

BRIDGING THE GAP  
BETWEEN THE ICTY  
AND COMMUNITIES  
IN BOSNIA AND HERZEGOVINA

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CONFERENCE PROCEEDINGS  
**BRČKO**  
8 MAY 2004



# **BRIDGING THE GAP**

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA

CONFERENCE SERIES

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The Bridging the Gap conference in Brčko would not have been possible without the hard work and dedication of many people and agencies. Our thanks to all those that made this remarkable series possible.

Appreciation is expressed to the Helsinki Committee in Republika Srpska, Bosnia and Herzegovina. Their commitment to truth-seeking and upholding basic human values, often in the face of hostility, is acknowledged.

The event was generously supported by the United Kingdom Foreign and Commonwealth Office.

Heartfelt appreciation is extended to those people most affected by the crimes addressed at the conference. Without their bravery, nothing could be accomplished.

**Bridging the Gap**  
between the ICTY and communities in Bosnia and Herzegovina  
CONFERENCE SERIES  
**BRČKO**  
8 MAY 2004

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# BRIDGING THE GAP

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## Plan of Brčko

### Key

1. Hospital
2. Health Centre
3. Wooden Mosque
4. Mosque
5. Mosque
6. Mosque
7. Brčko Police Headquarters (SUP)
8. Partizan Sports Hall
9. JNA Barracks
10. Laser Bus Company
11. Farms
12. Mass Grave Site



## Foreword

**D**uring 2004 and 2005, the Tribunal's Outreach programme conducted a series of landmark conferences entitled "Bridging the Gap between the ICTY and Communities in Bosnia and Herzegovina". Senior ICTY staff travelled to Bosnia and Herzegovina to explain some of the cases completed at the Tribunal to the local population in places where some of the most notorious crimes under the Tribunal's jurisdiction were committed. These conferences took place in Brčko, Foča, Konjic, Srebrenica and Prijedor.

The event in Brčko enabled the Tribunal to provide key stakeholders - victims' associations, municipal authorities, judicial officials and law enforcement agencies, as well as local politicians and civil society representatives - with a detailed and comprehensive picture of the Tribunal's activities in relation to allegations of serious violations of international humanitarian law occurring in the area during the 1992-1995 armed conflict.

Making extensive use of the enormous volume of evidence presented in the cases, representatives from the Tribunal were able to give an insight into the meticulous and painstaking investigations conducted by the Tribunal and explain how allegations of murder, beatings, rape, inhumane conditions and theft from civilians were proven before the court. In the Goran Jelisić and Ranko Češić cases the two defendants were both found guilty of violations of the laws or customs of war and crimes against humanity and sentenced to 40 and 18 years imprisonment, respectively.

Reactions of the audience highlighted the need to persist with efforts to bring to justice perpetrators of all crimes, regardless of the nationality of the victims or the perpetrators. ICTY representatives reiterated the Tribunal's preparedness to continue to do all it can to assist domestic authorities in bringing further prosecutions.

This book contains a summary of proceedings using the transcripts from the day, including opening remarks, presentations from Tribunal staff, photographs used as evidence in the cases and questions from the audience.

# **BRIDGING THE GAP**

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA

Listed below are the speakers who participated in the conference:

**Branko Damjanac**  
Mayor of Brčko

**Branko Todorović**  
Chairman, Helsinki Committee for Human Rights in Republika Srpska

**David Tolbert**  
Deputy Registrar, ICTY

**Bernard O'Donnell**  
Investigations Team Leader, Office of the Prosecutor, ICTY

**Geoffrey Nice**  
Principal Trial Attorney, Office of the Prosecutor, ICTY

**Cécile Tournaye**  
Legal Officer, Chambers, ICTY

**Olivier Fourmy**  
Former Senior Legal Officer, Chambers, ICTY

**Refik Hodžić**  
Former ICTY Outreach Coordinator for Bosnia and Herzegovina

## Welcome and Introductory Remarks

### **Mayor Branko Damjanac, Mayor of Brčko:**

Ladies and gentlemen, as you have seen from the invitation to this conference, we will have an opportunity to familiarise ourselves with the two cases regarding Brčko which have been completed at the ICTY and obtain a full picture about these two trials. Through them, we will acquaint ourselves with the work of the Tribunal for the purposes of information and preparing our institutions to take over one aspect of this work. Similar conferences will take place in four other places in Bosnia and Herzegovina.

It is a challenge and a great responsibility for us to ensure that this conference runs smoothly and that it achieves its aim. We need to show that Brčko is a community for which there are no taboos, which is developing in a positive direction that can serve as an example to others in Bosnia and Herzegovina (BiH). Many recent achievements in the Brčko District demonstrate this. Chief among them are the 100% recovery of property; the building of 5,500 housing units; the return of 21,000 persons; the raising of funds for social projects; the almost complete restoration of the infrastructure; the development of schooling and other facilities, as well as many sports halls, technical and educational institutions; and the functioning, according to multi-ethnic principles, of the Assembly, the judiciary and the police. Brčko is an open town now. International economic fairs take place here, as well as many other cultural events. The Brčko District is an active member of the Association of the Dunav, Drava and Sava communities, as well as the European Association. We are continuing to develop Brčko District, to develop our entire system of social life and enshrine the vital rights and interests of each citizen.

We believe that this conference and the activities to follow will contribute to our gaining an insight into the truth and achieve results that will promote tolerance, enrich our experience and strengthen trust among our peoples. We must give our full support to the activities of the competent investigative, judicial and other authorities working on the detection of crimes and perpetrators both in Brčko and further afield. We have to face the truth and all perpetrators, no matter from which community, must be punished. Out of respect for the victims, investigative procedures should not be abused for political purposes. All of us who represent authority have a duty to suppress crime and punish it. This is particularly important here in order to ensure a constructive, tolerant, multi-ethnic community. I would not like to see the events of the recent past used for marketing purposes, with blame assigned to any of the nations and ethnic hatred flaring up. Therefore, I express my full support to the Helsinki Committee and the International Tribunal in their work on processing war crimes, especially in Brčko, and the establishment of culpability in all crimes. Our own judicial authorities have a great responsibility in developing themselves and their competencies. I wish you success in your work.

**Branko Todorović, Chairman, Helsinki Committee for Human Rights in Republika Srpska:**  
Dear guests and friends, the Helsinki Committee for Human Rights in Republika Srpska has organized a number of activities in this past year trying to encourage the establishment and development of the judiciary in BiH. Together with the International Tribunal, we have been involved with a number of activities directed at strengthening the capacities of our judiciary. The fact that The Hague is geographically remote from BiH has been misused by those who want to compromise the Tribunal's work and misinform the local community and avoid their own culpability. To address the legal processes that deal with crimes committed in local communities, we decided to hold a series of conferences

together with the Tribunal's Outreach programme. These conferences should provide a presentation of what the ICTY Office of the Prosecutor (OTP), and the Trial Chambers in The Hague have done about the crimes committed in local communities. We believe this will promote better understanding in BiH but also encourage our local judiciary to assume their obligations in processing the perpetrators of war crimes. In BiH we face one issue

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*... this conference should provide support to finding the truth and building reconciliation in these parts of BiH.*

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the judiciary from Brčko and Bijeljina, representatives of NGOs dealing with human rights, the media, but also those who create the political reality in north-eastern Bosnia. In essence, this conference should provide support to finding the truth and building reconciliation in these parts of BiH.

In conclusion, I wish to thank our friends from The Hague who are with us here today - investigators, prosecutors, Chambers representatives - thank them for their good will in coming here today and showing us what they have done related to the crimes in Brčko. I also wish to thank the hosts, the Mayor, the Speaker and members of the Assembly who have unselfishly given in order to help organize this conference. Thank you everyone who has come here today. I hope we will send a message together about the readiness of the citizens of Bosnia to help restore a state of law and the fight of good against evil.

**David Tolbert, Deputy Registrar, ICTY:**

I would like to thank the Mayor for his opening remarks and I would also very much like to express our appreciation to the Helsinki Committee for helping to develop the vision for this programme. You will hear extensively from both the Prosecution and investigation side, and we also have representatives here from the ICTY Chambers. The Registry serves a different function, providing support to both the Prosecution and the Chambers in a very neutral manner. I, as the representative of the Registrar, and Refik Hodžić will be serving as facilitators, turning for more substantive commentary to our colleagues from the Prosecution and the Chambers. As we don't have any defence counsel here today, I will try to represent them to some extent and explain their role to you.

The Tribunal has held many events throughout the former Yugoslavia to explain its work and we've done a great deal of training of lawyers and judges, but today we are embarking on a new programme - to talk directly to you about specific cases that we have 1) investigated, 2) prosecuted and tried, 3) where judgements have been rendered, and, 4) where sentences have been imposed. We are doing this in the very community in which the cases arose and the events happened. Our goal here today is to explain in a direct and clear way what was done, concentrating on the facts of these cases and explaining, where necessary, the legal process.

What the Tribunal could never do, is prosecute every person or even a substantial number of persons alleged to have committed serious violations of humanitarian law. There has never been enough time or enough resources to do that, and now, with instructions from the UN Security Council, the Chief Prosecutor is focusing her attention on the most serious perpetrators in order to complete her investigations by the end of this year, in December 2004. This, what we call the completion strategy, also requires

us to complete our first-instance trials by the end of 2008 and the appeals by the end of 2010. The Tribunal, I believe, has taken a real step to end impunity, as illustrated by the two cases that we will be discussing today. But the Tribunal will increasingly be handing off responsibility to local prosecutors and courts to prosecute war crimes. We are working very closely with the Office of the High Representative and state officials in Bosnia and Herzegovina to establish a Special War Crimes Chamber within the State Court in Sarajevo so that prosecutions and trials of war crimes will continue there. And I want to emphasise that we are also strongly committed to providing evidence, expertise and advice to local prosecutors and the courts to enable them to start the process of local prosecutions and finish the job that the Tribunal has started.

But for now we want to focus on two cases that were prosecuted in the Tribunal that arose from events that occurred here in Brčko, literally just around the corner from where we are right now: the cases dealing with Jelisić and Češić. We aim to describe accurately and as fully as possible how these events, which produced very real victims, were investigated and then brought before the court in The Hague. These events affected you, they affected your community, and our purpose today is to demystify the process of what happened after the events here and what happened in The Hague. I'm very fortunate today to be joined by a distinguished panel, let me just briefly introduce you to them. From the Prosecution we have Geoffrey Nice, who was involved in the Prosecution of one of the cases and is also the Prosecutor in the Milošević case. We have Bernie O'Donnell who is a team leader in the investigation section. Olivier Fourmy was a senior legal officer in one of the Chambers in a case we will discuss, and Cécile Tournaye was a legal officer also involved in the cases.

Thank you very much for coming today. We look forward to telling you about the work we've done and then engaging you in questions and answers. I am deeply honoured to be here with you today in this community to talk about these events.

## Session One Investigations

**Bernard O'Donnell, Investigations Team Leader, Office of the Prosecutor, ICTY:**

I am an investigations team leader with the OTP at the ICTY. I started working on the Brčko investigation after commencing with the Tribunal in the second half of 1996 as the crime scene work was just about to start, and continued working on the case until around the time of the arrest of Goran Jelisić.

Today I will give some details of the early investigation, the crime scene inspections around Brčko, the exhumation of the mass graves that we were able to locate in Brčko, and the interview of Goran Jelisić, following his arrest.

The crimes that were committed in Brčko were investigated by a number of international observers prior to the establishment of the ICTY. The Commission of Experts, established pursuant to Security Council resolution 780, produced a final report in May 1994. In that report, the commission provides some details of events in Brčko from May 1992, including mistreatment in detention facilities, summary executions and rape. Many of the alleged perpetrators were unnamed soldiers or irregulars. One direct perpetrator referred to by name in that report was Goran Jelisić, who was referred to as the "Serbian Adolf". Mr Mazowiecki, Special Rapporteur of the UN Commission on Human Rights, in 1993 also reported crimes at the Luka camp in Brčko. The Human Rights Watch report also contained details of the executions in the Luka detention facility. Two of the notorious perpetrators mentioned in this report were Goran Jelisić and someone referred to by the name of Ranko. The Tribunal was also provided with extensive material from authorities in Bosnia containing details of crimes and potential witnesses.

Prior to 1996, the OTP had no access to the areas where crimes were committed. Therefore, the investigation primarily consisted of a review of a massive amount of information relating to events in Brčko and the interview of witnesses who were accessible to the investigators.

In the early days of the OTP's operation a great deal of consideration was given to the selection of targets for indictments. The OTP possesses documents, statements, intercepts and other evidence concerning thousands of people who allegedly committed crimes over which the Tribunal has jurisdiction and could therefore be investigated. Not counting the time or resources that would be required to actually investigate all these cases, it would literally take hundreds of years to prosecute all of them, if the trials lasted a couple of months each. Therefore, difficult decisions have had to be made as to who the most appropriate targets are for the OTP to investigate and prosecute. A strategy was developed concentrating on the most senior political and military officials,

such as Karadžić, Mladić and Milošević, and also the most notorious perpetrators such as Jelisić and Češić.

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Hundreds of witnesses were spoken to prior to the selection of targets. On the basis of evidence available, two targets were chosen for this investigation - Goran Jelisić and Ranko Češić.

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Hundreds of witnesses were spoken to prior to the selection of targets. On the basis of evidence available, two targets were chosen for this investigation - Goran Jelisić and Ranko Češić. Jelisić, according to witnesses, spoke of killing 80 people in a day and had boasted that he had been sent

to Brčko to wipe out the Muslims or “Balija” as he referred to them. Many witnesses regarded Ranko Češić as the next worst perpetrator of crimes committed in the Brčko area. Unfortunately, many of the perpetrators of serious crimes could not be identified.

In October 1996, the OTP for the first time gained access to the crime scenes for a forensic examination mission. Witnesses we had spoken to had told us about the following: the blowing up of bridges over the Sava River; crimes at the Partizan Sports Hall, including the killings by Češić which are mentioned in his indictment; killings and detentions at the Luka facility; the use of trucks from the *Bimeks* company to transport the bodies to mass graves; detention and killings at the *Laser* company premises, including one of the killings in the original indictment against Goran Jelisić; destruction of cultural and religious monuments; the execution of civilians by Jelisić in a lane near the police station in the centre of town; and detentions and killings at the Brčko police station. Witnesses also had given information on the sites of suspected mass graves and other sites of killings and detention.

I have prepared a selection of photographs from the crime scene mission conducted in late 1996. Literally thousands of photographs were taken on this mission along with hundreds of sketches and tens of hours of video tape footage. Therefore, this is only a small collection of material. The aim of the mission in 1996 was to obtain video footage and still photographs of the key locations where crimes were committed, to search for any physical evidence that may still be available - this was of course dependant upon the area and its use in the intervening period - and to check the information from witnesses and obtain corroboration where possible or highlight inconsistencies in witness testimonies.

One of the locations mentioned by witnesses was a bridge across the Sava River, seen in images 1-2. This, of course, is the bridge linking Brčko to Gunja. Although the blowing up of the bridges was not directly relevant to the Jelisić investigation, we obtained video footage and still photographs of the bridge in case they could be used in later proceedings against leadership level perpetrators. Before continuing, would Geoffrey Nice like to comment on the use of evidence collected in one case that may be relevant to another case?

**Geoffrey Nice, Principal Trial Attorney, Office of the Prosecutor, ICTY:**

You can't use in a case that happens to concern a particular locality all the evidence that arises from that locality. The two cases that came to trial concerning Brčko were for men low down the management chain. The crimes they committed were unbelievably awful but that didn't elevate them so as to make them in any way responsible for acts such as the blowing up of the bridges which were no doubt organized from a higher level. We emphasize this point because there sometimes exists concern that the blowing up of the bridges was not dealt with in either of the Brčko-related trials. The evidence is, however, being considered in the Krajnišnik trial, and hopefully there will be a judicial determination about that in the course of that trial.

**Bernard O'Donnell:**

I will now play an excerpt from the Krajnišnik trial as an example of evidence concerning the destruction of the bridge in Brčko.

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*(court transcript)*

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Case name and number: Krajišnik (IT-00-39)

Witness: Izet Gaši

Date: 04.02.2004

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**Witness:** In the morning of 30 April (1992) - it was 4.30 in the morning, to be precise - I was woken up by two powerful explosions. I have a wife and a child, so we got up. One window was broken on my building, actually, in my apartment, and then a couple of other windows were also broken on the other side. In the beginning, we didn't know what had caused the explosion, but later the telephones were working. We called one another, and later on we found out that two bridges were blown up across the Sava River. One of them was a railway bridge and the other was a bridge for regular passenger and vehicle traffic.

...

**Prosecutor Hannis:** Mr Gaši, do you have a photo on the screen before you?

**Witness:** Yes.

**Prosecutor:** And if you recognise that, tell the Judges what that is.

**Witness:** This is the bridge over the Sava River, in Brčko.

**Prosecutor:** And does that picture depict the portion of the bridge that had fallen in the river as a result of the explosion?

**Witness:** I was here, at that place where that section is missing, on that day. Yes, that is that section of the bridge.

**Prosecutor:** Is that how it looked that day when you saw it?

**Witness:** Exactly like this.

**Prosecutor:** Back up a second. After you heard the explosion, did you go to investigate?

**Witness:** I didn't go there. I got up, and then at about 6.30 I had to go to work, because I have to go to work at 7.00 every morning. So I started walking from my house to the electric company, and when I got there to the Elektroprivreda, our director said we could return home. So I returned home and then I told my wife I'm going to see the bridge over the Sava, because I knew that people were talking that it had been blown up. So it was maybe about 9.30 when I came to look at the bridge.

**Prosecutor:** And what did you see when you got down by the bridge?

**Witness:** In the very centre of town, just before the police station, I saw a couple of human corpses on the sidewalk. There's a small park just opposite from the SUP (Brčko police building), actually, and somebody took a door, a door from an apartment, and covered the lower part of a male corpse, the part where the legs and the lower stomach should be. Later, I passed behind the Posavina Hotel and saw parts of a child's legs. I reached the bridge. There were other people there. There were also police officers from the Brčko police station. There were also some of my acquaintances there. And maybe people began to talk there, to comment, who did

it, what they did. All the police officers were lost. They didn't even know what to do there, should they secure the site or not. After about half an hour, a vehicle of the JNA (Yugoslav People's Army) appeared with about eight to 10 people in the trailer. It was a Pinzgauer, a larger one. All the men were armed in camouflage uniforms with helmets on their heads, and one of them jumped out from the vehicle and started to talk to one of the police officers, that they should clear the site and that there was some kind of commission coming there. Then the soldiers all got back into the vehicle and continued on their way to another part of the town of Brčko. I stayed there for about another half an hour. People continued to comment about what had happened. And then I went back to my apartment. That's all.

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**Bernard O'Donnell:**

Later in this testimony, Izet Gaši referred to a conversation he had with a certain Rade Božić, a member of the Red Berets (an elite unit within the Serbian police force). Božić had said he had been the person who commanded the operation to blow up the bridge over the Sava River, and that he was very sorry that many civilians were casualties in that operation. He said that persons had been released to go across the bridge before they were supposed to and that they had to blow the bridge up.

Another location at which crimes were committed was the Partisan Sports Hall. Češić was indicted for the murder of five men at the Partisan Sports Hall on or about 5 May 1992. We went there in 1996 and photographed the facility so that we could show photographs to witnesses if necessary during later interviews. Forensic examination of the Hall and the area outside was not possible because of the time that had passed and the use of the facility in the years in between. Witnesses told us about the trucks from *Bimeks* which had been used to transport bodies from sites around Brčko to a mass grave on the outskirts of town. Image 3 is an aerial view of the facility. Images 4 - 6 were taken at the company itself, images 5 - 6 portray one of the refrigerator containers on the back of the *Bimeks* truck.

Image 7 taken of a mass grave in Brčko in 1992 shows a truck at the top of the picture that appears to be a *Bimeks* truck transporting bodies. An enhancement in image 8 makes it clear that it is indeed a *Bimeks* truck. We had the registration number of one of the trucks used and we attended *Bimeks* to try to find the truck. We also sought to corroborate information that we had from witnesses. We examined many of the vehicles at *Bimeks* but the truck used was not there and we did not obtain significant forensic evidence. We searched the house of Jelisić's family, locating some material but unfortunately not Jelisić.

We went to the *Laser* bus company to seek corroboration of witness testimony and to obtain photographs and video footage in case they became important later. We had information about detentions at *Laser* and the beatings and killings of civilians held there. Jelisić was indicted for the murder of Kemal Sulejmanović at this location in the original indictment. The area was photographed and sketched for later interviews with witnesses. The Reports from the Commission of Experts and others mention cultural and religious destruction in Brčko.

We documented what we could during the mission in 1996. Evidence of destruction of cultural and religious buildings in Brčko has been used in the Milošević trial and will be used in other cases, including Krajišnik.

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*The most notorious detention facility in Brčko was the Luka facility.*

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The most notorious detention facility in Brčko was the Luka facility. Here you can see the hangars where prisoners were held and offices used by Jelisić and others. Looking at the photo (image 9), the main warehouse building was the one used for detention. The first buildings closest to the end were hangars that were used and the offices across, separated by the lane, were those used by Jelisić and others. At the back of the facility was an area where bodies were piled before collection by *Bimeks* trucks. This is the area behind the hangar where some people were taken to be executed and where some of the bodies were piled. This, on image 10, is the road running through the Luka facility with the hangars on the right and the offices on the left. On the road you can see numbers marking the location of two of the four drains which I will mention later. You can see them indicated by the number six in yellow on the photo. In images 11 and 12 you see the inside of two of the hangars, and in image 13 a pole outside of the office building. Witnesses described how one victim was tied to the pole and beaten before being shot in the head.

With significant IFOR (the NATO-led Peace Implementation Force) support we were able to conduct a comprehensive examination of the Luka facility. At the time, the team comprised of investigators, crime scene experts, with security and photographers. The outside and inside of each building was searched, photographs and video footage were taken and scale diagrams were made of each building. Because of the use of the facility between 1992 when the crimes were committed and 1996 when the crime scene examination took place we could, of course, only hope to find a limited amount of evidence.

Image 14 is another one showing the office building and the pole outside, and in front of it you can see one of the four drainage grates. Witnesses had detailed how Jelisić had executed victims whilst forcing them down with their heads on the grate. Image 15 is a close-up of the drain. It was still in use and contained a large amount of waste. We emptied this drain and sifted through the content, using small metal detectors. Two of the drains were accessible and were examined. Two other drains could not be searched because of their depth and narrowness and the grate on one drain was not removable.

Although several years had passed since the crimes had been committed, we did find significant evidence in the drains at Luka that Jelisić had used a Scorpion pistol in the executions. The projectiles, fragments and cases found in the drains were from a Scorpion pistol and therefore helped to corroborate the information from witnesses about people being shot with that type of weapon at that location and held over the drains.

As part of the examination, we tried to corroborate information we received from witnesses who said they saw people being beaten and shot outside the hangar and that they witnessed this from inside the hangar. From the initial inspection of the building this appeared implausible because the hangar was solid masonry with high brick walls and solid steel doors which were kept closed most of the time. Witnesses stated that when sitting at the doors they could see through the cracks between the doors and the building and this is how they were able to witness some of the events. Damage to the building meant that this was in fact possible. Images 16 and 17 are taken from the position of the witness inside the hangar looking across to the area where they said they could witness beatings taking place.

We were told by witnesses about executions in the lane at the centre of Brčko. These photos show the lane and the area in front of the police station (images 18 and 19). This is a closer photo of the lane where executions were committed (image 20). In 1996, this area was also examined for any possible forensic evidence. On a short video, you can see one of the investigators, Fred Buckley, from the American Federal Bureau of Investigations, conducting an examination of the lane searching for any ballistic evidence that still might

be available. The area was also checked by crime scene experts from the Netherlands. Evidence found there, including cartridge casings, did help to corroborate witnesses and some of those casings were matched with ones from the drains of Luka. We conducted a limited search and examination of the Brčko police station, which of course had been used for several years after the killings and detention of people in 1992. We could not hope to find physical evidence, such as blood, projectiles or casings, but the evidence we obtained did corroborate witness accounts of where people were held and was valuable for interviews with witnesses, and also the later interview with Goran Jelisić.

Photographs were taken in 1992 of bodies in a mass grave in the area of Brčko (image 21). They shocked the world when they appeared in the international press and substantiated what those who had escaped the area claimed had been happening in the town. In 1997, an exhumation of a mass grave was conducted in Brčko. This is an aerial photograph of the general area of the mass grave (image 22). Here you can see the service station on the road to Bijeljina that many people referred to when they described the location (image 23). This is the road running down to the mass grave.

Before we were able to access the site and commence the exhumation, the area was de-mined. Then came the task of locating the mass grave itself. In fact, five pits were located at this location. Image 24, one of those taken in 1992, was used to try to locate the position of the mass grave. In the photograph you can see a light post and a large wire fence in the top left-hand corner, as well as several trees between the truck at the right of the photograph and the heavy earth moving equipment. These trees, the fence and the post were used to try to locate the exact position of the mass grave. This is a photo of Richard Wright, the chief archaeologist, and John Gurns, the crime scene officer, using the aerial photographs in order to locate the mass grave (image 25).

Before commencing the actual exhumation, the team was comprised of archaeologists, anthropologists, crime scene experts, a photographer, investigators, a protection manager, labourers, surveyors and security personnel. You can see the team working on the mass grave in the background (image 26). I draw your attention to the surveying equipment in the picture. I will mention more on that later.

Long trenches were dug in the suspected area of the mass grave and stratification of the soil was checked to identify areas of disturbed earth and a process of quarrying rubble from the top of the mass grave. Thousands of tons of rubble had to be removed from the area before reaching the top of the mass grave, as the area had in the meantime been used as a rubble dump and a general garbage dump and the remains of destroyed buildings were also spread over the entire area. From the type of rubble there was, the expert opinion of the chief archaeologist, Dr Wright, was that demolished mosques made up part of the rubble.

Details were recorded of each body taken from the grave, including details of any items or property found with the body. Each body was photographed and its location was precisely plotted. Grave one contained 25 bodies. Grave two contained 23 bodies. This grave had been robbed and in other ways disturbed, and an unknown number of bodies have been removed from it after the original burial. Grave three contained six bodies, along with substantial body parts. Grave four contained 12 bodies, but had also been robbed resulting in the removal

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*Documents later obtained from government authorities in Pale showed that there were originally more than 200 bodies in these mass graves.*

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of an unknown number of bodies. Grave five contained body parts. In total, 66 bodies and a number of body parts were removed from five mass graves at this location. Later post mortem examinations on the 66 bodies showed that all but 10 had been shot in the head. There had been a total of 88 head shots for 66 bodies. Documents later obtained from government authorities in Pale showed that there were originally more than 200 bodies in these mass graves.

The exhumation team had largely completed its work when the town erupted in violence unrelated to the Tribunal at the end of August 1997. All evidence was removed safely from the scene. However, members of the team were caught in the riots, ICTY vehicles were damaged and significant equipment and machinery was damaged and stolen.

This photograph was one of those taken in 1992 and appeared in *Time* magazine in 1996 (images 7 and 21). This photograph on the right is one taken in 1997 during the exhumation and showed the same bodies several years later when exhumed (image 27). When exhuming this grave, it became clear that the bodies in this collection of bodies in the photograph on the right-hand side was the same as those that were taken in the photograph that appeared in *Time*. Therefore, the bodies were carefully unearthed as a group rather than one by one. I mentioned the surveying equipment earlier. Two surveyors were at the site throughout the exhumation. As each body was uncovered, reference points were taken and fed into a computer to allow the precise plotting of each of the bodies in each of the mass graves. A total of 12 reference points were taken for each body, so the position of the head, torso, legs and arms could be precisely plotted in three-dimensional space. This was later used in trial to show the way in which bodies were disposed of and the attempts made to destroy evidence at the mass grave. I'm going to show you a short video of the use of that computer imagery, linking the results of what was found in the mass grave into something meaningful for the court and the presentation of that evidence in court.

(court transcript)

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Case name and number: Jelisić (IT-95-10)  
Prosecutor: Geoffrey Nice  
Date: 16.09.99

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The first page simply is an example of the methodology whereby the position of bodies is recorded, but since the report is not in dispute, we can turn to the second page, registry page 6218, which shows some six bodies and the various different and jumbled positions in which the bodies were found. I return to the body of the report: "The bodies show no sign of being carefully placed within the graves. They face in all directions, lie on their face and back, and have their limbs in disarray. Further details of the attitudes of the bodies may be seen in the 3-D simulation of the bodies in the graves contained on the computer disk" - the title of which is given, attached to the report, and I can just show that for you, I think. What you have here is the view from the top of Grave Number One, with, so far as possible, each identified body being drawn out in a different colour, so that the expert and his team took the coordinates of the body parts - head, shoulder, limb, foot - charted the positions of the bodies, both as to horizontal and depth. And this, it must be said, rather clever piece of software enables us to do this, I think - I'll have to do it slightly better - you can move the image so that one can look at the grave as if looking at it side on, and indeed you can then swivel it round and catch it in any profile that is helpful. That's Grave One. It's perhaps particularly

helpful in respect of Grave Two, which the Chamber will recall is the grave said to have been disturbed by the horizontal trench in the middle. There you have the view from above, and if I'm able to elevate the picture so that it's more or less horizontal, you can see immediately that there is a horizontal slice taken out, with bodies to the right and some bodies to the left.

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**Bernard O'Donnell:**

From the evidence of witnesses we believe there are other mass graves in the Brčko area used for civilians killed from May 1992 onwards, and we attempted to locate them. However, because of the large areas and the use of the areas, for instance as rubbish dumps, it was not possible to locate any other mass graves through probing or other normal means.

Throughout the investigation we received information about the old *Kafilerija*, the factory for disposing of slaughterhouse waste then used to burn bodies (image 28). The information was also mentioned in the Commission of Experts 1994 report and in the Mazowiecki report in 1993. Witnesses told that bodies were thrown into the furnaces and cremated to ash. We also received information that bodies removed from the mass grave were taken there for destruction.

Therefore, in October 1997, we conducted a forensic examination of the old *Kafilerija*. A team of investigators, crime scene experts, anthropologists specialising in human remains and animal remains spent two days examining the site in an attempt to determine whether or not bodies were destroyed there as some witnesses believed. The furnaces and boilers were examined and the inside of each furnace and boiler was checked for remains. A thorough examination was conducted looking for clothes, teeth, burns, hair, bullets or anything that may be evidence of bodies being disposed of here. No evidence was found. The opinion of persons consulted on the type of equipment there was that the burn temperature of the combustion chambers would not have been sufficient to destroy the bodies entirely. The size of the openings would have made it a very difficult to place bodies into the furnaces and there was also limited room inside.

Anthropologists did not find any evidence of human remains. Samples of organic matter were taken for later testing in the National Forensic Institute in the Netherlands. However, no trace of human remains was detected. The immediate area was also searched and bones were examined by anthropologists. All bones examined were animal bones. Therefore, the information on this site being used for destruction of a large number of bodies is unlikely to be true. The bodies removed from the mass grave, that I showed the photographs of, were taken somewhere and were reburied or disposed of. We don't know that location.

**David Tolbert, Deputy Registrar, ICTY:**

Thank you Bernie. I would encourage you to bear in mind what Bernie has presented as this evidence will be referred to repeatedly in later presentations. We will move through the investigation phase to the preparation of an indictment, its confirmation, and then the arrest and transfer of the accused. We'll discuss the rights of the accused and we'll talk about what happened in the two trials.

**Geoffrey Nice:**

The exhumation work carried out was done with extraordinary detailed care. I wasn't involved in it so I can, on this occasion, praise the work of others. It was of course extremely clever to be able to identify the grave given that there was no help provided, apart from that which was available from a single photograph. It must have been

extremely sensitive work to uncover the grave where it was expected that they would find the same configuration of bodies as was shown in a contemporaneous photograph. And the exercise identifying the position of the bodies so that they could be reflected in the computer programme that showed beyond doubt that the grave had indeed been robbed or disturbed, was advanced, technical and painstaking work. It's stunning, that detail, for in a criminal trial you never know what is going to be alleged by an accused. They are entitled to try and throw doubt on anything. But, that degree of careful examination would have made it impossible to draw conclusions other than those that must be drawn as to how the graves were filled and how they have been robbed. So the work is entirely respectful of the legal system and, of course, the rights of the accused. But it also shows appropriate respect for the dead themselves.

**David Tolbert:**

I wanted to just briefly touch on an issue that arises out of the exhumations and missing persons. Obviously, as a result of this work, certain missing persons may have been identified but the Tribunal's work, the Prosecution's work, in terms of exhumations is to obtain evidence to be presented at trial.

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*... the Tribunal's role in  
exhumations is to obtain evidence  
which is admissible in trial.*

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is a considerable concern for victims and victims' families and I just want to be clear on the Tribunal's role in this process. We're involved in exhumations because of our mandate to proceed with prosecutions and trials. Would you like to comment Geoffrey, on the link between the process of the investigation and drafting of the indictment?

**Geoffrey Nice:**

I'm quite happy to explain a little bit about the next step in the process which may not be familiar to the audience. In some countries, I suppose, preparations for trial are done entirely by investigators, in others entirely by lawyers. In cases as complex as those we have to deal with an interdisciplinary approach is used. Investigators and lawyers and all the other staff have to be involved in preparing an indictment.

Today's presentation will show that the overall process is one that proceeds step by step and it's designed in that way to show that the final results are safe and secure. After the investigators have done their initial and very substantial work, involving lawyers at the early stage, the whole group reviews what material it has within the OTP. The team reviews all the material it has, which of course included the material Bernie has just been dealing with, but also the evidence from eye-witnesses that implicated Jelisić and Češić.

Then the Chief Prosecutor will decide whether an indictment can be drawn up. But that isn't the end of the matter either. To ensure that the indictment is properly confirmed, it then has to go to a judge with what is called 'supporting material'. You can hear about that process from the next speaker. But what happens so far as when the Prosecution is concerned is that the investigators, the lawyers and the analysts, the researchers, all assisted at all times by interpreters and language assistants, put together a package of witness statements and the material that Bernie has been reviewing in order to satisfy first the Prosecutor and then a judge that sufficient material exists to bring, in this case, two men to trial.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA

## Images

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOŠNIA AND HERZEGOVINA



*Image 1*

The main bridge between Brčko and Gunja, Croatia.



*Image 2*

Close-up of the bridge between Brčko and Gunja, Croatia.



*Image 3*

Aerial view of the Bimeks company complex.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



*Image 4*

The side of a Bimeks truck. Photograph taken by ICTY investigators (1996).

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*Image 5*

Rear view of a refrigerator container on the back of a Bimeks truck.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



*Image 6*  
The interior of a refrigerator container.



*Image 7*  
A 1992 photograph of a mass grave in the area of Brčko showing a *Bimeks* truck (in the top right-hand corner). The trucks were believed to have been used to transport bodies.



*Image 8*  
A close-up of the writing on the side of the truck showing it to be a *Bimeks* truck.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



*Image 9*  
Aerial view of the Luka facility.



*Image 10*  
Road running through the  
Luka facility with the  
hangars on the right and the  
offices on the left.

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*Image 11*  
Inside the hangars at the  
Luka facility.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



*Image 12*  
Inside the hangars at the  
Luka facility.



*Image 13*  
A pole outside the office  
building at the Luka facility.  
Witnesses described how one  
victim was tied to the pole  
and beaten before being  
shot in the head.



*Image 14*  
The office building and the  
pole outside at the Luka  
facility. In front is one of the  
four drainage grates.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



*Image 15*

Close-up of the drain at the Luka facility. Witnesses detailed how Jelisić executed victims whilst forcing them down with their heads on the grate covering the drain.



*Images 16 & 17*

View looking out from a hangar at the Luka facility. Witnesses said they could see through a gap in the door to where beatings took place.



# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOŠNIA AND HERZEGOVINA



20

*Images 18 & 19*  
Aerial views of the central Brčko police station and lane behind.



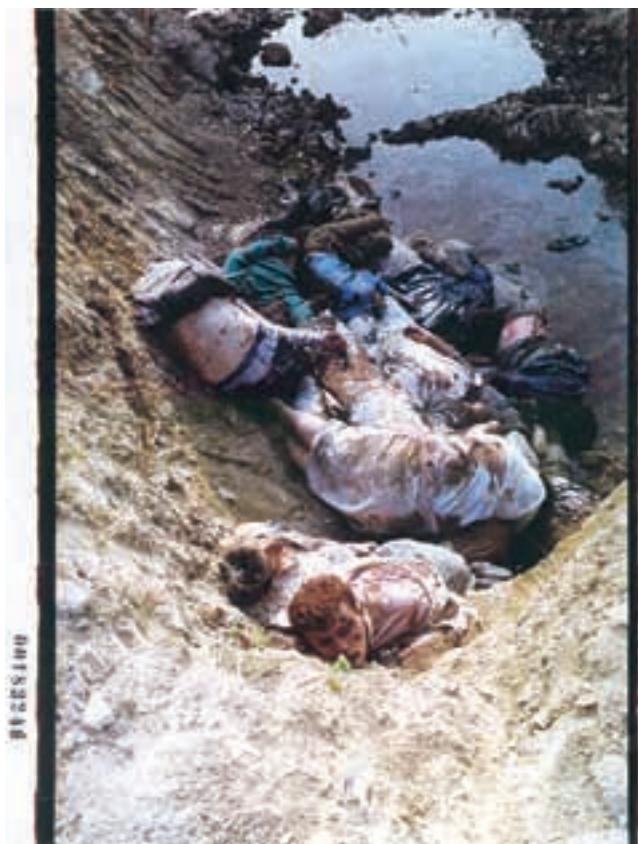
# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



*Image 20*

View of the lane behind the police station where an execution occurred.



*Image 21*

A 1992 photograph of the mass grave in the area of Brčko.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOŠNIA AND HERZEGOVINA



*Image 22*  
Aerial view of the general location of the mass grave in the area of Brčko.



*Image 23*  
The service station on the road to Bijeljina that many people referred to when they described the location of the mass graves.



*Image 24*  
A photograph from 1992 that was used by investigators in 1996 to locate the exact position of the mass grave (located beneath the digger in the foreground). They compared the position of the lamp post in the top left-hand corner with that of the three trees in the middle to locate the mass grave.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



*Image 25*

Richard Wright, the chief archaeologist, and John Gurns, the crime scene officer, using the aerial photographs in order to locate the mass grave.

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*Image 26*

The investigations team working at the mass grave site.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



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*Image 27*  
The removal of remains from the mass grave.



*Image 28*  
The old *Kafilerija*, a factory  
for disposing of slaughterhouse waste.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOŠNIA AND HERZEGOVINA



00152224

Images 29 - 36

A sequence of photographs showing a murder by Goran Jelisić in the lane behind the police station in central Brčko.

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00152226

Image 30

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



Image 31

26



Image 32

BRČKO

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



60 63232

Image 33

27



Image 34

**BRIDGING THE GAP**  
BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



*Image 35*



*Image 36*

## Session Two Confirmation of Indictment; Arrest, Transfer and Rights of the Accused

### Cécile Tournaye, Legal Officer, Chambers, ICTY:

The review of the indictment is the first step in the process that involves a judge. The Judge's intervention is necessary to give to the indictment its legal effect, and by confirmation of an indictment a warrant of arrest can be issued against an indicted individual. This intervention is essential for the process to move forward, but is also limited. The Judge intervenes only to review the indictment and check that some legal requirements are met. The Judge does not give any opinion on the opportunity to pursue one person or the other. As has been previously explained, the Tribunal cannot indict everyone who may have been involved in crimes. A selection has to be made and this selection is done by the OTP. The Judges have very little to do with this part of the work.

The Judge controls certain legal requirements in the indictment which are mainly focused on verifying that the fundamental rights of an individual are respected. For that purpose, supporting materials are submitted by the Prosecutor with the indictment. This material is intended to provide grounds to support that the suspect was indeed involved in the commission of crimes that are listed in

the indictment. The Judge reviews this material. This review, however, is relatively limited. First, because the material submitted by the Prosecutor need not be all the evidence they possess, but only what they consider sufficient to prove or, indeed, provide reasonable grounds to believe that the accused was involved in the crimes. Second, the Judge at this stage does not assess the reliability of this material. This is a *prima facie* review of the material.

The other thing that the confirming Judge assesses is whether the indictment is clear enough. Once the accused receives the indictment he must know exactly what he is accused of and the indictment therefore must be clear and precise enough, so the Judge must determine whether this can be verified.

So, the Judge reviews the material and takes a decision on whether or not to confirm the indictment. The Judge may confirm the whole indictment or part of it and reject some of the charges. The Judge can also invite the Prosecutor to submit additional material if the material presented is not considered sufficient. The Judge may also postpone any decision and ask the Prosecutor to modify the indictment before it can be confirmed.

In the case of Jelisić and Češić, the first thing to note is that a single indictment was presented for both accused. In this indictment, Jelisić was indicted for killing 16 persons at three different locations in Brčko - at the *Laser Bus Company* (he was indicted for killing one person there), the Brčko police station (six persons) and Luka camp (nine persons). He was also indicted for beating four persons detained at Luka camp. He was further indicted for stealing money and personal belongings from persons detained at Luka camp and for creating an atmosphere of terror in the camp. Finally, the last charge against him was of genocide for systematically killing Bosnian Muslim people in Brčko.

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*The Judge controls certain legal requirements in the indictment which are mainly focused on verifying that the fundamental rights of an individual are respected.*

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Also worth mentioning is that some of the evidence or materials presented earlier today by Bernie were not contained in this original indictment. The indictment was focused upon the two concerned individuals and other evidence presented by Bernie was only later presented in support of other indictments for higher level individuals, such as Krajišnik.

Češić for his part was indicted for killing 13 persons. Three of these murders were allegedly committed by Češić and Jelisić together at Luka camp. He was also indicted for forcing two brothers to commit sexual assault on each other, also at the Luka camp, and for creating an atmosphere of terror at the camp. Unlike Jelisić, he was never indicted for genocide.

This submission of an indictment can be regarded as the start of a legal process before the Tribunal. We'll hear later that when Jelisić was transferred to The Hague he was extensively questioned by the OTP. As a consequence the Prosecutor submitted a request to amend the indictment. As with the original indictment, this too needed to be confirmed by a judge. The Judge received this request for the amended indictment, reviewed it and granted it. The result of that was that two murder charges against Jelisić were removed after the Prosecution assessed that it did not have enough evidence for these two murders. Ultimately, Goran Jelisić was indicted for killing 12 persons and for inflicting cruel treatment on four detainees. Three charges were also removed from the original Češić indictment. He was not indicted for the murders of Sead Čerimagić, Jasmin Čumurović and Naza Bukvić which he had been initially charged with of committing together with Jelisić. These three murderers, however, were still alleged against Jelisić, and he later admitted his guilt to these murders.

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That's what we have as a start of the court process, with the confirmation of an indictment where Jelisić was indicted for 12 murders and for mistreatment, and Češić was indicted for 10 murders and one sexual assault.

**David Tolbert:**

As we go through the process, you can see that the investigation is quite wide and as the Prosecutor prepares the indictment the legal standards have to be met so the facts are whittled down to some extent before the Judge, and then we enter into judicial process. Once the indictment is issued, the issue of the accused's arrest and transfer to The Hague becomes paramount.

**Bernard O'Donnell:**

I'll provide you with some details on the arrest of Goran Jelisić and the interviews that followed his arrest. Jelisić took part in a number of interviews with myself and members of the OTP. Formal suspect interviews are under the Rules of the Tribunal conducted on video tape. Specific crimes were put to Jelisić and he was asked to give his account of each crime.

Jelisić was detained in Bijeljina by SFOR (the NATO-led Stabilization Force) and handed over to Tribunal officials. He was flown to The Hague in January 1998. The OTP has faced continuous problems in seeking indictees apprehension. We do not have our own force to make arrests of persons who have been indicted by the Tribunal and therefore rely on the cooperation governments and agencies such as SFOR in apprehending fugitives. In the case of both Jelisić and Češić, OTP investigators continually attempted to gather information on their whereabouts. When Jelisić was arrested, he was in possession of official documentation issued to him under a false name - a driver's licence, registration papers, identity cards, and so forth - which he said had been issued

to him by Republika Srpska authorities to assist him in evading arrest should he be stopped by IFOR or SFOR.

Jelisić took part in nine formal interviews with the OTP. In total, in excess of 30-hours of video-taped interviews were recorded. Each time we spoke to Jelisić, he was advised of his rights and he voluntarily took part in each of the interviews.

**David Tolbert:**

I think this is a very good illustration about the rights of the accused, which are fundamental. The Tribunal's Statute and the Rules clearly provide that you have the right to counsel. If you can't afford counsel, the Tribunal will provide counsel for you and pay through its legal aid system for counsel. If you want to waive your right to counsel, which of course is possible, then it needs to be documented. Another point is that the accused has the right to know the charges in his own language. When the questions he is being asked are not in his own language, there is an interpreter. The documents that the accused is given are in his own language. But even before we get to that point, it must be said that the accused did not have to do this, because the accused has the right to silence, or right against self-incrimination, in accordance with international law standards. As to the right of counsel, these rights are not solely for persons indicted, such as Jelisić, these rights apply to the suspects too. So, if a suspect is interviewed, he has a right to counsel and a similar range of related rights.

**Bernard O'Donnell:**

Some of the questions that were asked may seem a little bit strange, for instance about whether he used a shovel, whether he used other things in the beatings and things such as what he said at certain times. But, of course, this was for the purpose of corroborating the information that we had from witnesses who told us about a certain killing, exactly what happened, what was said by the accused at that time. In each of the interviews we strove to corroborate the information that we obtained from other sources, in other words to show that information we had from one place was in fact correct, as well as to check the truthfulness of Jelisić. But the photographs and video footage were put to Jelisić so he could explain how things happened and so forth. We conducted an analysis of the answers given by Jelisić in the course of the interviews and presented evidence on that analysis to the court.

Jelisić voluntarily admitted to mass murder for which he had been indicted. However, he could not be said to have truly cooperated. He was very definite about what matters he would and would not talk about, and also became agitated when pushed on details, or when inconsistencies in his story were put to him and he was asked to explain those inconsistencies. The information that he gave was also not complete and did not appear to be truthful in many respects. In short, Jelisić gave a sanitised version of events, very different to a version of events told to us by witnesses. OTP members were unable to put full details of the inconsistencies to Jelisić because he refused at a point to be further interviewed after giving basic details of each of the crimes. The details of the inconsistencies were given in evidence.

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*... Jelisić gave a sanitised version of events, very different to a version of events told to us by witnesses.*

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I'll shortly show you a segment of that evidence presented. It was quite lengthy so we won't play the whole lot. But, to outline some of these inconsistencies for you, we'll show what we thought relevant to Jelisić's claim to have been in fear of his life and that

he stayed in Brčko and killed people as directed. And yet, in the course of the interview, he admitted that he was able to leave the town on a number of occasions, that he in fact disregarded the orders he claimed to have been given on several occasions, but yet he faced no punishment. He had gone to Brčko originally as a volunteer. He had not appeared to question the orders he claimed he had been given to kill civilians. After leaving Brčko for the next period of time he was apprehended in Bijeljina. He claimed that he had been beaten and then taken to hospital because he had been injured in the beating. He claimed that this was part of the plan to kill him. However, he could not explain why instead of being taken somewhere and shot, if there was a plan to kill him, he was actually taken for medical treatment at the emergency services.

After Hasan Jašarević (one of the people mentioned in the indictment that was killed by Jelisić) managed to escape from the police station in Brčko, he was caught by a soldier and the police in Brčko. Jelisić walked up to him, shot him and killed him. He knew nothing about Jašarević and had not been ordered to kill him. Yet, instead of returning him to the police station, he simply executed him. Jelisić gave other examples of him willingly, even enthusiastically, participating in killing. Jelisić claimed that after fleeing Brčko he was hiding out in fear for his life, yet he stayed in hotels in Serbia and lived the good life, an expensive lifestyle of drink, cigars and hotel rooms. In two or three months, he managed to spend the equivalent of about three years' worth of his normal salary. After returning to Brčko, instead of being killed, he was issued with a new uniform, a new radio and a new gun. In 1993, he was issued with a new identity by local authorities.

Jelisić was told at the start of the interviews that if he chose to be interviewed we would give to the court the details of the true nature and extent of his cooperation. Following the comprehensive analysis of the interviews, the real extent of his cooperation was clear and these details were given to the court as evidence. We'll now see a segment of testimony that was given in evidence relating to the issue of cooperation of Jelisić. The points on the video are just excerpts from the lengthy testimony that was given.

*(court transcript)*

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Case name and number: Jelisić (IT-95-10)  
Witness: Bernard O'Donnell  
Date: 22.09.1999

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**Prosecutor Nice:** That's what I desire to point you to by way of the evidence on the killings, and very shortly I would like you to return to the topic of inconsistencies that we started dealing with yesterday. Probably it's easier if I ask you to amplify matters, insofar as you want to, and remind you and the Judges that the categories that you assert reveal inconsistencies are, first, whether he had no option to leave but had to stay and kill. Would you like to just express your position on that a little bit more?

**Witness:** Yes. Mr Jelisić claimed that he had to commit the murders, had to stay in Brčko, otherwise he would have been killed, and that he tried to save as many people as he could. There are a number of points from the interviews that I believe are inconsistent with that. The first point is, to put it in context, Mr Jelisić went to Brčko of his own free will. He heard of a deal that was being offered, and he volunteered to go to Brčko. Your Honours, the passages that I'm making reference to were found yesterday. If it assists, I can simply give the page number and interview date where the relevant questions and answers are as I make these points.

**Prosecutor:** Well, if you can just do that very briefly, without taking time, because we've looked at the passages, and indeed that was why we looked at the passages, so that your conclusions could be well founded.

**Witness:** That's correct. That's on 4 June, page 5. The second point is during the interview on 4 June, he was asked for the first time what he believed would happen if he did not kill a person he was told to kill. He said that if he did not commit the murder, he would have been assaulted or sent to prison, sent to prison for a crime that he had already been sentenced to. When questioned further, he said that he did not actually receive that threat because he did not protest. He believed that he would have received the threat if he would have protested. That's on pages 24 and 25 of 4 June.

Your Honours, this was his first formal opportunity to tell us why he had committed a murder and what threat he was labouring under. If he really did fear that he would be killed, I believe that he would have used the opportunity to tell us that, rather than telling us that he believed he would have been assaulted or sent back to prison. His claims that he feared death came later in the interviews and, I believe, may have been an afterthought. The next point I would like to make is it appears that he did not question being told to kill people.

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**Bernard O'Donnell:**

Hopefully, I've given you an understanding of the investigation into crimes in Brčko committed by Jelisić and Češić. It was a comprehensive investigation, but like any investigation conducted by OTP, one which has been totally dependent upon cooperation received by the Tribunal from local authorities, from the international community, and also from victims and witnesses. If it was not for the courage of victims and witnesses who were prepared to come forward and tell their story, then we could not hope to do our job properly. Likewise, all the way through we have been dependent for all the investigations in the OTP upon documentation provided by entities in the former Yugoslavia. We are committed to assisting, in every way that we can, local authorities in the further investigation and prosecution of persons for other crimes in Brčko that have not been part of Tribunal indictments, in particular, by providing material from the substantial collections of documentation that we have gathered in the course of doing this and other investigations that relate to crimes that should be investigated and prosecuted by local authorities.

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*If it was not for the courage of victims and witnesses who were prepared to come forward and tell their story, then we could not hope to do our job properly.*

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**Session Three  
Plea Agreements; Presentation of Prosecution  
and Defence Evidence**

**David Tolbert:**

One area I would like to address now concerns the rights of the accused and particularly the right to defence counsel. This is a critically important right and it plays out at the Tribunal somewhat differently than it does here in Brčko or elsewhere in the region. The Defence Counsel played a much smaller role, or a different role, than they usually play at trial because in one case - Češić - we did not have a trial at all. Instead we had a guilty plea, which means in essence that the accused admits to having committed certain crimes and a trial does not go forward. We simply have a sentence that's entered after presentation of evidence relating to a sentence by both parties, but there is no trial at which the Prosecutor must prove the case. And this was the case in both Češić and, except for one count, in the Jelisić case. Even in the Jelisić case the court entered a judgement after the prosecution case so the defence did not present a case. So that's one reason we have not focused quite as much on defence as might normally be the case.

But I think it is important to highlight how important this is and the role defence counsel play generally. In order to appreciate this I think you have to realise that the Tribunal is a system which is much more similar, at least in respect to defence counsel issues, to the accusatorial system or the common law system than it is to the continental or the civil law system. There is no investigative magistrate and there is no dossier that is produced before the court. What we have is a battle of the parties, so to speak. The Prosecutor presents his or her case primarily through witness testimony in the box under oath, and you've seen examples of this, and then there is cross-examination by the Defence Counsel. The Defence Counsel is trying to show that the witness is either inaccurate or is not telling the truth, or undermines the prosecution case.

Then the Defence presents its case as well to try to undermine, rebut and poke holes in the prosecution case. The Judge plays a much less active role than in the civil law system. I have here colleagues from different legal systems; Mr Nice is from Britain, Olivier is a French judge, and Cécile is also a French-trained lawyer, but given education in USA. They may have further comments on the nature of the Tribunal system. Although it has some elements that are unique to it, with respect to the presentation of evidence and the role the Defence Counsel plays it is much more of an adversarial system.

In that context, I'd like to point out that the right to the Defence Counsel is clear under the Tribunal's Statute, it is clear under the Rules and it is honoured that the accused can choose a counsel of his or her choice. If that individual is not able to pay for counsel, the Tribunal provides payment to the counsel under a legal aid system. There are various ways that this could have been done, but the way it has been done in the Tribunal is that outside counsel are put on a list, and they have to meet certain minimal qualifications. I would expect that some time in the near future these qualifications will be made a bit stronger, but they are relatively limited at this stage: an individual has to be a law professor or a member of a bar association of good standing, and also speak an official language of the Tribunal, English or French. This last requirement has been waived in a number of instances particularly for a certain member of a defence team, and frequently you will see a lead counsel who is from outside the region with a co-counsel from the region, who may not in some instances speak either English or French.

The legal aid system is quite expensive and it currently takes some 8% or more of the Tribunal's budget. There have been numerous issues and problems and I can highlight a few of them. One of course is finding a proper rate of payment which is a very difficult area to address and get right because an hourly rate that is established by the Tribunal may be a great deal in certain parts of the region, but not very much in London or New York. There have also been serious issues regarding the application of codes of ethics. We have now tried to form an association of defence counsel, but there is not a bar association like you have in national jurisdictions which can enforce disciplinary rules, take action against defence counsel and so forth. There are a lot of challenges in administering a legal aid system in an international context like this: the Registry spent a lot of time with it and we are still 10 years later struggling to get it right and the International Criminal Court is doing the same.

In these two cases that we are talking about today, the Defence Counsel played important roles, advising their client on whether or not to talk to the Prosecutor, how to respond to the Prosecutor's questions and then, quite importantly, negotiating a guilty plea with the Prosecutor's office, first of all making a decision to enter into a guilty plea and then the terms of that guilty plea, which we will go into a lot more details on this afternoon. The Defence Counsel is the principal advisor on those issues. Obviously, the accused has to agree to it, but in terms of representation, the Defence Counsel plays a key role. In these cases the Defence also submits evidence relating to mitigating circumstances. So, where there is a range agreed between the Prosecution and the Defence, I believe in the Češić case it was 13 to 18 years, the Defence Counsel is trying to have the sentence at the lower end of that range and the Defence put on evidence trying to show that there are mitigating circumstances that help either explain the conduct of the accused or may cause the court to have some compassion for the accused. I'll go into more details on these specific cases this afternoon after you hear more about the prosecution's case.

In any event, the Defence Counsel plays a central role in the Tribunal and is sometimes referred to as the fourth branch of the Tribunal, the three other branches being the OTP, the Chambers and the Registry. But in these particular cases, their role was less prominent than in other cases.

#### **Geoffrey Nice:**

Today we are in exactly the same month, the same season of year with the same length of daylight as at the time when these terrible offences were committed. From my hotel bedroom window, the alley where Jelisić committed his first terrible crimes is all too visible. The journey to the mass graves is all too short and, of course, to us outsiders it may be very difficult to understand how even after the passage of some years it was necessary for Bernie and some of his colleagues to identify a mass grave that cannot but have been known to many people. Things may be different in their appearance to you and their reality may be neither your perception nor ours, which shows why it is necessary in recording criminal convictions against people for grave crimes, to advance with caution, with modesty and with respect for the position of others, a position that we do not experience ourselves.

We lawyers were sent here to operate a particular legal system. It happens, to some degree, to match the systems that operate in England and America, but don't think that for that reason we necessarily as individual lawyers favour it. We were simply given it to operate and that we do. Sometimes I think it is difficult for people to understand the legal systems of others and the adversarial system often appears as a bit of a mystery to those from a civil system.

I am going to turn to the question of pleas and plea bargaining.

In refined modern systems that use the adversarial system the person charged with the duty of making allegations - in this case it's the Prosecutor of the Tribunal - has the duty of getting enough evidence before the trial of fact to show the guilt. This system, particularly in other countries - England and also America - is a system which is satisfied as soon as somebody says, "I did it, I'm guilty". What more evidence can the Judge want before moving to punish the man? To a large degree our Tribunal works on that basis, but because it's always trying to take the best from all available legal systems, it has incorporated more of the civil inquisitorial system and supervises the validity of pleas of guilty when they are given. But, nevertheless, somebody saying he's guilty is by and large enough. And that has the effect which some people find unappealing, of restricting the degree to which there is publicity and a public trial of the underlying events, because once somebody pleads guilty, there is no need for there to be such a public hearing.

The process by which the Tribunal has been dealing with pleas of guilty has been developing and becoming refined - Jelisić was an early case, Češić much later. Jelisić made admissions even if he was calculating in what he said. But at the end of the day he made admissions to enough killings and beatings for us to be satisfied that if it was just killings for which he was to be convicted there was enough there for him to be adequately and soundly punished and that there was no need to investigate more killings.

He challenged the suggestion of genocide and the Prosecutor, Justice Arbour, decided that he should be tried for that particular crime. In other words, it was effectively agreed between the Prosecution and the Defence that, yes, he was guilty of these killings and this or that beating and that the Judges would determine the issue of genocide. I'll come back to that.

There was no agreement in Jelisić's case about sentence. There was no agreement about cooperation. Years later when Češić came to be dealt with, the process had become more advanced. There was a full agreement between him and the Prosecution over his pleading guilty to the particular killings and offences charged against him, about the way in which he would cooperate with the Prosecution and about the range of sentence. You can't actually determine what sentence the Judges will impose, but you can have an influence on it to an extent. It was agreed between the Prosecution and the accused, who was represented by lawyers, that the range would be 13 to 18 years and if the Judges imposed any sentence within that bracket, he would not appeal. The Prosecution was satisfied that a sentence in that bracket would be a practical and realistic conclusion to the case against him. The Prosecution has in mind when accepting pleas of guilty and when coming to agreement with accused the factors that Cécile would deal with but also one other factor - time is not unlimited for our Tribunal. In national jurisdictions there is reasonable supposition that the law would go on forever, changes of government notwithstanding. But ours is limited and if we spend time and resources on disposing at length a trial that can properly be disposed of by pleas of guilty swiftly, then we make space for some other case of equal or greater gravity to be tried and in that way better fulfil our mandate.

#### **Cécile Tournaye:**

Both accused did not plead guilty at the same time. Jelisić was arrested in 1998 and Češić in 2002 and that explains the difference in procedure as described by Geoffrey. But, one can note that they did not plead guilty immediately. When they were arrested and transferred to The Hague, they first pleaded not guilty to all the charges brought against them. The Prosecution is obliged to disclose the material that it intends to use at trial against the accused to the Defence, and it was after reviewing that material and

after the accused talked to their legal counsel that they eventually decided to plead guilty. Jelisić made this decision relatively early, eight months after arriving. Češić took a little bit longer, but he still pleaded guilty before the trial started.

As has been explained, the process of deciding to plead guilty belongs really to the OTP and the Defence Counsel. It comes to the Judges as soon as it has been agreed to and what the Judges do is to supervise the validity of plea. For that purpose judges receive a document that is signed by the OTP, the Defence Counsel and the accused. This document outlines the facts that are recognised by the accused in addition to the crimes that he admits he's guilty of. So, the accused does not only admit that he committed this particular act, he also admits that it constitutes this particular crime. For that reason it is very important for the Judge to verify that indeed the process whereby the accused decided to plead guilty has been properly conducted.

The Judges look through the document and they schedule a public hearing where they ask both the accused and the Defence Counsel a series of questions. Basically, there are four requirements that the Judges are looking into. They make sure that the decision of the accused to plead guilty is a voluntary decision, that he hasn't been put under pressure to do so, and that there was no incentive given to him in order to make this decision.

They also verify that the guilty plea is informed, that the accused knows exactly what the consequences are for him and what the crimes he pleads guilty to mean exactly under international law. The Judges also verify that the words in which the accused pleads guilty are clear, and cannot be interpreted one way or another. The last thing is to verify that the facts admitted by the accused are enough under international law to convict this person of a specific crime. So, that's one other thing that judges do - verify that the criminal characterisation that is agreed upon corresponds to fit the facts best.

If the Judges are satisfied that the whole procedure was properly conducted, the accused enters a guilty plea at the public hearing. The next step for the Judges is really to enter a conviction on that basis. There is no need for additional evidence or corroboration. That emphasises even more the need for the Judges to make sure that, indeed, the guilty plea was properly given. We will see a relatively short excerpt of Mr Češić pleading guilty after the presiding judge had checked that indeed the requirements had been met for a plea of guilty.

*(court transcript)*

Case name and number:	Češić (IT-95-10/1)
Name:	Ranko Češić (guilty plea)
Date:	8.10.2003

**Judge Orie:** Then, Madam Registrar, may I ask you to read each count of the indictment and after each count I'll ask the accused to enter his new plea.

**Registrar:** Count 1, a violation of the laws or customs of war recognised by Article 3 of the Tribunal Statute and Article 3(1)(a) murder of the Geneva Conventions.

**Judge:** Mr Češić, how do you plead on count 1? Guilty or not guilty?

**Accused:** Guilty.

**Judge:** Trial Chamber records the plea of guilty on count 1. Madam Registrar, would you please read count 2.

**Registrar:** Count 2, a crime against humanity, recognised by Article 5 of the Tribunal Statute.

**Judge:** How do you plead, Mr Češić, guilty or not guilty?

**Accused:** Guilty, Your Honour.

**Judge:** The Trial Chamber records the plea of guilty on count 2. Would you please read count 3, Madam Registrar?

**Registrar:** Count 3, a violation of the laws or customs of war, recognised by Article 3 of the Tribunal Statute and Article 3(1) (a) of the Geneva Conventions.

**Judge:** How do you plead, Mr Češić?

**Accused:** Guilty, Your Honour.

**Judge:** The Trial Chamber records the guilty plea on count 3.

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**Cécile Tournaye:**

This goes on for all the counts and there were many counts against Ranko Češić. This is simply an example to show you how the procedure is conducted. One specific thing that was done also regarding Jelisić - an additional security that was taken by the Trial Chamber - was to ask for medical expert reports on Jelisić's ability to stand trial and understand charges against him to make sure that he pleaded guilty voluntarily and consciously. More than three expert reports were provided and all of them concluded that he was not mentally sick, although they all concluded that he had a strong personality disorder. They also concluded that he was fully capable of understanding the charges against him.

In the end, what did the Trial Chamber decide on this basis of the guilty plea, what was the conviction against the two accused? A series of facts was recognised by both Češić and Jelisić. For low-level perpetrators like Češić and Jelisić the context is not as important as for higher-level accused. We only had information about the fact that the bridges were shelled on 30 April 1992 and that a day later military, paramilitary and police forces were deployed in the municipality, but the exact origin of those forces was not clearly determined in these trials. Some witnesses stated that they were from Serbia, other witnesses stated that they were from Bijeljina, just like Jelisić, but it wasn't clearly established. On the other hand, what was established is that the attack clearly targeted the non-Serb population, that women and children had been expelled and that the men had been transferred to collection centers, Luka camp being one of them.

As for the convictions, Jelisić was convicted of stealing money from some detainees in the Luka camp, of 13 murders and cruel treatment of four detainees. The bulk of the crimes were committed within a very short period of time, from 7 May up until 19 May 1992, and a few murders were committed later on, up until 6 June 1992.

Jelisić admitted and described that he murdered five persons at the Brčko police station, on the little pathway that we saw photographs of this morning (images 29-36),

and he explained that he always killed them in the same fashion. They were first interrogated in the Brčko police station and then they were taken by him to this alley and he executed them, most usually two bullets fired into the back of their neck. Then a lorry would come - we have also seen the lorries this morning - and gather up the bodies. According to the accused, he committed all these murders within a period of two days. The five victims were not necessarily identified. There was one identified man - Hasan Jašarević; a young man coming from Šinteraj; Ahmet Hodžić or Hadžić, who was also nicknamed Papa, who was the head of the SDA (Party for Democratic Action) at the time; and a person known by the first name of Suad was also murdered that way.

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Jelisić also acknowledged that he murdered eight detainees at the Luka camp. Here again the murders were always committed in the same fashion. The victims underwent interrogation at the administration building - we've seen the location on photographs this morning (images 18 and 19). The accused for the most part participated in these interrogations, which involved severe beating with truncheons and clubs. Then, armed with a Scorpion pistol fitted with a silencer, the accused would make them go to the corner of the office where they were executed with, again, one or two bullets fired point blank into the back of their neck or into their back. Some victims were killed even before they reached the corner of the administrative building, so that other detainees could witness the murders. Other detainees were killed with one or two bullets to the back of their head while kneeling over the grate that was also shown this morning. That was recognised by Jelisić as well.

The eight victims were: Jasminko Čumurović; Huso and Smail Zahirović, two brothers from Zvornik; Muharem Ahmetović and his daughter Naza Bukvić; Stipo Glavošević; Novalija and Adnan Kučalović. Two of them were particularly cruelly treated before they were executed. Stipo Glavošević had his ear cut before he was killed. As for Naza Bukvić, whose brother and father were members of police force before the war and were apparently hiding, she was first handcuffed to a sign post and beaten with truncheons for a whole day by policemen, including Jelisić. Then she was taken back to the warehouse where the detainees were located. At this point she was covered in blood, her clothes were torn and she was moaning with pain. The next morning, Jelisić took her back and shot her dead in the same fashion as the other victims.

In addition to that, Goran Jelisić was also convicted of cruel treatment inflicted on four detainees, two of them being Muslim brothers named Zejćir and Rešad Osmić who were taken to the Brčko police station where they were first beaten by Jelisić. Jelisić then transported them to Luka camp in the trunk of a car. He forced them to go into the administration building there and stand against the wall, with their backs against the wall. He beat them with clubs, mostly to the head, neck and chest. They were beaten for approximately 30 minutes and as a result one of them, Rešad collapsed from the blows. Then Jelisić went away and came back 10 minutes later when he slashed the victims' forearms with a knife and beat them again with clubs.

The third beating for which he's been convicted concerns Muhamed Bukvić, who had already been severely beaten by another guard the previous day. He was beaten all over his body by Jelisić with a truncheon. Jelisić also used his fingers to squeeze the victim's cheek up toward his eyes, and hit him with his truncheon at eye-level. Amir Didić, who also testified in court in the context of the small trial that took place, was beaten on

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*Jelisić admitted and described that he murdered five persons at the Brčko police station, (...) Jelisić also acknowledged that he murdered eight detainees at the Luka camp.*

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several occasions during his detention. He testified that Jelisić was by far the guard who beat him the most and he related that on one occasion he was knocked unconscious by Jelisić striking him with a fire hose. All these facts were admitted by Jelisić and he was convicted on 31 counts.

There's one count to which Jelisić did not plead guilty - the count of genocide. In this context, a short trial was conducted. We will later talk about this and the facts that were adduced in the context of this trial.

Regarding Češić, he was indicted for 10 murders and one sexual assault but, unlike Jelisić, he was not indicted for genocide. Second - he pleaded guilty to all counts that

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*... Češić, (...) was indicted for  
10 murders and one sexual assault (...)  
he pleaded guilty to all counts that were  
charged against him.*

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were charged against him. All these acts were committed within 10 days, between 5 May and 14 May 1992, except for two murders that were committed simultaneously some time, the exact date is unknown, between 14 May and 6 June 1992. Five of these murders were committed the same day at the Brčko Partisan Sports Hall, when Češić called five

men out of the Sports Hall and made them lie down and shot them dead. Five of the other murders and the sexual assault were perpetrated at Luka camp.

One of the murders at Luka camp was when he shot dead a Muslim detainee named Sejdo. No further details were provided on the circumstances of his death. There was a difference between Jelisić's guilty pleas and Češić's guilty plea in that regard and Geoffrey has explained why we also had attached to the guilty pleas by Jelisić a series of witness statements which would corroborate what he had pleaded guilty to. For Češić, the only thing we had to establish was Češić's statement of guilt, and some of the details were missing.

For the other murders that were committed in Luka camp, Češić and another Serb policeman beat to death with clubs two other detainees at Luka camp. Between 14 May and 6 June 1992 he, with the assistance of two guards, took four detainees out of the office building and led them to the paved road in front of the main warehouse and shot and killed at least two of them. He was also convicted for forcing two Muslim brothers to perform *fellatio* on each other for about 45 minutes, while guards and other people watched them.

These are the facts that were admitted by both Jelisić and Češić. Other facts were adduced in the context of the trial that was conducted for Jelisić.

**Geoffrey Nice:**

Before we turn from the pleas of guilty of the two men, it's perhaps interesting to set what happens in our Tribunal in a slightly broader context. Over recent years, there has been an increasing focus on victims of crime. There was a time in many countries when courts were only concerned with the offender, dealt only with the offender. They were somewhat careless about the victims. But that has changed. So, in the International Criminal Court (ICC), the permanent court set up in The Hague that is going to be dealing with matters of this general kind in the future in some countries, there is a great focus on and opportunity for victims to participate. As I explained earlier, Češić came into the custody of the Tribunal at a more developed stage of our own jurisprudence than Jelisić. In the Češić case it was possible for the Prosecution, before the Judges

made the decision on sentence, to submit statements from relatives of victims explaining the suffering that they had undergone, and, indeed, identifying what sentences they thought to be appropriate. This is a development which may be seen in line with the general development of international law.

Jelisić denied genocide. The definition of genocide is that certain acts are committed with intent to destroy in whole or in part a national, ethnical, racial or religious group and as such is a word first coined after Second World War. It's a word adopted both by lawyers and by non-lawyers and, it would probably be fair to say that its definition is still in a state of development. No doubt, over time the strict legal definition and the non-legal understanding, which may be broader, will shrink together so that there is a common accepted understanding of this crime said by many to be the crime of crimes. Because of that view of it as a crime, it's often a crime people wish to see dealt with and recorded in respect of what they see as the worst of crimes.

Genocide is a crime that requires a quite specific mental state on the part of the accused, and you will immediately recognise that you can have crimes which are of equal gravity where someone happens not to have that particular state of mind, which would not be genocide, whereas if the person concerned had that state of mind, it would be. In this case the issue was whether somebody low down in management chain, as Jelisić was, could be guilty of this crime or if this crime was only appropriate for top-level leaders. I say that's not an issue, because as far as the Prosecution is concerned and indeed as other cases around the world show, it can be a crime committed by people at any level in the overall operation whereby these awful acts are done. And so he was charged with genocide and the Prosecution wished to see that charge brought to conclusion.

It was unusual because of the degree to which Jelisić admitted to crimes, however calculatingly. We had shown evidence of how he had said some of the most terrible things consistent with the state of mind required for genocide, so we were prepared to argue. And, indeed, it was an unusual if not unique case, because one of the bits of evidence we had of him actually executing two men.

The trial that took place was a short one and focused on the charge of genocide, because the killings themselves were all admitted and didn't have to be proved. The case went some way to encompassing and giving an overall view of what happened here in Brčko. The case was initially presented by a different attorney, Terree Bowers, who unfortunately had to leave the Tribunal, and I took over the case. He gave a short and succinct opening account of events in Brčko and we'll play some excerpts from that. I hope that we will seem to those of you who know intimately these matters, to have got the story pretty well right.

*(court transcript)*

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Case name and number: Jelisić (IT-95-10)  
Prosecutor: Terree Bowers (Opening statement)  
Date: 30.11.98

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The accused Goran Jelisić was one of the individuals sent to Brčko to assist in the ethnic cleansing. Before the war, Goran Jelisić had been an agricultural machinery mechanic from Bijeljina, a city which is located slightly south-east of Brčko. Earlier in 1992, a local court had sentenced Goran Jelisić to serve three years in prison for a conviction on fraud. The Bosnian Serb authorities, however, had more expansive plans for Jelisić, and within a short period of time, Goran

Jelisić found himself in a police uniform in the middle of Brčko. His presence in Brčko in 1992 was the result of a Bosnian Serb strategy to unlock the jailhouse doors in order to provide sufficient executioners for the genocidal and ethnic cleansing activities which took place in the spring and summer of 1992.

We are not certain of the exact date on which Goran Jelisić arrived in Brčko, but from eyewitnesses, we know that by the first week in May 1992, Goran Jelisić was executing prisoners outside of the police station in downtown Brčko. A photograph of one of those executions made it into international newspapers. The Prosecution intends to introduce that particular newspaper photograph into evidence. It is quite dramatic evidence of what Goran Jelisić was up to in those early days in Brčko. Jelisić has admitted that he is the policeman depicted in the photograph and that he carried out that particular execution. But as the court knows from Goran Jelisić's guilty pleas, Jelisić killed additional detainees outside of the police station.

In addition to executing detainees at the police station, Goran Jelisić moved to the Luka warehouse facilities on the Sava River where hundreds of Bosnian Muslim and some Bosnian Croat men were being detained. For approximately two weeks, Goran Jelisić acted as the chief executioner at Luka camp. He held the power of life and death in his hands, and systematically and regularly went about killing the Muslim detainees, as well as several Croats. His trademarks were a blue police shirt, a pistol, and a preference for executing detainees over a metal drainage grate. This particular trial will be more focused than the average trial because the accused has already admitted to 12 murders charged in the indictment. The Defence and the Prosecution jointly submitted a factual basis for the entry of the guilty pleas. Investigators from the OTP have extensively interviewed Goran Jelisić, and he does not deny that he committed multiple murders in the Luka complex. In the interviews, Goran Jelisić has even admitted to committing murders that were not charged in the indictment.

During this trial, we will introduce some of the more revealing statements which Goran Jelisić made to investigators. Because of the prior admissions and the entry of the guilty pleas, the Prosecution's case in chief will concentrate on proving that Goran Jelisić committed the murders in Brčko with a genocidal intent. As the Court knows, in order to convict Goran Jelisić of genocide, the Prosecution must prove beyond a reasonable doubt that Goran Jelisić committed the murders at the police station and at the Luka camp with the intent to destroy in whole or in part a racial, ethnical, or religious group. For purposes of this indictment, the Prosecutor has charged that Goran Jelisić committed his murders with the intent to destroy a part of the Bosnian Muslim population. It is important to emphasise at the outset that under the law, Goran Jelisić could be guilty of genocide if he had committed a single murder with the intent to destroy a racial, ethnical, or religious group. In this trial, however, we will establish that Goran Jelisić killed a high number of people during his genocidal spree in Brčko. We will never be able to fix the exact number. If he would be pressed to fix the number, he could not fix that number himself because of the cavalier nature in which he committed the executions and the great number of executions. But if we are to believe even a

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*For approximately two weeks, Goran Jelisić acted as the chief executioner at Luka camp. He held the power of life and death in his hands...*

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small percentage of the totals which Goran Jelisić claimed, then his victims certainly number well over 100. Not only is the number of victims substantial for purposes of prosecuting a genocide case, but the Prosecution will also establish that the portion of the group which Goran Jelisić set out to destroy was a significant portion of the Muslim population within the Brčko municipality. We will introduce evidence that shows that Bosnian Serb officials in the municipality drew up lists of those individuals who would be executed, thereby targeting intellectuals, military-aged men, and political leaders.

By the end of the evidentiary presentation, you will see that the victim group targeted by Goran Jelisić was both significant in its importance to the Bosnian Muslim community and substantial in number. In criminal cases where the Prosecution must prove the subjective intent of the accused, the Prosecution must often rely, almost exclusively, on circumstantial evidence in order to prove that intent.

The case against Goran Jelisić, however, is horrifically unique in that we have numerous witnesses who can testify about what Jelisić said at the time of his executions. A person's words are perhaps the most accurate and edifying indicator of the inner workings of his mind. This Court will be presented with the unique opportunity to listen to and analyse the very words Mr Jelisić spoke as he carried out his genocidal ambitions. The heart and the strength of the Prosecution's case will be elicited from the victim witnesses who saw and heard Goran Jelisić during his activities in Brčko. Many of these witnesses corroborate each other. Permit me to quickly review some of the anticipated testimony which demonstrates Goran Jelisić's genocidal intent.

First, numerous witnesses will testify that Goran Jelisić referred to himself as the "Serbian Adolf". He, himself, during his initial appearance before this Tribunal, admitted that he went by the nickname of "Adolf". The context in which Goran Jelisić used this nickname will demonstrate conclusively that this was not some form of endearment but was a direct reference to the genocidal activities of Adolf Hitler in Second World War. Indeed, one witness describes Goran Jelisić as stating to the effect, "Hitler was the first Adolf. I am the second." It matters little whether others gave Jelisić the nickname or whether he adopted it himself. What the evidence will show is that, regardless of the genesis of the nickname, Goran Jelisić used the nickname with a perverse pride in the genocidal symbolism it represented.

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*... numerous witnesses will testify that Goran Jelisić referred to himself as the "Serbian Adolf".*

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In addition to the use of the nickname "Adolf," numerous witnesses will testify that Jelisić openly bragged that the reason he had come to Brčko was to kill Muslims and to kill as many as possible. You will hear from at least one witness who tells of a confrontation which occurred when Goran Jelisić first took control at the Luka detention centre. As Goran Jelisić began harassing detainees, a local Serb from Brčko attempted to intervene. Jelisić became angry and said, in effect: "Do you know who I am?" and stated that all he had to do was to make a telephone call to resolve the matter. Goran walked off, came back. According to the testimony from the witnesses, Goran remained in control, and the local Serb was not seen again. Goran Jelisić did not hide the fact that the reason he had come to Brčko was to kill

as many Muslims as possible. One witness states that Jelisić bragged he had to kill 20 or 30 Muslims before he had his morning coffee. During his murderous spree, Goran Jelisić kept daily tallies of the number of Muslims he had killed. Numerous witnesses will testify about Goran Jelisić announcing his most recent totals. Goran Jelisić often told the detainees themselves how many Muslims he had killed at given points in time. Jelisić also told the guards in Luka camp how many individuals he had killed. Jelisić often set goals for himself by vowing not to rest until he had killed a certain total of detainees on a certain day. Once Goran Jelisić, according to one of the witnesses you will hear, even declined assistance from a guard with regard to a planned execution, noting that he, Goran Jelisić, was still in good form, even though he had killed over 60 people that day. Some of the daily tallies may have ranged into the high sixties, yet Goran Jelisić continued with his daily carnage.

The victim witness testimony will also establish that Goran Jelisić was not a reluctant tool of the genocide who was being compelled by Serb authorities to act against his will. Quite to the contrary, the testimony will firmly establish that Goran Jelisić was an efficient and enthusiastic participant in the genocide. One witness had the unfortunate experience of being with Goran Jelisić when Jelisić executed individuals over the metal grate.

As mentioned previously, Goran Jelisić often executed his victims over the grate in order to minimise the amount of clean-up after the execution. The grates fed into a drainage system which led out into the Sava River. This particular witness will testify that he watched as Jelisić forced a detainee to kneel over the grate and then shot him in the head. Jelisić then turned to the witness and said something to the effect of: “I can see that you are scared. It is nice to kill people this way. I kill them nicely. I don’t feel anything.” Goran Jelisić became so effective and so notorious during his genocidal spree that even the Bosnian Serb authorities had to rein him in.

You will hear from witnesses that around the 19 or 20 of May, 1992, some Bosnian Serb officials removed Goran Jelisić from Luka detention centre. Earlier in mid-May, however, when Jelisić first heard that an army major wanted to stop his killing, according to a witness, Goran Jelisić responded that he, Goran Jelisić, was the boss and that the Luka detention centre was not within the jurisdiction of the army. Jelisić said that he was ready to have a war with the army if they wanted him to stop his killing. Four or five days later, however, someone was able to get Goran Jelisić removed from the Luka camp. But for this eventual removal of Jelisić, he would have continued killing until he had fully decimated the detainee population. It is also important to note that Goran Jelisić understood how his individual actions fit into the broader genocidal campaign which had been launched by the Bosnian Serb authorities.

During interviews with OTP investigators, Jelisić explained that upon his arrival in Brčko, the head of the Serbian crisis staff provided Jelisić with a list of Muslims and instructed Jelisić to kill as many of the Muslims as possible. Through the witness testimony, we will also show that Goran Jelisić was not just a mere guard within the Luka camp but that he exhibited and exercised considerable authority. Particularly during the night, Goran Jelisić had free rein to do whatever he wanted to with the detainees. Often, he ordered guards to assist him in his activities and the guards complied. To the detainees whose lives were held in balance on an hourly basis, Goran Jelisić was the primary, if not the only, authority figure. As one witness put it: “To us, he was like a god. He controlled whether we lived or

whether we died.” It is appropriate and just that the Prosecution has pursued charges against individuals such as Goran Jelisić because without key executioners in the various geographical areas, the Bosnian Serb authorities would not have been able to implement the ethnic cleansing and genocidal campaign on which they embarked in the spring and summer of 1992. Accordingly, at the conclusion of the evidence, we will request this Court to find Goran Jelisić guilty of genocide because to the victims in Brčko, the face of genocide was the face of Goran Jelisić.

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**Geoffrey Nice:**

We will later come back to how the issue of genocide was in the end resolved by the Trial Chamber and the Appeals Chamber. Much, nearly all, of the evidence was given by witnesses who needed the protections of pseudonyms and whose faces were not seen by the public on the television broadcasts or at court. Of that evidence a large part was, I think public, so that people could read or hear the words spoken. There was evidence from the former mayor Mr Ramić, who gave an account of how this peaceful and multi-ethnic place had been subject in the proceeding month to an increase in population, to the arrival of the army, to the positioning of the army, to the blowing up of the bridges, to his inability to exercise his mandate as mayor, to his appearance on television in a last plea to the fleeing of many people, and indeed his own eventual departure. We had from Jelisić his interviews which were valuable in setting what he did in the wider context; for example, he explained how he had been provided with lists of people to kill and how the provision of those lists had all been part of a plan of which blowing up the bridges was also a part. He explained that how once Luka was operative it was possible to consolidate all the detainees within the same place and he gave an explanation for the next and unique piece of evidence which we shall see, and I expect many of you are already familiar with, which is the photograph sequence of the killing in the alleyway by the police station.

Those photographs are I think unique for this conflict. I said at the beginning of my address this afternoon that things may appear differently to those of us who don’t have your immediate experience to how they may seem to you. This photograph tells a great deal, the men facing certain death with the bodies ahead of them had been detained but briefly. They are without fight or resistance as they stumble towards a certain execution and the man killing them had, on his account, until comparatively recently led a comparatively normal life. One has but to wonder at the forces that can change people in such a short period of time, so rapidly, so as to find themselves in the position that these people found themselves. That’s only one view of this picture and on any reckoning it is the most powerful and indeed unique evidence of the commission of crimes by someone in your town.

He explained how he killed to order, usually with two bullets in the back of the head. He explained how the criteria for killing were to be a leading member of the SDA or just indeed to be connected to the SDA, at least that was one of the prevailing criteria. He explained how people who found themselves in cell number 13 at the police station were basically tried and convicted in advance and were facing a certain death before they ever found themselves there.

He gave one account in respect of Huso and Smajil Zahirović of how somebody else killed one of those two simply because he wanted to have a go at killing a Muslim. He explained that Naza Bukvic was simply killed because of her family connections with the party in opposition to those who were doing the killing. That evidence then not only happened to give the Judges live evidence of what Jelisić had done but set those crimes

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA

to a degree in a wider and more complete context.

As I said earlier today, it is not possible for every crime, every part of this tragic story to be investigated to the ultimate degree and in maximum detail. But through the trial of genocide of Jelisić we went a long way to lay publicly the facts as they appeared through our witnesses to have been.

## Session Four Judgement and Sentencing

### **David Tolbert:**

After the Prosecution puts forward its evidence the court enters a judgement and we have Olivier to tell us about the judgement and the Chamber's rulings. Olivier is very well placed for this as he was a senior legal officer advising the Judges in this case and is now a judge himself in France.

### **Olivier Fourmy, former Senior Legal Officer, Chambers, ICTY:**

I am not a member of the UN any more so I would like to thank those who have organised this event and for inviting me, and I would like to say how much I appreciate your participation and attendance.

A lot has been said about the cases of Mr Jelisić and Mr Češić. To start with, it is important - although it has been touched upon already - to say how special the system at the ICTY is. It is very true to say that the ICTY Statute and Rules organise a system which is primarily accusatorial. The Judges are meant to know nothing but what is presented to them by the Prosecution and by the Defence. You have already understood that regarding Mr Češić there was nothing to be presented with but the agreement that had been reached, it was a plea agreement. There was an agreement on the sentence and eventually the Judges rendered a decision that is fairly short and which deals with sentencing, which we will touch upon later.

The Jelisić case was different: as Geoffrey has just explained, there was disagreement based on the set of documents that were provided to the Judges. Then the Prosecution presented a case on genocide which led the Judges to make a number of findings. This is what is, I believe, extremely important to know because it explains how you move from an enormous amount of information to an extremely limited decision. You may agree with the decision, you may disagree with the decision, but the decision is what has been established beyond reasonable doubt for the Judges. They do not say the rest is wrong or that the rest does not exist. They do not say we are not interested in the rest, they say that that is all we can state today and that is very important. How did it go before the Judges in this case? The first encounter of the Judges with Mr Jelisić was something very special.

(court transcript)

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Case name and number:	Jelisić (IT-95-10)
Accused:	Goran Jelisić (initial appearance)
Date:	26.01.1998

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**Judge Jordić:** Please be seated. Madam Registrar, would you please ask the accused to be brought in. Could the accused be seated and please could the headphones be given to him, so he can hear the President of the Trial Chamber. Can you hear me, please?

**Accused:** Yes.

**Judge:** Please be seated. You may be seated. We are now going to go on with the initial appearance, with the accused Goran Jelisić. Accused, would you please stand up, and please could you say your first and last name, your date and place of birth, your profession and the place where you lived when you were arrested.

**Accused:** My name is Goran Jelisić, I am also known by my nickname, Adolf. I was born on 7 June 1968 in Bijeljina and I am a mechanic for agricultural machinery.

**Judge:** Could you tell me where your domicile was?

**Accused:** Slobodana Jovanović street, number 5, in Bijeljina, in Republika Srpska.

**Judge:** In Bijeljina. You may be seated, Mr Jelisić.

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**Olivier Fourmy:**

The reason why Jelisić addressed the court that way remains unclear to me and certainly unclear to the Judges. That was the first time the Judges met with Jelisić, so that must have had and could not but have had a major impact on the perception of the Judges about the case. Then we move to the presentation by the Prosecution of the case, only in relation to genocide, as Geoffrey just explained. The Judges were presented with 23 witnesses and 70 exhibits. These witnesses, these exhibits, in addition to the factual basis led to the conclusion that Cécile told you about regarding the general framework of the case and also on more specific accounts whether or not the Judges could reach the decision and more importantly whether the Judges would take into account those additional elements presented by the Prosecution not only in relation to the genocide count but also possibly in relation to sentencing.

I want to insist on some particular pieces of information that were bought to the Judges. One element, for example, concerns the forces that attacked the municipality of Brčko. The Judges were told that some belonged to the so-called "Arkan Tigers". These forces were meant to be extremely fierce combatants. What was repeatedly mentioned was the brutality with which Jelisić and Češić used to behave. I don't think that any of the witnesses considered as particularly brutal the fact that very often just by entering the camp or just by being arrested that they would be deprived of money, watches, jewellery or ID's. What they mainly complained about was, for example, in the case of Češić, is a story of having two brothers being forced to perform *fellatio*. Regarding Jelisić, it is the story of the woman who was attached to the post, which you have seen photographs of presented by Bernie, where she was beaten and beaten repeatedly so that eventually she would be taken almost fainting to the hanger and the next day she would be executed.

You heard that story of the Croat man whose ear had been cut and although he begged to be killed he was not killed immediately. There was also major evidence that, in fact, Jelisić enjoyed the beatings, the shooting. The beatings he did with sticks, batons, the fire hose and all he could use to beat people. He would beat people in the presence of third persons, including very young ones.

You may want to see how the Judges perceived this and how they described it in their pronouncement.

# BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA

(court transcript)

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Case name and number: Jelisić (IT-95-10)  
Trial Chamber Judgement: Judge Claude Jordà  
Date: 14.12.1999

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The Trial Chamber wishes to state clearly that the circumstances under which the acts ascribed to the accused were committed make the crimes appear especially abject and revolting. Goran Jelisić acted violently towards the detainees. For no apparent reason he punched them and beat them with truncheons, clubs, and other instruments without consideration for the person's sex or vulnerability.

Above all, Goran Jelisić is guilty of murdering 13 people whom he executed in cold blood. Five of these murders were perpetrated near the Brčko police station and always in an identical manner. After being interrogated, the victims were led by Goran Jelisić into an alley near the station and then he proceeded to execute them, generally with two bullets to the back of the neck fired from the Scorpion pistol fitted with a silencer. The other eight murders ascribed to him were committed in Luka camp. Here again, the murders were perpetrated in the same way. The victims were first subjected to interrogations conducted or participated in by Goran Jelisić and then beaten with truncheons and clubs. Next, armed with a Scorpion pistol, Goran Jelisić made them go outside and led them to the corner of the buildings where the victims were then executed point-blank with one or two bullets to the back of the neck or the back. Some of them were forced to kneel on a grate and then killed with one or two bullets to the back of the head. One Croatian detainee had his ear cut off before being shot. The bodies were then taken behind the buildings by the detainees, of course those who survived, thrown into the river or crammed into refrigerated lorries before being put into mass graves.

Witnesses declared that Goran Jelisić took pleasure from his position, one which gave him a feeling of power, of holding power of life or death over the detainees and of acting as he pleased, and that he even took a certain pride in the number of victims that he had executed. Thus, Goran Jelisić allegedly proclaimed to the Luka camp detainees that before being able to have his coffee every morning he needed to execute 20 to 30 persons. He also allegedly said to a detainee after one execution on the 15 of May that it had been his eighty-third "case". Whatever the exact number of his victims, the crimes of Goran Jelisić formed part of the armed operation carried out by the Serb forces against the Muslim population of Brčko. This offensive displays a certain degree of organisation. The rounding-up of the population at different points in the town, their subsequent transfer to detention centres, the interrogations, the violence and the murders, always perpetrated in an identical manner over a brief period of time, demonstrate the widespread or systematic nature of the attack against the civilian population of Brčko.

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## Olivier Fourmy:

Such was the perception of the Judges. It is fair to say that given the evidence put to the Judges by the Prosecution regarding the genocide issue, the Judges had to reflect on it and to take into consideration what they believed had been established. They certainly took into consideration the situation of the population in Brčko, immediately before the war and immediately after. At the time of the census in 1991 among the 40,000 inhabitants - maybe 41,000 inhabitants - there were 55% Muslims, 20% Serbs and 7% Croats and others. After the war we do not have any census. The Judges were not presented with any census, they were not presented with figures that would amount to 2,000 being dead or missing.

The Judges also noted that it is true to say that the beatings, the murders, were committed against detainees in relation to them belonging to the Muslim population. For example, there is a story of Jelisić beating a man and then beating the brother of the man. He beats them extremely severely until he suddenly realises that they are not Muslims, whereupon they were immediately set free. The Judges also noted the comments Jelisić made in relation to the Muslims. He said, and I am sorry to use this expression but apparently it was commonly used by him, he said that they were just good enough to clean the toilet. He said that he would kill Muslims every day for breakfast. He said that eventually only 5 to 10% would survive. That is what he said repeatedly. He said that he had killed a very large number of them. As you have been told, the Judges found, on the basis of evidence introduced by the Prosecution that he killed 13 persons. That was for the purpose of this case, the findings that the Judges could make. But he himself boasted that he killed 80 or even more, up to 150 persons.

Also, the Judges thought they should reflect on the question as to whether or not it was possible to commit genocide within the Brčko area or is it that genocide should be considered a crime by definition of such magnitude that you would need to have all the criminal acts perpetrated in a wide area? The Judges gave a clear answer on this point. They decided that you do not need a wide area and the municipality of Brčko is wide enough for genocide to be committed. They took into consideration additional elements, like whether there were indications that indeed a particular population was targeted so that destruction in all or part was envisaged. They took into consideration the lists that Geoffrey mentioned and accepted the fact that there were lists but didn't consider that Jelisić was acting in accordance with this list or, in other words, did not consider that there was a consistent link between the existence of a list that would have been prepared by others and the actions of Jelisić. This is also in relation to the fact that the Judges could not find that there was enough evidence that he indeed did receive orders to the extent that he should have to kill the population, although he himself alleged that he received orders to behave the way he did.

For the Judges no chain of command whatsoever had been established. The Judges also concluded that there was no plan and I am sure Geoffrey will explain at a later stage what the Appeals Chamber said about this notion of a plan. So, what the Judges went on to consider was whether Jelisić was not someone committing genocide but in being an accomplice to genocide, which in any case raised the issue of whether or not he had what we call in our legal jargon the *mens rea*, which is the mental element required to establish his guilt. In other words, whether he himself had the intention to commit genocide or to be an accomplice in genocide? The answer to that question, by the Trial Chamber, was no. They did not believe that a man who had no rank, no responsibility, who came from outside the town, despite everything that had been presented by the Prosecution and despite some of his admissions, had the will to destroy the Muslims or the non-Serbs in Brčko in all or in part. This was why, eventually, the Judges reached their decision to acquit him of genocide, but to find him guilty of all the crimes Cécile has told you about, and to sentence him.

Now is the time to turn back to Geoffrey for the Appeals process because the Prosecution appealed that decision and the Appeals Chamber actually reversed it to some extent.

**Geoffrey Nice:**

I think what we pick up from the following concluding part of the chronology of events is something extremely encouraging and positive. Most criminal systems of integrity around the world have an appeals process; sometimes the appeal is a re-hearing, some-

times it is an appeal confined to points of law, sometimes it is an appeal to which you are only entitled if you manage to get over some threshold test. In our Tribunal we have a very generous approach allowing either the Prosecution or the Accused to appeal. You may think that given the gravity of work in which we deal, the newness of the system we are operating and the international nature of our staff, it is desirable that there should be every avenue for reconsideration of decisions made by the Trial Chamber, avenues available to both sides. The Prosecutor, in exercising her role as guardian in the interests of victims and guardian of developing justice was not disposed to let the initial decision of the Judges, that there should be no finding of genocide, lie.

It happens that the Trial Chamber brought the case to conclusion at a particularly early stage and they had not gone through a defence case. The appeal when it was heard was to the effect that it should not have been stopped at that stage and that there was evidence at that time which might have led a Trial Chamber looking at the totality of the evidence in due course to convict of genocide. That is not to say that they found there was genocide, but only that it looked at the trial at that stage that it should have gone on and it was possible in due course that a finding of genocide could have been returned. The Appeals Chamber could have sent the case back to the Trial Chamber and instructed them to get on and go through the next stage of it, but they didn't. Again, with an eye on practicality and on various other reasons they cited why they were not going to send the case back to trial, including the fact that if something had gone wrong it was not Jelisić's fault. They decided to draw a line at that stage, they confirmed the sentence of 40 years imposed on Jelisić and brought the proceedings to a conclusion.

You will see from what Olivier and I have described that the various organs of the Tribunal operate independently in the greater interest. The Prosecution aren't hand in glove with the Judges, they are independent, they have their own function to perform and they have to perform it independently. Likewise the Judges aren't craven to the Prosecutor, they have to exercise their judgement independently at all times. For example, they do not just accept evidence because the Prosecution say they should, they exercise judgement, right the way through. I hope if and when you review the work of the Tribunal more fully you will be satisfied of that.

**Olivier Fourmy:**

Sentencing is something that was initially designed at the Tribunal in a way which is also, I believe, different from what you may know in your own system. Initially it was designed so that the cases would be tried in two different phases, the first would be the trial itself for the Judges to decide on the conviction and the second would be a sentencing phase with additional evidence, maybe witnesses, presented both by the Prosecution and/or the Defence to the Judges for the sole purpose of sentencing. I believe this is less and less the situation now and the Judges move straight from evidence related to the substance of the case to evidence related to sentencing.

Sentencing in these two cases was related to the particular situation where there was a plea agreement. As explained by Cécile and Geoffrey, the plea agreements were not taken the same way by the Judges. Regarding Jelisić, the plea agreement was not considered so satisfactory that it would express something that would extend to either the accused understanding and accepting what he had done or providing cooperation with the Prosecution. On the other hand, Češić obviously cooperated with the Prosecution and he made a statement which I believe is very clear, regarding his state of mind.

**BRIDGING THE GAP**  
BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA

(court transcript)

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Case name and number: Češić (IT-95-10/1)  
Accused: Ranko Češić  
(statement read out during the sentencing hearing)  
Date: 27.11.2003

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**Judge Orie:** Yes. Mr Češić, you have an opportunity to make a statement, if you want.

**Accused:** Thank you, Your Honours. First of all, without any false sentiments, I wish to express my deep remorse for all the evil I have done. Words such as "remorse" are insufficient to express what somebody like me feels. Looking back in time after so much time has elapsed since I committed those crimes, there is an enormous difference between my state of mind now and then. Now I would never do the things I did then, the things that took place in a time of euphoria, a time when all human dignity was abolished.

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*First of all, without any false sentiments, I wish to express my deep remorse for all the evil I have done.*

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Before the trial, I pleaded guilty to the counts of the indictment, and I did my best to help the OTP and the Tribunal to bring to light a small part of the overall truth, the part that refers to my actions. Your Honours, I will do anything to bring back the past and not to do what I have done. Since this is not possible, all that is left for me is to feel the deepest remorse for what I have done. To this I would like to add that

I did not want to bring my friends and relatives here to say nice things about me because I didn't want to increase the pain of the victims and their families, out of respect for the deceased. I hope that my sincere remorse, which I feel deeply, will help to prevent similar things from happening in the future, and I wish to say that any nation that experiences war is unfortunate, and people who live through this and families who have suffered pain feel this deeply. I want to say that I hope nobody will ever do the things that I have done and that prison is not the only punishment for me, because it is even harder to go on living with this feeling of guilt. Thank you, Your Honours, for giving me leave to speak.

**Judge:** Thank you, Mr Češić.

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**Olivier Fourmy:**

So this is what Češić wanted to tell these judges. Now let's turn back to how the sentencing process actually works. It has been a concern repeatedly expressed by some persons that the Tribunal would make decisions that had nothing to do with the usual practice in other countries or with the practice in the former Yugoslavia. It is true that there are provisions that say that references should be made to the practice in the former Yugoslavia and it has been decided by the Judges that it is just one element among many elements that they can take into consideration when reaching their decision. In particular they are not bound by the fact that there was a law passed in 1995 that turned all the sentences that were previously sentenced in the former Yugoslavia as a death penalty to a maximum of 20 years, because for the Tribunal the maximum is life imprisonment. That is the general framework and within this framework the Judges take into consideration a variety of factors; some of them are the aggravating circum-

stances, others are the mitigating circumstances.

The aggravating circumstances are the way the crimes were committed, the enthusiasm, so to speak, with which the perpetrator committed the crimes. The brutality of the crimes, the general behaviour of the accused, or whether he committed these crimes directly or whether he gave orders to commit the crimes, these are elements that could be considered as aggravating circumstances. You also have, and particularly so in the case of Češić, the humiliation of the victims, especially in the case of a sexual assault. You have also the consideration whether the victims were particularly vulnerable for one reason or another. Being detained you are already vulnerable, but you may yet have additional reasons for being vulnerable. You would also take into consideration, and Geoffrey mentioned that it is very important, the impact of what happened not only on the victims themselves but on the population as a whole.

On the other hand you may have mitigating factors. The question is: Is there anything given the nature of the crimes committed that the Judges should take into consideration, to decide to impose a sentence which would not be too heavy on the person found guilty? Age was mentioned in the agreement between the Prosecution and the Defence for example in the case with Češić. He was 28, Jelisić was 23. It is not generally considered as a mitigating circumstance, and there is no evidence that this is particularly relevant for these kinds of crimes. The issue of the guilty plea itself we have already discussed. As to remorse, you just don't know what impact it may have on the Judges. There might be other circumstances like whether or not you might be of a good character: This is not considered really relevant by the Judges, whether you had a previous criminal record or not. If you would have no criminal record that would show in your favour but otherwise it is not really relevant. On the other hand, it would not be necessarily an aggravating circumstance either.

As a result of this balance between the aggravating and mitigating circumstances, the Judges have to try to find what they believe might be the right decision, if there is anything like the right sentence. As much as the Judges knew nothing the day they first entered the courtroom to deal with a particular case, at the end of the case they have had all this evidence before them, they had the accused sitting there, in most cases not saying much, in some cases expressing themselves like Češić did or like Jelisić did, saying, "I am the Serb Adolf".

But the Judges cannot help but have other considerations in mind. They know that others committed other crimes, they know that there are other accused before the Tribunal. If you impose a sentence on one particular accused, what sentence will you impose on the other accused? They know that for some people it may seem strange that you are tried by the ICTY, or by the international court somewhere when other similar crimes are not tried at all. They know that the victims or the relatives of the accused may feel that there is some kind of double standard. But they also know that when you have committed all those crimes that have been described to you today, all those killings and brutal beatings, with such behaviour harsh sentences are deserved, and that is what they decided. Probably thanks to the agreement and certainly to his behaviour, Češić's sentence was, as you know, 18 years. There was no such reason for the Judges to be lenient with Jelisić who was sentenced by the Trial Chamber to 40 years' imprisonment, with the Appeals Chamber confirming that decision.

## Session Five Victims and Witnesses; Concluding Remarks

### **David Tolbert:**

Before we move to questions there are two final remarks that I would like to make. On several occasions victims who were witnesses at the Tribunal played a key role in our work and I think there has been nothing more inspiring during the time I have been with the Tribunal than to see these courageous victims come forward. No doubt we have victims and witnesses and their families in the audience that cannot be referred to. I think that, as one of my colleagues said, we have seen a revolution in the rights of the accused. In our systems in England and the States, particularly in common law adversarial systems, victims were relegated to the side, they were not really considered part of the process. In the nineties we started to see things like victims' impact statements introduced during sentencing. In the Češić case we had that and the Brčko victims' impact statements were taken into consideration by the Trial Chamber.

At the ICTY, I think we probably are in the second generation of the victims' rights revolution. We do not have compensation for victims, we do not have direct participation for victims, but we do have a very robust victims and witnesses section located in the Registry. It is located in Registry because of the Registry's neutrality, to protect the interests of those victim witnesses who come to The Hague. We take enormous steps to ensure that they can come to The Hague and testify under reasonable conditions. Arrangements are made so that they are not frightened or bewildered by the circumstance in coming to another country, dealing with a strange court. It is a difficult process but we do provide counselling, we do have individuals who accompany witnesses throughout their time at the Tribunal and we also have a protection programme to ensure that witnesses can testify with protection. We do not really have instances in these two cases because the nature of the cases was that they were not full blown trials, but in many cases we have witnesses with protection. They may be given a pseudonym when they testify or, as Geoffrey mentioned, they testify in closed session, or their face is blanked out on the television screen or their voice is distorted, or in certain exceptional cases where they are in real danger we arrange for their relocation to another country.

The third generation in victim's rights is really being seen at the ICC, where the ICC provides for compensation for victims. Victims may make claims for compensation. There is a trust fund for victims and the court provides representation for victims to participate in the process. There has not been a case yet at the ICC so we will have to see how this works. But, given that there are so many victims, and I know there are a number of victims groups and victims' families here, I wanted to mention that very specifically.

In closing, I would like to refer to a few things that I said at the very beginning. What we have tried to do today is take you through the process from investigations to indictment, to confirmation of indictment, to trial, to sentencing, and to appeal, and to give you as much information as possible. I think what this shows, as Geoffrey has noted, is that there are tensions in this process but they are healthy tensions. Judges do not always agree, judges and prosecutors certainly do not agree and it is interesting for someone such as myself sitting in a more neutral position to watch this.

What is critical is that war crimes prosecutions are brought. The Tribunal has done what it can do. We are coming to an end. The dates of 2004 for the end of investigations, 2008 for first instance trials and the end of 2010 for appeals, they are real dates, passed by the Security Council. The Security Council, which created the Tribunal, the employer

in a sense, our creator, has told us our time is up. But there are opportunities to continue prosecutions at the special war crimes Chamber in Sarajevo under the auspices of the Office of the High Representative and we are working very hard with the Office of the High Representative and State Court officials to put a legal framework in place, to give training in witness protection and to give training to judges and lawyers so that war crimes prosecutions can happen locally. Moreover, the Prosecutor has certified many cases under the Rules of the Road<sup>1</sup> project which can be prosecuted locally and we want to renew the statement and the pledge that all of us, and this comes from the Tribunal at the highest levels, have the commitment to provide materials, to provide evidence from the Prosecutor's office but also to provide training, assistance and advice. Our arm is extended, our hand is extended, this is our next step or the next generation of war crimes prosecutions in this country. It is important that they go on. We want to do everything that we can to make sure that we provide the assistance that we can. We have a tremendous bank of technical knowledge in The Hague, but it will fast disappear as the dates of 2008 and 2010 near because people will leave and the opportunity to tap into that information and more importantly that expertise will disappear.

**Refik Hodžić, former Outreach Coordinator for Bosnia and Herzegovina:**

This conference, this whole exercise, was designed to bridge the gap between the Tribunal and you, representatives of the community. What is very important is that you have not been randomly chosen to attend, that you are not here by chance, by accident. You have been chosen to be invited because you are renowned members of your community and you have the opportunity and possibility to convey what you've heard here today to your communities.

We are now coming to your questions related to specific events and we will hear, hopefully, answers from our guests from the Tribunal. We have already received a number of questions in writing. I will read them out in the order in which I received them. If there are more questions, as I'm sure there will be, we will proceed with direct questions and answers. Questions should be directly related to the subject of our conference - Brčko, the crimes committed in Brčko, and what the Tribunal has done, or has failed to do, in relation to Brčko.

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<sup>1</sup> The Rules of the Road project was established in 1996 and required the ICTY to review case files on alleged perpetrators of war crimes investigated by the authorities in Bosnia and Herzegovina. Tribunal staff reviewed these case files and assessed whether there was sufficient evidence for an arrest warrant to be issued.

## Questions and Answers Session

**Question:** “In the course of investigating crimes in Brčko, were you able to establish the number of victims and, if the answer is yes, what is the number?”

**Bernard O'Donnell:**

This is a question that continually came up during the course of the investigation and later in the Prosecution: how many people were victims in Brčko, and also right across Bosnia? We are largely reliant on other agencies in trying to gather information on the total number of victims, agencies such as the ICRC (International Committee of the Red Cross) with data on missing persons, information from local agencies on the number of local people from the area who had been killed or had been missing for a significant time. I mentioned before that we had information on the number of people in the mass grave, which was over 200. We know that the number of people killed was significantly higher than that, according to fairly consistent witness testimony. There was some evidence given in trial, perhaps Geoffrey wants to give details on that...

**Geoffrey Nice:**

The evidence to which Bernie is referring is the evidence that came from the mayor, Mr Ramić, where he calculated that 2,000 people had not returned. He gave very detailed evidence in some ways. He prepared lists of people who were missing and gave an account of how prominent Muslims were disposed of in the early stages, but this figure of 2,000 was inevitably something of an estimation and I haven't had the opportunity or taken the opportunity of speaking to him recently to know whether he accepts or wishes to have changes to that figure. For the reasons Bernie gave it is extraordinarily difficult to be precise in these figures.

**Question:** “How will the documentation relating to crimes committed in Brčko, which is now in The Hague, become available to the judiciary in Bosnia and Herzegovina?”

**David Tolbert:**

Let me see if I can answer that because it is a two-part answer. What I hope to see in the future is our judicial database being available electronically, not just to the people in Brčko, but throughout the world via the internet. What we have in The Hague is a judicial database which is electronic and fully searchable in English, French and in what we call BCS (Bosnian, Croatian or Serbian), as well as Albanian. It includes all the documents that have been filed, in every case, since the beginning of the Tribunal. We are currently looking to raise funds so that we can put the non-confidential part of that on to the internet. I would note that there is a strong movement, including Nataša Kandić, who is here, and others who are working hard to establish documentation centres, in Sarajevo, in Belgrade and so forth, and I think those processes are well on their way which may be a second source. Obviously, there is also an enormous number of documents currently available also on the ICTY website. With respect to non-public documents which may be in the Prosecution's hands I would have turn that over to Geoffrey or Bernie to answer. But certainly those documents that are part of the judicial record of the Tribunal can be provided if you make reasonable requests to the Tribunal, through the Registry, and I hope in the not too distant future we will see our judicial database on the internet and that will actually address the concern that you mention.

**Bernard O'Donnell:**

The Deputy Prosecutor some time ago made some formal changes in the way we protect information that relates to crimes that we have gathered in the course of our

investigations. Acknowledging that there are other parties who have a legitimate interest in the prosecution of crimes that we have information on, we are developing a system for turning that material over to other entities which would include courts within Bosnia and Herzegovina that are tasked with doing further investigations. We view it as being something we can assist with as we have amassed huge quantities of documentation which is relevant to cases that we unfortunately will not be able to prosecute and it is now the responsibility of local authorities to do so. We can assist not only in providing that documentation but also in discussing similar cases that we have had. I guess the modalities of that must be worked out, but the short answer is that the OTP is committed to cooperating in the further investigation of crimes and the provision of information that will assist in those investigations.

**Geoffrey Nice:**

If you put it another way, there is in principle no confidentiality or no privilege in legal terms that attaches to the documents that we have. However, you should be aware, and those of you familiar with the Rules of the Tribunal will be aware, that there is a small quantity of material that's been provided to the OTP under our Rule 70 in terms of complete confidentiality. It is material that is provided to us essentially and usually for lead purposes to help progress our enquiries and that information will not be available to other agencies because of the very specific terms to which it has been provided to us. But that is only a very small quantity of material.

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*... the OTP is committed to cooperating in the further investigation of crimes and the provision of information that will assist in those investigations.*

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**Refik Hodžić:**

The next question: "Did the procedure against Jelisić indicate that there were high ranking officials responsible for these crimes and why didn't the process develop in that direction?"

**Olivier Fourmy:**

No, at least not before the Chambers. The Chambers did not get any information with respect to any high level official that might have ordered what happened in Brčko. I am, however, just referring to these two cases.

**Bernard O'Donnell:**

In the course of the investigation we did obtain information on other people who were responsible for crimes, other people who were involved who were also part of the political structure. I mentioned before about the selection of targets and the two targets that were selected for this particular case, Jelisić and Češić. If the question is, are there other investigations that should be conducted, the answer is definitely yes. Do we have information on those people? Yes we do. The prosecutions should be done now by local authorities. To discuss the specific details of that and the information we have would not be appropriate because it could prejudice investigations that could be done, and in our belief should be done in the future. This is the sort of thing that of course we would discuss with the authorities that would be tasked with doing the investigation.

**Refik Hodžić:**

Another question: "Why did the investigators not comprehensively investigate the connection between the political and army leadership in Bijeljina and the crimes in Brčko and Bijeljina?"

**Bernard O'Donnell:**

All the way through the investigation, we received information on certain figures in Bijeljina and Brčko. Some of the evidence we gathered, and I have indicated some of it in the presentation today, has been used and will be used in other proceedings. It is not the case that because we did not use that evidence in the Jelisić and Češić cases that its value is lost. If it is relevant to any other cases that are to be investigated by the Tribunal, the information will be used in those cases even though it was gathered during the course of this investigation. The second part of the answer that I wanted to give relates to the further investigations; as I said a minute ago, to really discuss specific details of what information we received could prejudice the possibility of success of any further investigations that are done by local authorities. So this is another example of the sort of information we would exchange if there was investigation into those targets.

**Refik Hodžić:**

Another question: “Is the OTP aware of a system determining who would be killed in Luka and in the *Laser* company and what is the role of the inspectors mentioned in the interviews with Jelisić?”

**Bernard O'Donnell:**

I am probably going to start to sound like a worn out record but part of the answer I have to give to that one is quite similar and I think you will understand why. Yes, we did receive some information about the basis on which people were selected from Luka and also those held in the period before Luka became fully operational, those who were held in what was known as “Room 13” at the Brčko police station. According to Jelisić and also according to witness accounts, people were selected on the basis of their ethnicity and their party affiliation. People who were members of the SDA, especially senior members of the SDA, were targeted according to evidence that we have. People who were financiers of the SDA were also targeted. Those people who were selected from the very beginning from 1 May (1992) onwards from areas around Brčko and that process continued in Luka camp. Again, specific details of evidence against other people who were involved with that selection is the sort of thing that we would discuss in the course of further investigations conducted by local authorities, and we would provide any evidence we could to assist in those investigations.

**Geoffrey Nice:**

I would like to make one point arising from the previous question and answer. I think it may be obvious but nevertheless it should be emphasised, this was a question in relation to the pursuit of connections to Bijeljina. Don't be under the illusion that tracking down a witness or a potential witness is going to bring forth the material the investigator wants. The people who are able to tell the truth will themselves very often if not nearly always be implicated themselves or fear that they are going to be implicated. We have had examples of people, such as these two accused, making admissions, once it is clear to them on this occasion from witness evidence that they are probably going to be convicted in any event. But that is a rarity, and it is also a rarity to have someone who was involved to a degree taking the risk with his own future by telling us everything that he really knows. It doesn't work like that and we live with that reality and everyone else has to accept it. This is not a truth commission where there is an incentive upon people to unburden themselves, this is a criminal process. They are two very different procedures and this one has difficulties in unearthing witnesses who point the finger in the way we need.

**Refik Hodžić:**

Since the next question has already been partially answered, maybe just a brief answer

to this: "In the indictments against Milošević and Krajišnik, did the Prosecution take into account crimes committed in Brčko and in the Batković camp to which most of the inmates from Luka were transferred?"

**Bernard O'Donnell:**

In both cases the events that occurred in Brčko are part of the trial. In fact, the events of Brčko are a very important part of the crime base for the trials of Krajišnik and Milošević. You mentioned the Batković camp and, of course, we are aware that a lot of the detainees from Luka were taken to Batković camp. That is also quite important, as well as the way that it was done. If you look at the pattern of detention across Bosnia, some of the evidence given shows the level of planning that must have been necessary to do that with people being detained at various places but across a very large area involving a lot of different municipalities and a lot of different autonomous regions. People ended up at Batković camp even from the autonomous region of Krajina. So, yes, it is an important part of both of those cases.

**Refik Hodžić:**

And now we have a rather lengthy question, as follows: "Will the Tribunal review the crime committed against 13 people from Grbavica who were taken captive alive, tortured and then killed. Their limbs were broken and torn from their bodies, they were decapitated, their fingers were broken, they were tortured in many different ways." A compact disc has been submitted with evidence and post mortem details. "This is a small fraction of the crimes committed in the Brčko territory: Bijela, five victims; Cerik, 14 victims; Bukvik, 59 murdered and the entire population deported; Bukovac, 13 killed. From the territory populated by Serbs, 5,000 were expelled from the Federal part and they were also imprisoned in 26 different camps."

**Bernard O'Donnell:**

I will start with an answer to the question and then I will invite David Tolbert, Geoffrey Nice and any other members of the panel to comment. The Tribunal, to make it very clear, is interested in investigating crimes where Serbs are the victims just the same as investigating crimes where Muslims or Croats are the victims. In fact, the sole function of a whole investigative team is to investigate crimes where Serbs are the victims, such as the crimes that you have just outlined. As I mentioned earlier, to be able to do our job effectively we really need to have cooperation and the investigations that we have undertaken go back many years and by virtue of their nature they are very large investigations. They are investigations that span years of work and the cooperation has to be there from people who have information that can assist in the process. To illustrate that with the mass grave that we discussed this morning, 66 bodies and substantial body parts were removed in that exhumation but we know from documentation that we seized that there were over 200 bodies in that mass grave. If you were to say to a member of the Tribunal, say myself, in 1997 that you had information on a mass grave with 200 Serbs in it in Brčko then when we had an exhumation programme going I would have guaranteed at least equal resources into doing the exhumation. In fact, at the end of 1997, I took part in one of the first missions to open dialogue with officials in Republika Srpska with one of the chief war crimes investigators for crimes committed against the Serbs. At that stage unfortunately we did not receive details of mass graves containing Serb victims.

One of the problems the ICTY has faced in conducting investigations has been a lack of access to information and I think you can appreciate that it is a very difficult situation. How can we conduct investigations when we have no information supplies, no complaints, no official details referred to the Tribunal for investigation? I am especially

talking about the early stages because there was vital time lost in 1996, 1997 and even 1998 when cooperation was minimal. No access was provided to witnesses, in fact many people had been discouraged from talking to us according to what we have been told by many of those people later. We have information provided which is a mixture of open source material and other things we don't relate to the crimes but are more propaganda based. It is very difficult for us to do the investigation.

So, coming back to the whether the Tribunal is willing to investigate the crimes that you have just mentioned, the answer is that the Tribunal is interested in crimes regardless of what the ethnicity is, crimes should be investigated on the basis of their seriousness. We accept the information that was provided and it will definitely be referred to the team responsible for undertaking those investigations. We have contact details for the people who put together that information and a decision will be made on that by the people who review the information.

**David Tolbert:**

I would emphasise that under the Tribunal's Statute, which is adopted pursuant to Chapter VII of the United Nations Charter, states are required to cooperate with the Tribunal. Part of that cooperation is to make arrests when the Tribunal issues warrants, and to provide the Tribunal with evidence. I would like to underline that the Tribunal

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*... the Tribunal cannot investigate the alleged crimes if governments do not cooperate with it, do not provide evidence or materials or block access.*

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cannot investigate the alleged crimes if governments do not cooperate with it, do not provide evidence or materials or block access. So, cooperation is also about providing us with materials where authorities believe there has been a violation of the Statute. It is no secret that certain states, certain entities have been much more cooperative with the Tribunal than others and I think we have to put the answer in context. Just last week the

President of the Tribunal made a referral to the Security Council under Rule 7bis of the Tribunal's Rules of Procedure and Evidence for Serbia and Montenegro's failure to cooperate with the Tribunal. That is an example of non-cooperation that has now gone to the highest level.

**Geoffrey Nice:**

I have something to add as well, not so much regarding the Jelisić case but in two other cases in which I have been involved. The most important material arguably is documents. Cooperation has been for the most part interpreted by the states as consisting of providing requested documents. You may think that cooperation is rather more than that and you may think that our life would have been made a great deal easier, that the record could have been made fuller and better if the states had themselves made a positive decision to find the documents that they know exist and they know will help us and hand them over. But they have not done it. So, 10 years on we are looking at walls where there were central records of the major decision making bodies which have been kept from us. It is going to be, probably, a matter of judgement for your children, your grandchildren and their children whether this was the right thing to do because people will be looking back and they will look back on these trials and say, well they got that wrong and they didn't get that right or that wasn't done completely and the answer will all too often be because one state or the other elected not to cooperate in the fullest sense.

**Refik Hodžić:**

Next question: “ICTY brought an indictment against only two persons for crimes committed in Brčko. According to all the information arising from these two cases, has a link been established with local authorities with a view to collecting new evidence and bringing new indictments?” Then a follow-up question on this: “Are you aware if any authorities are working to collect new evidence on crimes committed after May 1992, and, if so, which?”

**David Tolbert:**

I mentioned earlier the Rules of the Road cases in which local prosecutors submit investigation dossiers to the Tribunal’s Prosecution for endorsement before any case can commence in Bosnia. I understand that there are a number of those that have been certified for prosecution and have been returned to local authorities. Others have been returned with questions for more information. So that process is in full swing. Bernie, do you want to say anything further?

**Bernard O’Donnell:**

I hope I answered the substantive part of the question earlier. I will just recap. We do have information on the involvement of other people in significant crimes. They are now going to be the responsibility of local authorities. We will cooperate in the sharing of information to assist in any further investigations that are conducted and we would talk to the authorities tasked with the investigation on the specific details.

**Refik Hodžić:**

The next question: “Is it really a good idea to transfer responsibility from the International Tribunal to local courts if we know very well that no single local authority in Brčko has done anything either to collect evidence or deal with war criminals? In Brčko it is still a taboo.”

**David Tolbert:**

In terms of transferring cases, let me spend just a moment to talk about what we mean when we talk about transferring cases and materials because there is some confusion on this. There are three possibilities under the Tribunal’s statute.

Certain cases that are already indictments at the Tribunal can be referred to local authorities under Rule 11bis, that allows the Tribunal to actually transfer the indictment, as well as the accused if they are in custody, back to national authorities. We will probably transfer a comparatively small number of cases to the State Court’s Special War Crimes Chamber in Sarajevo, once it is up and functioning. Such cases will not include high-level suspects because by definition according to the Security Council the Tribunal is to focus on the most serious perpetrators.

There is a second category, which are the ‘Rules of the Road’ cases. Those are the cases that local prosecutors or national prosecutors want to bring in Bosnia and Herzegovina. They are required to send an investigative dossier to The Hague for certification. The responsibility of evaluating as to whether there is a *prima facie* case and whether it is appropriate to go forward with it has been with the ICTY but will probably move to a body in Sarajevo once the State Court and the Special Chambers are established there.

There is a third element and that is evidentiary materials, cases that have been partially or extensively developed, materials that might assist national authorities in their investigations and prosecutions.

Those are the three categories that we are talking about and it is important to bear that in mind. Let's move to the question. It is not really up to the Tribunal at this stage, we have to end our investigations by the end of 2004, it is the Security Council's decision that our cases are to end by 2008 and our Appeals by 2010. Are those dates absolutely concrete? They are pretty close. If Karadžić is arrested at the end of 2008, well, things might change and there might be some adjustment for a case like Karadžić or Mladić or Gotovina. So whether local authorities are ready or not, the authority is coming to them and what I have said today is a reflection of the Tribunal's leadership's commitment to do whatever we can with the Office of the High Representative, the State Court and the local authorities, whether they are in Brčko or anywhere else in the former Yugoslavia, be it Serbia, Croatia, Macedonia. I think what is implicit in the question is that time is running out, and it is running out because the expertise in The Hague will start to wind down, and people who know a tremendous amount about the crime base throughout the former Yugoslavia, are leaving. So, whether we like it or not, that is the reality and I think that it is in everyone's interest to do whatever we can do to build the local courts' and the local prosecutions' strength to take on this task.

**Refik Hodžić:**

Next question: "Can the families of victims ask the Tribunal for compensation from the authorities of the Brčko District which assumed responsibility for the suffering of their loved ones?"

**David Tolbert:**

The short answer is no.

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**Refik Hodžić:**

If I may add something, this question, as well as the few next ones that I will read, should better be addressed to the local authorities, relying perhaps on what the Tribunal established as a fact in the context of their cases. The Tribunal as you heard has no mechanism whatsoever to deal with the issue of compensation. That does not mean, however, that local authorities do not have any obligation to think about it, to contemplate it.

I will now read two questions which I don't think can be answered by our panel but they deserve to be heard and, perhaps, people from our police forces and our government should take them into account. The first question, unsigned: "My family was brutally killed in the village of Čađavac by Serb troops in 1992. In the mass grave I found my cousin, uncle and grandmother. My father was taken by locals from Potočari and handed over to the military police that took him to the barracks and brutally killed him. Much is known about this case but it is concealed. What does it take for my case, the case of my family, to start to be dealt with?"

I don't think you will hear an answer from this panel but the local authorities should do something about it and react. I think this is a good opportunity for them to hear this.

Another question: "To whom should we talk about 13 persons who were forcibly expelled from their homes in 1995 after being forced to pay around 1,700 Deutsche Marks on threat of death"? And one more: "A petrol station belonging to the Mištrefić family was robbed of 250,000 Deutsche Marks. Whom should we address for compensation?"

Again, I have to say this is not a proper question for this panel.

Continuing with certain questions that can be answered here: “Who and when should find out the whole truth about what happened in Brčko from May 1992 onwards? There is still no one collecting evidence on the great number of Croats and Muslims who are still recorded as missing.”

**Geoffrey Nice:**

This is a difficult question to answer because the answer is not a very happy or encouraging one. Starting with our Tribunal - our Tribunal has a narrow mandate and that mandate is to investigate crimes when they are revealed and, now, only to prosecute crimes at a certain level. I’m afraid this inquiry has to be directed elsewhere. I have to repeat - we are not a truth commission and we can’t take on that job. Terrible and tragic events were committed here and there are many other places where the inhabitants feel that the whole story hasn’t been unearthed and won’t be unearthed for the same reason. I think this point has to be made - these investigations and these trials are extraordinarily expensive in terms of time and money, because of the places of investigation, the nature of the underlying crime and so on. They are also complicated and time-consuming because of the difficulties we’ve had in production of materials and because of the very limited occasions it is when people simply volunteer and tell us the truth. These are matters outside our control, but it does mean that there are serious limitations in the number of cases we can deal with. Therefore the uncomfortable but truthful answer to that question is that that kind of investigation may have to be dealt with, if at all, by others. We can only deal with particular and serious crimes when we have enough evidence.

**Refik Hodžić:**

Another question: “Today I learned about the technology of the work of ICTY. For me as a layman that was very interesting. My question concerns all those actions before the indictment. How did you make your priorities without being influenced by public opinion and media and politicization?”

**Bernard O’Donnell:**

That’s a difficult question to answer in a short space of time, because it’s talking about the management of the investigation in a fairly protracted period of time. But, in the early stages, the Tribunal did not have access to the area, so we used sources such as the report of the Commission of Experts - that came out in 1995 and other reports such as Mazowiecki’s report in 1993. We already had a substantial body of knowledge of what generally had occurred, what the most significant crimes were, who many of the perpetrators were - although many of the perpetrators were not named - and from there a selection of targets and a selection of crimes was made. The second phase of the investigation was to go forward with that, to try and collect evidence to be able to present in court on the charges and the targets that were selected as being the most appropriate. That took the form of continuing to gather material from Bosnian authorities, from international agencies, interviewing of witnesses, trying to identify further witnesses on specific incidents and eventually culminate in crime scene work and the arrests and so forth.

**Olivier Fourmy:**

There might also be a political aspect in an answer to that particular question. I will not respond as a former member of ICTY but as a former civil servant of the French Foreign Ministry. One should recall that the ICTY was established at the time when the international community, or at least a large part of the international community, was primarily concerned with crimes committed against Muslims in Bosnia and Herzegovina. But, of course, the international community was also well aware that even assuming, and I do

say assuming, that majority of the crimes would be committed against that particular community that there were unfortunately strong chances that other crimes would be committed against the other communities. I think this framework might also be important to understand how the Tribunal itself developed its investigations and then you may also want to take into consideration which of the communities involved provided information to the Tribunal.

**Refik Hodžić:**

Several questions have been asked in this spirit we discussed as responses to other questions. A sort of correspondence has developed among participants concerning certain subjects that have been referred to. However, there is one question which is very complicated, deals with a very complex legal question. That is: "How should we resolve the question of valid convictions concerning persons convicted of war crimes who have not been arrested? These people are walking free today. The Tribunal is not dealing with them and the local authorities don't take them into custody." So, we are talking about convictions made during the war, valid convictions which are still in force but have not been enforced. I don't know if any of you will be able to answer this question.

**Geoffrey Nice:**

As to the validity of the convictions to which the question refers, we are unable to express a view one way or the other for pretty obvious reasons. They are not convictions returned at our court and we know nothing about them beyond what is asserted. If they are valid convictions, it's not for us to take any steps to enforce the sentences, it is for others. Our mandate is to act independently in the way we do and these alleged convictions with men at liberty affect our mandate not one way or another. I'm afraid that the remedy for this, if there is a remedy, is elsewhere.

**Refik Hodžić:**

During the break Ms Džaferović, Mr Tokača and Mr Đapo asked if they could raise some questions. Since we have only 15 minutes left, I would like to know if there is anyone else who wants to pose a question.

**Zumra Džaferović:**

I would like to ask the lady and gentlemen if they are aware of the names of the members of our Brčko garrison who received orders from Milošević as to what to do in Brčko and they conveyed this order to the others who gave them to Ranko (Češić) and others. We were hoping to learn something about this and we were hoping that their names would be mentioned in the trials and in the proceedings against Češić because they had to know in advance what would happen in Brčko, they were aware of the plan.

**Geoffrey Nice:**

We would perhaps invite everyone here to show some caution before using names in a public or semi-public place like this. That information, providing it's been made available to the investigators, will be acted upon. If you have any concerns about whether it's been adequately provided, please have a word with Mr O'Donnell afterwards. I'm certainly not in a position to say anything else publicly about what you've just asked.

**Mirsad Tokača:**

You will have to forgive me for saying this, but what has been going on in this room today has been a one-way street. Everything is directed towards the Tribunal and it shouldn't be. I am afraid that our local communities, including Brčko, are still far too distant, far too remote from the Tribunal. We have to stop looking to the Tribunal and we have to turn to our local authorities and to get them to start dealing with these

matters. It's been five years since the Brčko District has been established, five years from the day when our authorities began to operate. I am very happy to hear that in this period we've had free movement of people, goods and capital. But there has been no freedom so far in the exercise of the rights of victims or proper dealing with people who are guilty of serious crimes. And while I'm thanking the organizers for this meeting, which lasted several hours and could have lasted several days, and I also thank everyone for the support of the civil sector which has given more care to certain matters than our authorities have, in future meetings of this kind I believe we have to give more attention to bringing local communities closer to the experience of the Tribunal and the expertise which is so valuable for prosecutors, judges, investigators and others. We must see how we should go about creating a proper climate in our local community for our war crimes chamber to work properly and to develop other levels, structures that would deal with war crimes and war criminals. That's why I kindly ask of you to make every effort for the Outreach programme not to die in Bosnia, but to develop it in such a way as to ensure that it becomes a two-way street and for the interest of experts to concentrate more on expert issues while eliciting more public interest than has been the case until today. Let us not allow another meeting which would be a one-way street.

**Geoffrey Nice:**

I asked to answer this because much of what the speaker said reflects what David Tolbert's been saying in the course of the day. Of course, we can't explicitly agree with what you're saying so far as it would reflect any criticism of local bodies. That's not for us to do and is outside our knowledge. But there are two points, aren't there? First, when an international organisation chooses, or is asked to contribute to a solution of a local problem, it has to make a decision to the appropriate time to withdraw its services and hand the problem back completely or more completely to the community. Doing that will never be at the completely right time for everybody because, by doing it, it is indeed going to be exerting pressure on the local community which the local community might not want at exactly that time. But that's one of the things we're doing, by dint of the Security Council determination that our activity must come to an end, which is, uncomfortable, but necessary and actually desirable. But the other part of that is, as David has been at pains to say, and I'm sure Refik would acknowledge and repeat, we want to make everything that we've learned and every skill we've discovered in ourselves or in others available to help in the very process that you seek.

**David Tolbert:**

I would just add something, because you made reference to our Outreach programme, which is quite a critical component of the Tribunal's work, unfortunately underappreciated I would say. One of the things that we're committed to doing is a second generation Outreach programme, and by that I mean that the first generation, being a more information, public relations aspect, will continue, but the second generation Outreach programme looks to provide the training and provide skills transfer, the knowledge transfer, the know-how transfer. That's what we're really looking to do with the Outreach programme. Unfortunately, it's fairly small and comes from extra-budgetary funding, but you can be assured that we are very committed to the Outreach programme and pushing it on to the second generation.

**Mirsad Dapo:**

First of all, I wish to welcome you all as the speaker of our Assembly, I wish to thank the gentlemen and the lady from The Hague today for today's discussion and to say that I'm very pleasantly surprised to see that the people attending here today are ready to discuss things very openly. I am appealing here today that we adopt a resolution to which all the governmental bodies would subscribe whereby this work would be trans-

fferred to the local level. I think we have felt the absence today of the authorities of various entities because the judiciary of the Brčko District does not have all this data that you have. And what is very important is that nobody must be above the law and that everybody has to be subject to the same procedure, so that blame is not assigned to whole nations, so that we can start building a multi-ethnic society and that can be done only after we establish the whole truth. The first step is to identify victims. And another thing is that we all have to make an additional effort to encourage all citizens to provide whatever information they have, not only about crimes committed by members of other ethnicities, but members of their own communities as well. We still don't have enough information about perpetrators or victims from all communities. Only when we have done this, can we really start our work and can we do justice to the victims. Only then can we enable them to find out where their beloved ones lie. That is why I'm grateful that people from the judiciary, from the authorities and politicians of Brčko have come here today to attend, to discuss this openly.

**Question:** Could you give me your opinion why today after so many years some of the oligarchs in power still do not give you access to information?

**Geoffrey Nice:**

I suspect my answer would be not better or worse informed than yours. But can I suppose two basic reasons. One is because they perceive an interest in defending particular individuals or saving particular individuals from what would be revealed about these individuals if they made the documents available. I suppose it is possible to understand that, but hard or indeed impossible to justify. The second obvious potential reason is that they don't see the work of the Tribunal as, indeed it is, the work which concerns individual criminal responsibility but themselves take the view that there is some kind of, not corporate, but general responsibility, and that they are not disposed to help that perceived general responsibility being uncovered.

There is also a third and specific reason for withholding of documents, which has been identified sufficiently in public that it can be referred to, and that is concern about what effect assistance to us would have on proceedings before the International Court of Justice in The Hague, arising from Bosnia's claim against Serbia there. None of these reasons will look very good in the mid or long term, they would all look terrible. I repeat what I said earlier - think of your own children, grandchildren and great grandchildren reviewing an incomplete record made incomplete because today's leaders acted in resistance of our efforts out of the sort of interests I identified.

**David Tolbert:**

I'd like to add one comment to that, which I fully agree with. A real danger is that with these completion strategy target dates it's possible that you will have authorities who do not want to cooperate with the Tribunal, playing for time, so to speak, until the Tribunal's mandate expires. They will also try to prevent local courts from prosecuting, so this is a real danger and you are quite right to highlight it.

**Ivan Krndelj:**

I wish to thank the organisers for giving primarily the victims of war crimes this opportunity to hear how the ICTY and its investigators are doing their job. We have realized today that you have not had enough information that would have enabled you to gain an even better insight into what happened in Brčko. We are aware that with the convictions of Jelisić and Češić the story does not end, it only begins, and I mean the story of processing war crimes. As one of the prisoners in the barracks in the Brčko District, in the month of May (1992), I wonder why the barracks are never mentioned because

people have been tortured and killed there and why, in connection with the bridge that we have seen at the beginning in the video footage, is this an investigation that's ongoing because people died there or is it something mentioned only in connection with material damage or something of that sort. I thank you on behalf of all the three communities. You have seen today that all of them want to see war criminals brought to justice. If the International Tribunal is no longer able to continue this work, then please transfer your responsibilities to local authorities. We have the resources to continue.

**Bernard O'Donnell:**

Thank you very much. In relation to the bridge - I played earlier the testimony that was given by Mr Gaši. That testimony was in relation to the Krajišnik case. The blowing of the bridge is actually part of the evidence in that case. It shows part of the planning of other things. It's been introduced by the OTP as part of the evidence in that case, but it was not relevant to Jelisić himself, so it was not introduced in that case, or Češić himself, but that's not to say it's not relevant to other cases, and it will be used in those cases. Secondly - the barracks. The detentions we are aware of occurred in lot of places around Brčko. There has been a lot of focus on Luka, but we know that there are a lot of other places that were used. That is also important in other cases because of the widespread nature and the organization which I gave some brief details on earlier. In relation to the transfer of cases, I fully agree. As we mentioned before, it's our intention to work closely with people who will take up these prosecutions and assist them with information and in any other way we can.

**Branko Todorović:**

Very briefly again I wish to thank our guests from The Hague and to express our appreciation not only of their work regarding the crimes committed here in Brčko, but our gratitude for their being here today and for the hope they have given us. And I see this hope looking at your faces. You, people from Brčko, with your courage and forbearance are trying to find answers to very painful questions. If I should try to formulate the message from all of us here today to everyone in Brčko, not only to the families of the victims, that message would be that we wish good to triumph over evil. We want the rule of the law and we want punishment for war criminals, with no interference from politics, no focusing on narrow-minded interest, no entrenchment on any side. I believe that citizens of Bosnia and Herzegovina are in a large measure ready to take up this civilizing challenge we are facing, the challenge to bring criminals to justice and we as citizens can contribute to this process by putting pressure on the judiciary and the authorities to do their job. As a representative of NGOs active in BiH, I can say that this conference is only the beginning. We will see a continuation of this in other towns and we will again ask the authorities in Brčko District and in other entities and the international community, of course, what they have done to see the rule of law established in BiH. We are not asking for anything more. We are only asking that brutal perpetrators of crimes against innocent women, children and people should be brought to justice.

**Geoffrey Nice:**

In light of the thrust of many of the recent questions about investigations not carried on, I think I should make one point clear on behalf of the investigators and the lawyers

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of the limb of the Tribunal that enquires and prosecutes. And the point can be divided into two - your tragedy has provided us, of course, with the real privilege, and it is a privilege, of enquiring into these extraordinary and fundamental issues that war crimes reveal without the suffering that you have. But the second and important point that I hope you will accept is that there is no investigator and no lawyer from the Prosecution of the ICTY who wants to see our investigations come to an end. We recognize that they have to and wiser heads determined when that has to happen and when it has to be handed to local authorities, and we accept that. But, please, don't go away other than accepting that all the investigators and all the lawyers who prosecute would wish to carry this work in what they see as the greater interest.

**David Tolbert:**

I would add that all the staff in the institution are deeply committed to this process. As you say, wiser heads have made the decisions that we have to live with. I wanted to thank our interpreters for the great job that they've done and also give them a major apology for running over a long time without a break. I think it's illustrative, we got a little bit too overly engaged in the discussion. But it shows some of the issues we face at the Tribunal - almost everything has to be translated, interpreted. We all come from different legal cultures. Frankly, the Tribunal has a lot of issues, but I think a lot has been accomplished given the enormous task that it's had to face. I want to thank my colleagues here for making the trip here. It's been a tremendous honour for all of us to be in front of you today. I've always viewed the Tribunal as really your Tribunal. It's not our Tribunal. It's established to deal with crimes that were committed here, in Brčko and throughout the region. So, in a sense, we are only doing what we should be by reporting to you what we've done. It's really been an honour and a pleasure to be with you here today and we look forward to seeing you again another time.