

II. UNIES



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: 8 février 2010

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

**Assistée de:** M. John Hocking, greffier

**Décision rendue le:** 8 février 2010

**LE PROCUREUR**

*c/*

**VOJISLAV ŠEŠELJ**

**DOCUMENT PUBLIC AVEC ANNEXES**

**DÉCISION RELATIVE AUX REQUÊTES DE L'ACCUSATION AUX FINS  
DE DRESSER LE CONSTAT JUDICIAIRE DE FAITS  
RELATIFS À L'AFFAIRE MRKŠIĆ**

**Le Bureau du Procureur**

M. Mathias Marcussen

**L'Accusé**

M. Vojislav Šešelj

## I. 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 de deux requêtes aux fins de dresser le constat judiciaire de faits admis dans l'affaire *Le Procureur c. Mrkšić et consorts* (« Affaire Mrkšić »), en application de l'article 94(B) du Règlement de procédure et de preuve (« Règlement »), enregistrées respectivement par le Bureau du Procureur (« Accusation ») le 26 septembre 2008 (« Première Requête »)<sup>1</sup> et le 21 juillet 2009 (« Seconde Requête »)<sup>2</sup>.

## II. II. RAPPEL DE LA PROCÉDURE

2. Le 28 septembre 2008, l'Accusation déposait la Première Requête par laquelle elle demandait que soit dressé le constat judiciaire de 274 faits tirés du jugement de première instance rendu le 27 septembre 2007 dans l'*Affaire Mrkšić* (« Jugement Mrkšić »).<sup>3</sup>

3. Le 21 juillet 2009, l'Accusation déposait la Seconde Requête par laquelle elle demandait que soit dressé le constat judiciaire de 28 faits tirés de l'arrêt rendu par la Chambre d'appel dans l'*Affaire Mrkšić* (« Arrêt Mrkšić »).<sup>4</sup>

4. L'Accusé ne répondait à aucune de ces requêtes dans le délai de 14 jours, à compter de la réception de la version en BCS, qui lui était impartie par l'article 126bis du Règlement<sup>5</sup>.

## III. ARGUMENT DES PARTIES

5. L'Accusation soutient dans sa Première Requête que le constat judiciaire des 274 faits<sup>6</sup> irait dans le sens de l'économie judiciaire et respecterait le droit de l'Accusé à un procès équitable<sup>7</sup>. En outre, l'Accusation soutient que les faits dont l'admission est demandée remplissent les critères d'admissibilité en vertu de l'article 94(B) du Règlement, à savoir que ces faits sont concrets,

<sup>1</sup> Original en anglais intitulé « Motion for Judicial Notice of Facts Relevant to the Vukovar Crime Base », 26 septembre 2008 (« Première Requête »).

<sup>2</sup> Original en anglais intitulé « Prosecution's Second Motion to Take Judicial Notice of Adjudicated Facts Concerning Vukovar Crime Base Pursuant to Rule 94(B) With Annex A », 21 juillet 2009 (« Seconde Requête »).

<sup>3</sup> *Le Procureur c/ Mile Mrkšić, Miroslav Radić et Veselin Šivančanin*, affaire n°IT-95-13/1-T, Jugement, 27 septembre 2007 (« Jugement Mrkšić »).

<sup>4</sup> Original en anglais intitulé « Prosecutor v. Mile Mrkšić and Veselin Šivančanin, Case n° IT-95-13-13/1-A, Appeals Judgement », 5 mai 2009 (« Arrêt Mrkšić »).

<sup>5</sup> L'Accusé recevait la version en BCS de la Première Requête le 11 novembre 2008 (Voir Procès-verbal de réception enregistré le 14 novembre 2008) et de la Seconde Requête le 18 août 2009 (Voir Procès-verbal de réception enregistré le 22 septembre 2009).

<sup>6</sup> Voir l'annexe de la Première Requête.

<sup>7</sup> Première Requête, par. 29-36.

distincts, identifiables, pertinents, ne reposent pas sur des accords de plaidoyers convenus dans d'autres affaires, ne concernent pas les actes ou conduites de l'Accusé, ne contiennent pas de qualification juridique ou d'opinion subjective et ne sont pas soumis à une procédure d'appel. De plus, l'Accusation souligne que les faits dont l'admission est demandée ne sont pas formulés différemment dans le Jugement Mrkšić et qu'ils ne portent pas préjudice aux droits de l'Accusé<sup>8</sup>.

6. L'Accusation soutient dans sa Seconde Requête que le constat judiciaire de 28 faits<sup>9</sup> irait également dans le sens de l'économie judiciaire<sup>10</sup> et respecterait le droit de l'Accusé à un procès équitable<sup>11</sup>. L'Accusation précise en outre que les 28 faits dont l'admission est sollicitée remplissent les conditions posées par l'article 94(B) du Règlement, à savoir que ces faits sont suffisamment clairs (concrets, distincts et identifiables) et pertinents au regard de l'acte d'accusation, qu'ils constituent uniquement des conclusions factuelles et ne contiennent pas de qualification juridique ou d'opinion subjective, qu'ils ne reposent pas sur des accords de plaidoyers convenus dans des affaires antérieures, qu'ils sont définitifs, qu'ils ne mettent pas potentiellement en cause la responsabilité pénale de l'Accusé et qu'ils ne diffèrent pas de l'Arrêt Mrkšić<sup>12</sup>.

#### 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) du Règlement 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 jurisprudence<sup>13</sup>, c'est-à-dire qu'il s'agit de faits :

<sup>8</sup> Première Requête, par. 19-36.

<sup>9</sup> Voir l'annexe de la Seconde Requête.

<sup>10</sup> Seconde Requête, par. 17-19.

<sup>11</sup> Seconde Requête, par. 13-16.

<sup>12</sup> Seconde Requête, par. 4-12.

<sup>13</sup> 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

- 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;
- 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.

### III. V. DISCUSSION

10. La Chambre a analysé les 274 faits de la Première Requête dont le constat judiciaire est sollicité par l'Accusation à la lumière des arguments présentés et des critères rappelés ci-dessus.
11. La Chambre relève tout d'abord qu'aucun de ces 274 faits n'a été contesté dans l'Arrêt Mrkšić.
12. La Chambre estime ensuite que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Première Requête ne peut pas être dressé, au motif qu'ils ne sont **suffisamment clairs**: 11, 47, 53, 54, 58, 65, 66, 69, 70, 83, 85, 86, 88, 89, 90, 92, 93, 94, 112, 115, 116, 118, 120, 201, 204, 220, 221, 269, 272.

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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<sup>er</sup> avril 2005; *Le Procureur c/ Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Valentin Ćorić 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.

13. La Chambre estime de plus que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Première Requête 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** : 25, 62, 63, 84, 99, 104, 121, 123, 151, 167, 177, 178, 179, 180, 181, 182, 183, 189, 190, 191, 193, 199, 230, 231, 232, 233, 234, 236, 239, 240, 241, 242, 243, 245, 246, 270.

14. La Chambre estime également que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Première Requête 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 et qu'ils compromettent le droit de l'accusé à un procès équitable**: 41<sup>14</sup>, 207, 271.

15. En outre, la Chambre a estimé que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Première Requête ne peut pas être dressé, au motif qu'ils ne sont pas **incontestables** : 64<sup>15</sup>, 82, 117<sup>16</sup>, 206, 210, 257, 258, 259, 260, 261, 267, 268.

16. La Chambre a aussi estimé que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Première Requête ne peut pas être dressé, au motif qu'ils ne sont **pas pertinents ou qu'ils ne sont pas fidèles au Jugement**: 212, 213, 214, 215, 216, 217, 218, 237<sup>17</sup>, 238<sup>18</sup>, 273.

17. La Chambre a en outre estimé que le constat judiciaire du fait portant le numéro suivant dans l'annexe de la Première Requête ne peut pas être dressé, au motif qu'il est **répétitif par rapport à un fait déjà admis**: 133<sup>19</sup>.

18. La Chambre a par ailleurs estimé que le fait portant le numéro suivant dans l'annexe de la Première Requête peut faire l'objet d'une **admission partielle** si certaines portions étaient supprimées afin de rendre le fait compatible avec les critères d'admissibilité évoqués ci-dessus: 128.

19. La Chambre a enfin estimé opportun de dresser le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Première Requête sans y apporter aucune modification: 1, 2,

<sup>14</sup> L'utilisation du terme « conquérir » n'est pas neutre.

<sup>15</sup> Le paragraphe 39 du Jugement Mrkšić précise « The evidence indicates there... ».

<sup>16</sup> Le paragraphe 59 du Jugement Mrkšić précise « *Despite the evidence to the contrary...* ».

<sup>17</sup> La date du 20 novembre n'apparaît nulle part dans le Jugement Mrkšić.

<sup>18</sup> La date du 20 novembre n'apparaît nulle part dans le Jugement Mrkšić.

3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 55, 56, 57, 59, 60, 61, 67, 68, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 87, 91, 95, 96, 97, 98, 100, 101, 102, 103, 105, 106, 107, 108, 109, 110, 111, 113, 114, 119, 122, 124, 125, 126, 127, 129, 130, 131, 132, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 168, 169, 170, 171, 172, 173, 174, 175, 176, 184, 185, 186, 187, 188, 192, 194, 195, 196, 197, 198, 200, 202, 203, 205, 208, 209, 211, 219, 222, 223, 224, 225, 226, 227, 228, 229, 235, 244, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 262, 263, 264, 265, 266, 274.

20. L'ensemble des faits relatifs à la Première Requête et dont la Chambre accepte de dresser le constat judiciaire figure en annexe A 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 Première Requête.

21. La Chambre a également analysé les 28 faits de la Seconde Requête dont le constat judiciaire est sollicité par l'Accusation à la lumière des arguments présentés et des critères rappelés ci-dessus.

22. Par conséquent, la Chambre estime que le constat judiciaire du fait portant le numéro suivant dans l'annexe de la Seconde Requête ne peut pas être dressé, au motif qu'il n'est pas **fidèle au jugement** : 5 .

23. La Chambre estime également que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Seconde Requête 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 et qu'ils compromettent le droit de l'accusé à un procès équitable**: 7, 8, 10, 14, 19.

24. La Chambre estime que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Seconde Requête ne peut pas être dressé, au motif qu'ils ne sont **pas suffisamment clairs**<sup>20</sup>: 9, 13, 23.

25. La Chambre estime de plus que le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Seconde Requête 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

<sup>19</sup> Ce fait répète le fait 132 admis.

<sup>20</sup> Aucune précision temporelle n'est fournie.

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** : 11, 20, 21, 22, 24.

26. La Chambre a enfin estimé opportun de dresser le constat judiciaire des faits portant les numéros suivants dans l'annexe de la Seconde Requête sans y apporter aucune modification: 1, 2, 3, 4, 6, 12, 15, 16, 17, 18, 25, 26, 27, 28.

27. L'ensemble des faits relatifs à la Seconde Requête et dont la Chambre accepte de dresser le constat judiciaire figure en annexe B 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 Seconde Requête.

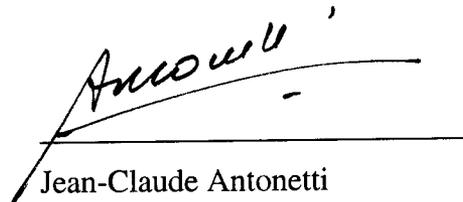
#### IV. VI. DISPOSITIF

28. 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 Première Requête et à la Seconde Requête et

**DRESSE** le constat judiciaire des faits énumérés en langue anglaise dans les annexes A et B jointes à la présente décision ;

**REJETTE** la Première Requête et la Seconde Requête pour le surplus.

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



Jean-Claude Antonetti  
Président

En date huit février 2010  
La Haye (Pays-Bas)

[Sceau du Tribunal]

## V. ANNEXE A

No. du fait	Fait
1	The district of Vukovar is located in Eastern Slavonia, current day Croatia, on the western bank of the Danube River.
2	The Danube river marks the border between Croatia and Serbia.
3	Vukovar municipality ranges from Ilok, southeast of the city of Vukovar, on the Danube, to Osijek, northwest of Vukovar.
4	The distance between Osijek and Ilok is about 50 kilometres.
5	Vukovar municipality also encompasses Trpinja and Bobota to the west.
6	In 1991, Vukovar municipality had a population of some 84,000.
7	Of the Vukovar population in 1991, 43.7% were Croats, 37.4% were Serbs, 1.6% were Hungarians, 7.3% regarded themselves as "Yugoslavs" and 10% defined themselves as "others".
8	In 1991, the population of some towns or villages in the Vukovar municipality, such as Borovo Selo and Trpinje, was exclusively Serb, but overall the area was mixed.
9	In 1991, the Vukovar area was among the richest areas in Yugoslavia both in terms of the land and general infrastructure.
10	In 1991 the Socialist Federal Republic of Yugoslavia (SFRY) experienced a series of events which culminated in the break-up of the six republic federal state.
12	A referendum on independence was held in Croatia in mid May 1991, with the result that the people of Croatia voted not to remain in the SFRY as a unified state, but to become independent.
13	On 25 June 1991, the Croatian Parliament passed a declaration on the sovereignty and independence of Croatia.
14	The Croatian Parliament declared Croatia independent on 8 October 1991.
15	Croatia's independence was not recognized by the then European Community until 15 January 1992.
16	Generally speaking, Serbs living in Croatia did not participate in the mid May 1991 referendum.
17	In August 1991, however, Serbs in the predominately Serb parts of Croatia held their own referendum, voting to remain within SFRY.
18	Within Croatia, following elections in early 1991, which were won by the Croatian Democratic Union ("HDZ"), and the steps directed to constitutional change, clear tensions began to become apparent between Serbs and Croats.
19	A large number of automatic weapons were purchased in late 1990 or early 1991 with the involvement of General Spegelj, who later became Minister of Defence of Croatia.
20	By early 1991 the attitude of both the political leadership and the general public in Croatia became increasingly hostile towards the JNA. The JNA had come to be typically perceived in Croatia as aligned with Serb interests and effectively commanded from Belgrade by a Serb dominated leadership.
21	In the course of 1991 many Croat and other non-Serb officers and men of the JNA left the JNA, in many cases to take up arms against the JNA in Croatia.
22	In March 1991 Croatian forces "blocked", <i>i. e.</i> effectively blockaded, the JNA barracks in Bjelovar and Varaždin.
23	By July-August 1991 a general strategy was adopted to block JNA barracks on Croatian territory by cutting off water, electricity, food supply, and communications to the JNA barracks.
24	In the spring of 1991 Serbia-based paramilitary groups began establishing themselves in various parts of Eastern Slavonia, around Vukovar.
26	On 2 May 1991 the Croatian Ministry of Internal Affairs ("MUP") carried out an operation in the largest Serbian village in Vukovar municipality, Borovo Selo, in response to the arrest of two Croatian policemen the previous night. Five buses with policemen from Vukovar, Vinkovci and Osijek police stations participated in the raid. 12 Croatian policemen and three Serb civilians were

No. du fait	Fait
	killed and there was also a number of wounded on both sides.
27	This incident in Borovo Selo 2 May 1991 was followed by a series of acts directed against Serbs or pro-Serbs interests.
28	In western Croatia, on 6 May 1991, a JNA soldier was strangled in Split in front of TV cameras.
29	A report of the Federal Secretariat for National Defence to the SFRY Presidency of 8 August 1991 indicated that from 9 May until 4 August 1991, 340 attacks against JNA units and members in Croatia were carried out, in which six JNA soldiers and officers were killed and 83 were wounded.
30	Shortly after the incident of 2 May 1991 in Borovo Selo, the HDZ took control of Radio Vukovar.
31	The name of the Radio Vukovar station changed from "Radio Vukovar" to "Croatian Radio Vukovar."
32	The editor-in-chief of the Radio Vukovar Mirko Stanković, who had a reputation of being pro-Serb, was replaced by Josip Esterajher, a Croat.
33	The director of the Radio Vukovar left in May 1991.
34	The departure of the director of the Radio Vukovar in May 1991 was followed by the departure of a number of Serb employees.
35	Slavko Dokmanović, a Serb and a member of the Social democratic Party of Croatia ("SDP"), who was elected President of the Municipal Assembly of Vukovar following local elections in 1990, ceased to perform his functions in early July 1991 when the position of a commissioner for Vukovar was created by the Croatian government.
36	Marin Vidić, aka Bili, a Croat, who was previously Deputy Municipal President was appointed to the position of commissioner for Vukovar in late June 1991.
37	By August 1991 the ethnic composition of the Vukovar hospital staff had changed. Many of the Serb employees ceased working there.
38	The director of the Vukovar hospital, Dr Rade Popović, a Montenegrin, was dismissed on 18 July 1991.
39	Dr Vesna Bosanac, a Croat, was appointed to the position of director of the Vukovar hospital on 25 July 1991.
40	Dr Vesna Bosanac headed the Vukovar hospital staff until 20 November 1991.
42	In August 1991 local Serb communities made a declaration of their autonomy and purported to create the second of the new Serb-ruled "mini-states" in Croatia, viz, the Serb Autonomous District ("SAO"; <i>Srpska Autonomna Oblast</i> ) of Slavonia, Baranja, and Western Srem.
43	A "government" of the SAO was formed in September 1991.
44	JNA forces sporadically shelled parts of Vukovar in June, July and August 1991. Houses in the centre of Vukovar as well as the Vukovar hospital were hit and damaged and civilians were wounded.
45	The first significant shelling occurred on 4 July 1991. The predominately Croat Borovo Naselje was targeted from the direction of the predominately Serb Borovo Selo.
46	In June and July 1991, shelling would take place once a day or every two days in Vukovar.
48	To the north and northwest of Vukovar, the town of Osijek came under heavy JNA artillery attack in July 1991.
49	The villages of Erdut and Dalj were shelled in early August 1991.
50	Borovo Naselje was shelled during the spring/summer of 1991.
51	To the east, the village of Ilok was shelled by the JNA and experienced daily shooting in August 1991.
52	As part of its autumn 1991 operation, the JNA started an incursion in Eastern Slavonia with the intention of capturing the towns of Vukovar, Vinkovci and Osijek.
55	During September and early October, the JNA attacks on villages in Eastern Baranja intensified, causing extensive material damage to villages and civilians to flee.
56	By August 1991 people were already leaving Erdut, after the village was shelled with mortars.
57	On 25 and 26 August 1991, the JNA and other Serb forces overran the entire district of Baranja.

No. du fait	Fait
59	On 23 August 1991, Borovo Naselje came under heavy shelling. Croatian forces in Borovo Naselje brought down two JNA aircrafts with hand-held rocket launchers.
60	On 24 and 25 August 1991, all other parts of Vukovar were subjected to a heavy aerial attack by the JNA. This was the first severe attack on the city of Vukovar (...) Extensive damage was caused to the city and many civilians were killed.
61	On 25 August 1991, the siege of Vukovar commenced.
67	The Guards Motorised Brigade ("gmtbr") arrived in the Vukovar area at the end of September 1991.
68	The Guards Motorised Brigade ("gmtbr"), alone, numbered some 4,000 troops.
71	The Croat forces in Vukovar consisted of three groups of personnel, organized under one central leadership. The smaller groups were: (a) permanent and reserve members of the police from the Ministry of Internal Affairs of the Republic of Croatia ("MUP"); (b) members of the National Guard Corps ("ZNG") and in the closing stages members of the newly created Croatian Army ("HV"), and (c) members of other local volunteer defence groups.
72	The ZNG was formed in March 1990 and was affiliated with the political party HDZ.
73	A small number of the ZNG took part in the fight for Vukovar.
74	Individual non-Serb citizens of Vukovar also formed groups to defend their city. In almost every street, people became organized and took turns keeping watch.
75	Tomislav Merčep was defence secretary for Vukovar Municipality and he was involved in organising Vukovar's defence system along with that of the general area. They were organised in part along military and police lines.
76	On or about 1 September 1991, the Chief of Staff of the ZNG sent Dedaković and Branko Borković to take over command of the forces defending Vukovar.
77	Mile Dedaković, aka Jastreb ("the Hawk"), came to be recognized as the leader of the Vukovar defence.
78	Whoever was armed and was involved in the defence of Vukovar came under the command of Mile Dedaković. This included ZNG, policemen, Merčerp's men and other volunteers.
79	The headquarters of the defence of Vukovar was in a shelter across the street from the municipal building.
80	A Croatian paramilitary group, Croatia's Liberation Forces or HOS, was also active in the general area around Vukovar.
81	In the months immediately prior to the capitulation of the Croatian forces in Vukovar in November 1991, opposing the Serb forces, there were up to 1,500-1,700 Croat combatants within the city.
87	Serb forces in the Vukovar area also had anti-aircraft batteries and an air force armed with a range of ground attack weapons including bombs up to 250 kg, all of which were used in the attack on Vukovar.
91	While, during the siege, the Croatian forces in Vukovar had mostly infantry weapons, they did acquire some mortars and one or two anti-aircraft guns.
95	By September 1991 there were two fronts in Eastern Slavonia, the northern and the southern fronts.
96	By the end of September 1991, the JNA barracks in the city of Vukovar had been "blocked" by Croatian forces for an extended period of time. The JNA soldiers in the barracks were unable to leave, their water and electricity had been cut off and they had come under weapons fire.
97	On 30 September 1991 the Guards Motorised Brigade ("gmtbr") was deployed from Belgrade on a mission, <i>inter alia</i> , to de-block the barracks and relieve the JNA soldiers inside. A unit from Sremska Mitrovica had previously been unsuccessful in a similar attempt.
98	On 2 October 1991 the gmtbr were able to de-block the barracks, but its more extensive offensive in Vukovar was halted by strong resistance from Croatian forces.
100	From October 1991, the city of Vukovar was without electrical supply.
101	On 12 and 13 November 1991, there was street-to-street fighting close to the centre of Vukovar.
102	From 2 October until 18 November 1991 the JNA was constantly engaged in attack operations in and

No. du fait	Fait
	around the city of Vukovar. Combat operations were conducted more or less on a daily basis. These often involved attacks by JNA aircraft, artillery, tanks and rockets.
103	Under the might of the attack the destruction of the Vukovar city progressed and, slowly but certainly, the siege of the city by the JNA was tightened until the Croat forces finally capitulated.
105	By early October 1991, Bogdanovci fell to the Serb forces, and later that month the Croatian defence line pulled back towards the city centre so that in the Sajmište area the front line ran north of the JNA barracks and the Petrova Gora neighbourhood.
106	As of 1 November 1991 the Croatian defence were forced to withdraw from Sajmište and Duga Street to Otokara Keršovanija.
107	On 10 November 1991, the 3 <sup>rd</sup> company of the 1 <sup>st</sup> motorised battalion of the Guards Motorised Brigade of the JNA ("3coy 1/gmtbr") took Milovo Brdo, forcing the Croatian defence in this area to withdraw to positions close to the Vukovar hospital.
108	On 18 November 1991 the Croatian forces finally capitulated. The defence line was abandoned.
109	During the preceding night there was still JNA shelling, although not in the area of the hospital, and early in the morning of 18 November 1991 there was a major action involving JNA tanks.
110	Mitnica had been a stronghold of the Croatian forces until they surrendered there on 18 November 1991.
111	The fighting in the Vukovar area from late August 1991 until 18 November 1991 had devastating consequences for the city and its surroundings. Many towns around Vukovar were destroyed. Luzac, Opatovac, Stompajvci, Tolonik, Trpinja, Bršadin, Petrovci, Negoslavci and Borovo Naselje were destroyed. In other towns houses had been heavily shelled.
113	By mid-October Vukovar had been completely surrounded with widespread damage to buildings. After the fall of the city the scenes were of utter and total destruction.
114	In Mitnica, the roofs of family houses had been blown off and by November 1991 there was practically no house left standing above the cellar.
119	During the fighting the upper levels of the Vukovar hospital were vacated because of shelling, bombing and other destruction from the attacks of the Serb forces. As a consequence the patients, staff and the improvised medical treatment facilities were below ground in the desperately crowded basement areas.
122	The combat operations in the Vukovar area had built up in intensity during August and September 1991.
124	The conflict attracted the attention of the United Nations Security Council. On 25 September 1991, the Security Council passed Resolution 713 strongly urging all parties to the conflict in Yugoslavia to abide strictly to prior cease-fire agreements.
125	The Guards Motorised Brigade ("gmtbr") was a, if not the, premier unit of the JNA. Its personnel were carefully selected, highly trained and well equipped. Its main responsibility was to provide security to the political and military leadership of the former Yugoslavia.
126	The gmtbr comprised eight battalions: two motorised battalions, two military police battalions one of which included an anti-terrorist company, an armoured battalion, a light artillery battalion of anti-aircraft defence, a rear battalion, and a battalion responsible for securing significant buildings and facilities.
127	Before the Vukovar operations, the numerical strength of the gmtbr was approximately 4,000.
128	Major Veselin Šljivančanin was the chief of the security organ of the gmtbr.
129	Major Veselin Šljivančanin's deputy was Major Ljubiša Vukašinović.
130	Captain Borče Karanfilov, Captain Mladen Karan and Captain Srečko Borisavljević were officers of the security organ and were among those subordinated to Veselin Šljivančanin.
131	On 29 September 1991 Colonel Nebojša Pavković from the Federal Secretariat for National Defence was ordered by the Federal Secretary to "engage" in the command of the gmtbr during combat activities in the Vukovar sector and effectively served in Negoslavci under Mile Mrkšić as liaison officer to the Federal Secretariat and the intermediary command of the 1 <sup>st</sup> Military District ("1 MD").

No. du fait	Fait
132	On 29 September 1991, pursuant to an order issued by the Chief of Staff of the Federal Secretary for National Defence, General Adžić, the gmtbr was committed to the fighting in the Vukovar area. To this end it was re-subordinated to the command of the 1 MD.
134	The gmtbr arrived in the Vukovar area almost in its full composition: only its battalion tasked with securing buildings and facilities stayed behind.
135	At the time of the gmtbr's arrival in the Vukovar area the commander of the 1st motorized battalion of the gmtbr ("1/gmtbr") was Major Borivoje Tešić.
136	Major Borivoje Tešić's deputy was Captain Slavko Stijaković.
137	The 1/gmtbr had three companies.
138	Captain Saša Bojkovski was the commander of the 1st company ("1coy 1/gmtbr").
139	Captain Zoran Zirojević was the commander of the 2nd company ("2coy 1/gmtbr").
140	Captain Miroslav Radić commanded the 3rd company ("3coy 1/gmtbr").
141	The 3coy 1/gmtbr consisted of three platoons led by Lieutenant Dordje Vostić, Lieutenant Elvir Hadžić (also Miroslav Radić's deputy) and Sergeant Dejan Jovanović, respectively.
142	The gmtbr's two military police battalions were deployed to the Vukovar area on 28 or 29 September 1991.
143	At the time, the commander of the 1st military police battalion of the gmtbr ("1 MP/gmtbr") was Major Branislav Kavalić, who, on 1 November 1991, was replaced by Captain Jovan Šušić.
144	The 1 MP/gmtbr comprised also an antiterrorist company commanded by Captain 1st Class Mladen Marić.
145	Captain 1st Class Radoje Paunović was the commander of the 2nd military police battalion of the gmtbr ("2 MP/gmtbr").
146	Radoje Paunović's deputy was Captain 1st Class Milivoj Simić who also served as a company commander in that battalion.
147	OG South was initially formed by the command of 1 MD sometime in the summer or autumn of 1991.
148	OG South was established to unify all military units acting in a geographic zone around and to the south of Vukovar under a single command.
149	Another formation, OG North, was established to perform a similar role in respect of an adjoining geographic zone generally to the north of the zone for which OG South was responsible.
150	The southern perimeters of OG North's zone of responsibility extended into the northern reaches of the city of Vukovar itself.
152	OG South was not strictly a Corps although at the operational level it was similar to a Corps, as it enjoyed support from other units.
153	The command post of OG South was located in Negoslavci, a village situated south of Vukovar, and was housed in a vacated, private house. There was also a rear command post located in the village of Berak.
154	As of 1 October 1991 units subordinate to OG South included the gmtbr, the TO unit Petrova Gora and the armoured battalion of the 544th Motorised Brigade of the JNA, but this was extended considerably in the following weeks.
155	Pursuant to orders of the Federal Secretary for National Defence, the command of OG South was subordinated to, and reported one level up to, the command of 1 MD.
156	1 MD covered a vast area which included the territory of the 1st Belgrade District, the 3rd Skopje District, the 5th Zagreb District, and the area of Eastern Slavonia.
157	The 80 mtbr of the JNA, also referred to as the Kragujevac Brigade.
158	The 80 mtbr comprised one tank battalion, three infantry battalions, a rear and an engineer's battalion.
159	Except for 1/80 mtbr which was within the zone of OG North, the units of the 80 mtbr began deployment in the area of Vukovar on 8 November 1991.
160	The brigade's Chief of Staff and Vojnović's deputy was LtCol Rade Danilović.
161	Captain Dragi Vukosavljević was the chief of the 80 mtbr's security organ.

No. du fait	Fait
162	Captain Dragan Vezmarović was the commander of the military police company of the 80 mtr.
163	Pursuant to the Law on All Peoples' Defence, the Territorial Defence, TO, was one of the two constituent elements of the armed forces of the former Yugoslavia, the other being the JNA.
164	TO was organised on a territorial basis, at the level of local communities, municipalities, autonomous provinces and republics, the highest command level being the republican level.
165	The Law on All Peoples' Defence also allowed for the possibility in time of war, or in the event of an immediate threat of war or other emergencies, for the armed forces to be reinforced by volunteers. These were individuals who were not subject to military service and who had been accepted and had joined the armed forces at their own request. In this way volunteers became either members of the JNA or TO.
166	The volunteers had the same rights and duties as the other military personnel and conscripts.
168	While TO commanders were responsible within their territorial structures to their superiors for their work, combat readiness and use of units, pursuant to the Law on All Peoples' Defence, in situations when JNA and TO forces were engaged in joint combat operations, these units were subordinated to the officer in charge of carrying out the operation.
169	The principle of unity or singleness of command required that in a zone of operations, in combat action, one commander was responsible for commanding all military units in that area, including TO and volunteer units, and that all subjects in the area, <i>i. e.</i> all units and their individual members, were subordinated to the one commander.
170	The general moral guidance circular of General Adžić, the Chief of the General Staff, of 12 October 1991, in its last paragraph reiterated that at all levels all armed units, whether JNA, TO or volunteers, must act under the single command of the JNA.
171	On 15 October 1991 the command of 1 MD issued an order to all units subordinated to it, including OG South, to establish "full control" within their respective zones of responsibility. Pursuant to this order, paramilitary units which refused to submit themselves under the command of the JNA were to be removed from the territory.
172	TO units active in the zone of responsibility of OG South were organised in TO detachments, which comprised TO companies and TO platoons.
173	In Vukovar TO detachments, generally, would comprise only 150 to 200 men.
174	When the gmtbr arrived in Vukovar on 30 September 1991, there were approximately 10 TO units represented in Vukovar. However, the only TO unit at detachment level in the zone of responsibility of OG South was Petrova Gora TO, which was smaller than the usual size of a TO detachment.
175	In October 1991 Miroljub Vujović was appointed commander of Petrova Gora TO detachment replacing Dušan Jakšić, who was moved to a support role in the rear.
176	Stanko Vujanović was a TO commander in Vukovar and was seen by many at the time as Miroljub Vujović's deputy.
184	In normal JNA operations an assault detachment is a larger unit, with strength from several companies to a battalion which is formed for a specific purpose.
185	An order issued by Mile Mrkšić on 1 October 1991 in his capacity of gmtbr commander, stated that the gmtbr was "to conduct a blockade and assault on Vukovar with the use of assault detachments within OG [South]".
186	The order issued by Mile Mrkšić on 1 October 1991 issued specific tasks to Assault Detachment 1 ("1 AD") and Assault Detachment 2 ("2 AD") and listed the units incorporated in them.
187	Orders issued later by the command of OG South, for example, the orders of 15 October 1991 and of 14 November 1991, assigned tasks also to Assault Detachment 3 ("3 AD"), and Assault Detachment 4 ("4 AD").
188	An order of 29 October 1991 assigned tasks, <i>inter alia</i> , to Assault Detachment 5 ("5 AD").
192	The area of operations of 1 AD coincided with the area of Petrova Gora TO detachment and its axis approximately coincided with the axis of 3coy 1/gmtbr.

No. du fait	Fait
194	On 20 November 1991 the commander of 2 AD was Major Lukić who was also the commander of the JNA barracks in Vukovar.
195	The area of responsibility of 2 AD included Velepromet and Sajmište.
196	Town (and village) commands in the area of responsibility of OG South were established during November 1991 by the command of OG South pursuant to orders from the command of 1 MD.
197	Town commanders were required under JNA rules to prevent sabotage and terrorist activity in their area of responsibility, to ensure proper transportation, to prepare conditions necessary for the civilian authorities to function, to be responsible for general security, law and order, to prevent looting and ensure physical security to persons in their area.
198	On 19 November 1991 the commander of OG South Mile Mrkšić issued an order appointing the commander of 80 mtbr LtCol Milorad Vojnović to the position of town commander for Ovčara, Jakubovac and Grabovo.
200	By the beginning of November 1991 virtually none of the houses along the road from Vukovar to Mitnica were left standing above the cellar.
202	The damage to civilian property was extensive. By 18 November 1991, the city of Vukovar had been more or less totally destroyed. It was absolutely devastated.
203	The Vukovar hospital, schools, public buildings, offices, wells, the water and roads were severely damaged during the conflict.
205	From September to November 1991 there was no drinking water available in Vukovar, except from the remaining wells.
208	In one incident in late October 1991 the Eltz Castle in Vukovar was shelled, causing the death of 12 persons.
209	The battle for Vukovar caused a large number of casualties, both dead and wounded, combatants and civilians.
211	An exhumation of one mass grave took place in 1998 at the new cemetery in Vukovar. This was the largest exhumation in relation to the conflict in Croatia as a whole; 938 people were exhumed. Of the 938, 800 bodies were identified; 644 of these were Croatian, with 358 classified as civilians. This grave had been dug following the fall of Vukovar.
219	On 18 October 1991 the ECMM received a plea from General Tus of the Croatian forces regarding the heavy artillery attacks that were launched on the Vukovar hospital wounding 83 persons.
222	On 18 November 1991 OG South was ordered to take the Vukovar hospital by 1000 hours on 19 November 1991.
223	In the days preceding the fall of Vukovar, a large number of Vukovar residents had arrived at the Vukovar hospital.
224	On 18 November 1991, there were not less than approximately 750 people, 450 patients and about 300 civilians, waiting at the Vukovar hospital, to be evacuated.
225	Among the persons present at the Vukovar hospital on 18 November 1991 there were sick, wounded, hospital staff, as well as family members of hospital staff.
226	Among the persons present at the Vukovar hospital on 18 November 1991 there were also members of the Croatian forces, both MUP and ZNG, some of whom were not wounded but had taken refuge at the hospital.
227	On 19 November 1991 the Vukovar hospital was full beyond its capacity.
228	JNA soldiers entered the hospital in the late morning of 19 November 1991. These were primarily soldiers of 1 AD and 1/gmtbr led by Miroslav Radić who was under the command of Major Tešić.
229	Patients at the hospital and hospital staff saw JNA soldiers at the hospital in the afternoon and evening of 19 November 1991.
235	Miroslav Radić and Veselin Šljivančanin were at the hospital on 19 November 1991.
244	By the Zagreb Agreement the hospital was to be under the protection of the ICRC, which was to register the wounded and sick to be evacuated, ECMM monitors were to monitor the evacuation from

No. du fait	Fait
	Vukovar hospital and were to have full access to all stages of the evacuation.
247	On 22 October 1992, Dr Clyde Snow, an experienced forensic pathologist who was acting under the mandate of the UN Special Rapporteur on the human rights situation in the former Yugoslavia, Mr Tadeusz Mazowiecki, announced that a mass grave had been discovered in the area of Vukovar.
248	The actual site of the mass grave was in a lonely location at Ovčara near to the Vupik farm in Ovčara and between it and Grabovo.
249	The mass grave near to the Vupik farm in Ovčara was placed under a 24-hour guard by UNPROFOR soldiers.
250	No exhumation followed Dr Snow's announcement of the discovery of the Ovčara grave until nearly four years later. During this time, however, the mass grave remained under UN protection.
251	The exhumation of the mass grave near to the Vupik farm in Ovčara began on 31 August 1996.
252	The remains of 200 human bodies were exhumed from this mass grave at Ovčara. There were 198 males and two females.
253	The bodies were retrieved from the site and transported to the Institute of Forensic Medicine in Zagreb where full post mortem examinations was conducted.
254	The exhumation and the autopsies were conducted by international and domestic experts. Representatives of the Croatian and the Yugoslav government were present during the exhumation and the autopsies. The exhumation was conducted under the authority of this Tribunal. Other international organisations, including ECMM, OSCE, and the International Commission for Missing People also participated in the exhumation.
255	International forensic experts carried out the autopsies of the bodies under the monitoring of Dr Davor Strinović, Deputy Head of the Institute of Forensic Medicine in Croatia and a member of the Republic of Croatia Government Commission for Detainees and Missing Persons ("Commission for Missing Persons").
256	The age range of those exhumed from the mass grave at Ovčara was between 16 and 72.
262	200 persons have been killed at the mass grave site at Ovčara on 20/21 November 1991.
263	After the autopsies were completed, the process of identification began. In 1997, the Commission for Missing Persons took custody of the bodies exhumed at the Ovčara mass grave in order to carry out this task.
264	Two methods of identification were used: the classical method and the DNA method.
265	<i>Ante mortem</i> information was gathered from the families of the victims and then compared with elements found in the course of the autopsy.
266	Of the 200 bodies exhumed at Ovčara, 192 were identified, 93 by the classical method and 99 by DNA.
274	The mortal remains of KIRALJ, Damir 1959 Male, and MIKULIĆ Zvonko 1969 Male were received from the authorities of Serbia and Montenegro (from Sremska Mitrovica in 1997 and from Belgrade in 1995, respectively).

## VI. ANNEXE B

No. du fait	Fait
1	Mile Mrkšić was a colonel in the JNA and commander of the Gmtbr and OG South. As a commander of OG South he had command of all Serb forces including JNA, TO and paramilitary forces.
2	Veselin Šljivančanin was a major in the JNA and held the post of head of the security organ of both the Gmtbr and the OG South.
3	The city of Vukovar had been the object of attack by the JNA from August to November 1991. During the course of the 3 months, the city was largely destroyed by JNA shelling and hundreds of people were killed.
4	When the city of Vukovar was occupied by Serb forces in November hundreds more non-Serbs were killed by Serb forces. The majority of the remaining non-Serb population were expelled from the city in the days following the fall of Vukovar.
6	Šljivančanin learned of the withdrawal of JNA troops from Ovčara in the course of his meeting with Mrkšić on the night of 20 November 1991.
12	The 80 mtbr (also referred to as the Kragujevac Brigade) had one tank battalions, a rear, an engineer battalion, a military police company and a light artillery anti-aircraft battalion.
15	The Gmbtr's main responsibility was to provide security to the political and military leadership of the former Yugoslavia and the security organ's purpose was to perform counterintelligence activities.
16	The security organs of the units subordinated to OG south, including the 80 mtbr, were required to report to Šljivančanin as the security organ of OG South.
17	Without a specific delegation by the commander, Šljivančanin had no specific responsibility for prisoners of war by virtue of his position as security organ of the OG South.
18	Šljivančanin's authority over the military police of 80 mtbr was limited by reason of the mandate of the security organ of OG South.
25	Between 15:00 hours and 15:30 hours on 20 November 1991, Witness P017 dug the hole which later served as a mass grave.
26	The killings at Ovčara started after 21:00 hours and continued up to midnight.
27	On 21 November 1991, pursuant to an order from the command of OG South, the Vukovar TO detachment was re-subordinated to the command of the 80 mtbr.
28	Lt. Col Milorad Vojnović was aware that prisoners of war were to be held at Ovčara.