

Milosevic & Aanklacht

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**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case no. IT-02-54-T

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Date filed: 3 March 2004

THE PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**AMICI CURIAE MOTION FOR JUDGEMENT OF ACQUITTAL
PURSUANT TO RULE 98bis**

Public Document with Confidential Annexes 1 and 2 and Public Annex 3

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Annex 3: Reference Materials in Support of the Amici Curiae's Motion for Judgement of Acquittal Pursuant to Rule 98bis

I. Introduction

1. On 27th June 2003, the Trial Chamber ordered that: "*the amici curiae may submit a Motion pursuant to Rule 98bis within seven days of the close of the Prosecution case*"¹. On 25 February 2004², the Prosecution closed its case and the Trial Chamber ordered *inter alia* that "*any motion under Rule 98bis shall be filed by the Accused or Amici Curiae by Monday 8 March 2004.*"³ The Amici Curiae file this brief pursuant to the Trial Chamber's Orders.
2. This motion has necessitated an analysis of the Prosecution case by the Amici Curiae to check the sufficiency of the evidence against the allegations in the Indictment solely for the purposes of a Rule 98bis motion. It does not comment upon the sufficiency of the evidence called by the Prosecution on those counts upon which no submission to acquit has been made under Rule 98bis.

II. Rule 98bis

3. Rule 98bis(B) provides:

"(B) The Trial Chamber shall order the entry of judgement of acquittal on motion of an accused or proprio motu if it finds that the evidence is insufficient to sustain a conviction on that or those charges."

¹ The Prosecutor v. Milosevic, Case No. IT-02-54-T, Order on Amici Curiae Request Concerning The Manner of Their Future Engagement and Procedural Directions under Rule 98bis, 27 June 2003.

² The Prosecutor v. Milosevic, Prosecution Notification of the Completion of its Case and Motion for the Admission of Evidence in Written Form, 25 February 2004. See also Decision on the Prosecution's "Notification of the Completion of its case and Motion for the Admission of Evidence in Written Form", 25 February 2004.

³ The Prosecutor v. Milosevic, Order Rescheduling and Setting the Time Available to Present the Defence Case, 25 February 2004.

4. The appropriate test under Rule 98bis is set out by the Appeals Chamber in *Jelusic*,⁴ in which it was stated that:

*"the reference in Rule 98bis to a situation in which the evidence is insufficient to sustain a conviction means a case in which in the opinion of the Trial Chamber, the prosecution evidence, if believed, is insufficient for any reasonable trier of fact to find that guilt has been proved beyond reasonable doubt. In this respect, the Appeals Chamber follows its recent holding in the Delalic appeal judgement, where it said: "the test applied is whether there is evidence (if accepted) upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question... the test is not whether the trier would in fact arrive at a conviction beyond reasonable doubt on the prosecution evidence (if accepted) but whether it could. At the close of the case for the prosecution, the Chamber may find that the prosecution evidence is sufficient to sustain a conviction beyond reasonable doubt and yet, even if no defence evidence is subsequently adduced, proceed to acquit at the end of the trial, if in its own view of the evidence, the prosecution has not in fact proved guilt beyond a reasonable doubt,"*⁵

5. On a motion for acquittal under Rule 98bis, the test to be applied is, whether there is *"evidence (if accepted) upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question."*⁶

⁴ The Prosecutor v. Goran Jelusic, Case No. IT-95-10-A, Appeals Chamber, Judgement, 5 July 2001, para.37.

⁵ *Ibid.*, p.9, para.37. Since the Jelusic Appeal Chamber Judgement, numerous Trial Chambers have applied this standard: The Prosecutor v. Galic, Case No. IT-98-29-T, Decision on the Motion for the Entry of Acquittal of the Accused Stanislav Galic, 3 October 2002; The Prosecutor v. Sikirica et al. Case No. IT-95-8, T, Judgement on Defence Motion to Acquit, 3 September 2001.

⁶ See footnote 4 above at para.36 of the Judgement.

6. Pursuant to Rule 98bis, a judgement of acquittal can be entered with regard to an entire count of the indictment or a factual incident cited in the indictment in support of the offence.⁷ A finding by the Trial Chamber that there is sufficient evidence to justify a case continuing against an Accused, does not preclude the possibility of an eventual acquittal.
7. In a Decision in *Kordic and Cerkez*, it was held that when considering a Motion pursuant to Rule 98bis, a Trial Chamber should not generally reach any conclusion as to the credibility or reliability of a witness until all the evidence in the case has been presented.⁸ However, in certain circumstances, reliability and credibility will become relevant at the Rule 98bis stage of the proceedings:
- (i) In *Kvočka*,⁹ the Trial Chamber held that it would not assess the *"credibility and reliability of the witnesses called by the Prosecution until all the evidence has been given, except where the evidence is so unreliable that no reasonable trier of fact could credit it...the Chamber will not assess credibility and reliability of witnesses unless the Prosecution case can be said to have "completely broken down"*¹⁰.
 - (ii) In *Kordic*,¹¹ the Trial Chamber held that it was obliged to consider questions of credibility and reliability in dealing with a motion under Rule 98bis, in situations where the *"Prosecution's*

⁷ The Prosecutor v. Kvočka and others, Case No. IT-98-30/1-T, Decision on Defence Motions For Acquittal, 15 December 2000; The Prosecutor v. Galic, Case No. IT-98-29-T, Decision on the Motion for the Entry of Acquittal of the Accused Stanislav Galic, 3 October 2002, at para.12; The Prosecutor v. Nalentic and Martinovic, Case No. IT-98-34-T, Decision on Motions For Acquittal, 28 February 2002, p.4, para.11.

⁸ The Prosecutor v. Kordic & Cerkez, Case No. IT-95-14/2-T, Decision on Defence Motions For Judgement of Acquittal, 6th April 2000, p.10, para 28. See also The Prosecutor v. Kunarac, Case No. IT-96-23-T, Decision on Motion For Acquittal, 3 July 2000; The Prosecutor v. Kordic & Cerkez, Case No. IT-95-14/2-T, Decision on Defence Motions For Judgement of Acquittal at pp.9-10, para.28.

⁹ The Prosecutor v. Kvočka and others, Case No. IT-98-30/1-T, Decision on Defence Motions For Acquittal, para.17, 15 December 2000.

¹⁰ *Ibid.*, para.17.

case has completely broken down, either on its own presentation, or as a result of such fundamental questions being raised through cross-examination as to the reliability and credibility of witnesses that the Prosecution is left without a case."¹²

- (iii) In *Kunarac*¹³, the Trial Chamber held that if evidence of identification "is not capable of establishing beyond reasonable doubt that the accused is the offender because it is unreliable in this sense, then (even if the evidence to which the prosecution has pointed is accepted) that evidence is "insufficient to sustain a conviction" and the accused is entitled to a judgement of acquittal in relation to that charge."¹⁴

¹¹ *The Prosecutor v. Kordić*, IT-95-14/2-T, Decision on Defence Motions For Judgement of Acquittal, 6 April 2000.

¹² *Ibid.*, at pp.9-10, para.28.

¹³ *The Prosecutor v. Kunarac and others*, Case No. IT-96-23-T, Decision on Motion For Acquittal, 3 July 2000, p.5, para.8.

¹⁴ *Ibid.*, at p.3, para.3.

III. KOSOVO INDICTMENT

A. The Indictment

8. The Accused faces five counts on the Indictment concerning the territory of Kosovo. He is charged with crimes against humanity contrary to Article 5 of the ICTY Statute in Counts: 1 (deportation)¹⁵; 2 (other inhumane Acts - forcible transfer)¹⁶; 3 (murder)¹⁷ and 5 (persecution)¹⁸. Count 4 (murder)¹⁹ charges the Accused with violation of the laws or customs of war contrary to Article 3 of the Statute.

B. Territorial Jurisdiction

9. The Trial Chamber has previously ruled in a decision in *Milutinovic*²⁰ that the Tribunal has territorial jurisdiction over crimes committed in Kosovo during the period of 1 January 1999 until 20 June 1999.

C. Applicable Substantive Law: Articles 3 and 5 of the Statute

10. The applicable substantive law in relation to Articles 3 and 5 of the Statute is set out in the Prosecution's Pre-Trial Brief.²¹

¹⁵ Article 5(d) of the Statute

¹⁶ Article 5(i) of the Statute.

¹⁷ Article 5(a) of the Statute.

¹⁸ Article 5(h) of the Statute.

¹⁹ Article 3 of the Statute.

²⁰ *The Prosecutor v. Milutinovic et al.* Case No. IT-99-37-PT. Decision on Motion Challenging Jurisdiction. 6 May 2003.

²¹ See paras.92-102 of the Prosecution's Pre-Trial Brief.

D. Armed Conflict

(i) Introduction

11. In order for the International Tribunal to have jurisdiction over alleged crimes pursuant to Articles 3²² and 5²³ of the Statute, the crimes must have been committed in an "armed conflict".
12. The Prosecution alleges that at all times relevant to the Indictment "a state of armed conflict existed in Kosovo in the FRY"²⁴ Furthermore, in the Prosecution's Pre-Trial Brief, it is claimed that "...from 1 January 1999 to 20 June 1999, there was an armed conflict between the KLA, on the one hand, and the forces of the FRY and Serbia, on the other."²⁵ However, the issue of whether an armed conflict existed in Kosovo at the relevant time has not previously been litigated before this Tribunal. It constitutes a live issue within the trial.
13. The Amici Curiae concede that an international armed conflict existed in Kosovo from 24 March 1999, the date of the commencement of the NATO bombing campaign. However, it is submitted that before 24 March 1999, there was no armed conflict in Kosovo.
14. The Amici Curiae submit that a legal determination by the Trial Chamber regarding the nature of the conflict before 24 March 1999 is required at this stage in the proceedings. Resolution of this issue may

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²² It is immaterial for the purposes of Article 3 of the Statute whether the armed conflict is international or internal: The Prosecutor v. Dusko Tadic, Case No. IT-94-1/AR 72, Appeals Chamber, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 at para.70, 86-94 and 137.

²³ Article 5 imposes a jurisdictional requirement limiting the Tribunal's jurisdiction to crimes against humanity "when committed in armed conflict", "whether international or internal in character". The existence of an armed conflict is not a requirement for equivalent offences at the ICTR, ICC, and Courts for East Timor and Sierra Leone.

²⁴ Para.69 of the Indictment. In the opening address by the Prosecution "armed conflict" was referred to four times. See Transcript on 12.2.2002 at p.2 and on 13.2.2002, at p.175 and 180. These were general references without dealing with the jurisprudence on the matter.

²⁵ Prosecution's Pre-Trial Brief Pursuant to Rule 65ter(E)(i), filed 26 November 2001, at para.94.

save the Trial Chamber and the parties from expending substantial resources presenting and considering unnecessary evidence during the remainder of the trial.

(ii) **The Law**

15. The test to determine the existence of an armed conflict was set out by the Appeals Chamber of the ICTY in *Tadic* :

*"An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State."*²⁶

16. An armed conflict becomes subject to the jurisdiction of the Tribunal from its initiation and *"extends beyond the cessation of hostilities until a general conclusion of peace has been reached; or in the case of internal conflicts peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring states, or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there."*²⁷

(iii) **Internal Armed Conflict – "Protracted Armed Violence"**

17. The test applied by the Appeals Chamber in *Tadic*, refers to two types of armed conflict: international and internal (or "non-international").²⁸ In an armed conflict of an *"internal or mixed character"* the criteria of the *"intensity of the conflict and the organisation of the parties to the conflict... are used solely for the purpose, as a minimum of distinguishing an armed*

²⁶ *The Prosecutor v. Dusko Tadic, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Para.70.*

²⁷ *Ibid.*

²⁸ For convenience, the term "internal armed conflict" shall be substituted for "non-international armed conflict."

conflict from banditry, unorganised and short lived insurrections, or terrorist activities, which are not subject to international humanitarian law.”²⁹
Isolated, random or sporadic acts cannot constitute armed conflict.

18. In essence, an internal disturbance must rise to the level of “*protracted armed violence*” to render international humanitarian law applicable. Furthermore, the ascertainment of the intensity of an internal conflict does not depend on the subjective judgement of the parties to the conflict.³⁰

19. Factors relevant to the determination of an internal armed conflict are set out in the International Committee of The Red Cross’s official commentary to Common Article 3 of the Geneva Conventions.³¹ These factors are not intended to be binding conditions, but rather convenient criteria to assist in answering the question as to what is meant by an internal armed conflict.

²⁹ The Prosecutor v. Dusko Tadic, Case No. IT-94-1-T, Trial Chamber, Judgement, 7 May 1997, para.562. See also Art 8(2)(d) and (f) of the Rome Statute. This Statute provides that in an internal armed conflict, serious violations of common article 3: “do not apply to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.” Similarly, other serious violations of the laws and customs applicable in an internal armed conflict have the same limitation, with the added emphasis of the need for “*protracted armed conflict*”.

³⁰ The Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Chamber, Judgement, 2 September 1998, para.603.

³¹ The Prosecutor v Tadic, Case No. IT-94-1-T, Trial Chamber, Judgement, 7 May 1997, para.562, footnote 47: (ICRC, Geneva, 1952.) p.49-50.

The criteria are as follows:

- "(1) *That the Party in revolt against the de jure Government possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for the Convention.*
- (2) *That the legal Government is obliged to have recourse to the regular military forces against insurgents organised as military and in possession of a part of the national territory.*
- (3) (a) *That the de jure Government has recognized the insurgents as belligerents; or*
 (b) *that it has claimed for itself the rights of a belligerent; or*
 (c) *that it has accorded the insurgents recognition as belligerents for the purposes only of the present Convention; or (d) that the dispute has been admitted to the agenda of the Security Council of the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.*
- (4) (a) *That the insurgents have an organisation purporting to have the characteristics of a State.*
 (b) *that the insurgent civil authority exercises de facto authority over persons within a determinate territory.*
 (c) *That the armed forces act under the direction of the organized civil authority and are prepared to observe the ordinary laws of war.*
 (d) *That the insurgent civil authority agrees to be bound by the provisions of the Convention.*³²

³² International Committee of The Red Cross, official commentary to Common Article 3 of the Geneva Conventions. See Additional Materials supplied with this Motion.

20. In addition to Common Article 3 of the Geneva Conventions, Additional Protocol II also applies to internal armed conflicts, and provides further guidance and criteria. The threshold for the application of Additional Protocol II is narrower than Common Article 3, as the Protocol only applies to conflicts of a certain degree of intensity, whereas common Article 3 applies in all situations of internal armed conflict.
21. Additional Protocol II defines internal armed conflicts as those which *"take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command³³, exercise such control over a part of its territory³⁴ as to enable them to carry out sustained and concerted military operations³⁵ and to implement this Protocol."*
22. Article 2 of the Protocol provides that the following situations fall outside the scope of internal armed conflicts: *"situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."*³⁶

³³ An important element of a Non-International Armed conflict is the notion of "responsible command". In the commentary to Additional Protocol II it is stated that *"the existence of a responsible command implies some degree of organization of the insurgent armed group or dissident armed forces but this does not necessarily mean that there is a hierarchical system of military organization similar to that of regular armed forces. It means an organisation capable, on the one hand, of planning and carrying out sustained and concerted military operations, and on the other, of imposing discipline in the name of a de facto authority."* (Para.4463 of the commentary).

³⁴ At para.4466 of the commentary, it states that *"the control must be sufficient to allow sustained and concerted military operations to be carried out."*

³⁵ Para.4469 of the commentary states that *"sustained" means that the operations are kept going or kept up continuously. The emphasis is therefore on continuity and persistence. "Concerted" means agreed upon, planned and contrived, done in agreement according to a plan. Thus we are talking about military operations conceived and planned by organized armed groups."*

³⁶ Para.4475 of the commentary contains a description of internal disturbances which was drafted by the ICRC during the first session of the Conference of Government Experts in 1971:

"This involves situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness of duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules."

Further, it is suggested in the commentary (at para.4474) that: *"The concept of internal disturbances and tensions may be illustrated by giving a list of examples of such situations without any attempt to be exhaustive: riots, such as demonstrations without a concerted plan from the outset; isolated and sporadic acts of violence, as*

23. It is submitted that Common Article 3, Additional Protocol II and the Commentaries can be used as tools of reference when seeking to flesh out the meaning of an internal armed conflict.

(iv) **Nexus between Conduct and Armed Conflict**

24. As regards Article 3 of the Statute, the Prosecution must also establish *"a link between the acts of the accused alleged to constitute a violation of the laws or customs of war and the armed conflict in question."*³⁷ In relation to this nexus, the Appeals Chamber has held that it *"would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict."*³⁸ *"The existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed."*³⁹ *"In other words, it is sufficient to establish that the perpetrator acted in furtherance of or under the guise of armed conflict."*⁴⁰

25. The requirement of an armed conflict *"does not necessitate any substantive relationship between the acts of the accused and the armed conflict whereby the accused should have intended to participate in the armed conflict."*⁴¹ *The Appeals Chamber has held that a nexus between the acts of the accused and the armed conflict is not required. The armed conflict requirement is satisfied by proof that there was an armed conflict at the relevant time and*

opposed to military operations carried out by armed forces or armed groups; other acts of a similar nature, including, in particular, large scale arrests of people for their activities or opinions."

³⁷ This is accepted jurisprudence at the ICTY. This principle has been stated most recently in the *The Prosecutor v. Stakic*, Trial Chamber, Judgement at para.569.

³⁸ *The Prosecutor v. Tadic*, Jurisdiction Decision, para.70; *The Prosecutor v. Celebici*, Trial Chamber, Judgement, paras. 193-4, *The Prosecutor v. Kunarac*, Appeal Chamber, Judgement, para.57.

³⁹ *The Prosecutor v. Kunarac*, Appeal Chamber, Judgement at para.58.

⁴⁰ See *The Prosecutor v. Stakic*, Trial Chamber, Judgement, dated 31 July 2003 at para.569, which refers to the *Kunarac* Appeal Chamber Judgement at para.58. A nexus between conduct and an armed conflict has been held to exist when the crime was committed in the course of fighting of the take-over of a town during [that] armed conflict - see *The Prosecutor v. Celebici*, Trial Chamber Judgement, para.193.

⁴¹ See *The Prosecutor v. Kunarac* Trial Chamber, Judgement at para.413 which refers to *Tadic* Appeals Judgement at paras.249 and 272.

place.”⁴² (Emphasis added). It is not necessary for the perpetrator of the crime to have the intention to participate directly in the armed conflict, provided that the act is linked geographically and temporally with the armed conflict.⁴³ Neither is it necessary that such a crime forms part of an official policy or practice approved or tolerated by one of the belligerents or that it serves a policy linked to the conduct of war or that it is in the interests of a party to the conflict.⁴⁴

26. As regards Article 5 of the Statute, the Appeals Chamber has held that “the requirement [of an armed conflict, whether international or internal in character] is a purely jurisdictional prerequisite which is satisfied by proof that there was an armed conflict and that objectively the acts of the accused are linked geographically as well as temporally with the armed conflict.”⁴⁵

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(v) **Submissions on the Armed Conflict in Kosovo**

27. It is submitted that the armed conflict in Kosovo can be divided into two phases; (i) from 24 March 1999 and (ii) before 24 March 1999.

From 24 March 1999

28. In the submission of the Amici Curiae the start of the NATO bombing campaign on 24 March 1999 marks the commencement of an international armed conflict in the FRY (including Kosovo). A declaration of an imminent threat of war was proclaimed on 23 March 1999 and a state of war on 24 March 1999.

⁴² The Prosecutor v. KUMARAC, Trial Chamber, Judgement at para.413 which refers to the Tadic Appeals Judgement at paras.249 and 251.

⁴³ The Prosecutor v. Kupreskic and Others, Trial Chamber, Judgement, paras.545-6; The Prosecutor v. Blaskic, Trial Chamber Judgement, para.71.

⁴⁴ The Prosecutor v. Tadic, Trial Chamber, Judgement, para.573.

Before 24 March 1999

29. The Amici Curiae submit that an armed conflict did not exist in Kosovo, in the FRY, before 24 March 1999.

30. In order to assist the Trial Chamber with its determination of this issue, two confidential tables of Prosecution evidence have been prepared, setting out the evidence at trial of the creation, development and operation of the KLA up until 24 March 1999. Annex 1 contains extracts of evidence from Prosecution witness testimony from the trial transcripts. Annex 2 contains extracts of evidence from Prosecution Exhibits (including Rule 92bis witness statements). These Annexes have been filed confidentially in order to avoid any unintentional breach of protective measures. However, in the absence of any objection from the Prosecution, the Amici Curiae request the Trial Chamber to allow these Annexes to become public documents.

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31. On the basis of the evidence in this trial, the Amici Curiae submit that before 24 March 1999:

- (i) The intensity of the conflict in Kosovo between the KLA and the Serb Forces had not risen to the level of "protracted armed violence" to render international humanitarian law applicable. The Prosecution evidence presented at trial does not support an interpretation of the intensity of the conflict as having reached a level of "protracted armed violence". The Trial Chamber may have regard to Confidential Annexes 1 and 2 attached hereto for a summary of the evidence presented on this issue.

⁴⁵ The Trial Chamber v. Kunarac, Appeal Chamber, Judgement at para.59.

- (ii) The conflict between the KLA and the Serb forces is more accurately described as acts of *"banditry, unorganised and short lived insurrections, or terrorist activities"* which are not subject to international humanitarian law. For evidence in support of this submission, reference should be made to the bold italic extracts in Confidential Annex 1 at pp.11-13, 19, 23-24, 25-26, 50, 58, 67 and 68 and in Table 2 at pp.6, 7 and 8.

- (iii) The KLA did not constitute a sufficiently organised armed group under responsible command or an organised military force *"responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for the Convention"*. For evidence of the creation and development of the KLA, lack of weapons and uniforms, ineffective control and command the Trial Chamber may refer to the bold italic extracts in Confidential Annex 1 at pp.1, 3, 7, 10, 13, 19, 22, 23, 27-28, 30, 43-4, 46, 50, 58, 59, 67 and 68 and in Confidential Annex 2 at pp. 5, 6, 7, 8, 9, 10-11, 28 and 29.

- (iv) The armed forces of the KLA did not act under the direction of an organised civil authority, prepared to observe the ordinary laws of war. Reference can be made to the bold italic extract in Annex 1 at p.21. In relation to the existence of a police force, see p.49 of Annex 1.

- (v) The KLA did not exercise such control over a part of the territory of Kosovo so as to enable it to carry out sustained and concerted military operations. For evidence of the KLA's inability to maintain control and the sporadic nature of the attacks etc. see Annex 1 at pp.12-13, 18, 24, 25-26, 48-9 and Annex 2 at pp.5, 8, 26, 27 and 28.

(vi) Prosecution evidence in the form of Human Rights Watch reports⁴⁶ which date the start of the armed conflict from 28 February 1999 should not be regarded as conclusive on this issue. For example, the Human Rights Watch report "Under Orders: War Crimes in Kosovo"⁴⁷ bases its conclusions upon materials and evidence which have not been produced during the trial. It is submitted that at best, this report provides no more than background material of limited evidential weight.

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HALLEN

32. If the Trial Chamber finds in favour of the Amici Curiae's submissions that there was no armed conflict before 24th March 1999, it is submitted that part of paragraph 63(k)(i)⁴⁸ and paragraph 66(a)⁴⁹ should be excised from the Kosovo Indictment.

⁴⁶ See Exhibit 145: Human Rights Watch Report: Under Orders: War Crimes in Kosovo; Exhibit 191: Human Rights Watch, "Humanitarian Law Violations in Kosovo" at p88-107; Exhibit 198: Human Rights Watch Report: "A Week of Terror in Drenica" at pp. 84-90; at p.90: "the conditions of Article 3 and Protocol II were satisfied during the period under the purview of this report (February - August 1998)." See Exhibit 204: Human Rights Watch: "Detentions and Abuse in Kosovo". Exhibit 206: Human Rights Watch, "Civilian Deaths in the Nato Air Campaign" at p.16. The same submissions are made in relation to these reports.

⁴⁷ Exhibit 145: Human Rights Watch Report: Under Orders: War Crimes in Kosovo at p.39: "The Drenica massacres.. marked the beginning of the Kosovo conflict in the terms of the laws of war. It was only after February 28, 1999, that the fighting clearly went beyond mere internal disturbances to become an internal armed conflict, a threshold which once passed obliges both government forces and armed insurgencies to respect basic protections of international humanitarian law - the rules of war."

⁴⁸ The following part of Paragraph 63(k)(i) should be excised from the Indictment: "(i) On or about 8 March 1999, forces of the FRY and Serbia attacked and partially burned the village of Kollina/Kolline."

⁴⁹ Para.66(a) should be excised from the Indictment: "a. On or about 15 January 1999, in the early morning hours, the village of Racak (Stimlje/ Serbia. After shelling, the forces of the FRY and Serbia entered Stimlje municipality) was attacked by forces of the FRY and the village later in the morning and began conducting house-to-house searches. Villagers, who attempted to flee from the forces of the FRY and Serbia, were shot throughout the village. A group of approximately 25 men attempted to hide in a building, but were discovered by the forces of the FRY and Serbia. They were beaten and then were removed to a nearby hill, where they were shot and killed. Altogether, the forces of the FRY and Serbia killed approximately 45 Kosovo Albanians in and around Racak. (Those persons killed who are known by name are set forth in Schedule A, which is attached as an appendix to this indictment.)"

E. INDICTMENT ANALYSIS

(i) COUNT 1 - DEPORTATION

33. Count 1 of the Kosovo Indictment charges the Accused and other members of the joint criminal enterprise with the offence of deportation, a crime against humanity, contrary to Article 5 (d) of the Statute of the Tribunal.
34. The Indictment alleges the offence within paragraphs 55-63. The allegation concerns 13 municipalities in the province of Kosovo during the period 1 January 1999 - 20 June 1999 in which 800,000 Kosovo civilians were expelled and displaced.
35. The case against the Accused on this count is that forces of the FRY and Serbia deliberately created an atmosphere of fear and oppression through the use of force, threats and violence against the Kosovo Albanian towns, villages and population.⁵⁰ The destruction, killings and violence were deliberate and caused the movement of the population beyond the state borders into Albania and Macedonia.

The Law

36. The offence of deportation in Article 5(d) of the Statute is the involuntary and unlawful evacuation of individuals from the territory in which they reside. Deportation presumes transfer beyond state borders, whereas forcible transfer, contrary to Article 5(i) relates to displacement within a state. This definition of deportation has been adopted by several Trial Chambers in recent judgements.⁵¹

⁵⁰ See para.63 of the Indictment

⁵¹ Deportation under Article 5(d) requires displacement of persons to another state. See *The Prosecutor v. Krstic*, Trial Chamber, Judgement at para.521: "both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet, the two are not

37. There is a need for a nexus between the deportation and the armed conflict. It must occur as a result of a deliberate widespread or systematic attack on the civilian population. The transfer must be accompanied by a degree of force.⁵² The deportation of the population must be intended as part of the joint criminal enterprise. The forces of FRY and Serbia must be proved to have had deportation as their objective and the victim to have acted as a consequence of their acts or conduct. The evidence must reflect the involuntariness of the victims' movement over the border. Transfers based on an individual's free will to leave are lawful.
38. The compulsory nature of the transfer must also be examined. For example, departures motivated by reasons such as fear of discrimination, are not necessarily in violation of the law.⁵³

synonymous in customary international law. Deportation presumes transfer beyond state borders, whereas forcible transfer relates to displacements within a State." In *The Prosecutor v. Krnojelac*, Trial Chamber, Judgement (at para.474, footnote 1429), the Trial Chamber stated that the persons deported must be displaced across a national border in order to be "distinguished from forcible transfer which may take place within national boundaries." In the recent *Stakic* Judgement, the Trial Chamber adopted a different approach in relation to deportation and focused on forcible removal rather than the destination resulting from such removal, though acknowledging that there must at least be a transfer to territory controlled by another party to the conflict: "Article 5(d) of the Statute must be read to encompass forced population displacements across internationally recognised borders and de facto boundaries, such as constantly changing frontlines, which are not internationally recognised. The crime of deportation in this context is therefore to be defined as the forced displacement of persons by expulsion or other coercive acts for reasons not permitted under international law from an area in which they are lawfully present to an area under the control of another party." It is submitted by the *Amici Curiae* that the definition of deportation provided in the *Krstic* and *Krnojelac* Trial Chamber Judgements is correct and reflects the state of customary international law in this regard. It is noted that the definition of deportation and specifically the existence of a cross border element has been appealed by the Prosecution in the case of *The Prosecutor v. Mladen Naletilic and Vinko Martinovic*, Case No. IT-98-34. The Appeals Court Judgement is still awaited on this issue.

⁵² The Trial Chamber in the *Krstic* Judgment at para 529 made reference to the Elements of Crimes for the International Criminal Court which provides that the term "forcibly": "is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment."

⁵³ In the *Krstic* Trial Chamber Judgement, at para.528, the Chamber referred to the commentary to Article 49 of the 4th Geneva Convention in support of this contention: "The Diplomatic Conference preferred not to place an absolute prohibition on transfers of all kinds, as some might up to a certain point have the consent of those being transferred. The Conference had particularly in mind the case of protected persons belonging to ethnic or political minorities who might have suffered discrimination or persecution on that account and might therefore wish to leave the country. In order to make due allowances for that legitimate desire the Conference decided to authorise voluntary transfers by implication and only to prohibit "forcible" transfers." (at para.528)

The Evidence

(a) Nogavac/Nagavc⁵⁴

39. There is evidence of the offence of deportation from the municipality of Orahovac⁵⁵. However, the Indictment cites a particular incident in the village of Nogavac/Nagavc within the municipality as a specific part of the charge.
40. The witnesses relied upon by the Prosecution in respect of Nogavac/Nagavc are: Fehim Elshani, Ali Hoti, Sabri Popaj, Lutfi Ramadani and Mehmet Avdyli. The Prosecution also rely on Exhibit 106 (a report by the OSCE entitled "*Kosovo/Kosova, As Seen, As Told: An Analysis of the human rights findings of the OSCE*")⁵⁶ and Exhibit 145 (a report by Human Rights Watch entitled "*Under Orders: War Crimes in Kosovo*").⁵⁷

Fehim Elshani⁵⁸

41. The witness joined a convoy heading towards Albania. The direction of his travel was a decision made by him. He was not forced to move from Nogavac across a State border by forces of the FRY and Serbia ordering people to leave their villages, as alleged in paragraph 63(a)(i) of the Indictment.⁵⁹

⁵⁴ Para.63 (a)(i) of the Indictment

⁵⁵ See Prosecution witnesses Agim Zeqiri, date of testimony 20/2/02, Tr. 743-763 and Reshit Salih, date of testimony 22/4/02, Tr.3542 et seq.

⁵⁶ This report was exhibited on 22nd April 2002, produced by witness Ali Hoti, see Tr. 3598. See p.279 of the report. This does not provide evidence of deportation.

⁵⁷ This report was exhibited on 14 May 2002, see Tr.4876.

⁵⁸ Date of testimony: 21/2/02, Tr.787 et seq., relevant passages at Tr.815-822.

⁵⁹ See Tr.818: "*Meanwhile, on this critical day - this is Friday, 2nd of April - I had Serbian troops in my yard, in coats and in uniforms, and they filmed the corpses and the damage. And among them there was someone from the state security called Agim Isakaj, and he later said to me. "You had better get out of here, because otherwise, if you're found here tomorrow, you will be in for it."* Q. Mr. Elshani, how did you know this person? A. I knew this person from before, because he comes from this municipality, and he used to work in state security in Rahovec. Q. Was he wearing --A. He is a Roman Cypsy. Q. [Previous translation continues]...A. No. He was wearing plain

42. In respect of Mr Elshani's description of the circumstances and actions taken by "policemen" and "Serbian troops" on 2nd April 1999, the Trial Chamber may be of the opinion that there is sufficient evidence to support the contention that the witness was forcibly transferred from his village of Nogavac. However, in the submission of the Amici Curiae, there is insufficient evidence that the witness was "forcibly" deported over the State border by the forces alleged to be under the responsibility of the Accused.

Ali Hoti⁶⁰

43. The witness lived in Krusha e Madhe and describes a Serbian artillery attack on his village on 26th March 1999. Further, he describes the circumstances in which he joined a convoy of people.⁶¹
44. It is submitted that by the time the witness reached the border as a member of the convoy travelling to Albania, he had already made a

clothes. Q. And he said to you to leave. Why did he say this to you? A. No doubt he knew that the next day would be worse than that day, and for that reason, he told me to leave my village, for the sake of my own safety and of the other people who were there. Q. And did you leave your village? A. On the next day, I took a tractor. I loaded on it some clothes, my wife, and then we set out for Krusha e Madhe."

Tr.820: "From Prizren, after the injured were released from hospital, I took all of them. I mounted them on my tractor and then I drove them to Albania. Tr.821: A. When I -- when we arrived in Zhur village, we saw a policeman and a soldier there. They stopped me. They asked me to show them my passport. I showed it to them. Then the police told me, "Go on. Continue your trip to Albania," but warned me not to move outside the main road, the asphalt road, because all the ground was planted with mine."

⁶⁰ Date of testimony: 22/4/02, Tr.3590-3593. The Rule 92bis statement made by Mr Hoti was exhibited as part of the Prosecution's case (Exhibit 105). This witness travelled to Nagavc, but was not forced to cross State border by forces of the FRY and Serbia.

⁶¹ Exhibit 105 (Rule 92bis witness statement): "As my house was so close to the Serbs, my family and myself started to leave. We headed for the hill, which is East of the village, in the direction of Nagavc." (p.2 of the 92bis statement). "The Serbs captured a group of people from Hoca e Vogel, who had been hiding in a valley nearby. The Serbs had told them to go to Albania and not to stop anywhere. This group of people passed us the next morning the 26th March 1999 at about 0800hrs. An old man who was in front of the group was carrying a piece of wood with a white cloth attached as a sign of surrender. They told us what the Serbs had said and they said that we should join them. After we had joined this group of people from Hoca e Vogel, we started to walk in the direction of Krusha e Madhe. When we entered the road that goes to Krusha e Madhe, we were stopped by the police. They were with about 20 policemen with two trucks. Apart from us twenty, there were others hiding. We could see them and their rifle barrels, because they were not completely hidden. They were in fighting position. They had taken their positions along on the road and blocked the turn towards Krusha e Madhe. They ordered us to go in the direction of Nagavc." (p.3 of 92bis statement). At the border with Albania, the witness hears a policeman say: "You wanted NATO and Clinton and here you are. You have to leave Kosovo, because you did not want the Serbs, you wanted NATO. Kosovo is of the Serbs. Go to Albania, that is your place." (See p.8 of the 92bis statement).

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voluntary decision to cross it. Earlier statements allegedly made by "Serbs" to others that they must "go to Albania", which are subsequently told to the witness, are too remote and/or insufficient to establish the involuntary transfer of a person beyond a state border.

45. The Amici Curiae submit that the attack on the witness's village of Krusha e Madhe on 26th March 1999 provides sufficient evidence of forcible transfer but insufficient evidence of deportation.

Sabri Popaj⁶²,

46. Mr Popaj describes the circumstances in which he came to cross the border into Albania.⁶³ He visited Nogavac, and was not forced to cross the State border as a result of his visit.
47. It is submitted that there is insufficient evidence of involuntary transfer of this individual across the state border into Albania by forces of the FRY and Serbia. The witness does not refer to any compulsion, orders or threats made to him or others, by forces of the FRY and Serbia, that they must go to Albania. The witness did not cross the border until mid May 1999, by which time; members of his family were already in Albania. The reference to the location of his family may be interpreted as the main reason as to why the witness chose to travel to Albania. The Amici Curiae submit that there is sufficient evidence of forcible

⁶² Date of testimony: 10/6/02, Tr.6669, Exhibit 225: Rule 92bis witness statement.

⁶³ "On the 13th May 1999 I decided to leave Kosovo for Albania. My family was already in Albania. They had left on the 2nd April. I went to Celina and joined up with Baki Rexhepi (Nazim's brother), Arben Rexhepi, my wife's brother, and Gazmend Malsori. We joined a larger group of persons who were from Banja village in the Municipality of Peja. They had been walking a long time and stopped at Celina. We helped them and then we all set off together. We numbered 45 in all. We set off at around 9.30am and started walking in the direction of Albania." "We walked to Dushanova village, near Prizren, where we found a tractor and a trailer. The tractor was working so we took it. Everyone got onto the trailer and I drove the tractor. We arrived at the Yugoslav border at Morini at 5pm. Here, we were questioned by the Serb border guards, who asked me how many of us were there and where did we come from. I said that we came from Peja." "They also demanded our documents and identification papers. I think they got documents from only five of us. I had none. They threw these documents onto a fire some metres away. I did the talking for the whole group because I knew some Serbian. After some 20 minutes we were allowed to cross over into Albania."

transfer of this witness from his village of Bellacerka⁶⁴, but insufficient evidence of deportation.

Lutfi Ramadani⁶⁵.

48. There is no evidence of Mr Ramadani crossing a State border, in either his Rule 92bis witness statement or in his testimony on 11th June 2002.

Mehmet Avdyli⁶⁶.

49. The reasons as to why Mr Avdyli decided to cross the border into Albania have not been given in evidence.⁶⁷ There is no evidence that Mr Avdyli was forced, ordered or escorted to leave by forces of the FRY and Serbia.

Submissions

50. It is submitted that the Prosecution has not proved the factual allegations in paragraph 63(a)(i) in support of Count 1 (deportation). None of the five witnesses referred to above gave evidence of deportation from Nogavac. There was no evidence that the forces of the FRY and Serbia engaged in the process of transferring these witnesses over the state border.

⁶⁴ In the Rule 92bis witness statement at p.3, the witness states that on 25 March 1999, "automatic fire was directed towards the village from the police and army in the bunkers. They were shooting over the tops of the houses, as a warning I took it, to leave our houses and the village. This was around 4am. Everyone, on hearing the shooting left their houses and started to leave the village."

⁶⁵ Date of testimony: 11/6/02, Tr.6698. See Exhibit 226 : Rule 92bis statement

⁶⁶ Date of testimony: 11/6/02, Tr.6731: "While leaving Kosovo for Albania, he and two others were detained by the Serb police, tied to a heater, interrogated, and accused of being members of the KLA. In his statement, the witness provides the names and ages of the majority of persons killed during the execution at the house or barn of Mr. Batusha." There is no evidence of deportation from Nogavac.

⁶⁷ See Rule 92bis witness statement (Exhibit 227): "I then proceeded to Nagavac and received medical attention from a Dr Xhemal... from Krushe e Madhe. I relayed my story to the doctor. I then left to Albania. I was stopped at the border at Morina by Serbian policemen who asked me how I was burnt. I replied that my house was burning

51. The Amici Curiae submit that the evidence in paragraph 63(a)(i) does not support Count 1. |

(b) Gnjilane/Gjilan⁶⁸

52. It is alleged that in this municipality, on 6 April 1999, forces of the FRY and Serbia entered the town of Prilepnica/Perlepnice and ordered the population to leave. On 13 April 1999, after the population returned, they were re-ordered to leave and the town was set on fire. Throughout the municipality the same forces attacked and destroyed buildings belonging to Kosovo Albanians. The displaced population were subject to harassment and mistreatment.

53. There has been no direct evidence of deportation or forcible transfer in relation to Prilepnica/Perlepnice. The only evidence before the Trial Chamber concerning this location is contained within Exhibit 106, the OSCE report: "*Kosovo/Kosova, As Seen, As Told.*"⁶⁹

54. It is submitted that the evidence in Exhibit 106 is insufficient to sustain a conviction on the charges of deportation or forcible transfer in Prilepnica/Perlepnice, for the following reasons:

- (i) The relevant part of the report constitutes a summary of events from six statements provided to the authors of the report.
- (ii) The six statements are not contained within the report and have not been produced by the Prosecution during the trial.

and I was burnt whilst trying to retrieve blankets. They tied me to a heater that was attached to the wall and accused me of being a UCK member, stating that I sustained this injury from one of their grenades."

⁶⁸ Para.63.i. of the Indictment

⁶⁹ See Exhibit 106 at p.204 of the report

- (iii) The makers of the statements were not witnesses in the trial and have therefore not been heard by the Trial Chamber or cross-examined by the Accused.
- (iv) There is no attestation that the statements used by the authors of the report were truthfully made. The accuracy of the statements cannot be tested.
- (v) The report summary does not explain whether the events described by the witnesses were from their own knowledge.⁷⁰

55. The evidence produced in the report is too remote from the trial proceedings for it to be used to establish a *prima facie* case in relation to either the offence of deportation or forcible transfer. It is submitted that in the absence of any other evidence in support of these charges, reliance upon a summary contained within the OSCE report as the sole source of evidence concerning events in Prilipnica is insufficient.

56. The Amici Curiae submit that the Accused is entitled to have a judgement of acquittal entered in respect of these factual allegations concerning Prilipnica in paragraph 63.i. These facts must be excised from the Indictment.

57. Further, there has been no direct evidence to support the contention in paragraph 63.i. that "*throughout the entire municipality of Gnjlane/Gjilan, forces of the FRY and Serbia systematically burned and destroyed houses, shops, cultural monuments and religious sites belonging to Kosovo Albanians, including a mosque at Vlastica.*"⁷¹

⁷⁰ See *The Prosecutor v. Milosevic*, IT-02-54-AR73.2, Appeals Chamber, Decision on Admissibility of Prosecution Investigator's Evidence, 30 September 2002.

⁷¹ Para.63(i) of the Indictment.

58. There has been no evidence produced concerning the mosque at Vlastica. It is therefore submitted that the extract cited above must be excised from the Indictment.
59. The sole direct witness relating to the municipality of Gnjilane/Gjilan was Mr. Shabani.⁷² He gave evidence of the displacement of persons and acts of violence committed by Serb forces relevant to the villages of Zheger, Nosale and Lladove, cited in paragraph 63.i. of the Indictment.⁷³ The evidence was that the population fled from violence directed at those specific villages by Serb Forces in the municipality. There was no evidence that these forces intended to transfer the population of these villages over the state border as a specific act. The witness stated that the decision to go to Macedonia was a decision made by the people. The evidence of Mr Shabani does not prove the offence of deportation.⁷⁴ However, in the submission of the Amici Curiae, the evidence is capable of amounting to the offence of forcible transfer in relation to the villages of Zheger, Nosale and Lladove.
60. The only other evidence before the Trial Chamber in relation to events in the municipality of Gnjilane/Gjilan is hearsay evidence contained within the OSCE Report "As Seen, As Told"⁷⁵ and the Human Rights Watch Report "Under Orders"⁷⁶. For reasons provided above, it is

⁷² Dates of testimony: 4-6 March 2002 at Tr.1512-1602.

⁷³ Tr.1533. Clarified in cross-examination at Tr.1563

⁷⁴ Tr.1535: "Q. And you fled with them, I understand, sir, on the 4th of May, and you decided to go to Macedonia; is that correct? A. Yes, that's correct. That is, on the 4th of May, driven out of poverty, misery and lack of foodstuffs and the constant danger threatening us, listening to the firearms, gunshots coming from the Serbian army and which were present in that area, seeing their movements, we felt completely insecure. This is why we decided, as a group of about 600 people, to leave that place and head towards the border with Macedonia."

⁷⁵ Prosecution Exhibit 106 at p.200-205: In "As Seen, As Told" at the time when the OSCE-KVM arrived, the municipality of Gnjilane/Gjilan was described as being "one of the calmest parts of Kosovo, and [it] did not experience any open conflict in the period before and during the OSCE-KVM's deployment...(p200) Furthermore, "in the period from the OSCE-KVM evacuation to mid-April, the violence in Gnjilane/Gjilan town was described by the report as "sporadic" (see p.201). There is reference to shelling, looting, confiscation and "forced expulsions" conducted by inter alia, the VJ, police officers and paramilitaries within the municipality of Gnjilane/Gjilan. However, there is insufficient evidence to support the allegation that such activities occurred "throughout" the municipality in a "systematic" manner.

⁷⁶ See Exhibit 145 at p.118 and p.149.

submitted that this evidence is insufficient to sustain a conviction for deportation within the municipality of Gnjilane/Gjilan.

(c) Urosevac/Ferizaj⁷⁷

61. It is alleged that in this municipality between 24 March and 19 April 1999 forces of the FRY and Serbia shelled and attacked the villages of Biba/Bibe; Muhadzer Prelez/Prelez i Muhaxherevc; Raka/Rakaj and Staro Selo/Fshatë i Vjeter. Thereafter, the Kosovo Albanian population left either under orders or fled the villages of Papaz, Sojevo/Sojeve, Varos Selo/Varosh and Mirosvlje/Mirosale. The displaced population was subject to harassment and mistreatment. Most of those fleeing left to Macedonia by train or in convoys.

62. In relation to this section of the Indictment, there has been no evidence of shelling and/or attacking the villages of:

- (a) Biba/Bibe⁷⁸;
- (b) Muhadzer Prelez/Prelez i Muhaxherevc;
- (c) Raka/Rakaj - the passages in evidence are not in the context of the allegations concerning Rakaj in the Indictment;⁷⁹
- (d) Papaz;

⁷⁷ Paragraph 63.j. of the Indictment

⁷⁸ Witness Bucaliu gave evidence 12-13 March 2003, Tr.2040, on 13/3/02 see Tr.2106: "I don't know about all these villages you enumerated. I know about the neighbouring villages which were all emptied of people. I said Kamoja [phoen], Sore [phoen], Bibaj, and Varosh. These four villages, they were evicted from Albanians [sic]."

⁷⁹ Witness K5 gave evidence on 24 - 27 May 2003, Tr.5521 at Tr.5550: "A. They did this in the villages of Komogllave, Rakaj, Nerodime and Naruk. Q. And what happened to the people of these towns? A. They sent away the people from these villages and they fled to Skopje and some to Albania. Q. And what happened to you and your family? Did you leave your home as well? A. Yes. I went and took my family, because the army and the paramilitaries were firing with hand-held mortars at my home, and I decided to take my family and go. At Tr.5565: "Q. Who is Isufi Ademi and what happened to him? A.. He was from the village of Rakaj, and his family had had problems with the Serb police earlier. They had been looking for arms, the police had been looking for arms from his family. And to find a solution, he agreed to work, just to save his family, to work with them. And later on, there was information that this person had fled and joined the KLA and so an order was given to go and murder him and his family, his brothers. Q. And what happened? A. We went with the armoured vehicle, with the jeep, and a BMW, and a Mercedes and the other car. We went to the village of Rakaj. We surrounded the house of the person in question in Rakaj. At the start - he had four dogs in the courtyard, and we shot at them, and we shot at the house. Dimitri shot at the house. And there were no dogs inside the house. And so we set the house on fire, six or seven houses and the garage and all the buildings around, and burnt everything down. Q. To

(e) Varos Selo/Varosh.

63. The Amici Curiae submit that the names of these villages should be excised from the Indictment.

(d) Kacanik⁸⁰

64. This paragraph of the Indictment alleges that the municipality of Kacanik was attacked between March and May 1999 by the forces of FRY and Serbia. They destroyed villages and buildings and killed people which resulted in the population fleeing to Macedonia.

65. The witnesses heard in respect of this municipality were Hazbi Loku;⁸¹ Isuf Loku;⁸² Isa Raka;⁸³ Sejdi Lami;⁸⁴ and Fadil Vishi.⁸⁵

66. In the submission of the Amici Curiae, the evidence provided by these witnesses does not prove the offence of deportation. It was not alleged by any of the witnesses that the forces of FRY or Serbia had, as a positive act, forcibly transferred the population over the state border

whom belonged the six houses? A. Those belonged to his brothers, as I said, his brothers, his cousins, family members. They were all burnt down, the houses." See also Tr.5567 in the same terms.

⁸⁰ Paragraph 63.k(i) of the Kosovo Indictment

⁸¹ This witness testified on 11 March 2002, Tr.1920. See Tr.1950: "I understand that after seeing all this happening, later that evening you left Kottina; is that right? Yes, that's right. After all that horror, all that burning, I didn't know where my family was, whether they had been killed or what had happened to them. We didn't know what to do. We others decided to leave the village, and we walked all night and crossed the border into Macedonia."

⁸² This witness testified on 14 May 2002, Tr.4840. See Tr.4842: "Mr. Loku returned to his village at about 8.00 in the evening. He found one of his neighbours, Zymer Loku, who was badly wounded by machine-gun fire and subsequently died. At about 10.00 that same evening, Mr. Loku and other residents of his village decided to flee to Macedonia. Mr. Loku arrived in Macedonia early in the morning of 25 March 1999. Two of Mr. Loku's brothers disappeared after the attack on Kottina on the 24th of March, 1999."

⁸³ This witness testified on 2 May 2002, Tr.4157. See Tr.4159: "On 28 March 1999, the witness and a large group of people started walking through the woods towards Macedonia. The witness was in a group of 13 to 14 people who helped carry his wounded wife on a stretcher. When they came to the border, a Macedonian soldier blocked the border and about 700 people had to stay in the woods for two days. The witness and his group managed to contact some locals from Blace who helped them cross the border to Macedonia."

⁸⁴ This witness testified on 6 May 2002, Tr.4395. See Tr.4398: "In the hamlets of Caku and Tjefku, most of the houses were burned. On the 14th and 15th of April, 1999, the entire population of the village fled. The witness and his family went to Macedonia. On the way to Macedonia, they were stopped by VJ soldiers who demanded money from them in order to let the people pass. The villagers paid 500 Deutschmarks to these soldiers."

⁸⁵ This witness testified on 7 May 2002, Tr.4446. See Tr.4448: "The witness remained in the forest until the following day and then walked 24 hours to Macedonia."

into Macedonia. The evidence from the witnesses was that this had been a voluntary decision taken by them. The events which the witnesses experienced prior to making the decision to leave the country *may* have played a role in the decision-making process. However, the issue is whether there is sufficient evidence to support the contention that the movement of those individuals was "involuntary".

67. In the submission of the Amici Curiae, there is insufficient evidence of "involuntariness" of movement across a State border to sustain a conviction for the offence of deportation in the municipality of Kacanik. However, the evidence is capable of supporting the offence of forcible transfer as a result of the acts and conduct alleged against the forces of FRY and Serbia.

(e) Decan/Decani⁸⁶

68. Paragraph 63.1 alleges that on or about the 29 March 1999 forces of FRY and Serbia surrounded and attacked the village of Beleg and "other surrounding villages" in the Decan municipality. The main allegation within the paragraph concerns Beleg.

69. The Prosecution called evidence from a single witness on these matters, K20.⁸⁷ This witness gave evidence about matters relevant to Beleg, but not in relation to the wider scope of events within the municipality, as

⁸⁶ Paragraph 63.1. of the Indictment

⁸⁷ Date of testimony 8 April 2002, Tr.2512. See Tr.2514: "Were there people coming from other villages? Were they coming to live in Beleg at a certain point? A. During the war? Q. Yes. Or even before the war. A. During the war, some people came, because I do not know about before the war. Q. And what happened during the war? Why did the people come to your village? A. Before the war, I don't know, as I said; but during the war, some people came as they were being chased by the police and the army. Q. And when you say "the war," what are you referring to? A. The war in 1999, the 28th of March. That's when they left as they were being chased from their village. From Drenovc village, they were brought to Beleg. Q. And how do you know that? How do you know they had been chased? A. That's what they said when they came. They said, "We were kicked out of our houses. We were told to go." Q. And did they - did they give any specifics about who drove them out of their houses? A.

alleged in the Indictment. The only other location mentioned by the witness within the municipality was the village of *Drenovc*.

70. In the submission of the Amici Curiae, the scale of the allegation in paragraph 63.1 is not supported by the evidence and the reference to "other surrounding villages" should be excised from the Indictment.

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(ii) COUNTS 3 and 4: MURDER ⁸⁸

71. The Prosecution alleges that the Accused is criminally responsible for acts of murder, pursuant to Article 5(a)⁸⁹ and Article 3⁹⁰ of the Statute of the Tribunal. The Prosecution relies upon paragraphs 55-63, 65 and 66 of the Indictment which cite specific killings in a number of locations within the province of Kosovo between 1 January and 20 June 1999.⁹¹ It is alleged that the forces of the FRY and Serbia committed the acts at the direction, with the encouragement, or with the support of the Accused and other members of the joint criminal enterprise.

The Law

72. The offence of murder requires the killing of a person by the Accused or a subordinate, by an unlawful act or omission, with the intention to cause death or inflict grievous bodily harm, knowing that such bodily harm is likely to cause death and being reckless as to that fact.⁹² In relation to Count 3 as a crime against humanity there is a need for the

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Well, they said, "The police and army came into our houses and did not give any direction whatsoever. just told us, "Get out of the house.""

⁸⁸ Kosovo Indictment at paras 65-66

⁸⁹ Count 3 - murder as a crime Against humanity

⁹⁰ Count 4 - murder as a violation of the laws or customs of war, recognised by Article 3(1)(a) of the Geneva Conventions.

⁹¹ Paragraphs 66.a-1. All the allegations of murder are after 24 March 1999, except for the first incident in paragraph 66(a) being on or about 15 January 1999 at the village of Racak.

⁹² The Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment 2 September 1998. However, see Finalised Draft Text of the Elements of Crimes for the ICC, Article 7(1)(a), where just the words "killed" or "caused death" are used.

offence to have been committed as part of a widespread or systematic attack against the civilian population. As to count 4 it has been held that murder as a violation of the laws or customs of war is similar to wilful killing under Article 2 of the Statute.⁹³ That is, the death of the victim being caused by the actions or omissions of the Accused, with intent to kill or to inflict serious bodily injury in reckless disregard of human life. In the case of an Article 3 offence there is the requirement that the victim was not taking an active part in the hostilities.

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The Evidence

(a) Djakovica - 134a Ymer Grezda Street

73. In paragraph 66(e) of the Indictment it is alleged that on 26 March 1999 at 134a Ymer Grezda Street, Djakovica, the forces of FRY and Serbia entered the house and killed 6 Kosovo Albanian men.
74. There has been no direct evidence of the events concerning these killings in the trial. Dr. Baccard produced a report by a U.S. forensic team as part of his series of exhibits, containing information regarding the cause of death of the 6 men.⁹⁴ The only other reference to this killing is contained in Prosecution Exhibits 145⁹⁵ and 106.⁹⁶ These

⁹³ The Prosecutor v. Kordic, Case No. IT-95-14/2-T, Trial Chamber, Judgement, 26 February 2001, para. 233.

⁹⁴ Date of testimony: 21 May 2002. See Tr.5265: "The cause of death, as regards the six of them, were wounds to the head caused by gunshot projectiles."

⁹⁵ Exhibit 145, Human Rights Watch: Under Orders: See p.216: "On March 26, armed Serbs shot and killed six men in one house on Ymer Grezda Street, including a Muslim cleric, Zensel Dana, and his sons Emin and Fahri. The killing is cited in the war crimes tribunal's indictment of Milosevic, Milutinovic, Sainovic, Ojdanic and Slobilkovic." Also, footnote 18 in Chapter 6: "According to the indictment, the other three men killed were Sylejman Begolli, Arif Bytyqi, and Urim Bytyqi. The OSCE's report on Kosovo, "As Seen, As Told", page 174, also mentions this incident, although the description is different from that provided in the indictment."

⁹⁶ Exhibit 106, OSCE: As Seen As Told: See p.174: "On or around 26 March, the local shajkt of the Bektashi sect (a Muslim order), his two sons, and three other Kosovo Albanian men were shot in their house by about 50 armed Serbs, including special police in black uniforms, who entered the house at around 22.30 and separated the men from the others. One witness also described seeing a "policija" patch on their backs and the Serbian flag on their right patch. Another neighbour described how a group of masked men in black uniforms arrived in a Lada Niva car with a police number plate, addressing the victims by name in Albanian. One man was arbitrarily killed

references constitute hearsay evidence and are insufficient to sustain the retention of paragraph 66(e) in the Indictment.

75. The Amici Curiae submit that the Accused is entitled to have a judgement of acquittal entered in respect of paragraph 66(e). This paragraph should be excised from the Indictment.

(iii) COUNT 5: PERSECUTIONS

76. The Prosecution alleges that the Accused is criminally responsible for persecution, under Article 5(h) of the Statute. It is alleged that forces of the FRY and Serbia committed acts of persecution at the direction, with the encouragement, or support of the Accused and others known and unknown. The Indictment states that these persecutions included *"sexual assault by forces of the FRY and Serbia of Kosovo Albanians, in particular women, including the sexual assaults described in paragraphs 57 and 63."*⁹⁷

The Law

77. The offence of persecution requires that the Accused committed acts or omissions against a victim or victim population violating a basic or fundamental human right. The Accused's conduct must be committed on political, racial or religious grounds and the Accused must have committed the acts or omissions with a discriminatory mental state.⁹⁸
78. Acts of persecution may include all crimes enumerated elsewhere in the Statute. *"The persecutory act or omission may encompass physical and*

in front of the house, the others were told to run and were shot from behind. The bodies were later buried in the yard of that house. These killings feature in the ICTY indictment of Milosevic and others"

⁹⁷ Paragraph 68(c) of the Indictment.

⁹⁸ Article 5(h) of the Statute.

mental harm as well as infringements upon individual freedom.”⁹⁹ Acts of persecution must be of the same level of gravity as other acts under crimes against humanity.¹⁰⁰ The act must “be discriminatory in fact” and the persecutory conduct must be based on race, religion or politics.

79. The Trial Chamber in the Kupreskic Judgement held that discriminatory intent was the key to the *mens rea* of persecution, which was a higher threshold than the *mens rea* required for other crimes against humanity.¹⁰¹

⁹⁹ The Prosecutor v. Krnojelac, Trial Chamber, Judgement, para.435.

¹⁰⁰ The Prosecutor v. Kupreskic, Trial Chamber, Judgement, para.621.

¹⁰¹ The Prosecutor v. Kupreskic, Trial Chamber, Judgement, para. 636: “...the *mens rea* requirement for persecution is higher than for ordinary crimes against humanity although lower than for genocide...persecution as a crime against humanity is an offence belonging to the same genus as genocide. Both persecution and genocide are crimes perpetrated against persons that belong to a particular group and who are targeted because of such belonging. In both categories what matters is the intent to discriminate: to attack persons on account of their ethnic, racial or religious characteristics (as well as, in the case of persecution, on account of their political affiliation). While in the case of persecution the discriminatory intent can take multifarious inhumane forms and manifest itself in a plurality of actions including murder, in the case of genocide, that intent must be accompanied by the intention to destroy, in whole or in part, the group to which the victims of the genocide belong. Thus, it can be said that, from the viewpoint of *mens rea*, genocide is an extreme and most inhuman form of persecution. To put it differently, when persecution escalates to the extreme form of wilful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide.”

The Evidence

(a) Prizren

80. Paragraph 63(b) of the Indictment alleges that Kosovo Albanian women were taken from a convoy near the Albanian border and sexually assaulted by members of the Serbian forces. Prosecution witness Xhafer Beqiraj testified that he witnessed Serb soldiers removing three Kosovo Albanian women from their convoy and taking them to some nearby bushes.¹⁰² No additional evidence indicating any subsequent sexual assault has been produced. It is submitted that general hearsay evidence in Exhibits 106 and 145 concerning allegations of rape and sexual assault in Prizren are insufficient to substantiate the specific allegation within paragraph 63(b).

81. The Amici Curiae submit that the reference to sexual assault cited in this paragraph must be excised from the Indictment as the evidence is insufficient to substantiate the allegation.

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IN PAR 57 UND 63
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63 ABGES
ALBANIAN STRAW

¹⁰² Exhibit 103: Witness Statement of Xhafer Beqiraj. This witness testified on 19 April 2002. See Tr. 3506-3537. See Tr. 3511.

IV. CROATIA

A. The Indictment

82. The Accused faces thirty-two counts on the Indictment in respect of Croatia. He is charged with crimes against humanity (Article 5 of the ICTY Statute),¹⁰³ violation of the laws or customs of war (Article 3 of the ICTY Statute)¹⁰⁴ and grave breaches of the Geneva Conventions (Article 2 of the Statute).¹⁰⁵

B. Applicable Substantive Law: Articles 2, 3 and 5 of the Statute

83. The applicable substantive law in relation to Articles 2, 3 and 5 of the Statute is set out in the "Legal Analysis" section of the Prosecution's Pre-Trial Brief.¹⁰⁶

¹⁰³ See count 1 (persecution) Article 5(h) Statute; count 2 (extermination) Article 5(b) Statute; count 3 (murder) Article 5(a) Statute; count 6 (imprisonment) Article 5(e) Statute; count 7 (torture) Article 5(f) Statute; count 8 (inhumane acts) Article 5(i) Statute; count 14 (deportation) Article 5(d) Statute;

¹⁰⁴ See count 4 (murder) Article 3 Statute, count 12 (torture) Article 3 Statute, count 13 (cruel treatment) Article 3 Statute, count 18 (wanton destruction of villages or devastation not justified by military necessity) Article 3(b) Statute; count 19 (destruction or wilful damage done to institutions dedicated to education or religion) Article 3(d) Statute, count 20 (plunder of public or private property) Article 3(e) Statute, count 23 (murder) Article 3 Statute, count 26 (cruel treatment) Article 3 Statute, count 27 (attacks on civilians) Article 3 Statute, count 29 (wanton destruction of villages or devastation not justified by military necessity) Article 3(b) Statute, count 30 (destruction or wilful damage done to historic monuments and institutions dedicated to education or religion) Article 3(d) Statute, count 31 (plunder of public or private property) Article 3(a) Statute, count 32 (unlawful attacks on civilian objects) Article 3 Statute.

¹⁰⁵ See count 5 (wilful killing) Article 2(a) Statute, count 9 (unlawful confinement) Article 2(g) Statute, count 11 (wilfully causing great suffering) Article 2(b) Statute, count 16 (unlawful deportation or transfer) Article 2(c) Statute, count 17 (extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly) Article 2(g) Statute, count 22 (wilful killing) Article 2(d) Statute, count 25 (wilfully causing great suffering) Article 2(a) Statute, count 28 (extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly) Article 2(c) Statute.

¹⁰⁶ See paras.1002 -1096.

C. Armed Conflict and Croatia

(i) Introduction

84. In respect of the grave breach counts,¹⁰⁷ the Prosecution must prove, *inter alia*, that the armed conflict was international at all relevant times.¹⁰⁸ }

85. The Prosecution allege that the armed conflict in Croatia was international from 8 October 1991 onwards.¹⁰⁹ However, the Amici Curiae submit that the conflict only became international at some point between 15 January 1992 and 22nd May 1992. This matter has not previously been litigated before this Tribunal and constitutes a live issue within the trial.

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86. The Amici Curiae submit that a legal determination by the Trial Chamber in respect of when the conflict in Croatia became international is required at this stage in the proceedings, given that it may lead to the dismissal of some counts in the Indictment. Such a determination at this stage would save the Trial Chamber and the parties from expending resources unnecessarily during the remainder of the trial.

¹⁰⁷ Counts 5, 9, 11, 16, 17, 22, 25, and 28.

¹⁰⁸ International Criminal Practice, 3rd Edition, Jones and Powles at p.223: "The governing law, as laid down by the Appeals Chamber in the Tadic Jurisdiction Appeals Decision, and endorsed in the Tadic Appeals Judgement, is that an international armed conflict is required for Article 2 of the Statute (grave breaches of the Geneva Conventions of 1948) to apply, i.e. a conflict involving two or more States and not a civil war. This "internationality" requirement is assessed on a case-by-case basis."

¹⁰⁹ See para.85 of the First Amended Indictment: "between at least 1 August 1991 and at least June 1992, a state of armed conflict existed in Croatia. Until 7 October 1991, this armed conflict was internal in nature. From 8 October 1991 an international armed conflict and partial occupation existed in the Republic of Croatia."

(ii) The Law

(a) International Armed Conflict

87. An armed conflict is international in character if:

- (a) the conflict takes place between two or more States; or
- (b) one or more States intervene into a hitherto internal conflict taking place within the territory of another State, either
 - (i) directly through their own troops, or
 - (ii) indirectly through, *inter alia*, subordinate armed forces, militias or paramilitary groups placed under the "overall control" of the intervening State.¹¹⁰

88. Accordingly, the conflict can be "international" only from the date on which Croatia became a State.

(b) Statehood

89. The legal criteria for Statehood are set out in Article 1 of the Montevideo Convention on Rights and Duties of States which provides that:

"The State as a person of international law should possess the following qualifications: (a) a permanent population¹¹¹; (b) a defined territory¹¹²; (c) government¹¹³; and (d) capacity to enter into relations with the other States."¹¹⁴

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¹¹⁰ The Prosecutor v. Tadic, Appeals Chamber, Judgement, paras.84, 137. See also The Prosecutor v. Celebici, Appeals Chamber, Judgement, para.26; The Prosecutor v. Aleksovski, Appeals Chamber, Judgement, para.134.

¹¹¹ See Principles of Public International Law by Ian Brownlie, at p.70: "This criterion is intended to be used in association with that of territory, and connotes a stable community"

¹¹² See Brownlie, p.71: "There must be a reasonably stable political community and this must be in control of a certain area. It is clear from past practice that the existence of fully defined frontiers is not required and that what matters is the effective establishment of a political community. In 1913, Albania was recognised by a number of states in spite of a lack of settled frontiers and Israel was admitted to the United Nations in spite of disputes over her borders."

¹¹³ See Brownlie, p.71: "The existence of effective government, with centralized administrative and legislative organs, is the best evidence of a stable political community. However, the existence of effective government is in

- 90. In addition to the Montevideo Convention on Rights and Duties of States, certain other criteria are sometimes suggested as necessary for statehood.

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A degree of permanence

- 91. The requirement that the entity possess a degree of permanence as a criterion of statehood has been the subject of much criticism. Brownlie explains that "permanence is not necessary to the existence of a state as a legal order, and a state which has only a very brief life may nevertheless leave an agenda of consequential legal questions on its extinction."¹¹⁵ However, in circumstances where "another State's rights are involved (for example in a secessionary situation), or where certain criteria for statehood are said to be missing, continuance of an entity over a period of time is of considerable evidential value."¹¹⁶ Permanence is not strictly a criterion of statehood in the sense of an indispensable attribute. However, it is sometimes an important piece of evidence as to the possession of the attributes of statehood.¹¹⁷

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Willingness to observe international law

- 92. It has been suggested that "willingness to observe international law" is another criterion for statehood.¹¹⁸ However, this position has been

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certain cases either unnecessary or insufficient to support statehood. Some states have arisen before government was very well organized, as, for example, Poland in 1919 and Burundi and Rwanda, admitted to membership of the United Nations at the seventeenth session of the General Assembly."

¹¹⁴ See Brownlie, pp.71-72 for more detail. "In the enumeration contained in the Montevideo Convention, the concept of independence is represented by the requirement of capacity to enter into relations with other states. Independence has been stressed by many jurists as the decisive criterion of statehood. Guggenheim distinguishes the state from other legal orders by means of two tests which he regards as quantitative rather than qualitative. First, the State has a degree of centralization of its organs not found in the world community. Secondly, in a particular area, the State is the sole executive and legislative authority. In other words, the state must be independent of other state legal orders, and any interference by such legal orders, or by an international agency, must be based on a title of international law."

¹¹⁵ Brownlie, at p.75

¹¹⁶ Crawford, The Creation of States in International Law, at p.72

¹¹⁷ Ibid.

¹¹⁸ See Chen, The International Law of Recognition, p.61

subject to trenchant criticism.¹¹⁹ An unwillingness or refusal to observe international law may well constitute grounds for refusal of recognition "or for such other sanctions as the law allows, just as unwillingness to observe Charter obligations is a ground for non-admission to the United Nations."¹²⁰ These issues, however, are distinct from statehood. Furthermore, as Brownlie explains, "responsibilities of states are consequences of statehood, and logically it is inexcusable to express as a criterion of statehood a condition which the entity has a capacity to accept only if it is a state."¹²¹

A certain degree of civilization

93. Hyde states four qualifications for statehood (the four enumerated in the Montevideo Convention) and adds a fifth: "the inhabitants must have attained a degree of civilization, such as to enable them to observe...those principles of law which are deemed to govern the members of the international society in their relations with each other."¹²² Brownlie explains that the requirement that the entity possess "a certain degree of civilization" is "usually omitted from enumerations of criteria and is redolent of the period when non-European states were not accorded equal treatment by the European Concert and the United States. In modern law it is impossible to regard a tribal society which refuses to conduct diplomatic relations with other societies as a *res nullius*."¹²³ This requirement is better formulated "as one of government: "international law presupposes, not any common faith or culture, but a certain minimum of order and stability."¹²⁴

¹¹⁹ *Ibid.*

¹²⁰ Crawford, pp.72-73

¹²¹ Brownlie, p.75

¹²² Chen, *The Law of Recognition*, p. 60, footnote 30. See also Chapter 2.

¹²³ Brownlie, at p.75.

¹²⁴ Crawford, at p.73.

Legal Order

94. Legal order constitutes an important element of government, and therefore, an indication of statehood, however, *"its status as a distinct criterion is open to doubt. Thus a revolutionary (that is, illegal) change of constitution does not necessarily affect the identity or continuity of the State. Entities which, by all other criteria, are States, at the time they come into existence may have only rudimentary or fragmentary legal systems. In extreme cases, there may be no more than a diffused willingness to accept the system to be established by a Constituent Assembly. Moreover a single State may well compose several interlocking legal systems, having a complex interrelation and without the subordination of one to the other - this is the case with federations."*¹²⁵

(iii) Submissions

95. The Amici Curiae submit the following:

- (i) The armed conflict can be *"international"* only from the date at which Croatia can be said to have met the requirements of statehood.
- (ii) The Prosecution have failed to prove the asserted date of Croatia's statehood as **8 October 1991**. }
- (iii) No expert or other witness has been called by the Prosecution to give evidence on the date of Croatia's statehood.¹²⁶ ||

¹²⁵ Crawford, pp.74-76.

¹²⁶ Evidence from Mesic has been admitted pursuant to Rule 92bis(D) from previous trial proceedings in the case of *The Prosecutor v. Dokmanovic*, on 20.3.98. However, this evidence only deals with side issues in relation to the statehood of Croatia - e.g. Mesic refers to the fact that Croatia organised a referendum on 25.6.91 (See Transcript date: 20.3.98 at p.1670) and the meeting in Brioni on 8.7.01 at which the decision is taken that Croatia will suspend its declaration of independence for three months (see Transcript date: 20.3.98 at p.1677). Relevant documentation has been exhibited through prosecution

- (iv) Croatia met the requirements of statehood at a point in time between 15 January 1992 and 22 May 1992, based upon the following observations:

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- (a) Croatia's own declaration of independence on 8 October 1991,¹²⁷ following the end of the three month moratorium agreed in the Brioni Declaration, is not decisive of the date on which Croatia became a State, in international law. The declaration is not a self-executing act.
- (b) The claim that Croatia was independent as of 8 October 1991 is principally based upon the conclusion arrived at by the Arbitration Commission¹²⁸ established by the European Commission, presided over by Robert Badinter, in Opinion 11, rendered on 16 July 1993.¹²⁹ However, in the submission of the Amici Curiae, the Arbitration Commission's opinions are of limited legal relevance for the following reasons: (i) The Arbitration Commission was not created by virtue of an international agreement between the parties; (ii) it was not created

witness Hrvoje Sarinic on 21.1.04. However, no witness has been called to deal specifically with the issue of Croatia's statehood.

¹²⁷ Exhibit 641, tab 22, admitted on 21.1.04 through Prosecution witness Hrvoje Sarinic: Joint Session of all Chambers of the Parliament of the Republic of Croatia of 8 October 1991: Announcement that following the end of the three-month moratorium agreed in the Brioni Declaration, "the Republic of Croatia severs all State/legal ties on which basis it formed...the previous SFRY and disavows the legitimacy and legality of all bodies of the former federation."

¹²⁸ Exhibit 641, tab 32 admitted on 21.1.04 through Prosecution witness Hrvoje Sarinic: Conference on Yugoslavia Arbitration Commission (Badinter Commission) Opinions on questions arising from the dissolution of Yugoslavia (No. 1, 3, 5, 8, 11).

¹²⁹ Exhibit 641, Tab 32: Opinion 11 of the Arbitration Commission of the Peace Conference on Yugoslavia - Paris, 16 July 1993 - at point 4: "...the Republic of Croatia and Slovenia, both of which declared their independence on 25 June 1991 and suspended their declarations of independence for three months on 7 July 1991, as provided by the Brioni declaration. In accordance with the declaration, the suspension ceased to have effect on 8 October 1991. Only then did these two Republics definitively break all links with the organs of the Federal Republic of Yugoslavia and become sovereign States in international law. For them, then, 8 October 1991 is the date of State succession." Also at point 10: "10. The Arbitration Commission consequently takes the view: That the dates upon which the States stemming from the Socialist Federal Republic of Yugoslavia succeeded the

pursuant to a treaty and is not an independent judicial body; (iii) the Commission's opinions do not constitute formal judgements and are thus, not legally binding.

- (c) On 8 October 1991, Croatia had insufficient control over a substantial part of its territory for it to be considered an independent State by this date. The armed conflict was still ongoing in many areas of Croatia.
- (e) It was not until 5 December 1991 that there was a Statement of the Parliament of the "Republic of Croatia" at a joint session of all Chambers, declaring the decision of the "Republic of Croatia" to initiate the necessary procedures for the admission, or membership, of all international governmental and other institutions, in particular the United Nations, as well as the Council of Europe.¹³⁰
- (f) The President of Croatia sought recognition of the "Republic of Croatia" from the Member States of the European Community on 19 December 1991.¹³¹
- (g) Recognition¹³² of Croatia by many States took place only several months after Croatia's declaration of

Socialist Federal Republic of Yugoslavia on 8 October 1991 in case of the Republic of Croatia and the Republic of Slovenia."

¹³⁰ Exhibit 641, tab 23, exhibited on 21.1.04: Declaration of the Parliament of the Republic of Croatia on 5 December 1991. Exhibit 641, tab 23, exhibited on 21.1.04.

¹³¹ Exhibit 641, Tab 32: See Arbitration Commission, Opinion 5 on the Recognition of the Republic of Croatia by the European Community and its Member States.

¹³² It is acknowledged that there is a doctrinal dispute between the "declaratory" and "constitutive" views on recognition of states and governments. See Brownlie at pp.86-87: "According to the declaratory view, the legal effects of recognition are limited, since recognition is a mere declaration or acknowledgement of an existing state of law and fact, legal personality having been conferred previously by operation of law." See also Brownlie at pp.87-88: According to the constitutive view, "the political act of recognition is a precondition of the existence of legal rights: in its extreme form this is to say that the very personality of a state depends on the political decision of other states." See also "The Creation of States in International Law" by James

independence: (i) The EC did not recognise the independence of Croatia until 15 January 1992,¹³³ (ii) Austria, Belgium, Finland, Italy, the Netherlands, Sweden, and the United Kingdom only recognised Croatia as a state, after EC recognition had taken place. (iii) The US did not recognise the independence of Croatia until 7 April 1992.

(h) The UN General Assembly decided to admit Croatia to UN membership (a prerequisite of which under Article 4 of the UN Charter is statehood¹³⁴) on 22 May 1992.¹³⁵

(iv) Relevant Counts before the Conflict Became International

(a) Counts 17, 22, 25 and 28

96. In the event that the Amici Curiae's submissions on the date of Croatia's statehood are accepted, it is submitted that the Accused is entitled to have a judgement of acquittal entered in respect of counts 17¹³⁶, 22¹³⁷, 25¹³⁸ and 28¹³⁹. These counts charge the Accused with grave

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Crawford, Chapter 1, p.24: "...in practice, recognition can have important legal and political effects. For example, where an entity is widely recognised as a State, especially where such recognition has been accorded on non-political grounds, that is strong evidence of the statehood of that entity-though it is not conclusive. Equally, where the status of a particular entity is doubtful, or where some necessary element is lacking, recognition, apart from its evidential importance, may oblige the recognizing State to treat the recognized entity as a State, and may thus contribute towards the consolidation of its status."

¹³³ Exhibit 641, tab 31, admitted on 21.1.04: Statement by the Presidency of the European Union on the Recognition of the Republics of Slovenia and Croatia, 15 January 1992.

¹³⁴ Article 4 of the UN Charter 1945 provides that membership of the organisation is "open to all peace-loving States which accept the obligations contained in the present Charter and, in the judgement of the Organization, are able and willing to carry out these obligations."

¹³⁵ Exhibit 641, tab 35, admitted on 21.1.04: UN General Assembly Resolution 46/238 of 22 May 1992 (admitting Croatia to membership of the United Nations).

¹³⁶ Count 17 relies upon para.71 of the indictment, the time frame of which is 1 August 1991-May 1992. However, the particulars relied upon in this paragraph of alleged crimes in the SAO SBWS, the SAO Western Slavonia and SAO Krajina refer to the time frames of "until October 1991" and "August to December 1991", both of which are before the first possible start date of the "international" conflict, as submitted by the Amici Curiae.

¹³⁷ Count 22 relies upon paras.73-75 of the indictment, the time frame of which is 1 October 1991 until 7 December 1991. This indictment time frame is before the first possible start date of the "international" conflict as submitted by the Amici Curiae.

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breaches of the Geneva Conventions which allegedly took place before Croatia became a state and therefore before the conflict became international. The factual paragraphs in support of these counts should also be excised from the Indictment.

(b) Count 5

97. Count 5 relies upon paragraphs 39-49 and 52-59 of the Indictment. The only paragraphs which relate to allegations of crimes *within* the time period of international conflict submitted by the Amici Curiae are paragraphs 47¹⁴⁰, 58¹⁴¹ and 59¹⁴². The Trial Chamber is therefore required at this stage to assess whether there is sufficient evidence within the "*international*" phase of the conflict in order to justify the retention of count 5 within the Indictment.

(c) Counts 9, 10, 11 and 16

98. Counts 9, 10, 11 and 16 also charge the Accused with grave breaches of the Geneva Convention from "*August 1991 until March 1992*". These counts rely upon paragraphs 63-65 and 67-69 of the Indictment and fall *partially* within the time period suggested by the Amici Curiae for the commencement of the "*international*" conflict. The Trial Chamber is therefore required at this stage to assess whether there is sufficient evidence within the "*international*" phase of the conflict in order to justify the retention of counts 9, 10, 11 and 16 within the Indictment.

¹³⁸ Count 25 relies upon paras.73-75 of the Indictment, the time frame of which is 1 October 1991 until 7 December 1991. This indictment time frame is before the first possible start date of the "*international*" conflict as submitted by the Amici Curiae.

¹³⁹ Count 28 relies upon paras.77-82 of the Indictment, the time frame of which is 1 October 1991 until 7 December 1991. This indictment time frame is before the first possible start date of the "*international*" conflict as submitted by the Amici Curiae.

¹⁴⁰ This paragraph refers to crimes committed between 18 November and February 1992.

¹⁴¹ This paragraph refers to crimes committed on 21 February 1992.

¹⁴² This paragraph refers to crimes committed on 4 May 1992.

Evidence before the start of the "*international*" conflict cannot be used to support these counts.

(d) **Count 14**

99. Count 14 charges the Accused with deportation from "*1 August 1991 until May 1992*", punishable as a crime against humanity under Article 5(d) of the Statute. This count relies upon paragraphs 67-69 of the Indictment and falls *partially* within the time period suggested by the Amici Curiae for the commencement of the "*international*" conflict.
100. The offence of deportation involves the transfer of civilians beyond state borders. The Indictment refers to the deportation of Croat and other non-Serb civilians to locations outside Croatia, to Serbia and Montenegro. However, it is submitted that such forcible movement of civilians may only constitute the offence of deportation, (as opposed to forcible transfer within the SFRY), from the date on which Croatia can be identified as a state with a state border. The Trial Chamber is required at this stage to assess whether there is sufficient evidence of deportation within the "*international*" phase of the conflict in order to justify the retention of count 14 within the Indictment.

D. INDICTMENT ANALYSIS

(i) Count 1

101. Count 1 charges the Accused with persecution, a crime against humanity pursuant to Article 5(h) of the Statute.

(a) Paragraph 36(I)

102. In relation to the specific factual incidents cited in paragraph 36(I) in support of Count 1, it is submitted that there is insufficient evidence to support the allegation of "*deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat and other non-Serb population*" in the villages of Sarengrad¹⁴³ Bapska¹⁴⁴, Nadin¹⁴⁵ and Bruska¹⁴⁶

¹⁴³The only evidence in relation to Sarengrad is the shelling of this town on 4 October 1991 contained in the witness statement of C1136 (Exhibit 516). There is no mention of any damage to buildings in the statement.

¹⁴⁴No evidence has been presented in relation to the destruction of buildings in Bapska.

¹⁴⁵The only evidence in relation to the village of Nadin is general hearsay evidence from C-061, which in the submission of the Amici Curiae in this instance is insufficient to found the factual allegation in relation to Nadin in para.36(I): See Tr.13065:

"Q. And in the region near Knin, were Skabrnja, Nadin, and Bruska attacked in this way? A. They were. Q. Were these villages that I just mentioned, were these Croatian villages? A. Yes, Croatian or majority Croatian villages. Q. Did these villages pose a threat to the JNA or the Serb people in the region? A. They didn't. Q. You mentioned that various formations were involved. Did they get involved in a certain pattern so that one formation went first, did something, and then others follow? Can you describe how these forms of attack actually were conducted? A. As far as I know, there was a rule, and that was that the first to take part in attacks were police units or volunteer units or units under the control of the State Security Service. They would engage in provocations, provocative shootings, individual opening of fire towards Croatian settlements, and then they would open fire with mortars. In other words, they would provoke the other side, upon which the JNA would join in with its artillery and all the units under its control. Q. You mentioned state security. Which state security did you mean was involved? A. The state security of Serbia. Q. When the JNA had joined and attacked, what happened afterwards when a village was taken? A. As a rule, there was looting and torching of property. Q. Who did this, which formations? A. This was done also by the JNA, while it held control, especially in Drnis. I know of a case there. And then the JNA would hand over control, or rather, it would leave the area without any control for a certain period of time. The police would not establish its control there and then the looting would become generalised. Q. Those - you said that - what did the Croatian population do when this attack occurred? A. They fled. Q. Did anyone stay behind? Did any people stay behind, and if so, what happened to them? A. Very few people stayed behind, mostly elderly people. After that, there would be individual killings, which in most cases would not be elucidated."

And Tr.13405: "Q. Do you know when these villages, Skabrnja and Nadin, were attacked and which - in which way, which forces took part in it? A. I learnt later - I wasn't fully informed at the time. I was later informed that these were Skabrnja and Nadin, in November 1991. JNA units took part, as well as units that were coordinated by the Crisis Staff in Benkovac, which means the TD and the police and all armed formations that were in the area of Benkovac. Q. Did you get information that Croatian civilians were murdered during the attack? A. I learnt later that they had been."

103. In the submission of the Amici Curiae, the names of these villages should be excised from paragraph 36(1). 11

(ii) Counts 2, 3, 4 and 5

104. Counts 2, 3, 4 and 5 charge the Accused with the crimes of extermination (crime against humanity), murder (crime against humanity), murder (violation of the laws or customs of war) and wilful killing (grave breach of the Geneva Conventions of 1949) respectively.

(a) Paragraph 40

105. In paragraph 40, it is alleged *inter alia* that on 21 October 1991, Serb forces took forty-three detained Croats to a location near the village of Bacin where they were then killed. In relation to this allegation, it is submitted that there is insufficient evidence of who killed the 43 persons in Bacin. Witnesses C1141¹⁴⁷ and Milan Babic¹⁴⁸ stated that they did not know who carried out the killings. While the evidence from Prosecution witness Josip Josipovic constitutes hearsay evidence

¹⁴⁶ There is evidence in relation to the village of Bruska from C-061. However, it is general hearsay evidence which in the submission of the Amici Curiae in this instance is insufficient to found the factual allegation in relation to Bruska. See Transcript at p13065 cited above. In the Prosecution's Second Pre-Trial Brief (Croatia and Bosnia Indictments) filed 31 May 2002, it is clear that the Prosecution originally intended to also call witnesses C1152 and C1073 to deal with the village of Bruska. However, these witnesses were not called and were deleted from the Rule 65ter witness list pursuant to a Trial Chamber Decision on 21.11.03, in response to the "Prosecution's Fourth Omnibus Motion For Leave to amend the witness list and request for protective measures for witnesses named herein", filed 31 October 2003. Prosecution witness Jasna Denova gave evidence on 29 October 2003 in relation to an attack on the hamlet of Marinovici, near to Bruska. However, she does not provide evidence of the "deliberate destruction of homes, other public and private property, cultural institutions, historic monuments and sacred sites of the Croat and other non-Serb population". See Exhibit 576.

¹⁴⁷ Testimony of witness C1141 on 21.10.02 at Tr.11972-74: "Q: Do you know anything about who committed that crime? A: I don't know. And I keep asking myself why it was done and who did it. Q: You don't know who did it nor why? A: I don't know why it was done. This was an arbitrary killing." Also see Tr.11977: "Q: Could you see...any cause for this killing? A: I really don't know. I've thought about this, and I keep thinking about it, what the cause was. I think it was arbitrariness on the part of a group of people, several people. Why they did that I really don't know."

¹⁴⁸ Testimony of Milan Babic on 2.12.02 at Tr.13649: "I don't know who carried that out. I said what I knew about the matter."

of a general nature, which is insufficient, in this instance, to found the factual allegations in paragraph 40¹⁴⁹;

106. Furthermore, there is no evidence to support the factual allegation within paragraph 40, that *"In addition, the Serb forces brought at least thirteen non-Serb civilians from Bacin und Cervoljani to the same location. All fifty-six victims were killed there. At approximately the same time, the Serb forces took away an additional thirty civilians from Bacin and twenty-four from the villages Dubica and Cervoljani into an unknown location where they killed them."*

107. For the aforementioned reasons, it is submitted that paragraph 40 in its entirety should be excised from the Indictment at this stage.))

(b) Paragraph 41

108. This paragraph refers to attacks on the villages of Saborsko, Poljanak and Lipovanic by *"Serb forces including the JNA, TO and "Martic's Police"*. Evidence of such attacks has been presented at trial. However, in the submission of the Amici Curiae, there is insufficient evidence to support the allegation in paragraph 41 that: *"As soon as the Serb forces entered the villages, they killed all remaining non-Serb inhabitants they found."* Accordingly, this passage should be excised from the Indictment.))

¹⁴⁹ See Exhibit 521: Supplementary Witness statement of Josip Josipovic, at para.13: *"The most horrendous crime of Momcilo Kovacevic and Stevo Radunovic and their co-perpetrators was the killing of more than one hundred innocent civilians from the villages of Bucin, Dubica and Cervoljani. I heard from the survivors of the mass execution that the local police picked the civilians from different places in those villages on the pretext of attending a meeting. Later on they took them to an unknown place and executed them. As Momcilo Kovacevic and Stevo Radunovic were the commanders of the local police, I cannot imagine that a large-scale killing and execution of civilians can take place without their knowledge and involvement."*

(c) Paragraph 50

109. In paragraph 50 of the Indictment, it is alleged that on 21 September 1991, "members of the TO of the SAO SBWS led by Zeljko Raznatovic shot eleven detainees" and buried their bodies in a mass grave in the village of Celija. For this allegation, there is hearsay evidence in the form of a letter produced by C-013 which reports that in the evening of 21 September 1991, the president of SBWS, Goran Hadzic together with Arkan and 20 of his men broke into the Dalj prison, and took 11 prisoners away.¹⁵⁰ There is also evidence that 9 of the 11 persons listed in the Indictment were later exhumed and identified.¹⁵¹
110. The Prosecution has not called any direct eye witness testimony in relation to these events. There is no evidence that the 11 prisoners who, according to the letter were taken away by Hadzic and Arkan, were actually shot and subsequently buried by "members of the TO of the SAO SBWS" led by Arkan.
111. For the aforementioned reasons, it is submitted that paragraph 50 should be excised from the Indictment at this stage.

¹⁵⁰ Exhibit 375: Tab 1: Report from the commander of Dalj police to the Ministry of Interior of SBWS, dated 23 September 1991, produced by C-013 which states that: "On 21 September 1991, around 18.00, Goran Hadzic, President of the AO Slavonija, Baranja and Western Srem came to the offices of Dalj police station. He came together with Zeljko Raznatovic, aka Arkan, who was accompanied by 20 men. Goran Hadzic and Zeljko Raznatovic released from detention Slavko Paliukas from Aljmas and Luka Sutalo from Erbit. Arkan and his men also took away the following men: Ivan Zelenbar, Zoran Andel, Cedomir Predojevic, Drazan Stimac, Zeljko Filipcic, Darko Kusic, Ivan Forjan, Pavao Zemljak, Vladimir Zemljak, Pavle Bek and Haro Brajovic. Goran Hadzic and Zeljko Raznatovic did not give any explanation to Rajko Milovanovic, duty man in Dalj police station, concerning those who were released or taken away. Goran Hadzic did not give neither written nor oral order for the above-mentioned action."

(d) Paragraph 51

112. In relation to paragraph 51 of the Indictment, it is alleged that on 4 October 1991, members of the TO of the SAO SBWS led by Zeljko Raznatovic entered the detention facility in the police building in Dalj and shot a number of detainees.
113. Hearsay evidence in the form of an "Official Note" from the Ministry of the Interior (Osijek and Baranja Police Administration) has been presented to support this allegation.¹⁵² However, the Official Note refers to 12 dead bodies being removed from a room at the detention facility, not 28 as alleged in the Indictment. Furthermore, the Note does not clarify whether these individuals were civilians or Croats. No eye witness to these events has been called to give evidence.
114. It is submitted that in this instance, the evidence called by the Prosecution does not accurately reflect the allegation in the Indictment.

par. 51 duty
witness

(e) Paragraph 53

115. In paragraph 53 it is alleged that on 9 November 1991, members of the TO of the SAO SBWS led by Zeljko Raznatovic and members of the Militia of the SAO SBWS arrested ethnic Hungarian and Croat civilians

¹⁵¹ Exhibit 403, tab 25: Excerpt from Annex I of the Milosevic Croatia Indictment annotated by witness Grujic, para.50 - Baranja Case One, Tr.17290.

¹⁵² Exhibit 375, Tab 2: The Official Note states *inter alia* that at around 2345hrs Arkan and 20 of his men arrived at the station, looking for "Milorad", after which he and five of his men went into the room where Milorad Stricevic was. "Stricevic and the others who were in the room brought detainees in through the side door and conducted processing. Throughout the processing Arkan's men were coming out and others were going in. The only thing that was heard during the interrogations were the words: "Come on you, the Guardsman and MUP / Ministry of the Interior/guy", and occasionally sounds were heard as if an object was being struck against a table, but no other sounds were heard. At around 0040 hours they took three detainees who then carried out 12 dead bodies from the room, loaded them into the truck, and then together with those three men drove them off somewhere. After that Arkan returned with his men and asked Srbo Slav Mihaljevic or Predrag Blagojevic whether the room was clean, and when he received an affirmative answer they left. Stricevic, Milovanovic, Gojsovic, Trbic and the unknown man also left at the same time." [The names of the persons missing from the detention facility are listed in the Official Note].

in Erdut, Dalj Planina and Erdut Planina and took them to the training centre of the TO in Erdut where twelve of them were shot dead the following day. The Prosecution rely upon witness C-020. This witness provided evidence about his conversation with Stricevic regarding the whereabouts of the prisoners. The witness stated that he was told by Stricevic that the "prisoners were exchanged, and then he said upstream on the Danube."¹⁵³ In his oral testimony, C-020 explained that he interpreted these words to mean that the prisoners "were probably liquidated". He stated further that "later on it became known that they had been killed." It is submitted by the Amici Curiae that in this case, the totality of C-020's evidence is insufficient to sustain the retention of the allegation cited above.

PAR. 53
DEJUT N:25
OP RIT PUM

116. Furthermore, paragraph 53 alleges that on "3 June 1992, members of the SNB, in co-operation with members of "Arkan's Tigers", arrested Marija Sensasi (born 1937), a female family member of the original Hungarian victims who had continued to make inquiries about the fate of her relatives. This woman was subsequently murdered and her body was thrown into an abandoned well in Dalj Planina." Prosecution witness C-020 refers to the arrest of a "woman on a bicycle" although he does not identify her as Marija Senasi. During his testimony, C-020 is asked about what happened to this woman. He provides the following response:

"A: I didn't know at the time. After this – after the investigation, I learnt that she was found somewhere in Erdut later on.

Q: Can you help us with where or what had been suggested about what should happen to her?

A: Nobody said anything, only that she should be brought in for an information interview."¹⁵⁴

¹⁵³ Testimony of C-020 on 22.10.02 at p.12167.

¹⁵⁴ Testimony of C-020 on 22.10.02 at pp.12181-12182

117. There has been no identification of Marija Senasi as the name of the woman who was arrested by C-020. Neither has evidence been provided as to who killed Marija Senasi. Mr Grujic's evidence only serves to support the allegation that a person named Marija Senasi was exhumed and identified.¹⁵⁵ In the submission of the Amici Curiae, there is insufficient evidence in relation to this particular allegation to justify its retention within the Indictment.

PAR. 53 DEUT
ODHMKOP
PIT PUNJ

(f) Paragraph 55

118. In paragraph 55, it is alleged that *"Following a request of Goran Hadzic to retain those non-Serbs who were suspected of participation in the military operations, the JNA transported a large number of inhabitants of Vukovar to the detention facilities in Dalj around 20 November 1991. There, Serb TO members selected those suspected of participating in the defence of Vukovar. The selected detainees were interrogated, beaten and tortured. At least thirty-four were executed. The names of the victims are set out in Annex I attached to this indictment."*¹⁵⁶

119. The Prosecution relies upon evidence from Mr Grujic and C1175. C1175's testimony supports the allegation in paragraph 55 that the JNA transported a large number of inhabitants of Vukovar to the detention facilities in Dalj on or around 20 November 1991".¹⁵⁷ However, there is no evidence to support the contention that this action was taken pursuant to a request by "Goran Hadzic to retain those non-Serbs who were suspected of participation in the military operations." Furthermore, the testimony of C1175 does not deal with the allegation that "Serb TO members selected those suspected of participating in the defence of Vukovar. The selected detainees were interrogated, beaten and tortured. At least thirty-

PAR. 55
DEUT NEXT
OP 2015
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¹⁵⁵ See Tr.17292.

¹⁵⁶ Para.55 of the Indictment.

¹⁵⁷ See Exhibit 517 at p.4, para.13. See also testimony dated 28.8.03 at Tr.25485.

four were executed. The names of the victims are set out in Annex I attached to this Indictment." The witness states that there was "mistreatment" of those detained in Dalj¹⁵⁸, but when asked about killings in cross-examination, the witness stated that he did not "know that anybody was killed". The 10-11 bodies he testified about were located at Lovas Farm, not in the Dalj detention facilities. Neither does this witness provide any direct evidence in relation to how these individuals were killed.

120. Mr Grujic's evidence merely confirms that 11 persons cited in the Annex to the Indictment were exhumed and identified. He does not provide evidence as to how these individuals were killed and by whom.

121. It is therefore submitted that the extracts cited above should be excised from the Indictment at this stage in the proceedings as the evidence in support is insufficient to sustain a conviction.

para. 55
DUGR BUS
WIT UP
DIT PUNT

(g) Paragraph 56

122. In paragraph 56 it is alleged that "members of the TO of the SAO SBWS led by Zeljko Raznatovic and members of the Militia of the SAO SBWS" arrested "five non-Serb villagers from Erdut" and took them to the "TO training centre in Erdut" where they were subsequently killed.

123. In relation to this paragraph, the Prosecution seeks to rely on evidence from expert witness Mr. Grujic¹⁵⁹ and Luka Sutalo.¹⁶⁰ Mr. Grujic's evidence confirms that three of the five persons listed in the Indictment

¹⁵⁸ See testimony dated 28.8.03 at Tr.25486 at line 21. See also Exhibit 517 at p.3, para.7.

¹⁵⁹ Tr.17254; Ex. 401-403; Killings and Detention in Croatia during the war (expert); 1991-1994.

¹⁶⁰ This witness testified on 28 August 2003. See Tr.25540-25587 and Prosecution Exhibit 520 (92bis witness statement).

Annex for paragraph 56, were exhumed and identified.¹⁶¹ The hearsay evidence from Mr Sutalo is as follows:

*"Villagers then started to disappear and I was told by their wives/relatives who witnessed it that Milenko Simic was involved. No one knew at that time what their fate was. The disappeared included, Aleksandar Raic on 10.12.91, Ivica Kovacevic, Stipa Kovacevic, Mato Butkovic and Janika Guljasevic."*¹⁶²

124. It is submitted that that in this case, insufficient evidence has been called by the Prosecution to sustain the retention of paragraph 56 within the Indictment. This paragraph should be excised at this stage of the proceedings.))

(h) Paragraph 57

125. In paragraph 57 of the Indictment, it is alleged that seven ethnic Hungarian and Croat civilians were arrested in Erdut, and taken to the TO training centre where they were shot and killed.

126. The Prosecution relies upon the evidence of the expert witness Mr. Grujic which establishes that six of the seven persons listed in the Indictment have been exhumed and identified.¹⁶³

127. They also rely upon the evidence of Prosecution witness C1162.¹⁶⁴ This witness confirms *inter alia* that she was arrested on 25 December 1991 by two of Arkan's soldiers and taken to the Training Centre in Erdut where she was interrogated, threatened and then driven home on the same day.¹⁶⁵

¹⁶¹ Grujic states that Stjepan Kovacevic is still listed as missing and the ODMF have no information on Ivan Guljasevic - see Tr.17293.

¹⁶² See Ex 520, para.55.

¹⁶³ Grujic also explains that the seventh person, Nikola Matosevic is still listed as missing. See Tr.17294.

¹⁶⁴ In the Prosecution's Second Pre-Trial Brief (Croatia and Bosnia Indictments) filed 31 May 2002, the Prosecution referred to additional witnesses in support of this paragraph: C1051 and C1196. However, these witnesses were not called as part of the Prosecution's case.

¹⁶⁵ See Exhibit 481: Rule 92bis witness statement of C1162.

128. In relation to the specific allegations of paragraph 57, C1162 provides the following hearsay evidence in respect of one or possibly two of the persons listed in the Indictment Annex for paragraph 57:

*"With respect to the missing villagers, I would like to add the following. I believe it was in November 1991 when Danka Bolmanovic, who at that time worked in the kitchen of the LPK winery, told me that she had heard that Franjo Piti and Andrija LNU were killed by Arkan's soldiers. I believe that Danka Bolmanovic now resides in Sombor."*¹⁶⁶

129. In the submission of the Amici Curiae, the totality of C1162's evidence is insufficient to sustain the factual allegations cited in paragraph 57. Therefore, it is submitted that this paragraph should be excised from the Indictment.

(i) **Paragraph 58**

130. In paragraph 58 it is alleged that on "21 February 1992, members of the TO of the SAO SBWS led by Zeljko Raznatovic and members of the Militia of the SAO SBWS arrested four non-Serb civilians in Erdut." These civilians were then allegedly interrogated in the Territorial Defence training centre in Erdut and killed. The Prosecution relies upon the evidence of expert witness Grujic and C-020.

131. Prosecution witness C-020 provides hearsay evidence in relation to the killing of only one of the four persons listed in the Annex I to the Indictment, Viktorija Albert.¹⁶⁷ The witness stated that he was told a couple of days later that Viktorija Albert and Stricevic had been

¹⁶⁶ See Ex 481 at Registry page: 00895047.

¹⁶⁷ Annex I, Victims Erdut Case Six, paragraph 58.

killed.¹⁶⁸ This evidence is insufficient to support the detail of the allegation in paragraph 58. It is submitted that this paragraph should be excised from the Indictment.))

(iii) **Counts 6 to 13**

132. Counts 6 to 13 charge the Accused with the crimes of imprisonment (crime against humanity), torture (crime against humanity), inhumane acts (crime against humanity), unlawful confinement (grave breach of the Geneva Conventions of 1949), torture (grave breach of the Geneva Conventions), wilfully causing great suffering (grave breach of the Geneva Conventions), torture (violation of the laws or customs of war) and cruel treatment (violation of the laws or customs of war), respectively.

(a) **Paragraph 64(b)**

133. In relation to the existence and management of detention facilities, paragraph 64(b) refers to *"a transit detention facility run by the JNA that also included scores of long-term detainees"* in the *"military barracks in Kumbor in Montenegro"*.

134. The Prosecution relies upon the evidence of expert witness Ivan Grujic in support of paragraph 64(b).¹⁶⁹ In his expert report, Grujic explains that he compiled a list of the detention sites *"based on statements from persons detained in these places, and reports on visits to detainees by the International Committee of the Red Cross and other international organisations."*¹⁷⁰ These statements and reports by the Red Cross have not been produced as evidence during the trial.

¹⁶⁸ See testimony of C-020 on 22.10.03 at Tr.12177-12179.

¹⁶⁹ Grujic gave evidence in relation to this detention facility on 4th March 2003, see Tr. 17302 on 4.3.03.

¹⁷⁰ Ex 401: Expert report of Ivan Grujic, at p.16.

135. No direct evidence has been called by any other witness as to the existence, organisation and leadership of this particular detention facility in the "military barracks in Kumbor in Montenegro". Grujic did not give evidence as to who ran the detention facility; neither could he assist the Prosecution with whether or not this was a "military facility".¹⁷¹ Furthermore, no evidence has been presented as to alleged offences committed at this facility.

136. It is submitted that there is no evidence before the Trial Chamber that this detention facility was "run by the JNA", as alleged in the Indictment. Given the extremely limited evidence from Grujic in relation to this particular detention facility, and the lack of additional evidence in support, it is submitted that paragraph 64(b) should be excised from the Indictment at this stage.

(b) Paragraph 64(f)

137. Paragraph 64(f) refers to a "military barracks in Zrenjanin in Serbia run by the JNA, scores of detainees".

138. The Prosecution relies on evidence from expert witness Grujic, who was asked one question in relation to this detention facility.¹⁷² No evidence has been presented by the Prosecution in relation to who established and subsequently ran the facility and whether any offences were committed at this particular camp. Given the insufficiency of the

¹⁷¹ Testimony from Ivan Grujic on 4.3.03 at Tr.17302: "Q. You have next the camp Kumbor. When did it exist and was it a transit facility, and what can you tell us? A. The Kumbor camp existed during that same time, between October and December 1991, and a small number of detainees we have listed with us was small because it was a transitory camp and detainees from Kumbor were later transferred to Morinje and other areas of Montenegro. Q. And was it a military facility? Do you know? A. I don't know whether it was a military facility or not."

¹⁷² See testimony of Grujic on 4.3.03 at Tr.17304: "Q: In relation to Zrenjanin, just one question: Was that also a transit place? A: According to our information, they would stay in Zrenjanin for a short period of time as well, and there was a place by Zrenjanin called Erka."

evidence presented, it is submitted that the allegations contained within paragraph 64(f) should be excised from the Indictment at this stage. } |

(c) Paragraph 64(h)

139. Paragraph 64(h) refers to the arrest and detention of Croat and other non-Serb civilians in the "Prison in Knin, SAO Krajina run by the JNA, approximately one hundred and fifty detainees."

140. The Prosecution relies on witnesses C-037¹⁷³, Milan Babic¹⁷⁴ and Ivan Grujic¹⁷⁵. None of these witnesses provide direct evidence as to the existence, conditions, organisation, or possible crimes committed at the prison. In the absence of direct evidence in support of this paragraph, it is submitted that it should be excised from the Indictment at this stage in the proceedings. } | 64(h)

(d) Paragraph 64(j)

141. Paragraph 64(j) refers to the arrest and detention of Croat and other non-Serb civilians in "police buildings and the hangar near the railway station in Dalj, SAO SBWS run by the JNA and TO, hundreds of detainees."

142. Three Prosecution witnesses have given evidence in relation to this detention facility.¹⁷⁶ C-13 testified that the detention facilities in Dalj

¹⁷³ C-037 heard about camps in Knin and Udbina in the SAO Krajina from the Croatian media during the war. (See testimony on 30.9.02 at Tr.10453)

¹⁷⁴ Milan Babic heard stories that detained persons were mistreated. He knows that there were two such prisons in Knin, one was controlled by the JNA whereas the other was controlled by the police. Babic received this information from the Minister of Justice, Risto Matkovic who was the first to tell him. (See testimony on 20.11.02 at Tr. 13067)

¹⁷⁵ Grujic provides hearsay evidence in relation to Knin - he states that between August 1991 - November 1991, 671 detainees were kept in Knin (hospital and barracks) (See testimony on 4.3.03 at Tr.17305-17306).

¹⁷⁶ Witnesses C-13, C-1175 and Luka Sutalo.

were "run by the TO."¹⁷⁷ Witness C1175 stated that he and others were detained by the TO and members of the police unit commanded by Stricevic.¹⁷⁸ Luka Sutalo also testified that they were detained by men wearing some sort of police uniform and others wearing civilian clothes.¹⁷⁹ He also stated that the Dalj detention centre was not run by the JNA.¹⁸⁰

143. Therefore, it is submitted that the reference to this facility being "run by the JNA" should be excised from the Indictment.))

(e) Paragraph 64(p)

144. Paragraph 64(p) refers to the "police station in Opatovac, SAO SBWS run by the JNA, scores of detainees."

145. The Prosecution relies upon witness C1126¹⁸¹ in support of this paragraph. This witness was questioned several times at a "local community building" in Opatovac. Some of those soldiers, who were present and/or questioned her, wore JNA uniforms. However, this witness makes no reference to the police station in Opatovac, as charged in the Indictment. Furthermore, no other witness has been called in respect of the "police station" operating as a detention facility, where crimes were alleged to have been committed. It is therefore submitted that this paragraph should be excised from the Indictment.))

64(p)

¹⁷⁷ See testimony of witness C-13 on 28.8.03 at Tr.25575-25578.

¹⁷⁸ See testimony of witness C1175 on 27.8.03 at Tr.25464. At Tr.25469, the witness is asked whether he saw the JNA unit in Dalj arresting or mistreating anyone, to which the witness responded "no".

¹⁷⁹ Luka Sutalo acquiesced that the Dalj detention centre was not run by the JNA but by men wearing some sort of police uniform and by others wearing civilian clothes - see testimony on 28.8.03 at Tr.25575-25578.

¹⁸⁰ *Ibid.*

were "run by the TO."¹⁷⁷ Witness C1175 stated that he and others were detained by the TO and members of the police unit commanded by Stricevic.¹⁷⁸ Luka Sutalo also testified that they were detained by men wearing some sort of police uniform and others wearing civilian clothes.¹⁷⁹ He also stated that the Dalj detention centre was not run by the JNA.¹⁸⁰

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¹⁷⁷ See testimony of witness C-13 on 28.8.03 at Tr.25575-25578.

¹⁷⁸ See testimony of witness C1175 on 27.8.03 at Tr.25464. At Tr.25469, the witness is asked whether he saw the JNA unit in Dalj arresting or mistreating anyone, to which the witness responded "no".

¹⁷⁹ Luka Sutalo acquiesced that the Dalj detention centre was not run by the JNA but by men wearing some sort of police uniform and by others wearing civilian clothes - see testimony on 28.8.03 at Tr.25575-25578.

¹⁸⁰ *Ibid.*

(iv) Counts 17 to 20

146. Counts 17 to 20 charge the Accused with extensive damage and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (grave breach); wanton destruction of villages, or devastation not justified by military necessity (violation of the laws or customs of war); destruction or wilful damage done to institutions dedicated to education or religion (violation of the laws or customs of war) and the plunder of public or private property (violation of the laws or customs of war) respectively.

(a) Paragraph 71

147. Paragraph 71 lists villages in the SAO SBWS, SAO Western Slavonia and SAO Krajina where it is alleged that intentional and wanton destruction and plunder took place.

148. The following villages are included within paragraph 71: (a) Nadin; (b) Celija; (c) Sarengrad; (d) Bruska and (e) Bapska.

Nadin

149. The only evidence called by the Prosecution in relation to the village of Nadin is general hearsay evidence from C-061.¹⁸² In the submission of the Amici Curiae this evidence is insufficient to found the factual allegations in support of counts 17-20.

¹⁸¹ C1126 testified on 3.7.03. See also Prosecution Exhibit 485 (witness statement).

Celija

150. The evidence called by the Prosecution in relation to Celija concerns findings at a mass grave site found at this location.¹⁸³ No evidence has been presented in relation to Celija which supports counts 17-20.

Sarengrad

151. Prosecution witness C1136 gave evidence in relation to Sarengrad.¹⁸⁴ This witness provided evidence of the shelling of Sarengrad on 4 October 1991. However, neither the witness's statement nor testimony supports counts 17-20.

Bruska

152. There is some evidence of looting and destruction in the village of Bruska. However, in the submission of the Amici Curiae, this evidence is too remote and cannot be linked to the perpetrators of this crime.¹⁸⁵

Bapska

153. Evidence in support of counts 17-20 in the village of Bapska has not been presented by the Prosecution at trial.

¹⁸² See Tr.13065 and 13405 set out in footnote 145 above.

¹⁸³ See the testimony of Prosecution witnesses Crujic on 3.3.03 at Tr.17290; Davor Strinovic on 14.3.03 at Tr.17944 and 17948 and Luka Sutalo on 28.8.03 at Tr.25575.

¹⁸⁴ See the testimony of C1136 on 27 August 2003 at Tr.25411-25462; Exhibit 516.

¹⁸⁵ Exhibit 576 at p.4: witness statement of Jasna Denona: "In 1995, after the area was liberated, I went back to see my family home in Bruska. The house had been looted and even the doors and the windows were stolen. It was full of ammunition including rifle ammunition, hand grenades, artillery shells, and I do not know what else."

Submission

154. It is submitted that the names of the aforementioned villages should be excised from paragraph 71 of the Indictment. $\left. \right\}$

V. BOSNIA

A. The Indictment

155. The Accused faces twenty-nine counts on the Indictment in respect of Bosnia. He is charged with genocide,¹⁸⁶ complicity in genocide,¹⁸⁷ crimes against humanity (Article 5 of the ICTY Statute),¹⁸⁸ violation of the laws or customs of war (Article 3 of the ICTY Statute)¹⁸⁹ and grave breaches of the Geneva Conventions (Article 2 of the Statute).¹⁹⁰ All the counts relate to both forms of individual criminal responsibility as set out in Article 7(1) and Article 7(3) of the ICTY Statute.¹⁹¹

B. Genocide - Counts 1 and 2

156. The Accused is charged with genocide and in the alternative, complicity in genocide.

¹⁸⁶ Count 1 (genocide) Article 4(3)(a) Statute

¹⁸⁷ Count 2 (complicity in genocide) Article 4(3)(e) Statute

¹⁸⁸ See count 3 (persecution) Article 5(h) Statute; count 4 (extermination) Article 5(b) Statute; count 5 (murder) Article 5(a) Statute; count 8 (imprisonment) Article 5(e) Statute; count 9 (torture) Article 5(f) Statute; count 10 (inhumane acts) Article 5(i) Statute; count 16 (deportation) Article 5(d) Statute; count 17 (inhumane acts (forcible transfers)); count 23 (murder) Article 5(a); count 24 (inhumane acts) Article 5(i).

¹⁸⁹ See count 7 (murder) Article 3 Statute, count 14 (torture) Article 3 Statute, count 15 (cruel treatment) Article 3 Statute, count 20 (wanton destruction of villages or devastation not justified by military necessity) Article 3(b) Statute; count 21 (wilful destruction or wilful damage done to institutions dedicated to education or religion) Article 3(d) Statute, count 22 (plunder of public or private property) Article 3(e) Statute, count 27 (murder) Article 3 Statute, count 28 (cruel treatment) Article 3 Statute, count 29 (attacks on civilians) Article 3 Statute.

¹⁹⁰ See count 6 (wilful killing) Article 2(a) Statute, count 11 (unlawful confinement) Article 2(g) Statute, count 12 (torture) Article 2(b) Statute; count 13 (wilfully causing great suffering) Article 2(c); count 18 (unlawful deportation or transfer) Article 2(g) Statute; count 19 (extensive destruction and appropriation of property) Article 2(d) Statute; count 25 (wilful killing) Article 2(a) Statute; count 26 (wilfully causing great suffering) Article 2(c) Statute.

¹⁹¹ Article 7(1): that he planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the crimes. Article 7(3): superior criminal responsibility if he knew or had reason to know that a subordinate was about to commit such acts (in articles 2 or 5) or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.

(i) The Law

157. For the purposes of this submission, the Amici Curiae do not intend to set out the law on genocide in detail. The crime of genocide under Article 4(3)(a) of the Statute requires: (a) one or more of the acts enumerated in Article 4(2)¹⁹²; and (b) the *mens rea* of the offence, consisting of the special intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.¹⁹³
158. The defining feature of genocide is that it must be proven that the alleged offender possessed the "specific intent" or *dolus specialis* to destroy the group in whole or in part. Where this intent is not established, the act remains punishable, but not as genocide. It may be classified as a crime against humanity.
159. For the crime of complicity in genocide, it must first be proved that the offence of genocide has been committed. It is not necessary for the perpetrator of the original offence to have been tried.¹⁹⁴ Various forms of participation can constitute complicity including, "*complicity by procuring means, such as weapons; complicity by knowingly aiding and abetting; and complicity by instigation.*"¹⁹⁵ An individual cannot be both a principal perpetrator and the accomplice thereto in respect of a particular act.

¹⁹² Article 4(2): Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part; (d) imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

¹⁹³ The Prosecutor v. Jelicic, Trial Chamber, Judgement, para.62; The Prosecutor v. Krstic, Trial Chamber, Judgement, at para.542.

¹⁹⁴ The Prosecutor v. Akayesu, ICTR, Trial Chamber Judgement, 2 September 1998, paras. 529-531.

¹⁹⁵ Archbold International Criminal Courts, Practice, Procedure and Evidence by Rodney Dixon and Karim Khan, at 13-28. See The Prosecutor v. Akayesu, Trial Chamber Judgement, paras.538-545.

160. The *mens rea* requirement of complicity is that the accomplice "*knew of the assistance he was providing in the commission of the principal offence. For the purposes of complicity in genocide, the intent is that the accomplice knowingly aided or abetted one or more persons to commit genocide. An accomplice need not, thus, possess the specific intent to destroy the group in whole or in part.*"¹⁹⁶

(ii) **Submissions**

161. The following submissions are made in relation to the *mens rea* of the crime of genocide and the forms of liability with which the Accused is charged. No concessions or admissions are made in relation to proof of the crime of genocide at this stage in the proceedings:

It is submitted that:

- (a) There is no evidence that the Accused possessed the requisite "special intent" required to commit the crime of genocide.
- (b) There has been no evidence of acts and/or conduct of the Accused which could be interpreted as declarations of an intention to commit genocide.
- (c) The crimes in Schedules A, B and C of the Bosnia Indictment, if proved, do not provide evidence of specific intent for the crime of genocide by their scale or context, which was primarily territorial in nature.

¹⁹⁶ Ibid.

- (d) In respect of Article 7(1) liability, there is no evidence that the Accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a genocide, or any genocidal acts.
- (e) Pursuant to Article 7(1) the Accused is also charged with third category joint criminal enterprise liability ("JCE III").¹⁹⁷ It is submitted that there is no evidence that the crime of genocide was within the object of the *alleged* joint criminal enterprise. Furthermore, the *mens rea* of the offence of genocide, namely that the Accused possess the special intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, cannot be reconciled and is not compatible with the *mens rea* requirement for a conviction pursuant to JCE III.¹⁹⁸ The latter consists of mere "*foreseeability*" that such a crime might be perpetrated by one or other members of the group. It is

¹⁹⁷ The Prosecutor v. Tadić, Case No. IT-94-I-A, Appeals Judgement, 15 July 1999, para.204: "The third category concerns cases involving a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the execution of that common purpose." For the *mens rea* requirement of JCE III, see para.228: "With regard to the third category, what is required is the intention to participate in and further the criminal activity or the criminal purpose of a group and to contribute to the joint criminal enterprise or in any event to the commission of a crime by the group. In addition, responsibility for a crime other than the one agreed upon in the common plan arises only if, under the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group and (ii) the accused willingly took that risk."

¹⁹⁸ The Prosecutor v. Stakić, Case No. IT-97-24-T, Judgement, 31 July 2003, para. 530, p.150: "According to this Trial Chamber, the application of a mode of liability cannot replace a core element of a crime. The Prosecution confuses modes of liability and the crimes themselves. Conflating the third variant of joint criminal enterprise and the crime of genocide would result in the *actus reus* being so watered down that it is extinguished. Thus, the Trial Chamber finds that in order to "commit" genocide, the elements of that crime, including the *actus reus* must be met. The notions of "escalation" to genocide, or genocide as a "natural and foreseeable consequence" of an enterprise not aimed specifically at genocide are not compatible with the definition of genocide under Article 4(3)(a)." [Emphasis added.] It is submitted that the *actus reus* requirement of genocide "is incompatible with the notion of genocide as a natural and foreseeable consequence of a crime other than genocide agreed to by the members of the JCE. See The Prosecutor v. Radislav Brđjanin, Case No. IT-99-36-T, Decision on Motion For Acquittal Pursuant to Rule 98bis, 28 November 2003. See para. 57: "The Trial Chamber reiterates that the specific intent required for genocide is set out in paragraph 52 above. This specific intent cannot be reconciled with the *mens rea* required for a conviction pursuant to the third category of JCE. The latter consists of the Accused's awareness of the risk that genocide would be committed by other members of the JCE. This is a different *mens rea* and falls short of the threshold needed to satisfy the specific intent required for a conviction for genocide under Article 4(3)(a). For this reason, the Trial Chamber has found that there is no case to answer with respect to count 1 in the context of the third category of JCE." This decision has been appealed by the Prosecution: See Prosecution's Appeal From Trial Chamber's Decision on Motion for Acquittal Pursuant to Rule 98bis, filed 10 December 2003. At the date of filing, the Appeals Chamber has not delivered a decision in relation to this issue.

submitted that the Prosecution must prove that the Accused possessed the specific intent required for genocide before a conviction can be entered.¹⁹⁹ In the absence of proof of the Accused's *dolus specialis*, he cannot be convicted of genocide pursuant to JCE III. The concept of joint criminal enterprise is not a "separate offence in itself".²⁰⁰

- (f) In respect of Article 7(3) liability, it is submitted that the specific intent requirement of genocide cannot be reconciled and is not compatible with the simple *mens rea* requirement of command responsibility. The knowledge requirement of command responsibility ("knew or had reason to know") falls short of the "specific intent" required for genocide. It is submitted that the possession of knowledge is not of itself sufficient to prove intent to commit genocide. What is required is proof that any acts or conduct of an Accused were deliberately intended to cause genocide. Furthermore, an Accused who merely "should have known" that his subordinates were committing crimes of genocide, cannot possibly have the specific intent to destroy an ethnic group."²⁰¹

¹⁹⁹ See William Schabas' commentary in *The New England Law Review*, Volume 37, Number 4, page 1015 "Mens Rea and the International Criminal Tribunal For the Former Yugoslavia" in relation to the conviction of Krstic for genocide, based upon the JCE theory of criminal liability: "The Trial Chamber never really concluded that he actually intended to commit genocide - a requirement of the chapeau to article 4(2) of the Statute - but only that genocide was a "natural and foreseeable" consequence of a criminal plan to ethnically cleanse Srebrenica, and that a reasonable person would have "surmised" such a development. Dilution of the *mens rea* standard in the case of prosecutions that rely upon superior responsibility or joint criminal enterprise raises issues of a policy nature. Granted, these two techniques facilitate the conviction of individual villains who have apparently participated in serious violations of human rights. But they result in discounted convictions that inevitably diminish the didactic significance of the Tribunal's judgements and that compromise its historical legacy." Emphasis added.

²⁰⁰ The Prosecutor v. Milutinovic et al, Appeals Chamber Decision, para.44: The Appeals Chamber explicitly held that it "does not view the concept of joint criminal enterprise as a separate offence in itself, but only as a mode of committing one of the offences prescribed by articles 2 to 5 of the Statute."

²⁰¹ See "The Jelavic Case and the Mens Rea of the Crime of Genocide" by William Schabas, 14 *Leiden Journal of International Law* 125-139 (2001) at p. 132. In the Krstic case, the Trial Chamber did not enter a judgement under Article 7(3), as the Chamber was of the view that the Accused's guilt was "sufficiently expressed in a finding of guilt under Article 7(1)." There have been a number of convictions by the ICTR for genocide committed on the basis of superior responsibility. "In each case, the Trial Chamber accepted evidence that the superior had actual knowledge of the behaviour of the subordinate rather than mere "reason to know". Although the convictions rely upon the superior responsibility provision, in reality the crimes look more like one of complicity by omission." (See Schabas's article cited above. See also The Prosecutor v. Serushago, Case No. ICTR-98-39-S, Sentence, 2 February 1999; The Prosecutor v. Kayishema & Ruzindana, Case No.

- (g) In the alternative, it is submitted that under Article 7(3) there is insufficient evidence that the Accused exercised "effective control" over the perpetrators of the alleged crime of genocide. Further, it is submitted that there is no evidence that (a) a subordinate of the Accused killed individual Bosnian Muslims or Bosnian Croats with the intent to destroy them as a group and (b) that the Accused "knew²⁰² or had reason to know"²⁰³ that a subordinate of the Accused was about to commit genocide, or had done so, and that the Accused failed to take the necessary and reasonable measures to prevent such acts or to punish.
- (h) In relation to count 2 (complicity in genocide), there is no evidence that the Accused knowingly aided or abetted one or more persons to commit genocide.

162. For the aforementioned reasons, the Amici Curiae submit that Counts 1 and 2 should be excised from the Bosnia Indictment at this stage in the proceedings. } }

ICTR-95-1-T, Judgement, 21 May 1999, para.473; The Prosecutor v. Musema Case No. ICTR-96-13-T, Judgement, 27 January 2000, paras. 894, 899, 905, 914, 924.

²⁰² International Law Developments in the Case Law of the ICTY, Edited by Gideon Boas and William Schabas, Crimes of the Commander: Superior Responsibility under Article 7(3) of the ICTY Statute, by Daryl A Mudis, p.256: "The term "knew" entails actual knowledge, which may not be presumed and may be established either through direct evidence or actual knowledge or circumstantial evidence from which it can be inferred that the commander must have had actual knowledge. (See The Prosecutor v. Aleksovski, Judgement, Case No. IT-95-14/I-T, 25 June 1999, para.80)

²⁰³ The Prosecutor v. Delalic et al, Case No. IT-96-21-A, Appeals Chamber, Judgement, para.241: The Prosecution must demonstrate that "information of a general nature was available to the superior that would have put him or her on notice of offences committed by subordinates." This information need not be conclusive that crimes were committed, but rather, "it is sufficient that the superior was put on further inquiry by the information, or, in other words, that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by his subordinates." (para.239)

C. INDICTMENT ANALYSIS

163. Schedules A-F of the Bosnia Indictment itemise the alleged crimes with which the Accused is charged. In the interests of efficiency, the Amici Curiae's Rule 98bis submissions are similarly set out in schedule form. The Amici Curiae's Schedules A-F contain only those alleged crimes upon which it is submitted that there is either no evidence or insufficient evidence to sustain the retention of the allegation within the Indictment at this stage.

Schedule A - Killings not Associated with Detention Facilities

No.	Place/Event	Comment on Evidence	
2	Bosanski Novi - In Blagaj Japra, 7 Bosnian Muslim men were killed during the expulsion of Bosnian Muslims	No evidence	09-Jun-92
2	Bosanski Novi - In Alici, 27 Bosnian Muslim men were killed.	No evidence	23-Jun-92
5	Foca - In Filipovici, at least 5 Bosnian Muslims were killed by Serb soldiers in a military warehouse.	N.B. Proved by witness Taranin 10/7/03. Witness B-1011 referred to in Prosecution fill-box deals with Brcko.	26-Apr-92
5	Foca In Jelec, 18 Bosnian Muslims, including elderly people and 8 members of one family, were executed by JNA soldiers.	No evidence	4-10-May-92
5	Foca In Brod, 14 Bosnian Muslim men from Trnovaca were executed by Serb soldiers.	No evidence	22-Jun-92
6	Gacko 2 Muslim males killed by Serbs in a field near Mount Zelengora	No evidence	18-Jun-92
6	Gacko At least 8 Muslims killed by Serb soldiers near Mount Zelengora	No evidence	18-23-June-92
7	Kljuc In Prhovo, 38 Bosnian Muslim villagers, including women and children, were killed by shooting and grenades.	No evidence	01-Jun-92
8	Kotor Varos In Kotor Varos town, approximately 13 non-Serbs were killed in and around the Medical Centre.	No evidence	25-Jun-92
8	Kotor Varos In a barn in Dabovci, at least 15 Bosnian Muslim men were killed.	No evidence	Aug-92
8	Kotor Varos In Grabovica, a large number of Bosnian Muslim and Bosnian Croat detainees were held in the Grabovica School, beaten and never seen again.	No evidence	Nov-92
9	Nevesinje At or near Lipovaca and Dubrovaci, at least 34 Bosnian Muslim men, women and children were killed.	No evidence	Jun-Jul-92
	Nevesinje Near Kiser,	No evidence	mid July-

	approximately 17 Bosnian Muslim civilians were killed by Serb soldiers		92
10	<u>Prijedor</u> In Hambarine and Behlici, at least 3 Bosnian Muslims were killed.	Insufficient evidence. B1369 (Exhibit 658) refers to the attack on Hambarine on 23 May 1992. Hearsay evidence from B1032 (Exhibit 656)	11-Jun-1-Jul-92
	<u>Prijedor</u> In Kamicani, approximately 8 non-Serbs were killed in Mehmed Sahoric's house.	No evidence	26-May-92
	<u>Prijedor</u> In Jaskici, at least 19 Bosnian Muslim men were killed.	No evidence	14-Jun-92
	<u>Prijedor</u> In Brisevo, at least 68 non-Serbs were killed during the attack	No evidence	24-Jul-92
	<u>Prijedor</u> In Kipe iron ore mine (near Ljubija), at least 8 Bosnian Muslim men were executed.	No evidence	25-Jul-92
	<u>Prijedor</u> In Ljubija, at least 3 Bosnian Muslim men were executed at the football stadium.	Insufficient evidence. See witness B1369 at Exhibit 658 in relation to hearsay evidence concerning this allegation.	25-Jul-92
	<u>Prijedor</u> In Tomasica, 4 non-Serbs were killed.	No evidence	03-Dec-92
11	<u>Prnjavor</u> In Lisnja, 4 Bosnian Muslim men were executed	Insufficient evidence. Witness B-1610 9/9/03, Ex 532 Tr. p.16017 - "Tito Porok told us I had killed these guys" Evidence in cross-examination on the issue did not establish manner of cause of death - could have been aggression or self-defence. 9/9/03 Tr.p. 26183-84 "Q. Do you know how they were killed, how they lost their lives? Do you know anything about that? A.. No, I don't know anything about that, but I do know that they were killed, and I do know that there was a cross drawn on their bodies Q. Tell me, were they killed during the fighting that took place there or were they executed by someone? Which is it? A. Well, there wasn't any fighting going on there. Not a single bullet was	May-92

		<p>fired. There was no fighting, no combat. Q. And where did these people actually come from? How did these men come to be killed?</p> <p>A. I don't know how they were killed. All I do know is that their bodies were found and that they had to be buried in the morning.</p> <p>Q. All right. So you don't know how they were in fact killed.</p>	
12	<u>Sanski Most</u> In Donji Kruhari near Skrljevita, 5 Bosnian Croat men were killed.	No evidence	02-Nov-92
	<u>Sanski Most</u> In Sasina, at least 65 non-Serb men were executed by members of Arkan's Tigers under the direct command of Arkan	Insufficient evidence.	21-Sep-95
13	<u>Srebrenica</u> No.7. Kozluk (Zvornik Municipality), at least 340 Bosnian Muslim men.	No evidence- Witnesses dealing with Kozluk - (a) <u>Banjanovic</u> 9/5/03, Tr.p.20614 Ex 444 R.92 bis and 19/5/03 Tr.p.20626 (b) <u>B-024</u> 5/6/03 Tr.p.21894 (c) <u>Riviere</u> 28/10/03 Tr.p.28139	15/16-Jul-95
14	<u>Visegrad</u> In Bikavac settlement, approximately 70 Bosnian Muslim and other non-Serb civilians were burnt to death in a house ignited by Serb paramilitaries led by Milan Lukic.	Insufficient evidence - Witness B-1054 29/8/03 Tr.p.25596 R.92 bis Ex 522 gives evidence of deaths of civilians from Koritnik in Visegrad by fire caused by Lukic. At Tr.p 25600 "And finally after escaping from Visegrad, did you learn that this group had perpetrated a similar crime to another group of Muslim civilians in a house in Visegrad, without going into the detail of that event? A. Yes, at the Bikavac, about 80 people were burnt by this same group. Again, these were civilians, elderly people and children." Only heard about deaths by fire in Bikavac.	27-Jun-92
15	<u>Vlasenica</u> In Drum (Vlasenica town) approximately 22 Bosnian Muslim men were killed.	Insufficient evidence.	

15	<u>Vlasenica</u> In Zaklopaca, at least 58 Bosnian Muslim men, women and children were executed during the Serb attack on the village.	No evidence	16-May-92
17	<u>Ilijas (Greater Sarajevo)</u> In Ljesevo, 21 Bosnian Muslims were killed.	No evidence	04-Jun-92

Schedule B - Killings Associated with Detention Facilities

No.	Place/Event	Comment on Evidence	
1	<u>Banja Luka</u> Between Krings camp and Manjaca camp, approximately 20 non-Serb men were killed during transportation between the camps.	No evidence	04-Jul-92
2	<u>Bileca</u> In SUP Detention facility, 2 non-Serb detainees killed.	No evidence	25-Jun -18 Dec-92
4	<u>Bosanski Samac</u> In Crkvina camp, approximately 17 non-Serb detainees were killed.	Evidence of 16 killed on 7 May 1992. See Witness B1643, Exhibit 654.	06-May-92
7	<u>Cajnice</u> At Mostina Hunting Lodge, 53 non-Serbs killed.	Insufficient evidence. Witness Malesevic 10/3/03 Tr.P.17431-32 "I'm going to ask you about five more locations. Number 11, Cajnice. A. The hunting lodge Mostina, where about 100 detainees were kept. Again the conditions were horrific. They were starved, tortured, beaten up. But in July, after the death of a combatant at the Gorazde front, a massacre occurred. More than 62 inmates were killed on that occasion. A witness survived this and can testify about it." Hearsay and no direct evidence of the event.	19-May-92
9	<u>Gacko</u> 5 Bosnian men killed in the SUP building in Gacko	No evidence.	3-Jul-92
10	<u>Kalinovik</u> Approximately 23 Muslim men and boys from the Gunpowder warehouse shot in a field near Ratine.	Insufficient evidence. Witness Malesevic 10/3/03 Tr.P.17432: Q. Number 15, Kalinovik, please. A. Kalinovik. The gunpowder warehouse there where 101 detainees were kept. Our witness, the only survivor from that camp, describes how they were liquidated. After a certain period of time, they were forced to board trucks waiting for them. There were three trucks, and they tied the	05-Aug-92

		<p>detainees and telling them to move on, that they were going to take them to the prison in Foca. However, on the way there, the truck on which our witness was stopped. They were told to get off. Four detainees were selected from the group, and the rest were executed. Our witness was just wounded, and he watched the whole scene. These four were untied and told to throw in the bodies into a shed, and then they too entered and then four men in uniform poured gasoline over the bodies and some tyres and set fire to them. Our witness managed to survive and to testify about this.</p> <p>Q. Thank you. A. This was a group of 23. As for the others --</p> <p>Q. Sorry. The group of 23 that were burned; is that correct?</p> <p>A. Yes. And as for the others, we don't know how they ended up.</p>	
14	<u>Sanski Most</u> Near Hrastova Glavica, approximately 100 non-Serb men taken from Keraterm and Omarska camps were killed.	Insufficient evidence.	05-Aug-92
14	<u>Sanski Most</u> At Sanakeram ceramics factory, at least 10 non-Serb men were killed	No evidence.	30-Sep-09- Oct-92
15	<u>Teslic</u> In Teslic town, at least 5 non-Serb men were killed at the Territorial Defence building.	No evidence	Jun-92
17	<u>Zvornik</u> At Novi Izvor building, at least 2 non-Serb male detainees were killed.	Insufficient evidence: B1461 (Exhibit 437) and B1516 (Exhibit 606) refer to 11 prisoners at the Novi Izvor building, who were taken away to search houses, and not seen again. There is no evidence that these persons were subsequently killed.	May-92

Schedule C - Detention Facilities

No.	Place/Event	Comment on Evidence	
2	<u>Bihac</u> Traktorski Servis, Ripac (garages and houses)	<p>Insufficient evidence. See Witness Malesevic date 10/3/03 Ex 404 Tr.p.17429 "MR. NICE: Tab 7 of Exhibit 404, please. And again this is a document really to become a document of record rather than one that we need go through in detail.Q. Have you prepared a list of the detention facilities under Serbian control? And we can see simply on page 1, for example, the ten facilities you've identified within that period of years in Banja Luka, or further down the page, the 15 that you've identified in Bijeljina. And if we go to the last page, we will see that you total those facilities as the that you have given us in evidence.A. Yes. Yes. We compiled this list in the Centre for Research and Documentation on the basis of statements that we had available to us. And for all these detention facilities, we have documentation and members who are willing to provide more detailed information about them, if necessary." Tr.p. 17429 "Tab 8. It's the page from the indictment against this accused, page 29, and it's the Schedule C identifying detention facilities. Have you reviewed this list of detention facilities referred to in the indictment? A. Yes, I have, and found that all the camps were recorded in our Alliance, all these detection facilities." Hearsay and not direct evidence of the place.</p>	Jul-Oct-92
4	<u>Bileca</u> SUP Detention facility.	Insufficient evidence, see argument at point 2.	10 June- 19 Dec 1992
4	<u>Bileca</u> Student Hostel (Dacki Dom).	Insufficient evidence, see argument at point 2.	25 June - 5 Oct 1992
8	<u>Bosanski Novi</u> Bosanska Kostajnica Police Station	Insufficient evidence, see argument at point 2.	May-Jul-92
11	<u>Cajnice</u> Mostina Hunting Lodge	Insufficient evidence, see argument at point 2 and Witness	April, May 1992

		Malesevic 10/3/03 Tr.P.17431-32 "I'm going to ask you about five more locations. Number 11, Cajnice. A. The hunting lodge Mostina, where about 100 detainees were kept. Again the conditions were horrific. They were starved, tortured, beaten up. But in July, after the death of a combatant at the Gorazde front, a massacre occurred. More than 62 inmates were killed on that occasion. A witness survived this and can testify about it." Hearsay and not direct evidence of the place.	
11	<u>Cajnice</u> Cajnice SUP building	Insufficient evidence, see argument at point 2.	June-July 1993
12	<u>Dobo</u> Seslija Camp	Insufficient evidence, see argument at point 2.	Mar-Oct-93
15	<u>Kalinovik</u> Gunpowder warehouse between Jelasica and Jazici.	Insufficient evidence, see argument at point 2 and Witness Malesevic 10/3/03 Tr.P.17432: Q. Number 15, Kalinovik, please. A. Kalinovik. The gunpowder warehouse there where 101 detainees were kept. Our witness, the only survivor from that camp, describes how they were liquidated. Hearsay and not direct evidence.	5 July-5-Aug-92
16	<u>Kotor Varos</u> Kotor Varos Prison	Insufficient evidence, see argument at point 2.	Jun - Nov-92
16	<u>Kotor Varos</u> Kotor Varos Sawmill	Insufficient evidence, see argument at point 2.	Jun-92
16	<u>Kotor Varos</u> Kotor Varos Police Station	Insufficient evidence, see argument at point 2.	May-Sep 92
16	<u>Kotor Varos</u> Kotor Varos Elementary School	Insufficient evidence, see argument at point 2.	Aug-Sep 92
17	<u>Nevesinje</u> Central Heating Factory (Kilavci)	Insufficient evidence, see argument at point 2.	Jun-Jul 92
18	<u>Prijedor</u> Miska Glava	Insufficient evidence, see argument at point 2.	Jul-92
20	<u>Sanski Most</u> Boiler Room of Old Hotel.	Insufficient evidence, see argument at point 2.	21-Sep-95 to 25-Sep-95
21	<u>Testic</u> Pribinic (old post office)	Insufficient evidence, see argument at point 2.	Jun-Oct 92
21	<u>Testic</u> TO Building	Insufficient evidence, see argument at point 2.	Jun-92
21	<u>Testic</u> SUP Building	Insufficient evidence, see argument at point 2.	Jun-92

22	<u>Visegrad</u> Detention centre in tourist hotel in Vilina Vlas.	Insufficient evidence, see argument at point 2. Furthermore, it is submitted that there is insufficient evidence that the hotel was a detention centre as opposed to a place where the witness and others were temporally confined. See Witness B1510, Exhibit 661.	01-May-92
22	<u>Visegrad</u> Uzamnica, a former military warehouse and barracks.	Insufficient evidence, see argument at point 2.	Aug-92 - Oct-94

Schedule D - Forcible Transfers

No.	Place/Event	Comment on Evidence	Deportations
1	<u>Banja Luka</u> Deportations to Hungary 19359	Evidence of forcible transfer, but no evidence from Prosecution witnesses of deportation of persons from Banja Luka into Hungary.	Hungary
2	<u>Bileca</u> Deportations to Montenegro 993	No evidence of forcible transfer or deportation. The evidence presented at trial relates to the camps/prison in Bileca, not forcible transfer or deportation from Bileca.	Montenegro
5	<u>Bosanska Krupa:</u> Bosanska Krupa 1439 Buzim 389 Krupa na Uni 1	There is evidence of forcible transfer from Bosanska Krupa. However, there is no evidence of forcible transfer from Buzim. The evidence in relation to Buzim refers to its aspirations to become a separate municipality [See the testimony of Easad Velic on 24.11.03 at Tr.29578.] There is no evidence of forcible transfer from Krupa na Uni.	
6	<u>Bosanska Dubica</u> 3310	No evidence of forcible transfer.	
7	<u>Bosanska Gradiska</u> 7516	No evidence of forcible transfer.	
9	<u>Bosanski Petrovac:</u> Bosanski Petrovac 778 Petrovac unknown	No evidence of forcible transfer. The evidence at trial in relation to this location refers to the bombing of a column of civilian refugees in the vicinity of Bosanski Petrovac (Tr.24668 on 22.7.03) 80	

12	<u>Brcko:</u> Ravne / Rahic 1532	There is evidence of forcible transfer from Brcko, but not in relation to Ravne/Rahic which is cited in Schedule D.	
13	<u>Cajnice</u> 2214	No evidence of forcible transfer.	
14	<u>Celinac</u> 608	No evidence of forcible transfer.	
16	<u>Donji Vakuf</u> 1729	No evidence.	
19	<u>Gorazde</u> Gorazde FBiH Srpsko Gorazde	Insufficient evidence.	
20	<u>Kalinovik</u> 612	No evidence of forcible transfer from this location.	
22	<u>Kotor Varos</u> 6870	No evidence of forcible transfer.	
26	<u>Rogatica</u> 6650	No evidence of forcible transfer.	
23	<u>Nevesinje</u> 1483	No evidence of forcible transfer.	
25	<u>Prnjavor</u> 3490	No evidence of forcible transfer.	
27	<u>Rudo</u> Deportations to Macedonia 1614	No evidence of forcible transfer or deportation to Macedonia.	Macedonia
30	<u>Sekovici</u> 162	No evidence of forcible transfer.	
31	<u>Sipovo</u> 1427	Insufficient evidence of forcible transfer.	
32	<u>Sokolac</u> 2670	No evidence.	
33	<u>Teslic</u> 7789	No evidence. No reference to forcible transfers from Teslic municipality. Mr Vasiljevic on 18.2.03 refers to killings by the Red Berets in Teslic, but not forcible transfer (Tr.16326)	

34	<p><u>Trebinje:</u> Trebinje 3116 Ravno 201</p>	<p>Insufficient evidence of forcible transfer. The evidence cited in relation to Ravno concerns killings, not forcible transfer : Stjepan Kljuic (15.7.03) at Tr.p.24448.</p>	<p>Insufficient evidence of forcible transfer from Trebinje.</p> <p>C-017 and Babic provide evidence in relation to Trebinje.</p> <p>C-017: (10.6.03) at Tr. P. 22049-50 - this evidence relates to people being sent to Trebinje.</p> <p>C-017: (10.6.03) at Tr.p.22014-15 - this evidence concerns C-107's arrest in Trebinje.</p> <p>Babic: (22.11.02) at Tr.p.13347 - evidence concerning reserves to be situated in Trebinje.</p>
36	<p><u>Vlasenica</u> 6942</p>	<p>Insufficient evidence of forcible transfer.</p>	<p>See B1056 Ex 597.</p>
38-45	<p><u>City of Sarajevo and Greater Sarajevo</u></p>	<p>There is evidence of forcible transfer from Hadzici in Greater Sarajevo. Insufficient evidence in relation to the other locations.</p>	

Schedule E - Sarajevo Sniping Incidents

No.	Place/Event	Comment on Evidence	
1	Fadila ZGODIC, a woman aged 52 years, was shot and wounded in the hip while carrying bread near Darovalaca Krvi Street, presently Kolodvorska Street, in the area of Novo Sarajevo.	No evidence.	7 Nov 1992
2	Anisa PITA, a girl aged 3 years, was shot and wounded in the right leg as she was taking off her shoes while on the porch of her residence on Zagrici Street in the Sirokaca area of Sarajevo.	No evidence.	13 Dec 1992
3	The victim, a girl aged 9 years, was shot and wounded in the back as she played in the front garden of her house in the Sedrenik area of Sarajevo.	No evidence.	17-Apr-93
4	Muhamed HAZNADAREVIC, a man aged 52 years, was shot and wounded in the back and chest while trying to tend a vegetable plot in Slatinski Put 5, presently Slatinski Put 13, Kobilja Glava, north of Sarajevo.	No evidence.	25-Jun-93
5	Almasa KONJHODZIC, a woman aged 56 years, was shot dead near the junction of Dure Dakovica and Kranjcevic Street, presently Alipasina and Kranjcevic, while walking with her family.	No evidence.	27-Jun-93
6	Munira ZAMETICA, a woman aged 48 years, was shot dead while collecting water from the Dobrinja River in area of Dobrinja II and III.	No evidence.	11-Jul-93
7	Mejra JUSOVIC, a woman aged 45 years, was shot and wounded while pulling a load of wood towards her home near Rasadnjak, Sedrenik area, Sarajevo.	No evidence.	24-Jul-93
8	Vildana KAPUR, a woman aged 21 years, was shot and wounded in	No evidence.	05-Aug-93

	the leg while transporting water home along Stara cesta, Hotonj area.		
9	Nafa TARIC, a woman aged 35 years, and her daughter Elma TARIC, aged 8 years, were shot by a single bullet while walking together in Ivana Krdelja Street, in the centre of Sarajevo. The bullet wounded the mother in the left thigh and wounded the daughter on the hand and in the abdomen.	No evidence.	03-Sep-93
10	Sacir BOSNIC, a man aged 56 years, was shot dead while gathering wood across the road from the Hambina Carina Reservoir and adjacent to Zelengorska Street, presently Hambina Carina Street, at Sirokaca, Skenderija.	No evidence.	07-Sep-93
11	Faruk KADRIC, a boy aged 16 years, was shot and wounded in the neck while riding as a passenger in his father's truck along Ante Babica Street, in the west end of Sarajevo.	No evidence.	04-Oct-93
12	Edin RAMOVIC, a man aged 29 years, was shot and wounded in the left upper arm while walking in Stara cesta Road, in the Bare area of Sarajevo.	No evidence.	07-Oct-93
13	Ramiz VELIC and Milan RISTIC, aged 50 and 56 years respectively, were wounded by a burst of gunfire while they were working clearing rubbish along Brace Ribara Street, presently Porodice Ribar Street, in the Hrasno area of Sarajevo.	No evidence.	02-Nov-93
14	Ramiza KUNDO, a woman aged 38 years, was shot and wounded in the left leg while she and another woman were returning from a	No evidence.	02-Nov-93

	water well carrying buckets of water near Brijesko Brdo Street, presently Bulbulistan Street, in the west end of Sarajevo.		
15	Fatima OSMANOVIC, a woman aged 44 years, was shot and wounded in the right side of her face while she was carrying water in Brijesko brdo Street, presently Bulbulistan Street, in the west end of Sarajevo.	No evidence.	13-Nov-93
16	Sanija DZEVLAN, a woman aged 32 years, was shot and wounded while riding a bicycle across a bridge in Nikola Demonja Street, Dobrinja.	No evidence.	06-Jan-94
17	Hetema MUKANOVIC, a woman aged 38 years, was shot and killed in her apartment on the first floor of Obala 27. Jula 89/I, presently Aleja Lipa 64, in the Hrasno area of Sarajevo. At the time she was sitting with her husband and neighbours, drinking coffee by candlelight.	No evidence.	11-Jan-94
18	Ivan FRANJIC, a man aged 63 years, was walking with two others on Ante Babica Street in Vojnicko Polje, in the west end of Sarajevo. He was shot and wounded in the stomach while one of his companions Augustin VUCIC was shot and later died from his injuries.	No evidence.	13-Mar-94
19	Sadeta PLIVAC, a woman aged 53 years and Hajra HAFIZOVIC a woman aged 62 years, were both shot and wounded in their legs while passengers in a crowded bus near the junction of Nikolje Demonje and Bulevar AVNOJ, presently Nikolje Demonje and Bulevar Branioca Dobrinja, in Dobrinja.	No evidence.	25-May-94

20	Fatima SALCIN, a woman aged 44 years, was shot and wounded in the hand when walking with her father-in-law in Ive Andrica Street, in the Mojmilo area of Sarajevo.	No evidence.	13-Jun-94
21	Sanela MURATOVIC, a girl aged 16 years, was shot and wounded in the right shoulder while walking with a girlfriend in Dure Jaksica Street, presently Adija Mulabegovica, in the west end of Sarajevo.	No evidence.	26-Jun-94
22	Jasmina KUCINAR, a pregnant woman aged 31 years, and her son Damir KUCINAR, aged 4 years, were lightly wounded in the legs by a shot penetrating a crowded tram in which they were travelling. The tram was travelling west on Zmaja od Bosne Street towards Alipasino Polje. Mensur JUSIC, a man aged 36 years, sustained a slight leg wound and Belma SUKIC nee LIKIC, a woman aged 23 years, was wounded in the left armpit in the same attack. The tram was near the Holiday Inn hotel at the time of the incident.	No evidence.	6-10-Jul-94
23	Rasid DZONKO, a man aged 67 years, was shot and wounded in the back whilst sitting watching television in his apartment situated at Milanka Vitomira Street, presently Senada Mandica Dende Street 5 in Vojnicko Polje, in the west end of Sarajevo.	No evidence.	17-Jul-94
25	Alma CUTUNA, a woman aged 43 years, was wounded in the right upper leg while travelling on a tram on Zmaj od Bosne Street in Sarajevo.	No evidence.	08-Oct-94
26	Adnan KASAPOVIC, a boy aged 16 years, was shot in the chest and killed while walking in an alley adjoining Dorde Andrijevic Kuna	No evidence.	24-Oct-94

	Street.		
27	Fata GUTA, a woman aged 59 years, was shot and wounded in the hand while she was going with jerri-cans to collect water from the Moscanica spring in Gazin Han, to the east of Sarajevo.	No evidence.	08-Nov-94
28	Sanja SMJECANIN, a pregnant woman aged 28 years, was shot and wounded while travelling with her husband and sister-in-law in a car on Zmaj od Bosne Street.	No evidence.	09-Nov-94
29	Dzenana SOKOLOVIC, a woman aged 31 years, and her son Nermin DIVOVIC, a boy aged 7 years, were fired on while walking in Zmaj od Bosne Street. Ms. SOKOLOVIC was wounded with a bullet in the abdomen. The bullet passed through her and hit her son in the head, killing him. They had been walking home from Hrasno, where they had gone to collect firewood the previous day.	No evidence.	18-Nov-94
30	Hajrudin HAMIDIC, a man aged 52 years, was wounded in the arm and face when the tram he was driving westbound on Zmaj od Bosne was fired on.	No evidence.	21-Nov-94
31	Sanela DEDOVIC, a girl aged 12 years, was wounded in the left ankle while she was walking to school. The incident occurred at the junction of Sedrenik Street and Red'epa Gorusanovica Street, in the north east corner of Sarajevo.	No evidence.	22-Nov-94
32	Hafiza KARACIC, a woman aged 31 years and Sabina SABANIC, a woman aged 26 years, were both wounded in the right shoulder when the tram they were travelling on came under fire on Zmaj od Bosne, between the Technical School and Marshal Tito	No evidence.	23-Nov-94

	Barracks.		
33	Lejla BAJRAMOVIC, a woman aged 24 years, was sitting in a friend's apartment in Franca Lehara Street, near the centre of Sarajevo, when she was shot in the head and killed. The shot came through the apartment window.	No evidence.	08-Dec-94
34	Dervisa SELMANOVIC, a woman aged 49 years, was shot and wounded in the right knee while she was gathering firewood in the backyard of a house in Sedrenik Street, in the north east end of Sarajevo.	No evidence.	10-Dec-94
35	Malkan PLEHO, a man aged 62 years, was shot and wounded in the right lower leg while climbing the front steps to his house in Sedrenik, in the north east end of Sarajevo.	No evidence.	11-Dec-94
36	Halid DEMIROVIC, a man aged 62 years, was shot and wounded in the right heel while he was gathering firewood on Pasino Brdo, in the north east corner of Sarajevo.	No evidence.	13-Dec-94
37	Senad KESMER, a man aged 31 years, Alma CEHAGIC, a woman aged 19 years, Alija HOLJAN, a man aged 55 years, and others, were shot and wounded while travelling in a westbound tram on Zmaj od Bosne Street. The tram was near the Tito Barracks at the time.	No evidence.	27-Feb-95
38	Azem AGOVIC, a man aged 46 years and Alen GICEVIC, a man aged 33 years, were shot and wounded while travelling in an eastbound tram on Zmaj od Bosne Street. The tram was near the Holiday Inn at the time.	No evidence.	03-Mar-95

39	Tarik ZUNIC, a boy aged 14 years, wounded in the hand while he was walking home from school at Sedrenik Street, in the north east of Sarajevo. He emerged from behind a protective screen, about 100 metres from home, when he was hit.	No evidence.	06-Mar-95
40	Vahid BALTA, a man aged 52 years, was walking with his wife in Sedrenik Street, in the north east of Sarajevo, when he was shot in the ankle.	No evidence.	06-Mar-95
41	A young man was crossing the junction of Nikole Demonje and Bulevar Avnoj Streets in the Dobrinja area, when he was shot in the left side and killed.	No evidence.	18-Mar-95
42	Sensa COVRK, a woman aged 27 years, was shot and wounded in the abdomen while walking in Josipa Krasa Street, Novi Grad, holding her young son's hand at the time.	No evidence.	03-May-95
43	A man was shot and killed in Dinarska Street, Hrasno Brdo.	No evidence.	13-May-95
44	Durgut COBIC, a man aged 80 years, was shot and wounded in the shoulder when he opened the balcony of his apartment door Kunovska Street 4/I, Dobrinja.	No evidence.	25-May-95

Schedule F - Sarajevo Shelling Incidents

No.	Place/Event	Comment on Evidence	
1	Two shells were fired upon a crowd of approximately 200 persons who were watching and participating in a football game in a parking lot bordered on three sides by residential apartment blocks and on the fourth side by the Lukavica Road in Dobrinja 3B, a residential settlement. At least twelve people, including 3 children under the age of 15 years, were killed and at least 70 people, including 10 children, were wounded. The origin of fire was VRS-held territory approximately to the east-south-east.	Insufficient evidence. Witness Hamill (who testified on 13.11.03), Rule 92bis (D); Exhibit 590; Transcript pp. 6114-7, 6160-6164. No evidence shells fired by Bosian Serbs.	01-Jun-93
2	An 82 mm mortar shell was fired upon about 100 civilians who were waiting to access a communal water pump in the front yard of a residence at 39 Hakije Turajlica (previously Aleja Branka Bulica then Spasenije Cane Babovic) in Dobrinja, a residential settlement. At least twelve people were killed and fourteen people were wounded. The origin of fire was VRS-held territory approximately to the west-north-west.	No evidence.	12-Jul-93
3	Three mortar shells landed in the area of Alipasino Polje, the first in a park behind, and the second and third in front of residential apartment buildings at 3 Geteova Street (previously Centinjska Street) and at 4 Bosanska Street (previously Klara Cetkin Street), where children were playing. The second and third shells killed six children under the age of 15 years and wounded one adult and four such children.	No evidence.	22-Jan-94

	The origin of fire was from VRS-held territory approximately to the west.		
4	A salvo of three 120 mm mortar shells hit civilians in the Dobrinja residential area. The first landed to the front of a block of flats at Oslobodilaca Sarajeva Street hitting persons who were distributing and receiving humanitarian aid and children attending religious classes. The second and third landed among persons trading at a market in an open area to the rear of the apartment buildings at Mihajla Pupina Street and Oslobodilaca Sarajeva Street. Eight people, including 1 child under the age of 15 years, were killed and at least 18 people, including 2 children were wounded. The origin of fire was from VRS-held territory, approximately to the east.	Insufficient evidence. Hafizovic, Exhibit 588, Transcript p. 7758 - 7766. No evidence of shells fired by Bosnian Serbs.	04-Feb-94
6	A 120 mm mortar shell impacted on the Igman Road amongst a group of civilians at a bus stop. One person was killed and fifteen were injured. The origin of fire was Vojkovic VRS territory.	No evidence.	30-Oct-94
7	Three mortar shells struck Livanjska Street, a street of civilian dwellings. Two persons were killed and six were injured. The origin of fire was Poljine direction VRS territory.	No evidence.	08-Nov-94
8	One 120 mm mortar shell hit Partizanska Street 18 in Hrasnica. Two children aged eight years and two years were killed and three adults were injured.	No evidence.	17-Nov-94
9	An 82 mm mortar shell hit adjacent to a civilian dwelling killing an elderly man and injuring his elderly wife. The	No evidence.	12-Dec-94

	origin of fire was VRS territory.		
10	Two 76 mm shells in quick succession hit a flea market in the old commercial quarter of Bascarsija in Old Town. Two persons were killed and seven were injured. The origin of fire was Trebevic, VRS positions.	No evidence.	22-Dec-94
11	A modified aircraft bomb hit a residential area in Hrasnica at the foot of Mount Igman destroying one dwelling, severely damaging eleven other dwellings. One person was killed and three injured. The origin of fire was Ildza, VRS territory.	No evidence.	07-Apr-95
12	A 60 mm mortar shell hit a concrete area near the Sarajevo railway station. Seven people were injured. The origin of fire was Zlatiste, VRS territory.	No evidence.	12-Apr-95
13	A missile landed and exploded on the asphalt of Safeta Zajke street at approximately 9.45, killing two and injuring five people. The missile came from the southeast, direction of Lukavica.	No evidence.	24-May-95
14	A modified air-bomb landed at Majdanska Street bb. Two civilians were killed and six were wounded. The origin of fire was from the southeast VRS territory of Pavlovac.	No evidence.	24-May-95
15	A modified air-bomb struck a building near apartment blocks in Safeta Hodzica Street, destroying the top three floors of an apartment building. This explosion was followed by several artillery rounds landing in the same area. Serious damage was caused to a number of buildings. Two people were seriously injured and fifteen persons were slightly	No evidence.	26-May-95

	injured. The fire was determined to have come from VRS territory to the West/ Southwest.		
16	At about 10.00 hours, a modified aircraft bomb was fired from the North West. The bomb landed and exploded on the building of the UMC and Oncology Department at Dositejeva street 4-a. There was a lot of damage and three persons were slightly injured.	No evidence.	16-Jun-95
17	At about 15.20 hours, a modified aircraft bomb, most probably fired from Lukavica, exploded next to 10, Trg Medunarodnog Prijateljstva, slightly injuring seven people and causing considerable damage to neighboring buildings.	No evidence.	16-Jun-95
18	At 17.20 hours, a modified aircraft bomb was fired from the North West. It exploded on the builder house at Cobanija Street 7. Two people were wounded.	No evidence.	16-Jun-95
19	A 120 mm mortar shell struck a line of civilians, numbering approximately 50-70, waiting for water distribution in Marka Oreskovica Street, Dobrinja. Seven people were killed and twelve injured. The origin of fire was Nedzarici, VRS territory.	No evidence.	18-Jun-95
20	A projectile was fired into the street Bulevar Mese Selimovica, probably from the direction of Rajlovac. There were no victims.	No evidence.	29-Jun-95
21	At about 13.30 hours, a high impact missile landed just outside the house number 5 in Radenko Abazovica. It was fired from the Western part of the city (Ilidza - Rajlovac). There were no victims.	No evidence.	01-Jul-95

22	At about 21.30 hours, a rocket projectile with a concussion warhead exploded in Buni-ki Potok street. Thirteen people were injured. The projectile came from Ilidza.	No evidence.	01-Jul-95
23	A 120 mm mortar shell hit close to a dwelling at Vrbarjusa 95 (a residential area). One boy was killed. The origin of fire was VRS territory in the South.	No evidence.	19-Jul-95
24	A rocket missile with concussion warhead, coming from the direction of Ilidza/Blazuj, landed on the house Sokolovici, Bjelasnicka Street 54. Two persons were killed and eleven were lightly wounded.	No evidence.	23-Jul-95
25	A modified explosive device exploded at the staircase between the 2nd and the 3rd floor of the BITAS building in Zmaja od Bosne Street 64. One person died, another received light injuries. The origin of fire was VRS territory in the South West.	No evidence.	22-Aug-95
26	A 120 mm mortar shell landed in Mula-Mustafe Baseskije Street outside the entrance to the City Market. 43 people were killed and 75 were injured. The origin of fire was Trebevic, VRS territory.	No evidence.	28-Aug-95

Signed

Steven Kay QC

Steven Kay QC

Branislav Tapuskovic

Gillian Higgins

London

3 March 2004

Sagittarius

Van: "Ruza" <despot@tiscali.nl>
Aan: "Sagittarius"
Verzonden: dinsdag 9 maart 2004 22:41
Onderwerp: Re: uctg/milosevic

Hoi Nico,
ik ga nog achteraan voor die fax, geen zorgen hierover. Jij hoort het nog.
Groetjes,
Roza

— Original Message —

From: Sagittarius
To: Ruza
Sent: Tuesday, March 09, 2004 1:28 PM
Subject: Re: uctg/milosevic

Hoi Roza,

Bedankt voor dit zeer belangrijke rapport. De amici curiae maken in menig opzicht gehakt van de aanklachten. En eisen intrekking van een hoop klachten 'in dit stadium'.
Het NAVo-tribunaal moet nu steeds meer zijn ware gezicht tonen. Of inbinden !

Heb je nog iets gehoord van Vucic ? Zo niet, zou je dan nog eens willen bellen of er al pogingen zijn gedaan om het origineel van de fax te vinden ?

hartelijke groeten,

Nico

— Original Message —

From: Ruza
To: hans.hupkes@planet.nl ; Meindert Stelling ; Jan Beentjes ; Nico Varkevisser ; Nico & Neeltje
Sent: Monday, March 08, 2004 9:44 PM
Subject: uctg/milosevic

<http://www.un.org/icty/milosevic/040305.pdf>

Deze e-mail is door E-mail Virus Scan van Het Net gecontroleerd op virussen. Zie voor meer informatie: <http://www.hetnet.nl/evs/>

'Niet verantwoordelijk'

27 x 2004



Oud-premier Kok stond gisteren voor de Haagse rechtbank, waar hij zich moest verantwoorden voor NAVO-bombardementen in 1999 in de Joegoslavische steden Belgrado en Niš. Daarbij

vonden tientallen burgers de dood. Kok zei, dat Nederland niet verantwoordelijk was, omdat aan de luchtaanvallen geen Nederlandse vliegtuigen deelnamen. Kok en oud-minister Van Aartsen

(Buitenlandse Zaken) werden gisteren gehoord in een door slachtoffers en nabestaanden aangespannen zaak. Zij eisen schadevergoeding en smartengeld. (Foto GPD)

Vrees VS, NAVO over Servië

BELGRADO, 5 MAART. De Amerikaanse regering en de NAVO maken zich zorgen over het voornemen van de nieuwe Servische regering, de samenwerking met het Joegoslavië-tribunaal te beperken.

Pierre-Richard Prosper, Amerikaans gezant inzake oorlogsmisdaden, zei in Sarajevo dat Washington „zeer bezorgd is over recente verklaringen uit Belgrado”. „Het lijkt erop dat de regering bezig is een draai van 180 graden te maken en dat is niet goed.” De Amerikaanse wetgeving voorziet in een stopzetting van hulp aan Servië als dat land per 31 maart niet kan aantonen volop met het Joegoslavië-tribunaal samen te werken. „Op dit moment is de samenwerking niet bevredigend”, aldus Prosper. „[De Serviërs] hebben nog een maand om hun verantwoordelijkheid te nemen.”

²⁰⁰⁷ In Brussel liet ook een woordvoerder van de NAVO weten dat men zich zorgen maakt over de recente uitlatingen in Belgrado. Als Servië in gebreke blijft, „zal dat het lidmaatschap van Partnerschap voor Vrede wel heel moeilijk maken”, aldus de woordvoerder. Servië vroeg in juni vorig jaar zich te mogen aansluiten bij het programma van samenwerking tussen de NAVO en niet-leden.

De bezorgdheid van de Amerikaanse regering en de NAVO is gewekt door recente uitlatingen van Vojislav Koštunica, sinds woensdag premier van Servië. Hij wil de samenwerking van Servië met het tribunaal beperken en „minder slaafs” van karakter maken. Servische verdachten van oorlogsmisdaden zouden in Servië zelf moeten worden berecht en door het tribunaal veroordeelde Serviërs zou-

den hun straf in Servië moeten uitzitten.

De regering van Koštunica kreeg het vertrouwen van het Servische parlement: 130 parlementariërs stemden voor, 113 tegen. De laatsten waren leden van de Democratische Partij DS, die Servië de afgelopen drie jaar heeft geregeerd, en van de ultra-nationalistische Servische Radicale Partij SRS, de grootste in het parlement. Voor de gelegenheid hadden de SRS-parlementariërs een speldje opgespeld met het portret van hun leider Vojislav Šešelj, die in Den Haag in de gevangenis zit, verdacht van oorlogsmisdaden. De socialisten van Slobodan Milošević steunen de regering-Koštunica zonder daarvan deel van uit te maken. Ze hebben gedreigd de regering ten val te brengen als die Serviërs uitlevert aan het Joegoslavië-tribunaal. (Reuters, VIP)

Sagittarius

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Verzonden: woensdag 17 maart 2004 1:16
Onderwerp: Fw: MILOSEVIC NOT COWED AT THE HAGUE: NATO WAR CRIMINALS MEET RESISTANCE

----- Original Message -----

From: [nebojsa](#)
To: [Ruza](#)
Sent: Tuesday, March 16, 2004 8:38 AM
Subject: MILOSEVIC NOT COWED AT THE HAGUE: NATO WAR CRIMINALS MEET RESISTANCE

MILOSEVIC NOT COWED AT THE HAGUE: NATO WAR CRIMINALS MEET RESISTANCE

http://www.iacenter.org/yugo_miloshague3.htm

By Cecil Williams, 21 February 2004

The Hague, Netherlands

The former president of Yugoslavia, charged with "genocide" by the very imperialist powers that mercilessly bombed his country for 78 days in 1999, has thrown the charge back in the prosecutor's face.

"Genocide is a method your colonial powers use. North and South, in Africa and Asia, all the colonial powers used genocide. And today our part of Europe is also a target of colonial powers who want to take back what they have lost," said Slobodan Milosevic on Feb. 14 when he finally got a chance to testify here before the International Tribunal for War Crimes in the Former Yugoslavia.

The tribunal was set up by the very NATO powers that bombed Yugoslavia. Those governments and private corporations finance it. Its sole purpose is to prosecute and imprison Milosevic and other Yugoslavs who opposed the breakup of their country.

The CIA and German intelligence spent billions of dollars to foment civil war in Yugoslavia and overturn the Milosevic government. Last June, in violation of the Yugoslav Constitution, the corrupt, U.S.-backed regime of Zoran Djindjic handed him over to NATO. Djindjic had hoped for a few billion in aid and loans, but wound up with only \$21 million.

Milosevic, imprisoned far from home in this Dutch city, has been denied the right to consult privately with lawyers or speak to the press.

The long-awaited show trial opened Feb. 12 with a half-hour tirade by chief prosecutor Carla del Ponte. Then the British Queen's Counsel Geoffrey Nice gave a melodramatic two-day presentation of NATO's "evidence." Between pregnant pauses, studied sighs and anguished facial contortions, Nice repeated the litany of lies that bombarded the Western public in 1999 while NATO ships and warplanes bombarded Yugoslavia.

Nice charged that Milosevic, motivated by a "ruthless quest for power," had carried out "genocide" and "ethnic cleansing" against Bosnian Muslims, Croatian Catholics and Albanian Kosovars.

These NATO powers show no concern that British troops and Protestant paramilitaries have been "ethnic cleansing" in northern Ireland for decades, murdering hundreds of Irish Catholics. Thirty years after British troops gunned down Irish civil rights marchers on Bloody Sunday in Derry, not a single British soldier has been penalized.

They applaud when U.S. planes and missiles murder more than 5,000 Afghan civilians or when U.S. and British bombs and sanctions kill 500,000 Iraqi children.

Much of the "evidence" Nice presented has long been exposed as sheer fabrication.

The court was shown discredited ITN footage of Bosnian Muslims allegedly held in a Serb "concentration camp." The British television reporters who set up the shot were actually standing inside a wire enclosure, and the people they were filming were refugees outside looking in.

Nice also brought up an alleged massacre of Kosovar civilians by Serbian police at Racak on Jan. 15, 1999. There is considerable evidence the dead were fighters of the U.S.-funded "Kosovo Liberation Army" who had died in a battle.

The prosecution at times seemed desperate. Nice spent some time making the point that Milosevic, after being elected president of Yugoslavia, had appointed members of his party, the Socialist Party of Serbia, to key posts. Nice also read a Yugoslav People's Army officer's report that his troops had carried out no pillaging, looting or property destruction. "One wonders why he found it necessary to report that," Nice asked.

After two days of this utterly weak presentation, presiding judge Robert May should have thrown the case out of his court. Instead he imperiously rejected Milosevic's right to a hearing to decide if the court had legitimate jurisdiction.

'WESTERN COLONIALISM IS GENOCIDE'

With words and video footage, Milosevic portrayed NATO's destruction of Yugoslav towns and villages. "They bombed by night, when people were fast asleep. Most of the targets were homes and housing blocks." He described the targets: Aleksinacs, a village of miners who worked in the pits, was hit by 14 missiles; 36 people died. People were killed in Vranje, a small farming village, and in Rakovica, a blue-collar neighborhood on the outskirts of Belgrade. In Starigrad Przen, 50 Roma people died. Both Serbs and Muslims died while tending their cows in Novi Pazar, an undeveloped area.

"They especially targeted areas like Novi Sad," said Milosevic, "a part of Serbia where 27 nationalities lived peacefully. That was precisely what they wanted to destroy, that kind of life in Yugoslavia. NATO's object was to break up and terrorize the whole of Yugoslavia." He pointed out that in 78 days of bombing NATO destroyed only seven Yugoslav army tanks but dozens of schools, hospitals and medical clinics.

Milosevic answered the NATO court's claim that the Yugoslav Army had driven Albanian Kosovars from their homes. He gave a list of Kosovar Albanian villages destroyed by NATO bombs and showed photos of the corpses of Albanian children, women and men who died when their convoy was attacked by U.S. warplanes. "They were targeted because they were returning to their homes," Milosevic said. "It was a message to the Albanians: Don't go home, flee in order to justify NATO bombing."

He also told how U.S. planes had bombed Istok prison in Kosovo, killing 78 prisoners, then lied, claiming Yugoslav police had massacred the prisoners. Milosevic showed photos proving the prison had been destroyed by bombs.

Working backwards from the Kosovo war, Milosevic detailed 12 years of U.S.- and German-orchestrated destabilization of Yugoslavia; how the CIA and Germany's BND had set up and financed right-wing separatist movements in Kosovo, Bosnia and Croatia while at the same time backing right-wing nationalist forces among the Serbs.

He traced the heritage of the secessionist movements back to the World War II Nazi and Fascist occupation Yugoslavia, and described the horrible genocide of Serbs in western Yugoslavia at the hands of the Hitler-created Croatian Ustashi regime.

Milosevic blasted Nice for referring to his political party as the "Serbian Socialist Party," which would limit it to just Serbian people. "We are the Socialist Party of Serbia," he said. "We have in our ranks Muslims, Albanians, Roma, Goran, all of the 27 nationalities who make up Serbia. Would they join a racist organization?"

He told why the U.S. and German regimes targeted his government. "I stopped them from implementing the plans they had imposed on the rest of East Europe, including Albania. They wanted to do to Serbia what they did to the rest of East Europe. That's why they tried for 10 years to overthrow me."

To the judges he said, "You do not wish to hold [NATO leaders] accountable because you represent them. But it is worth it to me to spend any amount of time in prison for one chance to speak the truth to the public. I believe most people are honest; if they were not, life would not be worth living. And I believe the people will speak up. They are the jury because this tribunal does not have one."

'BIG POWERS DESTROYED ORDINARY PEOPLE'

In Yugoslavia and elsewhere in East Europe, people are speaking up. Tens of thousands rallied to support Milosevic in Belgrade on Feb. 9, before the trial opened. The tribunal was presented with the signatures of 120,000 Yugoslav citizens demanding Milosevic's freedom. The Russian Duma voted by 316-to-6 to demand his release, as has the Ukrainian Rada.

Few honest observers at the trial were unmoved. A young Iranian woman who works in Kosovo told a reporter, "I came here hoping to see Milosevic hanged, but now I see I've been deceived."

A young Muslim woman from Britain said, "In Yugoslavia, like now in Afghanistan, big powers came in and destroyed the lives of ordinary people."

posted 2/21/2002

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Vervanging van rechter tribunaal is lastige klus

20-3-2009
Slobodan Milosevic, die momenteel een 'reces' van drie maanden heeft om zijn verdediging voor te bereiden, wordt donderdag weer even naar Rechtszaal Nr. 1 van het Joegoslavië-Tribunaal gehaald.

President Theodor Meron van het VN-hof zal de ex-president van Servië en Joegoslavië dan vragen of hij instemt met de vervanging van rechter Richard May. De Brit May was sinds juni 2001 voorzittend rechter in de Milosevic-zaak, maar verlaat het tribunaal voortijdig in verband met een ernstige ziekte. De verdachte wordt om toestemming gevraagd bij de vervanging van een rechter, omdat hij er in principe recht op heeft gevonnist te worden door rechters die alle getuigen hebben gehoord en al het bewijs hebben gezien.

Milosevic heeft nog niet gezegd of hij zal instemmen met een vervanging. (ANP)

'Genoeg bewijs genocide Milosevic'

14-3-2009
Reuters, ANP
GENÈVE/DEN HAAG

De hoofdaanklager van het Joegoslavië-Tribunaal, Carla del Ponte, is ervan overtuigd dat de Joegoslavische ex-president Milosevic veroordeeld kan worden voor genocide.

Eerder deze maand vroegen de 'Vrienden van het hof', die moeten toezien op naleving van de rechten van Milosevic, om vrijpraak voor de zwaarste aan-

klacht, wegens gebrek aan bewijs. Del Ponte zal maandag echter vragen de aanklacht te handhaven. Hoe 'moeilijk' het ook is genocide te bewijzen, aldus Del Ponte: 'we houden vol dat het bewijs dat we in het hof hebben gepresenteerd, voldoende is om een veroordeling te verkrijgen.'

Het Tribunaal veroordeelde gisteren de gepensioneerde Joegoslavische vice-admiraal Miodrag Jokic (69) tot zeven jaar cel. Het is de eerste veroordeling van het VN-hof wegens oorlogsmisdaden

begaan tijdens de belegering en beschietingen van de Kroatische havenstad Dubrovnik in 1991.

Jokic had in augustus 2003 gedeeltelijk schuld bekend. De historische Kroatische havenstad Dubrovnik, de 'Parel van de Adriatische Zee', werd in de laatste maanden van 1991 beschoten door de marine van het Joegoslavische Volksleger (JNA), dat toen door Serviërs werd gedomineerd. Jokic was als vice-admiraal van de Joegoslavische marine betrokken bij deze beschietingen.

Sagittarius

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Verzonden: zaterdag 20 maart 2004 0:21
Onderwerp: Fw: U.N. prosecutor to maintain genocide charges against Milosevic

— Original Message —

From: [nebojsa](#)
To: [Ruza](#)
Sent: Friday, March 19, 2004 10:28 AM
Subject: U.N. prosecutor to maintain genocide charges against Milosevic

U.N. prosecutor to maintain genocide charges against Milosevic

http://www.newsradio88.com/international/UN-Milosevic-ai/resources_news_html

Thursday March 18, 2004
 By NAOMI KOPPEL
 Associated Press Writer

GENEVA (AP) The chief U.N. war crimes prosecutor rejected demands that she drop genocide charges against former Yugoslav President Slobodan Milosevic on Thursday, but acknowledged that she lacks a "smoking gun."

"We will maintain our count of genocide. We insist that the evidence we have collected and will present in court is enough to obtain the conviction of Milosevic for genocide, but of course it will be the judges who decide on that," Carla del Ponte told reporters.

The prosecution has until Monday to respond to the tribunal in The Hague, Netherlands, about a motion for acquittal on many of the 66 counts in Milosevic's indictment.

The motion, filed earlier this month by three independent lawyers, asserts the prosecution failed to support the charges with evidence.

Milosevic is charged with one count of genocide and one of complicity in genocide for the massacre by Serb forces of more than 7,000 Muslims in the U.N.-protected enclave of Srebrenica in July 1995.

Del Ponte conceded that it is hard to get a conviction for genocide because it is necessary to prove that Milosevic acted with prior intent to destroy a racial, ethnic or religious group.

"We have some pieces of evidence but we haven't got the smoking gun, so let's see if we can convince the judges," she said.

However, even if he is not convicted on that charge, "it changes nothing at all on the criminal responsibility of Milosevic," she added.

Prosecutors concluded their case against Milosevic last month, two years after his trial began in February 2002. Milosevic is to begin presenting his defense on June 8.

The tribunal on Thursday scheduled a March 25 hearing to establish whether Milosevic plans to contest the appointment of a new judge to replace Richard May of Britain, who resigned due to illness.

Milosevic has the right to challenge any replacement. That could delay the proceedings, which have already been going on for more than two years. He could even seek a retrial.

If he does object, it will be up to the other two judges hearing the case to decide how to proceed. U.N.

secretary general Kofi Annan is expected to name a successor to May shortly.

Del Ponte, who is in Geneva to attend a human rights film festival, said she is concerned that the U.N. tribunal still is not receiving full cooperation from the countries involved, especially in Serbia.

"I would like to be able to say that things are going well and in the right direction, but at the moment I simply cannot," del Ponte said.

"Cooperation should be seen as the best way to contribute to the course of justice and to pay respect to the victims, who are too often sidelined, disregarded, while indicted persons are celebrated in the media as heroes or patriots."

The Hague tribunal currently has 53 detainees, but another 21 indicted war criminals are still at large in the Balkans, mostly in Serbia. They include Radovan Karadzic, the wartime leader of the Bosnian Serbs who is accused of having masterminded with Milosevic Bosnia's 1992-95 war, which killed 260,000.

Karadzic is believed to be in Bosnia, while his wartime military chief, Gen. Ratko Mladic "is in Belgrade," del Ponte said.

"War crimes do not expire with time. They are and always remain war crimes," del Ponte added.

"And in particular for the victims and their families they remain the war crimes that they suffered. It is these people's plight and pain that give me strength in the day-to-day battle for full cooperation."

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22-3-2004

DIE VERTEIDIGUNG VON SLOBODAN MILOSEVIC
BRAUCHT DRINGEND SPENDEN!

Da Milosevic sich weigert, das illegale Haager Tribunal anzuerkennen, ist er der einzige Gefangene, der für seine Verteidigung keine materielle Unterstützung vom Tribunal erhält. Die Dringlichkeit der Spendenaktion wird noch einmal unterstrichen, indem Ramsey Clark von den UN fordert, "Präsident Milosevic Haushaltsmittel zur Verfügung zu stellen, um anwaltliche Beratung, Ermittler, Researcher, Dokumentenanalysten und andere Experten zur Verfügung zu stellen, um wirksam auf das gegen ihn vorgebrachte Beweismaterial zu antworten." Außerdem fordert er, Milosevic die "für die Bewältigung der Aufgabe erforderliche Zeit einzuräumen, bevor irgendwelche Prozessverhandlungen wieder aufgenommen werden." Dabei seien die Anstrengungen, um auf die Anklage zu antworten, "selbst dann unverzichtbar sind, wenn das Gericht abgeschafft oder die Anklage eingestellt wird, um zur Feststellung der historischen Fakten um des künftigen Friedens willen beizutragen."

Das Internationale Komitee für die Verteidigung von Slobodan Milosevic (ICDSM) sammelt seit einiger Zeit Spenden für den Rechtshilfefond zur Unterstützung des ehemaligen jugoslawischen Präsidenten. Doch das Tribunal hat es nicht dabei Bewenden lassen, Präsident Milosevic massiv in seinen Rechten als Angeklagter und in seinen Menschenrechten zu beeinträchtigen. Auch Bemühungen von einfachen rechtlich denken Menschen, seine Verteidigung zu unterstützen, werden gezielt behindert. Zu diesen Machenschaften erklärt Klaus Hartmann, der Sprecher der Deutschen Sektion des ICDSM und Vorsitzender der Vereinigung für Internationale Solidarität (VIS) e.V., folgendes:

"In offenkundigem Auftrag des Tribunals der Kriegsverbrecher sind Geheimdienste aktiv, die unsere Bankverbindungen lahm legen sollen mit dem Ziel, den Rechtshilfefonds für Slobodan Milosevic zu sabotieren und ihn damit von den elementaren Voraussetzungen seiner Verteidigung abzuschneiden, also ihm den Rechtsweg abzuschneiden. So wurde zuletzt die Postbank

23-3-04

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23-3-04

eranlasst, aus Anlass der Einreichung eines Schecks aus den USA das bisher angegebene Spendenkonto der Vereinigung für Internationale Solidarität (VIS) e.V. ohne Angabe von Gründen zu kündigen.

Damit ähneln die Formen der Auseinandersetzung immer mehr jenen von Geheimdiensten an der 'unsichtbaren Front', die man je nach Geschmack als Katz-und-Maus-Spiel oder als Krieg bezeichnen kann.

Zugleich macht dies eine flexiblere Taktik und schnellere Reaktionsweise unsererseits erforderlich. Dazu gehört an erster Stelle der Aufbau eines Systems von Regionalkassierern, die wie in der 'guten alten Zeit' persönlich bei Spendenwilligen vorsprechen und kassieren. Sie erhalten ein Legitimationsschreiben von der Vereinigung für Internationale Solidarität e.V., um den potentiellen Spendern das erforderliche Vertrauen abzunötigen sowie Namenslisten aus ihrer Region. Nachdem sich Brigitte Dressel spontan bereit erklärt hat, diese Aufgabe in Berlin zu übernehmen (großes Lob!), suchen wir nun verschärft Freiwillige aus anderen Gebieten. Nur keine falschen Hemmungen!

Ansonsten bieten wir natürlich sofort ein Ersatzkonto an - ohne Gewähr, wie lange das hält. Wir werden uns auf häufigere Wechsel einstellen müssen, was aber auch einen Vorteil hat: sowie wir ein neues Konto bekannt machen, gilt es, sofort loszulaufen und zu spenden - man weiß ja nie, wie lange es offen bleibt, und diesen Wettlauf mit dem Gegner will ja sicher jeder gewinnen! Und hier können wir schon mal üben:

Wir bitten um Spenden auf das Konto -ACHTUNG: Nur bis 12. April 2004 - danach ist das Konto gekündigt !!

Monika Krotter-Hartmann - Kennwort "Rechtshilfefonds"

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Kostunica gaat zwelgen in slachtofferschap

6-3-2004

Op de kop af een jaar geleden werd de Servische premier Djindjic in Belgrado vermoord. Sombere lieden – in de Servische hoofdstad niet zo dun gezaaid – voorspelden toen dat de periode Djindjic binnen afzienbare tijd zou worden gezien als een korte fase van openheid, ingeklemd tussen tijdperken van door patriottisme aangewakkerde isolatie. Zo ver is het nog niet. Maar het aantreden van de regering van Kostunica, wijlen Djindjic' aartsvijand, maakt de voorspelling minder zonderling dan zij een jaar geleden leek.

Kostunica's minderheidskabinet geniet de parlementaire steun van de Socialistische Partij van Servië, waarvan Milosevic vanuit zijn Haagse cel nog steeds het voorzitterschap bekleedt. Tot nu toe bestaat nog geen duidelijkheid over wat Kostunica, meestal aangeduid als 'gematigd nationalist', de socialisten in ruil voor die steun heeft beloofd. Speculaties in de Servische media lopen uiteen van het bevriezen van de samenwerking met het Joegoslavië-Tribunaal tot het actief bijstaan van Milosevic, die de komende maanden zijn verweer gaat voorbereiden. Dat kan onder meer door hem overheidsdocumenten toe te spelen.

Zelf heeft Kostunica, die er nooit een geheim van heeft gemaakt het Tribunaal als een anti-Servisch instituut te zien, gezegd dat samenwerking met Carla Del Ponte 'geen prioriteit' geniet. Het Tribunaal heeft in zijn optiek een onevenredig hoog aantal Serviërs aangeklaagd en 'manipuleerde feiten'.

Onder Djindjic leverde Belgrado verdachten uit als waren zij door Del Ponte bestelde pizza's. Onder Kostunica zal het afgelopen

zijn met de 'uitleveringsdienst Servië', suggereerde de nieuwe premier.

Een en ander noopte de Servische mensenrechtenactiviste Natasa Kandic begin deze week te stellen dat de twee belangrijkste voortvluchtige Tribunaal-verdachten, de heren Karadzic en Mladic, thans in Servië veilig zijn. Zij sprak haar vrees uit dat het Tribunaal zijn activiteiten zal beëindigen zonder de twee te hebben berecht.

Een meerderheid van de bevolking deelt haar vrees echter niet, maar wel de verongelijkheid van Kostunica. Het illustreert dat drieënehalf jaar na de val van Milosevic de Servische en de westerse versie van het Joegoslavië drama nog even incongruent zijn als zij de hele jaren negentig zijn geweest.

Milosevic is niet geliefd, maar een meerderheid van de Serviërs vindt nog steeds dat Joegoslavië is verwoest door een westers complot dan wel exclusief door het separatisme van Slovenen, Kroaten en Kosovo-Albanezen. Volgens media-analisten komt dit door eenzijdige informatievoorziening.

Het feit dat de Servische diaspora, die beter geïnformeerd zou moeten zijn, vaak nog verongelijker is dan de thuisbasis, bevestigt dit niet. 'Het slachtofferschap smaakt domweg beter dan het idee dat je een beleid hebt gesteund dat, ook al voorzag je het niet, rampen tot gevolgen had', stelt de Belgradose filosoof Obrad Savic. Aanhoudende beschuldigende vingers van het Westen maken het slachtofferschap er alleen maar aantrekkelijker op.

Op een of andere manier zal er toch een brug moeten worden geslagen tussen Servië en het Westen. Maar onder Kostunica zal

die er niet komen. De 'gematigde nationalist' zei deze week dat er 'geen alternatief is' voor Europese integratie. Het is echter moeilijk denkbaar dat Kostunica in ruil daarvoor bereid zou zijn iemand als Mladic – voor wie hij nog wel eens een goed woordje over had – in een doos met een strik af te leveren bij Carla Del Ponte.

De VS dreigen hulp aan Servië na 31 maart stop te zetten als de samenwerking met het Tribunaal niet wordt hervat. Ook pro-westerse commentatoren in Belgrado betogen dat deze koppeling tussen 'hulp' en 'schuld bekennen' slecht valt in een zwaar verpauperd en door vluchtelingen overspoeld land. Het 'kopen' van verdachten houdt de overtuiging in stand dat de buitenwereld een smerig spel speelt met Servië. De aan een groot bedrag gekoppelde uitlevering van Milosevic door Djindjic verdient geen schoonheidsprijs, uitspraken van Carla Del Ponte dat Djindjic haar tijdens een geheim overleg in Zwitserland ook Mladic had beloofd, nog minder.

Kostunica zal op die stemming inspelen. Het valt te verwachten dat hij deadlines voor het uitleveren van verdachten zal trotseren, maar tegelijk een totaal isolement zal trachten te vermijden.

Dit betekent dat er zo af en toe toch een moeizaam compromis met het Tribunaal zal moeten worden gesloten. Dat kan alleen worden verkocht door te zwelgen in slachtofferschap. De lijdzame uitdrukking op zijn gezicht toen hij Carla Del Ponte in 2001 de hand schudde – 'Serviërs, ik kan helaas niet anders' – zal de komende tijd vaak te zien zijn.

Olaf Tempelman

Genocide Milošević is 'niet bewezen'

DEN HAAG, 6 MAART. De amici curiae hebben het Joegoslavië-tribunaal gevraagd ex-president Slobodan Milošević vrij te spreken van het hof vinden dat de aanklagers deze zwaarste aanklacht tegen Milošević niet hebben kunnen bewijzen in het proces tegen de ex-president.

Dit blijkt uit een verzoekschrift dat de griffie van het tribunaal gisteren heeft gepubliceerd.

De amici curiae, die moeten toezien op de eerlijkheid van het proces bij afwezigheid van een verdiger van de vroegere Joegoslaviëse president, menen dat de aanklagers de afgelopen twee jaar niet hebben bewezen dat Milošević een „specifieke intentie” had om in het geheel of gedeeltelijk een bevolkingsgroep uit te roeien. Uit het gedrag van Milošević valt geen genocidale intentie af te leiden, en het is ook niet bewezen dat hij genocide heeft gepland of bevolen, aldus de amici.

De amici, onder wie de Brit Steven Kay, hebben hun verzoek ingediend nadat de aanklagers het eerste deel van de presentatie van hun bewijsmateriaal eind februari afronden. Als de rechters dit verzoek inwilligen, betekent dit dat Milošević tussentijds van de beschuldiging genocide in de aanklacht wordt vrijgesproken. In dat geval hoeft hij zich op dat punt niet te verdedigen.

Als de genocide-aanklacht wegvalt, blijven nog misdaden tegen de mensheid en oorlogsmisdaden in Bosnië, Kroatië en Kosovo over in de omvangrijke tenlastelegging. Het proces is geschorst tot 8 juni om Milošević (62) de gelegenheid te geven zijn verdediging voor te bereiden.

De Jamaicaan Patrick Lipton Robinson is gisteren benoemd tot voorzittend rechter van het proces. Hij volgt de Brit Richard May op die wegens gezondheidsredenen het Joegoslavië-tribunaal verlaat. (ANP)

maart 2006

Serven: "De Balkanoorlogen duren nog altijd voort"

Schuldvraag Sloba moeilijk te bewijzen

Heeft Slobodan Milosević tevoren weet gehad van de volkerenmoord in voormalig Joegoslavië? Aanklager Carla Del Ponte van het VN tribunaal in Den Haag zit met de handen in het haar. "Ik krijg onvoldoende medewerking van Belgrado" is haar verweer.

Het is een feit, dat al die honderden personen, die in de loop van tijd de moeite hebben genomen om tegen Sloba te getuigen niet daadwerkelijk zijn schuld hebben kunnen aantonen. In feite gaat het om zijn eventuele voorkennis van de plannen van Mladić, Karadžić en andere Bosnische Serven om met de moslims, de nazaten van de Turkse overheersers, af te rekenen. En ook met de rooms-katholieke Kroaten in Bosnië.

De onderlinge strijd tussen Serven, Kroaten en moslims dateert al vanaf het prille ontstaan van Joegoslavië. Hoewel Serven, Kroaten en Slovenen al in 1917 in de verklaring van Korfoe de vorming van Joegoslavië hadden geëist, was er al meteen tweespalt. De Groot-Servische aspiraties werden allerminst door de Kroaten gehuldigd.

De Kroatische Boerenleider Stjepan Radić werd in 1928 bij een schietpartij in de Skupština, het Joegoslavische parlement, vermoord. Koning Alexander werd op zijn beurt vermoord door Artuković. In de Tweede Wereldoorlog zijn onder leiding van de Pro-Duitse "eerste Kroatische nationale regering" van de uit Italië afkomstige Ustaša leider Ante Pavelić, generaal Slavko Kvaternik, Lorković en de hierboven genoemde Artuković door rooms-katholieken en moslims naar schatting een half miljoen (orthodoxe) Serviërs omgebracht.

Hoewel de rooms-katholieke kardinaal Stepinać deze moorden en de jodenvervolgingen al in 1943 heeft veroordeeld, was Pavelić eerder wel door paus Pius XII in audiëntie ontvangen.

In hoeverre deze feiten en ook de Groot-Servische gedachte, die reeds vóór de Eerste Wereldoorlog een grote rol speelde in de twee korte Balkanoorlogen (respectievelijk in 1912 en 1913), nog leven bij Milosević is de grote vraag. Is hij rancuneus?

Ongetwijfeld kent hij de geschiedenis van zijn land. Italië – dat erg beducht was voor een te sterk Servië als overbuur – had het voor elkaar gekregen, dat in 1912 de staat Albanië is gevormd. Dat was weliswaar tien jaar voordat Benito Mussolini aan de macht kwam, maar daarna hebben het fascistische Italië, het nationaal-socialistische Duitsland en het militaristische Hongarije een erg bedenkelijke rol in Europa gespeeld, waarbij het vooral ten koste ging van Rusland, Tsjechië en Servië. In de "filosofie" van Hitlers NSDAP waren Slaven tweederangs "Untermenschen".

Dat laat natuurlijk onverlet, dat de recente moordpartijen in Bosnië-Herzegovina, die zijn bedacht door politici en uitgevoerd door militairen en paramilitaristische roverbenden op veelal onschuldige mannen, vrouwen en kinderen bestraft moeten worden.

In Servië leeft echter, ook bij niet-aanhangers en zelfs tegenstanders van Milosević, de wrange gedachte, dat de Balkanoorlogen tegen hun land nog niet voorbij zijn.

Vandaar de onwil van Belgrado om met aanklager Del Ponte van het VN-tribunaal in Den Haag samen te werken. De gevraagde documenten blijven voor altijd in de kluisen.

Ben Cornelissen

RE RACAK -

NATO bombed Yugoslavia in 1999 on the pretext that there had been a massacre in the vicinity of Racak in Kosovo>

24-3-2007

Deutsche Press-Agentur 17.1.2001 - International News "FINNISH EXPERTS FIND NO EVIDENCE OF SERB MASSACRE OF ALBANIANS - Finnish forensic experts in a final report on the circumstances of the deaths two years ago of some 40 people in the village of Racak in Kosovo found no evidence of a massacre by Serb security forces, a German newspaper reported Wednesday". <http://homes.dsl.nl/~hermantl/> - Also read "Was 'Racak' Kosovo's Gulf of Tonkin?" by Michel Collon The New Statesman 5.4.2001. And Chris Soda's "Complete Analysis of the Incident at Racak on January 15th 1999 - <http://www.egroups.co.uk/messageyugoslaviainfo/618> and many more on request from cdsmireland@eircom.net.

RE - During the course of NATO attacks on the multi ethnic region of Serbia/Yugoslavia, the Serbs were accused by the Western media of forcing ethnic Albanian people from their homes in Kosovo. This is a blatant lie. In fact people of all ethnic backgrounds in the region were fleeing their homes in the wake of NATO aggression against Yugoslavia. Read The Rockford Institute: OPERATION HORSESHOE: KOSOVO FORGERY REVEALED 4.4.2000 Available from cdsmireland@eircom.net

Sagittarius

Van: "R Despotovic" <despot@tiscali.nl>
Aan: "DIRECT DRAGAN DIRECT" <classic2direct@yahoo.com>; "Nico & Neeltje" <sagitar@hetnet.nl>
Verzonden: dinsdag 30 maart 2004 0:59
Onderwerp: Fw: Milosevic had refused his consent to the trial carrying on

— Original Message —

From: [nebojsa](#)
To: [Ruza](#)
Sent: Friday, March 26, 2004 9:24 AM
Subject: Milosevic had refused his consent to the trial carrying on

Ruza,
 Don't you think that the title of this article is very misleading?
 Nebojsa

Milosevic Does Not Demand Re-Trial as Judge Quits

<http://news.findlaw.com/international/s/20040325/milosevicdc.html>

By Paul Gallagher

THE HAGUE (Reuters) - Slobodan Milosevic quashed speculation he would demand a re-trial on Thursday after a judge resigned on health grounds just weeks before the former Yugoslav president opens his defense at The Hague war crimes tribunal.

Milosevic refused at a hearing to be drawn into giving — or explicitly withholding — his consent to proceedings going ahead with a replacement standing in for Richard May, the senior of three judges who have heard the first two years of the trial.

The hearing at the U.N. tribunal ruled that Milosevic, who refuses to recognize the court's legitimacy, had effectively refused his consent to the trial carrying on. Judges must now decide on whether to continue or order a re-trial. Other Hague trials have continued when judges have had to be replaced.

The trial, Europe's biggest war crimes proceedings since Hitler's henchmen were tried at Nuremberg after World War II, can still go ahead without Milosevic's consent if its judges decide its continuation is in the interests of justice.

"Since I consider your tribunal to be illegal I do not wish to declare my views on matters that have to do with administrative solutions to any problem you will raise here," Milosevic told the hearing.

Charged with genocide, crimes against humanity and war crimes in Bosnia, Croatia and Kosovo in the 1990s, he called for more time to prepare and conduct his defense but said he would not comment on "administrative issues."

"I do interpret your comments as amounting to refusal to consent," judge Theodor Meron said.

The trial was adjourned last month when prosecutors rested their case after calling some 290 witnesses in years. Milosevic is to launch his defense on June 8. The two remaining trial judges will decide how to proceed without judge May.

"It will therefore be for the trial chamber to determine whether the interests of justice warrant a continuation of the proceedings with a substitute judge without your consent or a whether a re-hearing should be ordered," judge Meron told Milosevic at Wednesday's administrative hearing.

The proceedings, dogged by Milosevic's bouts of illness, opened in February 2002. The former Serbian leader

is defending himself and has vigorously cross-examined witnesses.

He has dismissed the charges against him as politically motivated lies and says he does not recognize the court's jurisdiction. He reiterated a call to be released from detention on Thursday. The court has rejected such calls in the past.

"It is not my objective to disappear. It is my objective to win, to prevail, to show the truth," said Milosevic.

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Sagittarius

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Aan: "DIRECT DRAGAN DIRECT" <classic2direct@yahoo.com>; "Nico & Neeltje"
 <sagitar@hetnet.nl>
Verzonden: dinsdag 30 maart 2004 1:40
Onderwerp: Fw: Hague witness among Kosovo arrested

— Original Message —

From: [nebojsa](#)
To: [Ruza](#)
Sent: Thursday, March 25, 2004 3:21 PM
Subject: Hague witness among Kosovo arrested

Hague witness among Kosovo arrested

Beta - March 24, 2004

BELGRADE – Wednesday – A former regional commander of the Kosovo Protection Corps, Sukri Buja, arrested in connection with last weeks violence in Kosovo, was the first senior Kosovo Liberation Army officer to give evidence against Slobodan Milosevic at the Hague Tribunal.

Buja was arrested on Tuesday evening by Finnish KFOR troops on suspicion of inciting violence in Lipljan in which one Serb was killed and several injured. Hundreds of Serbs were expelled from the town, ten kilometres south of Pristina and scores of Serb-owned houses set on fire.

Buja is a senior official of the Democratic Party of Kosovo, the party established by former members of the Kosovo Liberation Army, after official announcements that the guerrilla organisation had been disbanded.

The Liberation Army's former political leader, Hasim Thaqi, is the president of the party.

Serbian judicial authorities have charged Buja with crimes against Serbs in 1998 and 1999 in the Urosevac.

According to Pristina media he was sentenced to thirteen years' imprisonment in 1989 for political activity and released after five years in custody in 1994.

In 1995 he sought political asylum in Switzerland, devoting himself to "helping Kosovo". He returned to the province after the massacre of the Jasari family in the village of Prekaz in March, 1998, entering illegally from Albania with another thirty people carrying light arms and weaponry.

Buja began his two days of testimony at the Hague Tribunal on June 5, 2002. Identified only as protected witness K7, he presented himself as the former commander of the Kosovo Liberation Army for the Racak district.

Under cross-examination, he admitted he did not know how many people he had killed during hostilities in Kosovo.

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Sagittarius

Van: "R Despotovic" <despot@tiscali.nl>
Aan: "Nico & Neeltje" <sagitar@hetnet.nl>
Verzonden: dinsdag 30 maart 2004 0:40
Onderwerp: Fw: *Part 3* How NATO Staged Albanian Flight during 1999

----- Original Message -----

From: <emperorsclothes1@aol.com>
Sent: Friday, March 26, 2004 7:22 PM
Subject: *Part 3* How NATO Staged Albanian Flight during 1999 Bombing

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 >
 > How NATO Staged Albanian Flight during NATO Bombing
 > - Part 3 of 3 -
 >
 > Interview with Cedomir Prlncevic, President of the Jewish Community of
 > Pristina, driven out by KLA terrorists in 1999
 > Formerly the Chief Archivist of Kosovo
 >
 > Interviewer: Jared Israel
 > Translator: Petar Makara
 > [Posted 3 December 2000 * Re-posted 26 March 2004]
 >
 > If you would like to send Part III by email, and want a 'clean' text, it
 > is posted at <http://tinyurl.com/2r6sv>
 >
 > Part I is at <http://tinyurl.com/ypzf3>
 > Part II is at <http://tinyurl.com/2g8qa>
 > The text is posted *in full* at
 > <http://emperors-clothes.com/interviews/keys.htm>
 >
 > =====
 >
 > Serbs and Albanians Worked Together During the Bombing, Until...
 >
 > =====
 >
 > Israel: In Pristina, during the bombardment, was there any effort to have
 > unity between the Albanians, the Serbs and other minorities?
 >
 > Prlncevic: We, as loyal citizens of Yugoslavia, whether Serbs or

Albanians, tried to cooperate and live together, to help each other.

>

> Israel: But what about the majority of the people in Pristina? Did the majority try to help each other?

>

> Princevic: Yes. It was the town of intellectuals. We all had flats next to each other. The children went to the same schools. We lived in the same apartment buildings.

>

> Israel: So the secessionists weren't strong there?

>

> Princevic: Not at first, but then later even in Pristina the Albanians were sucked into the secessionist camp. This could happen because of certain cultural traits, deeply rooted in their history. During the bombing, suddenly they started leaving. And when we asked them, "Why are you doing this?" they replied, "We have to!"

>

> Israel: Who are you talking about?

>

> Princevic: Professors, managers at stores, retired people, even retired Yugoslav Army officers who were ethnic Albanian.

>

> =====

>

> "Sorry, I have to go..."

>

> =====

>

> Princevic: I'll give you an example. My Albanian neighbor was a Professor. He seemed very much integrated into Yugoslav life. Our children played together; we were friends, you see. And then, without warning he packed up and started to leave his flat, to leave Kosovo. So I said: "Why are you leaving, neighbor?" He said: "Sorry. I have to." And I said, "Why? We're safe here. Nobody's bothering you. The housing complex hasn't been bombed. We're all working together." And he said, "I was ordered to leave." He gave me the keys so I could watch his flat. Ironically, after NATO took over he returned and then I was forced out by the KLA gangsters. I gave him my key, so he could watch my flat.

>

> Israel: But who ordered him to leave?

>

> Princevic: The leader of his clan.

>

> Israel: Why?

>

> Princevic: To prove obedience to the KLA. This was the KLA's national plan. All loyal Albanians were to leave during the bombing and go to Albania or Macedonia to show the world how terrible the Serbs were; this exodus was staged; it was a performance, Hollywood in Kosovo. What is Hollywood without actors? A large number of Albanians had to perform, had to actually leave Kosovo. This was not so different from what they had been doing for ten years, you see, pretending they had been locked out of the schools when actually it was an organized boycott, and so on.

>

> Moreover, once they were in the refugee camps, the Albanians would be

under the direct leadership of the KLA, which could intensively indoctrinate them, Which it did.

>

> Israel: But why would his clan leader agree to this crazy plan?

>

> Princevic: You think it was crazy? This gets us to the heart of the matter. Between the attacks from the KLA on Albanians who cooperated with the Yugoslav government and the continuous bombing by NATO, especially of Albanians who disobeyed the KLA, the KLA had gotten their message across to the clan leaders. So now the clan leaders ordered their people to pack up and leave.

>

> Israel: You know, during the bombing, NATO said the Albanians were fleeing atrocities. We Western opponents of NATO said they were fleeing the NATO bombing. But you're saying we were both wrong, that the Albanians weren't fleeing the Serbs or the bombing.

>

> Princevic: Let's just say the bombing isn't a sufficient explanation. If they were just fleeing bombs, why did they have to go to Albania and Macedonia? Why not to inner Serbia? And what about people like my friend, who just packed up, seemingly for no reason, and left? The rest of us, Serbs, Jews, Roma, we were in Pristina too. Why didn't we leave? Did we value our lives less than they valued theirs? No, it wasn't the bombs. They were afraid to disobey their clan leaders.

>

> But the bombing did play an important role. The KLA served as spotters; they could direct NATO attacks against hostile Albanians, and this confirmed for the clan leaders that the KLA had serious power.

>

> It was psychological warfare, intended to reinforce the psychological crisis among Albanians, a crisis rooted in fear.

>

> The KLA and NATO were telling Albanians: NATO supports the KLA. After NATO takes over, the KLA will be in charge and if you don't leave now you will be in big trouble later. There will be no safe refuge.

>

> That's what I meant when I said you need to know something about Albanian culture in order to understand why Albanians left.

>

> You have to know about blood feud.

>

>

>

> Blood feud and the Canon of Leke

>

>

>

> Princevic: One book has a great hold over Kosovo Albanians. It's called the 'Canon of Leke Dukagjiniis'. It's a 15th century text that spells out codes of behavior. It goes into great detail on how to carry out blood feuds, when and whom it is proper to kill. It lays out the proper methods to use when killing, rules and regulations and so on.

>

> And this Canon is alive among Albanians today, especially since the fall of communism. This is an intensely tradition-oriented culture. Blood feud is

a constant threat for Albanians. Thousands of people in Albania and Kosovo cannot leave their houses because they are being hunted; even a child in the cradle might be marked for death as part of a feud. It is for this reason that Kosovo Albanian houses are often built surrounded by high walls and with gun slits instead of windows.

>

> By methodically killing those who refused to support them, the KLA was striking a deep fear among Albanians: the refusal of one Clan member to obey could lead to revenge against his entire clan. And now the KLA had NATO bombers to enforce blood feud.

>

> What took me by surprise was how much this affected Albanians, even intellectuals. It's amazing. Here is a Professor in Pristina, very sophisticated, but when the order comes from his Clan leader, who is perhaps a farmer 100 miles away, the Professor immediately packs up and leaves for Albania without even considering saying no.

>

> Israel: We didn't understand the KLA. We thought their terror tactics were counter-productive.

>

> Princevic: Well, they knew their own people, their fears, their traditions. They knew that if they could prove they were deadly, the clan leaders would fall in line.

>

> Now they live in a society dominated by gangsters. None of this would have happened were it not for years of effort by the United States.

>

> * * *

>

> Part I is at <http://tinyurl.com/ypzf3>

> Part II is at <http://tinyurl.com/2g8qa>

>

> [Further reading follows the fundraising appeal]

>

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- > *****
- >
- > Further reading:
- >
- > *****
- >
- > 1) On the involvement of the OSCE Verification Monitors in organizing the KLA and in spying on Yugoslavia, see:
- >
- > * "The Cat is Out of the Bag" at
- > <http://emperors-clothes.com/news/ciaaided.htm>
- >
- > 2) "The roots of Kosovo fascism" by George Thompson can be read at
- > <http://emperors-clothes.com/articles/thompson/rootsof.htm>
- >
- > 3) On the criminalization of politics, economics and daily life in Kosovo since the June 1999 NATO takeover see the following:
- >
- > * "Crime and Terror in the New Kosovo" at
- > <http://emperors-clothes.com/news/u.htm>
- > [Documents the criminalization of daily life]
- >
- > * "How will you plead at the trial, Mr. Annan?" at
- > <http://emperors-clothes.com/news/howwill.htm>
- > [The London 'Observer' quotes an internal UN report documenting the criminal nature of the Kosovo Protection Corps, set up by the UN]
- >
- > * "Gracko survivors blame NATO" at
- > <http://emperors-clothes.com/misc/grack.htm>
- > [A terrible crime reveals the enormity of NATO's opening of the border between Serbia and Albania.]
- >
- > [4] United States planners were fully aware of the destabilizing potential of ethnic Albanians in Kosovo as far back as 1982. Here is a quote from "YUGOSLAVIA, a country of study," a 1982 book which is part of the U.S. Army's "Area handbook series."
- >
- > In the forward, Dr. William Evans-Smith, Director of Foreign Area Studies for American University in Washington, DC, writes:
- >
- > * "The study focuses on historical antecedents and on the cultural, political and socioeconomic characteristics that contribute to cohesion and cleavage within the society. "
- >
- > Here's a quote from the book:

- >
- > * "Yugoslavia's largest national minority was its Albanian community, in 1981 numbering some 1.6 million, nearly 7 percent of the population. Most Albanians were concentrated in Kosovo where they constituted roughly 80 percent of the population; another quarter million resided in neighboring Macedonia and Montenegro. All told, an estimated one-third to one-half of all Albanians lived in Yugoslavia - making them one of the largest potentially irredentist communities in the world..."
- >
- > "Some demonstrators [in the 1981 Albanian riots] suggested that the proposed Kosovo republic ought to include Albanians in Macedonia and Montenegro too. Some extremists even voiced secessionist sentiments calling for a 'Greater Albania.'"
- >
- > The book was published by Headquarters, Department of the Army (DA Pam 550-99), Documents, U.S. Government Printing Office, Washington, DC. It is available at libraries.
- >
- > ***
- >
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Van: "R Despotovic" <despot@tiscali.nl>
Aan: "Nico & Neeltje" <sagitar@hetnet.nl>
Verzonden: dinsdag 30 maart 2004 0:41
Onderwerp: Fw: Part 2 - How NATO Staged Albanian Flight during 1999

----- Original Message -----

From: <emperorsclothes1@aol.com>
Sent: Friday, March 26, 2004 5:30 PM
Subject: Part 2 - How NATO Staged Albanian Flight during 1999 Bombing

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- > How NATO Staged Albanian Flight during 1999 Bombing
- > - Part 2 of 3 parts -
- >
- > Interview with Cedomir Princevic, President of the Jewish Community of Pristina, driven out by KLA terrorists in 1999
- > Formerly the Chief Archivist of Kosovo
- >
- > Interviewer: Jared Israel
- > Translator: Petar Makara
- > [Posted 3 December 2000 * Re-posted 26 March 2004]
- >
- > If you would like to send Part II by email, and want a 'clean' text, it is posted at <http://tinyurl.com/2g8qa>
- >
- > Part I is at <http://tinyurl.com/ypzf3>
- >
- > Part III is at <http://tinyurl.com/2r6sv>
- >
- > The text is posted *in full* at
- > <http://emperors-clothes.com/interviews/keys.htm>
- >
- > =====
- >
- > [-- Text is continued from Part I --]
- >

> Israel: Was the bombing used to drive Albanians out of Kosovo?

>

> *****

>

> Princevic: Not mainly on its own, but yes, insofar as it reinforced the KLA's attempt to destabilize the area. Mr. Walker was the one who was organizing the KLA. Mr. Walker of the Verification Mission that came into Kosovo, under the OSCE [Organization for Security and Cooperation in Europe] umbrella, in the fall of 1998.

>

> You see this is a complex thing and I wanted to give a long answer. Even this international corps of monitors, this Verification Mission, they were also involved in organizing KLA. Before the bombing started we had this forced diplomacy. The European Community and the U.S. insisted that their forces come into Kosovo as peace monitors. At the head of these peace Verifiers was Mr. Walker.

>

> The Verifiers organized the KLA. That's why terrorist attacks by the KLA increased after they arrived. During that period there was no major shift of population, whether Albanian or Serbian, though this international monitor group was laying the basis for migration. They needed migration to create the impression of a crisis for international public opinion.

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> Israel: How did they lay the basis for migration?

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> *****

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> Princevic: They did it by having the KLA kill some Albanians who were cooperating with the government.

>

> *****

>

> Israel: The Verifiers, the OSCE Monitors, did all this?

>

> *****

>

> Princevic: Yes, they organized the KLA into a more cohesive force so it could influence events. And they prepared for the bombing. The Yugoslav government caught some Albanians and some Serbs who were positioning bombing markers. Those are radio devices that emit signals to identify targets.

>

> We were confused when the OSCE monitors left Kosovo. It should have been obvious why they left. Their job was done.

>

> *****

>

> Israel: OK, I'm confused right now. I'm not sure about our focus. Are we talking about the Verifiers being responsible for positioning bombing markers?

>

> *****

>

> Princevic: Yes! That is one thing they organized. I say this in full

> Israel: Getting back to the period up to the bombing: You were saying that in this area along the border two things were going on: The army was trying to get those people out of the potential fire zone plus they were organizing local Albanians for self-defense. But at the same time a section of Albanians had been organized by the other side, by the KLA. So they were having a contest for the hearts of the ethnic Albanians?

>

> *****

>

> Princevic: Yes. At first the Yugoslav government felt confident that they'd succeed in getting the Albanian population to organize to defend itself from the KLA. The attempt to do this started during the Rambouillet talks, in the winter of 1999, before the bombing.

>

> *****

>

> Israel: My impression is that the KLA [Kosovo Liberation Army] had a weak base during this period. Is that true?

>

> *****

>

> Princevic: Yes, but remember there was a continuous influx of their people from Albania. So they had weak popular support but they were getting reinforcements from Albania, trying to turn the tide.

>

> *****

>

> Israel: Which is why there were constant border clashes with Yugoslav troops fighting these intruders.

>

> *****

>

> Princevic: Right.

>

> *****

>

> Israel: So the KLA's solid base was in northern Albania?

>

> *****

>

> Princevic: At that time, yes. But the Yugoslav Government program of self defense failed in the border area and then gradually throughout Kosovo people switched to the KLA side.

>

> *****

>

> Israel: During the bombing was the KLA used as spotters for NATO air attacks?

>

> *****

>

> Princevic: Yes. Definitely.

>

> *****

>

responsibility. Yes, OSCE monitors prepared the NATO attack.

>
> The KLA is only a proxy for what NATO wanted to achieve in this geographical area. All the current political turmoil points to NATO, whether in Kosovo or Montenegro or the Former Yugoslav Republic of Macedonia.

>
> *****

>
> Israel: Explain what you mean, please.

>
> *****

>
> Princevic: I mean Kosovo is just one of the points of destabilization of Yugoslavia. It is manipulated from the US and Europe. And this is not just what I think. It is obvious.

>
> *****

>
> Israel: I apologize for these picky questions. People are starved for clarification on these points. Nobody has made things clear.

>
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>
> Princevic: I'm grateful for the questions. And again: I am answering with full consciousness of my responsibility to be accurate.

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>
> Israel: I understand. You're an historian of Kosovo.

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>
> Princevic: Yes, I am, and I want people to know the truth about what happened here...

>
> So getting back to the period before the bombing: the OSCE was taking steps to produce a migration of Albanians towards Macedonia and Albania. The idea was to break down the physical barrier of the border existing between Yugoslavia on the one hand and Macedonia and Albania on the other. The OSCE wanted to create for the international community the impression of a humanitarian catastrophe.

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>
> Israel: Even before the bombing?

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>
> Princevic: Yes. The OSCE was actually organizing the complete scenario for the crisis in Kosovo. Once again, they were trying to push the ethnic Albanian population to Albania and Macedonia to present the impression of a humanitarian nightmare.

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> We were surprised that right before the bombing significant numbers of Albanians began moving toward the border. We were surprised. But of course,

it was planned.

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> Israel: But there were no bombs yet.

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> Princevic: At that time the KLA had a big influx of reinforcements from Albania. They attacked road crossings and so on with the intention of making a total chaos and collapse of the situation in Kosovo. This was intended to make a point to all Albanians.

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> Israel: But in terms of the population movement, why were the ethnic Albanians leaving? I wish you could just give me some idea.

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> Princevic: That is exactly why I started answering your question by talking about the culture of the Albanian people. Because they have a strong clan structure and as part of that tradition, if the leader of the village says, "Let's vote for this candidate!" they tend to vote for this candidate, and if the leaders says "Let's all go!" - they go.

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> Israel: But why would the clan leaders say "Let's all go!"?

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> Princevic: First of all, a large part of the ethnic Albanians wanted to return to the situation that existed a hundred years ago, under the Ottoman Empire, and again during World War II, when Kosovo was under Nazi- Albanian control. Most of the Albanian population had been won to this goal by the secessionist movement.

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> Promises from the USA

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> Princevic: When I speak of secession you might think of the Basques in Spain or the Irish in Northern Ireland, but this is very different. In Kosovo, a foreign Superpower supported the secessionists for well over a decade. Because of this support, the Albanians were psychologically prepared to achieve - no, not to achieve, to be given - secession. As a gift. The secessionist leaders, starting with Rugova, had promised them, "Do this, do that and the US will intervene and we will get Kosovo." They had been promising this for years. "Sacrifice your children by boycotting the schools; sacrifice your health by boycotting the hospitals; use your suffering to show foreign public opinion how we suffer under the Serbs, and the U.S. will come to our rescue."

>
 > By March 1999 this political theater had been going on 10 years. "The US will set us free." And of course, many Albanians believed that during World War II the German Nazis had set Albanians free.

>
 > The Yugoslav constitution of 1974 didn't help. It weakened the central government and thus encouraged those in Kosovo who wanted to return to the W.W. II regime when Albanian nationalists ruled Kosovo under the German Nazis and terrorized the Serbs, Roma ['Gypsies'] and Jews. After 1974 the abuses against Serbs and Roma increased. This was openly manifested during the ethnic Albanian riots in 1981.

>
 > These were race riots, with Serbs as the targets, both the Serbian clergy and ordinary Serbian citizens. After that the Americans entered the picture and magnified the secessionists' political strength ten times over.

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 > U.S. Openly Encouraged Secessionists in 1990
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 > Prlincevic: For example, when US Ambassador Zimmerman arrived in Yugoslavia in 1990 [before the outbreak of the Yugoslav wars of secession] one of his first acts was to go to Kosovo and open an Exhibition of architectural works from Chicago. He used this exhibition to boost the Albanian secessionists.

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 > Israel: How?

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 > Prlincevic: He didn't invite anyone from the Federal Yugoslav Federal or Serbian Governments. But he did invite Ibrahim Rugova [the main secessionist leader at that time] and the like.

>
 > By snubbing the Federal Government, which represented multiethnic society, and snubbing those Albanian leaders who opposed secession, Zimmerman's action had a profound psychological effect

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 > Israel: I can imagine. Everyone notices who doesn't get invited to a party.

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 > Prlincevic: Yes, and especially in this period, when there was much ultra-nationalist agitation in Kosovo, to break Kosovo away from Serbia and to take parts of Macedonia and Bulgaria and link it all up with Albania. And these were the leaders whom Zimmerman invited. How could Albanians argue against secession when Rugova could say, "See? We have the support of the most powerful nation on earth!"

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- > Israel: People often present Mr. Rugova as the good guy, by way of contrast to the KLA.
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- > *****
- >
- > Prlncevic: They have the same goal: secession. The difference is over methods. Rugova always wears a scarf to illustrate the entrapment, or whatever, of Albanians in Yugoslavia. He says he'll take it off when Kosovo secedes from Serbia.
- >
- > The United States, for its own geopolitical reasons, deliberately encouraged the secessionist tendency among Albanians, used them against the Yugoslav government in order to destabilize the Balkans. [4]
- >
- > The fact is that Serbs and Albanians had been living together with some degree of tolerance for centuries, whenever there was peace... The United States disrupted this status quo.
- >
- > **
- >
- > This text is continued in Part III. To read Part III now, go to
- > <http://tinyurl.com/2r6sv>
- >
- > [Further reading follows the fundraising appeal]
- >
- > =====
- >
- > * Emperor's Clothes Needs Your Help *
- >
- > =====
- >
- > [Make a donation]
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- > Our best is yet to come...
- >
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- >
- > * Or by credit card over the phone. 1 (617) 916-1705
- >
- > Thank You!
- >

> *****

> Further reading:

> *****

> 1) On the involvement of the OSCE Verification Monitors in organizing the KLA and in spying on Yugoslavia, see:

> * "The Cat is Out of the Bag" at
> <http://emperors-clothes.com/news/ciaaided.htm>

> 2) "The roots of Kosovo fascism" by George Thompson can be read at
> <http://emperors-clothes.com/articles/thompson/rootsof.htm>

> 3) On the criminalization of politics, economics and daily life in Kosovo since the June 1999 NATO takeover see the following:

> * "Crime and Terror in the New Kosovo" at
> <http://emperors-clothes.com/news/u.htm>
> [Documents the criminalization of daily life]

> * "How will you plead at the trial, Mr. Annan?" at
> <http://emperors-clothes.com/news/howwill.htm>
> [The London 'Observer' quotes an internal UN report documenting the criminal nature of the Kosovo Protection Corps, set up by the UN]

> * "Gracko survivors blame NATO" at
> <http://emperors-clothes.com/misc/grack.htm>
> [A terrible crime reveals the enormity of NATO's opening of the border between Serbia and Albania.]

> [4] United States planners were fully aware of the destabilizing potential of ethnic Albanians in Kosovo as far back as 1982. Here is a quote from "YUGOSLAVIA, a country of study," a 1982 book which is part of the U.S. Army's "Area handbook series."

> In the forward, Dr. William Evans-Smith, Director of Foreign Area Studies for American University in Washington, DC, writes:

> * "The study focuses on historical antecedents and on the cultural, political and socioeconomic characteristics that contribute to cohesion and cleavage within the society. "

> Here's a quote from the book:

> * "Yugoslavia's largest national minority was its Albanian community, in 1981 numbering some 1.6 million, nearly 7 percent of the population. Most Albanians were concentrated in Kosovo where they constituted roughly 80 percent of the population; another quarter million resided in neighboring Macedonia and Montenegro. All told, an estimated one-third to one-half of all Albanians lived in Yugoslavia - making them one of the largest potentially irredentist communities in the world..."

> "Some demonstrators [in the 1981 Albanian riots] suggested that the

proposed Kosovo republic ought to include Albanians in Macedonia and Montenegro too. Some extremists even voiced secessionist sentiments calling for a 'Greater Albania.'"

>

> The book was published by Headquarters, Department of the Army (DA Pam 550-99), Documents, U.S. Government Printing Office, Washington, DC. It is available at libraries.

>

> ***

>

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Sagittarius

Van: "R Despotovic" <despot@tiscali.nl>
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Verzonden: dinsdag 30 maart 2004 1:30

Onderwerp: Kosovo-Studie des Bundeswehr-Offiziers Heinz

Vuksic jedenfalls war wieder zur Stelle, als sich Scharping im Frühjahr 2000 einige unangenehme Fragen zum Hufeisenplan ausgerechnet aus dem eigenen Haus gefallen lassen mußte (vgl. die Kosovo-Studie des Bundeswehr-Offiziers Heinz Loquai, auszugsweise dokumentiert in KONKRET 5/2000). In dieser Situation bestätigte Vuksic als bisher einziger jugoslawischer Militär die Existenz eines solchen Plans. In einem Vortrag vor der Österreichischen Militärakademie von 17. bis 19. März 2000 in Reichenau behauptete er: "Milosevic hat den Befehl zur Ausführung der Operation 'Hufeisen' erlassen". Nach der Absetzung Perisics im November 1998 habe "die neue Militärführung wahrscheinlich den glänzenden und schnellen Erfolg der Operation 'Hufeisen' versprochen".

<http://www.free-slobo.de/notes/ko020522.htm>

Nach einer Meldung der Nachrichtenagentur Reuters vom 12.07.2000 wurde am selben Tag dem Oberst der Reserve Dragan Vuksic, ehemaliger jugoslawischer Militärattaché in Deutschland, der mit Beginn der NATO-Luftoperation von seinem Posten abberufen wurde, durch ein jugoslawisches Militärgericht der Dienstgrad aberkannt. Als Grund wurde angegeben, dass er im März 1999 anlässlich einer Experten-Tagung in Wien maßgebliche Details eines geheimen Operationsplanes verraten habe. Dieser Plan habe zum Ziel gehabt, den kosovo-albanischen Aufstand im Kosovo zu ersticken und aufkeimende Veränderungen in der ethnischen Struktur der Provinz Kosovo zu verhindern. Mit dieser Urteilsbegründung hat die jugoslawische Seite selbst die Existenz eines geheimen Operationsplans zugegeben.

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Van: "Klaus von Raussendorff" <redaktion@aikor.de>
Aan: "Klaus von Raussendorff" <raussendorff@web.de>
Verzonden: woensdag 31 maart 2004 14:16
Onderwerp: Vor fünf Jahren: Auf den Trümmern Jugoslawiens begannen die neuen
Liebe Leute,

zum Fünften Jahrestag des NATO-Angriffs auf Jugoslawien dokumentiere ich:

GRENZEN

"Frankfurter Allgemeine Zeitung" vom 24. März 2004, S. 12

[1]

5 JAHRE DANACH: DER 24. MÄRZ 1999 - EIN TAG DER SCHANDE
Rede von Klaus Hartmann auf der Kundgebung am 20. März 2004 in Duisburg

[2]

ZUM 5. JAHRESTAG DES NATO-ÜBERFALLS AUF JUGOSLAWIEN
Rede von Joachim Guilliard auf der Kundgebung am 27. März 2004 in Mannheim

[3]

GENERAL JACKSON VERWEIGERT DEN BEFEHL -
VOR FÜNF JAHREN BEGANN DER KOSOVO-KRIEG

Von Jürgen Elsässer

"Freitag" vom 26. März, 2004

[4]

KOSOVARISCHE FOLKLORE - DER SCHWARZE KANAL:
ZU DEN NEUERLICHEN GEWALTEXZESSEN DER SCHUTZBEFOHLENE N DER
WESTLICHEN

WERTEGEMEINSCHAFT

Von Werner Pirker

"junge Welt" vom 27. März, 2004

<http://www.jungewelt.de/2004/03-27/029.php>

[5]

AUF DEN TRÜMMERN JUGOSLAWIENS - DIE MILITARISIERUNG DEUTSCHER
AUSSENPOLITIK

IM SPIEGEL DER ZERSCHLAGUNG EINES STAATES

Von Cathrin Schütz*

"Neues Deutschland" vom 26. März 2004

[6]

Hinweis:

Das serbische Parlament beschloss am 31. März 2004 ein Gesetz über die Rechte der vom ICTY in Den Haag angeklagten Gefangenen in und ihrer Familien. Dies ist als ein positiver Schritt zu bewerten, da der serbische Staat beginnt, seiner verfassungsrechtlichen Verpflichtung konkret nachzukommen, seine Staatsbürger zu schützen, die im Ausland strafrechtlich verfolgt werden. Das Gesetz gewährt den Gefangenen in Den Haag und ihren Familien eine sehr bescheidene finanzielle Unterstützung (weiterlaufende Gehaltszahlungen für ehemals in Serbien beschäftigte, Reisekosten für Besuche von Familienangehörigen, etwa 170 EUR für Telefonkosten pro Monat).

Sagittarius

Van: "L. Brusselaers" <brusselaers@zeelandnet.nl>
Aan: "Intal" <info@intal.be>
Verzonden: donderdag 1 april 2004 19:18
Onderwerp: FW: Public Meeting in LONDON 2.4.04 - The Trial of Slobodan Milosevic and the Struggle for Truth and Justice - The Hague Fiddles as Kosovo Burns

-----Oorspronkelijk bericht-----

Van: cdsmireland@eircom.net [mailto:cdsmireland@eircom.net]
Verzonden: donderdag 1 april 2004 18:23
Aan: AilbheSmyth; BredaOBrien; BelfastNews; Afri; aocleiden; afa; aart; BertieAhern; BrianDenny; brusselaers; AliceMahonMP; AzhariMustafa; AlantJost; AnPhoblacht; BlackPope; BalkanStudiesOrg; BetteJones; BrendanRyan; Artel; AmnestyInternational
Onderwerp: Public Meeting in LONDON 2.4.04 - The Trial of Slobodan Milosevic and the Struggle for Truth and Justice - The Hague Fiddles as Kosovo Burns

Contact: CDSM (UK) Ian Johnson - i-johnson@lineone.net

Message of Support to the Committee to Defend Slobodan Milosevic - UK re your meeting "The Trial of Slobodan Milosevic and the Struggle for Truth and Justice" - Conway Hall London 2.4.2004
 From: People Against War Network - Ireland

We commend and support organisers of tonight's meeting held to expose the lies propagated by the West to justify the war against Yugoslavia and to launch the sham trial against President Slobodan Milosevic.
 Please don't hesitate to contact us for information pack on the war in The Balkans.

Our warmest greetings to all in attendance.

Joe O'Brien - People Against War Network email: nowar@eircom.net
 31.3.2004

The People Against War Network supports people from all ethnic groups in the Balkans and blames the war solely on Western military industrialists based in the USA, Germany the UK etc for starting the war. The USA and EU 's premature declarations of so-called independence for Croatia and Bosnia and sponsorship and training of the fanatic anti socialist/antiYugoslavia separatist forces brought death and destruction to people from all ethnic groups in the Balkans.

THE TRIAL OF SLOBODAN MILOSEVIC AND THE STRUGGLE FOR TRUTH AND JUSTICE

-
 Public Meeting Organised by International Committee to Defend Slobodan Milosevic (UK Section) Conway Hall, Red Lion Square, Holborn, London WC1.
 Friday 7.30 pm 2nd April 2004

To the International Committee to Defend Slobodan Milosevic (UK Section)
 From June Kelly for the International Committee to Defend Slobodan Milosevic

(Irish Section) email: cdsmireland@eircom.net - <http://www.icdsmireland.org>
31.3.2004

"The media campaign against Serbia/Yugoslavia on behalf of the military and industrial complex based on repeating the lie and scapegoating the victim conditioned all but the most sceptically inclined into believing Slobodan Milosevic and the Serbian people to be culpable for every single offence committed in the last Balkans war.

This has led the way to the passive acceptance of the brutal overthrow of President Milosevic's government by a cabal of C.I.A. funded thugs and the establishment in Belgrade of an American sponsored puppet government subservient to foreign capital.

The abduction of Mr Milosevic a sovereign head of state characterises the gross illegality associated with the West's entire campaign to establish a military occupation and corporate take over of Yugoslavia and its neighbours. All of this achieved under the guise of granting independence to the various regions in the area.

The U.S./NATO sponsored Hague Tribunal has been Kafkaesque in its presentation of lies, false witness and manufactured evidence - This is the living embodiment of Kafka's "The Trial" in an era summed up by the writer as a time when, "not the murderer but the victim will be considered guilty". (Part of text of Summary of Workshop presented by ICDSM member which took place in Dublin in October 2003. The workshop was titled - "We Were Lied To About Iraq As We Were Lied To About The Balkans War".)

In the struggle for truth, justice and peace we send our message of support and solidarity to our friends the organisers and people gathered at the meeting in Conway Hall London tonight."

To join or help this struggle for truth and justice, visit:

<http://www.sloboda.org.yu/> (Sloboda/Freedom Association)

<http://www.icdsm.org/> (The International Committee to Defend Slobodan Milosevic

ICDSM)

<http://www.wpc-in.org/> (World Peace Council)

<http://www.free-slobo.de/> (German Section of ICDSM)

<http://www.icdsmireland.org/> (Irish Section of ICDSM)

<http://www.icdsm-us.org/> (U.S. Section of the ICDSM)

http://www.geocities.com/b_antinato/ (Balkan antiNATO Centre)

SLOBODA urgently needs your donation.

Please find the detailed instructions at:

<http://www.sloboda.org.yu/pomoc.htm>

A few extra notes for reference compiled by ICDSM(Irish Section)

KOSOVO CRISIS - March 2004

KOSOVO - To oppose militarism/war and foreign occupation of Iraq Palestine Afghanistan □ must also mean to oppose foreign military and corporate occupation of Kosovo - For example, Camp Bondsteel is the largest US military base outside of the USA. To oppose militarism/NATO must also mean