitarize the zone. The idea of a safe area, or sanctuary, is an old concept in war where both side parties to a conflict agree they will not fight in an area in order to preserve the civilian population in that area and that would therefore be a safe area. The United Nations sanctioned this arrangement that was made on the ground by passing two main Security Council resolutions. One was United Nations Security Council resolution 824, the other was 836, and these resolutions extended the concept of having a safe area to the other five: Goražde, Sarajevo, Tuzla, Bihać — Maglaj, I think, was the other one, or Zepa. But the wording in the Security Council resolution was very specific; indeed, General Mambia went over to advise on what the limitations of a peacekeeping force were. They could protect, they

could not defend, the best they could do was to deter attacks against by their presence which is not a war-fighting mission; it is a peacekeeping mission and therefore the United Nations Security Council resolution was very clear in its wording. The wording was: "to use all means possible to deter attacks against". That depended on the co-operation of both parties to the conflict not to either attack out or to attack in because the United Nations forces themselves were not in a military position to defend or protect. Unfortunately, the Bosnian forces failed to disarm in Srebrenica and indeed in a number of the other safe areas and therefore there was continual cross-exchanges of fire going on throughout my time in command. And, of course we know all about the horrors that subsequently happened in Srebrenica.

Mr. BROWNLIE: General Rose, can you confirm that there were similar situations in 1994 in Goražde and in Bihać?

General ROSE: Yes, that is so.

Mr. BROWNLIE: Could you describe what the reaction was of the Serbian forces in Goražde and Bihać?

General ROSE: Well, in Goražde, where they decided to launch an attack to prevent these sullies against themselves, and indeed also to recover some of the villages from which they had been driven out during the fighting the previous year, they launched another attack, I think in March 1994, against Goražde and the United Nations were obliged to use air strikes to prevent the overrunning of Goražde, which they duly did. The Serbs pulled out their forces on the line more or less where their own villages had been, and never actually entered the main Muslim side of Goražde, which was on the other side of the river.

And so that was the first occasion in which NATO was used in live combat in its history; of course, it has been used many times since; but the first occasion was the stopping of the overrunning of Goražde. The United Nations were accused often of using pinpricks, not destroying, using that as an excuse to take on the entire army of Republika Srpska or indeed that for the JNA in Belgrade because the plans for follow-up action of NATO was to bomb supply depots and command and communication centres throughout that part of the Balkans, not limiting itself to Bosnia. So, the United Nations would not accept this and this caused a great deal of friction at the time and a lot of negative propaganda against the United Nations subsequently for

not extending the air strikes in their campaign. But of course the United Nations were limited not only by its mandate from the United Nations but also another constituency which rarely gets a mention and that is the constituency of the troop-contributing nations, all of whom have had to get parliamentary authority within their countries to deploy forces as peacekeepers; they had no authority from their own parliaments to deploy them as war-fighting forces or to get them engaged in war. They had all seen what had happened the year before in Somalia when peacekeeping forces attempted to attain war-fighting goals in Mogadishu. And the result had been the collapse of the peacekeeping mission and the prolonged suffering of the people of Somalia; and they were not prepared for that to happen again.

Mr. BROWNLIE: If we could move on to a different subject: could you describe the kind of conflict which took place between Fikret Abdić, the Muslim ruler of the Autonomous Province of Western Bosnia, on the one hand, and the Bosnian Government, on the other?

General ROSE: This was a strange anomaly of which, of course, there were many in such a confused, three-sided civil war in the Balkans. Mr. Abdić had run for presidential election at the start and had lost to Mr. Izetbegović, who claimed that he had been cheated of his electoral victory, so he formed a breakaway State in his own community, raised an army and found himself clearly under attack from the Bosnian forces and then formed an unholy alliance with the army of Republika Srpska, so you had the anomalous position where there were Serbs and Muslims in coalition fighting the main forces of Bosnia and Herzegovina. In the end he, of course, was overwhelmed and defeated and I have no idea what happened to him subsequently. But this breakaway State did not last for long.

Mr. BROWNLIE: Could you now describe the relation between Fikret Abdić and the Republic of Srpska?

General ROSE: I never saw them together, but they were in a military alliance, a loose military alliance.

Mr. BROWNLIE: Could you tell us whether Republika Srpska or Republika Srpska Krajina gave support and help to Fikret Abdić?

General ROSE: They undoubtedly did.

Mr. BROWNLIE: Thank you. And, lastly, could you provide some information about the conflict which took place between Croats and Muslims?

General ROSE: The conflict that took place between the Croats and the Muslims ceased with the Washington Accord, which I think was signed in early March 1994. Up until then the civil war had been three-sided, with each side fighting to establish — well, first of all, protect its own communities; secondly, to establish its own territorial integrities and as a result of discussions which took place, I think in Washington initially, because the agreement was finally called the Washington Accords, the United Nations were able to broker a ceasefire on the ground which then turned outwardly into this newly formed federation. But the fighting up to then had been just as vicious as between any of the other two communities.

Mr. BROWNLIE: Thank you. That concludes the examination-in-chief, Madam President.

The PRESIDENT: Thank you, Mr. Brownlie. I now give the floor to Ms Korner for her cross-examination.

Ms KORNER: Thank you, Madam President. Sir Michael, just before I pick up on some of the things that you told the Court, can I ask you about your preparation for your testimony here? Obviously, I imagine you went through your book again?

General ROSE: I did not.

Ms KORNER: You did not?

General ROSE: No.

Ms KORNER: All right.

General ROSE: My children call it “fighting for breath”, and I did not want to go through that experience again!

Ms KORNER: I am sorry, I really have to say the same thing to you as Mr. Brownlie, could you — I know I am asking you questions, I know it is difficult . . .

General ROSE: No, I did not reread the book.

Ms KORNER: Were you given an opportunity to go through your testimony in the *Galić* case by the side that is calling you?

General ROSE: No, I kept a record because I was sent a copy of that record, and I certainly read the preamble to it, which was the basis of my introduction here today.

Ms KORNER: So you have not had — did you remind yourself of your testimony before you came here today? Did you *remind* yourself of your testimony in *Galić* by reading through it?

General ROSE: No, I did not read through the testimony to *Galić*, I read through the preamble to make sure the dates of my appointment were correct. That is as far as my reading went.

Ms KORNER: Have you been shown by the side that is calling you — and I appreciate that you say that you are just here to assist the Court — any of the documents that have been entered into this case as part of this . . . ?

General ROSE: No, I have not.

Ms KORNER: So you have not had an opportunity of looking, for example, at the Supreme Defence Council minutes?

General ROSE: I have not.

Ms KORNER: Or, indeed, any of the other documents that relate to the command and control issues in this case?

General ROSE: No.

Ms KORNER: So you are basing what you say to the Court on your experience in Sarajevo during, effectively, the year 1994?

General ROSE: That is correct: and not just Sarajevo because of course we had meetings all over, Pale, Banja Luka, on the odd occasion in Goražde . . .

The PRESIDENT: Sir Michael, can I remind you again to speak slowly and it will help with us hearing you, if you can.

General ROSE: The meetings, of course, were not just limited to Sarajevo, they took place in Pale, Banja Luka, and elsewhere — on one occasion, Belgrade.

Ms KORNER: So, for example, when you gave your opinion of the relationship between the Federal Republic of Yugoslavia and Republika Srpska, both of the politicians and the military side, you are basing that opinion on what you observed rather than any documents you have read?

General ROSE: That is correct. I saw no documents relating to their relationship.

Ms KORNER: Thank you. Can I just deal with two or three matters that you raised. First of all, one you raised quite recently and that is the Fikret Abdić saga — and you have spoken about joint operations. Were you aware that in 1994 in the Bihać area the Bosnian government forces were facing a coalition of opposing forces which included the VRS, the Republika Srpska army, the forces of the Serb Republic of Krajina and the MUP and Fikret Abdić?

General ROSE: I think I probably was, because I had discussions on one or two occasions with General Dudaković, who was the Bosnian military commander there at the time, and I am sure he would have explained who his enemy were.

Ms KORNER: Thank you. But when I say the MUP, actually it is the police, the armed police, which came from Belgrade. Were you aware of that?

General ROSE: I was certainly not aware of any — and I would have remembered had Dudaković mentioned there were regular Serb police in that part of Bosnia: and I am sure he never told us that.

Ms KORNER: You mentioned, to *your* knowledge, that there were two instances of armed involvement by the Federal Republic of Yugoslavia in operations. Can I take it from that that again that is from your experience and you cannot say whether there were others, but you were told . . . ?

General ROSE: That is inevitably so, and even the two incidents that we did observe — again, one had no direct proof but there was a strong inference that these different weapons, different looking people, different uniforms, different plan and commander control and, of course, the bombers were never claimed by Belgrade I do not think, although the pilots were buried — and had air force funerals, from what I gather — back in Yugoslavia, so it was more by inference, but it was pretty strong evidence, I would say.

Ms KORNER: In Sarajevo, when you were there, was the tunnel in operation?

General ROSE: Of course the tunnel was in operation.

Ms KORNER: And that was throughout the whole period of time you were there?

General ROSE: That is true.

Ms KORNER: And that was because — and I know in your book, there was some problem about this, but Sarajevo at that stage was a besieged town.

General ROSE: It was certainly a besieged town but it was not in a state of medieval siege that one had read about in the sort of Middle Ages. They were able, through the tunnel or through deals, to get stuff in and out of Sarajevo and, of course, for most of the middle period of my time there — because of the ceasefire the United Nations had brokered: initially it was observed by all three sides — convoys were coming from Hamburg, as it were, metaphorically, straight into Sarajevo and life started to take on a semblance of normality. And their electricity started to go back on again, water systems were repaired, the trams started to run again, but, alas, this did not last more than, I think, September of that year. It was therefore not in a complete stage of siege and there were certainly deals going on between the two sides. At whatever level, I do not know where, stuff was moving across the battle lines in the middle of the night, if only because we saw evidence of it when snow had fallen from satellite photography.

Ms KORNER: Now, I want to ask you also: you referred to and obviously you are very familiar with the United Nations Security Council resolution, the one 836?

General ROSE: Yes.

Ms KORNER: Do you recall the terms of that now? You obviously remember some parts?

General ROSE: I remember some parts.

Ms KORNER: Do you remember the fifth paragraph of the resolution, which said that the mandate of UNPROFOR, in order to enable it in the safe areas referred to in resolution 824 was to deter attacks against the safe areas?

General ROSE: That is correct. Deter attacks against, using all means possible . . .

Ms KORNER: I'll read the rest of it, "to monitor the ceasefire, to promote the withdrawal of military or paramilitary units, other than those of the Government of the Republic of Bosnia and Herzegovina, and to occupy some key points on the ground".

General ROSE: That is correct.

Ms KORNER: And it also authorized you, didn't it, in carrying out this mandate — and I think that this is what you are referring to — acting in self-defence, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties, to armed incursion into them, or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of the protected humanitarian convoys.

General ROSE: That is so.

Ms KORNER: The Muslim forces, as they are sometimes described, were more correctly described as the Bosnian Government forces, as you have been describing, that's right isn't it?

General ROSE: That is so. Because they were more than just Muslims in that organization, there was the odd Serb, there was the Croat, after the federation. So it was more correct to call them the Bosnian Government forces.

Ms KORNER: Right. I'm going to ask you a few things about your book. I don't know whether you brought a copy with you.

General ROSE: Do you want me to refer to particular pages?

Ms KORNER: I think it might help if you have it with you.

General ROSE: I think you will have to do it, because mine is . . .

Ms KORNER: I think mine is the paperback.

General ROSE: So that's alright, it's not the hardback.

Ms KORNER: Though I'm afraid the page numbers are different. I tell you what, if we give you the hardback . . . Do take that.

General ROSE: I have got the paperback.

Ms KORNER: Unfortunately our markings are all . . . I think the pages are different aren't they, just to make life . . .

General ROSE: They'll be different.

Ms KORNER: Yes. Alright, I'm sorry about all the bits of paper. Could you turn, please, to your introduction; it is page 3. In the penultimate paragraph, did you say that you were talking about the Bosnians pointing out that an international coalition lead by America took military action against Iraq. And then you said this "[h]owever the situation in Bosnia was not simply that of one nation invading another, it was a civil war about territory, in which the Bosnian-Croats and the Bosnian-Serbs sought to succeed from the State and join with their compatriots in neighbouring Croatia and Serbia".

General ROSE: That is so, and I still hold to that belief.

Ms KORNER: I just want to see if we can establish one thing about it. In the sort of territorial war that you're thinking of, would this be right? If, for example, we go back to

Napoleonic time — Napoleon invading, for example, Spain and Portugal and other countries to acquire more territory: that is what you are calling a territorial war? Is that right?

General ROSE: Yes, then I made the parallel here with Iraq invading Kuwait, where quite clearly one nation had invaded another. I could have used the Argentines invading the *Islas Malvinas* rather than that, but I thought that was bit close to home!

The PRESIDENT: That may not have been a prudent example.

Ms KORNER: But there is a difference isn't there, between what was happening in Bosnia and the sort of wars you are thinking about. In that, it's right isn't it, that the invasion, the taking over of territory — if one likes to put it that way — also included the removal from those territories in one form or another — without going into methods — of a complete ethnicity?

General ROSE: It could do, but it wouldn't always do.

Ms KORNER: But in Bosnia?

General ROSE: In Bosnia, certainly the removal of the ethnic groupings was wholesale, the ethnic cleansing, by the various sides against the others, and of course, as I said in my introduction, this was happening on all three sides. You could find areas where the churches had all been destroyed and the minarets were standing; you could find areas where the minarets had all been destroyed and the churches were standing; and then you could find areas where one church type of Christian church had been destroyed and the type of Christian church had been left standing and vice versa. A highly complex affair, but undoubtedly the people, the ethnic minority groupings in these other areas, were subject to major ethnic cleansing.

Ms KORNER: I think it was your view, however, when you came to testify in the case of *Galić*, that by the time you got to Sarajevo, the Serbs controlled much of the territory of Bosnia and Herzegovina, 70 per cent?

General ROSE: I felt that is correct.

Ms KORNER: And as you said earlier to the Court, that's why it was in the Bosnian-Serbs' interest to have a ceasefire.

General ROSE: That's right.

Ms KORNER: Because they had a clear military advantage at that stage.

General ROSE: That is correct.

Ms KORNER: You've described a little of what you perceived to be the relationship between the Federal Republic of Yugoslavia and Republika Srpska, in Bosnia. And I think you made a few references to that in your book — again if you could just have a quick look to confirm this. On page 44, where you are describing — I think its really the aftermath of the Markale shelling — and you say that — this is in your second paragraph — “we return to the residency in a sombre mood, Akashi wanted me to accompany him straight away to Belgrade. He intended to put pressure on President Milošević to get the Bosnian-Serbs to agree to an immediate ceasefire and to withdraw their artillery from around Sarajevo.” So, is that an instance where it was certainly perceived that it was Milošević who had the power to put pressure?

General ROSE: Absolutely. And indeed that's what happened.

Ms KORNER: And if you go please to page 108, use just a couple of examples, the bottom penultimate paragraph, again the last sentence, “13.15 hours, Viktor” — that is Viktor Andreev, is it?

General ROSE: Sorry, I'm not with you. I've lost you.

Ms KORNER: If you look at page 108, penultimate paragraph, which begins “Eleventh of April”.

General ROSE: Yes.

Ms KORNER: The last sentence in that paragraph “at 13.15 hours, Viktor” — and I was asking you if that was Viktor Andreev?

General ROSE: That's correct.

Ms KORNER: “Who had been speaking to Belgrade, reported that President Milošević had personally intervened to get Karadžić to stop the shelling.”

General ROSE: That is so, that is so. And I think I gave accounts of that in my introduction that it was possible to bring, but it wasn't like turning a switch where you would get direct response, you had to get all sorts of pressures brought to bear before that could happen.

Ms KORNER: On the same topic please, General Mladić, you've described your view of the relationship between Mladić and Karadžić. Did you know a General Sir Rupert Smith? Do you know him; I think you probably do.

General ROSE: I know him very well.

Ms KORNER: I am just going to ask you if you would agree with some views that he expressed. As you know, he testified, I believe, in the *Milošević* case and he expressed the view, when he was being asked about aid from the Federal Republic of Yugoslavia to Republika Srpska, in particular in relation to the payment of officers, he said: “The man who pays the cheque is usually the man who is in command, eventually.” Would you agree with that as a sentiment?

General ROSE: I am not sure that I would entirely. I think the exposure that my successor, General Smith, had to the Pale régime was much limited by the forthcoming indictment of Karadžić and Mladić as war criminals. I think he did not meet him on more than a very few occasions. And I think to say that “he who pays the money can call the tunes” is probably drawing to the case a tighter relationship that certainly in my experience actually existed.

Ms KORNER: This goes back again to the relationship that *he* perceived — and I wonder if it was one that was the same perception as you. It was this: he was asked about his view of the relationship between Milošević and Mladić, and again, this is his view: “I think Mladić had his own place to exercise power and to do so, and only when this interfered with the business of Mr. Milošević and Serbia did he get interfered with or controlled.”

General ROSE: I think it would certainly be true to say that Mladić had his own agenda and that the régime in Belgrade may have been morally supporting it and materially supporting it, but they were not controlling it in a military sense. He had his own agenda.

Ms KORNER: Did you know how often Sir Rupert Smith dealt with Belgrade?

General ROSE: I do not know at all.

Ms KORNER: You do not know. Alright. Thank you.

General ROSE: I seem to remember him telling me he only met Mladić on one or two occasions, whereas I, of course, met him practically every week. But as I say, the international climate had changed with the forthcoming indictment of Mladić and Karadžić so they were not permitted the same frequency of visits.

Ms KORNER: Finally, again one more time referring to your book, could you go to page 34, please. Madam President, may I say, I know that Mr. Brownlie has a copy but we have copied the pages that I am referring to, if you want them.

In the second paragraph you are describing meetings held by — I think he was one of your officers, wasn't he? Oh, your driver:

“He used these first two meetings to establish good relationships with the bodyguard belonging to Karadžić and Mladić. Over the months he was able to glean a lot of information from them, regarding what they thought about the situation and what their bosses were doing. It was especially interesting to hear that Mladić regularly travelled to Belgrade on Tuesdays. From this it was clear that Mladić at least was receiving direct orders from the military headquarters there.”

General ROSE: That was the impression — that he would go back on a regular basis to the headquarters of the Yugoslav army, where he would not necessarily receive direct orders. We had no evidence of that, but he would certainly be in consultation with them.

Ms KORNER: Thank you. On the topic of control by the military, can I just put to you something that you said in *Galić*, and just see whether that is still your view. I will, in a moment, come to the shelling incidents which caused deaths. You were asked by Mr. Ierace, who was prosecuting, about the degree of command and control that the military leadership on all sides of the warring factions exercised. You may recall that. And you said:

“Yes. The halting of the shelling and the almost but total halting of the sniping at that time [this was when you had arranged a ceasefire] showed that there was a total and absolute control on both sides of the military machine.”

General ROSE: That was true.

Ms KORNER: I just want to deal very briefly with the two incidents that I think were the first major things you had to deal with on your arrival. The first was the shelling of an area called Dobrijna. You obviously recall it very well. Was this the situation: it happened, in fact, the day before its more famous incident, the Markale marketplace massacre, that there was an incident involving some mortar explosions in Dobrijna and you said:

“There were people forming up to collect United Nations rations — I think it was in the afternoon — and four mortar shells fell in this crowd and a number of people were killed and injured. I think six or 10 people were killed and about 28 injured.”

General ROSE: That is true.

Ms KORNER: And you were asked whether any steps had been taken to examine the crater impact sites and to ascertain, if possible, the direct source of the fire of those four mortar shells. You said:

“Certainly, crater analysis was performed almost immediately and the evidence from that, of course, one can’t be certain in those situations. It is a very inexact science. The evidence pointed quite clearly that it had been the Bosnian Serb army that fired these shells and clearly targeted the civilians queuing up for these rations.”

General ROSE: That is so.

Ms KORNER: And the next day was the notorious mass killings in the Markale marketplace. A number of investigations have been done. Is it right to say that there is no clear evidence as to where those shells came from?

General ROSE: That is so.

Ms KORNER: I have only got two more topics, thank you very much, Sir Michael. Firstly, I want to ask you about this. As a British Army General, if you were operating in an area from which you were going to withdraw, would you willingly and voluntarily leave behind equipment and supplies for the use of another army?

General ROSE: No, certainly not. But of course you may be compelled so to do if the withdrawal was either interrupted or you had insufficient transport arrangements.

Ms KORNER: Yes, obviously. Finally this. And I’m sorry, Sir Michael, I am going to have to ask you to take your book up again. On one more thing you said: the *Galić* case. This refers back to the 70 per cent that you have been talking about. This is a re-examination and you were asked:

“Did the Serb leadership, in expressing their desire for peace, ever suggest that they would give up any of the 70 per cent that they had taken?”

After there was an interruption by defence counsel, you said this:

“The Serbs could never be described as peacemongers. They were the aggressors. They had taken much of Sarajevo as well as Bosnia. Their reasons for suing for peace in 1994 and trying to develop it from the peace that occurred around Sarajevo to a wider peace in the Balkans, was to take advantage of their military gain. But this does not mean that they were peacemongers. They were not, equally, but the peace agreement around Sarajevo allowed them to withdraw their heavy weapons, required them to withdraw their heavy weapons, which they were able to redeploy to other places such as Goražde or Bihać, where they were able to intensify the fighting. So a distinction has to be made between a military desire for peace in a particular area and the wider strategic goals, which were to maximise the territorial gains through military victory.”

General ROSE: That was inevitably so. The Serbs by then, the summer of 1994, were beginning to consider trading land for peace. All they were going to gain — 70 per cent of the country — they were definitely prepared — and we’ve had discussions in Pale, Mr. Koce and

Karadžić — about how much could be given up, they were prepared to give up in order to secure a long term ceasefire. And I think they were prepared to reduce their holdings down to 51 per cent of the territory. But then of course there were complications about the quality of the territory, which then interrupted those peace negotiations. But certainly by the summer of 1994, what you have said is true, they had fought to their maximum, they had gained their territory; they were now into the peace business because they were going to try and secure their political objectives. Of course, the Bosnian Government were in a reverse situation; they wished to now renew the fighting in order to regain their land, and then declare a just peace, when they'd have reconquered their territory. Always a hopeless military aspiration.

Ms KORNER: Right, in fact you said what I said. I was repeating through your words, Sir Michael. Finally, could you just look, please, at page 35 of your book? And there you are talking about ethnic cleansing.

General ROSE: Yes.

Ms KORNER:

“In this way, ethnic cleansing had spread to all parts of the country. During the war, the Bosnian Muslims became the main victims of a deliberate and systematic policy of ethnic cleansing and in certain areas, extermination. Although all three sides were to some extent guilty of war crimes, genocide as defined by the United Nations Convention on Genocide did not form part of official government policy in the way that it so clearly did with the Serbs. Nevertheless, the Bosnian Serbs were not the sole perpetrators of atrocities and this fact was often difficult to communicate to members of the international community.”

General ROSE: I am no expert on international law, but that certainly was my view when I wrote the book.

Ms KORNER: Yes. Thank you very much indeed, Sir Michael.

The PRESIDENT: Thank you. Mr. Brownlie, do you wish to re-examine?

Mr. BROWNLIE: Yes, I have a few short points. The first is, General Rose, in the examination-in-chief, when you were asked about the general performance of the Bosnian Government, in the context of observing ceasefires, you made the remark that it was always the Bosnian *Serbs* who broke the ceasefires. Isn't it possible that there you actually meant to say “Muslims”?

General ROSE: I meant to say “Muslims”. Did I say “Serbs”?

Mr. BROWNLIE: Yes.

General ROSE: Oh, I meant to say Muslims. I meant to say Muslims, because that was the tenor of my logic . . .

The PRESIDENT: Yes. I think that slip of the tongue had been understood.

General ROSE: Well, I withdraw the word “Serbs”, and insert the word “Muslims” in that case. And I can give you the instances. It was very clear. There was one in June after there had been meetings in Geneva between the two warring parties, under the chairmanship of Mr. Akashi, at which Mr. Ganić, the Vice-President — who commanded the armed forces — he went back, having signed the agreement, and almost immediately launched an attack on the western side of Sarajevo in order to break down that ceasefire.

And then of course there was technical evidence which I was able to present to President Izetbegović, showing that it was his forces under Delić, that had deliberately broken the ceasefire in September, which had actually made, transformed the life of the people in Sarajevo. And yet it was their own Government that had smashed that ceasefire in order to create those images of victims, of suffering which of course they needed if they were going to get the international support they thought they required. They were two clear examples.

And of course on Mt. Igman, they were the ones who continually attacked into the demilitarized zone on Mt. Igman. Although the Serbs generally held their line, on the outside of that demilitarized zone.

Mr. BROWNLIE: Thank you. The other point was that you confirmed to counsel for Bosnia that no documents were shown to you.

General ROSE: No.

Mr. BROWNLIE: Could you also confirm that it was at no stage suggested to you that you would be an instrument for the introduction of documents into this testimony?

General ROSE: No.

Mr. BROWNLIE: Thank you very much. Thank you, Madam President.

The PRESIDENT: Thank you. The Court will now retire but the Parties and the witness should remain in the vicinity of the Great Hall of Justice. If the Court wishes to pose questions to the witness, it will return to the courtroom within the next 15 minutes. If the Court should not wish to pose any questions to the witness, the Registry will inform the Parties and the public accordingly. The Court now rises.

The Court adjourned from 11.05 to 11.40 a.m.

The PRESIDENT: Please be seated. Please will you ask the witness to rejoin us? Sir Michael, there are some questions for you from the Bench, and I call first of all upon the Vice-President.

The VICE-PRESIDENT: Thank you, Sir Michael. In your introductory statement you made the remark, which I am afraid I cannot cite verbatim but I can merrily try to rephrase. You said that in the interest of peace, this case should not continue and you cited the fact that the leaders had died and the historical events after the First World War where heavy conditions were imposed on Germany. Now, of course, peace is a very important consideration but there is another consideration, namely, justice. Would you say that what happened after the Second World War — the imposition of reparations on Germany and the trial of Nazi and Japanese war criminals — should not have been undertaken and, instead, a commission on reconciliation and truth would have done the job more effectively?

General ROSE: I think the point I was trying to make, Madam President, was that it is better to pursue individuals for war crimes than to try and pursue States. The heavy reparations that were imposed on Germany after the First World War caused the end of democracy in that country and the rise of totalitarian fascist State. And, of course, at the end of the Second World War, the reparations were imposed, but they were much more limited, and at the same time the international community was engaged in a programme of reconstruction and putting the past behind them, and I think that balance, therefore, was a better balance than had happened in the First World War. But my general thesis is that if we are not going to punish successive generations of people of Serbia

and Montenegro it would be better to continue pursuing the war criminals and not to go for States. I think it is more constructive to pursue the path of truth and reconciliation.

The PRESIDENT: Thank you. I now call upon Judge Owada.

Judge OWADA: Thank you, Madam President. I have a question to the witness. General Sir Michael Rose, if I understood you accurately, you stated something to the following effect: no formal military command relationship existed between the VRS and the VJ. Now, my question is the following: if my understanding of that statement is accurate, is that statement based on your impression, your inference coming from some circumstantial factors that you observed, or some concrete evidence?

General ROSE: This was relating . . . I do not quite understand what it was relating to. The relationship between the military commanders in the army of Republika Srpska and the Yugoslav regular forces . . .

The PRESIDENT: Would you like the question put again to you?

General ROSE: I think I understand it.

Judge OWADA: The question is the following: if I understood you correctly, and of course this was a verbal exchange, so I may not have grasped what you said correctly, but my understanding was that you said to the effect that no formal military command relationship existed between the army of Republika Srpska and the army of Yugoslavia. Now, my question is whether that statement of yours was based on your impression or your inference on the basis of some circumstantial factors that you observed, or based on some concrete evidence?

General ROSE: I fully understand that, Madam President. It was an inference drawn from the impressions that I had gained during that time. There was no concrete evidence one way or the other, but having lived in the military for the whole of my career, I have an understanding of formal military command relationships and my view was that they did not exist between those two organizations.

Judge OWADA: Thank you.

The PRESIDENT: Thank you. I now call upon Judge Simma.

Judge SIMMA: Thank you, Madam President. Sir Michael, I can link my question to what you just said in reply to Judge Owada's question. You stated that according to your insight into matters you could not establish that there was a formal relationship of command and control between Belgrade and the Bosnian Serbs. On the other hand, on one of the pages of the book to which you were referred by counsel for the Applicant, you said on that page that all sides committed atrocities and war crimes, and then you referred to genocide, and what you said was that genocide was committed by only one side, namely, the Serb side. Now, in the light of what you said about the relationship between Belgrade and Pale, would you then say that if you want to retain that statement because I am not sure what year your book was published, if you keep to that view that genocide was committed, would you say that genocide, according to your insight, was then rather committed by the Bosnian Serbs or would you kind of implicate Belgrade in that?

General ROSE: No, I would not implicate Belgrade. Clearly, it was committed by the — and this is my understanding of genocide, the definition of genocide has obviously changed. That book was printed, I think, in 1995. My understanding has improved as to what genocide consists of, but I would not alter my view that it was the Pale régime that was committing genocide. Whether the Belgrade régime was implicated in that and how far they were implicated in that, I would not be able to offer an opinion.

The PRESIDENT: Thank you. That brings to an end the hearing of the witness and I thank you, Sir Michael, for appearing before us.

General ROSE: Thank you, Madam President.

The PRESIDENT: The Court will now turn to hear the evidence of Mr. Jean-Paul Sardon, who has been called as a witness-expert by Serbia and Montenegro, and the witness-expert may now be brought into court.

[Witness enters and takes his place at the rostrum]

The PRESIDENT: I call upon Mr. Sardon to make the solemn declaration set down in Article 64, subparagraph (b), of the Rules of the Court.

M. SARDON : Je déclare solennellement, en tout honneur et en toute conscience, que je dirai la vérité, toute la vérité et rien que la vérité et que mon exposé correspondra à ma conviction sincère.

The PRESIDENT: Je vous remercie. I now give the floor to Ms Fauveau-Ivanović to begin her examination of the witness-expert.

Mme FAUVEAU-IVANOVIĆ : Merci, Madame le président. Monsieur Sardon, je vous prie de vous présenter brièvement à la Cour et d'exposer votre expérience et vos travaux principaux.

M. SARDON : Madame le président, Messieurs les juges. Excusez-moi, c'est l'émotion d'être devant vous. Mon nom est Sardon, Jean-Paul, je suis directeur de recherche à l'Institut national d'études démographiques à Paris, je suis également directeur de l'Observatoire démographique européen et j'ai en particulier la charge de produire annuellement l'*Annuaire démographique du Conseil de l'Europe*. Je suis également membre fondateur d'un groupe de recherche démographique, un réseau qui s'appelle DémoBalk, qui est spécialisé dans la démographie...

The PRESIDENT: Could I just interrupt, I am sorry to do so earlier, but we are very anxious to understand everything you are saying, so could you speak a little more slowly for the interpreters.

M. SARDON : Excusez-moi, Madame le président. Je disais que suis également membre fondateur d'un groupe de recherche démographique, un réseau dont le nom est DémoBalk, qui a organisé jusqu'à maintenant trois conférences internationales sur la démographie des Balkans; la première s'est tenue à Thessalonique en 1996, la deuxième à Sarajevo en 2000 et la dernière, en 2005, à Belgrade. Voici pour ma présentation. Merci, Madame le président.

Mme FAUVEAU-IVANOVIĆ : Monsieur Sardon je vais vous demander de faire à la Cour votre déclaration.

M. SARDON : Madame le président, afin de lever toute ambiguïté au départ, je tiens à préciser que je n'ai moi-même procédé à aucune estimation directe ou indirecte du nombre de victimes de la guerre qui toucha la Bosnie-Herzégovine entre 1992 et 1995, ce que je vais vous présenter ici est une analyse critique des estimations publiées en insistant plus particulièrement sur celles qui ont été faites par les démographes de l'unité démographique du bureau du procureur du Tribunal pénal international pour l'ex-Yougoslavie. Dans un premier temps, je m'intéresserai aux victimes de la guerre avant d'aborder la question des réfugiés et des déplacés.

1. Les victimes de guerre en Bosnie-Herzégovine (1992-1995)

L'estimation du nombre des victimes de ce conflit est un sujet si sensible si emblématique des conflits interethniques qui ont accompagné la désintégration de l'ancienne Yougoslavie qu'elle est plus souvent traitée d'une manière émotionnelle que comme un sujet nécessitant toute la rigueur scientifique.

Toutes sortes de chiffres circulent, repris en fonction de la sensibilité de ceux qui les utilisent, sans que ces derniers ne ressentent la nécessité d'en vérifier le bien-fondé ou même tout simplement d'en contrôler l'origine.

Estimations du nombre de décès dus à la guerre pour l'ensemble de la Bosnie-Herzégovine (1992-1995), selon l'origine et l'estimation

Sources	Sources étrangères	Sources locales
SIPRI (1993)	169 100	
Basssiouni (1995)	200 000	
Kenney (1995)	40 000-70 000	
IPH (1 ^{er} janvier 1996)		156 824
IPH (25 mars 1996)		278 800
Praso (1996)		329 000
Bosnjovic-Smajkic (1997)		258 000
Boyle (1998)	139 000	
Thomas (1998)	25 000-60 000	
Zerjavic (1998)		220 000
Bosnjovic (1999)		252 200
Tabeau-Bijak (2003)	102 622	

C'est ainsi que l'on a vu fleurir des estimations du nombre de tués et disparus qui s'étagent de vingt mille à trois cent vingt-huit mille. Soit dans un rapport tout à fait inhabituel de un à seize. La plupart de ces estimations circulent sans que l'en en connaisse plus précisément la source, ni la méthodologie ayant présidé à leur calcul, quand, toutefois, ces nombres ne sont pas nés par une sorte de génération spontanée.

La première constatation que l'on peut faire à l'analyse de ces estimations est que leur niveau dépend largement de l'origine géographique de leurs auteurs. Celles faites en Bosnie-Herzégovine sont toujours beaucoup plus élevées que venant de l'étranger. La moyenne des estimations locales dépasse deux cent quarante-sept mille personnes contre moins de la moitié, cent dix-huit mille, pour la moyenne des estimations étrangères. Il s'agit là d'un fait relativement courant dans des situations de ce type, le camp des victimes surestime toujours le nombre des pertes qu'il a eu à déplorer. De plus, la plupart des constructions locales, prennent en compte l'excès de mortalité qui est dû à la dégradation des conditions de vie pendant la guerre.

Malheureusement, que ces estimations aient été faites à l'intérieur ou à l'extérieur de l'ancienne Yougoslavie, il est assez difficile de comprendre comment les auteurs les ont obtenues. Ce n'est généralement pas précisé dans la publication. Toutefois, un nombre limité de méthodes permet de procéder à de telles estimations :

- utilisation des statistiques de décès qui ont été fournies par l'Institut de santé publique de Sarajevo;
- comparaison entre la population attendue héritée du dernier recensement (1991) et la population actuelle estimée;
- combinaison des deux méthodes précédentes.

Le problème principal de ces travaux est l'absence de critique de la qualité des sources utilisées, en particulier les données de mortalité collectées par l'Institut de santé publique, dont nous savons qu'elles surestiment largement le nombre de décès du fait de doubles comptes.

Parmi toutes ces estimations, auxquelles nous avons pu accéder, l'une se distingue particulièrement par sa qualité, c'est celle établie par Ewa Tabeau et Jakub Bijak, démographes

attachés au bureau du procureur du TPIY. Dans ce travail aujourd'hui publié¹, le nombre des victimes dues à la guerre y est estimé à cent deux mille six cent vingt-deux personnes.

Dans ce document, comme dans tous ceux préparés par l'unité démographique du bureau du procureur du TPIY, les auteurs recourent à l'ensemble des sources avant de considérer une personne comme morte ou disparue. De plus, tous les documents nécessaires à la compréhension de la manière dont sont obtenues ces estimations sont donnés et l'approche scientifique est toujours présente, même si nous pouvons faire quelques critiques.

Pour ce travail, comme pour tous ceux qui ont été faits dans le cadre de cette unité démographique, les auteurs ont mobilisé l'ensemble des sources disponibles en matière de décès. Le premier travail a donc consisté à éliminer les doubles comptes contenus dans ces différentes listes disponibles de personnes mortes, tuées ou disparues.

Ensuite, après l'élimination des doubles comptes, chaque enregistrement de décès a été couplé avec les bulletins individuels du recensement de 1991 afin de contrôler l'identité de la personne, et cela a été couplé aussi avec le registre de votants de 1997-1998 et de 2000, afin de contrôler la validité de la déclaration de décès ou de disparition.

Après tous ces apurements, le nombre minimum de morts et disparus s'élèverait à cent sept mille trois cent quatre-vingt-quinze personnes dont soixante-sept mille cinq cent trente dus à la guerre. En fait, il s'agit des personnes déclarées mortes ou disparues, dont on a retrouvé le bulletin de recensement et qui ne figurent dans aucune liste d'électeurs. Ce nombre ne contient pas les mille neuf cent vingt-trois personnes trouvées, à la fois dans la liste des victimes et dans la liste électorale, et dont le destin est donc inconnu. Mais c'est là que se situe le premier problème.

En effet, l'incohérence n'est mesurée que sur les personnes enregistrées sur les listes électorales en 1997-1998. Or, l'OSCE (Organisation pour la sécurité et la coopération en Europe) considère que 20 % des personnes d'âge éligible ne se sont pas inscrites pour voter, c'est-à-dire quelque cinq cent cinquante mille personnes². En faisant la simple hypothèse que les incohérences

¹ Ewa Tabeau et Jakub Bijak, «Casualties in the 1990s War in Bosnia-Herzegovina: A Critique of Previous Estimates and the Latest Results», communication présentée au Seminar on the Demography of Conflict and Violence, Jevnaker, Norvège, 8-11 novembre 2003. Ce travail a été publié ultérieurement sous le titre «War-related Deaths in 1992-1995, Armed Conflicts in Bosnia-Herzegovina: A critique of Previous Estimates and recent results» in *European Journal of Population*, 2005, n° 21, p. 187-215.

² $((2210252/80)*100-2210252)=553013$.

affectent dans la même proportion (0,99 %) les inscrits et les non-inscrits, le nombre de décès liés à la guerre aurait dû être diminué de trois cent deux³.

Afin d'être plus précis, ce nombre devrait être calculé séparément pour chacune des communautés. Ce point n'est pas sans importance, parce que les listes électorales sont utilisées pour acquérir la certitude qu'une personne est décédée. Ainsi, une personne déclarée à tort comme morte ne peut être retirée de la liste des personnes décédées que si elle s'était inscrite pour voter. Si elle ne s'est pas inscrite, elle sera définitivement considérée comme décédée. Si la proportion des non-inscrits diffère d'une nationalité à l'autre, l'estimation du nombre de victimes selon l'affiliation ethnique pourra être plus éloignée de la réalité que ne le sera l'estimation du nombre total de décès indépendamment de leur appartenance ethnique.

Quoi qu'il en soit, l'estimation du nombre minimal de décès ou de disparitions ne saurait être largement remise en cause. L'estimation de ce nombre minimal de victimes s'élève, je le rappelle, à cent sept mille trois cent quatre-vingt-quinze, dont soixante-sept mille cinq cent trente dus à la guerre.

D'autre part, comme le couplage des bulletins de décès avec les bulletins individuels du recensement n'a pu être assuré que dans un peu plus de 81 % des cas, le nombre de victimes observées ne constitue qu'un minimum et sous-estime par conséquent le nombre total des victimes. C'est pourquoi ces nombres minimums ont été ajustés pour tenir compte de ces couplages impossibles.

Comme souvent, le point-clé est celui de la procédure de redressement qui permet d'estimer le nombre total de victimes. Pour ce faire, les auteurs ont admis, comme cela se fait couramment, que les 19 % de personnes, pour lesquelles le couplage entre le bulletin de décès et le bulletin de recensement n'avait pu être réalisé, avaient, en moyenne, les mêmes caractéristiques que celles pour lesquelles l'appariement des deux sources fut possible. L'hypothèse sous-jacente est que la proportion des décès confirmés serait la même, tant pour les décédés dont on a retrouvé le bulletin de recensement que pour ceux pour lesquels l'appariement avec un bulletin de recensement fut sans succès. De manière implicite, cela suppose qu'aucune sélection particulière n'intervient pour

³ (67530/107395)*481.

séparer les personnes entre ces deux groupes, et, en particulier, que la probabilité pour que les bulletins de décès et de recensement puissent être couplés soit indépendante des caractéristiques que l'on analyse. En clair, il ne faudrait pas que les personnes pour lesquelles le couplage n'a pu être réalisé soient principalement des personnes qui auraient été déclarées à tort comme décédées, ou qui appartiendraient à une communauté particulière.

Rien ne permet de conforter cette hypothèse, qui n'est qu'une des hypothèses possibles. En effet, nous pourrions tout aussi bien faire l'hypothèse que les 19 % ne sont pas un échantillon aléatoire de l'ensemble des bulletins de décès, mais qu'au contraire ils résultent d'un effet de sélection. De ce fait, les 81 %, en dépit de leur nombre, ne sont pas nécessairement représentatifs de l'ensemble des personnes et peuvent en donner une image biaisée, notamment pour l'affiliation ethnique.

La faiblesse des travaux faits par les démographes du bureau du procureur du TPIY provient du fait que s'ils ont bien apuré le fichier des bulletins de décès, ils n'ont pas procédé à un travail de critique de la liste électorale et du recensement, à l'exception de la suppression des doubles comptes dans le recensement de 1991.

L'effet de ce redressement n'est pas négligeable puisqu'il permet de faire passer le nombre de victimes de guerre de soixante-sept mille cinq cent trente à quatre-vingt mille huit cent soixante-huit.

Afin de compléter l'estimation du nombre total de décès, les auteurs ont estimé le nombre de civils morts enregistrés dans les registres de la Republika Srpska à la moitié des morts civils enregistrés sur le territoire de la Fédération. En première estimation, ils auraient tout aussi bien pu faire l'hypothèse que les décès civils se répartissaient entre les communautés comme les décès militaires. Dans ce cas, cela aurait entraîné une réduction du nombre...

The PRESIDENT: Could you pause a moment? Is everything in order? Yes. Please continue and as slowly as you conveniently can.

Mr SARDON: I will try.

Donc, dans ce cas, et en faisant cette nouvelle hypothèse, cela aurait entraîné une réduction du nombre de blessés de près de trois mille. Dans ces conditions, le nombre total de décès serait un

peu inférieur à cent mille. Néanmoins, il apparaît que l'estimation faite par les démographes du bureau du procureur est sérieuse et qu'elle doit approcher la réalité. Très probablement le nombre de décès dus à la guerre devrait se situer autour de cent mille. Ce qui plaide également en faveur de la bonne approximation de cette estimation, c'est qu'elle est très proche de celle produite par Mirsad Tokaca, directeur du centre de recherche et de documentation de Sarajevo. Le décompte des victimes, civils et soldats, auquel aboutissait, fin février, son équipe s'élevait à quatre-vingt-seize mille quatre cent trente-six personnes. Ce nombre devrait être encore affiné d'ici la fin mars, date à laquelle devrait être publié le rapport définitif recensant l'ensemble des personnes mortes pendant le conflit.

Cette concordance des estimations témoigne du fait que le nombre de victimes de la guerre de 1992-1995 serait deux fois moins élevé que le chiffre couramment cité de deux cent mille personnes.

Par-delà l'accord sur le nombre total de victimes, la répartition selon la filiation ethnique sont assez proches. Mme Tabeau et M. Tokaca estiment tous les deux la part des Musulmans à 68 %, mais elle diffère quelque peu pour les autres : 26 % de Serbes, 5 % de Croates et 1% de personnes appartenant aux autres communautés pour M. Tokaca, alors que Mme Tabeau estime ces parts respectives à 19 %, 8 % et 5 %. Il est vrai que la répartition de Mme Tabeau est calculée sur les nombres minimums, non redressés.

II. Les réfugiés et déplacés en Bosnie-Herzégovine (1992-1995)

Si pour les décès ou disparitions il existe des bulletins, ce n'est pas le cas pour les réfugiés et déplacés, ce qui confère une importance capitale aux procédures d'estimation. Cela est encore plus flagrant quand on s'intéresse à une zone particulière comme c'est le cas dans la plupart des actions judiciaires devant le TPIY, dont les travaux d'experts ont servi de base à notre analyse.

Ces travaux [rapports⁴ ou présentations de rapports⁵], faits par les membres de l'Unité démographique, utilisent la même méthodologie que celle dont j'ai parlé pour Mme Tabeau. C'est d'ailleurs dans le cadre de ces travaux que cette méthodologie avait été mise en place.

⁴ *The Prosecutor v. Momcilo Krajisnik*, Submission of updated statement of Dr. Ewa Tabeau (29 May 2003) and *The Prosecutor v. Slobodan Milošević*, Prosecution submission of expert report of Ewa Tabeau pursuant to rule 94bis (28 April 2003).

Dans la mesure où tous ces rapports recourent à la même méthodologie et suivent la même structure, nous allons faire dans la suite comme s'il s'agissait d'un seul document.

D'un point de vue méthodologique, plusieurs critiques peuvent être formulées tant sur les sources que sur les hypothèses, implicites ou explicites retenues. Tout d'abord, en ce qui concerne la critique des sources, les auteurs s'arrêtent à l'aspect comptable :

- ils ne discutent aucunement la qualité de l'information donnée dans le recensement de 1991 sur l'appartenance ethnique, pas plus que sur la complétude de ce recensement;
- ils ne se posent pas non plus la question des éventuels biais de sélection qui pourraient avoir affecté la procédure d'inscription sur les listes électorales.

Mesure et définition des réfugiés et déplacés

Une des premières critiques concerne la manière dont sont mesurés et donc définis les réfugiés et les déplacés.

Ainsi, les réfugiés et les déplacés de l'intérieur ont été mesurés par comparaison entre la municipalité de résidence officielle au recensement de 1991 et celle où l'inscription sur la liste électorale a été faite. Ainsi, tous les électeurs résidant, en 1997, hors de la municipalité de résidence officielle en Bosnie-Herzégovine déclarée en 1991 sont considérés comme des *réfugiés* s'ils se sont inscrits depuis l'étranger et comme *déplacés* si cette inscription est intervenue dans une autre municipalité du pays.

Dans un rapport qui a été présenté dans le cadre du procès contre Slobodan Milošević, les auteurs ont écrit que les électeurs résidant à l'étranger «peuvent et doivent» être considérés comme des réfugiés⁶. Il s'agit là d'une affirmation assez surprenante et qui conduit à gonfler le nombre des réfugiés, pour plusieurs raisons.

⁵ Helge Brunborg, «Contribution of Statistical Analysis to the Investigations of the International Criminal Tribunals» paper for international conference on *Statistics, Development and Human Rights*, Montreux, 4-8 September 2000 and Helge Brunborg, Torkild Hovde Lyngstad and Henrik Urdal, «Accounting for Genocide: How Many Were Killed in Srebrenica?», *European Journal of Population*, 19: 229-248, 2003 (Presentation of results from Helge Brunborg and Henrik Urdal, «Report on the number of Missing and Dead from Srebrenica» in *The Prosecutor v. Radislav Krstic*, February 12th 2000).

⁶ Il semble qu'il y ait une contradiction entre les pages 6 et 28 au sujet de la définition des réfugiés, page 28 il est dit que les réfugiés sont définis par comparaison des résidences en 1991 et en 1997-98. Cela signifie-t-il que les personnes déjà à l'étranger en 1991 n'ont pas été prises en compte ?

En premier lieu, le fait d'inclure des personnes vivant à l'étranger pose problème. Si cette inclusion ne modifie pas notablement la composition ethnique, comme les auteurs l'écrivent (p. 6, v.*SM*), elle augmente, quand même, le nombre des réfugiés de 15 %...

The PRESIDENT: Mr. Sardon, I'm sorry to interrupt you once again, but I want to explain to you we really wish to follow what you are saying and you will help those of us who are following through our earphones if you can speak a little more slowly.

Mr. SARDON: I will try to do my best but you know . . .

The PRESIDENT: Please be sure that we are appreciative of your being here, and it is only because we are interested we would like you to speak more slowly.

M. SARDON : I apologize for that. Donc, comme je le disais, le fait d'inclure les personnes vivant à l'étranger fait augmenter le nombre des réfugiés de 15 % puisque 13 % des électeurs inscrits à l'étranger étaient déjà à l'étranger en 1991. Ensuite, cela suppose non seulement que toutes les personnes qui avaient émigré avant le recensement de 1991 ont été empêchées de revenir du fait de la guerre, mais également que durant la guerre personne n'a quitté le pays pour des raisons non liées à la guerre.

Enfin, cela signifie que même s'il n'y avait pas eu de guerre personne n'aurait émigré. Une hypothèse plus réaliste aurait considéré que le taux d'émigration aurait été, en l'absence de la guerre, très voisin de celui qui était observé dans les années précédant la guerre. L'affirmation des auteurs est étonnante et elle est présentée sans argument sérieux à l'appui. Aussi, n'est-il pas facile de comprendre pourquoi ces auteurs n'ont pas considéré l'éventualité de la poursuite d'une émigration de travail, même dans de telles conditions et même si cette hypothèse aurait dû être rejetée après analyse. De la même façon, la méthode utilisée tend à exagérer le nombre des personnes *déplacées* à l'intérieur de la Bosnie-Herzégovine. Utiliser cette méthode pour calculer une première estimation était tout à fait logique mais on pouvait s'attendre à ce que les auteurs cherchent à se faire une idée plus précise en se demandant si, en dépit de la guerre, certains changements de leur résidence, pendant la période 1991-1997, ne pourraient pas être considérés comme «normaux». D'autre part, ils auraient pu également se demander si, en l'absence de guerre, l'ensemble des survivants aurait continué à résider dans la même municipalité. Pour cela, comme

pour affiner l'estimation du nombre de réfugiés, il aurait été possible de considérer que les changements de résidence officielle auraient continué à un rythme voisin de celui qui avait été enregistré avant la guerre. Et comme vous le savez sûrement, le mariage est ainsi, notamment, souvent l'occasion d'une migration interne pour l'un des époux, celui qui va vivre dans la résidence de son conjoint.

Estimation du nombre total de *réfugiés et déplacés*

Après cette étape qui donne le nombre, défini par les auteurs comme *minimal*, de réfugiés et déplacés internes, mesuré — je vous le rappelle — dans la seule population des électeurs pour lesquels le bulletin de recensement a pu être identifié, les auteurs ont estimé le nombre total de personnes réfugiées et déplacées, en faisant l'hypothèse que leur proportion dans cette sous-population devait être très proche de celle que l'on pourrait mesurer pour l'ensemble de la population de la zone considérée, que ce soit une région particulière ou l'ensemble du pays.

L'hypothèse que les auteurs ont utilisée est valide à condition que l'une au moins des deux conditions suivantes soit réalisée :

1. le sous-ensemble dans lequel est mesurée la proportion doit être suffisamment grand par rapport à l'ensemble dans lequel on désire l'estimation, de façon à ce que la partie non observée ne puisse remettre en cause, autrement que de manière marginale, la proportion mesurée;
2. le sous-ensemble doit constituer un échantillon aléatoire, c'est-à-dire représentatif et non biaisé de l'ensemble de la population.

En l'occurrence, rien ne permet d'affirmer que ces conditions sont bien réalisées. En effet, non seulement l'appariement avec les bulletins de recensement n'a pu être réalisé que pour 80 % des personnes inscrites sur la liste électorale, mais l'OSCE considère qu'au moins 20 % des personnes éligibles — comme je vous l'ai dit — ne se sont pas fait inscrire sur les listes électorales et les auteurs estiment même que la proportion de non-inscrits représenterait un quart des personnes éligibles. Si bien qu'au total la proportion ne serait mesurée que dans un sous-ensemble d'environ 60 % de la population éligible et, par conséquent, une proportion encore plus faible de la population totale puisqu'il faut tenir compte de la population de moins de dix-huit ans, qui n'était pas éligible.

Ce double processus, d'inscription sur les listes électorales puis d'appariement avec les bulletins de recensement, pourrait tout aussi bien être à l'origine de sélections, susceptibles d'entacher de biais la proportion mesurée.

Mais avant d'analyser ces sources de biais, évoquons le problème de la mortalité entre le recensement de 1991 et 1997-1998. En estimant le nombre de déplacés et réfugiés par application à l'ensemble de la population recensée en 1991, de la proportion mesurée parmi les électeurs, les auteurs semblent considérer comme négligeable le fait que quelque cent cinquante mille personnes soient mortes pendant la guerre — mort naturelle et mort de la guerre. L'hypothèse qu'ils font n'est pas loin de la réalité car le nombre de décès, liés ou non à la guerre, représente un peu plus de 3 % de la population d'avant-guerre. Néanmoins, les conséquences de cette surestimation sont de même ampleur sur tous les effectifs calculés sur la base de la taille de la population en 1991.

L'inscription sur le registre des votants de l'OSCE

Examinons maintenant les possibles effets de sélection qui ont pu intervenir dans la constitution du registre des votants. Pour déterminer si les listes électorales peuvent être utilisées pour estimer les nombres de personnes mortes ou disparues, et leur répartition selon les principales communautés, il est essentiel de savoir si les personnes enregistrées forment véritablement un échantillon représentatif de la population de Bosnie-Herzégovine, ainsi que de chacune de ses composantes, ou si certains groupes ont refusé de prendre part au vote, en proportions un peu plus grandes pour les uns que pour les autres

Le premier facteur de doute est la composition des nouveaux inscrits de 1998, dont on sait qu'ils ont été fondus en un registre unique avec ceux de 1997. Ces nouveaux électeurs, qui sont au nombre de cent cinquante mille, sont en effet deux fois plus nombreux que les seules nouvelles personnes éligibles entre 1997 et 1998, c'est-à-dire celles qui n'avaient pas encore atteint en 1997 l'âge minimum légal. Cela signifie donc, qu'en plus de ces personnes nées en 1980 qui ont atteint l'âge minimum en 1998, d'autres personnes qui auraient pu s'inscrire dès 1997 ne l'ont fait qu'en 1998. Ainsi, si les inscrits de 1998 ne sont pas représentatifs de ceux qui auraient dû s'inscrire cette année-là, cela signifie peut-être que les inscrits de 1997 n'étaient pas nécessairement représentatifs de l'ensemble des éligibles. D'autre part, rien ne permet de dire que

le registre unique, découlant de la fusion des listes de 1997 et de 1998, aurait une plus grande représentativité.

De plus, si les auteurs reconnaissent que le registre ne peut être utilisé pour estimer l'effectif total de la population (c'est l'évidence dans la mesure où la population de moins de dix-huit ans n'y sont pas enregistrés), ils précisent que le registre peut être utilisé pour analyser la composition ethnique, et estimer le nombre de déplacés et réfugiés. Ainsi, confrontés au sous-enregistrement de la liste électorale, les auteurs ont décidé d'augmenter l'effectif des communautés en appliquant un coefficient égal au sous-enregistrement estimé par l'OSCE. Faisant cela, ils font l'hypothèse implicite que le sous-enregistrement est indépendant de la situation ou de l'appartenance ethnique. Il est très étrange de voir que les auteurs ne se posent pas la question d'un éventuel biais de sélection dans le registre électoral. Alors que l'on peut imaginer que quelques nationalités pourraient, en plus grande proportion que d'autres, ne pas s'être inscrites sur les listes électorales.

Mais même si nous admettons, en suivant les auteurs, que le sous-enregistrement est en moyenne indépendant de l'appartenance ethnique du fait d'éventuelles compensations, cette hypothèse est d'autant moins réaliste qu'elle s'applique à des zones plus petites, et ce, quelle que soit la nationalité. Ainsi, pouvons-nous penser que les membres des minorités pourraient avoir hésité à se faire inscrire sur les listes électorales dans les zones où les relations avec la communauté majoritaire étaient conflictuelles. Dans les régions où les Serbes sont majoritaires, des Musulmans auraient pu éviter de s'inscrire pour ne pas raviver les tensions, de même pour des Serbes vivant, très minoritaires, dans des régions musulmanes.

C'est pourquoi, si la liste électorale constitue bien un large échantillon de la population vivant dans le pays en 1997-1998, il est difficile d'admettre, sans investigation supplémentaire, que cet échantillon est bien représentatif, tant de l'ensemble de chacune des catégories ou communautés, la proportion de non-inscrits pouvant notablement varier selon ces communautés et selon les zones géographiques.

Le couplage de la liste électorale avec les bulletins de recensement

Le couplage de la liste électorale avec les bulletins de recensement est lui aussi susceptible d'introduire de nouveaux biais. En effet, pour un cinquième des personnes, soit cinq cent

cinquante mille électeurs, le couplage n'a pas pu être possible. Le fait de ne pas avoir été capable de prendre en compte un tel nombre pose une nouvelle question sur la représentativité non plus des personnes inscrites sur la liste électorale, mais de celles pour lesquelles l'appariement avec les données du recensement a été couronné de succès.

En effet, sans information sur les caractéristiques des personnes dont l'appariement n'a pas réussi, il est impossible d'éliminer l'hypothèse d'un biais de sélection. Ainsi les experts soulignent que certains couplages n'ont pu être réalisés du fait d'«erreurs d'orthographe», la question se pose ainsi de savoir si ces «erreurs d'orthographe» ne pourraient pas être plus fréquentes pour certaines communautés.

Quand les auteurs corrigent le nombre de cas observés pour livrer une estimation d'ensemble pour la zone étudiée, ils fournissent un nombre à l'unité près, donnant ainsi l'illusion d'une estimation très précise, voire d'un nombre observé. Ne donner ce nombre qu'en milliers aurait été largement suffisant et aurait rendu plus explicite le statut de cette estimation. En effet, la précision apparente du nombre estimé ne doit pas occulter l'incertitude des coefficients de correction qui permettent d'augmenter de 50 % le nombre de personnes encore certainement en vie.

On peut apprécier, avec le taux de sondage de 60 % auquel on aboutit avec l'utilisation de la liste électorale, combien élevés pourraient être les éventuels biais, quand, non seulement, seuls 60 % de l'ensemble de la population sont pris en compte, mais, encore, quand aucune information n'est disponible sur les 40 % manquants. Ce problème est naturellement encore plus sérieux lorsque l'on étudie des zones particulières, car dans ce cas, les éventuelles compensations que l'on peut évoquer pour le pays dans son ensemble, n'existent pas; et ce, d'autant plus que le taux de sondage réel, dans certaines zones, doit être inférieur à la moyenne nationale de 60 %.

Le recensement de 1991

Le premier problème que pose l'utilisation du recensement de 1991 est celui de la définition de la population légale, qui suit le concept de population *de jure*, c'est-à-dire que le recensement dénombre non seulement les personnes vivant dans le pays à leur résidence officielle, mais également les citoyens vivant à l'étranger⁷. Ainsi, l'effectif total de la population recensée en 1991

⁷ En 1991, comme dans les recensements précédents, le recensement des personnes vivant à l'étranger a été organisé dans les consulats et les ambassades.

surestime la population effectivement présente sur le territoire de la Bosnie-Herzégovine le jour du recensement et donc à la veille de la guerre. Par symétrie, cela peut conduire à surestimer l'écart entre les nombres de personnes inscrites sur listes électorales et par conséquent le nombre de «disparus» entre 1991 et 1998. Nous ne savons pas si les personnes vivant à l'étranger, d'ailleurs, se sont fait enregistrer pour voter dans la même proportion qu'elles s'étaient fait recenser.

Le second problème qui se pose est celui de l'affiliation ethnique déclarée au moment du recensement.

Les démographes du bureau du procureur ont l'air de considérer comme robuste la déclaration sur l'appartenance ethnique, ce qui n'est pas nécessairement vrai. Dans toute l'ancienne Yougoslavie, l'appartenance ethnique est un concept pas toujours facile à définir pour la totalité de la population. La déclaration peut changer au fil du temps du fait de l'émergence de nouvelles catégories (comme l'apparition des Musulmans ou l'apparition des Yougoslaves). Elle peut changer sous l'influence de contingences politiques, qui peuvent engendrer des tensions entre communautés, de nouvelles alliances politiques ou des pressions exercées sur les minorités.

Afin de s'en convaincre, il suffit d'examiner l'évolution de la population des différentes communautés nationales (ainsi que du groupe des «nationalités inconnues») au fil des recensements.

The PRESIDENT: You are speaking at an admirable pace but I need to interrupt once more. Ms Fauveau-Ivanović, the Court was advised that the oral testimony and your examination would take 30 minutes. We are clearly into an overrun. Could we please be advised as to how long it is likely that the witness will speak?

Mme FAUVEAU-IVANOVIĆ : Madame le président, je crois que cela prendra encore cinq minutes. Je vous prie de nous accorder cinq minutes supplémentaires.

The PRESIDENT: Yes, I will do so and I'll take the opportunity to assure Bosnia and Herzegovina that equal time will be afforded to them and the Court will sit as late as is necessary both for that to happen and for proper consideration to be given as to any questions they might like.

Ms KORNER: May I insist, Madam President, this is such highly technical information, that there is no conceivable way we can conduct a proper cross-examination based on what is happening. So, the cross-examination will be limited to a few general points.

The PRESIDENT: Thank you. Please continue.

M. SARDON : Ainsi, quand on voit que pour l'ensemble de la Bosnie-Herzégovine, le nombre des Yougoslaves a été divisé par 6,3 entre 1961 et 1971, puis multiplié par 5,5 entre 1971 et 1981, on se rend compte que le changement de la taille ou de la part des nationalités ne résulte pas seulement de l'accroissement naturel ou du solde migratoire de ces groupes, mais qu'il existe également une sorte de mobilité entre ces groupes.

Population selon la nationalité, aux divers recensements 1961-1991

Nationalité	Effectif				Distribution en pourcent			
	1961	1971	1981	1991	1961	1971	1981	1991
Croates	711 665	772 491	758 140	760 852	21,7	20,6	18,4	17,4
Musulmans	842 248	1 482 430	1 630 033	1 902 956	25,7	39,6	39,5	43,5
Serbes	1 406 057	1 393 148	1 320 738	1 366 104	42,9	37,2	32,0	31,2
Yougoslaves	275 883	43 796	326 316	242 682	8,4	1,2	7,9	5,6
Albanais	3642	3764	4396	4925	0,1	0,1	0,1	0,1
Tziganes	588	1456	7251	8864	0,0	0,0	0,2	0,2
Ukrainiens		5333	4502	3929		0,2	0,1	0,1
Autres	35 169	25 011	27 408	18 874	1,1	0,7	0,7	0,4
Non déclaration		8482	17 950	14 585		0,2	0,4	0,3
Inconnus	1885	9598	26 576	35 670	0,1	0,3	0,7	0,8
TOTAL	3 277 948	3 746 111	4 124 256	4 377 033	100,0	100,0	100,0	100,0

Si on ne peut refuser de partir du recensement de 1991 pour estimer le nombre de disparus, déplacés et réfugiés, il apparaît un peu troublant de ne pas se poser la question de la qualité des informations auto-déclarées et de ne pas s'interroger sur l'acceptabilité de la taille du biais auquel la reconnaissance de la pertinence de la déclaration sur l'appartenance ethnique pourrait conduire.

Le rapprochement des réponses données lors des derniers recensements pas des personnes, nées à la même date et résidant dans la même municipalité, aurait pu fournir des éléments intéressants d'information sur la relative perméabilité, dans certains cas, des déclarations d'appartenance ethnique. En effet, la probabilité pour que deux personnes, habitant le même village, soient nées le même jour est très faible, si du moins l'effectif de la population de la communauté n'est pas très élevé. Un appariement de ce type a été effectué en Macédoine, naturellement dans un contexte totalement différent; il a cependant montré que si, au niveau de l'ensemble du pays, environ 4 % des personnes avaient changé de déclaration entre deux recensements successifs, cette proportion montait à 60 % dans certaines municipalités.

Un des problèmes les plus importants aussi concerne ce groupe de «Yougoslaves»⁸, que j'ai évoqué tout à l'heure. Ce groupe se compose en effet de tous ceux qui refusent le jeu des appartenances ethniques et qui considèrent qu'ils sont, avant tout, citoyens d'un même pays, quelle que soit leur origine. Sous cette appellation, doivent notamment figurer les personnes issues de couples mixtes.

Ainsi existe-t-il un recoupement objectif entre ces «Yougoslaves» et les groupes auxquels s'intéressent les auteurs, croates, serbes et musulmans. Si l'on ne peut sérieusement envisager des échanges entre Serbes et Musulmans, sauf peut-être dans le cas d'enfants de couples mixtes, il est à peu près sûr que les frontières entre chacun des groupes et celui des Yougoslaves ne sont pas hermétiques et que des échanges avec des minorités partageant la même religion sont hautement probables.

Enfin, à tous ces problèmes que nous venons d'évoquer, se rajoutent par ailleurs, les problèmes de couverture du recensement ou de la variabilité de cette dernière selon la communauté ou la région.

Conclusion

Si au niveau national l'estimation du nombre de personnes mortes ou disparues ne peut être critiquée que de manière marginale, au niveau régional, les estimations faites par les mêmes

⁸ Les groupes «Appartenance ethnique non déclarée» et «Inconnu» pourrait être additions aux «Yougoslaves» parce que le premier suit une évolution parallèle à celle des «Yougoslaves», ce qui pourrait indiquer une attitude commune, et la très rapide augmentation du groupe des «inconnus» semble liée au rejet de plus en plus fort de ce *jeu ethnique*.

personnes sont beaucoup plus sujettes à la critique, en particulier celles du nombre de déplacés et réfugiés. En effet, pour estimer le nombre total de la zone sous observation à partir du nombre minimal observé, ils s'appuient sur une hypothèse implicite, dont rien n'assure qu'elle se vérifie. Cette hypothèse sous-jacente, commune à l'ensemble des analyses qu'elles soient nationales ou régionales, est que la liste électorale est un échantillon aléatoire de la population totale d'âge éligible. Si, au niveau national, cette hypothèse peut être plus ou moins acceptable, pour des zones spécifiques, et même pire, pour les comparaisons entre groupes nationaux, il est à peu près sûr que les résultats soient entachés d'une certaine incertitude. En effet, au niveau local, de nombreuses choses peuvent interférer et dans ce cas on ne peut pas compter sur des compensations avec d'autres régions, comme cela peut se produire à l'échelon national. Parmi les groupes ethniques à l'échelon régional c'est bien pire, car l'hypothèse d'indépendance doit être vraie pour chacune des communautés. C'est le point faible de l'analyse, qui ne tient pas directement à la qualité de la liste électorale mais à la manière dont elle a été utilisée.

Je vous remercie de votre patience, Madame le président, et Messieurs les juges.

The PRESIDENT: Thank you very much, Mr. Sardon. You have the floor, Ms Fauveau-Ivanović.

Mme FAUVEAU-IVANOVIĆ: Madame le président, je n'ai pas de question pour M. Sardon mais j'aimerais vous demander encore une fois de nous excuser pour le dépassement du temps.

The PRESIDENT: Thank you. Ms Korner.

Ms KORNER: Mr. Sardon, so this is very technical information, isn't it? I see you're nodding. You have to say "yes" or "no".

M. SARDON: Oui.

Ms KORNER: And it's a criticism, is it, of the paper which is written by Ewa Tabeau and her collaborator Mr. Jakub Bijak called "War related deaths in the 1992-1995 armed conflicts in Bosnia and Herzegovina"? You didn't mention the paper you were criticizing.

M. SARDON : Oui, c'est vrai, j'aurais dû le citer. Il est dans une note de bas de page dans mes notes et j'ai oublié de le mentionner; je pensais que tout le monde le connaissait. Je vous prie de m'excuser.

Ms KORNER: Would you agree that on the Ewa Tabeau and Jakub Bijak are the persons who have done the most detailed and consistent research into the demography of the conflict?

M. SARDON : Mais je crois l'avoir dit dans mon intervention. C'était le travail le plus sérieux et c'était pour cela que je m'étais intéressé surtout à celui-là, puisque d'autres avançaient des chiffres de manière tout à fait imprécise.

Ms KORNER: Have you communicated any of the lengthy and detailed criticisms you have made of her methodology? Of their methodology? To either of them, either in a written paper or privately?

M. SARDON : Non. Je ne l'ai pas fait pour une simple raison, c'est que ce travail m'avait été demandé dans le cadre de cette action devant la Cour et donc je pensais que je ne devais pas en révéler la substance avant. Mais si vous me l'autorisez, j'aurais des échanges volontiers avec mes collègues sur ce thème.

Ms KORNER: You don't think it might assist the Court in arriving at a decision, if they have to, if you and Ms Tabeau were to get together and discuss the criticism ?

M. SARDON : Peut-être, mais permettez-moi d'insister sur une chose qui est que lorsque l'on s'intéresse au nombre de victimes, c'est-à-dire aux tués ou aux disparitions dus à la guerre, j'ai indiqué que les quelques critiques et les conséquences en termes numériques sont très réduites. Donc c'est pour cela que j'ai dit que cette estimation de cent mille personnes était sans doute tout à fait réaliste. Et donc, l'avantage d'avoir une discussion avec Mme Tabeau n'éclairerait pas beaucoup parce que l'on pourrait tomber d'accords sur un chiffre qui s'écartera de quelques centaines uniquement. Mais l'ordre de grandeur restera toujours le même...

Ms KORNER: I am not at the moment discussing what figures people arrived at. I am discussing your criticism of her methodology for arriving at those figures. Do you think it would be of assistance if you discussed *that* with her?

M. SARDON : L'utilité pourrait être non pas dans ce cas précis mais peut-être pour des utilisations ultérieures de méthodologie voisine, dans d'autres situations. Vous savez, c'est

toujours facile d'être le critique de service parce que on n'a pas fait le travail soi-même, on n'a pas été entraîné dans les difficultés, parce que le travail qu'ils ont fait, c'est un travail considérable. Donc, on peut toujours critiquer des hypothèses. Ils ont pris les hypothèses les plus simples, celles qui sont les plus couramment admises dans n'importe quelle situation et moi, j'ai simplement souligné des incertitudes que l'on pouvait avoir à la validité des hypothèses sous-jacentes et c'est tout.

Ms KORNER: Am I right in thinking that you have only actually published one paper on demographic change in the Balkans since the end of the 1980s, published in 2001?

M. SARDON : Oui, j'ai publié cet article dans une revue française. J'en ai publié d'autres. J'en ai publié dans une autre, je ne me souviens plus laquelle, à quelle revue vous faites référence, mais j'avais présenté un article qui lui ressemblait beaucoup dans une revue française qui s'appelle *Espace population société*, qui était toujours consacrée à l'évolution démographique de l'ensemble des pays des Balkans au cours de la décennie quatre-vingt-dix ou dans les périodes antérieures.

Ms KORNER: I am going to ask you about a couple of things in an article, and I only have the English, that you wrote — no doubt that you have given it to the other side — in 2001, and I am not clear, oh, a journal called *JSTOR*. What? Sorry, I did not hear that. The subtitle appears to be "Population and English Selection". I can hear all sorts of people muttering but I am not sure what the problem is. Is there a problem in the interpretation?

M. SARDON : Non, non, je vous entends très bien. J'ai essayé de voir à quel article vous faisiez référence et en fait, c'est la revue dans laquelle je publie assez souvent, qui est la revue de mon Institution, c'est une revue française qui maintenant est devenue bilingue et, dans une période intérimaire, traduisait un certain nombre d'articles parus dans l'année en anglais.

Ms KORNER: Thank you. That was very helpful. I just want to ask you about two things that you wrote. Did you write: "[t]he wars that accompanied the break up of the former Yugoslavia" — and then you list them — "[p]rovoked hundreds of thousands of deaths, 200,000 to 300,000 deaths in Bosnia and Herzegovina representing between 5 and 7 per cent of the population"?

M. SARDON : Si vous le lisez, c'est que je l'avais écrit à l'époque, mais quand j'ai écrit cette information c'était sur la foi du peu d'éléments qui étaient disponibles à l'époque, et en

particulier, à l'époque je n'avais aucun des documents publiés par l'Unité démographique du bureau du procureur et si je l'ai écrit, c'est une erreur; et si j'écrivais cet article aujourd'hui, il est sûr que je remplacerai ce chiffre par cent mille.

Ms KORNER: Yes. In fact, Mr. Sardon, it is not a criticism of you, it is merely to put the fact. It has been very difficult since the end of the conflict to obtain reliable estimates of how many people were killed, how many displaced and all the like.

M. SARDON : Je crois que c'était le cas avant que les démographes du bureau du procureur ne fassent leur travail, et aussi peut-être maintenant, je suis encore un peu plus sûr de la validité des résultats par le fait que M. Tokaca arrive à un décompte qui se trouve très proche de celui auquel Mme Tabeau est arrivée. Donc, je crois que maintenant on ne peut plus dire que nous ne disposons pas d'analyses sérieuses sur le nombre de victimes de cette guerre qui a touché la Bosnie-Herzégovine.

Ms KORNER: Yes, as I said. But you felt in 2001, publishing an academic paper, that you were entitled to quote that figure of those deaths. Is that right?

M. SARDON : Oui, c'est peut-être une légèreté de ma part parce que vous savez — comme vous avez lu cet article — cet article s'intéresse à tous les pays de la région. N'ayant pas d'information particulière sur le nombre de personnes qui avaient été tuées durant ces conflits, je n'ai fait que reprendre les chiffres qui circulaient à droite, à gauche sur cette estimation. Donc, c'est vrai que j'ai peut-être agi avec légèreté à l'époque, mais je n'avais rien d'autre, alors il aurait fallu que je mette, autrement, un grand point d'interrogation ou plusieurs points d'interrogation sur le nombre de victimes.

Ms KORNER: It is all right, Mr. Sardon. As I said, it is not a criticism but for reasons which I need not trouble you with, it is important to bring that out. You mention — virtually the only note I was able to take: did you say that there were no figures on refugees and displaced persons? Is that what you said in your paper to the Court?

M. SARDON : Non, ce n'est pas tout à fait ce que j'ai dit. J'ai dit qu'il n'y avait pas de liste nominative, à ma connaissance, de réfugiés et de déplacés. C'est tout ce que j'ai voulu dire. Il y a des estimations qui ont été données, il y en a eu une que le HCR a donné, plusieurs organisations. Les démographes du bureau du procureur du TPIY ont aussi donné des estimations, mais je ne me

suis pas intéressé aux nombres. Je me suis intéressé simplement à la manière dont ces nombres étaient calculés et à mon sens, comme je l'ai dit je crois, si ces nombres peuvent être considérés comme un ordre de grandeur tout à fait acceptable au niveau national, quand on descend dans des zones géographiques particulières ou quand on s'intéresse à des communautés particulières, la validité des hypothèses sous-jacentes est encore plus sujette à caution qu'au niveau national. C'est tout ce que j'ai dit.

Ms KORNER: Now, I want to ask just about two other matters and see if you can assist us. In deciding whether a person killed was a civilian or a soldier for the purposes of these records, is it right that you would look to see whether at the time — if you were deciding that he is a soldier — he was listed as a serving soldier in the records of the army or whatever the family said?

M. SARDON : Je dois dire que personnellement, je n'ai pas regardé cela, je me suis intéressé au nombre de personnes mortes du fait de la guerre, indépendamment de leur statut militaire ou civil. Mais je sais qu'il y a des difficultés pour faire cette distinction entre les civils et les militaires parce que dans certains cas beaucoup de personnes qui sont mortes — tout au moins c'est ce que j'ai lu — étaient considérées comme des militaires alors que rien ne prouvait, qu'effectivement, ils étaient militaires. Donc je crois, je ne me suis pas intéressé vraiment à cette distinction parce que pour moi, je pense que ce n'est pas la chose la plus prioritaire. La chose la plus prioritaire, c'est de savoir en gros quel est le nombre de victimes qui a été faites par la guerre et non pas de savoir si ces victimes étaient vraiment des militaires ou étaient des civils et dans quelles proportions, même si cela a une importance effectivement pour les gens qui sont concernés par cela. Mais cela n'affecte pas le nombre total. C'est seulement leur répartition.

Ms KORNER: I am sorry, Sir, I should have made it clear. This was a general question using your expertise as a demographer. The classification of a person as a soldier only relates to what he was actually registered as being at the time. It does not show the circumstances in which he died, does it?

M. SARDON : Oui.

Ms KORNER: And so to take a very silly example, if an off-duty soldier had the weekend at home and during the course of the weekend his village was shelled and he was killed, he would still

be registered as a military person, even though at the time he was not involved in fighting. That is right, isn't it?

M. SARDON : Je crois, je sais pas trop comment sont faites ces statistiques mais il y a de bonnes chances que ce soit son statut, civil ou militaire, qui le fasse rentrer dans une classification ou dans une autre. Mais bon, je crois qu'il faudrait, dans un cas comme cela... Il faut toujours chercher à voir ce qu'il y a derrière les statistiques pour savoir si cette statistique est pertinente ou non. Si vous cherchez à déterminer le nombre de soldats qui sont morts au combat et si effectivement vous incorporez des gens qui ont été tués dans des circonstances qui ne sont pas liées directement à leur fonction, effectivement, là, on commet une erreur mais je ne pense pas que ce soit le point le plus important.

Ms KORNER: I understand that you are concerned with how you arrive at overall figures as opposed to the category into which they fall. But that's the situation, isn't it?

M. SARDON : Pas tout à fait, pas totalement.

Ms KORNER: What do you mean by "not totally"?

M. SARDON : Eh bien, c'est-à-dire que je ne me désintéresse pas de savoir si les gens qui ont été tués sont des civils ou des militaires, s'ils ont été victimes de faits de guerre ou de combats directs du fait de leur uniforme ou non. C'est vrai que c'est un sujet important, mais ce n'est pas celui que j'ai cherché à analyser. Mais je ne m'en désintéresse pas parce que c'est important pour toutes les personnes qui sont concernées.

The PRESIDENT: Thank you very much. I would ask Mrs. Fauveau-Ivanović if there is any re-examination?

Mme FAUVEAU-IVANOVIĆ : Non, Madame le président. Je n'ai pas d'autre question.

The PRESIDENT: Thank you. The Court will now retire but the Parties and the witness-expert should remain in the vicinity of the Great Hall of Justice. If the Court wishes to pose questions to the witness-expert, it will return to the courtroom within the next 15 minutes and will sit late for that purpose. If the Court does not wish to put any questions to the witness-expert,

it will not return to the courtroom and the Registry will inform the Parties and the public accordingly. The Court now rises.

The Court rose at 12.55 p.m.
