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Tribunal international chargé de poursuivre les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire de l'ex-Yougoslavie depuis 1991

Affaire n° : IT-03-67-T

Date: 10 décembre 2007

Original: FRANÇAIS

LA CHAMBRE DE PREMIÈRE INSTANCE III

Composée comme suit : M. le Juge Jean-Claude Antonetti, Président
M. le Juge Frederik Harhoff
Mme. le Juge Flavia Lattanzi

Assisté de: M. Hans Holthuis, le Greffier

Décision rendue le: 10 décembre 2007

LE PROCUREUR

c/

VOJISLAV ŠEŠELJ

DOCUMENT PUBLIC

**DÉCISION RELATIVE À LA REQUÊTE DE L'ACCUSATION
AUX FINS DE DRESSER LE CONSTAT JUDICIAIRE DE FAITS
EN APPLICATION DE L'ARTICLE 94(B) DU RÈGLEMENT DE
PROCÉDURE ET DE PREUVE**

Le Bureau du Procureur

Mme. Christine Dahl

L'Accusé

Vojislav Šešelj

I. INTRODUCTION

1. La Chambre de première instance III (« Chambre ») du Tribunal international chargé de poursuivre les personnes présumées responsables de violations graves du droit international humanitaire commises sur le territoire de l'ex-Yougoslavie depuis 1991 (« Tribunal ») est saisie d'une requête aux fins de dresser le constat judiciaire de faits admis dans d'autres affaires, en application de l'article 94(B) du Règlement de procédure et de preuve (« Règlement »), enregistrée par le Bureau du Procureur (« Accusation ») le 23 mai 2006 (« Requête »)¹.

II. RAPPEL DE LA PROCÉDURE

2. Le 23 mai 2006, l'Accusation déposait sa Requête par laquelle elle demandait que soit dressé le constat judiciaire de 418 faits tirés de plusieurs jugements rendus dans d'autres affaires².

3. Ayant obtenu une prorogation de délai pour répondre ainsi qu'une extension de la limite du nombre de mots³, l'Accusé présentait sa réponse le 25 août 2006, laquelle était enregistrée le 26 juillet 2007 (« Réponse »)⁴, suite à l'autorisation donnée par le Juge de la mise en état alors chargé de l'affaire⁵.

¹ Original en anglais intitulé "Prosecution's Motion for Judicial Notice of Adjudicated Facts, with Annex", 23 mai 2006.

² *Le Procureur c/ Radoslav Brđanin*, affaire n° IT-99-36-T, Jugement, 1 Septembre 2004; *Le Procureur c/ Vidoje Blagojević et Dragan Jokić*, affaire n° IT-02-60-T, Jugement, 17 janvier 2005; *Le Procureur c/ Zejnir Delalić, Zdravko Mucić, Hazim Delić et Esad Landžo*, affaire n° IT-96-2-T, Jugement, 16 novembre 1998; *Le Procureur c/ Stanislav Galić*, affaire n° 98-39-T, Jugement, 5 décembre 2003; *Le Procureur c/ Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić et Vladimir Šantić*, affaire n° IT-95-16-T, Jugement, 14 janvier 2000; *Le Procureur c/ Milorad Krnojelac*, affaire n° IT-97-25-T, Jugement, 15 mars 2002; *Le Procureur c/ Radislav Krstić*, affaire n° IT-98-33-T, Jugement, 2 août 2001; *Le Procureur c/ Dragoljub Kunarac, Radomir Kovač et Zoran Vuković*, affaire n° IT-96-23-T, Jugement, 22 février 2001; *Le Procureur c/ Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić, Dragoljub Prcać*, affaire n° IT-98-30/1-T, Jugement, 2 novembre 2001; *Le Procureur c/ Blagoje Simić, Miroslav Tadić et Simo Zarić*, affaire n° IT-95-9-T, Jugement, 17 octobre 2003; *Le Procureur c/ Milomir Stakić*, affaire n° IT-97-24-T, Jugement, 31 juillet 2003; *Le Procureur c/ Pavle Strugar*, affaire n° IT-01-42-T, Jugement, 31 janvier 2005; *Le Procureur c/ Duško Tadić*, affaire n° IT-94-1-T, Jugement, 7 mai 1997; *Le Procureur c/ Mitar Vasiljević*, affaire n° IT-98-32-T, Jugement, 29 novembre 2002.

³ Par décision de la Chambre I rendue le 12 juillet 2006 (voir original en anglais intitulé "Decision regarding deadlines for responses to motions on expert witnesses and adjudicated facts", 12 juillet 2006, p. 3). L'Accusé avait présenté une requête orale en ce sens lors d'une conférence de mise en état, voir Conférence de mise en état du 4 juillet 2006, CRF. 545).

⁴ Traduction en anglais de l'original en BCS intitulé "Submission 210-Dr. Vojislav Šešelj Response to the Prosecutor's Request for Taking Judicial Notice of Adjudicated Facts and Appendix", présentée le 25 août 2006 et enregistrée le 26 juillet 2007 (« Réponse »).

⁵ Décision relative à la troisième requête de l'Accusé aux fins d'admettre les documents 210, 211 et 212 (numéro 286), 26 juillet 2007. Il convient de noter que les écritures déposées le 25 août 2006 ont été, à plusieurs reprises, soumises par l'Accusé puis rejetées par le Greffe car elles ne respectaient pas la limite de mots déjà augmentée (5000 mots) qui avait été fixée par décision de la Chambre I du 12 juillet 2006. Voir *supra*, note de bas de page 2. Voir également la traduction en anglais de l'original en BCS intitulé "A Repeated Request from Professor Vojislav Šešelj, PhD to the Trial Chamber that it Receive Submissions Number: 210, 211 and 212", présentée le 8 janvier 2007; Traduction en anglais de l'original en BCS intitulé "Professor Vojislav Šešelj Third Motion that Trial Chamber III Admit Submissions 210, 211 and 212", présentée le 11 avril 2007 et enregistrée le 25 avril 2007, p. 3.

4. Le 2 août 2007, l'Accusation demandait l'autorisation de répliquer, et joignait sa réplique, en contestant de façon générale les arguments avancés par l'Accusé dans sa Réponse (« Réplique »)⁶.

III. ARGUMENTS DES PARTIES

5. L'Accusation soutient que le constat judiciaire des 418 faits mentionnés en annexe de sa Requête irait dans le sens de l'économie judiciaire et d'une harmonisation de la jurisprudence du Tribunal, tout en respectant les droits de l'Accusé⁷. En effet, il permettrait à la Chambre de ne pas inutilement perdre de temps avec l'établissement des faits allégués dans l'acte d'accusation porté contre l'Accusé (« Acte d'accusation ») et/ou du contexte historique, afin de se concentrer uniquement sur les questions liées à la responsabilité de l'Accusé⁸. L'Accusation indique par ailleurs que les faits dont elle sollicite le constat sont en rapport avec la présente instance et respectent les critères fixés par la jurisprudence applicable à l'article 94(B) du Règlement⁹.

6. L'Accusé répond en sollicitant le rejet de la Requête essentiellement pour deux motifs¹⁰. En premier lieu, les critères permettant de faire droit à la Requête ne seraient pas remplis¹¹. En effet, admettre la Requête aurait notamment pour conséquence de violer son droit à un procès équitable en renversant de façon injustifiée la charge de la preuve pesant sur l'Accusation¹². L'Accusé relève par exemple que les faits admis à l'encontre de personnes serbes dans l'affaire *Čelebići* ne peuvent faire l'objet d'un constat judiciaire dans la présente espèce car les accusés dans cette affaire étaient musulmans et avaient dès lors tout intérêt à ne pas s'opposer à l'admission de tels faits¹³. L'Accusé soutient en second lieu que l'Accusation commet un abus de droit en présentant des faits comme admis dans des affaires antérieures alors qu'ils ne le sont pas¹⁴.

⁶ Original en anglais "Prosecution's Reply to Accused's Response (No. 210) (D21427) to the Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94 (B) (D12516)", enregistré le 2 août 2007 (« Réplique »).

⁷ Requête, par. 8-16.

⁸ *Id.*, par. 10.

⁹ *Id.*, par. 17-19. L'Accusation explique également très brièvement la manière dont est organisée l'annexe de la Requête (Requête, par. 20-22). Voir également la Réplique, dans laquelle l'Accusation admet que certains faits sont liés à l'entreprise criminelle commune alléguée dans l'Acte d'accusation (Réplique, par. 9). Elle soutient en outre que les faits dont l'admission est sollicitée n'ont pas été pris hors contexte ni altérés et que leur formulation n'a été modifiée que quand il fut nécessaire d'expliquer le contexte ou le contenu des faits (Réplique, par. 11). Elle note enfin que beaucoup de faits dont elle sollicite l'admission ont déjà fait l'objet de constats judiciaires antérieurs (Réplique, par. 13).

¹⁰ Réponse, pp. 2, 107.

¹¹ *Id.* pp. 2-10.

¹² *Id.*, p. 2.

¹³ *Id.*, p. 4, 7.

¹⁴ *Id.*, pp.10-11. L'Accusé présente ensuite des observations spécifiques pour illustrer ces propos en se basant sur certains faits dont le constat judiciaire est sollicité (voir Réponse, pp. 11-107).

IV. DROIT APPLICABLE

7. L'article 94(B) du Règlement dispose qu'une Chambre de première instance peut, d'office ou à la demande d'une partie, et après audition des parties, décider de dresser le constat judiciaire de faits ou de moyens de preuve documentaires admis lors d'autres affaires portées devant le Tribunal et en rapport avec l'instance.
8. L'article 94(B) donne ainsi à la Chambre de première instance la *faculté* de dresser le constat judiciaire de faits admis dans d'autres affaires et en rapport avec l'instance. Ce constat a pour effet de créer une présomption simple et de renverser la charge de la preuve sur la partie contestant le fait ayant fait l'objet du constat, cette partie devant alors en rapporter la preuve contraire.
9. Dans l'exercice de son pouvoir discrétionnaire, la Chambre vérifie donc que les faits en question remplissent effectivement les critères posés par l'article 94(B) du Règlement et développés par la jurisprudence¹⁵, c'est-à-dire qu'il s'agit de faits
- 1) suffisamment clairs (concrets, distincts et identifiables notamment par des références précises aux paragraphes ou parties du jugement antérieur);
 - 2) définitifs (ne faisant pas l'objet d'une procédure d'appel ou de révision);
 - 3) pertinents au regard de l'acte d'accusation;
 - 4) ne pouvant raisonnablement être contesté par la partie adverse;
 - 5) constituant uniquement des conclusions factuelles et ne contenant pas de qualification juridique ou d'opinion subjective;

¹⁵ Voir en ce sens notamment *Le Procureur c/ Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Vladimir Šantić*, affaire n° IT-95-16-A, Décision relative aux requêtes des appelants Drago Josipović, Zoran et Vlatko Kupreškić aux fins d'admissions de moyens de preuve supplémentaires, en vertu de l'article 115, et aux fins de constat judiciaire, en vertu de l'article 94 B), 8 mai 2001; *Le Procureur c/ Momčilo Krajišnik*, affaire n° IT-00-39-PT, Décision relative aux requêtes de l'Accusation aux fins du constat judiciaire de faits admis et de l'admission de déclarations écrites en application de l'article 92 bis, 28 février 2003; *Le Procureur c/ Slobodan Milošević*, affaire n° IT-02-54-T, Décision relative à la requête de l'Accusation aux fins de dresser le constat judiciaire de faits admis dans d'autres affaires, 10 avril 2003; *Le Procureur c/ Enver Hadžihasanović et Amir Kubura*, affaire n° IT-01-47-T, Décision relative au constat judiciaire de faits admis dans d'autres affaires suite à la demande des conseils des accusés Hadžihasanović et Kubura déposée le 20 janvier 2005, 14 avril 2005; *Le Procureur c/ Momir Nikolić*, affaire n° IT-02-60/1-A, Décision relative à la requête de l'Appelant aux fins de constat judiciaire, 1^{er} avril 2005; *Le Procureur c/ Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Valentin Čorić et Berislav Pušić*, affaire n° 04-74-PT, Décision relative à la requête aux fins de dresser le constat judiciaire de faits admis dans d'autres affaires en application de l'article 94 B) du Règlement, 14 mars 2006; *Le Procureur c/ Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero et Vinko Pandurević*, affaire n° IT-05-88-T, original en anglais intitulé "Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex", 26 septembre 2006; *Le Procureur c/ Édouard Karemera, Mathieu Ngirumpatse et Joseph Nzirorera*, affaire ICTR-98-44-T, Décision relative à la requête du Procureur aux fins de constat judiciaire, 30 avril 2004.

- 6) ne reposant pas sur des accords de plaidoyers convenus dans des affaires antérieures;
- 7) ne mettant pas potentiellement en cause la responsabilité pénale de l'Accusé; et
- 8) ne compromettant pas le droit de l'accusé à un procès équitable.

V. DISCUSSION

10. La Chambre accepte d'examiner la Réplique qui a été déposée dans le délai imparti par l'article 126*bis* du Règlement et qui répond aux arguments présentés par l'Accusé.

11. La Chambre a analysé les 418 faits dont le constat judiciaire est sollicité par l'Accusation à la lumière des arguments présentés par les parties, des critères rappelés ci-dessus, ainsi que des jugements cités par l'Accusation.

12. Par conséquent, la Chambre considère que le constat judiciaire des faits figurant en annexe de la Requête et portant les numéros suivants, ne peut pas être dressé au motif qu'ils ne sont pas **pertinents** au regard de l'Acte d'Accusation car ils concernent notamment des régions ou municipalités — Kosovo, Prijedor, Sanski Most, Foča et Višegrad — non visés par l'Acte d'accusation ou des détails superflus concernant les municipalités au sujet desquelles l'Accusation ne peut apporter de moyens de preuve sur la seule « ligne de conduite délibérée », notamment Bosanski Šamac¹⁶: 28, 210, 211, 261, 330 à 418.

13. La Chambre estime en outre que le constat judiciaire des faits portant les numéros suivants ne peut pas être dressé, au motif qu'ils mettent potentiellement en cause la **responsabilité de l'Accusé** — en se rapportant notamment à l'objectif ou aux membres de l'entreprise criminelle commune alléguée ainsi qu'aux personnes pour lesquelles l'Accusé est tenu responsable — ou qu'ils sont liés à une **question fondamentale soulevée par l'Acte d'accusation sur laquelle la Chambre sera amenée à statuer** — notamment le concept de « Grande Serbie » et les questions y ayant trait et la propagande organisée par les autorités et les médias serbes: 1, 3, 29 à 36¹⁷, 37, 57, 61, 71, 72, 75, 84, 87, 91, 92, 95, 114, 122 à 128, 132 à 135, 166, 168 à 170, 173 à 177, 180, 216, 222 à 228, 230 à 233, 249 à 253, 259, 260, 262, 288, 321.

¹⁶ Voir Décision relative à l'application de l'article 73 *bis* du Règlement, 8 novembre 2006, traduction en français du 26 mars 2007.

¹⁷ Ce fait mentionne nommément l'Accusé.

14. La Chambre estime de plus que le constat judiciaire des faits portant les numéros suivants ne peut pas être dressé, au motif qu'ils ne sont **pas suffisamment clairs**: 2¹⁸, 5, 13, 159, 184, 220¹⁹, 229, 264, 265, 302, 318²⁰.

15. La Chambre estime également que le constat judiciaire des faits portant les numéros suivants ne peut pas être dressé, au motif qu'ils ne constituent pas de simples conclusions factuelles mais contiennent des **qualifications juridiques ou des opinions subjectives**: 46, 47, 62, 130, 131, 254, 266, 294, 296, 301, 313, 320, 323, 326, 329.

16. La Chambre estime enfin que le constat judiciaire des faits portant les numéros suivants ne peut pas être dressé, au motif qu'ils ne sont **pas définitifs**: 64, 156²¹.

17. La Chambre a par ailleurs estimé que certains faits portant les numéros suivants pouvaient faire l'objet d'une **admission partielle** si certaines portions étaient supprimées ou ajoutées afin de rendre le fait compatible avec les critères d'admissibilité évoqués ci-dessus: 26, 59, 94, 148, 186, 246, 267, 275, 276, 281, 282, 290, 293, 317, 322, 324, 328.

18. La Chambre a enfin estimé opportun de dresser le constat judiciaire des faits portant les numéros suivants sans y apporter aucune modification: 4, 6 à 12, 14 à 25, 27, 38 à 45, 48-56, 58, 60, 63, 65 à 70, 73, 74, 76 à 83, 85, 86, 88 à 90, 93, 96 à 113, 115 à 121, 129, 136 à 147, 149 à 155, 157, 158, 160 à 165, 167, 171, 172, 178, 179, 181 à 183, 185, 187 à 209, 212 à 215, 217-219, 221, 234 à 245, 247, 248, 255 à 258, 263, 268 à 274, 277 à 280, 283 à 287, 289, 291, 292, 295, 297 à 300, 303 à 312, 314 à 316, 319, 325, 327.

19. L'ensemble des faits dont la Chambre accepte de dresser le constat judiciaire figure en annexe de la présente décision. Ces faits sont mentionnés en langue anglaise car il n'existe à ce jour aucune traduction officielle en langue française de la liste des faits dont l'Accusation sollicite le constat judiciaire, figurant en annexe de la Requête.

¹⁸ Ce fait est redondant avec le fait 80, ce dernier étant plus clair.

¹⁹ Pour ce fait, l'Accusation ne fournit aucune référence précise qui aurait permis à la Chambre de vérifier que le fait a réellement été admis dans une autre affaire.

²⁰ Pour ce fait, l'Accusation fournit une référence qui ne correspond pas au fait mentionné.

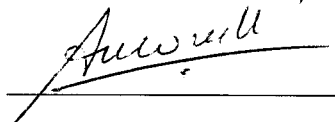
²¹ Les faits 64 et 156 concernent l'affaire *Le Procureur c/ Pavle Strugar*, affaire IT-01-42-T, dans laquelle la procédure d'appel a été réouverte suite à la décision dont l'original en anglais est intitulé *Le Procureur c/ Pavle Strugar*, Affaire n° IT-01-42-Misc.1, « Decision on Strugar's Request to Reopen Appeal Proceedings », 7 juin 2007.

VI. DISPOSITIF

20. Par ces motifs et en application de l'article 20(1) du Statut du Tribunal et de l'article 94(B) du Règlement, la Chambre **FAIT PARTIELLEMENT DROIT** à la Requête et dresse le constat judiciaire des faits énumérés en langue anglaise dans l'annexe jointe à la présente décision.

21. La Chambre **REJETTE** la Requête pour le surplus.

Fait en anglais et en français, la version en français faisant foi.



Jean-Claude Antonetti
Président de la Chambre

En date du dix décembre 2007
La Haye (Pays-Bas)

[Sceau du Tribunal]

ANNEXE

Numéro du fait	Contenu du fait
4	For Serbs the heroic but unsuccessful resistance of the Serb nation to Turkish invasion, culminating in their defeat in the battle of Kosovo, remains an emotional event, symbolic of Serb courage.
6	In 1929 that Kingdom changed its name to the Kingdom of Yugoslavia, that is, the Kingdom of the southern Slavs.
7	For many centuries Roman Catholicism had predominated in the northern and western sectors, whereas Orthodox Christianity and Islam prevailed in its southern and eastern sectors under the rule of the Ottoman Empire.
8	This same general religious division persisted into this century and indeed still persists.
9	During the time of Axis occupation, a portion of the territory of the state was annexed by Italy and two other areas were transferred to Bulgarian and Hungarian control respectively.
10	Much of what remained became the formally independent but in fact Axis puppet state of Croatia, extending far beyond previous, and subsequent, Croatian boundaries and divided between Italian and German zones.
11	The Second World War was a time of prolonged armed conflict in Yugoslavia, in part the product of civil war, in part a struggle against foreign invasion and subsequent occupation.
12	Although this wartime situation was short-lived, lasting only from 1941 to 1945, it left bitter memories, not least in Bosnia and Herzegovina, large parts of which, including opština Prijedor, were included in the puppet state of Croatia.
14	However, at least in opština Prijedor, particularly in rural areas, the three populations, Serbs, Croats and Muslims, tended to live separately so that in very many villages one or another nationality so predominated that they were generally regarded as Serb or Croat or Muslim villages.
15	Many witnesses speak of good intercommunal relations, of friendships across ethnic and coincident religious divides, of intermarriages and of generally harmonious relations.
16	Marshal Tito and his communist regime took stern measures to suppress and keep suppressed all nationalist tendencies.
17	Under its Constitution of 1946, the country was to be composed of six Republics: Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia, and Montenegro and two autonomous regions, Vojvodina and Kosovo.
18	According to the 1946 Yugoslav Constitution, the peoples of the Republics, other than Bosnia and Herzegovina, were regarded as distinct nations of federal Yugoslav.

19	The situation of Bosnia and Herzegovina was unique; although it was one of the six Republics, it, unlike the others, possessed no one single majority ethnic grouping and thus there was no recognition of a distinct Bosnian nation.
20	However, by 1974 the Muslims were considered to be one of the nations or peoples of federal Yugoslavia.
21	Throughout the years of Marshal Tito's communist Yugoslavia, religious observance was discouraged.
22	Nevertheless, the population remained very conscious of so-called ethnic identity, as Serb, Croat or Muslim.
23	Today, in Bosnia and Herzegovina, whether practising or non-practising, the great majority of Serbs remain Orthodox Christian and the Croats Roman Catholic, while the title Muslim speaks for itself.
24	Post-war Yugoslavia was, at first, a highly centralist State, with substantial power exercised federally from Belgrade.
25	Then, in the 1960s and on into the 1970s, there was a trend towards devolution of power to the governments of the Republics, a trend enhanced by a new Constitution adopted in 1974 and which continued on into the 1980s.
26	In October 1988, the authorities governing Vojvodina were removed [...].
27	In the mid to late 1980s, the Republic of Serbia had already begun measures to deprive Yugoslavia's two autonomous provinces, Vojvodina and Kosovo, of their separate identity and effectively to incorporate them into the Republic. This it achieved in substance in 1990, thereby ending what Serbs regarded as a discriminatory feature of the federation, that the one entire nation of Serbs, consisting of Serbia and the two provinces, was, alone of the Republics, denied a single, united identity.
38	Yugoslavia had long pursued its own unique system of socialist self-management which set it apart from the rest of the communist world.
39	During the 1980s this system came to be widely regarded as responsible for Yugoslavia's protracted economic crisis.
40	Towards the end of the 1980s, the economic crisis in Yugoslavia developed into a major political one.
41	Yugoslavia's one-party state, with all political power in the hands of the League of Communists, was increasingly regarded as outmoded.
42	In 1988, a sweeping reform of the political and constitutional scene occurred. The whole structure of socialist self-management, entrenched as it had been in the federal Constitution, was abolished.
43	The many constitutional references to the Yugoslav working class as the political actors and possessors of political power were removed and the leading political role of the League of Communists was brought to an end.

44	In 1988 and 1989 events in both Serbia and Slovenia suggested impending threats to the unity of the federation.
45	Marshal Tito's death in 1980 and the rapid disintegration of the ruling League of Communists of Yugoslavia in the first months of 1990 resulted in a power vacuum and the emergence of national parties throughout the country.
48	Slobodan Milošević, already a powerful political figure in Serbia as a party chief, spoke at a mass rally at the site of the Kosovo battlefield itself.
49	Slobodan Milošević spoke at the Kosovo battlefield as the protector and patron of Serbs throughout Yugoslavia and declared that he would not allow anyone to beat the Serb people.
50	Slobodan Milošević's speech greatly enhanced his role as the charismatic leader of the Serb people in each of the Republics, after which he rapidly rose in power.
51	In 1989 Slovenia formally amended the Republic's Constitution to empower the Slovene Assembly to take measures to protect the Republic's status and rights from violation by organs of the federation.
52	This amendment was declared unconstitutional by Yugoslavia's constitutional court.
53	In December 1989 Slovenia chose to ignore the decision of the court.
54	In the following 18 months other Republics increasingly ignored federal authority.
55	In May 1990, a new government was elected into office in Slovenia after its first multi-party elections.
56	In December 1990, a plebiscite was held in Slovenia, resulting in an overwhelming majority vote for independence from Yugoslavia.
58	A plebiscite in Croatia in May 1991 produced an overwhelming majority for independence.
59	Just before the holding of the Croatian plebiscite, Serbia and Montenegro, aided by the votes of the two formerly autonomous provinces now controlled by Serbia, blocked for a time the customary rotation of the collective Presidency of the federation, preventing the appointment of a Croat whose turn it was, according to the convention, to be President of the federation. [...]
60	On 25 June 1991 Slovenia and Croatia declared their independence from the Socialist Federal Republic of Yugoslavia.
63	In Bosnia and Herzegovina, the Parliament declared the sovereignty of the Republic on 15 October 1991.
65	The Republic of Serbian People of Bosnia and Herzegovina (later to become the <i>Republika Srpska</i>) was declared on 9 January 1992, to come into force upon any international recognition of the Republic of Bosnia and Herzegovina.
66	In March 1992 Bosnia and Herzegovina declared its independence following a

	referendum held in February 1992 sponsored by the Bosnian Muslims with some support from Bosnian Croats.
67	The holding of the February referendum had been opposed by Bosnian Serbs, who very largely abstained from voting.
68	The European Community and the United States of America recognised the independence of the Republic of Bosnia and Herzegovina in April 1992.
69	The Republic of Bosnia and Herzegovina was admitted as a State member of the United Nations, following decisions adopted by the Security Council and the General Assembly, on 22 May 1992, two days before the shelling and take-over of Kozarac.
70	Even before 22 May 1992, the Republic of Bosnia and Herzegovina was an organised political entity, as one of the republics of the Socialist Federal Republic of Yugoslavia, having its own republican secretariat for defence and its own TO.
73	This completed the dissolution of the former Socialist Federal Republic of Yugoslavia.
74	What had taken the place of state socialism in Yugoslavia were the separate nationalisms of each of the Republics of the former Yugoslavia, other than Bosnia and Herzegovina, which alone possessed no single national majority.
76	The former Socialist Republic of Bosnia and Herzegovina was divided into territorial units of self-management which were possessed of a certain level of autonomy. Each of these municipalities (opština) were governed by a Municipal Assembly, consisting of members directly elected by the local population, which in turn elected an Executive Council from its own members. In Bosnia and Herzegovina there were 109 such municipalities.
77	In 1990 the first free, multi-party elections were held in Bosnia and Herzegovina, for both opština assemblies and for the Republican Legislature.
78	The most prominent political parties in Bosnia and Herzegovina were the Muslim Party of Democratic Action ("SDA"), the Serb Democratic Party ("SDS") and the Croat Democratic Union ("HDZ").
79	The outcome of the elections was, in effect, little more than a reflection of an ethnic census of the population with each ethnic group voting for its own nationalist party.
80	A census in April 1991 recorded that 43.7 percent of the residents of Bosnia and Herzegovina were ethnic Muslims, 32.4 percent were Serbs and 17.3 percent were Croats.
81	A coalition government was thus formed headed by a seven member State Presidency, with the leader of the SDA, Alija Izetbegović, as the first President.
82	In the Republican Assembly, co-operation between the Muslim and Serbian political parties proved increasingly difficult as time went by.
83	What was initially a coalition government of the Republic broke down in October 1991 and failed completely in January 1992.
85	The conflict between Serbia and Croatia, following the declaration of independence by

	Croatia in June 1991, served greatly to exacerbate the tension between Bosnia and Herzegovina's three ethnic groups.
86	Further, the Bosnian Serbs retained vivid memories, albeit now some 50 years old, of their suffering at the hands of the Croats during the Second World War.
88	In September 1991, it was announced that several Serb Autonomous Regions in Bosnia and Herzegovina had been proclaimed, including Krajina, Romanjija and Stara Herzegovina.
89	Bosanski Krajina, as the Serb Autonomous Region of Krajina was initially called, consisted of the Banja Luka region and surrounding municipalities where the Serbs constituted a clear majority.
90	While the SDA and the HDZ promoted the secession of the SRBH from the SFRY, the SDS strongly advocated the preservation of Yugoslavia as a state, in order to ensure that the Serbs would continue to live together in a single state, and would not become a minority in an independent Bosnian state.
93	The Bosnian Serb deputies of that Parliament ' <i>i.e. the BiH parliament</i> ²² , proclaimed a separate Assembly of the Serb Nation on 24 October 1991.
94	In November 1991 the SDS sponsored, organised and conducted a plebiscite primarily for the Bosnian Serb population. Voters were given different ballots depending upon whether they were Serb or non-Serb. The Serb voters were asked to vote on the question: "Are you in favour of the decision reached by the Assembly of the Serbian People in Bosnia and Herzegovina on 24 October 1991 whereby the Serbian people shall remain in the common State of Yugoslavia which would include Serbia, Montenegro, Serb Autonomous Region Krajina, Serb Autonomous Region Slavonija, Baranja, Western Srem along with all others willing to remain in such a State?" while the question for non-Serbs was: "Are you in favour of Bosnia and Herzegovina remaining a republic with equal status in a common State of Yugoslavia with all the other republics which also declare themselves willing to do so?"
96	The outcome of the plebiscite purported to be 100 percent in favour. The SDS leadership used this outcome as a basis on which to develop the separate Serb political structure. The plebiscite was cited as justification for all subsequent moves such as the ultimate walk-out of the SDS representatives from the Bosnia and Herzegovina Assembly, the various negotiations conducted at the federal and international levels and the proclamation, on 9 January 1992, of the Republic of the Serbian People of Bosnia and Herzegovina.
97	Also on the basis of the plebiscite, the SDS and military forces in each region including the JNA, paramilitary organizations, local TO units, and special police units, began to establish physical and political control over certain municipalities where it had not already gained control by virtue of the elections.
98	In these regions, which included opština Prijedor, the SDS representatives in public office in some cases established parallel municipal governments and separate police forces.

²² Explanation added.

99	Physical control was asserted by positioning military units, tanks and heavy artillery around the municipalities and setting up checkpoints to control the movement of non-Serbs.
100	Crisis Staffs were formed in the Serb Autonomous Regions to assume government functions and carry out general municipal management.
101	Members of the Crisis Staffs included SDS leaders, the JNA Commander for the area, Serb police officials, and the Serb TO Commander.
102	For example, Lieutenant-General Momir Talić, Commander of the 5 th Corps (which became the 1st Krajina Corps), was a member of the Crisis Staff in Banja Luka ("ARK Crisis Staff"), thus demonstrating the relationship between the political and military branches of the Bosnian-Serb-run government. The ARK Crisis Staff, which had jurisdiction over opština Prijedor, was established in April or May 1992 as an organ of the Autonomous Region of Krajina.
103	On 19 December 1991, the Main Board of the SDS issued a document entitled "Instructions for the Organisation and Activity of Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances" ("Variant A and B Instructions"). These instructions provided for the conduct of specified activities in all municipalities in which Serbs lived, and essentially mapped out the take-over of power by Bosnian Serbs in municipalities where they constituted a majority of the population ("Variant A") and where they were in a minority ("Variant B"). The stated purpose of the Variant A and B Instructions was "to carry out the results of the plebiscite at which the Serbian people in Bosnia and Herzegovina decided to live in a single state" and to "increase mobility and readiness for the defence of the interests of the Serbian people".
104	The Bosnian Serb leadership was fully aware that the establishment of Bosnian Serb authority, especially in areas where Bosnian Serbs were in a minority, would necessarily entail the use of force and fear.
105	The Variant A and B Instructions included, amongst others, the directive that the SDS Municipal Boards should form Crisis Staffs of the Serbian people in their respective municipalities. The "tasks, measures and other activities" referred to in the Variant A and B Instructions were to be carried out exclusively at the order of the President of the SDS.
106	Consequently, the existence of 'Serbian municipalities' was declared even in municipalities where the SDS did not have overall control ("Variant B municipalities").
107	The composition of the municipal Crisis Staffs in 1992 was designed to ensure that they not only had authority in the eyes of the general public, but also that they were able to ensure implementation of their decisions. Members included the respective President of the Municipal Assembly or the President of the Municipal Executive Committee (Variant A) or the President of the SDS Municipal Board (Variant B), the commander of the Municipal TO staff, and the Chief of the police. In addition, municipal Crisis Staff meetings were regularly attended by representatives of the army. The municipal Crisis Staffs thus resembled SDS shadow governments, as they included SDS members for most leading positions in the municipalities.

108	Between the end of December 1991 and April 1992, the SDS increased its preparations to take over political power at the municipal level in areas ear-marked for incorporation into the new Bosnian Serb state. On 11 December 1992, the SerBiH Assembly adopted the recommendations on the establishment of municipal assemblies of the Serbian people in BiH in those municipalities where Bosnian Serbs were in a minority.
109	The statute of the Autonomous Region of Krajina provided for the creation of Crisis Staffs in the case of war or immediate danger of war.
110	In early May, after the official decision on its establishment was taken by the Executive Council of Krajina, the ARK Crisis Staff took over all powers of the government and other agencies. It was the highest-level decision-maker in the Autonomous Region of Krajina and its decisions had to be implemented throughout the Autonomous Region of Krajina by means of municipal Crisis Staffs. The municipal Crisis Staffs had to report to the ARK Crisis Staff daily regarding the steps taken to implement the decisions of the Main Board located in Banja Luka.
111	On 31 May 1992, the Serbian Assembly of Bosnia and Herzegovina issued a "Decision on the Formation of War Presidencies in Municipalities in Times of War or the Immediate Threat of War".
112	Decisions and discussions of the ARK Crisis Staff impacted on military activity such as the mobilisation of military conscripts, deadlines concerning the surrender of weapons, the forceful confiscation of weapons once deadlines issued by the ARK Crisis Staff had expired, the removal of non-Serbs from the army, and the formation of civilian government in Donji Vakuf Municipality, which was run by a military administration.
113	In early 1992, while international negotiations to resolve the question of the status of BiH were ongoing, the Bosnian Serb leadership enforced its plan to separate the territories claimed by them from the existing structures of the SRBH and to create a separate Bosnian Serb State. On 9 January 1992, the SerBiH Assembly proclaimed the SerBiH, which on 12 August 1992 was renamed Republika Srpska ("RS"). ²³ It was composed of so-called Serbian autonomous regions and districts, which included the ARK.
115	In March 1992, the Assembly of Serbian People of Bosnia and Herzegovina promulgated the Constitution of the Serb Republic of Bosnia and Herzegovina and proclaimed itself a distinct republic.
116	The March 1992 Assembly session was transmitted live on television.
117	In early 1992, the SDS disassociated itself from the legislature and government of the independent Republic of Bosnia and Herzegovina and formed the independent Serb government of <i>Republika Srpska</i> .
118	There were three principal governmental or quasi-governmental entities in Bosnia and Herzegovina in 1992-1993: the Government of the Republic of Bosnia and

²³ "For ease of reference, Republika Srpska (proclaimed only on 12 August 1992) will be referred to as SerBiH throughout the judgement." (Footnote taken from the Brdanin Judgement).

	Herzegovina based in Sarajevo, the Croatian Community of Herceg-Bosna based in Mostar and the Republika Srpska based in Pale.
119	On 31 March 1992, Momčilo Mandić, Assistant Minister of Internal Affairs in BiH, sent a telex to all security centres and all the public security stations around the SerBiH, informing them of the establishment of the Serbian Ministry of Internal Affairs (MUP), decision taken at a meeting of the SerBiH Assembly, held on 27 March 1992, at which the Constitution of the SerBiH was ceremonially promulgated.
120	On 16 April 1992, the Ministry of National Defence of the SerBiH issued a decision on the establishment of the Territorial Defence ("TO") as an army of the SerBiH, putting the command and control of the TO with municipal, district and regional staffs, as well as the staff of the SerBiH TO. In the same decision the Ministry of National Defence of the SerBiH declared an imminent threat of war and ordered public mobilisation of the TO in the entire territory of the SerBiH. Moreover, the formation of TO staffs in the newly established Bosnian Serb municipalities was ordered.
121	Cooperative links between the military and civilian authorities were also established at the regional level. These links were concentrated in the ARK Crisis Staff, of which General Major Momir Talić, Lieutenant Colonel Milorad Sajić and Major Zoran Jokić were all members. At one point or another, all three attended ARK Crisis Staff meetings. In addition, on 13 May 1992, the ARK Crisis Staff authorised two of its members, Vojo Kuprešanin and Predrag Radić, "to deal with all military and political issues in the territory of the ARK".
129	The Army of the Serbian Republic of BiH, later renamed VRS, was formally established on 19 May 1992.
136	The Federal Republic of Yugoslavia (Serbia and Montenegro), heavily engaged as it had been in activities in Croatia against the forces of the Croatian Army, was concerned with maintaining a supply corridor running from Serbia through northern Bosnia (which included opština Prijedor) to the Serbian Krajina in Croatia.
137	At the end of March 1992, the Bosnian Serb leadership, aiming to implement the Strategic Plan, took the necessary measures to separate the Bosnian police force and to put the Bosnian Serb police under Bosnian Serb civilian command. On 27 March 1992, the SerBiH Assembly established the Serbian Ministry of Internal Affairs ("MUP"). The legislation on the MUP came into effect on 31 March 1992, when a Minister was appointed who answered to the SerBiH Assembly. During the spring and summer of 1992, most non-Serbs were dismissed from the police force. In doing so, the police was transformed into a Bosnian Serb force.
138	The civilian police of the Republika Srpska was organised under the Ministry of Interior ("MUP"). In July 1995, Tomislav Kovač was the acting Minister of Interior. The civilian police was organised in two sections: the regular police force and the special police brigade.
139	On 4 March 1992, the ARK Assembly during its 15 th session adopted a decision to form the Security Services Centre of the ARK ("CSB") with its seat in Banja Luka. Stojan Župljanin was appointed Chief of the CSB. On 27 April 1992, the ARK Assembly issued a decision to establish a "Special Purpose Police Detachment" within the CSB.

140	Public Security Centres (“CJBs”) co-ordinated the activities of local Public Security Stations (“SJBs”), i.e. police stations, within their region.
141	In addition to ordinary police duties relating to law and order, some members of the regular police force also had duties within special police forces or PJP companies. PJP companies were trained for combat operations and were set up when needed. Members of the PJP Companies generally wore blue camouflage uniforms and were issued standard military weapons.
142	In accordance with the law in effect in the RS, MUP units could be re-subordinated to the VRS for various purposes, including to reinforce the VRS during combat activities. When resubordinated, the MUP forces followed orders issued by the VRS. The commander of the VRS unit to which the MUP unit was re-subordinated and the commander of the MUP unit coordinated their work in carrying out the tasks assigned by the VRS.
143	MUP forces were engaged in combat operations for a specific time to carry out a precisely described task. During their resubordination, MUP forces retained their formation and could not be disintegrated or separated.
144	The chain of command in the security services was as follows: the service was headed on a ministerial level by the Minister of the Interior. Next in the chain of command were the regional authorities, the most relevant in this case being the Banja Luka Security Services Centre (CSB).
145	In the spring of 1992, all employees in local Public Security Services (“SJBs”) and other public services were required to sign an oath of loyalty to the Bosnian Serbian authorities. Bosnian Muslims and Bosnian Croats who refused to sign the declaration of loyalty were dismissed. Those who accepted to sign could remain within the service.
146	However, by June 1992, the policy changed. To start, all non-Serbs holding managerial positions were fired and replaced by Bosnian Serbs. Bosnian Muslims and Bosnian Croats were dismissed from the judiciary, local enterprises, the media, hospitals, the police forces and the army. By the end of 1992, almost the entire Bosnian Muslim and Bosnian Croat community had been dismissed from their jobs. Many people who showed up for work during this period were turned back and denied access to their workplace. Generally speaking, people were sent home, told not to come back, and then fired soon thereafter.

147	The CSB was divided into two principal departments, the State Security Department (SDB) and the Public Security Department (SJB). The State Security Department was occupied with intelligence work. Within the Public Security Department there were several sub-sections dealing, for example, with crime, traffic, personnel, passports, and aliens.
148	After the invasion of Czechoslovakia in 1968 by the USSR and due to the poor relations between the SFRY and the Soviet Union, a defence system known as “All People’s Defence” (or “Total National Defence”) was devised to protect the SFRY from external attack.
149	Prior to the break-up of the former Yugoslavia, the totality of Yugoslav armed forces included the regular army, navy and air force, collectively known as the JNA, consisting of an officer corps, non-commissioned officers and conscripts, together with a reserve force, and, as well as and distinct from the JNA, the TOs.
150	The JNA was an entirely federal force with its headquarters in Belgrade.
151	There was a distinct TO in each Republic, funded by that Republic and under the control of the Minister of Defence of that Republic.
152	The JNA was a powerful national army, comprised of 45,000 - 70,000 regular officers and soldiers along with 110,000-135,000 conscripts who served on a more short-term basis, equipped with all the conventional weapons and equipment that modern European armies possess.
153	The TOs were equipped with essentially infantry weapons; rifles, light machine-guns, some small calibre artillery, mortars, anti-personnel mines and the like.
154	The TOs had no tanks and their transport would vary depending on the adequacy of a particular Republic’s funding of its TO and on how much each received by way of JNA cast-offs.
155	Traditionally all TO weapons were stored locally, within each municipality.
157	In the early 1990s the traditional predominance of Serb officers in the JNA swiftly increased so that very soon very few non-Serb officers remained in the JNA.
158	The change that overtook the JNA in the early 1990s is best illustrated by the change in the ethnic mix of conscripts between pre-June 1991 and early 1992. During that time, the Serb component rose from just over 35 to some 90 percent.
160	In July 1991, on instructions from headquarters in Belgrade, the JNA seized from the Republic’s Secretariat for Defence in Bosnia and Herzegovina and from municipalities all the documentation relating to conscription including all the registers of conscripts.
161	Bosnia and Herzegovina was a vital base for JNA operations in Croatia in the second half of 1991, and Bosnian Serbs were an important source of manpower both for the JNA and for the TO.

162	Those TO units in predominantly Muslim and Croat areas of Bosnia and Herzegovina were at the same time largely disbanded by the JNA.
163	The independence of Slovenia and Croatia, ultimately recognised by the European Community on 15 January 1992, was challenged militarily by the JNA.
164	In September 1991, the Prijedor Territorial Defence (TO) and the Fifth Kozara Brigade were mobilised and deployed to Western Slavonia as part of the JNA's war against Croatia.
165	By early 1992 there were some 100,000 JNA troops in Bosnia and Herzegovina with over 700 tanks, 1,000 armoured personnel carriers, much heavy weaponry, 100 planes and 500 helicopters, all under the command of the General Staff of the JNA in Belgrade.
167	With its declaration of independence on 6 March 1992, open conflict erupted in Bosnia and Herzegovina and the units of the JNA already present in the territory were actively involved in the fighting that took place. Reports of combat include an attack on Bosanski Brod on 27 March 1992 and the occupation of Derвента, as well as incidents in Bijeljina, Foča and Kupres in early April. After Bosnia and Herzegovina's independence was recognised by the European Community on 6 April 1992, these attacks increased and intensified, especially in Sarajevo, Zvornik, Višegrad, Bosanski Šamac, Vlasenica, Prijedor and Brčko.
171	Moreover, between March and May 1992, there were several attacks and take-overs by the JNA of areas that constituted main entry points into Bosnia or were situated on major logistics or communications lines such as those in Bosanski Brod, Derвента and Bijeljina, Kupres, Foča and Zvornik, Višegrad, Bosanski Šamac, Vlasenica, Brčko and Prijedor. The first attack was in Bosanski Brod on 27 March 1992. At the same time, there were clashes at Derвента. On 2 April 1992 there was an incident at Bijeljina and around this time also at Kupres. These were immediately prior to the recognition of Bosnia and Herzegovina's independence on 7 April 1992 by the European Community, with a retroactive date of 6 March 1992. In Bosanski Šamac, the 4 th Detachment of the JNA entered the town, cut off telephones and fired shots in the town. There was some non-Serb resistance quickly squelched by the arrival of JNA tanks and armoured cars. On 22 April 1992 conflict began in Vlasenica with a police vehicle driving through the streets announcing through a loudspeaker that all armaments were to be surrendered. All vital functions of the town were taken over by JNA forces, including the town hall, bank, post office, police and courthouse, and there were present very many uniformed men as well as some local Serbs with arms. On 29 April 1992 there was a bloodless take-over of the town of Prijedor, as noted elsewhere, and on 30 April 1992 two bridges were blown up by Serb forces in Brčko. On 19 May 1992 the withdrawal of JNA forces from Bosnia and Herzegovina was announced but the attacks were continued by the VRS.
172	In general, the military take-overs involved shelling, sniping and the rounding up of non-Serbs in the area. These tactics often resulted in civilian deaths and the flight of non-Serbs. Remaining non-Serbs were then forced to meet in assembly areas in towns for expulsion from the area. Large numbers of non-Serbs were imprisoned, beaten and forced to sing Chetnik songs and their valuables seized. This was accompanied by widespread destruction of personal and real property.

178	On 15 May 1992 the Security Council, by resolution 752, demanded that all interference from outside Bosnia and Herzegovina by units of the JNA cease immediately and that those units either be withdrawn, be subject to the authority of the Government of the Republic of Bosnia and Herzegovina, or be disbanded and disarmed.
179	The remainder of the former JNA was to become the army of the new Federal Republic of Yugoslavia (Serbia and Montenegro), known as the VJ.
181	On 25 December 1991, a JNA commander reported to Milošević that these transfers were 90% complete. Milošević anticipated that several Yugoslav republics would soon be recognised as independent States, and the Serbian President wanted to be sure that the JNA in BiH could qualify as an indigenous Bosnian fighting force.
182	Throughout 1991 and into 1992, the Bosnian Serb leadership communicated with the SFRY leadership on strategic policy in the event that BiH would become independent. The FRY, despite the purported withdrawal of its armed forces, at the very least, maintained its support of the Bosnian Serbs and the VRS while exerting influence over their operations. Despite the change of name from JNA to Army of the SerBiH after 19 May 1992, and subsequently to VRS, no consequential material changes actually occurred. While the change in name did not point to any alteration of military objectives and strategies, the equipment, the officers in command, the infrastructures and the sources of supply also remained the same.
183	In addition, the JNA military operations under the command of Belgrade that had already commenced by 19 May 1992 did not cease immediately and the same elements of the VJ continued to be directly involved in them.
185	The formal withdrawal of the JNA from Bosnia and Herzegovina took place on 19 May 1992.
186	In BiH, the JNA gradually changed from being the Yugoslav Peoples' Army and representing all ethnic groups and nationalities in the SRFY to becoming a <i>de facto</i> Serbian army. Already by early 1991, some ninety per cent of high ranking officers were Serbs and Montenegrins and not a single general was of Muslim ethnicity. When on 12 May 1992, the JNA was transformed into the VRS, non-Serbs were first dismissed from positions of command and soon after almost all non-Serb officers serving in the army were laid off. Bosnian Muslims and Bosnian Croats who had proved themselves in combat action and who agreed to sign an oath of loyalty to the SerBiH could remain with the VRS
187	The VRS was in effect a product of the dissolution of the old JNA and the withdrawal of its non-Bosnian elements into Serbia.
188	The weapons and equipment with which the new VRS was armed were those that the units had had when part of the JNA.
189	The VRS inherited both officers and men from the JNA and also substantial arms and equipment, including over 300 tanks, 800 armoured personnel carriers and over 800 pieces of heavy artillery.
190	Although these officers and non-commissioned officers had become formally members of the VRS rather than of the former JNA, they continued to receive their salaries from the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro).

191	The pensions of those VRS officers and non-commissioned officers who in due course retired were paid by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro).
192	After 19 May 1992, the FRY provided the VRS with three main types of operational support: logistics, personnel and training. The FRY provided considerable quantities of military equipment, fuel and ammunition to the VRS and the latter was almost entirely dependent on this procurement. Not only did the VRS repeatedly emphasise the critical state of its material reserves and request the assistance of the FRY, but the latter responded and sent the requested material support.
193	As President of the Republika Srpska ("RS"), Radovan Karadžić was the commander-in-chief of the Army of the Republika Srpska. In times of an imminent threat of war or state of war, the Armed Forces included both the VRS and the MUP.
194	Command and control within the VRS was based on the principle of "unity of command."
195	The Main Staff was the supreme military command organ of the VRS. The Main Staff's headquarters were in Han Pijesak and the forward command post ("IKM") was in Bijeljina.
196	Subordinated to the Main Staff were six regional Corps: the 1 st and 2 nd Krajina Corps, the East Bosnia Corps, the Herzegovina Corps, the Sarajevo-Romanija Corps, and the Drina Corps. In addition, two independent units were directly subordinated to the Main Staff: the 65 th Protective Regiment, and the 10 th Sabotage Detachment.
197	The former Commander of the 2 nd Military District of the JNA, based in Sarajevo, General Ratko Mladić, became the Commander of the VRS following the announced withdrawal of the JNA from Bosnia and Herzegovina.
198	The Banja Luka Corps, the 5 th Corps of the old JNA, became part of the VRS in Bosnia and Herzegovina, and was named the 1 st Krajina Corps, but retained the same Commander, Lieutenant-General Talić.
199	Excluding the Rear Base troops, the Banja Luka Corps numbered some 100,000 men, expanded from a peacetime strength of 4,500 men.
200	Units of the Banja Luka Corps took part in the attack on the town of Kozarac near Prijedor on 24 May 1992.
201	The Muslim-dominated government of Bosnia and Herzegovina instructed the Bosnian population not to comply with the JNA's mobilisation order.
202	In October 1991, the Government of the Republic of Croatia declared that the JNA was an invading force.
203	The Municipality of Bosanski Šamac is located in the north eastern part of the then Republic of Bosnia and Herzegovina. Situated on the banks of the Bosna and the Sava Rivers, on the border between Bosnia and Croatia, the town of Bosanski Šamac was an important commercial centre in an industrial region that contained ports, oil refineries and duty-free zones. The bridge over the Sava River was vital for the exchange of

	goods and services between Croatia and Bosnia and Herzegovina. The Municipality of Odžak is similarly located, immediately to the west of Bosanski Šamac, on the Sava River and on the border with Croatia.
204	The town of Bosanski Šamac was of strategic importance for the conduct of military operations. The Municipality formed part of the so-called Posavina Corridor, a narrow strip of flat land along the Sava River connecting the Serb-controlled areas within Croatia to the Bosnian Serb territories and the Republic of Serbia. The Corridor was the easiest and shortest way to establish a ground route between the Serb-controlled areas within Croatia to the west (Republika Srpska Krajina), and Serbia to the east.
205	The Municipalities comprising the Posavina Corridor were inhabited by a population of mixed ethnic background, the Croats and the Muslims together forming a majority of the population. According to the 1991 census, the Municipality of Bosanski Šamac was an ethnically diverse community of 32,960 people; Serb (41.3%), Croat (44.7%), Muslim (6.8%), Others (7.2%).
206	The political situation in Bosanski Šamac in the period 1990 to 1992 was a reflection at the local level of the general political situation in Bosnia and Herzegovina. In the elections of 1990, the national parties won the majority of the 50 seats at the Municipal Assembly, the HDZ being the leading party, followed by the SDS, the SDP and the SDA. Similar to the practice at the Republican level, the parties shared power in accordance with the results from the elections.
207	As part of the Serb referendum of November 1991, the vast majority of Serbs participated in a referendum held in Bosanski Šamac. The People's Assembly of the Serb People recommended the establishment of Serbian municipalities, following which meetings were held in all local Serb communes in the area, where residents were asked to vote on whether they supported the creation of Serbian municipalities in the Serb areas. On the basis of such voting, representatives of the local communes established the Serb Municipality of Bosanski Šamac and Pelagićevo in formation.
208	The SDA formed a Security Safety Commission in Bosanski Šamac in late 1991, which was referred to as a Crisis Staff.
209	During the period prior to the takeover, many meetings were held to discuss the increase of tensions. Meetings between representatives of the SDA, HDZ and SDS, and of the military occurred prior to 17 April 1992. The purpose of these meetings was to resolve current issues, in particular those concerning incidents with patrols and checkpoints.
212	There was an escalation of tensions in Bosanski Šamac in the months prior to the takeover, starting in autumn 1991.
213	There was an increase of shootings, grenade explosions, sabotage and violence in Bosanski Šamac. These incidents led to suspicion and blame on all sides as to the responsibility for the attacks.
214	These tensions were exacerbated by the war underway in neighbouring Croatia. Citizens of Bosanski Šamac could hear explosions, battles and the movement of tanks, units and military vehicles in the surrounding area.
215	In late 1991 prisoner exchanges between Croatia and Bosnia and Herzegovina were

	conducted largely through Bosanski Šamac. Refugees of all ethnicities arrived in Bosanski Šamac as a result of the war in neighbouring Croatia.
217	Rivalries increased between the three ethnic groups, culminating in a provocative display of nationalist flags, symbols and songs.
218	The 4 th Detachment was established by an order of Lt. Col. Stevan Nikolic, Commander of the 17 th Tactical Group, on 5 January 1992, following the issuing of mobilisation summonses by the Secretariat for National Defence. The 4 th Detachment was part of the JNA's 17 th Tactical Group.
219	There were around 450 soldiers in the 4 th Detachment.
221	Its stated purpose was the prevention of inter-ethnic conflicts and the spread of war from Croatia.
234	Prior to the forcible takeover of Bosanski Šamac, Serbian institutions, including the Serb Autonomous Region for Northern Bosnia and the Serb Autonomous Region of Semberija and Majevisa, were established for the purpose of assuming power and consolidating Serb authority over the municipality of Bosanski Šamac.
235	Radovan Karadžić came to Bosanski Šamac in December 1991 to discuss the formation of a Serbian municipality of Bosanski Šamac. Blagoje Simić, as President of the SDS Municipal Board, attended the meeting.
236	On 29 February 1992, the Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo was established, pursuant to the recommendation of the National Assembly of Republika Srpska.
237	The elected President of the Assembly of the Serbian Municipality of Bosanski Šamac and Pelagićevo was Dr. Ilija Ristić, and Dušan Tanasić was the Vice-President.
238	The leadership of the Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo consisted of the deputies of the Serbian Democratic Party of Bosanski Šamac, Orašje and Odžak and of "other deputies of Serbian ethnicity". The self-proclaimed Assembly of the Serbian People of the Municipality of Bosanski Šamac and Pelagićevo concentrated power in the hands of Serbs only and non-Serbs could not participate as elected representatives although the municipality had a non-Serb majority.
239	In a meeting in March 1992, the Serbian Municipal Assembly decided that the President and the Vice-President of the Municipality and the President of the Municipal Board of the SDS should establish a Crisis Staff in case the war broke out.
240	During a meeting of 28 March 1992 in Obudovac, the Serb Assembly of Bosanski Šamac elected the representatives of the Executive Board of the Serbian Municipality of Bosanski Šamac, among these Stevan Todorović, who was elected chief of the public security station.
241	During the meeting in Obudovac, the legally elected deputies of the Municipal assemblies of Šamac, Orašje, Odžak and Gradačac, asked Blagoje Simić to form the Crisis Staff, and if the need arose, to become President of the Crisis Staff.

242	On 15 April 1992, a Crisis Staff was duly appointed in Bosanski Šamac, and Blagoje Simić, the President of the SDS Municipal Board in Bosanski Šamac, became its President.
243	Most members enumerated in the Payroll list, including Blagoje Simić and Miroslav Tadić, were permanent members of the Crisis Staff and occasionally the Crisis Staff would employ additional staff who had expertise in specific fields.
244	Stevan Todorović as head of the MUP and member of the Executive Board was an <i>ex-officio</i> member of the Crisis Staff and attended Crisis Staff meetings. Miroslav Tadić became an <i>ex-officio</i> member of the Crisis Staff as soon as he became Commander of the Civilian Protection Staff on 23 April 1992.
245	The Crisis Staff took over the functions of the Municipal Assembly of Bosanski Šamac. By assuming the position of the Municipal Assembly, the Crisis Staff had full authority to govern the Municipality of Bosanski Šamac and was the highest civilian authority in the Municipality.
246	The Crisis Staff was responsible for coordinating the administration of the Municipality with the civilian police. [...]
247	As a result of the decision originating from the Presidency of Republika Srpska, the Crisis Staff issued a Decision renaming the Municipal Crisis Staff to War Presidency, on 21 July 1992.
248	The War Presidency with a Decision established the Committee for Exchange of Prisoners on 2 October 1992. The Committee was in charge of the prisoner exchanges and other exchanges.
255	Members of the 17 th Tactical Group of the JNA were present in town.
256	The takeover of the town occurred without any significant resistance.
257	Blagoje Simić telephoned Lt. Col. Nikolić in the early morning of 17 April to inform him that the Crisis Staff of the Serbian Municipality of Bosanski Šamac had been established and that, with the assistance of the Serb paramilitaries and the police, the Crisis Staff had taken the most important facilities in town in order to take over authority in Bosanski Šamac.
258	As a result of the telephone conversation between Blagoje Simić and Lt. Col. Nikolić, Lt. Col. Nikolić ordered the 4 th Detachment at 6.00 a.m. to be in a state of combat readiness.
263	Weapons were predominantly collected from Muslim and Croat civilians.
267	After the takeover [of Bosanski Šamac] it became clear that the Crisis Staff issued decisions and orders in accordance with decisions adopted by the Republika Srpska that included an Order prohibiting political activities on the territory of Bosanski Šamac Municipality, and implementation of Instructions for the Work of the Municipal Crisis Staffs of the Serbian People.
268	The Crisis Staff decided that the date of the forcible takeover of Bosanski Šamac, should become a public holiday. Accordingly, Article 4 of the Statute of the Serb

	Municipality of Šamac provided that “The Municipal holiday shall be 17 April.”
269	On 2 October 1992, the War Presidency adopted a decision renaming the Municipality of Bosanski Šamac to Šamac. The preamble to this decision stated that its aim was “the expungement of all undesirable and imposed symbols and values.”
270	On 30 September 1993, the Šamac Municipal Assembly (or Crisis Staff, <i>see SJ 515</i>) adopted a decision to rename the streets in the town of Šamac to represent important figures in Serb history. Most of the names of the streets listed in Article 1 of the Decision were changed into names of important figures of Serb history whereas the old names of the streets referred to people or events concerning all ethnic groups.
271	On 30 December 1993 the Šamac Municipal Assembly (or Crisis Staff, <i>see SJ 515</i>) issued a decision to change the coat of arms of the Šamac Municipality. The latter decision provides that the municipalities’ coat-of-arms be redesigned to incorporate features illustrating the “Orthodox identity of the people populating this region” and “the struggle of the Serbian people for independence and biological survival”.
272	Political parties were not active during the period of war operations because of a Decision adopted by Republika Srpska requiring political parties to freeze their activities. As a result of the Decision of Republika Srpska, the Crisis Staff adopted the Order prohibiting political activities on the territory of Bosanski Šamac Municipality.
273	The civilian police by means of an Order signed by Stevan Todorović, banned meetings of more than three non-Serbs in public places. The order was disseminated in radio-broadcasts and on posters placed throughout the town.
274	Following the takeover in Bosanski Šamac Municipality on 17 April 1992, and continuing throughout 1992, large-scale arrests of Bosnian Muslims and Bosnian Croats were carried out in the Municipality. Within the first week of the conflict, up to 50 persons had been arrested and detained at the SUP. From May 1992 until the end of the year, numbers of those arrested and held at the SUP varied from 50 to 100 persons. Around 200 arrested persons were detained at the TO during this period and between 300 and 500 arrested persons were brought to the secondary school in Bosanski Šamac. Large groups of persons were arrested and taken to facilities in Zasavica and Crkvina.
275	Approximately 250 non-Serb civilians were detained at the Territorial Defence Building in Bosanski Šamac. The number of people detained at the secondary schools in Bosanski Šamac was between 300 and 500. In May 1992 almost 1000 people were detained at the Omladinski Dom in Crkvina. [...]
276	[...] Methods of arrest included forming armed patrols and entering homes to arrest persons. The arrest of a large group of Croats in Bosanski Šamac, who were subsequently taken to Crkvina, was carried out by Serb police and military. The arrest of a large group of women, children and elderly, who were taken to Zasavica, was also carried out by Serb police and military. Some people were arrested by members of the 4 th detachment.
277	Following the escape of non-Serb men from Bosanski Šamac across the Sava River to Croatia in late June 1992, Serb police and military came and took the families of those who had escaped to Zasavica. Military trucks went from house to house rounding up Bosnian Muslim and Bosnian Croat women, children, and elderly. These arrests continued in August and September 1992. Groups of Croat civilians, including women,

	children and elderly were arrested from the town of Bosanski Šamac in approximately mid-May 1992 and taken to Crkvina.
278	The arrests of groups of women, children and elderly, who were subsequently detained in Zasavica and Crkvina, were arbitrary, with no lawful basis. They were arrested because they were non-Serbs, not because there was a reasonable suspicion that they had committed any offences, or for reasons of their safety.
279	While some persons were arrested who were in possession of weapons, there were non-Serb civilians arrested from their homes and brought to detention facilities in the town of Bosanski Šamac who did not possess weapons at all, those who had heeded the call to surrender their weapons before their arrest, or those who possessed legal permits for their weapons. The detention facilities were full of people who did not have weapons and who were not on lists of people who belonged to paramilitary groups. People were detained who had nothing to do with arming or armed groups.
280	Those arrested were not told the reason for their arrest, and many were beaten at the time of their arrests. Some were told that they were wanted for questioning but were not advised of the reasons of their arrest at the time of arrest. Many civilian persons were arrested without legal basis.
281	The SUP was used to detain many non-Serb persons taken into custody, following the takeover on 17 April 1992. Non-Serbs were detained in cells inside the SUP and in garages in the yard of the police station. [...]. During April 1992 people were continually brought into the SUP. This practice continued into May and throughout the year. Detainees in the SUP were held for varying periods of time. Some were detained there for a day before being transferred to the TO across the street, while some were detained there for months.
282	The TO, across the road from the SUP building in Bosanski Šamac, was used to detain many non-Serbs taken into custody following the takeover on 17 April 1992. Non-Serbs continued to be brought to the TO in April and May 1992 and throughout the year. Later in the year, detainees were transferred from other detention facilities to the TO. Some were brought into the TO directly upon arrest, while others were transferred there from the SUP. Detainees were held in several rooms at the TO, one large and one small, and they were also held in a storage room there. [...] In the middle of April 1992 there were between 40 to 50 people detained in the TO. In the summer, the number of detainees rose to approximately two hundred and fifty detainees. Detainees were held at the TO for varying periods of time, and some were held there for months at a time.
283	Detainees were held at the primary and secondary school gymnasiums, several hundred metres away from the SUP and TO in Bosanski Šamac. The numbers of detainees rose to 50 at the primary school, and between 300 and 500 in the secondary school. The first group of detainees at the primary and secondary school were transferred there on 13 May 1992 from the JNA barracks in Bijeljina. Throughout the spring and summer of 1992, people were brought to the primary and secondary schools and detained there, including men from the Kultur Dom in Crkvina and from Zasavica. Detainees were held in the schools for months at a time.

284	A group of Croat women and children were taken to Crkvina in mid-May 1992 ²⁴ . They were detained in facilities in Crkvina, together with men and the elderly, in places that included the Youth Centre, a warehouse, the Omladinski Dom and the Sport Stadium. Hundreds of non-Serbs were held in these facilities in Crkvina, for periods ranging from one night to a week.
285	Family members of some of the men detained in other facilities, including the SUP and TO in Bosanski Šamac, or who had been exchanged, were detained in Zasavica. In late June 1992, family members of men who escaped across the Sava River into Croatia, to avoid the mobilization call, were rounded up in military trucks and taken to Zasavica, and detained in camps there. Women, children and elderly were held in Zasavica, including some men. When Crkvina was evacuated, people from the neighbouring villages were detained in Zasavica. They were guarded and there were checkpoints at both entrances to the village. People did not go voluntarily to the camp in Zasavica, nor were they able to leave the village. People could not leave the area unless they wanted to be exchanged.
286	A group of approximately 47 Bosnian Muslim and Bosnian Croat detainees, who were held in the TO in Bosanski Šamac, were transferred to the JNA barracks in Brčko at the end of April 1992 and detained there. This group of detainees was held there until the conflict broke out in Brčko on 1 or 2 May 1992. They were then put on a bus and transferred to Bijeljina.
287	The detention of non-Serb civilians in facilities within Bosanski Šamac, namely, the SUP, TO and primary and secondary schools, was also arbitrary. These people were subjected to continued detention without respect for their rights to liberty and security of the person, and to a fair trial. The detainees in these facilities were not given any lawful reasons for their detention, and they were confined for considerable amounts of time without being charged. The legality of their detention was never reviewed by the Serb authorities.
289	Interrogations of those detained were conducted under coercive and forced circumstances. Interrogations were carried out by Simo Zarić, and members of the police that included Simo Božić, Miloš Savić, Vladimir Šarkanović and Savo Čancarević.
290	Detainees were beaten as they were required to give statements, and many did not see the statements that they were forced to sign. Although some detainees were questioned about the offence of illegal possession of weapons, as charged in the “Law on Criminal Proceeding of former Social Federative Republic of Yugoslavia”, they were all non-Serbs [...].
291	No witnesses were ever convicted for illegal possession of weapons. None of the detainees were ever advised of their procedural rights before or during their detention.
292	In addition, members of the SDA and HDZ, Bosnian Muslim and Croat political parties were arrested and detained, while again, members of the Serb parties were not.
293	On 17 April 1992 and in the following months, a large number of non-Serb civilians were repeatedly beaten in the detention facilities in Bosanski Šamac and in Crkvina,

²⁴ The original wording in the judgement reads **2003**, which is obviously a mistake.

	Brčko, and Bijeljina. Some of the victims had already been beaten upon their arrest. During their imprisonment in the detention facilities, detainees were severely beaten with various objects, such as rifles, metal bars, baseball bats, metal chains, police batons, and chair legs. The detainees were beaten on all parts of their bodies, and many of them suffered serious injuries. Some prisoners were beaten while undergoing interrogation. [...] The beatings took place on a daily basis, day and night.
295	Other heinous acts including sexual assaults, the extraction of teeth, and the threat of execution caused severe physical and mental pain and suffering and occurred in order to discriminate on ethnic grounds against the victims.
297	During detention in the detention centres in Crkvina and Bijeljina, the prisoners did not have sufficient space and sufficient food and water supply. They were kept in unhygienic conditions and did not have access to sufficient medical care. Furthermore, detainees were subjected to beatings. These prisoners were confined under inhumane conditions.
298	Civilians who had to report every day in front of the Pensioner's Home as well as civilians who were detained were forced to dig trenches, build bunkers, carry sandbags or railway sleepers for the construction of trenches, and build other fortifications on the frontline. This work was not rendered voluntarily. Civilians were compelled to work under the supervision of armed guards, who beat, or fired at those who tried to escape. Civilians who were forced to dig trenches and to work on the frontline were not paid for their work.
299	Civilians working on military assignments on the frontline were exposed to dangerous conditions and were under a high risk of being injured or killed. These assignments were made on a discriminatory basis.
300	Non-Serb civilians were subjected to humiliating forced labour. These assignments were such as to arouse feelings of fear and subordination, capable of causing the said persons psychological suffering, and of debasing them and the group to which they belonged. These assignments were part of a pattern targeting the Bosnian Muslim and Bosnian Croat political and economic leadership.
303	On 4 and 5 July 1992, prisoners were placed on buses in Šamac and driven to Lipovac to be exchanged. These people being exchanged were mostly Croats from Hasici and Tisina, and some Muslims from Šamac.
304	Most people who were exchanged on that day in Lipovac were elderly persons, women and children. About ten prisoners from the primary school gym were also exchanged. They first went to Sid, and the next day they were exchanged in Lipovac.
305	70-80 non-Serbs from Bosanski Šamac were exchanged on 4 September 1992 in Dragalić. They were brought by bus from Bosanski Samac to Bosanski Gradiska, and then to Dragalić.
306	At the exchange to Dragalić on 5 November 1992, about 100 persons were involved, women and children, men and elderly men, and the number that crossed to Croatia had to correspond to the number of people entering Bosnia and Herzegovina.
307	On 24 December 1992, prisoners from Šamac and surrounding villages were exchanged to Dragalić.

308	Citizens from Bosanski Šamac, and some detainees from Batković, were exchanged in Lipovac on 30 January 1993.
309	On 15/16 June 1993, about 150 to 170 non-Serb civilians were exchanged in two buses. They were prisoners from detention facilities in Bosanski Šamac and other Muslims and Croats who had not been incarcerated. The buses drove from Šamac via Crkvina to Dragalić.
310	All the people who were exchanged to Dragalić on 24 December 1993 were Croats and Muslims, and a number of them had been imprisoned in Zasavica.
311	There were other exchanges of non-Serb civilians to Dragalić on 19 September 1992, 7 October 1992, and 7 January 1993.
312	On or about 20 February 1993, 50 prisoners were exchanged in Lipovac from Batković to Croatia for 32 soldiers from Pale.
314	On 25/26 May 1992, 100 detainees, the overwhelming majority being Croats, and some Muslims from Bosanski Šamac and the surrounding villages, were exchanged for Serbs in Dubica. Only a small number of the Croats and Muslims were exchanged as prisoners of war. Prior to the exchange, the detainees had been held in the secondary school in Bosanski Šamac. The exchange took place across the river from Zasavica to Dubica. The people who were exchanged were transferred in groups of about five persons across the river.
315	Sarajevo was made up of ten municipalities: Stari Grad (Old Town), Centar (Centre), Novo Sarajevo, Novi Grad, Vogošća, Ilidža, Pale, Ilijaš, Hadžići, and Trnovo.
316	According to the 1991 census, the municipality of Pale was the only one in which BiH Serbs constituted an absolute majority (around 69%). The Serbs were a simple majority in Ilidža and Ilijaš. In Novo Sarajevo they were in approximately equal numbers to the Muslims.
317	SRK [Sarajevo Romanija Corps] controlled territory in Vrace
319	General Galić was in control of the SRK weaponry.
322	Military operations were carried out against towns and villages that were not military targets. Bosnian Serb forces carried out attacks in Prijedor, Sanski Most, Bosanski Novi, Ključ, Teslić, and Kotor Varoš, among others. [...]
324	In the spring of 1992, camps and other detention facilities were established throughout the territory of the Bosnian Krajina in army barracks and compounds, factories, schools, sport facilities, police stations and other public buildings. These camps and detention facilities were set up and controlled by the Bosnian Serb army, civilian authorities or the Bosnian Serb police. Non-Serb civilians were arrested <i>en masse</i> and detained in these camps and detention facilities. For example, in Prijedor Municipality, after the armed attacks on non-Serb villages by Bosnian Serb armed forces, women and children were separated from the men before they were all loaded onto buses and taken to Trnopolje, Omarska or Keraterm. [...] The conditions in the camps and some detention facilities were particularly harsh. [...]
325	As the events in the Bosnian Krajina developed, from the spring of 1992 onwards, active and systematic repression and expulsion of Bosnian Muslims and Bosnian

	<p>Croats was carried out by the Bosnian Serb authorities throughout the Bosnian Krajina. Convoys of buses and trains were organised by the Bosnian Serb authorities to drive tens of thousands of men, women and children out of Bosnian Serb claimed territory to either Bosnian Muslim held territory within BiH or to Croatia.</p>
327	<p>Bosnian Muslims and Bosnian Croats were subjected to movement restrictions, as well as to perilous living conditions; they were required to pledge their loyalty to the Bosnian Serb authorities and, in at least one case, to wear white armbands. They were dismissed from their jobs and stripped of their health insurance. Campaigns of intimidation specifically targeting Bosnian Muslims and Bosnian Croats were undertaken.</p>
328	<p>[...] In Banja Luka, the Agency for Population Movement and the Exchange of Material Wealth for the ARK (“Agency”), which was established on 12 June 1992 pursuant to a decision of the ARK Crisis Staff, aided in the implementation of both the exchange of flats and the resettlement of populations. The Agency was popularly known variously as 'Perka's Agency' or as 'Brdjanin's Agency'.</p>